

IN THE HIGH COURT OF THE COOK ISLANDS  
HELD AT RAROTONGA  
(CIVIL DIVISION)

MISC. NO. 95/2010

IN THE MATTER of Ss 50, 53, 58, 100 and 102 of the Proceeds of  
Crimes Act 2003

AND

IN THE MATTER of an application for an Ancillary Order and of an  
application for an Order for a Restraining Order  
to continue in force and of a Notice of Intention  
to Defend

BETWEEN TINGIKA ELIKANA

Applicant

AND EDDIE DUKHMAN aka DUKEMAN

First Respondent

AND CAPITAL SECURITY BANK LIMITED

Second Respondent

AND TRUSTEE OPTIMUS HOLDINGS GROUP  
TRUST

Third Respondent

Hearing: 6 April 2011

Counsel: Ms C Evans for Applicant  
Mr B Gibson for First Respondent and for Mr McNair and himself  
Ms Hunea for Second and Third Respondents

Judgment: 9<sup>th</sup> May 2011

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JUDGMENT OF HUGH WILLIAMS J

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- A. That part of Mr Dukhman's application dated 13 December 2010 for an order striking out the restraining order is dismissed as withdrawn.
- B. Orders pursuant to ss 53 and 50 granting leave to Messrs Gibson and McNair to be regarded as "other persons" for payment of their fees. The quantum of those fees to be ascertained and fixed by the Registrar of this Court on taxation pursuant to s 53(2)(f)(iv).
- C. After taxation and payment of Messrs Gibson and McNair's fees the Administrator to pay the balance of the restrained funds (including interest) to the US Marshal's account, details of which appear in paragraph [38]b).
- D. On payment of those funds the balance of Mr Dukhman's application dated 13 December 2010 is dismissed and the restraining order made in this proceeding is revoked.
- E. That this Judgment is, until further order of the Court, to be distributed solely to the parties (including the US Department of Justice) and counsel, and no reporting is to be permitted: see Minute accompanying this Judgment.

## **Issue**

[1] This Judgment deals with applications – particularly an application for the payment from restrained funds of the fees of Cook Islands lawyers – concerning the disposition of funds held under the Proceeds of Crimes Act 2003 (“the Proceeds Act”) and the Mutual Assistance in Criminal Matters Act 2003 (“the Mutual Assistance Act”). Though production orders under those Acts have been sought previously in other cases, this was the first occasion, as far as counsel were aware, where the restraining and forfeiture provisions of the Proceeds Act and the position of Cook Islands lawyers concerning their fees has been dealt with by the Courts, even though the Proceeds Act has now been in force for approximately eight years. This Judgment may accordingly have some precedent value.

## **Facts and interlocutory applications**

[2] On 21 September 2010 the Cook Islands government received a request dated 9 August 2010 from the United States Department of Justice under s 7 of the Mutual Assistance Act for the Cook Islands government to take action concerning funds remitted to the Cook Islands by the first respondent, Mr Dukhman and held on his behalf by the Second and Third Respondents, Capital Security Bank Limited (“CSB”) and Trustee Optimus Holdings Group Trust and Southpac Trust International Inc (“Southpac/Optimus”). The request included a significant amount of detail suggesting Mr Dukhman (and others) had over a number of years committed serious offences in the US including various forms of fraud and money laundering with sums of nearly US\$2M.<sup>1</sup>

[3] On 18 October 2010 a production order under the Proceeds Act was made in relation to funds held by Southpac/Optimus and CSB, and ANZ Banking Group Limited. That produced directions on 19 October 2010 by Mr Dukhman to Southpac/Optimus and CSB for the remittance of funds to him.

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<sup>1</sup> All figures in this Judgment are in US dollars, the currency denominated in most, if not all, Cook Islands off-shore banking transactions.

