

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **HOLDEN AT GEORGE TOWN**

Cause No: POCL 7/2010

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6 **IN THE MATTER OF AN APPLICATION BY THE ATTORNEY GENERAL FOR A**
7 **RESTRAINT ORDER PURSUANT TO SECTION 45 OF THE PROCEEDS OF CRIME**
8 **LAW 2008**

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10 **BETWEEN:**

DAYSI ROJAS PEREZ

APPLICANT/DEFENDANT

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17 **AND:**

THE ATTORNEY GENERAL

RESPONDENT/PLAINTIFF

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24 **Appearances:**

**Mr. Geoffrey Cox Q.C. instructed by Mr.
James Austin-Smith of Campbells for the
Applicant**

**Mr. John Masters, Snr. Crown Counsel of
the Attorney General's Chambers for the
Respondent/Plaintiff**

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33 **Before:**

The Hon. Mr. Justice Charles Quin

34 **Heard:**

14th June 2011

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36 **RULING**
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- 39 1. On the 20th October 2010 I granted a Restraint Order pursuant to an *ex parte*
40 application made under the Proceeds of Crime Law ("POCL") 2008 by the
41 Attorney General, and grounded by the affidavit of Detective Constable Reuben
42 Foster ("Detective Foster") dated the 20th October 2010, restraining all of the assets

1 held by, or on behalf of, the Defendant, Ms. Daysi Rojas Perez (“Ms. Perez”) and in
2 particular, deposits held in a Royal Bank of Canada (“RBC”) account #733-2810.

3 2. Leading counsel for the Defendant, Mr. Cox, applies to the Court to discharge the
4 Restraint Order dated the 20th October 2010 on the grounds that the facts and
5 matters set out in the affidavit of Detective Foster are plainly insufficient to provide
6 reasonable cause to believe that the Defendant has benefited from the alleged
7 criminal conduct.

8 3. Leading counsel on behalf of the Defendant submits that there is no evidence that
9 the deposits made into RBC in the Cayman Islands by the Defendant from her
10 accounts with the bank in the United States were the proceeds of criminal conduct.

11 4. Leading counsel on behalf of the Defendant relies on the recent English Court of
12 Appeal decision of *Windsor and Others v. CPS* [2011] EWCA Crim 143 delivered
13 on the 8th February 2011 by Lord Justice Hooper. In particular, Mr. Cox relies on
14 paragraph 51 of this (*supra*) Judgment where Lord Justice Hooper states:

15 *“The statutory test is clear: the applicant for a restraint order must satisfy the*
16 *judge that there is reasonable cause to believe that the alleged offender has*
17 *benefited from the criminal conduct.”*

18 In addition, Hooper L.J. added at paragraph 53:

19 *“Before charge – and all the more so before arrest – there will be many*
20 *uncertainties. The law does not require certainty at this stage but uncertainty is*
21 *not in itself a reason for making a restraint order as some of the respondent’s*
22 *submissions might suggest. The court must sharply focus on the statutory test:*
23 *is the Judge satisfied that there is reasonable cause to believe that the alleged*
24 *offender has benefited from his criminal conduct? It is that test which the court*
25 *must apply and requires a detailed examination of the material put before it.*
26 *The presence of uncertainties does not prevent there being reasonable cause to*
27 *believe, but the Judge must still be satisfied that there is reasonable cause to*
28 *believe.”*

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1 noted that all the wire transfers were from Media Marketing LLC directly into an
2 account in the name of the Defendant.

3 10. Detective Foster deposed to the fact that the RBC had been unable to contact the
4 Defendant by telephone either at home or at work. Furthermore, Detective Foster
5 stated that the RBC had made contact with HBC Professional Group and had been
6 informed that the Defendant was no longer employed with the firm and had not
7 been so employed for about three years.

8 11. Detective Foster deposed that the FRA had contacted the Financial Crimes
9 Enforcement Network (FinCEN) in the United States Treasury Department, a body
10 set up to detect and investigate financial crime. Detective Foster stated that it was
11 revealed by FinCEN that various Suspicious Activity Reports (SARs) had been
12 filed in relation to the Defendant for suspected medical fraud, totaling
13 US\$4,245,402.00, and for suspected healthcare fraud, totaling US\$3,923,595.00, as
14 well as for structured and suspected money laundering.

