

27-10-99



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IN THE GRAND COURT OF THE CAYMAN ISLANDS

HOLDEN AT GEORGE TOWN  
GRAND CAYMAN

CAUSE NO. 409 OF 1999

IN THE MATTER OF THE PROCEEDS OF CRIMINAL CONDUCT LAW 1996  
IN THE MATTER OF AN APPLICATION FOR RESTRAINT UNDER SECTION 19 OF THE  
PROCEEDS OF CRIMINAL CONDUCT LAW 1996

IN THE MATTER OF KENNETH TAVES & IN THE MATTER OF ACCOUNTS IN THE OWNERSHIP  
POSSESSION OR CONTROL OF KENNETH TAVES AT EURO BANK CORPORATIO  
CORPORATION, CAYMNA NATIONAL BANK and BANK OF NOVA SCOTIA

THE HONOURABLE ATTORNEY GENERAL OF THE CAYMAN ISLANDS

Applicant

AND

EUROBANK CORPORATION  
KENRICK (A.K.A. KENNETH) & TERESA TAVES  
MEDIA BUYING SERVICES

CHAMONIX

S. JARED PROPERTIES  
S. GRETCHEN BUCK/ MATTHEW REID  
BARNARD LYD.

PHAETON CORPORATION  
MARTIN DUGGAN  
ROB RAPPAPORT

DAVID GOLDFARB & BILL PARODI  
DR. MALVIN TAVES

ADAM SPENCER JOFFE  
DR. MELVIN TAVES & MRS. COLLEEN TAVES  
RAYMOND CREED

Respondents

Mr. Anthony Akiwuma for Att. Gen.

Mr. Diamad Murray for Applicant

**Ruling**

This is an Application by Originating Summons on behalf of the 7<sup>th</sup>. Named Respondent  
Barnard Limited, seeking an order that a restraint order made on June 6<sup>th</sup>. 1999 be  
discharged. Alternatively, that the said order be varied.

Section 10 of The Proceeds of Criminal Conduct Law, 1996 provides:-

- (1) The Grand Court may by order (referred to in this Law as a “restraint order” prohibit any person from dealing with any realisable property, subject to such conditions and exceptions as may be specified in the order.
- (2) Without prejudice to the generality of subsection (1) a restraint order may make such provisions as the court thinks fit for the living expenses and legal expenses of the defendant.

The main thrust of the Defendant’s submissions were not directed at the discharge of the order, but rather that it be varied to allow the applicant his living and legal expenses. The living expenses sought include those alluding to at paragraph 7 of his affidavit of the 29<sup>th</sup> September and total some \$9,000.00 a month. The Defendant contends that this amount could be derived from the interest of the three million dollars frozen by the restraint order, leaving the principle untouched.

This application was supported by reference to Gee – Mareva Injunctions, 4<sup>th</sup> Edition at page 194 Para (2) reads “ An individual is entitled to pay his ordinary living expenses. Mareva relief will not be granted so as to prevent him using his assets to pay such expenses.”

Exhibit 2 of the Defendant’s affidavit shows a number of bills paid out of his Wells Fargo account each month. These total \$9,000.00 and constitute his ordinary expenses. In **re Peters**, reported at 1 Q.B. (1988) p. 871, it was held that the purpose of a restraint order under the Drug Trafficking Offences Act 1986 was the preservation of assets at a time when the court did not know whether the defendant would be convicted, and was closely analogous to the Mareva jurisdiction; that the exercise of the power in accordance with the guidance given in section 13(2) of the Act of 1986 was consistent with the purpose of maintaining assets to meet a final order if one should be made and meeting the *reasonable requirements* of their owner in the meantime...”

It is easy to distinguish the criteria used for each of the orders. For the Mareva it is “Ordinary living Expenses.” Although the Mareva and the restraint order may be considered closely analogous, they differ in that the criteria for the latter are “reasonable requirements” This is analogous to the requirement of section 10(2) of our Proceeds of Criminal Conduct law 1996 which requires the court to make provisions “as it thinks fit.”

