



**In the matter of the Forfeiture of Money, etc in
Civil Proceedings (Bailiwick of Guernsey), Law 2007,
and in the matter of £9,368.36 in cash**
Royal Court
13th May, 2014

**JUDGMENT
23/2014**

**Application by Her Majesty's Procureur for forfeiture of seized cash pursuant to Section 13 of
The Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) Law, 2007**

**Approved Text
13.05.2014**

**IN THE ROYAL COURT OF GUERNSEY
(ORDINARY DIVISION)**

Between:

**IN THE MATTER OF
THE FORFEITURE OF MONEY, ETC IN
CIVIL PROCEEDINGS (BAILIWICK OF GUERNSEY)
LAW, 2007**

Applicant

-and-

IN THE MATTER OF £9,368.36 IN CASH

Respondents

**Application by Her Majesty's Procureur for forfeiture of seized cash
Pursuant to Section 13 of The Forfeiture of Money, etc in Civil Proceedings (Bailiwick of
Guernsey) Law, 2007**

Application heard on: 24th April, 2014

Judgment handed down on: 13th May, 2014

Before: John Russell Finch, Esq., Judge of the Royal Court

Crown Advocate J Hill appeared for the Applicant, HM Procureur

Advocate S J Mallett appeared for the Respondents, Charles Barry Mort and Phillip Le Cocq

Background

1. The money, the subject of this application is detained pursuant to Section 7 of the Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) Law, 2007 ("the Law"). By virtue of Section 13(2) of the Law, the Royal Court may order the forfeiture of the money, or any part of the money, if satisfied on a balance of probabilities that the money or part thereof

(a) is any person's proceeds of unlawful conduct, or (b) is intended by any person for use in unlawful conduct. It is the latter provision (b) which comes into play in the present case.

2. The factual background in essence is not in dispute and the nub of the case on its particular facts is the explanation given by the persons found to be in possession of the cash, Messrs Mort ("M") and Le Cocq ("L"). A good place to start is at the first affidavit of Customs Officer Hale at Tab 3 of the Bundle of affidavits and documents produced on behalf of the Applicant, HM Procureur ("A"). The cash was seized from these persons on 15th August 2013, under the provisions of the Law, prior to their departure to Poole on the car ferry. £2,184.31 and €55.00 (£44.21) was seized from L and £5,004.00 and £2,165.84 from M. These men were travelling together in a vehicle. Appropriate warrants of further detention were granted and the matter came to a contested hearing on 24th April 2014. Officer Hale and Messrs M and L gave oral evidence substantiating their various affidavits and offering themselves for cross-examination. In addition to these affidavits reliance was placed on affidavits in the folder put forward by A as well as a fresh affidavit from Officer Wylie, dated 17th April, 2014 and a letter from M's mother, dated 14th April, 2014.
3. Both persons were asked if they had anything to declare, specifically referring to large sums of cash and replied "no". They were then asked how much cash they each had in their possession. M said he had "£2,000.00 in his pocket and a further £5,000.00 in his suitcase; L said he was in possession of £2,000.00 in his pocket. M's suitcase revealed around £5,000.00 contained in a Wellington boot. M claimed £7,000.00 of the total found was accumulated from cash in hand work as a roofer. He could provide invoices and details of origin. The £2,000.00 found on L (who at the time worked for M), was "wages". M did not have a bank account just around that time due to ongoing problems with his bank. £5,000.00 was, according to M, a first payment of a debt to his brother, who had some time previously lent him £15,000.00 to help set up his own business. £2,000.00 was spending money, they were contemplating attending a Music Festival in the UK. L said he did not have a bank account and the £2,000.00 was "wages" to be used as spending money. When M and L returned to Guernsey on 21st August, 2013 they admitted the use of various drugs such as cocaine, ecstasy, ketamine and cannabis whilst in the UK. Nothing measurable was found that could justify a prosecution. ION scans produced positive results for cocaine, ecstasy and cannabis and the wellington boot that was looked at earlier was positive for cocaine. M and L signed a full range of authorities to enable Customs Officers to look at their finances.
4. M was interviewed on 1st November, 2013 but did not provide any evidence relating to the source of the funds seized. He mentioned that any cash in his possession would be retained by a third party, whom he was unwilling to name, not kept on his home premises (see the record annexed to Officer Hales' second affidavit, Tab 4, AH/2). At the end of his interview, M was advised in some detail what supporting documentation he needed to provide. He wrote all this down and indicated that he would "drop everything" to get all this together – see page 33 of the record of interview. M has provided two invoices for works previously done since the relevant funds were seized: one from P & A Barton-Wright is £7,460.00, paid in three tranches between March and May, 2013; the other from C A Duquemin is for £3,360.00 and comes from early July, 2013. M seemed to drop beneath the GBA radar between 16th December 2013 and 9th January 2014 (paragraph 37 of Officer Hale's first affidavit). An e-mail from the GBA to M set out the additional evidence needed, in some detail. On 9th January, 2014, M received a telephone call from the GBA, which proved unproductive. On the 10th M was once again given details of the evidence sought regarding the origins of the cash seized. Both M and L sought the legal advice of Advocate Mallett, who duly represented their interests at the hearing on 24th April, 2014.

