

SUPREMECOURT OF SEYCHELLES

Reportable 559
[2019] SCSC ...
MA279/2018
Arising in MC 62/2016/2016)

In the matter between

1.RADOMIR PRUS

2.SANDRA PRUS (NÉE WILCZOK)

3.EXCELSIOR DREAMS

4.FREE SUN LIMITED
(rep. By Tamara Christen)

Applicants

and

FINANCIAL INTELLIGENCE UNIT
(rep. By Ananth Subramanian)

Respondent

Neutral Citation: *Prus & Ors v Financial Intelligence Unit Ors* MA279/2018 Arising in MC 62/2016/2016) [9SCSC 8 July 2019].

Before: Twomey CJ

Summary: application to set aside interlocutory order by which Applicants assets had been forfeited and a receiver appointed to receive the property- order made on incorrect information provided to court- applicant's evidence countering belief evidence of respondents not relevant to showing legitimate source of funds used to purchase forfeited property

Delivered: 8 July 2019

ORDER

The application is dismissed with costs.

RULING

TWOMEY CJ

[1] On the 15 November 2017, this court granted orders pursuant to sections 4 and 8 of the Proceeds of Crime (Civil Confiscation) Act (hereinafter POCA) prohibiting the

Applicants or any person having notice of the orders from disposing or otherwise dealing with properties they were in control of, namely Maison 72 at Eden Island, Mahé, Seychelles and motor vessel Dream Angel registered in Seychelles and appointed Jan Celliers of the Financial Investigation Unit to receive the said properties.

- [2] It did so on the belief evidence of Jan Celliers contained in an affidavit sworn on 28 June 2017 that the specified property constitutes directly or indirectly, benefit from criminal conduct, or was acquired in whole or in part with or in connection with property that is directly or indirectly constituted benefit from criminal conduct.
- [3] The criminal conduct in this matter was alleged subsidy fraud by the Applicants resulting in the detriment to the financial interests of the European Union of the equivalent of Euros 10, 2020, 449 and a further sum of the equivalent of Euros 1,800,432 to the detriment of the Czech Republic. The fraud involved part of the subsidy to be paid for new technology and machinery associated with waste management in the Czech Republic, Hungary and Poland for the benefit of a Czech group of companies Excelsior Group Ltd to be supplied by a UK company FPR Engineering Limited (a shell Company) being diverted to the Respondents in Seychelles. This further amounted to money laundering.
- [4] An international warrant was issued for the arrest of the First Applicant by the Czech authorities which was subsequently removed to allow him to travel back to face trial for the fraud offences in the Czech Republic.
- [5] The Applicants have now applied to have this order set aside on the basis of the First Applicant's affidavit evidence and supporting documentation that he is inter alia:
 - (1) *a respected and upstanding citizen of the Czech Republic, engaged in successful investments in technology, industry and science with a focus on innovation in the whole of Europe including a very successful PET recycling factory with the highest capacity in the European Union.*
 - (2) *A member of the International Human Rights Commission and serves on its supervisory board as an ambassador at large*

- (3) *The Honorary Consul of the Republic of Congo*
- (4) *A member of the subcommittee on science research and innovation of the "House of Commons" (sic) of the Czech Republic*
- (5) *Absolved of the charge of subsidy fraud as per judgment of the court dated 18 June 2015*
- (6) *Charged only because of corruption in the Czech government of Vaclav Klaus which conspired to extort him into making a settlement*
- (7) *Of clean criminal record*
- (8) *The inventor of a nano battery*

[6] In response to this application, the Respondent has countered in an affidavit sworn by Jan Celliers the head of the Financial Investigation Crime Unit (which has absorbed into the Assets Recovery Unit of the FIU) that there are no grounds or sufficient grounds set out by the Applicants to discharge the orders of the Court.

[7] He has deponed inter alia that:

- (1) *The contents of his affidavit of 28 June 2017 in which he outlined the subsidy fraud amounting to the criminal conduct of the Applicants resulting in the detriment to the European Union and the Czech Republic amount to money laundering in Seychelles*
- (2) *The Applicants have only relied on the affidavit of the First Applicant which has failed to establish that the specified property is not benefit from criminal conduct*
- (3) *The Applicants have to date not shown the source of the funds used to purchase the large motor vessel and the 1-million-dollar property on Eden Island*
- (4) *With respect to the documentation of Exhibit 8 A, it only shows that the warrants in respect of the First Applicant were cancelled only to allow the First Applicant to defend the charges against him and not to exonerate him of the charges*

(5) In respect of the charges, the case was referred by the court back to the authorities for further investigations which are still pending

(6) The clean record certificate only refers to the fact that there are presently no convictions entered against the First Applicant but does not account for the investigations pending against him.

[8] In this matter, the Court has been asked to determine whether its interlocutory orders prohibiting the disposal of the property should be set aside or varied because of the evidence now adduced by the Applicants.

