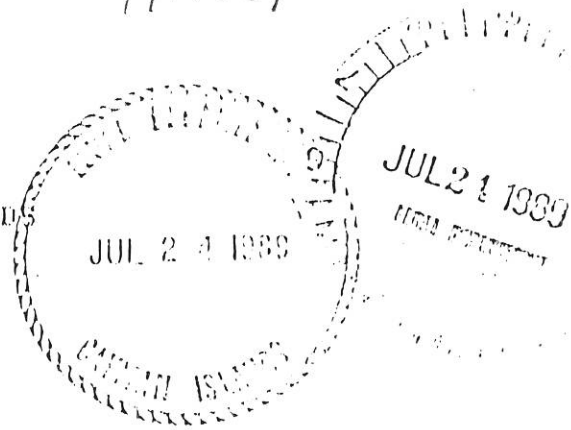


19.7.89

1

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN
CAUSE NO. 338/88



IN THE MATTER OF THE BANKS AND TRUST
COMPANIES REGULATION LAW (REVISED)

AND

IN THE MATTER OF GLOBAL INVESTMENT BROKERS LT

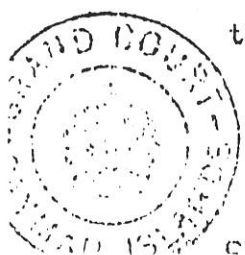
For the applicant *ex parte*: Mr. Anthony Smellie,
Acting Attorney General

JUDGMENT

This was an originating summons taken out by the Attorney General applying for an Order restraining the defendant from removing from the jurisdiction, transferring, assigning or otherwise disposing of funds deposited in an account in its name at a bank in George Town.

The affidavit evidence given in support of the summons by the Inspector of Banks was to the effect that the amounts deposited at the bank were proceeds obtained by a breach of the law by Global Investment Brokers Limited. The breach alleged was that the company had been conducting banking business without a licence, and had made untrue representations in a document purporting to be a prospectus of a "Private Investor Programme." It was the belief of the Inspector that the sums of money shown as having been deposited in the bank account of the defendant were obtained from persons who responded to the representations made in the prospectus.

I made the Order sought and undertook to give written reasons later, as I now do, in view of the legal principles involved. They concern the right of the applicant to apply and the jurisdiction of the Court to act.



Section 28 of the Penal Code provides that any person convicted of an offence may be liable to...

person injured by his offence. Sections 55 and 182 of the Criminal Procedure Code provide respectively for restitution of property after conviction and seizure of any property which there is reason to believe has been obtained by or is the proceeds or part of the proceeds of any offence, or into which the proceeds of any offence have been converted. However, at the time of the application, no conviction had taken place, although a charge had been filed against the company alleging a breach of section 3 of the Banks and Trust Companies Regulation Law (Revised).

The Order sought was, therefore, by way of being a preemptive strike. I was referred to two English cases, Chief Constable of Kent v. V. and anor., (1983) 1 QB 34 and Chief Constable of Hampshire v. A Ltd and ors., (1985) QB 132. I will refer to these as "Kent" and "Hampshire" respectively. In Hampshire the decision of the Court of Appeal to refuse an injunction was based on the principle that the power of the Courts to prevent the proceeds of crime being dissipated could only be exercised where those proceeds could be identified. That is not the problem in the present case. However, reference to Hampshire is useful for its analysis of the earlier Kent case. In that earlier case the Court was unanimously of the view that it had power under section 37(1) of the Supreme Court Act 1981 to grant the injunction sought. The majority of the Court, Donaldson and Slade LJJ, were of the view that an applicant had to show that he had a legal or equitable right or interest, the enforcement or protection of which required the making of an injunction. Lord Denning MR went further and defined a sufficient interest in terms of the locus standi of the applicant.

The principle for which Kent is authority is, in my view, that an applicant for an injunction must show a right or an interest, whether legal or equitable, on the basis of which it is just and equitable that an injunction should be made. A Chief Constable who believes on reasonable grounds that a sum of money in a bank account represents the proceeds of crime does have such an interest. He is under a duty to recover stolen goods if possible and that gives him the interest required for an injunction under section 37 of the Supreme Court Act 1981. The

Islands by virtue of section 13 of the Grand Court Law. Neither Lord Denning M.R. nor Donaldson LJ regarded it as essential that the Chief Constable should have the right to have the money actually paid over to him. That was the minority view of Slade LJ, who did however, make the following reference to the special position of the Attorney General -

"Statute or the common law may confer on certain persons or bodies a special right, beyond that conferred on an ordinary citizen, to seek injunctive relief from the Court, even though they may be able to point to no independent legal or equitable right of their own which is sought to be protected. The Attorney General, for example, has the right to seek an injunction to restrain a threatened illegal act in his capacity as guardian of the public interest."