[4] That, in turn, led to the making of an ex parte restraining order by Savage J on 21 October 2010 under s 45 of the Mutual Assistance Act and ss 50-53 of the Proceeds Act against funds held by CSB, Southpac/Optimus and others with the effect that the funds held in named accounts were to be withdrawn and deposited into an interest-bearing account held in trust by the financial secretary of the Ministry of Finance and Economic Management in the name of the Administrator. Mr Dukhman was barred from accessing the funds held in the Cook Islands.

[5] With subsequent variations to reflect changes of bank account numbers and the like, that order remains in force to be dealt with pursuant to this Judgment.

[6] Apart from one small further outstanding transfer, according to the submissions dated 28 January 2011 of Ms Evans for the Crown, all restrained funds were then held by the Administrator of the Confiscated Assets Funds, namely the Acting Financial Secretary of the Ministry of Finance and Economic Management.

[7] Since the making of the restraining orders, the following relevant interlocutory applications have been filed:

- a) On 13 December 2010 Mr Dukhman, acting through his Cook Islands lawyers, Messrs Gibson and McNair, applied for orders striking out the restraining orders or, alternatively, for orders for the payment of his reasonable living expenses, business expenses and debts, particularly his US attorney and Messrs Gibson and McNair's fees. That was supported by an affidavit sworn by Mr Dukhman in the US on 8 December 2010 setting out what he claimed to be his financial position and seeking payment of his expenses, debts and legal fees out of the funds. However, in a further affidavit sworn by Mr Dukhman in the US on 26 January 2011 he said that as a result of arrangements he had reached in the US he wished to withdraw all applications filed on his behalf and have all the funds in the Cook Islands returned to the US and paid to the US Department of Justice.

- b) On 3 February 2011 Messrs Gibson and McNair applied for leave to apply for a variation of the restraining order to permit their fees to be paid before repatriation of the Cook Islands funds to the US. The basis for their application was that they were entitled to the orders sought as “other persons” under s 53(1)(b) of the Proceeds Act.
- c) On 25 February 2011 the Crown applied for orders that the restraining order continue in force, it otherwise expiring by operation of law on 21 April 2011,<sup>2</sup> and also applied for an ancillary order under s 53(1)(a) of the Proceeds Act to repatriate the whole of the restrained funds. That application was supported by Mr Dukhman’s 26 January 2011 affidavit which, in addition to seeking return of the full amount of the restrained funds, then approximately \$1.6M, also sought to revoke both an affidavit of solvency he had sworn on 6 March 2009, and his 8 December 2010 affidavit.
- d) On 25 February 2010, Mr Mason, an officer of Southpac/Optimus, filed a memorandum saying that, in consequence of receiving Mr Dukhman’s 26 January 2011 affidavit, Southpac/Optimus had reached the view that the affidavit sworn by Mr Dukhman on 6 March 2009 as settlor of the Optimus Holdings Group Trust as to his solvency was inaccurate because it now appeared Mr Dukhman was at that date under investigation by the Federal Bureau of Investigation in the US, and all the funds deposited with Southpac/Optimus were, on his latest admission, derived from unlawful activities. As a result and acting pursuant to s 21A of the Trustee Companies Act 1981/82 Southpac/Optimus, on 22 February 2011, had advised Mr Dukhman that it would resign as trustee 42 days after delivery of the notice, and that at the expiry of that period the Registrar of International Trusts was to be notified and Optimus Holdings Group Trust would no longer qualify to be registered under the International Trusts Act 1984. He suggested the property of Southpac/Optimus which had been

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<sup>2</sup> At the conclusion of the hearing on 6 April 2011 orders were made maintaining in force all existing orders until dealt with by this Judgment.

transferred to the Administrator was “realisable property”, being property held by a person charged and/or convicted of a serious offence and needed an application by the Crown for a forfeiture order to be dealt with. Mr Mason submitted that a new trustee or trustees should be appointed by the Court pursuant to s 51 of the Trustee Act 1956 (NZ) applied in the Cook Islands by s 639 of the Cook Islands Act 1915.<sup>3</sup>

## **Discussion and decision**

### *(1) Uncontentious matters*

[8] Certain matters concerning these parties are relatively straightforward.

