

COURT OF APPEAL

CANADA
PROVINCE OF QUEBEC
REGISTRY OF MONTREAL

No: 500-09-029034-204
(500-17-112282-200)

MINUTES OF HEARING

DATE: September 3, 2020

THE HONOURABLE ROBERT M. MAINVILLE, J.A.

APPLICANT	COUNSEL
TIBIT LIMITED	Mtre BOGDAN CATANU Mtre CHRISTOPHER MAUGHAN Mtre EMILIE STE-PIERRE (<i>Woods</i>) By videoconference
RESPONDENT	COUNSEL
THE FEDERAL REPUBLIC OF NIGERIA	Mtre LEON MOUBAYED Mtre PIERRE LANTOIN Mtre GEORGE POLLACK (<i>Davies Ward Phillips & Vineberg</i>) By videoconference
IMPLEADED PARTIES	COUNSEL
GIUSEPPINA RUSSA	Mtre AUDREY BOCTOR (<i>IMK</i>) By videoconference
INNOTECH EXECAIRE	Mtre SOFIA LOPEZ BANCALARI (<i>Norton Rose Fulbright Canada</i>) Absent

AÉROPORTS DE MONTRÉAL TRANSPORTS DE MONTRÉAL NAV CANADA	ABSENT AND UNREPRESENTED
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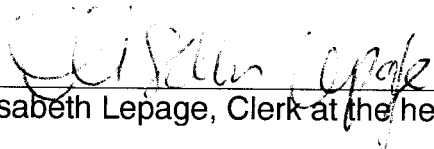
DESCRIPTION: **Application for leave to appeal from a judgment rendered in the course of the proceeding on August 4 2020 by the Honourable Martin Castonguay of the Superior Court, District of Montréal. (Art. 9, 18, 19, 30 par. 2 (7), 31 and 357 C.p.c.)**

Clerk at the hearing : Elisabeth Lepage

Courtroom: RC-18

HEARING

9:31	Commencement of the hearing. Identification of counsel.
9:33	Mtre Boctor advise that she does not intend to make any submissions. Submissions by Mtre Catanu.
9:48	Discussion between the Court and Mtre Catanu.
10:35	Discussion between the Court and Mtre Moubayed.
10:38	Submissions by Mtre Moubayed.
10:39	Discussion between the Court and Mtre Moubayed.
11:08	Reply by Mtre Catanu.
11:13	BY THE JUDGE: Judgment – see page 4.
11:14	Conclusion of the hearing.


Elisabeth Lepage, Clerk at the hearing

JUDGMENT

[1] The Applicant is seeking leave to appeal the judgment dated August 4, 2020 rendered by the Honourable Mr. Justice Martin Castonguay of the Superior Court, District of Montreal, dismissing its application to quash a seizure before judgement of a Bombardier Global 6000 jet aircraft registered in its name with the Isle of Man Aircraft Registry.

[2] The seizure before judgment of the aircraft was authorized on May 30, 2020 at the request of the Federal Republic of Nigeria ("FRN") on the principal ground that its true beneficial owner is Chief Dausia (Daniel) Loya Etete ("Etete"), a former minister of petroleum for the FRN. Etete is alleged to have transferred valuable petroleum assets for his personal benefit in a series of fraudulent and corrupt transactions carried out in breach of his duties as a minister (the "Malabu Scheme"). The FRN further alleges that Etete purchased the aircraft with his illicit gains from the Malabu Scheme and through various intermediaries. Etete is also alleged to hold and operate the aircraft through the Applicant. In short, the FRN asserts that the Applicant serves as a front for Etete with respect to the ownership and operation of the aircraft.

[3] The seizure was challenged before Castonguay, J.S.C. on the sole basis of the insufficiency of the allegations. On the contrary, Castonguay, J.S.C. found the allegations in the affidavits to be amply sufficient.

[4] Though the Applicant raises various specious arguments with respect to various errors of law which Castonguay, J.S.C. is alleged to have committed in his judgment, in essence it seeks to have this Court review anew the allegations in the affidavits in order to reach a different conclusion. With respect, the allegations in the affidavits are detailed, clear, cogent and convincing on all aspects, including with respect to FRN's reasonable fears that its claims may be jeopardized without the seizure.

