

IN THE SUPREME COURT OF BELIZE, A.D. 2014

CLAIM NO: 700 of 2014

BETWEEN

TITAN INTERNATIONAL SECURITIES INC.

CLAIMANT

AND

**THE ATTORNEY GENERAL OF BELIZE
THE FINANCIAL INTELLIGENCE UNIT**

**1st DEFENDANT
2nd DEFENDANT**

Keywords: Sections 9 & 14 of the Belize Constitution; the right against search of his person or his property or the entry by others on his premises; the right against arbitrary or unlawful interference with his privacy; balance between protecting the interest of the individual, the individual's right against arbitrary search, and, the interest of the public in law enforcement;

The Mutual Legal Assistance and International Co-operation Act;
Mutual Legal Assistance in the investigation and prosecution of crime;
Warrants of Search and Seizure; Scope and Validity of Warrants;

Before the Honourable Mr. Justice Courtney A. Abel

Hearing Dates: 29th September 2015
30th September 2015
1st October 2015
8th December 2015
9th December 2015
15th January 2016
21st January 2016.

Appearances:

Mr. Godfrey Smith, SC, Mr. Eamon H Courtenay, SC, and Ms. Iliana Swift for the Claimant

Ms. Anika Jackson, Solicitor General, Ms. Samantha Matute and Ms. Marcia Mohabir for the 1st Defendant

Mr. Fred Lumor, SC, and Mrs. Lenny Ysaguirre McGan for the 2nd Defendant.

JUDGMENT
Delivered orally on the 15th January 2016

Introduction

- [1] This is an application for Administrative orders by the Claimant, an international business company, which was licenced in Belize as a securities broker/dealer (“Titan”).
- [2] The claim has been brought against the Defendants, two public bodies, the Attorney General, representing the Government of Belize (GOB), and, the Financial Intelligence Unit (“the FIU”). The latter was established under the Financial Intelligence Act¹ to carry out certain statutory responsibilities including to fight against international crime.
- [3] The claim relates to the search of Titan’s business premises in Belize on the 9th September 2014 and the seizure of its property, resulting, so it is claimed by Titan, in the shutdown of its business.
- [4] The search and seizure was carried out under the Mutual Legal Assistance in Criminal Matters (MLAT) and Mutual Legal Assistance and International Cooperation Act² (“the Act”).
- [5] The present claim for administrative orders has been brought for judicial review and for relief under the Constitution in relation to the way in which the whole search and seizure operation took place, but principally for damages for what Titan claims was the unlawful shutdown of its business which resulted from a police and FIU’s (sting) operation.
- [6] The central issue for determination by this court is whether the entire operation, was tinged in any way with unlawfulness or illegality.

¹ Cap. 138.02 Revised Edition Laws of Belize.

² No. 18 of 2004 Laws of Belize.

The Issues

[7] Whether the search and seizure of Titan's property³ is unlawful (as being disproportionate and in excess of statutory authority) and/or was unconstitutional⁴?

The following questions arise under this heading:

- (a) Is the Act Constitutional?
- (b) Was the Warrant a valid and lawful warrant of a Magistrate of Belize?
- (c) Who carried out the search and seizure, was it the police alone or did it include officers of the FIU?
- (d) What was the role of the FIU (were they agents of the GOB) and was its actions in any way unlawful?
- (e) Whether items seized constitutes evidence of offences as required by the Act?
- (f) Was the search carried out in excess of legal authority?
- (g) Whose property was searched?

[8] Whether Titan is entitled to the reliefs claimed including the injunction and any damages?

Background

[9] On the 8th September 2014 a twenty (22) page indictment was unsealed in the USA ("the Indictment").

[10] The Indictment charged Titan and Mr. Kelvin Leach (the President of Titan), with being involved in a conspiracy and implicated in a fraudulent scheme with one Robert Bandfield and his related Companies, and other persons in the USA, to evade taxes; and also of being involved in securities fraud, money laundering and other alleged fraudulent transactions. The allegations arose from an undercover operation in Belize.

³ Under Section 18 of the Mutual Legal Assistance and International Cooperation Act, No. 18 of 2014 Laws of Belize

⁴ As being in violation of Titan's fundamental rights under Sections 3, 6, 9 and 14 of the Constitution of Belize.

- [11] By a twenty seven (27) page Request for Assistance under the Act, the US Department of Justice⁵ on the same day made an urgent request for the assistance of the AG in relation to the Indictment (“the Request”).
- [12] The Request was to have Titan’s offices searched, “*as quickly as possible to prevent the destruction of evidence*”, and alleged that “*a substantial amount of client information is held in hard copy files and on computers*” in the office of Titan, and asked that the Request be kept confidential.
- [13] Facts were outlined and alleged in the Request as well as certain details including the need to search Titan’s offices for “further evidence”.
- [14] The Request expressly stated that the documents needed included “*any and all documents or other evidence (in copy or original) seized during the execution of search warrants*”. The procedure to be followed was also specified.
- [15] Pursuant to the Request, the AG agreed to provide the assistance in short order, in its entirety, and to conduct the search of Titan’s office; and to “*seize any and all documents and information in hard copy or electronic form*” relating to Titan.
- [16] The assistance involved arranging to make an application to a Magistrate for the obtaining of a Warrant (a draft of which was prepared in the terms of the Request), and if obtained, for the subsequent search of Titan’s premises by way of a speedy and highly confidential operation.
- [17] The AG immediately informed the Belize Police Department in writing to apply to the Magistrate for the warrant to execute the planned search and seizure.
- [18] Sometime on the same day, presumably before the search commenced, the FIU also received from the AG a letter in which the AG requested the FIU’s assistance in order to effectively carry out the Request.
- [19] On the same day, a Corporal of the Police Department appeared before a Magistrate, for a Search and Seizure Warrant; not only in relation to Titan but also in relation to some three (3) other entities.
- [20] All of the applications took under one hour and a Warrant was granted by the Magistrate in terms of the prepared draft.

⁵ Criminal Division, Office of International Affairs.

[21] The Magistrate issued the Search Warrant solely on the strength of the Request to a Superintendent *“and to all and every Police Constable and Peace Officers of Belize and to the Officers of the Financial Intelligence Unit of Belize.”*

[22] The Terms of the Warrant is as follows:

“Whereas there is reason to suspect that certain property, to wit:-

Documents and information (in hard or electronic form) relating to

Titan International Securities Inc.,....., Robert Banfield, Rohn Knowles and Kelvin Leach.

Which property may be used as evidence in a prosecution for the suspected offences in the United States of America, of:-

- 1) Securities and commodities fraud;*
- 2) Attempted and conspiracy;*
- 3) Manipulative and deceptive devices;*
- 4) Laundering of monetary instruments;*
- 5) Conspiracy to commit the offence or defraud the US.*

The Informant has probable cause to suspect and therefore suspects that some or all of the said property is in the premises.

This is therefore to authorize and require you to enter ...into the said premises to search for and seize the said documents and information, and to furnish the same to the central authority.”

[23] Apart from the time it took for the Magistrate to consider the grant of the Warrant and the fact that it was in the terms applied for, there is no evidence that the Magistrate, who considered the application, did not carefully examine and consider the grounds put forward for the Warrant; and did not satisfy herself in relation to the search of the premises concerned.

[24] With the Warrant in hand, the police had a short briefing and then proceeded to conduct the search and seizure operation at Titan’s offices.

[25] The search was then carried out immediately as planned and this took place between 1:45/2:00 – 9:00 pm.

