

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

**CLAIM NO. 598 of 2014**

**BETWEEN:**

**(UNICORN INTERNATIONAL SECURITIES, LLC                      CLAIMANT**

**(AND**

**(THE ATTORNEY GENERAL    DEFENDANT**

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***BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA***

**Mr. Michael Young, S.C., for the Claimant**

**Ms. Anika Jackson, Solicitor General, for the Defendant**

**Hearing Dates:**

**29<sup>th</sup> June, 2015**

**15<sup>th</sup> of April, 2016**

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**D E C I S I O N**

**The Facts**

1. On the afternoon of September 9<sup>th</sup>, 2014 at around 2:00 p.m., the staff of Unicorn International Securities LLC (Unicorn) was carrying on its licensed business of trading in financial and commodity-based derivative instruments and other securities in the Roe Office Complex in the quiet area of Coney Drive in Belize City. Suddenly, the police swooped down on the office demanding that the staff cease what they were doing immediately and hand over everything. Supt. Romero, the leader of the group of police officers and other officers of the

State (“*the State Team*”), informed the staff of Unicorn that they had a warrant which was read out to them, all staff were stopped from working and police proceeded to question staff members one by one. Police then seized all documents and equipment and carted everything away in boxes. Unicorn’s business was closed down and has remained closed and inoperable since September 9<sup>th</sup>, 2014. On December 16<sup>th</sup>, 2014, Unicorn applied for and was granted an order for the return of most of its documents and equipment; most of these were returned to Unicorn on December 18<sup>th</sup>, 2014. The company’s license issued under the International Financial Commission’s Act has not been renewed, as at the 1<sup>st</sup> January, 2015. The Landlord has re-entered the company’s rented premises and to date Unicorn remains out of office and out of business. Unicorn has therefore brought this claim against the state “*for constitutional relief and for loss and damages caused to the Claimant company by virtue of an unlawful search and seizure of its documents, equipment and assets from its office premises situate at 1 Coney Drive on 9<sup>th</sup> September, 2014 (in pursuance of a request by the United States of America for mutual legal assistance under the Mutual Legal Assistance and International Co-operation Act 2014) and the resultant closure of the Claimant’s office and cessation of its business)*”. The Defendant’s position is that “*due consideration was given to the assistance requested and the search and seizure was executed in conformity with the aforementioned framework*” i.e. the Treaty between the Government of Belize and the Government of the United States of America on Mutual Legal Assistance

in Criminal Matters 2000 (“MLAT”) and the Mutual Legal Assistance and International Co-Operation Act, No. 8 of 2014 (“MLAICA”).

**The Issues**

2. As there was no agreement between the parties as to what the issues were, I have stated the Claimant’s issues immediately followed by what I found to be corollary of the Defendant’s issues.

1. Whether the acts complained of were in accordance or compliant with the Mutual Legal Assistance International Cooperation Act (MLAICA)?

Whether the relevant authorities acting pursuant to s.18 of MLAICA acted lawfully?

2. Is section 18 of the MLAICA inconsistent with the Constitution and therefore void?

Whether section 18 of the MLAICA is unconstitutional?

3. Whether the acts complained of were done under a law which fulfills the requirements of Section 17(1) of the Constitution or fall into the category of laws referred to in Section 17(2)? (Claimant’s Issue)

4. Whether the acts complained of contravene the Claimant’s right to be protected from arbitrary search or entry as provided in the Constitution at Sections 3 and 9?

Whether the actions of the relevant government authority were in contravention of the Claimant’s right to protection from arbitrary search or entry?

5. Whether the acts complained of contravene the Claimant's right to be protected from deprivation of property contrary to Sections 3 and 17 of the Constitution?

Whether the acts carried out by the relevant government authority were in contravention and violation of the Claimant's right to protection from deprivation of property?

6. Whether the acts complained of contravene the Claimant's right to engage in a trade or business as provided for in Section 15 of the Constitution?

Whether the acts carried out by the relevant government authority were in contravention and violation of the Claimant's right to be protected from interference with its right to engage in trade or business?

7. Whether the acts complained of contravene the Claimant's right to be protected from unlawful interference with its privacy, correspondence and unlawful attacks on its honour and reputation as provided for at Section 14 of the Constitution?

Whether the acts carried out by the relevant government authority were in contravention and violation of the Claimant's right to be protected from interference with the right to privacy, honor and good reputation?

8. Whether in this instance there should be restitution, including setting aside of the cancellation of the Claimant's license to carry out business? (Defendant's issue)

**Issue No. 1**

3. Whether the acts complained of were in accordance with or compliant with the Mutual Legal Assistance International Cooperation Act (MLAICA)?

Whether the relevant authorities acting pursuant to S.18 of the Mutual Legal Assistance and International Cooperation Act acted lawfully?