Further Facts

5. Both protagonists have previous convictions. L was fined in 2002 and 2006 for possession, but rather more significantly received 5 years' imprisonment in the Royal Court on 11th September, 2007 for possession of MDMA with intent to supply, plus a drug-trafficking confiscation order. M was fined in 2005 for possession of MDMA and also for the same offence on the 28th July, 2013. No cash was found on his premises when searched and he averred it was held by an un-named third party. Both were tested positively for the presence of controlled drugs on 21st August 2013, and on 5th September, 2013, M was arrested at a music festival on the Isle of Wight in possession of a chunk of cocaine and fined for possession. It is also evident M owes money on judgments to HM Sheriff, totalling £1,115.00.

Affidavits and Evidence in response

6. Both M and L gave oral evidence, basing themselves on the contents of their respective affidavits. M's is the more detailed, and he describes his roofing business and gross income, taking approximately £3,500 per month wages. He explained difficulties with his bank which caused him to accumulate cash in 2013 rather than utilize a bank account. Amounts totalling around £21,000 plus were received in cash for work. At paragraph 15, M explains that the "*accumulation of cash was kept in a shed at the house that I was living with*". His explanation to the GBA that a third party was looking after it was not true - "*I was concerned as to revealing where I was keeping such large quantities of cash for security purposes*". The money was kept in a box under a bench and other materials in the shed where he then lived. He was concerned that disclosing this would be a "*security issue*". M also detailed his relationship with his brother, to whom he owed £15,000. They have fallen out and no letter from the brother is forthcoming. M finds it surprising that it is suggested the £5,000 located in the Wellington boot is regarded as, concealed. It was safer than being on his person whilst on the boat. His mother will provide a letter regarding the loan (which was available for the hearing, even though she was by then back in the UK). M has petty debts judgments, which he did not oppose, but is reluctant to settle them as "*I did not agree that I owed the money*". M concluded his affidavit by stating he did not have an amount of cash on him that exceeded the limit, had intended to repay his brother and loaned £1,000 to L as an advance of wages, so that L had £2,000 on him. The money came from his successful roofing business, but he is not the best administrator and had not realized "*how serious this was*". In cross-examination, M agreed the fact that he had a cheque card and was able to withdraw money in Guernsey. He agreed he had said he would drop everything to get the requisite information, but "*buried his head in the sand*". He did not take it as seriously as he should. The letter from his mother is all he could produce. He accepted that the GBA were encouraging him to provide information but there were a million other things on his mind - "*I'm terrible with paperwork*". M did not want the GBA to take his money from the locked box, so lied to them when questioned. The mother's letter briefly confirms the situation with his brother.
7. L's affidavit is more terse. He explains his relationship with M, for whom he worked and that the £2,000 he had on him was made up of £1,000 savings from his wages and £1,000 advanced from M. He, too, did not have a bank account at the time and does not consider it unreasonable to have this money in his possession for a long weekend, especially going to a festival. He believes he has been targeted "*due to my history*". He had been in the habit of keeping his money under the bed due to a lack of bank account since January, 2013. In evidence, L stated he had co-operated fully with the GBA; he had had a good time at the festival and took a few drugs; his wages were roughly £300 - £400 per week. L would repay this advance by not claiming wages. The other money had taken L some 8-9 months to save, he was not intending to spend it all. L denied being in an illegal enterprise with M to spend the total amount for "*stock-in-trade*".

Merits

8. Having carefully considered all the affidavits and other evidence, especially the oral accounts given by Messrs M and L, the following findings, which are open to the Court on what has been put forward, are made to the civil standard of proof:
- (i) both M and L are involved in the use of controlled drugs and have significant recent convictions. Of particular note is M's conviction at Newport, Isle of Wight, on 5th September, 2013, for possession of a "*plum sized*" quantity of the Class A drug, cocaine;
 - (ii) M accepts that he lied in interview when stating the cash he had was held by a third party. It was kept, well secured at the shed of his dwelling. Such an admitted lie is significant and directly and seriously weakens the credibility of a witness in a key area;
 - (iii) no evidence has been forthcoming from M's brother. The explanation is a rift between them. M's mother's rather terse letter is untested. M's oral account of this was not convincing;
 - (iv) the concealment of £5,000 in a Wellington boot in M's suitcase reeks of suspicion. It is accepted this would not be revealed had M simply had a cursory personal search. It is to be noted that on return this boot tested positive for cocaine;
 - (v) M was afforded a good deal of opportunities to come up with some supporting documentation and the GBA rather patiently spelt it out for him in person and by e-mail. The results are what is now before the Court and are hardly impressive in depth or content;
 - (vi) both M and L did not appear to best advantage when cross-examined. Even making allowance for the nerves such a procedure may well involve, they each appeared rather evasive and ultimately unconvincing. Having seen them and assessed their credibility, the Court cannot accept their evidence. L loyally backed-up M, but appeared to be reciting a story he had decided to keep to. M was defensive throughout, especially when pressed. M is not the complete buffoon in relation to paperwork that he tried to appear to be.

Conclusion

9. On the balance of probabilities, A has made out his case and the application succeeds in relation to the total sum in question. On the facts, and having heard the evidence, the claims of M and L are rejected. The evidence demonstrates that it is more likely than not that this money was intended for use in unlawful conduct under the Law, namely the acquisition of a quantity of controlled drugs. The costs can be deducted from the total, unless some other order is sought. If that is the situation A is invited to present a brief written submission, please, within seven days of the date this decision is finally handed-down. Seven days for any written response on behalf of M and L.

J R Finch
Judge of the Royal Court