

A IN THE CENTRAL CRIMINAL COURT

T19971547

Old Bailey
London
EC4M 7EH

B Tuesday, 19th March 2002

C Before:

HIS HONOUR JUDGE GORDON

D R E G I N A

-v-

JOHN PALMER

E MR D MATTHEW appeared on behalf of the Prosecution

MR A DOS SANTOS appeared on behalf of the Defendant

F PROCEEDINGS

G Computerised transcript of Smith Bernal Reporting Ltd
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PROCEEDINGS

JUDGE GORDON: Yes Mr Dos Santos.

MR DOS SANTOS: May it please your Lordship, I appear on behalf of the defence, my learned friend Mr Matthew on behalf of the Crown.

JUDGE GORDON: Yes.

MR DOS SANTOS: This is a defence mention, which has a twofold purpose. The first relates to updating the Court effectively as to the position in relation to Mr Palmer's appeal against conviction. There has been correspondence between the court and the Court of Appeal so your Lordship may have some knowledge as to where we stand at the moment. Can I bring your Lordship up to date?

JUDGE GORDON: Yes.

MR DOS SANTOS: As we stand, the Court of Appeal has now given a date on 9th April for a hearing in relation to -- I see your Lordship's expression. It has been certified on an urgent basis in relation to an issue to do with the indictment.

JUDGE GORDON: Yes.

MR DOS SANTOS: But certainly that is going before a full court, three Lord Justices of Appeal. That matter should be the substantive hearing on that point.

A JUDGE GORDON: But it is only on one point?

B MR DOS SANTOS: On that point. Following that one of two
things could happen if unsuccessful. The first is that
the matter is adjourned and on a later date a further
matter is being raised and the grounds are going to be
heard.

C JUDGE GORDON: As far as the other matters are concerned,
has leave been given for those or is it just the one
point?

D MR DOS SANTOS: In effect, my Lord, leave has not
technically been given, it has been certified to go to
the court in what will effectively be a leave hearing
and a substantive appeal on that one point.

JUDGE GORDON: I see, I am with you.

E MR DOS SANTOS: I believe at that point the court will
consider leave in relation to the other matters.

JUDGE GORDON: I see.

F MR DOS SANTOS: If unsuccessful in that there is
a possibility matters may go higher to the House of
Lords or not on an interim basis. We know not yet but
it was felt important by the defence to let your
G Lordship know at this stage where we stand because that
can possibly have a consequential effect on the
pending --

H JUDGE GORDON: I was hoping to be able to say to you that I

A have no intention of reading anything further until I
knew the outcome of that hearing because clearly with
one outcome there will be no confiscation hearing but it
seems to me that that is just too close.

B MR DOS SANTOS: It is very close, your Lordship, and that is
why one of the things we have hoped to suggest today.

JUDGE GORDON: I am grateful to you.

C MR DOS SANTOS: We have a fixture, a long standing fixture
now for 15th April for five days. One possibility is
that the confiscation hearing -- this would be our
D application -- be adjourned but a mention be listed for
15th April whereby once we know the outcome of 9th April
for the Court of Appeal, once we have a clearer picture
as to what the status of the case is, we can then review
E whether or not it would be sensible to have the
confiscation hearing as soon as possible thereafter to
avoid the matter going off for a year or two as
F sometimes matters can happen on appeal or whether in
fact it might more prudent to effectively stay the
matter pending the outcome of the full appeal.

G JUDGE GORDON: I have already heard submissions on the
general principle as to whether I should conduct
a confiscation hearing bearing in mind that there was an
H appeal and as a matter of principle, particularly in the
light of the time that has already past, I have decided

A that I should. The only new matter appears to be the
9th April hearing and whether or not I ought to make any
changes in the light of that.

B MR DOS SANTOS: May I mention one other point, which your
Lordship may not be aware of. As well as listing the
matter for the urgent hearing for the Court of Appeal,
C Registrar McKenzie has also certified the matter for an
urgent bail application as well on that occasion
depending on what happens.

JUDGE GORDON: Yes.

D MR DOS SANTOS: The matter is being taken obviously very
seriously by the Court of Appeal. Registrar McKenzie
has suggested that it would be sensible to adjourn the
confiscation hearing, so that of course in no way --

E JUDGE GORDON: I imagine that he has only suggested that no
confiscation hearing should take place before the
9th April hearing.

F MR DOS SANTOS: Certainly. As I understand it though he
said the confiscation ought to be adjourned pending the
outcome of the appeal. Now of course that could be
9th April, it could be at a later date if we are
G unsuccessful at that point.

