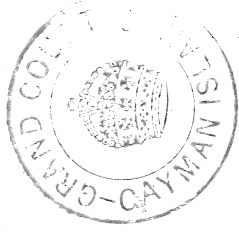


31/3/03



1 IN CHAMBERS

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3 IN THE GRAND COURT OF THE CAYMAN ISLANDS

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5 CAUSE PCCL 3 OF 2000

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IN THE MATTER OF THE LEGAL AID LAW
AND IN THE MATTER OF LEWIS DENTON ROWE

Before: Mr. Justice Kellock

Date: 31.3.2003

DECISION

Mr. Rowe is charged in indictment no 18/02 with two offences against the Proceeds of Criminal Conduct Law. One Tibbetts is charged in the same indictment with similar offences. All of these charges relate to the alleged involvement of the accused in facilitating the Cash 4 Titles Fraud.

It is anticipated that the case will come on for trial in the Grand Court in September this year and the trial may last 8 week. Tibbetts was granted legal aid for his defence costs in August 2002 subject to an initial contribution of \$1,000 and a further \$500 per month for two years. Tibbetts income consists of a salary plus investment income in excess of \$160,000 per annum. However as at August 2002 Tibbetts was heavily in debt and his assets had been placed in receivership.

1 Rowe's financial affairs are much more complicated but his assets are also controlled by
2 a receiver. His income appears to be limited to \$750 per week from a Trust established
3 by Rowe in the Channel Islands (which the Receiver has agreed can be paid directly to
4 him). He lives in Grand Cayman in a property jointly owned with his wife. In addition
5 to the Trust income the Receivers of Rowe's personal assets will pay for a long list of
6 household expenses which include the cost of a housekeeper and gardener. This may be
7 necessary given the couple's age. According to the Receivers, Row's liabilities exceed
8 his assets. The expenses described above are paid out of a pension.

9

10 I asked Mr. Allen (Counsel to Mr. Rowe in this application) to provide me with a bundle
11 containing the material Mr. Rowe thought I should have before me in deciding whether
12 or not Rowe should receive legal aid.

13 There are three affidavits sworn by Mr. Rowe in 2003 but they do not alone or in
14 combination set out the full picture.

15

16 In May 2002 The Chief Justice declined to award legal aid in light of the fact that
17 between 1998 and 2000 Mr. Rowe sent an enormous amount of money offshore to his
18 Trust and family. The Chief Justice felt that Rowe's family had an obligation to assist
19 Rowe (albeit a moral obligation) and the prospects for that assistance should be explored
20 before imposing a burden on the Public purse. Rowe now reports that this assistance will
21 not be forthcoming.

22

1 Rowe applied again in January of this year. That application was determined by Mr.
2 Justice Sanderson on January 17, 2003 as follows:
3 “Application for Legal Aid denied with liberty to reapply”.
4 Section 3 of the Legal Aid Law provides that if it appears to the Court that a person in
5 Mr. Rowe’s situation “has not the means to instruct a Legal Practitioner to advise or
6 represent him” (in proceedings such as the defence against the charges under the PCCL).
7 “It (the Court) shall grant to such person a certificate entitling him to free legal
8 aid or, as the case may be, subsidised legal aid for the preparation of his case and
9 generally throughout such proceedings and in any appeal”.
10
11 Section 7(1) of the Legal Aid Rules requires a statement of means
12
13 “and such documents as the Court may require for the purpose of verifying the
14 statement of means”. (I note also that a certificate for Legal Aid may be revoked
15 if the assisted person’s means have been misrepresented).
16
17 The Rules with respect to civil cases permit the Court to impose a variety of conditions
18 including the making of financial contributions and limiting the scope of the Legal
19 Representation.
20 The Rules relating to legal aid in criminal cases do not seem to contemplate such
21 restrictions. Indeed section 8(5) of these Rules provides that an assisted person may be
22 ordered to make a contribution towards the cost of his Legal Representation if he is
23 convicted.
24 However the Rules are subordinate to the Law and the Law provides (in section 3) that
25 the legal aid to be granted in appropriate cases may be “free legal aid” or “as the case
26 may be subsidised legal aid”.

1 Section 3 applies to both civil and criminal cases and while it is arguable that the words
2 “as the case may be” might be read as the equivalent of “subject to the Rules” I prefer
3 another interpretation.

4

5 It seems to me that the words “as the case may be” authorise the Court to decide
6 whether “free” or “subsidised” legal aid is appropriate in all cases.

7 I am therefore inclined to grant a certificate to Mr. Rowe but I do not have sufficient
8 information to decide.

- 9 (a) whether the assistance should be “free” or only subsidised” or
10 (b) whether Rowe should have one or two lawyers assigned.

11 I will therefore require a further and better affidavit sworn by Rowe setting out with the
12 utmost possible clarity.

13 (i) All of the circumstances relating to the transfers of Funds to the Trust and
14 Rowe’s family supported by records of the communications between
15 Rowe, the Trust and his family relevant to the transfers, the reasons
16 therefore and Rowe’s efforts to obtain contributions from those sources as
17 required by the Chief Justice.

18
19 (ii) Details of all Funds which have passed through Rowe’s hands or been
20 paid out for his benefit by anyone or for the joint benefit of Rowe and his
21 wife in 2003, supported by the cheques, receipts accounts vouchers and all
22 other documentary records to be expected in relation to the transactions.

23
24 (iii) A summary prepared to show clearly and concisely what monies have
25 been received and disbursed in 2003 as required by paragraph (ii) and
26 whether Rowe has revenue over expenditures or the reverse.

27
28 (iv) The names of the lawyer or lawyers Rowe intends to instruct and whether
29 or not such have agreed to represent Rowe on a legal basis.

30
31 The affidavit and information is to be provided on or before April 17th 2003 otherwise the
32 application will be refused.

1

2 Rowe is free to supplement his affidavit with the affidavits of others as he may be
3 advised.

4 The material will be sealed or other measures taken to ensure confidentiality.

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8 Hon. Mr. Justice Kellock
9 Judge of the Grand Court

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12 Dated the 31st day of March 2003

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