

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 10 OF 2003

IN THE MATTER OF AN APPLICATION BY THE ATTORNEY
GENERAL PURSUANT TO THE PROCEEDS OF CRIMINAL CONDUCT
LAW (2001 REVISION)

AND IN THE MATTER OF PIERRE FALCONE (DEFENDANT)



Transcript of Ruling delivered by

The Honourable JUSTICE WENDERSON on the 2nd day of

December 2003, in George Town, Grand Cayman.

APPEARANCES:

On behalf of the APPLICANT: MS. C. RICHARDS

MS. S. LOOKLOY

On behalf of the RESPONDENT: MR. A. AKIWUMI

1 CHAMBERS COMMENCED ON TUESDAY,
2 DECEMBER 2ND, 2003 AT 2:36 P.M.

3

4 THE COURT: The Attorney General applies,
5 at the instance of France, for a restraint
6 order.

7 The respondent has appeared to oppose the
8 application, and requests that I decide a
9 preliminary question.

10 The respondent argues that the court has
11 no jurisdiction, in the circumstances I will
12 outline, to grant the requested relief. He
13 says the French proceedings have not progressed
14 to the stage that our law would permit the
15 court to consider granting a restraint order.

16 The respondent is under active
17 investigation in France for several allegedly
18 serious offences. He has not yet been charged
19 formally with any of those. Some of the
20 offences would, if committed in the Cayman
21 Islands, amount to offences here.

22 The respondent is also alleged to have
23 been involved in money laundering in the Cayman
24 Islands. He has not, however, been charged
25 with any offence in this jurisdiction.

1 The application is brought under section
2 10 (1) of the Proceeds of Criminal Conduct Law
3 (2001 revision).

4 The court's jurisdiction to grant
5 restraint orders of this sort is wholly
6 statutory. The power is limited in a temporal
7 sense by certain provisions found in section 9.
8 Section 9 (1) is the relevant section here. It
9 reads as follows:

10 "The powers conferred on the
11 Grand court by sections 10 (1)
12 and 11 (1) are exercisable where
13 (A) proceedings have been
14 instituted against the defendant
15 for an offence to which this law
16 applies; (B) the proceedings
17 have not been concluded; and,
18 (C) either a confiscation order
19 has been made, or it appears to
20 the court that there are
21 reasonable grounds for thinking
22 that a confiscation order may be
23 made in them."

24 The question before me is whether there is
25 any evidence from which I could infer that

1 "proceedings have been instituted" against this
2 respondent in France.

3 The enforcement of external orders, as
4 this is, is governed by Part 3 of the law.
5 Section 31 (1) provides:

6 "That the Governor-In-Council
7 may, by order, (A) designate
8 countries and territories
9 outside the Islands to whose
10 external confiscation orders and
11 proceedings this law shall,
12 subject to subsection 2, apply;
13 (B) specify appropriate
14 authorities within designated
15 countries that are to give
16 effect to the provisions of this
17 law in relation to external
18 confiscation orders and to
19 related proceedings; and,
20 (C) specify in respect of
21 designated countries the steps
22 (apart from an application to a
23 court for an external
24 confiscation order) that need to
25 be taken there to amount to an

1 institution of proceedings."

2 The Governor-In-Council has responded to
3 the authority bestowed upon him by section 31
4 (1) by promulgating an order which was gazetted
5 April 30, 2001 -- Gazette number 8, Supplement
6 number 12.

7 That order contains a Schedule with three
8 columns. The first contains a list of
9 designated countries. The second contains a
10 list of the relevant authority in each of those
11 countries. The third is headed "point at which
12 proceedings for an offence are instituted". In
13 that third column, with respect to each
14 country, the order sets out a description of
15 what steps are minimally required for the court
16 to conclude that proceedings for an offence
17 have been instituted in the country in
18 question.

19 With respect to France, the description in
20 column three reads "when an application has
21 been made to the relevant court for an external
22 confiscation order". That language is
23 essentially superfluous in the Schedule. We
24 already know, by reference to section 31(1)(c),
25 that an application to a court for an external

1 confiscation order in France would amount, for
2 our purposes, to evidence that proceedings for
3 an offence have been instituted in that
4 country.