H JUDGE GORDON: Yes. The only new matter seems to be the
issue which has arisen which is the subject matter of
the 9th April hearing. Clearly had there been

A a substantive confiscation hearing fixed for before then
I would have adjourned it but there is not. The only
question is whether it is too tight and I will hear both
B sides on that.

C MR DOS SANTOS: There is one other possibility, my Lord.
What could happen is that the fixture remains as it is
for the 15th, however a further mention be listed for
the 12th, which is the Friday, whereby at least this
court could be updated as to the position in relation to
the appeal. At that point the matter would be vacated
rather than coming to court for the confiscation on the
D 15th and then raising the matter.

E JUDGE GORDON: Clearly if something occurs on or after, if
it goes over a day, the 9th which in effect negatives or
in some way makes impossible a confiscation hearing, I
entirely agree it would be appalling if there were
nevertheless listed.

F MR DOS SANTOS: If I can say this my Lord, this mention is
twofold and the other matter does relate to the
confiscation but it may be more sensible if I allow my
learned friend a chance to respond on this point.

G JUDGE GORDON: Well yes, it would be sensible.

H MR DOS SANTOS: If I just say this because I can conclude
this matter by saying clearly on an appeal that may
render the matter a nullity by the virtue of the nature

A of the appeal, our first application is that the 15th be
vacated and listed for mention on the 15th. If your
B Lordship is not with us on that, then perhaps just a
mention on Thursday or Friday before that to review
C matters.

JUDGE GORDON: Yes. All right. Well Mr Matthew, what do
D the Crown say about the matters that Mr Dos Santos has
E raised so far?

MR MATTHEW: The Crown say there is no need for the current
F fixture for the confiscation hearing to be taken out of
G the list. The appeal is plainly going to go ahead on
H this one point on 9th April, the week before, and if
that is purely successful plainly the confiscation
hearing will not take place.

JUDGE GORDON: Yes.

MR MATTHEW: It is however a short and discrete point and it
may well be that we find ourselves still able to proceed
on 15th April with the confiscation proceedings.

JUDGE GORDON: Yes.

MR MATTHEW: It is not for me to foresee the subtlety of
Mr Kelson's argument or indeed try and outguess --

JUDGE GORDON: I hope it is because you will obviously be
appearing, or rather --

MR MATTHEW: I think Mr Farrow is --

JUDGE GORDON: I am sure Mr Farrow will do that. Are you

A not going to be there?

MR MATTHEW: I am not absolutely certain. Certainly we will

undertake to inform the Court forthwith of the result.

B As I understand it, it is a point the defence have

raised that the Court apparently cannot find a signed

indictment. I have been provided, just after we came

C into court, with a copy of the transcript of

26th May 2000 proceedings where it seems fairly clear

that what the prosecution did was amend the original

signed indictment and I do not want to --

D JUDGE GORDON: It is not for me to comment on any point of

appeal but there are two possibilities, are there not.

One is that there was not a signed indictment in respect
E of the second trial. If that is so then either the

Crown concede the point or in the light of certainly one

or two fairly recent authorities they say that it no

F longer matters in the way it used to. I can see in

those circumstances it might well be that the defence

would, if they were unsuccessful, want to take the

matter higher because it is a development. That is one

possibility.

G If indeed the trial took place on the original

signed indictment and if the Court finds that, I cannot

see that that would give rise to an issue that the House

H of Lords would entertain for a moment because it is

just a matter of fact.

MR MATTHEW: Yes.

JUDGE GORDON: Can you see it taking more than a day?

MR MATTHEW: No.

JUDGE GORDON: The Court of Appeal I mean.

MR DOS SANTOS: I would be astounded if it took more than two days but certainly a day I would suggest would be --

JUDGE GORDON: It depends, does it not, on what factual basis is established.

MR DOS SANTOS: Largely yes that is right.

JUDGE GORDON: I can see that if it is a question of arguing whether the need for a signed indictment has gone and is to be treated as a technicality and not rendering a conviction unsafe, I can see that might merit some length of argument but if it is a purely factual matter, if the Crown contend that the trial took place on the original indictment, which I understand it everybody agrees was signed, indeed there are plenty of photocopies of it signed.

MR DOS SANTOS: Yes well that is not the defence position, without meaning to rehearse the arguments what I will say, my Lord, is this: it seems to me there will be a two-stage process. Firstly obviously a factual consideration by the Court and once that has been established whatever legal issues arise from that --

A JUDGE GORDON: Yes.

MR DOS SANTOS: -- and the authorities your Lordship is referring to leave some scope for legal argument none the less.

