

Representation of Don Thomas Batalla Esquivel

Jurisdiction:	Jersey
Judge:	Bailiff
Judgment Date:	26 March 2001
Neutral Citation:	[2001] JRC 75
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Court:	Royal Court
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Text

[2001] JRC 075

ROYAL COURT

(Samedi Division)

Before:

Sir Philip Bailhache, Bailiff, and Jurats Queree and Georgelin.

In The Matter of an application to discharge a Saisie Judiciaire made by Order of the Court on 8th February, 2000.

And in the matter of Articles 8 and 9 of the Drug Trafficking Offences (Jersey) Law, 1988 as modified by Regulation 2(2) of the Drug Trafficking Offences (Designated Countries and Territories) (Jersey) Regulations, 1997.

And in the matter of the Queen Noelle Settlement and the New Harmony Trust.

Representation of Don Thomas Batalla Esquivel seeking to set aside or vary a 'saisie

judiciaire', issued by the Deputy Bailiff on 8th February, 2000, and which resulted from an application by the Attorney General, on behalf of the Attorney General of the United States of America, pursuant to Drug Trafficking Offences (Designated Countries and Territories) (Jersey) Regulations, 1997

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

Advocate A.J. Belhomme, on behalf of the General.

Authorities

The Drug Trafficking Offences Act, 1986 (Designated Countries & Territories) Order 1990.

The Drug Trafficking Offences Act, 1986 (Designated Countries & Territories) (Jersey) Regulations 1997.

Bailiff

THE DEPUTY

- 1 When the Court delivered its judgment on 2nd March, 2001, it adjourned that part of the application of Don Thomas Batalla Esquivel to discharge the saisie judiciaire which related to assets that had not been pursued by the United States Government. The Court stated:

"I therefore propose to adjourn the hearing of the representation so that Abacus and the Viscount can be convened. If further proceedings have by then been instituted in the United States, the matter can be reviewed in the light of those proceedings. If no further proceedings have been instituted, counsel for the Representor may renew his application for the discharge of the saisie judiciaire to the extent that it embraces assets in respect of which no proceedings have issued."

- 2 On 22nd March, 2001, further proceedings were instituted before the United States District Court claiming the forfeiture in rem of the assets set out in the schedule to the complaint. The position as of today, therefore, is that, with the exception of certain assets to which we shall refer in due course, all the property subject to the saisie judiciaire issued by this Court on 8th February, 2000, is now claimed by the United States Government in proceedings in the Southern District of Florida.
- 3 Notwithstanding that change of circumstance, Mr. Lewis for the Representor has maintained his application that the saisie judiciaire in respect of all the assets which are still not subject to proceedings in the United States and the assets covered by the proceedings instituted on 22nd March, 2001, should be discharged.

- 4 Mr. Belhomme, for the Attorney General, explained at the hearing at the beginning of this month that the documents seized pursuant to the saisie judiciaire were extremely voluminous and that the US Government had been proceeding in a measured way instituting claims in respect of the assets which were subject to the saisie judiciaire in stages. As the Court indicated in its judgment on the last occasion, we think — notwithstanding the difficulties faced by the United States Government — that the delay in instituting proceedings has been considerable. However, what is in question here is the laundering of the very substantial proceeds of drug trafficking. We have considered carefully the submissions of counsel for Mr. Batalla but we have concluded that the delay is not so unreasonable that we should discharge the saisie judiciaire in respect of those assets which are now claimed in proceedings in rem in the United States.
- 5 So far as the assets still not subject to any forfeiture proceedings are concerned — that is to say the loan account due by Altoona Holdings Ltd to the Steinvorth AGP Settlement and CR Properties Inc. and its subsidiary companies also owned by the trustees of that settlement, and two loan accounts due by Evenwood Holdings Ltd and Allatab Investments Ltd to the trustees of the Don Esquivel Settlement — the saisie judiciaire is discharged. In other respects the application is dismissed.
- 6 Following the judgment which the Court has just delivered, Mr. Clyde-Smith for Baroque Trust Company Limited has submitted draft directions which the Trustee asks the Court to make in relation to the Trusts. The draft directions are not opposed by Mr. Belhomme for the Attorney General nor by Mr. Lewis for Mr. Batalla except in one respect. Mr. Lewis has submitted that the Court has no power to order that the costs of the Trustee be paid out of assets which are now vested in the Viscount as the realisable property of the defendant seized pursuant to the saisie judiciaire. Mr. Lewis has argued that the cash in question belongs not to the defendant but to companies which are owned by the trustees of the settlements in question. He has argued that the Viscount's duty is to protect those assets and that it is not open to the Viscount pursuant to his duties under the Drug Trafficking Offences (Jersey) Law, 1988 to pay the costs and expenses of the Trustee.
- 7 In our judgment that submission is misconceived: Article 9(4) of the Law empowers the Court to give the Viscount directions in relation to the management and dealing with any realisable property. That power in our judgment is quite wide enough to authorise the payment of legal costs and expenses and the costs of the Trustee arising out of the application made to the Court.
- 8 On the question of the merits of the case, counsel for the Attorney General has made it clear that the Trustee has at all times acted with complete propriety and has given every possible co-operation to the investigating authorities in the course of their investigation. The Court, therefore, rejects the submission made by counsel for Mr. Batalla and will issue the directions in the form of the draft submitted by counsel for Baroque Trust Company Limited.

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- 9 Further to the Court's judgment of 2nd March, 2001, any costs incurred in relation to the proposed request for directions will be held over to be considered at the conclusion of the hearing which may take place in relation to that request for directions.
 - 10 On the application of the Attorney General the Court will order, with the consent of all other parties convened to the application, that the saisie judiciaire over 'Magpie Farm' near Aspen in Colorado be lifted.