5 The real question addressed by the
6 Schedule (or which should be addressed by the
7 Schedule), is what step or steps preliminary to
8 an application to a court for an external
9 confiscation order will, in the circumstances
10 pertaining in that country, allow us to
11 conclude that proceedings have been instituted
12 there for an offence. By way of illustration,
13 I note that the entry with respect to
14 Switzerland reads "when proceedings for an
15 offence are brought before an examining
16 magistrate."

17 There are a number of other descriptions
18 of steps, such as those applicable to Australia
19 and the United Kingdom, which establish (I am
20 paraphrasing here) that proceedings will be
21 taken to have been instituted in those
22 countries when a charge is laid.

23 The Schedule is not entirely consistent.
24 For example, the charging regime is essentially
25 the same in Canada as in Australia and in the

1 United Kingdom, yet the column entry for Canada
2 makes no reference to the charging process but
3 simply repeats that proceedings will have been
4 instituted there when an application has been
5 made to the relevant court for an external
6 confiscation order.

7 Miss Richards, quite properly, concedes
8 that the express language of column 3, as it
9 pertains to France, cannot be said to apply
10 here. No application has been made in France
11 to the relevant court, which is the
12 Correctional Court, for an external
13 confiscation order.

14 What has happened in France is this: The
15 matter has been placed in the hands of an
16 investigating magistrate who is conducting what
17 I infer to be a relatively long and complex
18 investigation into a series of commercial
19 transactions. When that magistrate has
20 concluded his task, he will provide his final
21 report to the public prosecutor. That official
22 is charged with the duty of deciding, on the
23 basis of the evidence presented to him, whether
24 a charge should be laid against the respondent
25 or not. If one is laid, criminal proceedings

1 will be instituted in the Correctional Court,
2 at which point there may be an application for
3 an external confiscation order.

4 Miss Richards argues that the language in
5 the Schedule is not meant to be exhaustive.
6 She argues that the Court may read past the
7 description (with respect to France) in the
8 third column and ask itself what other steps
9 might be taken in France which would satisfy
10 this court that proceedings have been
11 instituted.

12 In my view, the answer to this question
13 requires only an application of the traditional
14 and well-known principles of statutory
15 interpretation.

16 The draughtsman of the order has clearly
17 taken into account that there will be differing
18 regimes in different countries, and has clearly
19 set out that in some, but not all, countries
20 the process of laying a charge or,
21 alternatively, bringing proceedings before an
22 examining magistrate (as in the case of
23 Switzerland) will ground this court with
24 jurisdiction.

25 In the case of other countries, such as

1 Austria, Belgium, Brazil, Canada, Denmark,
2 Finland and France, the draughtsman has
3 confined himself to saying that proceedings
4 will only be taken to have been initiated when
5 the statutory precondition found in section
6 31(1)(c) is satisfied.

7 I do not think I am justified in reading
8 anything of the sort suggested into the
9 Schedule with respect to France. It may well
10 be that the French criminal justice system
11 bears marked similarities to that in
12 Switzerland. There may be little reason to
13 differentiate the processes in the two
14 countries. Nevertheless, the Schedule is free
15 of ambiguity. I must give it its natural and
16 plain meaning. Clearly, the draughtsman
17 intended that, if the situation presented to me
18 had arisen in Switzerland, the court could
19 proceed to make a restraint order. He has
20 also, clearly, taken the view that if the
21 proceedings before the examining or
22 investigating magistrate are being conducted in
23 France, as they are here, I must wait until
24 application has been made to the relevant court
25 in France for an external confiscation order.

1 I see no justification for reading the Schedule
2 in any other way.

3 For these reasons, the application is
4 dismissed for want of jurisdiction.

5 I wish to make two further comments.
6 First, the respondent has placed in evidence
7 the opinions of certain members of the Attorney
8 General's Chambers including, remarkably, the
9 opinion of Miss Richards, counsel acting for
10 the Attorney General on the present
11 application. I do not consider that such
12 material is appropriate for my consideration on
13 an application of this sort. I have paid no
14 heed to the content of those opinions.

15 Secondly, it is not easy to discern why
16 such a clear distinction would be made between
17 various western European nations whose criminal
18 justice systems may be similar in the relevant
19 aspect under consideration here. It may be
20 thought appropriate for the Attorney General to
21 review the content of this Order with a view to
22 amending it. I will say no more than that.

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25

Henderson, J.

HONOURABLE JUSTICE HENDERSON