**Mitchell, Taylor and Talbot**, On Restraint Orders, under the heading ‘Exceptions to Restraint Orders’ in their 2<sup>nd</sup> Edition at paragraph 3-128 state as follows:-

*The general principle is that a defendant is entitled to access to his money for ordinary and reasonable living expenses. That which is ordinary and reasonable will depend on the facts of each particular case. If for example, the defendant’s children have been educated privately at some expense, the defendant is entitled to make a lump sum payment towards*

his education. Paragraph 3-127 makes it clear that the amount of the living expenses would be dependent upon the information known to the prosecutor when the application for the restraint order is made as the prosecutor's consent seems necessary. In any event it is only reasonable that the defendant provides a clear and precise picture of his ordinary expenses to facilitate the court. There is no doubt that the information provided by the defendant in this matter as to his living expenses are somewhat vague. This not only applies to the bills produced showing amounts paid out of the account, but also the itemised list of monthly expenses adding up to the \$9,375.00 that his attorney has submitted. It is as follows:-

Medical expenses	U.S.\$ 100.00
Maintenance and upkeep of homes	U.S.\$1,300.00
Hangar rental in U.S.A.	U.S.\$ 475.00
Utilities and house insurance	U.S.\$1,400.00
Food	U.S.\$1,500.00
Clothing	U.S.\$ 500.00
Fuel	U.S.\$ 300.00
Travelling and related expenses	U.S.\$2,000.00
Airplane maintenance and upkeep	U.S.\$ 400.00
Cars, license, petrol and maintenance	<u>U.S.\$1,200.00</u>
Total	U.S.\$9,375.00

There is no cogent evidence to support a number of these expenses. The prosecution accepted that the defendant does have an airplane, therefore the expenses for its maintenance and hangar rental are reasonable. In the absence of any evidence I cannot consider his food expenses reasonable. There also appears to be a duplication in relation to his house and travelling and car expenses.

Accordingly, with the above list as my guide and reference, I have allowed him what I consider fit for his monthly living expenses. These are as follows.

Medical expenses	U.S.\$ 100.00
Expenses related to homes	U.S.\$2,000.00
Hangar rental	U.S.\$ 475.00
Food, clothes, fuel	U.S.\$ 500.00
Travelling and related expenses	U.S.\$1,000.00
Airplane maintenance and upkeep	U.S.\$ 400.00
Car, petrol etc.	<u>U.S.\$ 600.00</u>
Total	U.S.\$5,575.00

There is one further item being sought under the heading of living expenses. At paragraph 8 of the defendant's affidavit of 8 September 1999 he avers that in January 1999 he entered into an agreement to purchase a small Kit helicopter, the purchase price was \$48,500.00. The agreement called for a non-refundable deposit of \$4,850.00. The balance of the purchase price now outstanding is \$43,650.00 plus shipping. The helicopter is due to be shipped by the end of October, and the defendant, in order to save

his deposit, now seeks the balance required as a living expense.

The defendant's fear of losing his deposit is understandable. The defendant contends that there can be no detriment to the plaintiff for the reason that should the plaintiff be successful, the helicopter will be an available asset. What he has failed to take into consideration is that although it may be available, it is in itself a depreciating asset, the purchase of which would indubitably dissipate the funds. Moreover, I do not agree that for the purposes of this Law, the purchase of a helicopter falls under the heading of 'reasonable requirement'. At page 326 of Gees (supra) under the heading of 'Ordinary living expenses,' it is stated as follows. "*Ordinary living expenses have been described as 'ordinary recurrent expenses involved in maintaining the subject of the injunction in the style of life to which he is reasonably accustomed. It does not include exceptional expenses like the purchase of a Roll-Royce.....'*" the paragraph goes on to say that in deciding whether the intended payment is such an expense, all the surrounding circumstances concerning the payment and the lifestyle of the individual would fall to be taken into account. There are of course certain exceptions. Thus in **re Peters (supra)** McNeill J referred to the English Order 115, Rule 4(1) which contemplates an exception to what is subject to a restraint order for living and legal expenses, and it is not limited to those expenses. In that case a lump sum payment was allowed for the education of the defendant's son.

The purpose of the Law is to maintain the realisable property in order for it to be available to satisfy any confiscation order that might ultimately be made. (re Peters) Although, as seen, there are certain exceptions, the purchase of such a luxury as a helicopter does not fall within these exceptions. I have no doubt that had the defendant been in the business of purchasing and dealing in helicopters for a livelihood, this court would no doubt take a different view. Such would then have been considered a reasonable requirement.

Accordingly this second limb of the application is dismissed.

Regarding the legal costs, the sum of \$40,000.00 has been agreed by the parties. With liberty.

#### Order

That the 7<sup>th</sup>. Defendant be allowed the sum of U.S.575.00 per month for living expenses as from 8 June 1999, with liberty.

That as agreed, the sum of \$40,000 be allowed for legal expenses.



Kipring Douglas  
Judge of the Grand Court



27<sup>th</sup> October, 1999