ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO ANUHCV2002/0228

BETWEEN:

WILLIAM COOPER

Claimant

and

ATTORNEY GENERAL
DIRECTOR OF PUBLIC PROSECUTIONS
MINISTER RESPONSIBLE FOR EXTERNAL AFFAIRS

Defendants

Appearances:
John Fuller for the Claimant
Kenroy E Samuel, Ms Harris with him, for the Defendants

2002: November 27, December 16
2003: January 13

JUDGMENT

[1] **MITCHELL, J**: These are Habeas Corpus proceedings. They arise out of a decision of the Learned Chief Magistrate (hereinafter "the Magistrate") to order the extradition of William W Cooper (hereinafter "the Claimant") to the United States of America to face money laundering charges.

THE HIGH COURT PROCEEDINGS

[2] These proceedings were commenced on 1 May 2002 by the Claimant by an application for leave to issue a Writ of Habeas Corpus *ad subjiciendum* pursuant to the provisions of the **Civil Procedure Rules 2000, Part 57.2**. The application is opposed by the Defendants, who filed an affidavit by Mr Cosbert Cumberbatch,

the Learned Director of Public Prosecutions, to the effect that the Magistrate had come to a correct decision after careful consideration.

[3] The application for leave to issue a Writ of Habeas Corpus first came up for hearing in Chambers on 28 June 2002, and both parties being present and represented, and the High Court file being in a state of confusion, the parties were directed to sort out the file and to lodge and exchange short written submissions on the application for leave and to appear again on 2 October. On 28 August the court reassigned a new hearing date of 27 November. The matter came up for hearing on the new date, when both counsel advised the court that they had been under the impression that the order of 28 June had been that leave to issue the writ had been granted. They had understood that this was the date fixed for the hearing of the substantive application. They both joined in urging the court to hear argument on the substantive application and to make such ruling as seemed appropriate. The court acceded to this request in order to save time, deemed the writ to have been issued following the directions given on 28 June 2002, and heard argument from both counsel based on the record and documents on file. Both counsel also submitted brief written submissions and copies of their authorities.

[4] The grounds of the Claimant's application are that on 17 April 2002 the Magistrate had ordered his extradition to the United States of America on an allegation of a crime that was not in Antigua and Barbuda at the time an extradition crime. The crime in question was set out in the Authority to Proceed of the Minister of 28 February 2000. This read:

> The offence of conspiracy to launder monetary instruments in violation of Title 18, United States Code, section 1956(h) and 2 with which William B Cooper has been charged in the United States of America appears to me to constitute equivalent conduct in Antigua and Barbuda under sections 3,

4 and 5 of the Money Laundering (Prevention) Act 1996 No 9 of 1996 as amended.

The Minister had with the above words specified the offence of money laundering created dealt with in Antigua and Barbuda by sections 3, 4 and 5 of the **Money Laundering (Prevention) Act 1996, No 9 of 1996** (hereinafter "the **Money Laundering (Prevention) Act**").

[5] Similarly, the Information on Oath before the Magistrate sworn by ASP Albert Smith claimed that:

> an order to commence Extradition Proceedings against William W Cooper of Paradise View on the 28th day of February 2000 was duly made by the Minister responsible for External Affairs by virtue of the power and authority vested in him under Section 9 of the Extradition Act No 12 of 1993 for conspiracy to commit the offence of Money Laundering with which the said William W Cooper has been charged in the United States of America by Indictment No 1:98 CR19MMP filed in the Northern District Court of Florida on 28th April 1999, which equivalent conduct in Antigua and Barbuda constitutes an offence under sections 3, 4 and 5 of the Money Laundering (Prevention) Act 1996 of the Laws of Antigua and Barbuda as amended, and under a Treaty of Extradition which Treaty was ratified by the House of Representatives of Antigua and Barbuda on 6th October 1997 and further ratified by exchange of instruments by the Governments of Antigua and Barbuda and the United States of America on 1st July 1999.

The complaint before the Magistrate had with the above words specified the offence of money laundering created dealt with in Antigua and Barbuda by sections 3, 4 and 5 of the **Money Laundering (Prevention) Act**.

