

# The Drug Trafficking Offences (Jersey) Law, 1988, as amended and applied by the Drug Trafficking Offences (Designated Countries and Territories) (Jersey) Regulations 1997

<b>Jurisdiction:</b>	Jersey
<b>Judge:</b>	Bailiff
<b>Judgment Date:</b>	07 February 2002
<b>Neutral Citation:</b>	[2002] JRC 35
<b>Reported In:</b>	[2002] JRC 35
<b>Court:</b>	Royal Court
<b>Date:</b>	07 February 2002

**vLex Document Id:** VLEX-792720957

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## Text

[2002] JRC 35

ROYAL COURT

(Samedi Division)

Before:

Sir Philip Bailhache, Bailiff, **sitting alone**

In the Matter of the Drug Trafficking Offences (Jersey) Law, 1988, as amended and applied  
by the Drug Trafficking Offences (Designated Countries and Territories) (Jersey)  
Regulations 1997

And in the Matter of The Representation of Tomas Batalla-Esquivel.

**Advocate M.G.P. Lewis for the Representor**

**Advocate A.J. Belhomme on behalf of the Attorney General**

### **Authorities**

*Kirklees MBC v Wickes Building Supplies Ltd.* [\[1993\] AC 227](#) .

[Re R \(restraint order\) \[1990\] 2 All ER 569](#) .

Drug Trafficking Offences (Jersey) Law 1988.

Drug Trafficking Offences (Designated Countries and Territories) (Jersey) Regulations 1997.

*Dowse and Heys v AG* (1997) JLR N. 6 .

*In re Donoghue* [\(2000\) JLR 67](#) .

*Maçon v Québec* [\(2001\) JLR 187](#) .

*Dixon & Ors v Jefferson Seal* [\(1998\) JLR 47](#) .

*In re Mason* [\(1993\) 1 WLR 824](#) .

**Application by the Representor for a cross-undertaking in damages with respect to any loss suffered by the Representor as a consequence of a *saisie judiciaire*, or alternatively any loss suffered by those trusts and settlements of which the Representor is a beneficiary and the assets of which are subject to the *saisie judiciaire*.**

Bailiff

### **THE**

- 1 This is an application by Don Tomas Batalla-Esquivel (“the representor”) for a “cross-undertaking in damages with respect to any loss suffered by the representor as a consequence of the *saisie judiciaire*, or alternatively any loss suffered by those trusts and settlements of which the representor is a beneficiary and whose [sic] assets are subject to the *saisie judiciaire*”. Mr. Lewis, who appeared for the representor, made it clear in oral submissions that what was sought was a cross-undertaking in damages as a condition of the continuance of the *saisie judiciaire* from the Attorney General of the United States, on whose behalf the Attorney General had acted. He did not seek the undertaking from the Crown.

- 2 The *saisie judiciaire* was issued on 8th February 2000. Mr. Lewis described the Viscount's costs of administering the assets subject to the *saisie judiciaire* between 8th February 2000 and 30th September 2001 as breathtaking. These costs, principally due to professional advisers engaged by the Viscount, amounted to \$492,804, whereas the total trust fund under administration was no more than \$5 million. Counsel conceded that there had been an agreement to surrender the proceeds of drug trafficking between the U.S. Government and Paul Edward Hindelang jnr. but submitted that no link between Mr. Hindelang and the representor had yet been proved. Counsel submitted that the *saisie judiciaire* was analogous to a Mareva injunction and that it was in the interests of justice that the U.S. Government, engaged in what were civil proceedings, in rem in the United States, should provide a cross-undertaking in damages. If there were no cross-undertaking, and the *saisie judiciaire* was subsequently discharged, the representor would be left with no remedy in relation to the recovery of costs incurred by the Viscount.
- 3 Counsel referred to *Kirklees MBC v Wickes Building Supplies Ltd.* [1993] AC 227 as authority for the proposition that there was no rule that the Crown was exempt from giving a cross-undertaking in damages in law enforcement proceedings. That may well be right but *Kirklees* was a case concerning the lawfulness of injunctions to restrain breaches of the law under Sunday trading legislation in the context of European Community Law. It is not in my judgment relevant to the judgment of the Court under drug trafficking legislation.
- 4 Mr. Belhomme, who appeared for the Attorney General, conceded that substantial costs had been incurred by the Viscount following the issuance of the *saisie judiciaire*. He suggested that some expense would in any event have been involved in the administration of these assets by the trustee irrespective of whether or not there had been a *saisie judiciaire*. Counsel also submitted that there was no doubt at all that the seized assets were the residue of funds passed by Mr. Hindelang to the representor as his nominee and subsequently laundered in Switzerland before being transferred to Jersey. Be that as it may, counsel's more telling submissions related to the jurisdiction, or lack of it, to make the order sought by the representor. Counsel referred me to *Re R (restraint order)* [1990] 2 All ER 569. In that case a landlord had let premises to a tenant who was charged with a drug trafficking offence. The Customs and Excise Commissioners obtained a restraint order prohibiting the tenant from disposing of his property including plant and machinery at the demised premises. The landlord, who was unaware of the order, attempted unsuccessfully to distrain on the plant and machinery for arrears of rent and incurred expenses in so doing. The landlord subsequently applied for a variation of the restraint order and in that context sought an indemnity from the Commissioners against loss of rent and other expenses. The Court declined to order the cross-undertaking in damages. Otton J stated, at page 573 –