**Claimant's Submissions on Issue No. 1**

4. Mr. Young, SC, on behalf of the Claimant submits that the way in which the Defendant phrases this issue it is as if there is a presumption that the "*relevant authorities*" did act pursuant to Section 18 of the MLAICA. He says there is no such presumption and that the first question to be asked is whether the relevant authorities acted in accordance or were compliant with Section 18 of the MLAICA.
5. Mr. Young, SC, submits that the actions of the State Team were of a draconian nature and that the Constitution and Laws of Belize on principle cannot allow the State to invade a business premises, tell the staff "*stop what you are doing*" and then search or search and seize, or seize property of the business and cart it away. The Defendant's actions must be clothed with some statutory authority.
6. He cites the Canadian case of ***Bay Colony v Wasaga Beach (Town Of)*** 1997 4466 (On-Ca) where the Appeal Court held that:

*"...given the drastic result of a tax sale or vesting (of the appellant taxpayer's property) in the municipality, it is important that the statutorily required procedures are strictly complied with. That was not done in this case."*

In the ***Omni Networks Ltd et al v The Financial Intelligence Unit***, Civil Appeal No. 28 of 2009, Morrison JA of the Belize Court of Appeal cited with approval the statement of Hughes LJ in ***Director of the Serious Fraud Office v A*** [2007 EWCA Crim 1927]:

*“A restraint order is a far-reaching order. Although it takes away no property or assets from the person under investigation, and is by definition temporary in application, it prevents him from using the frozen property in any way until the criminal investigation is over. That may restrict him considerably in what he can do by way of business or private activity. If it turns out that the person is not shown to be guilty of a crime, he may in the meantime have lost a good deal because of the restrictions put upon him by the order... the restriction of a restraint order may sometimes last for a long time, though it can be reviewed if it is persisting unfairly. The order has sometimes been called draconian and so it may deliberately be.”*

7. Mr. Young, SC, argues that the warrant itself issued by the Magistrate required a process of search, assessment and selection. He says that the State operation on the Unicorn premises was the anti-thesis of the exercise contemplated by and provided for under s.18 of MLAICA and indeed under the warrant. No search for any documents or information which may provide *“evidence relating to the offence”* was carried out or even attempted to be carried out. He points to the affidavit evidence of the leader of the State Team, Supt. Romero: *“We informed the group that we were there to seize all office equipment and documents and that they were to stop whatever they were doing to allow for this process”*. Learned Counsel also points to the fact that the State Team packed up everything and took them away, including personal items of staff members. He

submits that the State Operation was in flagrant non-compliance with and violation of Section 18 of MLAICA and that position in and of itself renders the operation unlawful.

**Defendant's Submissions on Issue No. 1**

8. In response to these arguments, Ms. Jackson on behalf of the Attorney General sets out the Short Title to the MLAICA which puts the entire purpose of the Act in perspective:

*"An Act to provide measures to ensure compliance with international standards and obligations, including the Vienna Convention, in relation to mutual legal assistance and international cooperation, to provide for mutual service of process, provision of evidence, offences at sea; and to provide for matters connected therewith or incidental thereto."*

Section 18 of MLAICA reads as follows:

*"18. If, on 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 person has been arrested in the course of a criminal investigation carried on in that State into such an offence; and*

*(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 a central authority in response to a request received-*

*(a) from a court or tribunal exercising 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.”*

She summarizes MLAICA as an act which involves mutual legal assistance from one State to another by encouraging cooperation between judicial, law enforcement, and customs authorities. This legislation was enacted to enable the exercise of powers and functions by domestic law enforcement bodies to honor Belize’s international obligations. Once assistance has been requested the responsibility for its execution lies with the Central Authority in the Requested State to act in accordance with the domestic law. She then cites **Attorney General of St. Christopher and Nevis v Lawrence** (1983) WIR 176 as authority for the principle that *“the presumption is always in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles”*.

9. Ms. Jackson further argues that the Claimant has merely stated that section 18 of the MLAICA *“does not come within the rubric of the exceptions provided for in Section 9 of the Constitution”*. The burden placed on the Claimant to prove that the section is unconstitutional is a very heavy one, and they have failed to dispel that burden. She cites **King v the Attorney General 44 WIR 52 p 66 and Frederick Smith v the Commissioner of Police** [1984] 50 WIR 1 p12 for the principle that



*“the Constitution places the onus of establishing that such an action is not justifiable on those attacking it in the absence of evidence, except in the plainest of cases that onus is not discharged”.*

10. Ms. Jackson also argues that the acts of the State were lawful. She says that while there is no settled definition of defence and public safety, it is now generally understood to refer to the survival and well-being of the state and includes matters such as threats to the security of the nation, in all forms, and major subversive activity; but it is not confined to these matters. It is also settled that the usual object of a warrant relating to defence and public safety is to assist in the investigation of a case. She cites ***Ghani v. Jones*** [1970] a1 QB 693 as authority for the following principles which apply to search and seizure:

“Law enforcement officers must have reasonable grounds for believing:

- (a) That a serious crime has been committed;
- (b) That the property is material evidence to prove commission of a crime;
- (c) That the person(s) in possession of the property is implicated in the crime;
- (d) The police must keep the property only for so long as is reasonably necessary;
- (e) The lawfulness of the conduct of the police ought to be determined in relation to the actual search and seizure and not consequent actions.”

11. Ms. Jackson submits that due to the import of the request and in spite of constraints such as the impractical nature, feasibility, time constraints, urgency and insufficiency of human and technical resources, the law enforcement officials acted lawfully throughout the search and seizure and in accordance with the existing mutual legal assistance regime in Belize.

### Decision on Issue No. 1

12. Having reviewed the affidavit evidence of the Claimant and the Defendant, and having considered the written and oral legal submissions made by both parties, I find that there is overwhelming evidence that the State Team did NOT act in keeping with Section 18 of the MLAICA. The section clearly sets out the procedure to be followed in search and seizure missions of this nature. It is a two stage process involving: (a) a search for evidence to support offences identified in the application by the police officer for the warrant; (b) seizure of items identified as being relevant and/or supportive in respect of the particular offences.