[6] The Minister's Authority to Proceed and the Information on Oath had both thus been based on the **Money Laundering (Prevention) Act.** The Claimant complains that the Magistrate had ordered the Claimant to be extradited instead under the **Proceeds of Crime Act 1993, No 13 of 1993** (hereinafter "the **Proceeds of Crime Act**"). Additionally, the Claimant complains that the Magistrate had considered inadmissible evidence and matters that were not in evidence in coming to her decision. He complains further that the Magistrate had failed to find that conspiracy to commit a nonexistent offence is not an extradition crime or any crime at all. Further, the Magistrate had failed to enforce the provisions of section 28(1) of the **Extradition Act 1993, No 12 of 1993** (hereinafter "the **Extradition Act**"). Finally, the Claimant complains that the Magistrate had failed to find that the evidence before her was evidence upon which a jury properly directed would [not] reasonably convict the Claimant and was evidence which in any event was unsafe, unsatisfactory and dangerous.

[7] A perusal of the record before the Magistrate reveals that on 6 March 2000 the Director of Public Prosecutions had applied for an Order of Extradition and the Claimant had been arrested. The typed application is garbled. It cites, "Section 11 of the Extradition Act No 12 of 1993 and a Treaty of Extradition between the Government of the United States of America and the Government of Antigua and Barbuda ratification [sic] 1st July 2000." The last words and numbers "ratification 1st July 2000" are scored through by pen, dated "6.3.00," and replaced by what appears to be the words "ratified on the 1st July ? amended in 1999 by consent." Whatever the meaning of the application as amended, by a lengthy decision in writing dated 17 April 2002, the Claimant's extradition was ordered by the Magistrate. The decision concludes, "Mr Cooper is therefore committed to await the Minister's order, on the charge of Conspiracy to commit Money Laundering." The result was these Habeas Corpus proceedings in the High Court. It does not appear from this decision that it was expressly based on an offence under the **Proceeds of Crime Act**.

THE FACTS

[8] The facts are set out in full in the written decision of the Magistrate, and need not be repeated in any detail. Briefly, from the evidence before the Magistrate it appears that what the Claimant is accused of having done is of having between the years 1994 to 1997 assisted his two US co-conspirators in a fraudulent "advance fee" scheme. The US fraudsters, in exchange for an "advance fee," had promised each of various desperate US borrowers that loans could be arranged for them, which loans all fell through, with the US borrowers losing the advance fee they had paid. The Claimant had at the time, in 1994, been an officer of the American International Bank Ltd and the Antigua Management and Trust Ltd, two corporations active in the offshore industry in Antigua and Barbuda. The Claimant set up and licensed at the request of the US fraudsters Caribbean American Bank and various other companies. From the evidence before the Magistrate, it appears that the US fraudsters arranged the fraudulent transactions and for the deposit of the advance fees to the accounts in Antigua. The Claimant and his staff then, for a fee, arranged to transfer the funds from time back to the United States, where the fraudsters put them to their own use. One of the co-conspirators claimed in his affidavit that the Claimant had knowingly taken part in completing some of the frauds and had spoken with a number of the clients who had lost money.

THE EVIDENCE

[9] The Claimant submits that the principal evidence against him is the evidence of his alleged co-conspirators, that such evidence would not be admissible against him in a court in Antigua and Barbuda, and that the Magistrate should have dismissed the proceedings on this ground. He relies on the decision of Redhead J (as he then was) in the High Court case **No 77 of 1995 In the Matter of Artland Bradford Lewis** as being of persuasive authority. In his decision in the above matter, Redhead J set out at length the many authorities which establish that the role of the High Court is not to act as a Court of Appeal against the decision of the Magistrate. The High Court cannot retry or rehear the case. However, the High

Court is not confined to an enquiry whether the Magistrate had jurisdiction. The court is entitled to entertain the question of law whether the evidence was sufficient to give a reasonable Magistrate applying the right test jurisdiction to commit the Claimant. It is not for the court to weigh the evidence, that is a matter for the Magistrate.

THE US PROCEEDINGS

[10] By diplomatic note dated 29 December 1997, the United States Government had requested of the Antigua and Barbuda Government the extradition of the Claimant. This request was made pursuant to the Extradition Treaty between the Government of Antigua and Barbuda and the Government of the United States of America signed on the 3 day of June 1996 (hereinafter "the Extradition Treaty"). The request indicated that the Claimant, along with 10 other named individuals, faced a two-count indictment filed in the District Court for the Northern District of Florida. The first count charged them

> That they did knowingly and wilfully combine, conspire, confederate, and agree with each other and with others, known and unknown to the Grand Jury, to conduct and to attempt to conduct financial transactions, knowing that the funds and monetary instruments involved in the transactions represented the proceeds of a specified unlawful activity, that is: wire fraud, in violation of Title 18, United States Code, section 1343, and knowing that the financial transactions were carried out with the intent to promote the carrying on of a specified unlawful activity, in violation of title 18, United States Code, section 1956(a)(1)(A)(i).