15 12. In addition, Detective Foster's affidavit disclosed that he had been informed that the
16 Federal Bureau of Investigation ("FBI") was interested in the Defendant.

17 13. I granted the Restraint Order over the assets in the Defendant's name pursuant to
18 s.44(1)(a) of the POCL because I was satisfied that from the evidence presented by
19 Detective Foster, and the submissions made by Senior Crown Counsel, that a
20 criminal investigation had commenced in the Cayman Islands with regard to an
21 offence, and further, I found that there was reasonable cause to believe that the
22 alleged offender has benefited from her alleged criminal conduct.

1 14. Detective Foster was in Court when his affidavit was read by Senior Crown counsel
2 and I had no cause to doubt his sworn evidence that criminal investigations had
3 been commenced in the Cayman Islands.

4 15. Senior Crown counsel also submitted that the Crown was concerned that should a
5 Restraint Order not be granted, the funds in RBC would flee from this jurisdiction
6 because there was evidence before the Court that in late September and early
7 October 2010 the Defendant was trying to move the said funds from the RBC
8 account in the Cayman Islands to Costa Rica.

9 16. I confirm that when Senior Crown Counsel and Detective Foster appeared before
10 me on the 20th October 2010 I did not look behind Detective Foster's sworn
11 testimony that a criminal investigation had been commenced. The evidence that the
12 Defendant was trying to move funds out of the RBC account to Costa Rica had only
13 just been revealed. This activity, and the instructions of the Defendant in relation to
14 her deposit estimate, clearly troubled the RBC sufficiently enough to make a SAR
15 to the Cayman Islands FRA.

16 17. Section 44(1)(a) of the POCL only requires the Court to be satisfied that a criminal
17 investigation has been commenced in the Islands with regard to an offence. There is
18 no requirement for the Court to assess the weight of the evidence, particularly at
19 this early stage, and, to adopt the words of Lord Justice Hooper, this Court should
20 be reluctant "*to lay down precise guidelines for the preparation of statements for*
21 *the purposes of obtaining Restraint Orders.*"

22 18. I took into account that the Defendant had disclosed to the RBC that her income
23 was US\$4000.00 per month, and that she predicted an annual deposit of
24 US\$350,000.00. In approximately eight months the Defendant had transferred

1 nearly six times that amount from Media Marketing LLC into an account in her
2 own name.

3 19. In light of that fact, and the fact that suspicious activity reports had been made in
4 the USA and in the Cayman Islands regarding of the Defendant’s movement of
5 funds, I formed the view that there was reasonable cause to believe that the
6 Defendant was benefiting from the alleged criminal conduct.

7 20. Having reviewed the facts and matters set out in the affidavit of Detective Foster,
8 and having heard leading counsel on behalf of the Defendant and Senior Crown
9 Counsel on behalf of the Attorney General I find that on the 20th October 2010 there
10 were sufficient grounds for granting the Restraint Order pursuant to s.44(1)(a) of
11 the POCL.

12 21. I understand that the Defendant may wish to challenge the Restraint Order on a
13 number of other grounds including pursuant to s.46(4) of the POCL which provides
14 that:

15 *“Where the condition in section 44 which was satisfied was that an*
16 *investigation was started or an application was to be made, the Court shall*
17 *discharge the Order if within a reasonable time proceedings for the offence are*
18 *not started or the application is not made, as the case may be.”*

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20 In addition the Defendant may wish to rely on material which was not before the
21 Court on the 20th October 2010.

22 22. The Attorney General submits that the document purporting to be a summons for
23 the discharge of the Restraint Order was never issued with a date and therefore is in
24 breach of GCR O.32 r.2(2), namely:

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“That no summons may be issued unless it specifies a date and time at which the hearing will take place.”

I order that this irregularity can be cured and, accordingly, allowed the hearing to continue with the date of the 14th June 2011 inserted pursuant to GCR O.2 in the Defendant’s summons.

23. In addition the Attorney General applies for an adjournment in order to file further evidence, including evidence from the FBI, which Senior Crown counsel submits they wish to put before the Court.

24. I now set out the relevant chronology from the 20th October 2010 as I understand it.

25. On the 8th November 2010 Linwood Attorneys filed a Notice of Appointment coming on the record to act as attorneys at law for the Defendant, Ms. Perez.

26. On the 13th December 2010 Linwood Attorneys filed a Summons in the Grand Court to discharge the Restraint Order and for further and other Orders as this Honourable Court deemed appropriate.