Section 18 (2) of the MLAICA clearly states:

“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.”(*emphasis mine*)

I find the language of the statute to be clear and unambiguous. This statute does NOT give the State authority to go into a licensed premises and cart away all computers and equipment, including personal belongings of the staff. Even the warrant given to the police said “*search for and seize documents and information*”. I agree with Mr. Young, SC, that the very warrant itself required a process of “*search, assessment and selection*”. These actions on the part of the State Team were therefore in flagrant violation of Section 18 of MLAICA and completely unjustifiable.

13. Having found in favor of the Claimant on this first issue, I decline to pronounce on the issue of whether section 18 of MLAICA is itself unconstitutional. Mr. Young, SC, has argued that that section violates section 9 of the Constitution because it fails to come within the exceptions to the protection of the right to search and entry stated therein. In this case, the Claimant's complaint is threefold: (1) the State did not act in accordance with Section 18 of the MLAICA and thus the legal basis of the exercise of its powers is not extant; (2) even if the State had acted in compliance with Section 18, that section is inconsistent with the Belize Constitution in that it does not fall within one of the categories set out in Section 9(2). Thirdly, even if Section 18 is harmonious with the Constitution, the manner of carrying out of the powers was manifestly misconceived, excessive, unreasonable, and indeed abusive. The Claimant has sought certain declarations as to the breach of their rights by the conduct of the State Team, but in my view, the challenge to the actions of the State Team in this case can be dealt with and addressed without deciding whether section 18 of MLAICA under which they purported to act is unconstitutional. I find that the actions of the State Team were not in accordance with section 18 of MLAICA and were therefore illegal.

14. Ms. Jackson for the Defendant in dealing with this issue of the constitutionality of MLAICA has recited the provision, stated that there is a presumption of constitutionality of legislation and said that the Claimant has not proven that section 18 is unconstitutional. I find that the specific issue of whether or not

section 18 is unconstitutional needs to be properly ventilated with comprehensive arguments on both sides to assist the Court in deciding the matter. The same can be said of Issue No. 3 as to whether the acts complained of were done under a law which fulfills the requirements of Section 17(1) of the Constitution or falls into the category of laws referred to in Section 17(2).

This issue (stated solely by the Claimant) is a re-statement of the previous issue. It is a direct attack on the constitutionality of MLAICA and it is an issue which I have said needs more comprehensive argument before it can be decided.

**Issue No. 4**

15. Whether the acts complained of contravene the Claimant's right to be protected from arbitrary search or entry as provided in the Constitution at Sections 3 and 9?

Whether the actions of the relevant government authority were in contravention of the Claimant's right to protection from arbitrary search or entry?

**Claimant's Submissions on Issue No. 4**

Mr. Young, SC, submits that the right to be protected from arbitrary search and entry is jealously respected and guarded by the Courts. In Action No. 208 of 2002 *Jitendra Chawla v The Attorney General*, the Claimant was a businessman doing business as Xtra House, a supermarket in Belize City. A provisional entry had been created and approved which required a deposit of \$90,000.00. On a final assessment of custom duties payable the sum of \$554,477.41 was computed by

the Customs Department as payable. The issue for trial was whether the \$90,000.00 required as a deposit was unlawfully taken from him as it constituted an excess deposit and therefore an unconstitutional taking of his property. The Claimant also complained of an illegal entry and search of his premises and removal of computers and some sacks of rice and that notwithstanding proof of the values of his imports submitted by him, the Customs Department insisted on collecting duty as assessed by them, thereby depriving him of the extra sum he had to pay. The Court found that the entry and search and seizure of the twelve computers and thirty three sacks of rice by agents of the Customs authority under writ of assistance was impermissible:

Conteh CJ (as he then was) at paragraph 29 quoted from the HL decision of ***IRC and Another v Rossminster Ltd*** (1980) 1 All E R 80 as follows:

*“... if the constitutional safeguards are to have any meaning it is essential for the justice conscientiously to ask himself whether on the information given upon oath (in the case of section 203 either orally or in writing) he is satisfied that the officer’s suspicion is based upon reasonable cause.*

*The Board had earlier explained that the purpose of the requirement that a warrant be issued by a justice as being “to interpose the protection of a judicial decision between the citizen and the power of the state. If the legislature has decided in the public interest that in particular circumstances it is right to authorize a policeman or other executive officer of the state to enter upon a person’s premises, search his belongings and seize his goods, the function of the justice is to satisfy himself that the prescribed circumstances exist. This duty is of high constitutional importance. The law relies upon the independent scrutiny of the judiciary to protect the citizen against the excesses which would inevitably flow from allowing an executive officer to decide for himself whether the conditions under which he permitted to enter upon private property have been met.*

*“The writ, as it stands, is a peremptory and prior authorization to enter people’s houses, search and seize uncustomed, forfeited or prohibited goods and is witnessed by no less than the Chief Justice. Other than this, it contains no procedure or system that regulates its use or deployment. Yes, Her Majesty Queen Elizabeth II is the Head of State in and for Belize, but I am not sure that Her Majesty would be happy or amused to know that in her name, ordinary Belizean homes can be searched and goods seized therefrom, without anyone being first satisfied that there was reasonable cause to execute the search in the first place. Just being armed with the writ, it is said, is sufficient. This, in my view, must be alarming and it makes an odd bedfellow with the Constitution’s protection and sits uncomfortably with it.”*