[9] In the first place, the unavoidable passage of time between Southpac/Optimus’ notice of resignation and delivery of this Judgment means that, by the date of delivery, the notice will be effectual. So, the Registrar of International Trusts will have been notified of the resignation and Optimus Holdings Trust Group will no longer qualify to be registered under the International Trusts Act 1984. By the date of delivery, it is virtually certain the whole of the funds remitted by Mr Dukhman to the Cook Islands will have been transferred to the Administrator of the Confiscated Assets Fund. That aspect of the matter, therefore, requires no further consideration by the Court. No further trustee would seem to need to be appointed.

[10] The application filed on Mr Dukhman’s behalf on 13 December 2010 so far as it related to striking out the restraining order was posited on suggested deficiencies in the manner of making the restraining order and its duration but, in view of the fact that Mr Dukhman has unequivocally applied to withdraw his supporting affidavit, it must be assumed that withdrawal is intended to extend to the interlocutory application as well. Thus whether the technical matters advanced on his behalf concerning the restraining order have merit no longer requires consideration. In

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<sup>3</sup> Just prior to delivery of this judgment a letter from Southpac to the Registrar dated 6 May 2011 was received advising that their resignation as Trustee became effective from 27 April 2011.

formal terms, Mr Dukhman's application of 13 December 2010 is dismissed as withdrawn to the extent that it sought an order striking out the restraining order.

(2) *Crown's Ancillary Application*

[11] The major parties to this matter both sought ancillary orders under s 53 of the Proceeds Act. Section 53 relevantly provides:

53. Ancillary orders and further orders –

- (1) If the Court makes a restraining order, any of the following may apply to the Court for an ancillary order –
  - (a) the Solicitor-General;
  - (b) a person whose property is the subject of the restraining order (the "owner");
  - (c) if the restraining order directs the Administrator to take custody and control of the property, the Administrator;
  - (d) with the leave of the Court, any other person.
- (2) An ancillary order may do any of the following –
  - (a) vary the property to which a restraining order relates;
  - (b) vary any condition to which a restraining order is subject;
  - (c) order a person to be examined on oath before the Court about the affairs of the owner or of the defendant;
  - (d) provide for carrying out any undertaking about the payment of damages or costs given by the Crown in connection with the making of the restraining order;
  - (e) direct the owner or the defendant to give a specified person a statement on oath setting out the particulars of the property, or dealings with the property, that the Court directs;
  - (f) if the restraining order directs the Administrator to take custody and control of property, do any of the following:
    - (i) regulate the performance or exercise of the Administrator's functions, duties or powers under the restraining order;
    - (ii) decide a question about the property;
    - (iii) order a person to do anything to enable the Administrator to take custody and control of the property;
    - (iv) if the restraining order provides that a person's reasonable expenses in defending a criminal charge be met out of the property, order that those expenses be taxed as provided in the ancillary order before being met;
    - (v) provide for the payment to the Administrator out of the property of the costs, charges and expenses incurred in connection with the performance or exercise by the Administrator of functions, duties or powers under the restraining order;
  - (g) anything else that the Court considers necessary in the circumstances.

[12] The ancillary order sought by the Crown was to repatriate the funds to the US pursuant to the enabling provision of s 53(2)(g), namely that such an order was “necessary in the circumstances”.

[13] The Court’s view is that it is “necessary in the circumstances” for an order to be made repatriating funds to a named account in the US to implement other orders made and that, on such repatriation, the restraining order should be revoked. But the essential remaining question is whether the funds so remitted are to be the whole of the funds held pursuant to the restraining order or only that part held after deduction of fees payable to Messrs Gibson and McNair, and the Court accordingly turns to that question.