[5] The affidavit of May 29, 2020 in support of the seizure before judgment was sworn by Babatunde Olabode Johnson ("Johnson"), a Nigerian lawyer mandated by the FRN to identify and manage claims on its behalf for the recovery of the proceeds of corruption by Nigerian politically exposed persons, including Etete. That affidavit incorporates another affidavit sworn by Johnson on May 20, 2020 in support of proceedings in the Virgin Islands which resulted in a Proprietary Freezing Injunction being issued on May 27, 2020 against the Applicant by the High Court of Justice of the Virgin Islands.

[6] These affidavits contain detailed information about Etete's fraudulent and corrupt activities, the purchase of the aircraft by Etete and the circumstances in which the Applicant came to hold and operate the aircraft as a front for Etete. The affidavits are supported by numerous documents, including detailed references to European disputes

and judgments pertaining to Etete's corrupt activities and FBI reports concerning his money laundering activities.

[7] The affidavits also contain detailed information explaining how Etete channelled monies through various intermediaries in order to purchase the aircraft and how the Applicant eventually came to hold the aircraft as a front for Etete. The affidavits also set out the reasons why the FRN reasonably fears that the recovery of the aircraft may be jeopardized without the seizure:

149. It is clear from the facts and matters that I have detailed herein that the FRN is the victim of egregious corruption and fraud. The Malabu Scheme involved a series of proxies and enablers which helped Etete launder his ill-gotten gains. Most of those monies have been secreted away. The lure of huge sums has allegedly corrupted two of the largest international oil companies in the world; a global bank (who, the FRN alleged, 'turned a blind eye' to the obvious); an ex-Bombardier sales representative; several service providers and numerous luxury retailers. Those parties, at the very least, seemingly did not trouble themselves to check who or what Rocky Top was, and some of them may not have needed to inquire thanks to the role played by IATS, which offered a veneer of legitimacy.

150. Although the general lack of due diligence, in this case, is lamentable, what is clear from my investigations into this transaction is that there were several 'professional frontmen' who traded on their ability to hide assets. Borgas is a dishonest enabler, and Ickonga, his codirector, was shrewd enough to take Tibit's records to Brazzaville to block any attempt to have them disclosed by order of this court. When Borgas stepped down as a director of Tibit, Etete found Russa, another proxy, to step in.

151. I am unaware of Etete's, Borgas' and Ickonga's whereabouts and I do not know if Russa is still at the address recorded by Mossack Fonseca. I have reminded myself of how Tibit acquired the Jet, *i.e.* by 'swapping out' its directors and shareholders via Swiss nominees. Because of the confidential nature of this jurisdiction, any rearrangement of ownership or control is not a matter of publicly accessible record, and FRN will not know if Tibit's shares (or the Jet) have been transferred or pledged in a way that prevents a successful recovery in this case. Even if the Aircraft Registry details are updated to reflect the change of ownership, that will only come to light after the event of a sale.

152. I am concerned that if Tibit were to sell the Jet, or to approve a transfer of its own shares to a third party purchaser of the Jet, that sale would be structured in a way that puts the proceeds out of reach. The evidence in this case plainly shows that Etete has a loyal group of professional money launderers and enablers at his disposal who have assisted in the implementation of a strategy across multiple jurisdictions to shield his and his ill-gotten assets from claims made by FRN. It seems inherently likely that Tibit itself does not have a bank account and that the proceeds of any sale of the Jet will be dissipated through an escrow agent such as IATS, and will be potentially untraceable.

[8] Since the veracity of all these allegations has not been challenged, the appeal on the sole question of their insufficiency presents no reasonable chance of success.

FOR THESE REASONS, THE UNDERSIGNED:

[9] **DIMISSES** the application and **DENIES** leave to appeal the judgment of August 4, 2020, with legal costs.



ROBERT M. MAINVILLE, J.A.