16. Mr. Young, SC, also submits that the State Team could have conducted the operation in a different manner for example by doing the following:

- (a) Provided information as to the specific offences which were the subject of criminal proceedings in the United States including the United States statutes and the sections of the statutes under which the subject parties are being charged
- (b) Ensured that the description of the offences were included in the application to The Magistrate
- (c) Ensured that the description of the offences were included in the Warrant
- (d) Have the State Team attend the premises without notice
- (e) Read the warrant to the person in charge at the business premises and either provide them with a copy of the warrant or allow them to photocopy it
- (f) Explained to the person in charge what the State Team was there for and indicate and arrange how the search would be conducted
- (g) Establish a place within the business office where the search would be carried out
- (h) Arranged for the custody of materials and documents during the search so that they would not be tampered with, modified or disposed of.
- (i) Conducted the search right there on the premises by examination of the documents and information whether in hard copy or electronic form to determine which documents and information may be used in the prosecution of the offences.

- (j) Identified and organized such documents and information
- (k) Taken copies of such documents and information and take them away
- (l) Take only such documents and information as are so identified and leave the other documents, equipment and assets as have not been identified as being possibly usable in the prosecution of the offences
- (m) Compiled a list or inventory of the items and documents taken, provide that list to the Claimant, and see the Claimant's acknowledgement of the correctness of that inventory
- (n) In carrying out such exercise the State would need to have a person or persons sufficiently knowledgeable to be able to identify the documents which may be used in the prosecution of the offences.

Learned Counsel says that this is not an exhaustive list, but that it provides the fundamental requirements for the entry and search to be carried out with due regard for the rights of the subject persons. While he does not concede the constitutionality of section 18 of MLAICA, he appreciates that there may be circumstances where originals of documents may be preferred to copies for evidential purposes. However the State should leave the Claimant with a copy.

17. Finally, Mr. Young, SC, cites Benjamin CJ in Claim No. 531 of 2014 ***Financial Intelligence Unit v. Robert Banfield*** where the FIU had difficulty in identifying the offences, His Lordship the Chief Justice discharged an ex parte Freezing Order and ordered the FIU to pay costs. This was a judicial warning that when these draconian powers are exercised, care, prudence, and caution needs to be applied, including strict compliance with the requirements of the enabling statute.

**Defendant's Submissions on Issue No. 4**

18. In her response addressing this issue, Ms. Jackson on behalf of the Attorney

General cites section 9 of the Constitution of Belize:

*"9 (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, public health, town and country planning, the development or utilization of mineral resources or the development or utilization of any property for a purpose beneficial to the community*

*(d) that authorizes, for the purpose of enforcing the judgment or order of the court in any civil proceedings, the search of any person or property by order of a court or entry upon any premises by such order."*

Ms. Jackson submits that the acts of the Central Authority were not in violation of the Claimant's right to protection from arbitrary search or entry as said acts were consistent with the proviso of section 9(2)(a) and (d) of the Constitution.

**Decision on Issue No. 4**

19. I find that the affidavit evidence clearly illustrates that the rights of the Claimant to protection from arbitrary search or entry were breached by the acts of the State Team. It is not enough for the Defendant to say to the Court that the State Team's actions came within the proviso to section 9(2)(a) and (d) of the Constitution so therefore their actions were lawful. The Defendant must show the court HOW the acts of the State on that day were respectful of the rights of



the Claimant. I agree fully with the submissions of Mr. Young, SC, where he sets out clearly the steps that the State Team could have taken in conducting this search in a manner which respects the constitutional rights of the company and of the individuals working there. While there is evidence that one or two of the steps were followed, e.g., the reading of the warrant to the staff, when one looks at the evidence as a whole it seems these steps were honored more in the breach than in the observance. The actions of the State Team in not conducting the search and seizure with due regard for the rights of the Claimant company resulted in an unmitigated violation of the Claimant's constitutional right to protection of arbitrary search or entry. I therefore find for the Claimant on this issue as well.

**Issue No. 5**

20. Whether the acts complained of contravene the Claimant's right to be protected from deprivation of property contrary to Section 3 & 17 of the Constitution?

Whether the acts carried out by the relevant government authority were in contravention and violation of the Claimant's right to protection from deprivation of property?

**Claimant's Submissions on Issue No. 5**

Mr. Young, SC, submits that the taking of property in a manner that is in violation of the right of the citizen to be protected from arbitrary deprivation of property includes a temporary taking. He relies on Claim No. 2003/2004 ***Geraldine Gabey***

*v the Governor et al* where the Claimant sought relief for breach of her constitutional rights and compensation for loss of income resulting from the loss of use occasioned by the seizure of her computer files. Her home had been searched pursuant to a lawfully issued search warrant and her computer along with other items of related software and personal files were seized. She further complained that the detention and return of her computer in an inoperable condition was in breach of her constitutional right to protection from deprivation of property under section 64 of the Constitution of Montserrat. The Court found that there was unlawful deprivation of the Claimant's property and that the continued detention and refusal to furnish the Claimant with her computer data and the return of the computer in an inoperable condition was an abuse by the police of their powers of detention as their actions went beyond what was reasonably necessary for the purposes of their investigations.