- [26] Immediately prior to commencing the search, a copy of the search Warrant was read to Mr. Kelvin Leach, but a copy was not given to or left with him.
- [27] The search was led and carried out by a Sergeant and 4 police officers.
- [28] One (1) other police officer, who was attached or seconded to the FIU, was also present throughout the search and seizure, along with a Crown Counsel in the AG's Ministry in observation. These officers were later joined and the search carried out in the presence of another Attorney of FIU; the latter two of whom arrived sometime later, about 6:00 pm, after the search had commenced.
- [29] The presence of the persons from the FIU was at the request of the AG for them to be there, and pursuant to the Warrant.
- [30] Photographs were taken of Titan's office in the course of the search (not disclosed in the present proceedings) and a large quantity of items were seized.
- [31] Titan's office was effectively gutted and computers were not turned on to determine what was relevant; apparently because: "*it was not feasible at the moment*".
- [32] The Court accepts, based on evidence before it, that items seized included items that "*couldn't conceivably assist in proving and disproving financial crimes*".
- [33] An inventory of items seized was not left with Kelvin Leach and he is unable to account for all of Titan's items seized.
- [34] Titan's Attorney was denied entrance to Titan's office during the search – it was claimed inadvertently.
- [35] The seized items were taken away from Titan's office and housed at the AG's office and the FIU's office.
- [36] The US Agents, present in Belize, did not take part in the search and seizure but apparently they afterwards copied all the documents and imaged all the electronic information.
- [37] Titan, by email of the same day, was informed by the International Financial Services Commission, that its licence had been suspended. This letter of suspension was later confirmed by letter dated 17th September 2014 from the Commission which prevented Titan from carrying on its "*trading in financial and commodity-based derivative instruments and other securities*". This suspension

has not to this day been lifted. But the present claim is not in relation to this suspension.

[38] Apparently the FIU then by letter dated 3rd October 2014 required the AG to produce to them in the following terms: “*all records seized on September 9, 2014 pursuant to MLAT of that date*”.

[39] Items taken during the search and seizure were eventually returned on 20th January 2015.

[40] The legal authority of the Defendants to carry out the search of Titan’s offices and seizure of property within its offices are the subject of complaint in the present proceedings. Titan alleges that Section 18 of the Act is inconsistent with Sections 9 and 14 of the Belize Constitution.

[41] In the present proceedings Titan specifically complains that a detailed list of things were not done in accordance with MLAT and/or the Act and/or the Constitution of Belize.

[42] The Defendants generally deny the substance of the complaint and allege that the search and seizure was at all times conducted lawfully.

[43] The FIU generally denies the substance of the complaint and alleges that it its officers did not execute the Search and Seizure Warrant and did not contravene any rights conferred on Titan by the Belize Constitution.

The Court Proceedings

[44] Titan commenced the present proceedings on the 22nd December 2014 in which it claimed many reliefs under the Constitution and the Act for declarations, an injunction and costs including for the manner in which the search was conducted claiming it was unlawful.

[45] The witnesses included accounting experts in relation to the question of damages.

The Law

The Belize Constitution

[46] The Belize Constitution is the supreme law of Belize; and any other law which is inconsistent with it is void⁶ and could be struck down by this court.

[47] Section 9 of the Belize Constitution provides:

⁶ See Section 2 of the Belize Constitution.

“ (1) *Except with his own consent, a person shall not be subjected to the search of his person or his property or the entry by others on his premises.*

(2) *Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes reasonable provision-*

(a) *that is required in the interests of defence, public safety, public order, public morality....”*

[48] Section 14 of the Belize Constitution guarantees a person protection of his privacy in relation to himself and his correspondence. Section 14 expressly states:

“*(1) A person shall not be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation*

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision of the kind specified in subsection (2) of section 9 of this Constitution.”

[49] Under Section 20 (1) and (2) of the Constitution the Supreme Court has the right to hear claims, such as the present one, under the Constitution.

[50] The right to protection from arbitrary search, unlawful and/or interference with his privacy is obviously not an absolute right and any law which makes reasonable provision for search and seizure, that satisfies the limitations contained in the provisions of Section 9(2)(a) of the Constitution, is obviously protected from being struck down.

[51] The objective of the limitations, such as contained in Section 9(2)(a) of the Constitution, as recognized by the Supreme Court of Canada in *Thanh Long Vu v Her Majesty The Queen and the AG of Ontario et al*⁷, is to strike “*a balance between the right to be free of state interference and the legitimate needs of law enforcement.*”

[52] In the present ever increasing globalized and interconnected world in which we live, what may be considered “*in the interest of defence, public safety, public order,*

⁷ [2013] 3 R.C.S. 657 at page 669 at paragraph [21].

public morality..” etc may encompass more than reference strictly to the ‘Belize’ public; and does extend to international treaty⁸ and other legal obligations, as well as relate to international cooperation.

The Mutual Legal Assistance and International Co-operation Act

- [53] The Act is to provide measures in conformity with Belize’s international obligation in relation to MLAT and all related matters.
- [54] The MLAT encourages cooperation between judicial, law enforcement, and customs authorities of foreign states.
- [55] The Act was enacted to enable the exercise of powers and functions by domestic law enforcement bodies to honour its international obligations for the effective provision of mutual legal assistance; involving the provision of assistance by one State to another in the investigation and prosecution of crime.
- [56] The Act makes provision for the AG, as the central authority, to consider in appropriate circumstances, and accept a request for assistance from a foreign state, such as the USA, in criminal matters, in compliance with the Act.
- [57] The Act empowers law enforcement authorities, once the requisite authorization is obtained from and under designated judicial personnel, to search and seize any property in accordance with its terms, in the course of investigations into serious crimes, including financial crime.
- [58] The provisions of section 18 of the Act expressly state:

“(1) If, on an application made by a police officer, a Magistrate is satisfied –

- (a) That criminal proceedings for an offence have been instituted against a person in a foreign State or that a person has been arrested in the course of a criminal investigation carried on in that State into such an offence; and*

⁸ MLAT.

(b) *That there are reasonable grounds for suspecting that there is on premises in Belize occupied or controlled by that person evidence relating to that offence;*

he may issue a warrant authorizing a police officer to enter and search those premises and to seize any such evidence found there.

(2) *The power to search conferred by subsection (1) is only a power to search to the extent that is reasonably required for the purpose of discovering such evidence as is there mentioned.*

(3) *No application for a warrant or order shall be made by virtue of subsection (1) except in pursuance of a direction given by the central authority in response to a request received –*

(a) from a court or tribunal exercising criminal jurisdiction in the overseas State in question or a prosecuting authority in that State; or

(b) from any other authority in that State which appears to him to have the function of making request for the purposes of this section;

and any evidence seized by a police officer by virtue of this section shall be furnished by him to the central authority for transmission to that court, tribunal or authority.

(4) ...

(5) ...”

[59] This provision specifically applies where “*proceedings for an offence have been instituted*” or a person has been “*arrested in the course of a criminal investigation carried out*” in a foreign State.

[60] The Act provides for rules of court to be enacted to flesh out the terms of the Act including, Section 18; but to date no such rules of court have been made under it .

[61] In the absence of such rules of court other provisions of the Act could provide some guidance as to how Section 18 may be interpreted; and specifically such guidance could be obtained from Section 26 of the Act.