(3) *Application by counsel for leave to be declared “other persons” under s 53(1)(d) of the Proceeds Act*

[14] Some preliminary matters require clearing away at the outset. They are:

- a) Though based on a criminal investigation and criminal charges laid in the US, the Proceeds Act is civil in nature with issues being determined on the civil standard of “balance of probabilities”.<sup>4</sup>
- b) Mr McNair made several affidavits in support of the application. In so doing he disqualified himself from acting as counsel.<sup>5</sup>
- c) The amount in issue totals \$16,197.60 being Gibsons Law PC Accounts GL1103 and 1104 for \$12,704.80 and \$3,492.80 respectively. There is no account in evidence from McNair, apart from his invoice for \$7,020.00 being shown as a disbursement on GL1103. The fees were at a discounted rate (which appears partly supported by the invoices) and charged at \$300 per hour (which was at variance with the rates of \$250 per hour for Mr Gibson and \$400 per hour for Mr McNair which counsel said on 6 April 2011 was being charged). There is nothing in the invoices about Mr McNair’s involvement apart from “numerous

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<sup>4</sup> Section 103.

<sup>5</sup> *Vector Gas Ltd v Bay of Plenty Energy Ltd* [2010] 2 NZLR 444 at 488-9 paras [147]-[149].

conferences” and attendances on him, and Mr McNair’s affidavits all appear to relate to actions after 23 December 2010, the date at which the claim for legal expenses was fixed despite Messrs McNair and Gibson having been involved in a number of attendances since. In the circumstances, it is a little surprising there was no challenge to the extent of the claims, the necessity for the attendances or the hourly rate charged.

- d) A number of directions were made at telephone conferences and other hearings concerning the provision of information and compliance with timetables but, in view of the current situation, those matters no longer require to be dealt with.

[15] The legislative framework for counsel’s application is that, under s 53(1) of the Proceeds Act, the Court may make an ancillary order on the application of the Solicitor-General, the owner of the property, the administrator and “with the leave of the Court, any other person”. Messrs Gibson and McNair seek qualification for an order as to their fees as “any other person”.

[16] Messrs Gibson and McNair submitted that, if orders such as they seek were not made, persons whose property was subject to restraining orders in the Cook Islands would seldom, if ever, be able to obtain legal representation because they would be likely to be unable to pay for it. They pointed to the enabling provisions of s 50(4) as indicating that Parliament clearly contemplated that a person whose property was the subject of a restraining order was intended to be able to obtain legal representation and pay for it out of the restrained funds. They submitted the only statutory means of their being able to achieve that end was for an order to be made that they were ‘other persons’ under s 50(4) – particularly in this case where Mr Dukhman’s change of stance meant he opposes their application. Counsel pointed out that there is no legal aid in the Cook Islands for persons charged overseas and, in any event, the total annual budget in the Cook Islands legal aid scheme is miniscule.



[17] Opposing, Ms Evans submitted it would be wrong in principle to order that counsel be regarded as “other persons” to enable payment of their fees because Mr Dukhman has now acknowledged that all funds remitted by him to the Cook Islands were the proceeds of fraudulent activity. Accordingly, Mr Dukhman could have no legal interest in the funds – as he admitted – and it would therefore be contrary to principle to enable counsel to be paid from funds in which their client could have no legal interest.

[18] There is much logical force in Ms Evans’ submissions that property owners who are not clients of a lawyer should not have their funds depleted by orders to meet the fees of the lawyer’s client, but, against that, the situation which arises in this case will often be the situation that arises under the Proceeds Act.

[19] Pursuant to s 6 “realisable property” - the only property against which a forfeiture order can be made,<sup>6</sup> - is property held by a person who has being charged with or convicted of a serious offence<sup>7</sup> and “property”, the assets against which a restraining order can be made, is broadly defined. It includes money, realty and personalty, whether in the Cook Islands or elsewhere and includes rights of action or intangible or incorporeal property. So, in many cases, the “property” in respect of which a restraining order is made will ultimately turn out to be tainted “realisable property” in respect of which a forfeiture order may be made.