The indictment goes on to specify various overt acts dating between 1 February 1994 and 12 March 1997. These overt acts, insofar as they affect the Claimant, are all acts alleged to have been performed by him in Antigua and Barbuda and not in the United States, and as such would be what the Act describes, if they are illegal acts, as "extra-territorial" offences. Count two merely "realleges and fully

incorporates" the allegations in count one for the purpose of invoking forfeiture to the United States of America pursuant to **Title 18, United States Code, section 982(a)(1)**.

AUTHENTICATION

[11] It appears that the evidence upon which the Magistrate had relied was principally the affidavits of Donald Ray Gamble (hereinafter "Mr Gamble"), Lawrence Sangaree (hereinafter "Mr Sangaree"), and Mickey L Pledger (hereinafter "Mr Pledger"). Section 28 of the **Extradition Act** provides how foreign affidavits for the purpose of extradition proceedings are to be authenticated:

> (1) In extradition proceedings in relation to a person whose return has been requested by a foreign state, foreign documents may be authenticated by the oath of a witness, but shall in any case be deemed duly authenticated –
>
> (a) if they purport to be signed by a judge, magistrate or officer of the foreign state where they were issued; and
>
> (b) if they purport to be certified by being sealed with the official seal of the Minister of Justice, or some Minister of State, of the foreign state.

The three affidavits of Mr Gamble, Mr Sangaree, and Mr Pledger were all sworn in the United States of America. They were sworn before a judge, but none of them were certified by a seal of a Minister of Justice of State of the United States. The consequence, argued the Claimant, was that none of these affidavits had been authenticated as provided by section 28 of the **Extradition Act**, and they should not have been admitted in evidence of the Magistrate.

[12] Of the above-mentioned three deponents, Mr Sangaree and Mr Gamble are alleged co-conspirators, while Mr Pledger is a Special Agent of the United States government who had investigated the activities of the Claimant. Their affidavits

were not tendered as affidavit evidence before the Magistrate. Their affidavits were put in evidence by the device of exhibiting them to a properly authenticated affidavit of one Lyndia F Padgett, a prosecutor in Florida (hereinafter "Ms Padgett"). Ms Padgett for good measure had summarized in her own affidavit the substance of the affidavits of Mr Sangaree and Mr Gamble. Counsel for the Claimant had submitted to the Magistrate that all three of these affidavits were inadmissible on the grounds that (1) Ms Padgett's evidence as to the facts, particularly paragraphs 12 to 21, was entirely hearsay, and (2) the affidavits of Mr Pledger, Mr Sangaree and Mr Gamble were inadmissible as evidence for the purpose of the proceedings as they offended the section 28 provision of the **Extradition Act** in that they had not been properly authenticated. He had urged that they could not be sneaked in by exhibiting them to a properly authenticated affidavit. The Magistrate overruled counsel's submissions and found that the evidence was admissible in that; one, Ms Padgett was entitled to give evidence of information and belief; and, two, her affidavit was properly authenticated, and that authentication covered the exhibits attached to it. Neither counsel produced any authority in support of their submission on this point, although counsel for the Defendants provided the court with an unidentified note concerning a 1986 UK decision in the Queen's Bench Divisional Court in a case cited only as **In Re Espinosa** that supported his contention. In the absence of any authority to the contrary having been produced, I respectfully agree with the Magistrate on both points. To find otherwise would be to give an unnecessarily restrictive interpretation to the Act.

THE EXTRADITION ACT

[13] On 28 February 2000, the Minister had issued an Authority to Proceed under section 9 of the **Extradition Act**. The relevant sections of the **Extradition Act** are as follows. Section 4 defines what is an "extradition crime." Section 4 deals at subsection (1)(b) with extra-territorial offences, and reads as follows:

> (1) In this Act, "extradition crime" means:

(a) . . .

(b) an extra-territorial offence against the law of a foreign state or designated Commonwealth country which is punishable under that law with imprisonment for a term of twelve months, or any greater punishment, and which satisfies –

(i) the condition specified in subsection (2); or

(ii) all the conditions specified in subsection (3).