[62] Section 26 in expressed terms states:

“(1) Where, on receipt of a request, the central authority is satisfied that

—

- (a) *the request relates to a criminal matter in the requesting State; and*
 - (b) *there are reasonable grounds for believing that the item to which the request relates is relevant to the criminal matter and is located in Belize, the central authority, or an authorised officer directed by him, may apply to the Supreme Court for an order under subsection (3) or a warrant under subsection (4) in respect of specified premises.*
- (2) *An application for a warrant referred to in subsection (4) in respect of any item in the possession of a financial institution shall not be made unless that item can be particularised.*
- (3)...
- (4) *On an application referred to in subsection (1), the court may issue a warrant in writing authorising the central authority, or an authorised officer directed by him, to enter the premises... and search the premises if the court is satisfied that the conditions in subsection (7) are fulfilled...*
- (5) *The central authority, or an authorised officer directed by him, entering premises by virtue of a warrant under this section—*
 - (a) *may take such other persons and equipment with him as he thinks necessary;*
 - (b) *may seize and remove any item whatsoever found there which he has reasonable cause to believe may contain information relevant to a request; and*
 - (c) *shall prepare a list of the items seized, where anything has been seized, and, if so requested by a person showing himself either—*
 - (i) *to be the occupier of the premises; or*
 - (ii) *to have had possession or custody of those items immediately before the seizure,*

provide that person with a copy of that list; and

(d) ...”

(6) The central authority may transfer any item seized to the requesting State in accordance with the terms of this Act and the applicable treaty and may, in writing, state any conditions that apply to such transfer.

(7) The conditions to be fulfilled under subsections (3) and (4) are that—

(a) there are reasonable grounds for suspecting that a specified person in Belize has carried on or has benefited from an offence relating to the item in respect of which the request is made;

(b) there are reasonable grounds for believing that the item to which the application relates —

(i) is likely to be of substantial value (whether by itself or together with another item) to the criminal matter in respect of which the request is made; and

(ii) does not consist of or include items subject to legal professional privilege; and

(c) the court is satisfied that it is not contrary to the public interest for the order or warrant to be issued.”

[63] Section 26, unlike Section 18, applies where there may not be existing proceedings or an arrest in the Foreign State, but where there is merely a criminal matter in the Foreign State and there are “*reasonable grounds*” for believing that there are relevant items in Belize; then a Judge of the Supreme Court, not simply a Magistrate, may grant a warrant for a search and seizure to take place.

[64] Thus, while appreciating the differences in the provisions of Section 18 and Section 26, this court considers that the procedure outlined in Section 26 is partly relevant to and may assist in the interpretation of Section 18 in relation to a warrant obtained by a Magistrate as expressly provided by Section 26 of the Act.

- [65] I do not, however, consider that under Section 18 a Magistrate may authorise an officer to take “other persons” other than the authorised officers to effect the search and seizure.
- [66] Thus, Section 26 of the Act relevantly applies to an application to the Supreme Court for a Warrant in relation to financial crime and provides:
- (a) Seized items to be able to be particularized.
 - (b) The search warrant must also be reasonable in its terms as drawn and approved by the Judge.
 - (c) After the search and seizure has taken place a list of the items seized must be made and the occupier of the premises or person having possession or custody of the items before the seizure, should be provided with the list of such items.
- [67] The presence of Section 18 (1) and (2) is relevant and important as it introduces limitations and safeguards. These limitations and safeguards require that the power to search is only a power to search to the extent that is “*reasonably required*” for the purpose of discovering such evidence if and only where there may be existing proceedings, such as a filed Indictment, or an arrest, in the Foreign State. Thus there must be an actual and specific criminal offence relating to a person in the requesting state and not merely an investigation. There must also be reasonable grounds for suspecting that there is, on premises in Belize occupied or controlled by a person the subject of such investigation; evidence relating to such an offence.
- [68] These provisions, together with the limitations and reasonable safeguards outlined above, make any search and seizure carried out under a Warrant issued under Section 18 of the Act, both reasonable and proportionate⁹ in a democratic society; and provides, in my view, adequate legal safeguards to protect and safeguard the public interest from the risk of any excessiveness or arbitrariness (in any search); as well as against the unlawful invasion of privacy. All of these limitations and reasonable safeguards would thus preserve the constitutionality of this Section,

⁹ *S v Makwanyane 1995 (3) SA 391 (CC) at para 104.*

even without resort to the presumption of constitutionality which exists in relation to any constitutional challenge of provisions in any legislation¹⁰.

[69] A decision of the Supreme Court of Canada in the case of *Thanh Long Vu v Her Majesty The Queen and the AG of Ontario et al*¹¹ illustrates two ways by which the balance between protecting the interests of the individual, the individual's right against arbitrary search, and the interest of the public in law enforcement, are thus to be achieved. These are:

“[22] First, the police must obtain judicial authorization for the search before they conduct it, usually in the form of a search warrant. The prior authorization requirement ensures that, before a search is conducted, a judicial officer is satisfied that the public's interest in being left alone by government must give way to the government's interest in intruding on the individual's privacy in order to advance the goals of law enforcement.

Second, an authorized search must be conducted in a reasonable manner. This ensures that the search is no more intrusive than is reasonably necessary to achieve its objectives. In short, prior authorization prevents unjustified intrusions while the requirement that the search be conducted reasonably limits potential abuse of the authorization to search.¹²”

[70] In relation to the reasonableness of the scope and the terms of the search warrant granted by a Magistrate, applying the case of *Aleksanyan v Russia*¹³, a decision of the European Court of Human Rights in relation to the right to privacy under Article 8 of the European Convention on Human Rights, a relevant element in determining reasonableness or lack of arbitrariness is whether the scope of the warrant had been “*reasonably limited*”.

¹⁰ See *Attorney-General of St. Christopher and Nevis v Lawrence* (1983) 31 WIR 176; *Gulf Rental Ltd v Evelyn et al Suit No 538/1982 (Barbados)*; *King v the Attorney General* 44 WIR 52 p 66; *Ramesh Dipraj Kumar Mootoo v Attorney-General of Trinidad and Tobago* [1976] 28 WIR 304.

¹¹ See Citation at Note 7 above.

¹² Ibid at Paragraph 24(5).

¹³ [App 46468/06];[2008] ECHR 46468/06.

[71] The terms of the warrant in the case of *Aleksanyan v Russia* authorized the search and seizure of “documents and objects important to the investigation.” In criticizing the search warrant, the Court’s discussion of its views, which may be of interest to, but not determinative of the present case, concerns the principles which it applied as they were involved in relation to search warrants; as follows:

“...the search warrants at issue were formulated in excessively broad terms. ...Such wording gave the prosecution unrestricted discretion in determining which documents were "of interest" for the criminal investigation. The Court recalls that in the case of *Smirnov v Russia* [2007] ECHR 71362/01, the vagueness of the search warrant was the key element which led the Court to conclude that the search in the lawyer's flat had been incompatible with art 8 of the Convention. The Court came to the same conclusions in the case of *Iliya Stefanov v Bulgaria* [2008] ECHR 65755/01 at paras 34 et seq, 22 May 2008, where the domestic authorities searched the office of a lawyer suspected of kidnapping and extortion. In that case the Court held that "neither the application for its issue [of the warrant] nor the warrant itself specified what items and documents were expected to be found in the applicant's office, or how they would be relevant to the investigation."¹⁴”

[72] The above discussion in the case of **Thanh Long Vu v Her Majesty The Queen and the AG of Ontario et al**¹⁵ provides a useful framework of the way in which the analysis of a search warrant may be framed.

[73] **Reg. v IRC Ex p. Rossminster**¹⁶ is good legal authority that in determining the validity and scope of a search and seizure warrant, and how the Court has to construe the provisions of Section 18 of the Act. Once the warrant complies with the words of the statute, the warrant is deemed to be valid¹⁷.

¹⁴ Ibid see Page 36 at paragraph 216.

¹⁵ See Citation at Note * above.

¹⁶

¹⁷ See pp. 999 to 1000 of *Reg. v IRC Ex p. Rossminster* per Lord Wilberforce. Also see p. 1008 per Lord Wilberforce; & per Viscount Dilhorne at pp. 1006 to 1007.