[20] It must follow that the “reasonable expenses” payable under s 50(4)(b) from restrained property will, not uncommonly, turn out ultimately to be the property of persons other than the accused.

[21] In that regard it is of some importance to note that the “reasonable expenses” which can be ordered to be paid under s 50(4)(b) from restrained property expressly includes both the cost of defending the criminal proceedings and “any proceedings under this Act”.

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<sup>6</sup> Section 6.

<sup>7</sup> Or donees from that person.

[22] Pursuant to ss 48-50 of the Proceeds Act the Solicitor-General can obtain restraining orders against a person's<sup>8</sup> realisable property if the Solicitor-General suspects a person may have committed an offence within the six years preceding the application, or a defendant is about to be charged with a serious offence within five working days, in either case with details of the Solicitor-General's suspicion being given. The Court is then empowered to make a restraining order against property if satisfied:

- (a) A defendant has been convicted of a serious offence, has been charged with a serious offence or will be charged with a serious offence within 48 hours; and
- (b) If the defendant has not been convicted of the serious offence, there are reasonable grounds for believing that the defendant committed the offence; and
- (c) there are reasonable grounds for believing that the property is "tainted property" or the defendant derived a benefit directly or indirectly from the commission of the offence; or
- (d) if the property is the property of a person other than the defendant and that the property is subject to the effective control of the defendant.

[23] It follows that restraining orders can only be made on conviction of or charging with a serious offence. There must be particularised suspicion of commission of a serious offence,<sup>9</sup> and there must be reasonable grounds for believing the restrained property is tainted.

[24] Section 50 of the Proceeds Act sets out the circumstances in which restraining orders may be made together with the conditions which may be attached to them. Specifically, 50(4) gives the Court power to make orders that out of the property, or a specified part of it, a person's reasonable living expenses may be met as may "the person's reasonable expenses in defending a criminal charge and any proceedings under this Act".<sup>10</sup>

[25] Pursuant to subsection (5), before making such orders the Court must be satisfied that the "person cannot meet the expenses or debt out of property that is not subject to a restraining order". Various timetabling orders were made during the

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<sup>8</sup> Or, in defined circumstances, realisable property held by others.

<sup>9</sup> In which case, subject to compliance with certain time limits.

<sup>10</sup> Section 50(4)(b).

proceedings with the view to meeting the requirements of s 50(5) but, for present purposes, it appears to be the case that Mr Dukhman qualifies in this regard, though doubts remain as to the possibility of him owing personal or other assets in the US. However, the fact that he has pleaded guilty to the charges against him and will no doubt be required to disgorge any funds held by him in the US means that this Court can take the inference that s 59(5) is complied with.

[26] Though it is impossible to be definitive, and although the particular serious offence giving rise to restraining orders defines those offences solely in terms of punishment<sup>11</sup> in the usual run of such matters, the likelihood is that the money or other property restrained will turn out either to have been derived from fraud, theft or similar activity on the part of the defendant, or from other forms of illegal activity such as drug trafficking or money laundering.

[27] What is shown ultimately to be the source of the fund is, however, important in deciding what should be done with it because a crucial decision can arise from provenance.

[28] It is well recognised in many countries that a person who commits fraud, theft or similar activity obtains no legal or beneficial interest in the funds or assets so obtained. Fraud, theft and similar are well recognised exceptions to various forms of indefeasibility of title, and even title to land obtained by a fraudster through fraud, theft or similar is defeasible. So a person defrauded or the victim of theft or similar conduct can expect the return of their property either by civil action or appropriate orders such as reparation in criminal proceedings because the criminal can have no title, legal or beneficial, to the funds or assets in question.