In the present case the Attorney General, unlike the Chief Constable of Kent, does not have power of seizure. But he has, as Slade LJ said in Kent, a right to seek an injunction to restrain a threatened illegal act in his capacity as guardian of the public interest. Such an illegal act is the dissipation of property unlawfully obtained. In the present case he had before him evidence from the Inspector of Banks. The Inspector is a person who is appointed by and reports to the Governor in Council. He has a statutory duty to maintain a general review of banking practice in the Cayman Islands. His evidence was to the effect that he had concluded that Global Investment Brokers Ltd had been carrying on banking business in the Islands and had committed criminal offences; that it had deposited in a bank proceeds obtained as a result of its breaches of the law; that he was concerned that funds remaining in the bank account would be taken outside the jurisdiction; and that he was advised that the Court may order upon the conviction of the defendant or its principals for any criminal offence against the Banks and Trust Companies Regulation Law (Revised) that funds standing to its account be returned to the depositors or if those depositors are not identified to the Financial Secretary for the benefit of the public revenue.

seizure and restitution of property wrongfully acquired in sections 181 and 182 of the Criminal Procedure Code and for compensation in section 28 of the Penal Code. The Crown cannot appear in its own Court to support its interest in person. It is represented by the Attorney General. He is primarily an officer of the Crown and that sense an officer of the public: Halsbury's Laws of England (4th edition) Vol 8, para 1274.

He represents the Crown in the Court in all matters in which rights of a public character came into question. The good name and economic property of the Cayman Islands depend heavily on the orderly conduct of the banking industry, and the Inspector of Banks called in aid the Attorney General to seek an injunction.

All these matters led me to the conclusion that this was a matter of sufficient public interest to give the Attorney General the right to make his application and to render it just and equitable for the injunction which I granted to be made.

It may be useful to add that, since the hearing of this matter, the powers of the Inspector of Banks have been considerably extended by the Banks and Trust Companies Law, 1989. In particular, he is now expressly authorised, if it appears to him that there is reasonable ground for suspecting that an offence against that Law has been or is being committed by any person to take, with the approval of the Court, such action as he considers necessary, in the interests of the depositors or of the beneficiaries of any trust, or other creditors of that person, to preserve the assets held by that person.



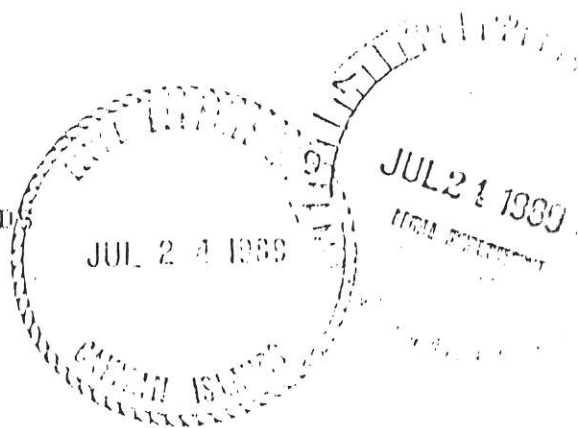
G.E. Harre

G.E. Harre

19th July 1989

Judge

1
IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN
CAUSE NO. 338/88



IN THE MATTER OF THE BANKS AND TRUST
COMPANIES REGULATION LAW (REVISED)

AND

IN THE MATTER OF GLOBAL INVESTMENT BROKERS LT

For the applicant *ex parte*: Mr. Anthony Smellie,
Acting Attorney General

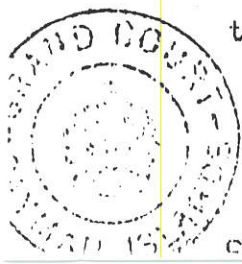
JUDGMENT

This was an originating summons taken out by the Attorney General applying for an Order restraining the defendant from removing from the jurisdiction, transferring, assigning or otherwise disposing of funds deposited in an account in its name at a bank in George Town.

The affidavit evidence given in support of the summons by the Inspector of Banks was to the effect that the amounts deposited at the bank were proceeds obtained by a breach of the law by Global Investment Brokers Limited. The breach alleged was that the company had been conducting banking business without a licence, and had made untrue representations in a document purporting to be a prospectus of a "Private Investor Programme." It was the belief of the Inspector that the sums of money shown as having been deposited in the bank account of the defendant were obtained from persons who responded to the representations made in the prospectus.

I made the Order sought and undertook to give written reasons later, as I now do, in view of the legal principles involved. They concern the right of the applicant to apply and the jurisdiction of the Court to act.