[74] Also if evidence unconnected with the indictment in the USA were removed that would not necessarily invalidate the warrant, but may ground a claim that things were taken which were not authorised by the warrant, as suggested by Viscount Dilhorne in the decision of the House of Lords in **Ex parte Rossminster**: where he states:

“The respondents satisfied the Court of Appeal that the seizure and removal were unlawful. When taking so many documents as were taken in this case, mistakes may occur and some documents be taken that should not have been. But the fact that they should not have been does not, in my opinion, justify the conclusion that the other documents taken were not taken after adequate examination and in the belief that they might be required in evidence. Omnia praesumuntur rite esse acta. If the respondents claimed the entry into their premises was a trespass, they would be met with the answer that the warrants made the entry legal. If they assert that following a lawful entry, documents and things were seized and removed when there was no right to take them, the onus, in my opinion, lies on them to establish a prima facie case of that and that, in my opinion, they have not done.”¹⁸

[75] The reasoning of the decision of the Privy Council in **AG of Jamaica v Williams**¹⁹ may also be relevant to the question of evidence the seizing of items unconnected with the Indictment in the USA. Lord Hoffman pertinently had this to say:

“Their Lordships consider that even on the strictest construction, the warrant undoubtedly authorised, and the statute enabled it to authorise, the search of the premises and the taking of files and documents reasonably suspected to be connected with uncustomed goods. Whether the documents actually taken fell within this description is a question of fact. There was in evidence a list of the documents which were taken, from which their Lordships think it is impossible to form a view as to whether they related to uncustomed goods or not. But there is nothing to show that the officers conducting the search did not reasonably suspect this to be the case. So much was recognised by the Court of Appeal: for example, in dealing with the claim for return of the documents, Forte J.A. said:

“As there is no evidence as to the relevance of the seized articles to [the charges against Mr. Williams] I would be reluctant to make an order at this stage for the return of the articles, as they may be

¹⁸ **Ex parte Rossminster: per Viscount Dilhorne** at pp. 1006 to 1007.

¹⁹ [1997] 3 WLR 399 at 400 per Lord Hoffman

needed as evidence in the criminal cases, in which case the Crown would be entitled to retain them."

At that stage of the proceedings it was, for the reasons already discussed, impossible for the Crown to disclose the grounds upon which it considered that the seized property was relevant to the charges. In those circumstances their Lordships think it cannot be assumed against the Crown that they did not have reasonable grounds for taking the documents which they did.

As Eveleigh L.J. said of the search by revenue officers in Reg. v. Inland Revenue Commissioners, Ex parte Rossminster Ltd. [1980] A.C. 952, 966:

"What the applicants' evidence amounts to, as I say, is that not every document was read, and not every document, as an individual document, was examined. Files were taken as files. . . . It seems to me that there can well be occasions when a glance at a document will tell an investigating officer whether it is the kind of document that he is entitled to take. No one can expect that they should stay on the premises to read the words and details of every document."

On the other hand, the taking of things other than documents (such as the pocket calculator) was probably not authorised by the warrant (unless "articles" is given a wider construction than the context would seem to justify) and certainly not authorised by the statute. Unless, therefore, the taking of these articles could be justified at common law, their removal was unlawful. But their Lordships do not consider that this trivial excess of power can vitiate the legality of the search and the taking of the documents properly authorised by the statute and the warrant."

- [76] The case of **Thanh Long Vu** may also be considered good authority for the proposition that in relation to the case of the search of computers, that prior judicial authorization for the seizure of computers, in the form of the search warrant as set out above, is not only required, but that specific prior authorization must also be obtained for the search of any computers found.
- [77] If this Court was to conclude that there are serious deficiencies of a search warrant then, following this case, a court could conclude that such deficiencies would render the searches of the subject premises to have taken place in an unconstitutional manner as in breach of the Belize Constitution²⁰.

²⁰ Ibid at paragraph 218.

[78] The importance of limiting the scope of a search warrant under the Act cannot be over emphasized, as highlighted in the case of *R v Energy Financing Team Ltd and others v Director of Serious Fraud Office*²¹.

[79] A reasonable interpretation of Section 18 would therefore, in my view, require the imposition of the following crucial matters and considerations:

- i. The police must obtain judicial authorization for the search before they conduct it, usually in the form of a search warrant. And the judicial officer has to be satisfied that the individual's interest in being left alone by the state must give way to the government's interest in intruding on the individual's privacy in order to advance the legitimate goals of law enforcement generally to prevent unjustified intrusion.
- ii. The application for the issue of the warrant, and the warrant itself, ought to specify what items and documents were expected to be found in the place to be searched, and how they would be relevant to the investigation. The warrant needs therefore to be drafted with sufficient precision to enable both those who execute it and those whose property is affected by it to know whether any individual document or class of documents falls within it. The search ought not to be wholly a fishing exercise and if an element of fishing is involved it ought not to be the major part of the exercise but be palpably, and demonstrably, part of a live and active criminal investigation for which criminal proceedings have been instituted or a person arrested; and in relation to which there are reasonable grounds for suspecting that there is on premises in Belize occupied or controlled by that person evidence relating to that offence;
- iii. An authorized search must be conducted in a reasonable manner. This is to ensure that the search is no more intrusive than is reasonably necessary to achieve its objectives. The requirement that

²¹ [1997] 1 ALL ER 942

the search be conducted reasonably would limit potential abuse of the authorization to search.

- iv. An itemised inventory of what is seized by the police officers ought to be taken by them.
- v. The persons conducting the search and seizure, i.e. the police officers, ought to account to the person responsible for the premises of any individual searched regarding what has occurred with any property seized.
- vi. Such police officers ought to therefore provide to the individual of premises searched with a list of any object and documents removed from the individual's office.
- vii. Seized property ought not to be kept any longer than is reasonably necessary and the central authority must account to the affected person for any significant delay of its return.
- viii. The police officers ought to leave a copy of their search warrant with the individual affected by the search unless there are special circumstances for not doing so.
- ix. Any individual affected by a search and seizure ought to be able to make representations to the central authority regarding any of its property seized and to have such representations treated seriously and responded to with due dispatch.
- x. Even without specifically providing measures to ensure that there is no abuse by the state; this is necessarily to be implied.
- xi. Even without specifically providing any provision for compensating the individual for damaged or lost property the police would be responsible for any loss and damage or for any unreasonable delay in the return of property seized (which is necessarily to be implied even if not expressly stated).

[80] Specifically, the presence of Section 18 (1) and (2) of the Act is proportionate as it satisfies the three-tiered test set out by the Judicial Committee of the Privy

Council in *de Freitas v Permanent Secretary of Agriculture, Fisheries, Lands and Housing and Others*²².

Whether the search and the seizure of Titan's property is unlawful (as being disproportionate and in excess of statutory authority) and/or unconstitutional?

(a) Is the Act Constitutional?

[81] It will be observed from the relevant law as I have found it that Section 18 of the Act is and ought to be read as consistent with Sections 9 and 14 of the Belize Constitution.

[82] It is clear from the facts of the case that the operations which was requested in the Request required great speed, secrecy, and I have been informed, was not one which had not been undertaken before in Belize (and so Belize may not have been as well prepared and may have lacked experience in executing it).

[83] It is also the case, and may be borne in mind, that Belize may not have had the benefit of the considerable resources (both in terms of the expertise of personnel and the financial and technological backup) as might exist and be applicable in more developed countries such as in Europe and the UK, and Canada, on which legal Authorities, the parties, have had to rely on in this case for guidance.

[84] After taking into account all of the above, I consider that the Request certainly discloses evidence implicating Titan and its director and certain named employees in the alleged offences on the unsealed US Indictment; and acknowledges that the nature of the contemplated search and seizure operations in Belize did involve, to a certain extent an element of "fishing" for further evidence.