(2) The condition mentioned in subsection (1)(b)(i) is that in corresponding circumstances equivalent conduct would constitute an extra-territorial offence against the law of Antigua and Barbuda punishable with imprisonment for a term of 12 months, or any greater punishment.

(3) The conditions mentioned in subsection (1)(b)(ii) are –

(a) that the foreign state or designated Commonwealth country bases its jurisdiction on the nationality of the offender;

(b) that the conduct constituting the offence occurred outside Antigua and Barbuda; and

(c) that, if it occurred in Antigua and Barbuda, it would constitute an offence under the law of Antigua and Barbuda punishable with imprisonment for a term of twelve months, or any greater punishment.

Section 9 deals with procedure. Section 9(5) provides

An authority to proceed shall specify the offence or offences under the law of Antigua and Barbuda which it appears to the Minister would be constituted by equivalent conduct in Antigua and Barbuda.

EXTRA-TERRITORIAL OFFENCES

[14] The issue of extra-territoriality arises. The allegation is that the Claimant whilst in Antigua committed an offence or offences in the United States of America. By

their very nature, therefore, the offences with which he is charged are extra-territorial.

[15] At the hearing in the High Court, learned counsel for the Defendants relied on the Privy Council decision from Hong Kong in the case of **Liangsiriprasert v United States [1991] 1 AC 225** and the earlier House of Lords decision in **DPP v Doot [1973] 1 All ER 940** to support the decision of the Magistrate. **Doot's case** [supra] establishes that an agreement made outside the jurisdiction of the English courts to commit an unlawful act within the jurisdiction was a conspiracy which could be tried in England if the agreement was subsequently performed, wholly or in part, in England. **Liangsiriprasert's case** [supra] establishes, among other things, that conspiracy to traffic in a dangerous drug in Hong Kong entered into in Thailand could be tried in Hong Kong without any act pursuant to that conspiracy being done in Hong Kong. I accept that these are good law in Antigua and Barbuda.

[16] For the Claimant to be extraditable to the United States, the offences with which he is charged are required to be extra-territorial in Antigua and Barbuda. Section 9 of the **Money Laundering (Prevention) Act** provided extra-territorial jurisdiction. But, that Act came into force only subsequent to 28 May 1998. At the time that the Claimant was providing his offshore financial services to the US fraudsters, the offence of a "conspiracy to commit money laundering outside of Antigua and Barbuda" had not been a criminal offence in Antigua and Barbuda. The equivalent conduct referred to in section 9(5) of the **Extradition Act** was not at that time a criminal offence in Antigua and Barbuda. Money laundering had not been made an extra-territorial offence under the earlier **Proceeds of Crime Act**. No question could arise of a conspiracy in Antigua to commit money laundering in the United States contrary to the **Proceeds of Crime Act**.

RATIFICATION

[17] The **Ratification of Treaties Act Cap 364 of the Laws of Antigua and Barbuda Revised Edition 1992** (hereinafter the "**Ratification of Treaties Act**") provides at section 3 for the procedure to be followed for the ratification by the House of Representatives of certain treaties to which Antigua and Barbuda becomes a party. Section 3 reads:

> (1) Where a treaty to which Antigua and Barbuda becomes a party after the coming into force of this Act is one which affects or concerns:
>
> (a) the status of Antigua and Barbuda under international law or the maintenance or support of such status, or
>
> (b) the security of Antigua and Barbuda, its sovereignty, independence, unity or territorial integrity, or
>
> (c) the relationship of Antigua and Barbuda with any international organisation, agency, association or similar body,
>
> such treaty shall not enter into force with respect to Antigua and Barbuda unless it has been ratified or its ratification has been authorised or approved in accordance with the provisions of this Act.
>
> (2) A treaty to which subsection (1) applies shall be ratified or shall have its ratification authorised or approved as follows:
>
> (a) where such treaty concerns a matter referred to in paragraph (a) or (b) of subsection (1) or contains any provisions which is to become, or to be enforceable as part of the law of Antigua and Barbuda, by Act of Parliament;
>
> (b) where such treaty concerns a matter referred to in paragraph (c) by Resolution of the House of Representatives.
>
> (3) No provision of a treaty shall become, or be enforceable as, part of the law of Antigua and Barbuda except by or under an Act of Parliament.