Section 28 of the Penal Code provides that any person convicted of an offence may be liable to...



person injured by his offence. Sections 55 and 182 of the Criminal Procedure Code provide respectively for restitution of property after conviction and seizure of any property which there is reason to believe has been obtained by or is the proceeds or part of the proceeds of any offence, or into which the proceeds of any offence have been converted. However, at the time of the application, no conviction had taken place, although a charge had been filed against the company alleging a breach of section 3 of the Banks and Trust Companies Regulation Law (Revised).

The Order sought was, therefore, by way of being a preemptive strike. I was referred to two English cases, Chief Constable of Kent v. V and anor, (1983) 1 QB 34 and Chief Constable of Hampshire v. A Ltd and ors., (1985) QB 132. I will refer to these as "Kent" and "Hampshire" respectively. In Hampshire the decision of the Court of Appeal to refuse an injunction was based on the principle that the power of the Courts to prevent the proceeds of crime being dissipated could only be exercised where those proceeds could be identified. That is not the problem in the present case. However, reference to Hampshire is useful for its analysis of the earlier Kent case. In that earlier case the Court was unanimously of the view that it had power under section 37(1) of the Supreme Court Act 1981 to grant the injunction sought. The majority of the Court, Donaldson and Slade LJJ, were of the view that an applicant had to show that he had a legal or equitable right or interest, the enforcement or protection of which required the making of an injunction. Lord Denning MR went further and defined a sufficient interest in terms of the locus standi of the applicant.

The principle for which Kent is authority is, in my view, that an applicant for an injunction must show a right or an interest, whether legal or equitable, on the basis of which it is just and equitable that an injunction should be made. A Chief Constable who believes on reasonable grounds that a sum of money in a bank account represents the proceeds of crime does have such an interest. He is under a duty to recover stolen goods if possible and that gives him the interest required for an injunction under section 37 of the Supreme Court Act 1981.

Islands by virtue of section 13 of the Grand Court Law. Neither Lord Denning M.R. nor Donaldson LJ regarded it as essential that the Chief Constable should have the right to have the money actually paid over to him. That was the minority view of Slade LJ, who did however, make the following reference to the special position of the Attorney General -

"Statute or the common law may confer on certain persons or bodies a special right, beyond that conferred on an ordinary citizen, to seek injunctive relief from the Court, even though they may be able to point to no independent legal or equitable right of their own which is sought to be protected. The Attorney General, for example, has the right to seek an injunction to restrain a threatened illegal act in his capacity as guardian of the public interest."

In the present case the Attorney General, unlike the Chief Constable of Kent, does not have power of seizure. But he has, as Slade LJ said in Kent, a right to seek an injunction to restrain a threatened illegal act in his capacity as guardian of the public interest. Such an illegal act is the dissipation of property unlawfully obtained. In the present case he had before him evidence from the Inspector of Banks. The Inspector is a person who is appointed by and reports to the Governor in Council. He has a statutory duty to maintain a general review of banking practice in the Cayman Islands. His evidence was to the effect that he had concluded that Global Investment Brokers Ltd had been carrying on banking business in the Islands and had committed criminal offences; that it had deposited in a bank proceeds obtained as a result of its breaches of the law; that he was concerned that funds remaining in the bank account would be taken outside the jurisdiction; and that he was advised that the Court may order upon the conviction of the defendant or its principals for any criminal offence against the Banks and Trust Companies Regulation Law (Revised) that funds standing to its account be returned to the depositors or if those depositors are not identified to the Financial Secretary for the benefit of the public revenue.

seizure and restitution of property wrongfully acquired in sections 181 and 182 of the Criminal Procedure Code and for compensation in section 28 of the Penal Code. The Crown cannot appear in its own Court to support its interest in person. It is represented by the Attorney General. He is primarily an officer of the Crown and that sense an officer of the public: Halsbury's Laws of England (4th edition) Vol. 8, para 1274.

He represents the Crown in the Court in all matters in which rights of a public character came into question. The good name and economic property of the Cayman Islands depend heavily on the orderly conduct of the banking industry, and the Inspector of Banks called in aid the Attorney General to seek an injunction.

All these matters led me to the conclusion that this was a matter of sufficient public interest to give the Attorney General the right to make his application and to render it just and equitable for the injunction which I granted to be made.

It may be useful to add that, since the hearing of this matter, the powers of the Inspector of Banks have been considerably extended by the Banks and Trust Companies Law, 1989. In particular, he is now expressly authorised, if it appears to him that there is reasonable ground for suspecting that an offence against that Law has been or is being committed by any person to take, with the approval of the Court such action as he considers necessary, in the interests of the depositors or of the beneficiaries of any trust, or other creditors of that person, to preserve the assets held by that person.



G.E. Harre

G.E. Harre

19th July 1989

Judge