[85] But the element of fishing was not, however, significant and I consider that the way in which the Request was drafted might have ultimately sent an unfortunate signal to the Police, in their authorised search and seizure operations, to approach the search and seizure operations in an unnecessarily "drag-net" way, when it could and ought to have been approached in a more careful and targeted manner.

[86] I have, despite some of my expressed misgivings, nevertheless found that the AG was perfectly in order to have agreed to provide the assistance in its entirety, in short order, pursuant to the Request, and to have given his green light, as the

²² (1999) 1 A.C page 69 at page 80.

central authority under the Act, for the police to proceed to apply to the Magistrate for a warrant as he did.

[87] Based on my finding of the law above, I am unable to find and will not be able to make any declaration, as sought by Titan that Section 18 of the Act is inconsistent with the fundamental rights guaranteed by the Belize Constitution.

[88] I am likewise unable to find and will not be able to make any declaration, as sought by Titan that the search, by reason of the constitutionality of the Act, was in breach of the constitutional rights of Titan under the Belize Constitution.

(b) Was the Warrant a valid and lawful warrant of a Magistrate of Belize?

[89] The law, as I have found it in relation to the validity of the Warrant, is set out above. I will now consider the question of the validity of the Warrant as it was actually considered and granted by the Magistrate.

[90] Counsel for Titan alleges that the warrant was fatally deficient for a number of stated reasons.

[91] The GOB submits that a prior Warrant was duly obtained under an authorizing law which properly defines the scope of the power to search and seize, and that it was obtained from an authorising and independent authority (Magistrate) who was persuaded by evidence on oath that there were reasonable grounds for conducting the search.

[92] FIU submits that the Warrant is bad in so far as it purports to authorise the Officers of the FIU, who are not police officers, as the Act does not authorise police officers to take other persons with them and this cannot be implied into Section 18 of the Act. FIU submits that the police officer attached to FIU was present at the search as a police officer and not as an agent of FIU, and that the other representatives of FIU did not actually take part in the search and seizure.

[93] I consider that the AG was also perfectly entitled to seek the assistance of the police to arrange to make an application to a Magistrate of Belize for the obtaining

of a Warrant, and was perfectly entitled to have prepared a draft Warrant for the assistance of the Magistrate as he did, in terms of the Request.

[94] I am not satisfied, however, that the AG was legally entitled to write to the FIU, in the terms that he did, requesting the FIU's assistance in order to effectively carry out the Request, and for FIU's investigators, other than Police Officers attached to FIU, to assist the Belize Police Department.

[95] To the extent that the Warrant as granted was interpreted as authorizing non-police Officers of the FIU to execute the search and seizure operation, then I consider that this is wholly misconceived by the FIU and unfortunately, and unwittingly, may have seduced them into thinking that they were entitled to be present and by their presence, or otherwise, to assist in the search and seizure operations.

[96] The Warrant was formulated in broad terms specifically: "*Documents and information (in hard copy or electronic form) ... relating to Titan International Securities, Inc.,... which property may be used as evidence in a prosecution for the suspected offences in the United States of America, of ..*"; and then lists the offences. Such wording does give the police discretion in determining which documents were relevant to and may be useful for the criminal investigation in the USA. The application for the issue of the Warrant, the Request, together with the Warrant itself contained such specification of documents and information. Such specificity is provided by the nature of the investigations, the alleged offences and the material which were expected to be found in the applicant's office, and how they would be relevant to the investigation. Such documents and information could be inferred from the somewhat complex nature of the alleged financial fraud offences.

[97] It is clear that too much specificity would tie the hands of the investigators and run the risk of undermining the investigations. Such an investigation cannot be equated with other types of crimes which might yield specific forensic information which can be specified with precision. But there is an expressed limitation which includes, that the documentation and information must relate to Titan, Robert Bandfield, Rohn Knowles and Kelvin Leach, and also must relate to the stated alleged offences.

- [98] The fact that the some of the alleged offences listed may not be offences immediately recognized under the laws of Belize is not a matter that the Magistrate has to agonize about. Provided that the alleged offences are reasonably recognizable as offences which are not offensive to the Laws of Belize and not inconsistent with such laws; such is all the Magistrate can be expected to do in considering whether to grant the warrant sought (always bearing in mind that the Magistrate is at liberty to amend the draft Warrant presented to her).
- [99] The Warrant also specifically indicated that the police officers were authorised to search for and seize “information in hard and electronic form”. This is prior legal authorization to search any computer found that may reasonably be suspected of containing the suspected information.
- [100] The scope of the warrant, other than it relating to authorizing officers of FIU, was not therefore too wide-sweeping as it did not effectively authorize the search for and seizure of any and every document or information which merely related to Titan, or its directors, inclusive of their personal communications and correspondence. Such documents and information had to be relevant to and capable of being used in relation to the indicted offences. It would be a question of fact whether the Police actually exceeded the authority given to them by the Warrant. The police who were authorised by the Warrant to execute the search and seizure were at all times at liberty to execute the Warrant by themselves despite the bad part of the Warrant.
- [101] In my view, to the extent that the Warrant did authorise Officers of FIU to be present and to take part in the search and seizure, rendered the Warrant bad and in excess of the powers of the Magistrate to grant. I consider, however that the bad part of the Warrant may be severed from and not invalidate the rest of the Warrant, and would not render any action taken pursuant to the good part of the Warrant unlawful.
- [102] I have nevertheless otherwise found that that the police had all constitutional and legal right and authority in accordance with Section 18 of the Act to carry out the search of Titan’s offices and seizure of property pursuant to the Warrant, and that such search and seizure would thereby be entirely constitutional and lawful.

[103] I am also quite satisfied that the Request discloses that any such search was substantiated by a proper and lawful search and seizure warrant; which does provide a legally grounded and constitutional basis for such a search and seizure operations.

(c) Who carried out the search and seizure, and therefore who it is alleged may have behaved in an unlawful way. Was it the police or officers of the FIU?

[104] There is no question that the Police were involved in the search and that if they acted in excess of the Warrant, then the GOB, would be responsible.

[105] I am persuaded that the search was conducted by police officers; but I am also satisfied that such search was carried out as well as by members or officers of the FIU pursuant to the request of the AG and under the terms of the Warrant granted by the Magistrate.

[106] The police officer of the FIU was at the time of the search working for the FIU and was there in her capacity as an officer attached (or seconded) to the FIU; and was there because of her special background and experience of working with the FIU. She may have been a police officer; but she was there in her capacity and under the supervision of the FIU, and if under and subject to anyone's direction, she was there under and subject to the direction, and for the purposes of the FIU. In short, she was no doubt an agent of the FIU whose presence and expertise to the search and seizure was considered by the AG important because of this status; hence his request for them to be present. Also insofar as the Warrant properly was directed to Officers of the FIU, it must have been directed to the police officer attached to the FIU.

[107] In addition, I accept the evidence of the witness for Titan where he testified that the officer of the FIU, who was present throughout the duration of the whole of the search and seizure, appeared to be taking central stage during its operation, is especially pertinent; and lends truth to the suggestion that this officer, in her capacity as a member of FIU, and because of her expertise, was considered pivotal to the conduct of the operations.

(d) What was the role of the FIU? Were they agents of GOB during the search and seizure and were their actions in any way lawful?