**Defendant's Submissions on Issue No. 5**

21. Ms. Jackson in response to this argument says that the Claimant's rights to protection from deprivation of property were not infringed. She says that the right not to be deprived of property under the Constitution is a right which is qualified by the exception of due process of law.

**Decision on Issues No. 5**

22. It is obvious that the Claimant's rights to protection from deprivation of property were breached in this exercise by the State Team. No one can quarrel with the Solicitor General's submission that this is a right which is indeed qualified by due

process in the Constitution. If the right were absolute, the country would be ungovernable as there would be a total bar to the State carrying out its mandate of maintaining law and order in the society. However, in the exercise of that mandate, the State must act carefully and reasonably lest it trample on the rights of the citizen. In this case, I find that the State, in its zeal to carry out its mandate of assisting the United States under MLAICA, trampled on the rights of the Claimant by carting away ALL of the Claimant's property, instead of sifting through the property carefully and taking only what was needed as evidence. In my view, a large part of this fiasco was due to the lack of experience of our State Team and part was also due to a lack of preparation and understanding of what to look for. It is incomprehensible to my mind how the State Team was only briefed (as Superintendent Romero stated in his affidavit) on such a comprehensive and invasive mission at 11:00 a.m., only to be followed immediately by orders to execute that mission at 1:30 p.m. on that same day. I would think that matters like these would have been planned and rehearsed in mock scenarios by the State Team at least for a few weeks in advance of the actual execution (as one would think that the element of surprise which is a necessary ingredient in the execution of such an exercise is geared towards catching the suspects off-guard, not the investigators). I have to say that while the importance of Belize assisting in the fight against international crime cannot be overstated, the police and other members of the State Team must be given the requisite training and resources to carry out the mandate from those

countries who seek our assistance and who have an abundance of experience, training and resources in general with which to assist Belize in fulfilling its MLAICA obligations, if there is to be any realistic hope of success. This is a comparatively impoverished country with limited resources, where our police officers barely have, e.g., vehicles, or gas for those vehicles that they do have at their disposal, to carry out their basic duties in the fight against crime on a national level; so if the fight against international crime is to have any teeth from Belize's standpoint, our State Team must be given the requisite training and resources to carry out that mandate in an all-encompassing sustained manner. Otherwise these missions under MLAICA will simply result in exercises in futility, repeatedly rendering the government liable to pay heavy compensation for breaches of the rights of its citizens. I find that the Claimant succeeds on these issues as well.

**Issue No. 6**

23. Whether the acts complained of contravene the Claimant's right to engage in a trade or business as provided for in Section 15 of the Constitution?

Whether the acts carried out by the relevant government authority were in contravention and violation of the Claimant's right to be protected from interference with its right to engage in trade or business?

### **Claimant's Submissions on Issue No. 6**

On behalf of the Claimant, Mr. Young, SC, submits that Unicorn's rights under section 15 of the Constitution were violated by the acts of the State Team. He says that Unicorn is a company incorporated and domiciled in Belize and it was carrying on a business trade under a licence that authorized it to carry on that business, i.e., a license from the International Financial Services Commission of Belize to carry on business of trading in financial securities and commodity based derivative instruments and other securities. Unicorn operated from its office at the Gordon House Complex on Coney Drive in Belize City. The licence was current at the time when the Claimant exercised its powers under section 11(1)(d) of the Act and when the Application for the extension of that Order was made to the Court on the 23<sup>rd</sup> September, 2014. Cem Can is the President and CEO of Unicorn and there are 10 employees of the Company.

Mr. Young, SC, says that the sudden seizure of the Claimant's documents, equipment, and other assets resulted in the shutting down of the business, a business which was being conducted openly in a democratic country with a constitutional presumption of innocence. He relies on the affidavit evidence of Lelani Rivero to establish and confirm that the State Team did shut down Unicorn's business. The application for the Freezing Order by the State was part and parcel of a series of steps taken by the State which resulted in the seizure of Unicorn's documents and business records, the shutting down of its business, the freezing of its assets and serious damage to its reputation.

### **Defendant's Submissions on Issue No. 6**

24. Ms. Jackson on behalf of the Attorney General replies to this submission in one sentence: *"It is our humble submission that any such license is not and has never been within the purview of this Department"*.

### **Decision on Issue No. 6**

25. Having read the affidavits of Lelani Rivero, Operations Manager of Unicorn, and Supt. Romero of the State Team, there is absolutely no doubt that the acts of the State Team violated the rights of Unicorn to engage in trade or business as provided for in the Constitution.

Section 15 of the Constitution provides:

*"15. (1) No person shall be denied the opportunity to gain his living by work which he freely chooses or accepts, whether by pursuing a profession or occupation or by engaging in a trade or business, or otherwise.*

*(2) It shall not be inconsistent with subsection (1) of this section to require, as a condition for embarking upon or continuing work, the payment of professional fees, trade or business license fees, or similar charges, or the possession of appropriate licenses or qualifications.*

*(3) 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 morality or public health;*

*(b) that is required for the purpose of protecting the rights or freedoms of other persons; or*

*(c) for the imposition of restrictions on the right to work of any person who is not a citizen of Belize."*

26. While it is clear that the Constitution does protect the citizen's right to engage in business, this right is qualified by the proviso in Section 15 which recognizes that there may be laws passed by Parliament which affect or limit the right to work in the interest of defence, public safety, public order, public morality or public health. However, any such law must make "reasonable provision" for the protection of these other matters of public interest. The exercise of powers, e.g., powers of search and seizure under a law such as MLAICA must be done in a reasonable manner, with due regard for the protection of the rights of all citizens including citizens such as Unicorn, as well as the individual rights of staff members employed by the company itself.