B JUDGE GORDON: Yes, if the factual position is as you outlined it. In any event all I think I need to know is that -- what day of the week is the 9th?

C MR DOS SANTOS: Tuesday.

MR MATTHEW: It is a Tuesday, my Lord.

JUDGE GORDON: So you reckon worst case scenario would be argument finished by the Wednesday?

D MR DOS SANTOS: Yes.

JUDGE GORDON: I suppose it might well be if it turns on the law side of it as opposed to the factual side one has to accept the possibility that the Court might want to reserve judgment.

E MR MATTHEW: Yes.

F MR DOS SANTOS: In which case if I may continue it may be sensible in that case to notify this court and it may be the matter has to be taken out of the list.

G JUDGE GORDON: I do not think it would be sensible to have a confiscation hearing if on this one point the Court of Appeal had reserved judgment and it was a matter of one day.

H MR MATTHEW: I can see the force of that.

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JUDGE GORDON: I rather hoped it was going to take place earlier than that.

MR MATTHEW: Yes.

MR DOS SANTOS: As had we all.

JUDGE GORDON: Well there it is.

MR MATTHEW: I suppose concluding the Crown's submission is that the only sensible way of proceeding is to proceed as if we were likely to be unaffected because there will be time, I think, to react if the Court of Appeal either reserves or.

JUDGE GORDON: Yes. I think the thing to do would actually rather than the Friday, Mr Dos Santos, to have a mention on the Thursday so to give you that much longer to stand down experts. We ought to know whether they have reserved, if so when to, and if they have not what the result is.

MR MATTHEW: Yes.

MR DOS SANTOS: The worst case scenario possibly if we did end up overrunning until the Thursday we would certainly communicate with the court and relist it for Friday.

JUDGE GORDON: Yes. I think what I will do is to say that unless it is cancelled by agreement, mention on the Thursday, which is?

MR MATTHEW: 11th, my Lord.

JUDGE GORDON: 11th thank you. Right, otherwise I propose

A to leave the 15th because if I take it out it is then going to slip months.

MR DOS SANTOS: If I may turn on to my second point.

JUDGE GORDON: Yes.

B MR DOS SANTOS: It relates to the actual confiscation hearing itself. The matters are proceeding on both sides as I understand it. There are two things I wish to raise. The first is my learned friend Mr Matthew has suggested a timetable providing we were still to retain the 15th, starting Monday, legal argument; the Tuesday, statistical and survey evidence; the Wednesday, accountancy evidence and the Thursday, submissions. From the respect of the defence it would seem eminently sensible.

C MR MATTHEW: I wrote to the court.

D JUDGE GORDON: I have it, thank you. My only query -- and I am not really in a position to have much input on timings -- the legal argument I take it is to what you described as the preliminary point.

E MR DOS SANTOS: Certainly.

F JUDGE GORDON: Is that a day?

G MR MATTHEW: I can see it being a short day.

JUDGE GORDON: Yes.

H MR MATTHEW: The reason I think Mr Kelson and I thought in the way I have set out is that legal argument can

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sometimes take longer than one anticipates.

JUDGE GORDON: Yes.

MR MATTHEW: We are deep in the throes of the European Court's jurisdiction.

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JUDGE GORDON: I see.

MR MATTHEW: I think we also have in mind that even if we ask experts to return not before 2, if one is then trickling over to 3.30.

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JUDGE GORDON: Yes. You both agree that timetable, do you?

MR DOS SANTOS: Yes, that was agreed.

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JUDGE GORDON: Right in that case I have no problem with the fact that it means moving prosecution, defence, back to prosecution, if that is the easiest way of doing it.

MR DOS SANTOS: Issue by issue must be.

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JUDGE GORDON: I am sure that is right.

MR DOS SANTOS: Which leave us with a potential problem and it relates to this, certainly through -- as is anticipated once having heard all the submissions and evidence your Lordship will rule as to benefit.

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JUDGE GORDON: Yes.

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MR DOS SANTOS: Then there will be an issue as to realisable assets.

JUDGE GORDON: There will be a issue?

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MR DOS SANTOS: Well, there may be. I do not know your Lordship has received a letter from Albert Hope(?).

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JUDGE GORDON: I have seen it. I have not got it. I am not quite sure who took it back.

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MR DOS SANTOS: I can pass my copy for your Lordship to have a look at.

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JUDGE GORDON: Perhaps I should. I remember that you raised this. I note that on the mention on 9th February what I said was that the defence were to comply with the Section 73A notice by 8th March unless within that period they had served -- you had served notice on the prosecution and the Court that you were not seeking to allege a permanent inability to pay any sum or sums ordered.