27. On the 16th December 2010 Linwood Attorneys filed an *ex parte* Summons with a supporting affidavit of the same date to come off the record pursuant to GCR O.67 r.6.

28. On the 20th December 2010 the Chief Justice granted Linwood Attorneys leave to come off the record on behalf of the Defendant.

29. On the 31st January 2011 Campbells filed a Notice of Appointment as attorneys for the Defendant. There followed considerable correspondence between the parties’

1 attorneys regarding the Defendant's proposed application to discharge the Restraint
2 Order.

3 30. On the 8th June 2011 the Defendant filed an affidavit in support of an application
4 under s.46 of the POCL 2008, which affidavit had been sworn on the 23rd May
5 2011. Attached to this affidavit but not currently on the Court file were six exhibits
6 entitled DRP1-DRP6. On the morning of the hearing of the 14th June 2011 the
7 Defendant provided the Court and Senior Crown Counsel with a hearing bundle
8 which included many documents which were not before the Court on the 20th
9 October 2010, and subsequent correspondence between the parties.

10 31. Senior Crown counsel submits that there was continuing correspondence between
11 the parties' attorneys in March and April 2011 in relation to the date and form of
12 the Defendant's proposed application to have the Restraint Order discharged.

13 32. On the 6th June 2011 the Respondent's office was served with an unsealed affidavit
14 of the Defendant, together with five folders of exhibits.

15 33. On the 7th June 2011 the Defendant's attorneys requested the return of the
16 documents and later on that day the Defendant's attorneys requested the immediate
17 return of the documents and asked that the documents not be copied.

18 34. On the 8th June 2011 six charges were laid against the Defendant before the
19 Summary Court of the Cayman Islands which included the removal, the transfer,
20 and possession of criminal property, obtaining a wire transfer by deception and
21 false accounting, all offences contrary to POCL. The Defendant is summonsed to
22 appear before the Summary Court on the 2nd August 2011.

1 35. Senior Crown counsel has informed the Court that he has been taken by surprise, in
2 that, his communications with the Defendant's attorneys led him to believe that
3 there was going to be a timetable for the filing of evidence by the parties.
4 Furthermore, the Court understands that the parties were in discussions regarding a
5 possible Public Interest Immunity (PII) application.

6 36. Senior Crown counsel has confirmed that the AG's chambers does have evidence to
7 update the Court on these proceedings, but that they were waiting to receive the
8 Defendant's material evidence before submitting their evidence in response, and
9 therefore that is the reason why that evidence is not before the Court today.

10 37. Having read the recent correspondence between the parties' attorneys and heard
11 both counsel I deem it only fair to grant the Attorney General's application for an
12 adjournment of the Defendant's application pursuant to s.46(4) of POCL to
13 discharge the Restraint Order, or on any other ground. Apart from a short delay, the
14 Defendant will not be prejudiced and can make her submissions on the recent
15 material included in the hearing bundle and rely on any affidavit evidence or
16 exhibits, she wishes to put before the Court.

17 38. It will also afford the Attorney General the opportunity to file the evidence which
18 Senior Crown counsel has received from the United States, and the evidence which,
19 presumably, supports the charges laid before the Summary Court on the 8th June
20 2011.

21 39. I should add that, subject to any restrictions which may be the subject of a PII
22 application, the Attorney General should provide the Defendant with full and frank
23 disclosure of all relevant evidence which supports the continuation of the Restraint
24 Order in order to give the Defendant a full opportunity to consider it and file any

1 evidence in response to it. This relevant evidence should be provided to the
2 Defendant's attorneys as soon as reasonably practicable.

3 40. I would request that the parties' counsel agree directions for the filing of evidence
4 and for the hearing of the Defendant's application to discharge the Restraint Order
5 and the Attorney General's application to continue the Order. If they cannot agree
6 directions as to the future conduct of these proceedings, I will hear counsel at a
7 convenient time.

8 41. Should the Defendant wish to apply for any variation of the Order to allow for
9 reasonable living expenses or to enable her to carry on her profession or
10 occupation, I will hear counsel at a time convenient to both parties.

11 42. Finally, I reserve the question of the costs of the hearing dated the 14th June 2011.

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14 **Dated this the 17th day of June 2011**

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19 **Honourable Mr. Justice Charles Quin**
20 **Judge of the Grand Court**