27. Looking at the affidavit of Lelani Rivero, Operations Manager of Unicorn, dated 17<sup>th</sup> October, 2014, the evidence is clear that the acts of the State Team closed down the business of Unicorn. Paragraphs 15 to 26 of that affidavit describe in detail the events which unfolded as follows:

*"15. About five minutes after I heard the commotion, an unidentified man in casual clothing walked into our back office and I got up from my desk to ask him who he was. He demanded that we move away from our computers and do not delete anything. At this time I was confused.*

*16. A few minutes later, five other people came in like a swat team, into our back office and one of them said that they had a warrant to search and seize all our computers and documents. I then asked one of the persons 'who he is' and he said 'Superintendent Romero'. My co-worker Maria Lara then asked Superintendent Romero if we could see the warrant and he replied 'no he will read it to us'. He then started to read the warrant to Maria, Loreth and I. The rest of the staff was at the front desk at this time. Whilst the Superintendent was reading the statement the rest of the staff came to the back office where we were. After he read the statement they took away our cell phones and told us*

*we were not allowed to make any calls. Maria then asked Superintendent Romero 'if we could call our lawyer to come to our office and represent us' and he said 'yes'. I then called our lawyer.*

*17. A few minutes later we asked if we could call our boss and they told us we were only entitled to one call. I then asked Superintendent Romero if 'we were arrested' and he said 'no'. At the time there was a female who I presumed to be an officer, and who was taking pictures of our office and was removing documents out of my drawer and putting them on my desk. They put all our staff to sit in the middle of the back office while they went to each office and packed up all our documents and computer into boxes. They also called each staff member to stand at their desk while they packed up our items as well as went through our purses.*

*18. At no time did the persons who attended at our office conduct a search of our computers or of the documents housed at our office. The persons including Superintendent Romero seized all documents, packed up everything in boxes inclusive of our multi-function photocopier and back-up equipment from our server room.*

*19. While this was happening an ADU officer called staff members one by one into another office and asked each of them questions. When it was my turn he asked me for my social security card and wrote down my name and asked me my position and how long I was working at Unicorn. They were there for like 3-4hours and it was the longest 3-4 hours in my life.*

*20. After they finished marking the boxes (and which was done at our suggestion) the officers/persons proceeded to remove the boxes from the Claimant's office and transported them downstairs.*

*24. Since the seizure of the Claimant's office equipment and documentation, it has been unable to perform and carry out services for and on behalf of our clients.*

*25. So complete and sweeping was the seizure of items from the premises of the Claimant that some personal items and equipment owned by employees were also taken.*

*28. Our clients stock(s) are held with various brokerage houses in different jurisdictions. We are unable to contact our brokers for the purpose of providing them with instructions to trade as we have no telephone, email, or fax communications. We have not been in contact with our clients and brokers since the 9<sup>th</sup> September, 2014.*



*29. The events described above have already been devastating to the Claimant's business. In addition to the Claimant itself there have been frantic inquiries from clients. The employees have been and are traumatized. The Claimant's Bankers have reacted and have frozen accounts. The Claimant's Landlord not only closed the office premises and effectively barred the Claimant's employees from entry but proceeded to take down the Claimant's business sign. They proceeded to put them back up (possibly because of advice) but the office premises remain closed without any access by the Claimant."*

These are portions of the affidavit which in my view substantiate the Claimant's allegations that the acts of the State Team terminated their business and violated the Company's right to carry on its licensed business under Section 15 of the Constitution of Belize. Affidavits of Chinique Lewis, Back Office Manager of the Claimant Company and Keshawn Guzman, Receptionist, Maria Elisa Lara Controller, and Sade Ford, Trader, all speak to similar experiences at the time of the State Team's descent upon the Claimant's office.

28. I turn now to paragraphs 3 to 16 of the affidavit evidence of Superintendent Romero dated 30<sup>th</sup> January, 2015 filed on behalf of the Defendant:

*"3. At around 11:00 a.m. on September 9<sup>th</sup>, 2014, I received a call from Assistant Commissioner of Police Russell Blackett, who is the head of NCIB. He instructed me to arrange and make the necessary arrangements for and comprise four teams of police officers to carry out a search and seizure operation immediately.*

*4. I made the necessary arrangements and when the teams had been formed, ACP Blackett held a briefing at around 1:30 p.m. with the teams of officers who would be involved in the search and seizure operation. During the briefing he produced four original copies of a warrant, each identifying the locations of the companies where operations would be conducted.*

*5. The warrants were then shown to each officer of each team and they were asked to conduct searches. Each team had a representative from the Financial Intelligence Unit.*

*The teams were specifically instructed to seize all computers and documents from within the offices that were the objects of the operation.*

*6. The teams were dispatched- one to each of the four locations. Members of the team were mostly from the CIB and thus attired in plain clothing. As the key investigation and surveillance unit within the police force, officers attached to NCIB are required to perform their official duties in plain clothes. This modicum of dress was also observed because of the nature of the exercise to be carried out as we did not want to alert persons and preferred to keep the operation secret for effectiveness.*