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MR DOS SANTOS: We are in slight difficulty with that because that may depend on the size of the order that is made.

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JUDGE GORDON: I can see that.

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MR DOS SANTOS: We have been trying for a few days now to arrange this mention, it seemed today was the most convenient time because we have overrun the 8th.

JUDGE GORDON: Yes.

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MR DOS SANTOS: The position is this: it may be depending on the size of the order that realisable assets may be determined at the conclusion of the substantive confiscation hearing but it may be there are serious problems. If there is a high order made, clearly once

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A word gets out and bearing in mind there is no effective order restricting the press reporting the figure, it could very well mean a diminution of realisable assets and the ability to pay could be affected by the size of the order and what happens there. We can produce some figures for the court in relation to what Mr Palmer may be able to realise but the difficulty is depending on how big the order is it may alter the nature of the exercise in terms of assessing Mr Palmer's ability to pay.

It sounds very vague but when one considers the amounts that are concerned and the nature of the assets it could very well be a problem. The reason why it is being mentioned now is that one would not want Mr Palmer to suffer from any inferences because this matter was not raised. What we would ask is that the benefit and realisable assets be split into two parts. Out of preference the realisable assets being heard on another day before the benefits being determined, at the very least putting the court on notice that we may make an application at the end of determining the benefit to then go off to another date so that we can complete the exercise of assessing realisable assets.

JUDGE GORDON: Yes.

MR DOS SANTOS: Rather than any further hearings in the High

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Court and trying to amend the order thereafter if problems are found it would be far more sensible and also in terms of the cost to Mr Palmer of the exercise.

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JUDGE GORDON: What sort of period of delay are you talking about then?

MR DOS SANTOS: I should expect --

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JUDGE GORDON: Again I suppose it depends on the size of the order.

D

MR DOS SANTOS: It does, it is very difficult to assess. I should not imagine it would probably take more than two months after that for our expert to complete at the worst. It may be a much shorter time. It is difficult for me to assess, it is a matter really which is out of my hands and really a matter for the expert.

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JUDGE GORDON: Yes.

MR DOS SANTOS: But it is an important that once an order is made it is an order which can be satisfied.

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JUDGE GORDON: Yes.

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MR DOS SANTOS: But without putting Mr Palmer in jeopardy. Again if I can leave it with a twofold application. The first is that the matter do be split into two, the second part not necessarily being fixed now so it is accepted by the Court there will be a second hearing in relation to realisable assets or the Court keep the position fluid until the conclusion of determining

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A benefits.

JUDGE GORDON: I can see where there is such a wide window
for decision as it were between the minimum sum put
forward and the maximum sum put forward, and it is
B massive the difference.

MR MATTHEW: Yes it is.

JUDGE GORDON: I can see on the face of it some force from
C the point of view of both sides in giving people the
opportunity for thought after a ruling as to where
within that window I come down because the exercises are
so different, or potentially so different.

MR MATTHEW: Yes. I think on the whole the Crown's position
D though is that we would oppose the application. We are
now 6 months on into this operation, this must have been
E foreseen some considerable time ago. We have very
recently been served with Dr Reubens' report which
says -- I mean it is the accountancy report, Mr Reubens'
F report -- which I think gives assets of 76 million on
his calculations. We had Mr Meegan Queen's Counsel
saying, I think it was in December, that he assured the
G Court that he was being paid outside the £40 million
which was restrained in the High Court.

JUDGE GORDON: Yes.

MR MATTHEW: I remember Mr Palmer very easily making a bail
H application saying he was about to invest £30 million in

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a restaurant development.

JUDGE GORDON: I seem to recall him agreeing with the valuation in cross-examination in the first trial from the Sunday Times.

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MR MATTHEW: Of the Sunday Times Rich List. As it happens it is one of the very few transcripts the Crown does have and I think he modestly said he was certainly a wealthy man but it was not fair to commit himself quite as --

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JUDGE GORDON: Was he not.

D

MR MATTHEW: We notice from Mr Ruebens' report that there has already been a sale by Mr Palmer of some of these assets. I think he says he has sold the Harleys restaurants and really we are against any sort of delay. This is something that should have been foreseen a very, very long time ago. It is really not right that the defence should now be making these very late applications to start making split hearings.

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JUDGE GORDON: Mr Dos Santos, are you able to help me at all as to the sort of level above which you were going to need further time to see whether a figure is realisable?

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MR DOS SANTOS: Well to do so I think I would be going out on a limb, not being an expert in these matters myself. Can I take instructions for one moment please?

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JUDGE GORDON: Yes.