**“However, he [counsel for the landlord] argues by analogy by reference to the Mareva injunction which is available in civil proceedings. He says, in effect, that the provisions of the 1986 Act encapsulate the Mareva injunction in a criminal context. Any order in civil proceedings would have included a cross-undertaking as to damages which would have provided protection to third parties who had acted innocently and in good faith .**

***If the court were to find that the order should not have been made then anybody who has suffered damage would be entitled to some form of compensation.*** Thus, he contends, in criminal proceedings the court should imply a similar undertaking to compensate third parties who act innocently and in good faith and who suffer damage .

.....

***Counsel for the Commissioners has submitted that the court has no jurisdiction to order compensation or indemnity, either under the 1986 Act or any other statutory provision.*** The operation of s 19 is very limited and specific in its provisions and does not permit any enlargement in the way contended for by the landlords. Furthermore, there is no cross-undertaking which can cover third parties' rights or injustices, and there is no reason to imply such an undertaking in the criminal Mareva context .

***He submits that the inherent jurisdiction of the court does not extend to compensating anybody who has suffered by the implementation of an order of the court, unless if it were shown that the order was in some way improperly obtained.*** That is not the position here .

.....

***I have come to the conclusion that I must accept the primary submissions of counsel for the Commissioners that there is no jurisdiction in this court, either by statute or in its inherent jurisdiction, to grant the relief sought on behalf of the landlords.*** There is no ground for implying a cross-undertaking. I must reject the landlord's case on those grounds alone ”.

- 5 In my judgment similar considerations apply in this jurisdiction. The primary purpose of the Drug Trafficking Offences (Jersey) Law 1988 is to make provision for the recovery of the proceeds of drug trafficking. The 1988 Law lays down a procedure for seizing property suspected to be the proceeds of drug trafficking. The Drug Trafficking Offences (Designated Countries and Territories) (Jersey) Regulations 1997 extends that procedure in specified circumstances to requests from the appropriate authority of designated countries. Nothing is to be found in the 1988 Law or in the 1997 Regulations that empowers the Court to require a cross-undertaking in damages either from the Attorney General or from the appropriate authority of a designated country. To claim an inherent jurisdiction to imply such a power would seem to me to be wrong and indeed inappropriate. The statute exists to curb the evil of drug trafficking. To impose cross-undertakings upon the Attorney General or the appropriate authority of a foreign state might very well inhibit the enforcement authority which ought not to be deterred from its duty to make application for saisie judiciaires by the fear that it might at some time in the future have to pay substantial damages or costs. The remedy provided by statute for those who consider that the saisie judiciaire ought not to have been granted or ought not to continue, is to seek its discharge.

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6 I accordingly hold that the Court has no jurisdiction, either statutory or inherent, to grant the relief sought by the representor. The application is dismissed.