*7. I accompanied one of the teams to the UNICORN office situate at Gordon House Coney Drive at approximately 2:00p.m. This team comprised of W. Cpl. Shaida McKenzie, P.C. Clement Usher, P.C. Brendon Lopez, Mr. Brian Flowers (IT Unit-Police Department and Mr. James Magdaleno from the Financial Intelligence Unit.*

*8. On arrival, I identified myself as a police officer- as Superintendent Romero. I then showed and read out the warrant to Maria Elisa Lara who mentioned that she was in charge of the office at that time.*

*9. She informed me that she wanted to call their attorney which she was immediately allowed to do.*

*10. We then informed the group that we were there to seize all office equipment and that they were to stop whatever they were doing to allow for this process.*

*11. Another officer was assigned to take the names and particulars of all persons present in the office, and he proceeded to do so on an individual basis. This was done for recording and reporting purposes as it is standard operating procedure.*

*12. Thereafter we proceeded to seize equipment, files and documents found in the office. The staff was cooperative during this process.*

*13. A representative from the office of Unicorn, Ms. Maria Lara, was allowed to oversee the search and seizure process.*

*14. The attorney, Mr. Yohhanseh Cave, arrived about forty minutes after the call was placed. I observed he spoke to the attorneys of FIU and members of the office staff.*

*15. All the items seized were then placed in boxes and taken to the FIU's office situate on Coney Drive, per instructions received from the Head, NCIB.*

*16. The entire exercise took about three and a half hours."*

29. I find that there is no substantial difference between these two affidavits filed on behalf of the Claimant and the Defendant respectively as to the factual description of events as they unfolded on September 9<sup>th</sup>, 2013 at the Claimant's offices on Coney Drive. The Claimant's license has been revoked, all its documents and equipment were seized by the State Team in an indiscriminate manner, contrary to the spirit of the MLAICA, and as a result the Claimant's business remains inoperative to date. I therefore find that the actions of the State Team violated the constitutional rights of the Claimant under section 15 of the Constitution.

**Issue No. 7**

30. **Whether the acts complained of contravene the Claimant's right to be protected from unlawful interference with its privacy, correspondence and unlawful attacks on its honour and reputation as provided for at Section 14 of the Constitution?**

**Whether the acts carried out by the relevant government authority were in contravention and violation of the Claimant's right to be protected from interference with the right to privacy, honor and good reputation?**

**Claimant's Submissions on Issue No. 7**

Mr. Young, SC, on behalf of the Claimant cites Section 14 of the Constitution as follows:

*“14.-(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. The private and family life, the home and the personal correspondence of every person shall be respected.*

*(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.”*

31. He cites the Canadian case of ***Thanh Long Vu v Her Majesty The Queen and AG of Ontario*** et. al. [2013] 3 R.C.S.657 The Appellant claimed searches and seizure conducted by the police violated his section 8 Charter rights where the police had found marijuana, two computers and cell phone on his premises. While the trial judge had held that the warrant did not establish reasonable grounds to believe that documents identifying the owners would be found in the residence and so the warrant could not authorize a search for them, The Court of Appeal held that the warrant had been properly authorized. It was however held that the police must obtain judicial authorization for a search before conducting it and an authorized search must be conducted in a reasonable manner, ensuring that the search is no more intrusive than is reasonably necessary to achieve its objective. The Court ruled that privacy interests implicated by computer searches are markedly different from those at stake in searches of receptacles such as cupboards and filing cabinets. The striking differences between computers and traditional receptacles call for distinctive treatment under section 8 of the Charter. Cromwell J said:

*“The question before us is whether this framework is appropriate for computer searches; in short, should our law of search and seizure treat a computer as if it were a filing cabinet or cupboard?”*

*2) In my view, it should not. Computers differ in important ways from the receptacles governed by the traditional framework and computer searches give rise to particular privacy concerns that are not sufficiently addressed by that approach. One cannot assume that a justice who has authorized the search of a place has taken into account the privacy interests that might be compromised by the search of any computers found within that place. This can only be assured, if as in my view, the computer search requires specific pre-authorization.”*

*“[21] Section 8 of the Charter- which gives everyone the right to be free of unreasonable searches and seizures seeks to strike an appropriate balance between the right to be free of state interference and the legitimate needs of law enforcement. In addition to the overriding requirement that a reasonable law must authorize the search, this balance is generally achieved in two main ways.*

*[22] First, the police must obtain judicial authorization for the search before they conduct it...*

*Second, the 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.”*

*“It is difficult to imagine a more intrusive invasion of privacy than the search of a person or home computer: Morelli, at para. 105; R v Cole 2012 SCC 53 [2012] 2 SCR 34 at para 3. Computers are a multifaceted instrumentality without precedent in our society.*

*41. First Computers store immense amounts of information, some of which, in the case of personal computers will touch the biographical core of personal information referred to in this court in R v Plant [1993]...”*

31. Finally Mr. Young, SC, relies on **Regina v Rao** [1984] Can LII 2184 (Ontario), where the Court of Appeal of Ontario, Canada reviewed the position on the powers of search at common law and also in various Commonwealth jurisdictions. He identified a difference in approach between (a) the powers to

search without a warrant persons and vehicles for dangerous drugs; and (b) the warrant requirement for the search of premises in many Commonwealth jurisdictions. Martin JA stated:

*“But in modern times the restrictions on search and seizure are perceived as protecting privacy interests rather than property interests. In addition to the fact that the mobility of persons and vehicles would, in most cases, make the requirement of a warrant impracticable, there is also a greater legitimate expectation of privacy with respect to dwellings and offices and other private premises than with respect to vehicles.”*

*“The legitimate expectation of privacy of one’s home or office is one of the most valued rights of the individual afforded protection by democratic society.”*

32. Mr. Young, SC, argues that these cases amply demonstrate the resolve of the Courts to ensure that the protection of the citizen from arbitrary and oppressive search is guarded and realized. They underscore the double barreled approach of the Courts in carrying out this resolve: (a) legislation that contravenes or crosses the protection line enshrined by the Constitution will be declared invalid to the extent of the contravention or inconsistency; (b) even where the powers of entry and search are conferred by statute or law that is harmonious with the Constitution (and therefore lawful) the organs or agents exercise their powers in an unreasonable or excessive manner. The actions of the State in the case at bar infringed upon the Claimant’s right to privacy which has caused damage to its reputation and goodwill.

**Defendant's Submissions on Issue No. 7**

33. Ms. Jackson on behalf of the Defendant says that the Claimant's rights to privacy under section 14(1) of the Constitution was not infringed as the search and seizure were carried out in conformity with the relevant legal framework in the interest of defence and public safety, the prevention and/or detection of serious crime, safeguarding the economy and to give effect to treaty obligations and more importantly domestic law. She cites Margaret DeMerieux in "*Fundamental Rights in the Caribbean Commonwealth Constitutions*" as follows:

*"Section 14(2) limits the first subsection by reference to section 9(2). The latter states the limitations on the right not to be searched and includes the usual restraints- laws and action on laws reasonably required in the interest of public order, public health, and defence. Additionally, there is the widely conceived restraint of laws required for protecting the rights or freedoms of other persons; laws authorizing entry and search for specified purposes and those permitting search of a person's property for enforcing the judgment or orders of a court. The reference back to section 9(2) points to the fact that the protection against search of the person or property, bears some relation to the idea of privacy, at least as freedom from physical intrusion. This aspect of privacy, however, falls far short of a general notion of privacy as a particular perception of liberty or individual autonomy."*

*"The striking feature of West Indian clauses is that they seek not to set out the limits of a constitutional search but focus instead on the stating and therefore the furthering of governmental goals which may validate a search. Thus the negative formulation of the right in the first subsection coupled with the widely phrased limitations subsection effectively empower the State to search and in extremely wide terms."*

34. Ms. Jackson submits that interference with the right of privacy has been deemed an intervention by the State through law or action creating or imposing legal effects on an individual. Hence any claim that there has been such interference amounts to an assertion that the state has acted *ultra vires*. It is noteworthy that

Belize is one of the two only States that confers the specific right to privacy and respect for private and family life and as such it is expressly guaranteed. It is accepted that the prohibition against search of an individual, his person, property and premises is the most obvious example of protection of the right of privacy, without more.

**Decision on Issue No. 7**

35. I agree with the Claimant that its right to privacy under the Constitution were violated by the actions of the State Team. I think Mr. Young, SC, in his submissions in Reply put the matter quite eloquently and most accurately in my view as follows:

*“The objectives (of the MLAT and the MLAICA) are understood and even laudable. But the undertaking of a Treaty obligation does not (at least) of itself clothe otherwise unconstitutional acts with legal authority., Putting it another way in examining, signing unto and ratifying treaties, the State needs to ensure that it is not crossing the Belize Constitutional Rubicon, particularly in relation to the fundamental rights and freedoms of its citizens and residents guaranteed by the Constitution. This restrictive boundary extends to the National Assembly in passing laws to implement the treaty. Where the law is inconsistent with the Constitution in a challenge by a victim, it cannot be saved by the treaty.”*

While I have declined to pronounce on the constitutionality of MLAICA in the case at bar, I have already found that the acts of the State Team were not compliant with the section 18 of MLAICA. The facts are clear and the evidence is incontrovertible that the Acts of the State were therefore unlawful in interfering and invading the privacy of the Claimant.



36. On Issue No. 8 regarding restitution raised by the Defence, this was not addressed at all by the Claimant, and was addressed only in passing by the Defendant saying that such restitution of the licence is not within the purview of their department. I therefore will not render any decision on that issue.

37. Judgment is in favor of the Claimant. I grant the Claimant the relief sought as follows:

(a) A Declaration that the acts carried out by the State were in contravention and violation of the Claimant's right to protection from arbitrary search and entry;

(b) A Declaration that the acts carried out by the State were in contravention and violation of the Claimant's right to protection from deprivation of property.

(c) A Declaration that the acts carried out by the State were in contravention and violation of the Claimant's right to be protected from interference with his right to engage in trade or business.

(d) A Declaration that the acts carried out by the State were in contravention and violation of the Claimant's right to protection from interference with the right to privacy, honour and good reputation;

(e) Damages to be assessed at a separate hearing;

(g) Return of the documents, computers, equipment, money and things seized by the State Team.

Costs awarded to the Claimant to be paid by the Defendant to be taxed or agreed.

*Dated this Friday, 15th day of April, 2016*

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**Michelle Arana**  
**Supreme Court Judge**