A MR DOS SANTOS: Can I say, my Lord, I would rather not offer
figures at this stage. If I can just come back at one
B thing. Certainly I know there has been a matter when
Mr Palmer -- it was put to him that he was a very
wealthy man, whatever bravado, boasts may be made at the
time, whatever may appear to be borrowing money or money
C being invested into more property or (inaudible), not
necessarily his own money. There is always a big
difference between assets he has and assets he can
realise.

D JUDGE GORDON: I follow that but you are operating against
the background that I have lifted the corporate veil.

E MR DOS SANTOS: Certainly but the nature of the corporate
veil, all supposed to come up on things to do with
timeshares and by the very nature of that industry one
can have virtually worthless assets if it comes to
an issue of coming to realise them.

F JUDGE GORDON: Yes.

G MR DOS SANTOS: I am in difficulty not being an accountant
myself. What I can say is this, it may be that when
a benefit figure is made we can proceed there and then.
At this stage I cannot say. I appreciate that it is
later late in the day, however it is the nature of the
exercise that makes it difficult and we have been racing
H against time to prepare the accountant's report which

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was served by the last mention and with our accountant making further investigations into this precise aspect.

It produced this letter dated 7th March.

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JUDGE GORDON: Can I have a look at it at this stage just to refresh my memory. (Handed)

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MR DOS SANTOS: Certainly what I am advocating is prudence to avoid the situation where there are severe difficulties and at the end of the day Mr Palmer should not be prejudiced by that. (Pause)

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JUDGE GORDON: I am not sure this is a letter that I have seen. I have seen the one from your solicitors.

MR DOS SANTOS: I had shown my learned friend beforehand. (Pause)

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JUDGE GORDON: Yes.

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MR DOS SANTOS: Your Lordship could make a ruling that in principle the confiscation be dealt with in two parts and the second part may be adjourned depending on the size of the order to allow further investigation. It does not necessarily mean that there would necessarily be a further date but certainly it guards against to find ourselves in a position whereby by virtue of the size of the order there could be very more difficulty. It must be in the Crown's interest in my submission as well to at least have an order which can be satisfied without having to take recourse to the courts further

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beyond that hearing.

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JUDGE GORDON: I think Mr Dos Santos in view of the fact that the matter that I am being asked to decide varies as it were on the best case scenario from your point of view to a comparatively small sum to on the Crown's highest scenario a massive amount, it is very difficult and I accept this for either side really to turn their minds sensibly to the issue of realisation. Therefore without finally deciding the matter what I will say is that I am likely to look favourably on an application for a comparatively short period of adjournment to enable the question of realisation to be properly put and to enable the Crown to have a proper opportunity of considering and dealing with it. I deal with it as a matter of principle only because it may depend on what I order.

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MR DOS SANTOS: I am grateful.

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MR MATTHEW: I think that leaves as it were hanging in the air the Crown's Section 73A request.

JUDGE GORDON: Yes it does.

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MR MATTHEW: Because I think your Lordship's order was a reply some time around now.

JUDGE GORDON: 8th March.

MR MATTHEW: I think 8th March was notice.

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JUDGE GORDON: It was response.

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MR MATTHEW: Yes I think it was.

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JUDGE GORDON: You served the notice at the time. What I said was the defence were to comply with the Section 73A notice by 8th March unless by then they had served a notice saying they were not seeking to --

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MR MATTHEW: Yes I agree.

JUDGE GORDON: The answer is at present they may be.

MR MATTHEW: Yes.

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JUDGE GORDON: That is why I say the reason for the adjournment would be to enable the defence to properly prepare their case and the Crown to answer it. I cannot sensibly order the Section 73A information to be provided until the defence evidence or material on that is complete and it seems to me that if such an application is made ie --

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MR MATTHEW: Yes.

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JUDGE GORDON: -- if the issue remains live that at the conclusion of hearing I should then deal with the Section 73A notice though as Mr Dos Santos I think accepts we are talking about a period of a month, perhaps two, we are not talking about a long period. So I do not think it would be appropriate for me to deal with the Section 73A at the moment.

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MR MATTHEW: So be it.

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MR DOS SANTOS: Those are all the matters the defence wish

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to raise my Lord.

JUDGE GORDON: Anything in addition that the Crown wish?

MR MATTHEW: No thank you, my Lord.

MR DOS SANTOS: Could I just ask for return of the letter.

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JUDGE GORDON: Yes it is here. (Handed)

(The Court adjourned)

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We hereby certify that the above is an accurate and complete record of the proceedings or part thereof. Signed on behalf of SMITH BERNAL REPORTING Ltd.

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