- [108] The question arises what was the role and significance of the lawyers of FIU during the search and seizure? Was it merely window dressing; and did not add something to the operations?
- [109] I must confess that I find it very hard to imagine that given all the facts and matters of the case, including the special request of the AG and no doubt the special training and expertise in financial matters, especially investigations and financial crime in Belize, that the officers of FIU and their presence, did not add something of value to the operations, whether by providing directions to the other officers or otherwise.
- [110] The FIU also appeared to have initiated its own investigations in Belize into the activities of Titan and sought from the AG's Ministry copies of documents and information seized under the Warrant. This is especially relevant and indicates that it had an active and vested interest in the conduct and result of the search and seizure.
- [111] FIU submits that the Woman Cpl. seconded to the FIU was part of the team of police officers that executed the warrant at Titan's premises and not there as agent of FIU.
- [112] The question has been raised by FIU whether there is sufficient evidence to implicate the lawyers in the search and seizure such that they may be considered as having taken part in it rendering them potentially (but not personally) liable for any proven excess.
- [113] As a question of fact I have been persuaded that the woman Cpl. Seconded to the FIU was there pursuant to the request of the AG as a representative of FIU to be present along with the other persons from this Unit to lend their special expertise to the search and seizure. I do not accept the argument, and argument it is, and not evidence, that such persons from FIU were there for purposes unconnected with FIU. Indeed I consider such argument flies in the face of the evidence in the case that all such persons took an active role in the search and seizure operations.
- (e) **Whether items seized constitutes evidence of offences as required by the Act?**

- [114] The power to search conferred by the Act is only a power to search to the extent that is reasonably required for the purpose of discovering such evidence as is there mentioned.
- [115] Police and other Officers of the AG and the FIU ought to have taken some measures, or ought to have at least taken some steps, not to remove Titan's files, records, computers, computer servers and electronically stored information, unrelated to the US request; rather than the apparent indiscriminate removal of such items. Surely that was the very purpose of having persons from the FIU present. If their presence was to have any redeeming quality or benefit, it was to ensure that some level of control and discrimination was exercised in the removal of items. Having said that, this is not to derogate from what I have stated earlier about the legality of the involvement of officers of the FIU in the search.
- [116] The indiscriminate way in which the search was conducted went beyond the power to search conferred by the Act, and in my view, was not a power of search exercised to the extent that was reasonably required for the purpose of discovering such evidence as was authorized by the Act.
- [117] As a result of my determination made under this heading, I am prepared to make the declaration sought by Titan that some of the records, including correspondences and the contents of computers of Titan concerning clients who were not US persons, nor who were not in any way related to Robert Bandfield or IPC Corporate Services LLC (and which records were kept at Titan's offices), were incapable of constituting evidence of the offences alleged in the Request and the subject of the search and seizure warrant lawfully issued by a Magistrate; but were entirely unrelated to matters alleged in the US Indictment.
- (f) Was the search and seizure carried out in excess of legal authority?**
- [118] Titan submits that the search was executed in an unreasonable and oppressive manner, which abused the authorization granted to search the premises.
- [119] Titan relies on the following facts which it alleges support their submission that the search and seizure was executed in an excessive and unlawful way (in terms of applicable statute and otherwise):

- (a) No copy of the search Warrant was provided to Titan despite a request being made by Mr. Kelvin Leach, the President of Titan. The warrant was simply read out loud very quickly. Titan in support of their rights being breached in this regard relies on the English case of *Redknapp and Another v City of London Police and Another*²³ which it claims recognized Titan's right to be given a copy of the Warrant and being satisfied of the legality of such search.
- (b) The Officers denied Titan's Attorney entry into the premises to witness the search and seizure.
- (c) The Officers took pictures which have not been disclosed in these proceedings.
- (d) Rohn Knowles, a director of Titan, was prevented from witnessing the search and seizure.
- (e) Officers of the AG and the FIU removed all of Titan's files, records, computers, computer servers and electronically stored information, including records of clients completely unrelated to the US request.
- (f) No inventory was prepared of the items seized and none has been produced to date.
- (g) To date, the Defendants have not returned all of the items seized.

[120] The GOB denies this claim of Titan.

[121] FIU submits that if police officers executed the Warrant in an unreasonable or unlawful manner, they would be personally liable to Titan in a private claim in tort not in a public law claim such as the present claim.

[122] I have carefully considered all the facts and circumstances of the case and have come to the conclusion that the search was executed, not to an insignificant extent, in an unreasonable and excessive, but not necessarily in an oppressive manner. Nevertheless, the actual search and subsequent events abused the authorization granted to search the premises and seize items in Titan's premises in the manner and way in which it was executed, and was thereby in breach of Titan's constitutional rights against arbitrary or unlawful interference with its privacy.

²³ [200] EWHC 1177

[123] Specifically that the Defendants ought to have been more careful about the manner in which it conducted the search and seizure and ought to have:

- (a) Provided a copy of the search warrant to Titan's representative Mr. Kelvin Leach, which would not have been required much on the part of Titan and eliminated the appearance of high-handedness and leant an air of legality and respectfulness to the whole operation and possibly put Titan at ease.
- (b) The Officers ought not to have denied Titan's Attorney-at-Law, entry into the premises to witness the search and seizure unless there was good reason to deny his entry – which has not arisen in the present case. Again this would have done much to lend the operations with propriety, transparency and demonstrated desire not to exceed legal authority.
- (c) The Officers took pictures which have not been disclosed in these proceedings. There is no excuse for Titan not to have been provided with copies of photographs as part of the disclosure process of the present proceedings.
- (d) A director of Titan, was prevented from witnessing the search and seizure and again this would have eliminated the appearance of high-handedness and leant and air of legality and respectfulness to the whole operation and possibly put Titan at ease.
- (e) Police and other Officers of the AG and the FIU ought to have taken some measures or at least taken some steps not to remove Titan's files, records, computers, computer servers and electronically stored information, unrelated to the warrant; rather than the apparent indiscriminate removal of such items. The comments which are contained above at paragraph (a) and (b) is equally applicable here.
- (f) It is inexcusable that no inventory was prepared of the items seized and no attempt made to obtain from a representative of Titan some form of confirmation of what items were removed. In the absence of such inventory and of any detailed inventory being produced to date is the result that the Defendants have to take full responsibility of the risk thereby created of being accused of not returning all items which has now resulted.

(g) In my view the Defendants ought to have taken every possible step to minimize the disruption of Titan's business and even if a shutdown was inevitable, to minimize the period of shutdown, by reason of the search and seizure, and make a concerted and ostensible effort to ensure that any such disruption was not done to persons other than those named on the Warrant.

[124] As a result of my determination made under this heading, I am prepared to make the declaration, sought by Titan, that the indiscriminate removal of all files, records and computers of Titan and the effective shut down of Titan's offices in Belize was disproportionate and in excess of any statutory authority to search and seize evidence in possession of Titan in aid of foreign court proceedings in the USA.

(g) **Whose property was searched and seized Titan's or some other and if so which parties?**

[125] Unfortunately the evidence is not available to disclose whose property was seized, other than those of Robert Bandfield or IPC Corporate Services LLC, which were kept at Titan's offices. Titan is entitled to this information.

[126] I will therefore also make an Order that the Defendants disclose the location of any and all such records, correspondences and computers and copies thereof or any information which they may have taken and within a reasonable time (to be agreed by Counsel for the parties and default of agreement determined by me) deliver the same up to Titan.

Whether Titan is entitled to an injunction, information of the chain of custody of items seized and any damages as claimed?

[127] In view of my determinations and findings I am also prepared to consider granting an injunction restraining the Defendants, or either of them, from retaining, distributing, sharing or making any use whatsoever of the records, contents of computers and/or correspondences of Titan, which concerned clients who were not US persons.

[128] I will hear Counsel on the appropriateness of granting such an injunction or consider any undertaking which may be given instead of such an injunction. Counsel for the parties have agreed to consult among themselves and seek to agree

on the terms of a draft Undertaking but in default of an agreement I will hear Counsel.