[29] On the other hand – though this analysis is something of a simplification – a person trading illegally by means other than fraud, theft and the like – say by drug trafficking – obtains an interest in the funds or assets derived from such activity, and remains the owner unless and until their interest is defeated by appropriate orders made by Courts, including orders under the Proceeds Act or similar statutes. Thus,

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<sup>11</sup> Under s 2 of the Proceeds Act a “serious offence” is one against the law of the Cook Islands (or if committed elsewhere is conduct which would similarly offend against the law of the Cook Islands) punishable by at least 12 months’ imprisonment or a fine of more than \$5,000.

speaking generally, aside from statutory provisions enabling Courts to ensure such persons do not profit from their illegal activities, a person who pays money or transfers assets to, say, buy drugs from a trafficker cannot get his or her funds or assets returned because the trafficker has acquired an interest in the money or assets. The payer must therefore rely on enabling provisions in statutes to get their money or assets back.

[30] Returning to this case, to decide the applications for ancillary orders, it is important to recognise there are three different periods concerning Mr Dukhman's money and activities in the Cook Islands.

[31] The first of these is between 6 March 2009 and October 2010. During that period there was nothing on the evidence to suggest to CSB, Southpac/Optimus that Mr Dukhman's 6 March 2009 affidavit of solvency and provenance was not accurate. It is now known the affidavit was incorrect, but there was nothing during that period on the evidence to alert CSB, Southpac/Optimus to that fact and, accordingly, nothing known to them to suggest the funds with which they were dealing in Mr Dukhman's name were not funds in which he had a legitimate interest. It is possibly in recognition of that fact that no application has been made for CSB/Southpac/Optimus to refund to Mr Dukhman (or the US Department of Justice) any fees those companies may have charged Mr Dukhman in that 19 month period.

[32] The third period relevant to this matter is that following the filing and service of Mr Dukhman's 26 January 2011 affidavit acknowledging his criminality, the fact that all funds held in his name in the Cook Islands were the product of fraudulent activity and asking for the entire fund to be remitted to the US Department of Justice. Having acknowledged the funds in his name in the Cook Islands were obtained by fraud or similar activity, he further acknowledged he could not have acquired any legal or beneficial interest in the funds. It is perhaps in recognition of that fact that Messrs Gibson and McNair used an earlier date, 23 December 2010, as the "cut off" date for their claim for legal fees.

[33] The intermediate, second relevant period must begin on the making of the ex parte restraining order on 21 October 2010 and its service on those affected by it,<sup>12</sup> and ends on the filing and service of Mr Dukhman's 26 January 2011 affidavit.

[34] During this second period – the period within which Messrs Gibson and McNair's fees were incurred – while the copious detail in the US Department of Justice request under the Mutual Assistance Act might reasonably have given rise to scepticism as to the correctness of Mr Dukhman's 6 March 2009 affidavit, the assertions would have been regarded as unproven, he was entitled to the presumption of innocence and entitled to have the restraining order re-examined, an entitlement he vigorously asserted in his 8 December 2010 affidavit and his 13 December 2010 application. In this period it was therefore reasonable for him to retain Cook Islands lawyers to act on his behalf to challenge the restraining order and seek orders for the payment of debts, legal expenses and the like as enabled by the Proceeds Act.

[35] To sum all that up, the Court's view is that orders under s 50(4)(b) and 53(1)(d) of the Proceeds Act – the latter, in this instance, being no more than providing an avenue to an order under the former – are matters for the exercise of the Court's discretion and the factors bearing on the exercise of the Court's discretion, in this case, if not generally, are:

- a) The principal object of the Proceeds Act is to deprive persons of the proceeds and benefits derived from the commission of serious offences by forfeiting their property<sup>13</sup> with the corollary that it is the statute's intention to retain as much restrained property as possible to satisfy orders made under the Proceeds Act including, importantly, orders returning restrained property to its true owners.<sup>14</sup>

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<sup>12</sup> The making of the production orders on 18 October 2010 might arguably have triggered this second period but nothing hangs on that in this case.

<sup>13</sup> Section 2(a)(b).

<sup>14</sup> *Solicitor-General v. Nathan* (1999) 17 CRNZ 496 approved in *Solicitor-General v. Panzer* [2001] NZLR 224.