The meaning of the above provisions appears clear. Some treaties need to be ratified by a Resolution of the House; other treaties need to be ratified by an Act of Parliament; while other treaties need no intervention by the House to be validly

ratified. A treaty falling within the class described by subsection (1)(c) is required to be ratified by a Resolution of the House; a treaty falling within the classes described by subsections (1)(a) and (b) require an Act of Parliament; and any treaty which is to be enforced as part of the law of Antigua and Barbuda shall have its ratification authorised or approved by an Act of Parliament. In this case, the Extradition Treaty was expected to be enforced as part of the law of Antigua and Barbuda. It follows that its ratification was required to have been be approved by an Act of Parliament before any of its provisions could be enforced in a court of law in Antigua and Barbuda.

[18] The Extradition Treaty had been ratified by resolution of the House of Representatives, we are informed by counsel for the Defendants, on 6 October 1997, and on 1 July 1999 the ratification instruments had been exchanged pursuant to Article 20 of the Treaty. The Claimant has not disputed that the ratification of the Treaty has taken place. What he submits is that the ratification was required to have been approved by statute before it could be enforced as part of the law of the State. It is agreed that, prior to the issuing by the Minister of his Authority to Proceed in this case, no Act of Parliament had been passed to approve the ratification. The consequence is that when on 6 March 2000 the extradition proceedings commenced before the Magistrate, the Extradition Treaty had been ratified, but no Act of Parliament approving the ratification had been passed.

[19] At the commencement of the hearing before the Magistrate, counsel for the Claimant informed the Magistrate that he had filed proceedings in the High Court for a determination of the validity of the proceedings in the absence of an Act having ratified the Treaty. The Magistrate adjourned the hearing. It has not been revealed what happened to those High Court proceedings, but when the extradition hearing resumed before the Magistrate on 17 April 2001, the House of Representatives of Antigua and Barbuda had passed the **Extradition Treaty (Government of Antigua and Barbuda and the Government of the United**

States of America) Ratification Act 2000, No 11 of 2000 (hereinafter "the **Ratification Act**"). The **Ratification Act** is quite short and its main provisions may be quoted in full. They read as follows:

> 2. The Extradition Treaty signed on the 3rd day of June 1996 by the Government of Antigua and Barbuda and the Government of the United States of America is hereby ratified and is deemed to have entered into force with respect to Antigua and Barbuda on the 6th day of October 1997.
> 3. The Treaty as ratified is enforceable in Antigua and Barbuda and applies to persons sought for prosecution or persons who have been convicted of extraditable offences in the United States of America.
> 4. The procedures prescribed in the Extradition Act 1993 shall apply in the execution of any request from the United States of America.
> 5. Any extradition request received in Antigua and Barbuda prior to the coming into force of this Act shall be executed in accordance with the provisions of the Treaty and it shall not be necessary to renew the request.

[20] This Act specifically ratified the Extradition Treaty and deemed the Treaty to have been entered into force on 6 October 1997, ie, prior to the commencement of these extradition proceedings. It specifically provided that any previously received extradition requests are to be executed in accordance with the provisions of the Treaty. It has not been questioned that this **Ratification Act** complied with the requirements of the **Ratification of Treaties Act**, though it ratified the Extradition Treaty rather than approved the ratification of the Extradition Treaty. No one took the point that the **Ratification Act** purported to ratify the Treaty instead of approving the anticipated executive action of ratifying the Treaty, and having heard no argument on the matter, I make no finding on it. I assume for the moment that the Extradition Treaty has been effectively approved by the **Ratification Act** and is now enforceable in the courts of Antigua and Barbuda.

[21] The passage of the **Ratification Act** does not resolve all of the ratification issues. A question still arises as to the effect of the passage of this **Ratification Act** on the validity of these pre-existing extradition proceedings against the Claimant. The question is: Did the Act validate the existing extradition proceedings against the Claimant? If the Authority to Proceed had been a nullity when it was issued by the Minister, did the passage of the **Ratification Act** without more validate it?

[22] A perusal of the provisions of the **Ratification Act** reveals that it does not contain any provision expressly saving previously commenced proceedings, such as this one. The Claimant relies on the case of **Attorney General v Thomas (1979) 31 WIR 468** as authority for the proposition that a ratifying Act does not have this effect unless there is clear language. Counsel for the Defendants submitted in response that the **Ratification Act** was a mistake and should never have been passed, as all the ratification that was necessary was the previous resolution of the House of Representatives. This submission does seem to conflict with the provisions of the **Ratification of Treaties Act** and with the authority of **Attorney General v Thomas** [supra]

[23] Additionally, there is the matter of the **Constitution of Antigua and Barbuda**. Section 15(4) provides:

> No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is more severe in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

This is a clear and absolute prohibition against enacting retrospective legislation which will put a person in jeopardy of criminal proceedings for acts which when committed by him did not constitute a criminal offence in Antigua and Barbuda.

