
IN THE SUPREME COURT OF SEYCHELLES

Civil Side: MA 189/2017

(arising in MC62/2016)

[2017] SCSC 1088

THE FINANCIAL INTELLIGENCE UNIT

Petitioner

versus

RADOMIR PRUS & ORS

Respondent

*X filed on 28/6/17
#54 ruling on 8/11/17
*75 set aside on 9/11/17
+ rev 5/12/17*

Heard: 15 November 2017
Counsel: Mr. Subramanian for petitioner

Delivered: 15 November 2017

RULING

M. Twomey, CJ

- [1] The Applicant is a statutory body. The Respondents are in possession or in control of Maison 72, Eden Island, Mahe, Seychelles and motor vessel "Dream Angel" registered in Seychelles.
- [2] The application is brought by way of notice of motion and supported by an affidavit sworn by Mr. Jan Celliers, Deputy Director, of the Applicant.

[3] The Applicant is seeking an interlocutory order pursuant to section 4 of the Proceeds of Crime (Civil Confiscation) Act (hereinafter POCA) prohibiting the Respondents or any person who has notice of the order from disposing of otherwise dealing with the property above mentioned or diminishing in value.

[4] The Applicant seeks a further order under section 8 of POCA, and that is the appointment of Mr. Jan Cellier as Receiver of the specified property to hold the same until further orders of this court.

[5] The Respondents were served with a copy of this application and their counsel asked for time to file a counter affidavit on 27 September 2017.

[6] On 7 November when this case had been set for hearing, the Court was informed that Counsel for the Respondents was unavailable because of his illness and asked that the matter not be proceeded with.

[7] Although the Court was minded to adjourn the matter, the Applicant has relied on rule 8 of the POCA which provides in relevant form that :

- 1) A respondent other than the FIU who has received notice of an inter partes application under the Act shall enter an appearance in Form 2 within seven Court days.
- 2) Where a respondent fails to comply with subrule (1), the Court shall proceed by default against that respondent unless the non-compliance has been sufficiently explained in Court.
- 3) A respondent shall file a reply affidavit within 14 Court days after entering an appearance or, where the respondent is the FIU, within 21 Court days after receiving notice of the application.
- 4) Extension of time for filing reply affidavits may be granted only for good cause, on a request made in advance by notice of motion filed in accordance with rule 3(6).
- 5) Where a respondent fails to file a reply affidavit within time, the Court shall proceed by default unless an extension of time is granted in accordance with subrule(4).

- [8] In the circumstances, the absence of Counsel is immaterial as the provisions of the Rules (supra) were breached. The amended affidavit was served since 26 September 2017 with neither appearance in terms of Form 2 entered, nor a reply affidavit filed. There has been no application for an extension of the time for the filing of the reply affidavit. The Court therefore proceeds by default.
- [9] The main ground for this application is that the Respondents are in possession or control of the specified property (supra) that 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, constitutes benefit from criminal conduct. And that such property is in excess of R50, 000.00.
- [10] I have examined the documentary evidence annexed to Mr Cellier's affidavit. I am satisfied that this information, of course, together with the unchallenged evidence of Mr. Cellier that there are reasonable grounds at this stage to suspect 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, constitutes benefit from criminal conduct.
- [11] The criminal conduct in this matter is subsidy fraud by the Respondents resulting in the detriment to the financial interests of the European Union of the equivalent of Euros 10,202, 449 and further, 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 also amounts to money laundering.
- [12] I therefore allow this application and issue an interlocutory order prohibiting the disposal of, dealing with or diminishing in value of the specified property. I further appoint Mr. Jan Cellier to be the Receiver of the said specified property until further orders of this court.

- [13] Costs of these proceedings will abide the final outcome of the proceedings in relation to the specified property in this matter.

Signed, dated and delivered at Ile du Port on 15 November 2017.



M. Twomey, CJ
Chief Justice



Dr. Mathilda Twomey
Chief Justice
Supreme Court of Seychelles