- b) Seen against those objectives, a cautious approach is appropriate to the determination of orders under the Proceeds Act sought by those accused of serious offences and those representing them – particularly applications for orders to be made prior to final determination of proceedings under the Act – because to make such orders will often result in property owned by others being used as if it was property owned by persons accused. That is a factor of very significant weight. In some factual circumstances – particularly given the analysis in paras [26] – [29] – it will be decisive against an application such as this.
- c) That notwithstanding, the Proceeds Act expressly provides for orders being made prior to final determination of claims for living expenses, debts, legal expenses and the like and it is important to enable accused persons to secure legal representation,<sup>15</sup> particularly where they are entitled to the presumption of innocence.
- d) Other factors mentioned in *Panzer* include the size of the fund, the nature of the restrained property, the quantum of legal expenses and the ability of the person charged to meet their legal expenses out of unrestrained property.
- e) *Panzer* also mentions as a relevant factor the apparent strength of the prosecution case. That, in many cases, should be coupled with anything known as to the provenance of the restrained funds or assets. The latter is relevant again having regard to the analysis in [26] – [29].
- f) The fact in this case that the fees sought by Messrs Gibson and McNair were incurred in the intermediate or second period when Mr Dukhman had been charged with, but not convicted of, the various charges laid against him in the US, and when he had the advantage, in onus of proof terms, of being the respondent in these proceedings.

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<sup>15</sup> *R. v. Vella* (1993) 70 ACrimR 241 244 approved in *Nathan*.

[36] In those circumstances, and weighing all those factors one against the other, it is the Court's conclusion that it is appropriate that orders be made pursuant to s 53(1)(d) of the Proceeds Act granting leave to Messrs Gibson and McNair to be "other persons" in order to apply for an ancillary order.

[37] However, turning to quantum, there is power in s 53(2)(b)(iv) to order that the legal expenses be taxed. There was no application for such an order in this case even though, as noted, there may have been a basis for the Crown to seek taxation. But, in order to minimise the impact on funds belonging to others of the payment of legal expenses to Messrs Gibson and McNair, the Court of its own motion orders their accounts be taxed by the Registrar of this Court. Such an order is "necessary in the circumstances" under s 53(2)(g) and should be standard in Proceeds Act applications where it is proved or admitted that the restrained funds in respect of which counsel's fees have been incurred are in fact not the property of the respondent and person accused.

[38] Once taxation has been completed, the Administrator is directed:

- a) to pay the sums certified as due to Mr McNair and to Gibson's Law PC to those firms; and
- b) to remit the balance (including interest) of the funds held pursuant to the restraining order to the following account maintained by the US Marshal's Service:

Swift Code CITIUS33

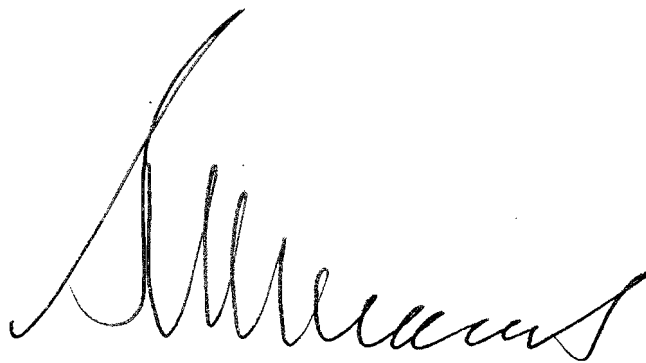
Remittance Account No. 38868.

Remittance Account Name: Federal Reserve Bank of New York/IPS

Bank Name: Citibank NA (New York)

Bank address: 388 Greenwich Street, New York 10013.

[39] In case of any administrative difficulties in implementing those orders, there will be liberty reserved to the parties to apply.

A handwritten signature in black ink, appearing to read 'Hugh Williams J', written in a cursive style. The signature is positioned above a horizontal dotted line.

**Hugh Williams J**

Solicitors:

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