Fortunately, the **Ratification Act** did not attempt to retrospectively save these proceedings, so that no question of the constitutional validity of any provision of the **Ratification Act** arises.

[24] Even if any retrospective effect of the **Ratification Act** on these proceedings were not unconstitutional, it is a fundamental rule of the criminal law that retrospective legislation is not to be construed as having a greater retrospective operation than its language renders necessary. The **Ratification Act** does not contain any language that can be interpreted as saving existing extradition proceedings that were brought prior to the **Ratification Act**. The proceedings against the Claimant were null and void from the beginning, and, not having been saved by the **Ratification Act** or by any other Act of Parliament, remain null and void, and the extradition proceedings should have been dismissed on this ground as well.

THE OFFENCES

[25] As we have seen at paragraph [4] above, the Authority to Proceed issued by the Minister had stated that the offences with which the Claimant had been charged constituted equivalent conduct in Antigua and Barbuda under sections 3, 4 and 5 of the **Money Laundering (Prevention) Act**, as amended. This Act came into effect by Gazette Notice on 28 May 1998. The acts alleged to have been done by the Claimant related to the years 1995, 1996, and 1997. The acts in question were committed by the Claimant, if at all, while he was acting as a director of American International Bank Ltd and/or Caribbean American Bank Ltd. On 19 November 1997, Caribbean American Bank Ltd had been put into liquidation by a court order. Prior to that, on 7 August 1997, the regulatory authority of Antigua and Barbuda had put Caribbean American Bank Ltd into receivership. The regulatory authority had taken this step as a result of a letter written by American International Bank Ltd on 6 May 1997 submitting a suspicious transaction report under the **Money Laundering (Prevention) Act**. This letter of 6 May 1997 had indicated that the Claimant had resigned as local director of Caribbean American Bank Ltd as of that date. From August 1997, the affairs of Caribbean American

Bank Ltd had been exclusively under the control of the receivers. There is nothing alleged against the Claimant from that date onward. It follows that the acts complained of against the Claimant had all been committed by him, if at all, prior to the coming into effect of the **Money Laundering (Prevention) Act**. He could not properly have been charged with a money laundering offence under this Act as a result of actions that he had taken prior to the coming into effect of the Act.

[26] The **Proceeds of Crime Act** had also provided for a money laundering offence at section 61. The section reads:

> (1) In this section "transaction" includes the receiving or making of a gift.
>
> (2) A person who, after the commencement of this Act, engages in money laundering commits an offence and is liable, on conviction to:
>
> (a) a fine of $200,000 or imprisonment for a period of twenty years, or both, if he is a natural person; or
>
> (b) a fine of $500,000 if it is a body corporate.
>
> (3) A person shall be taken to engage in money laundering where:
>
> (a) the person engages, directly or indirectly, in a transaction that involves money or other property that is proceeds of crime; or
>
> (b) the person receives, possesses, conceals, disposes of, or brings into Antigua and Barbuda, any money or other property that is proceeds of crime,
>
> and the person knows or ought reasonably to know, that the money or other property is derived, obtained or realised, directly or indirectly from some form of unlawful activity.

This money laundering offence under the **Proceeds of Crime Act** was an offence in Antigua and Barbuda prior to the issuing by the Minister of his Authority to Proceed. It was the only offence of money laundering in existence at the time of the Claimant's activities complained of. In consequence, it was the only money laundering offence that was in existence at the time of the activities of the

Claimant that might have given rise to a charge of conspiracy to commit. We have seen at paragraph [13] above that section 9(5) of the **Extradition Act** contains the provision that the Authority to Proceed "shall specify the offence" which it appears to the Minister would have been constituted in Antigua and Barbuda. The Authority to Proceed issued in this case by the Minister did not specify an offence under the **Proceeds of Crime Act**, but only an offence under the **Money Laundering (Prevention) Act**.