[129] I will also order Damages, to be assessed, for breaches which I have found but bearing in mind, in assessing such damages, that Titan has not had a licence to carry on business of securities broker/dealer since 9th September 2014, and that there has been no claim in the present proceedings in relation to the suspension of such licence.

Whether Titan as claimed is entitled to any and if so what award of damages?

The Law in relation to Damages

[130] Section 20 (1) and (2) of the Constitution reads:

“(1) If any person alleges that any of the provisions of sections 3 to 19 inclusive of this Constitution has been, is being or is likely to be contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the Supreme Court for redress.

(2) The Supreme Court shall have original jurisdiction-

a) to hear and determine any application made by any person in pursuance of subsection (1) of this section...

and may make such declarations and orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 3 to 19 inclusive of this Constitution.”

[131] By the Privy Council case of *Maharaj v Attorney General of Trinidad and Tobago*²⁴, the principle was undoubtedly established that one can be granted redress for breach of constitutional rights in the form of an award of damages. Lord Hailsham of St Marylebone²⁵ authoritatively opined thus:

*“A great deal of argument necessarily turned on the meaning to be attached to the word ‘redress’ in s 6(1) and ‘enforcement’ in s 6(2). It was contended for the appellant, and it is accepted by the majority decision, that either or both of these words is sufficiently wide, or at least sufficiently indeterminate in meaning, to include a right to damages or a direction for the assessment of damages as one of the remedies available to the High Court. Not unnaturally the attention of the Board was directed to its decision in *Jaundoo v Attorney General of Guyana* ((1971) AC 972), a decision based on the substantially analogous provisions of the Guyana Constitution. In that case, in allowing the applicant’s appeal, the Board remitted the motion to the court of first instance with a direction to hear and determine it on its merits, and, if these were found to be favourable to the applicant, to assess and give a direction for the payment of damages or compensation. This, it was contended, entirely supports the appellant’s argument in the instant appeal to the effect that the references in s 6 to ‘redress’ and ‘enforcement’ include, or at least may include, a right to damages as a form of relief. Though the contrary was contested strongly on behalf of the respondent, I see no reason to differ from the majority conclusion in this.”*

[132] This principle has been followed in a number of cases including: (1) *Gairy v Attorney General of Grenada*²⁶ (2) *Brown v Robinson*²⁷; (3) *Merson v*

²⁴ (*No. 2*) (1978) 2 All ER 670.

²⁵ at *ibid* p. 686(c).

²⁶ [2002] 1 AC 167

²⁷ [2004] UKPC 56.

*Cartwright*²⁸; (4) *Taketota v Attorney General*²⁹. Also, as submitted by Counsel for the GOB, the principle has been extended in an number of cases including, *James v Attorney General of Trinidad and Tobago*³⁰; *Crane v Rees*³¹; *Suratt v Attorney General of Trinidad and Tobago*³², *Ramanroop v Attorney General of Trinidad and Tobago*³³ and, *Inniss v Attorney General of St. Christopher and Nevis*³⁴, and more recently by the CCJ in **The Maya Leaders Alliance et al v. The Attorney General of Belize**.³⁵

[133] In light of the above, the court has accepted the submissions of Counsel for the parties that an award of damages may be appropriate where there has been an infringement or violation of the constitutional, including fundamental, rights guaranteed under the Constitution, but, however, that any such award is *discretionary and not as of right*, especially where a declaration alone would serve to vindicate the constitutional right infringed. That in addition, damages must be proved.

[134] The purpose of an award is not only to compensate Titan for the wrong suffered, but may also be to reflect public feelings at the state's violation of such an important right and to vindicate the constitutional right which has been contravened.

[135] The measure of damages should, depending on the circumstances of the case, reflect any additional dimension, gravity or outrage (as the case may be), which breach of a constitutional right adds to any other common-law measure of damage; and to deter further breaches³⁶.

[136] Thus the court must seek and be ready to fashion a remedy to grant an appropriate and effective relief for a contravention of a protected right; and if that is by way

²⁸ [2005] UKPC 38.

²⁹ [2009] UKPC 12.

³⁰ [2010] UKPC 23.

³¹ [1994] 2 AC 173.

³² [2008] UKPC 38.

³³ [2005] UKPC 15

³⁴ [2008] UKPC 42.

³⁵ [2008] UKPC 38 at Paragraphs [17]-[19]

³⁶ See *Ramanroop v Attorney General of Trinidad and Tobago* [2008] UKPC 38 at Paragraphs [17]-[19]

of a mandatory order for the payment of a money sum by the State, the court is both empowered and in appropriate cases, obliged to do so³⁷.

- [137] Titan submits and highlights the following non-exhaustive features of the Defendants' actions as relevant to a consideration of this issue. I have carefully considered Titan's submissions in relation to the magnitude of the harm undergone; the manifest breach of the terms of the Request and the Search Warrant; the period over which the wrongs have persisted; the alleged aggravating conduct accompanying the wrongdoing; and the Government's conduct in relation to Titan's property.
- [138] Titan further submits that the fundamental object of an award of damages is to award just compensation for loss suffered. The measure of compensation is to put Titan in the position as if the Constitutional right had not been infringed. Titan relied on the cases of *City of Vancouver v Alan Cameron Ward*³⁸, *Mombasa Development et al v The Attorney General et al*³⁹, *PF Sugrue Ltd v Attorney General*⁴⁰, *Geraldine Cabey v The Governor and others*⁴¹, *Sahring and Others v Commonwealth and Another*⁴².
- [139] Titan also submits, following the case of *Ward* and the case of *San Jose Farmers' Co-operative Society Ltd v. Attorney General*⁴³ that this court is obliged to conduct the assessment of damages as at the date the cause of action occurred.
- [140] Titan relies heavily on the evidence of its expert Mr. Reynaldo Magana, who provided an assessment of Titan's business using the approach of ascertaining the "fair market value", and explains that the fair market value is "*the amount at which property would change hands between a willing seller and a willing buyer when neither is under compulsion and when both have reasonable knowledge of the*

³⁷ See *The Maya Leaders Alliance et al v. The Attorney General of Belize* [2015] CCJ 15 (AJ), paragraph. 61 -page

³⁸ [2010] 5 LRC 309

³⁹ Civil Case No. 14 of 1999

⁴⁰ 1 NZLR 207

⁴¹ [2004] ECSCJ No. 284

⁴² [2014] FCA 246

⁴³ (1991) 43 WIR 63

*relevant facts. In addition, the hypothetical buyer must be in a pool that has the ability to exercise the right*⁴⁴.

[141] Mr. Magana then applied three methods to ascertain the market value of Titan's business (i) Capitalization of Cash Flow Method, (ii) Discounted Future Earnings Summary and (iii) Gordon Dividend Constant Growth Stock Model, and then concluded that the market value of the business at 9th September, 2014 was US\$22,273,700.00

[142] Titan also submits that the present case also calls for the award of vindicatory damages in the sum of BZ\$100,000 to mark the gravity of the wrong and the importance of the rights infringed and to serve as a deterrent against further such breaches, as well as with interest at the statutory rate until final payment.

[143] Counsel for the GOB submits that there has not been a breach of any of Titan's fundamental rights, and as such Titan has not suffered any loss as a result of the actions of the First Defendant.

[144] Further, it is submitted that should the Court find that there is a violation of Titan's rights under the Constitution, the evidence submitted by Titan in relation to the issue of damages is questionable and, therefore, unreliable.