[9] There are two grounds under which the Court can discharge and/or set aside an interlocutory order under Section 4(3) of POCCA. The first ground is if it is shown to the satisfaction of the Court that the property or any part of the property does not constitute directly or indirectly benefit from criminal conduct or was acquired in whole or in part with or in connection with property that, directly or indirectly, constitutes benefit from criminal conduct. The second ground is if it shown that the order causes any other injustice to any person (the onus of establishing which shall be on that person).

[10] Although not clearly stated in the First Applicant's affidavit, it would appear that his application is grounded on the fact that the properties in question, namely the villa and the yacht, do not constitute directly or indirectly benefit from criminal conduct or was acquired in whole or in part with or in connection with property that, directly or indirectly, constitutes benefit from criminal conduct.

[11] It is on this basis that I have proceeded to examine the averments in the affidavits before me and supporting documentation on the matter.

[12] I note first of all that none of the Applicants' supporting documentation is apostilled and conform to The Hague Convention for recognition in this jurisdiction. Further, the resolutions of the directors of the Third Respondent the power of attorney of the second Respondent are not registered. In the circumstances I do not find the signatures of the officials on the public documents authenticated.

provided to the Court. No explanation of how the same was granted without the First Applicant having ever been a resident in the Congo has been provided by him.

[17] With regard to the First Applicant's averment that he is a member of the subcommittee on science research and innovation of the "House of Commons" (sic) of the Czech Republic, an examination of his supporting documentation of this averment reveals that only an invitation was issued to him on 19 July 2018 to attend a two-hour session of the subcommittee of the Czech parliament on science research and innovation.

[18] Similarly, his averment that he invented a nano battery is not supported by the documentation he has submitted.

[19] The relevance of these averments to the provisions of POCA for setting aside a section 4 order is not at all clear to this court. In any event, with regard to discharging the freezing and receivership orders in place, section 4(3) of POCA provides in relevant form:

"(3) Where an interlocutory order is in force, the Court, on application to it in that behalf at any time by the respondent or any other person claiming an interest in any of the property concerned, may —

(a) if it is shown to the satisfaction of the Court, that the property or any part of the property is property to which paragraph (a) of subsection (1) does not apply; or

(b) that the order causes any other injustice to any person (the onus of establishing which shall be on that person),

discharge or, as may be appropriate, vary the order, and the Court shall not make the order in whole or in part to the extent the Court shall not decline to make the order in whole or in part to the extent that there appears to be knowledge or negligence of the person seeking to establish injustice, as to whether the property was as described in subsection (1)(a) when becoming involved with the property. (emphasis added)

[20] As I have stated before the Applicants seem to have based their application solely on the provisions of section 4 (3) above. This is borne out by the averments of the affidavit and in particular to the averment that the First Applicant has not "been found guilty of

subsidy fraud in the Czech Republic, Europe and anywhere in the world and [that] is thus improper to maintain an interlocutory order of seizure over [his assets] within the jurisdiction of Seychelles.”

[21] We have reiterated on countless occasions that there is no necessity for a conviction to be secured before proceedings are brought under POCA.

[22] In *Hackl v FIU* (2012) SLR 225, the Court of Appeal explained that in POCA it is not the criminal offence which is being targeted by POCA or AMLA and that:

“[although] there is an undeniable connection between the —criminal conduct’ as defined, ... it is the asset derived from any such conduct that is being aimed at. The distinction is important... All that is necessary to trigger the provisions of POCA is a predicate crime and not a criminal offence per se.” (p. 230)

[23] In this case, the predicate crime is fraud which the First Applicant by his own admission has stated that the charges were settled by him by payment of Euro 200, 000 to the Czech Republic.

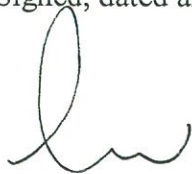
[24] The Applicants could have had the section 4 order granted by the court set aside at any time if they could show that the properties they owned were not benefit from criminal conduct. This continues to be the case. All they need to show on a balance of probability is that the funds used to purchase the yacht and the villa are not proceeds of crime. They have failed in any way meaningful or otherwise to discharge this burden.

[25] The evidence they have brought to convince this court to release the assets are to the effect that the First Respondent is a man of integrity. It does not in any way go to the heart of the matter, that is, put simply that the source of the funds used to purchase the properties were from legitimate sources and not proceeds of crime.


[26] In the circumstances, I am in no way satisfied pursuant to the provisions of POCA that the yacht and the villa do not constitute, directly or indirectly, benefit from criminal conduct and was not acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes benefit from criminal conduct.

[27] In the circumstances, the application is dismissed with costs.

Signed, dated and delivered at Ile du Port, Mahé, on 8 July 2019



TwomeyCJ



Dr. Mathilda Twomey
Chief Justice
Supreme Court of Seychelles