[27] The Magistrate accepted the submission of the Director of Public Prosecutions that the acts alleged against the Claimant in the United States could have founded a charge of common law Conspiracy. She also accepted the submission of the Director of Public Prosecutions that the fact that the Complaint and Warrant issued in these proceedings mentioned the **Money Laundering (Prevention) Act** did not invalidate the proceedings. Counsel for the Defendants in the proceedings before the High Court similarly submitted that the reference to the statute is mere surplusage and may be ignored. He pointed out that the **Extradition Act** at section 31(c) provides that the forms to be used should continue to be those prescribed under the United Kingdom **Extradition Acts 1870-1989**, and that the UK form of an authority to proceed merely recites the offence without reference to the statute creating the offence, so that, the reference by the Minister of an incorrect statute was not fatal, being merely otiose.

[28] The words of section 9(5) of the **Extradition Act**, "shall specify the offence," are mandatory. The Minister is required to specify the offence under the law of Antigua and Barbuda which constituted the equivalent conduct in Antigua and Barbuda. I accept that he was not required to specify a particular statute creating that offence. But, he was obliged to specify some offence. He chose in this case to specify a particular offence. He did not choose to specify the common law offence of Conspiracy; he chose instead to specify the offence of money laundering under the **Money Laundering (Prevention) Act**. This Act had not come into effect until 28 May 1998 when by Statutory Instrument No 16 of 1998

the Minister of Justice and Legal Affairs brought it into force. The Claimant could not have committed an offence under this Act as he had ceased to carry out his functions as a director of the companies set up by the US fraudsters since 1997. Even if the Minister had specified the common law offence of Conspiracy, the Claimant could not properly have been charged with this offence when the acts in question did not at the time amount to an offence in Antigua and Barbuda. In the absence of any authority provided to the contrary, I find based on general principles that the extradition proceedings should have been dismissed on this ground as well.

[29] I have examined the record of the evidence before the Magistrate. The affidavit of Ms Padgett and the evidence of the other witnesses before the Magistrate do not contain any admissible evidence implicating the Claimant in the conspiracy to defraud the victims of the US fraudsters. The evidence of the co-conspirators is inadmissible against the Claimant. The affidavit of Mr Pledger concerning his investigations and of his interviews with the Claimant does not contain any admission made by the Claimant or any other evidence that could implicate the Claimant in the fraud that the US fraudsters had perpetrated.

CONCLUSION

[30] To summarize the conclusions that I have come to, I find the following:

(a) The 6 October 1997 ratification by Statutory Instrument by the House of Representatives of the Extradition Treaty entered into with the government of the United States of America instead of by an Act of Parliament as required by the **Ratification of Treaties Act**, the extradition proceedings against the Claimant were void and Magistrate had no jurisdiction to issue the warrant to arrest the Claimant or to order his extradition to the United States;

(b) The subsequent ratification of the Extradition Treaty by the **Ratification Act** not having expressly validated the pre-existing and void extradition proceedings against the Claimant, the Magistrate had no jurisdiction to continue to hear the extradition proceedings and to make the extradition order of 17 April 2002;

(c) The evidence against the Claimant being entirely hearsay and accomplice evidence, there was no admissible evidence against the Claimant before the Magistrate on which the Magistrate could properly have ordered the committal of the Claimant;

(d) It is mandatory for the Minister to specify the offence which is the equivalent offence in Antigua and Barbuda, and it was not open to the Magistrate to alter or amend the specified charge for the purpose of committing the Claimant;

(e) The offence of money laundering contrary to the **Money Laundering (Prevention) Act** specified by the Minister having been created an offence in Antigua and Barbuda only as of the date that Act came in to effect, ie, 28 May 1998 or one year after the Claimant had ceased to act and the offence not having existed at the time that the Claimant was alleged to have been performing the acts complained of, the Authority to Proceed was void and the Magistrate had no jurisdiction to issue the warrant and to commit the Claimant;

(f) The only other offence of money laundering existing at the time of the commencement of these extradition proceedings, ie, the offence created by the **Proceeds of Crime Act**, not being an extra-territorial offence, even assuming the Magistrate had the jurisdiction to take this offence into account in making her decision, which I do not accept, the Magistrate had no jurisdiction to issue the warrant or to commit the Claimant.

[31] Applying the law and findings above, there will be judgment for the Claimant as follows:

(1) The extradition order made by the Magistrate on 17 April 2002 is set aside as having been made without jurisdiction;
(2) The Claimant is discharged;
(3) The Claimant shall have his costs against the Defendants at the prescribed rate based on a value of $50,000.00.

Don Mitchell, QC
High Court Judge