[145] In support of this submission the GOB relies on the Expert Report of Jose Bautista filed on the 22th day of September, 2015 who opines:

- (a) Titan's expert clearly admits that his firm was unable to provide any assurance as to the reliability, accuracy and completeness of the financial statements and other information used in the valuation.
- (b) That Mr. Bautista himself identifies particular data that renders the report inaccurate, specifically unaudited profit and loss statements, specific material on which he relied which were not verified.
- (c) The financial statements did not comply with generally accepted accounting principles as they do not include required statements of changes in equity and explanatory notes and therefore, cannot be relied upon.
- (d) Management bias as the financials and information supplied for the valuation report was provided by a Director for Titan.

⁴⁴ Pg. 156 Trial Bundle

- (e) Titan's accounts were not audited.
- (f) No assurance is given of the forecasted damages and financial claims asserted.
- (g) The future profitability and viability of the company was greatly compromised (because of the indictment, and other bad publicity about its activities in Belize and elsewhere) and illustrated that it is likely that the company's credibility had been largely eroded which would affect its future marketability and profitability and therefore would not have been able to attract much future business.
- (h) Titan's trading license has been suspended since the 15th day of September, 2014 which affects its status to trade.
- (i) The valuation methodology is questionable and inaccurate, hypothetical and unrealistic (specifically that it assumes that the business would have continued at a constant rate for an indefinite period) and that an asset-based approach should have been adopted and if used is likely to amount in the value of the business being nil.

[146] Counsel for FIU submits that Titan has not established breach of its constitutional rights and consequently has not established its entitlement to damages.

[147] Counsel for FIU also submits that if contrary to its position Titan has not established breach of its constitutional rights, then the court should conclude on the evidence that Titan has failed to prove damages, as it ought, as the evidence on which it relies is wholly unreliable based on the expert testimony of Mr. Bautista, upon which FIU also relied, for many of the reasons outlined by Counsel for the GOB, and arrives at the same conclusion as this learned Counsel.

[148] Having carefully taking into account the determinations which I have made, carefully read the expert testimony and substantial written submissions which the parties have presented to the court, and carefully listened and considered the cross-examination of the expert witnesses and the oral submissions. I have concluded that Titan is entitled to be granted redress for breach of its constitutional rights and that this court should exercise its discretion to make an award of substantial damages.

- [149] However arriving at the conclusion that an award of damages should be made is relatively the easy part of this court's deliberation. A much more difficult part is determining how much this court should award bearing in mind the determinations which this court has reached; and arriving at the level of compensation to which Titan is entitled. This is because the expert evidence of the GOB and the FIU did not have the benefit of the finding of this court in order to assist the court to arrive at a valuation; and the parties have not been able to assist the court by arriving at an agreed or even a ball-park figures which this court could work from. I will therefore have to do the best I could based on the evidence which has been presented to me.
- [150] I must say that despite the excellent cross-examination of Mr. Bautista by Counsel for Titan, for many of the reasons which was outlined in the expert report and testimony of Mr. Bautista, I am not satisfied with the extent of proof of damages by Titan; and in particular, whether it is indeed the independent, objective and unbiased product of Titan's expert witness; and whether the assumptions on which it was based were ones on which this court can rely. This has also been complicated by the indication given that the conclusion arrived at was in effect tentative or provisional.
- [151] On the other hand, the expert evidence of Mr. Bautista did not provide an independent calculation of the possible damages in the manner in which Titan's expert did; but simply attempted to criticize or poke holes, as it were, in the evidence of Titan's expert testimony. This court would have instead benefited from having a single expert or an assessor assist the court by providing a report to advise me with regard to the evidence of the expert witnesses.
- [152] In the final analysis, this court has determined that the estimate of pecuniary value of Titan's business which was impacted by breaches of its constitutional rights has been significantly overestimated by as much as 80%.
- [153] In particular, even assuming that Titan's expert report was correctly estimated then a large part of the estimate attributable to the future profitability and viability of the company was greatly compromised because of the Indictment and other bad publicity about its activities in Belize and elsewhere.

[154] I have also come to the conclusion that it is likely that the company's credibility had been largely eroded which would have affected its future marketability and profitability and therefore would not have been able to attract much future business. Finally and most importantly that its trading license has been suspended since the 15th day of September, 2014 (in relation to which there is no claim in the present proceedings) which affects its status to trade and has nothing to do with the constitutional breaches.

[155] The total effect of the 80% reduction from the calculated loss would result in the sum of approximately US\$4,460,000.00, which sum this court will order the Defendants to pay to the Claimant as compensatory damages.

[156] No order will be made for vindicatory damages.

Costs

[157] Because Titan has largely, but by no means entirely succeeded, it is entitled to its costs to be paid by the Defendants, certified fit for two (2) Senior Counsel and one (1) Junior Counsel, which I have assessed, taking into account all the facts and circumstances of the case, to be 80% of the prescribed costs with the value of the claim being the said sum of US\$4,460,000.00.

Disposition

[158] For the reasons given above I will grant the Claimant the following reliefs:

- (a) A Declaration that the Warrant of Search and Seizure granted by a Magistrate on the 8th September 2014 to enter into Titans premises to search and seize documents and information relating to Titan insofar as it authorised officers of the FIU to be present and to take part in the search and seizure rendered the Warrant bad and in excess of the powers of the Magistrate to grant, but that the bad part of the Warrant may be severed from and not invalidate the rest of the Warrant, and would not render any action taken pursuant to the good part of the Warrant unlawful.
- (b) A Declaration that some of the records, including correspondences and the contents of computers of Titan concerning clients who were not US persons, nor who were not in any way related to Robert Bandfield or IPC Corporate Services LLC (and which records were kept at Titan's offices),

were incapable of constituting evidence of the offences alleged in the Request and the subject of the Search and Seizure Warrant lawfully issued by a Magistrate; but were entirely unrelated to matters alleged in the US Indictment.

- (c) A declaration that the search was executed, not to an insignificant extent, in an unreasonable and excessive, but not necessarily in an oppressive manner. Nevertheless, the actual search and subsequent events abused the authorization granted to search the premises and seize items in Titan's premises in the manner and way in which it was executed, and was thereby in breach of Titan's constitutional rights against arbitrary or unlawful interference with its privacy.
- (d) A declaration that the indiscriminate removal of all files, records and computers of Titan and the effective shut down of Titan's offices in Belize was disproportionate and in excess of any statutory authority to search and seize evidence in possession of Titan in aid of foreign court proceedings in the USA.
- (e) An Order that the Defendants disclose the location of any and all records, correspondences and computers, and copies thereof, or any information which they may have taken, and deliver the same up to Titan on or before the close of business on the 20th February 2016.
- (f) Upon an undertaking from the Defendants by their Counsel that they will not at any time in the future, whether by themselves or by their agents or employees or any of them or in any other way use or permit the use of any property not related to any client of Titan who are not citizens of the United States of America taken in the search and seizure operations carried out in the premises of the Claimant on the 9th September, 2014 and agrees to issue a limitation to the United States of America Authorities not in any way to use such items taken; this court will not grant an injunction to Titan.
- (g) An Order for damages for breach of the constitutional rights of Titan, bearing in mind, in assessing such damages, that Titan has not had a

licence to carry on business of securities broker/dealer since 9th September 2014, and that there has been no claim in the present proceedings in relation to the suspension of such licence, which I have assessed taking all the relevant facts and circumstances into consideration, at US\$4,460,000.00, which sum the Defendants shall pay to the Claimant as compensatory damages.

- (h) The Defendants shall pay Titan's costs, certified fit for two (2) Senior Counsel and one (1) Junior Counsel, which I have assessed, taking into account all the facts and circumstances of the case, to be 80% of the prescribed costs with the value of the claim being the said sum of US\$4,460,000.00.

The Hon. Mr. Justice Courtney A. Abel

21st January 2016