



**Forfeiture Of Money, etc in Civil Proceedings
(Bailiwick Of Guernsey) Law 2007 v Heykers**
Royal Court
17th August, 2018

**JUDGMENT
32/2018**

Application for an order of forfeiture.

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

IN THE MATTER OF:

**THE FORFEITURE OF MONEY ETC
IN CIVIL PROCEEDINGS
(BAILIWICK OF GUERNSEY) LAW 2007
AS AMENDED**

-AND-

**IN THE MATTER OF US \$26,529.73
& €70,757.68 PLUS ACCRUED INTEREST
HELD IN A BANK ACCOUNT IN THE NAME OF
HUGO FRANZ MARIA HEYKERS**

Application heard on: 9th August, 2018

Decision handed down on: 17th August, 2018

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

Counsel for HM Comptroller (Applicant): Advocate R Gist

Counsel for the Respondent: Advocate C A Tee

Materials referred to in Decision:

The Forfeiture of Money etc in Civil Proceedings (Bailiwick of Guernsey) Law 2007, as amended -
Sections 10, 13 and 61;

Royal Court cases: No. 23/2014 and 8/2017;

Bassick and Another v Commissioners of Customs & Excise (1993) 161 JP 377;

Muneka v Customs & Excise Commissioners [2005] EWHC 495 (Admin)

DECISION

Introduction

1. This is an application on behalf of HM Comptroller (“A”) for an order of forfeiture under Section 13 of the Forfeiture of Money, etc, in Civil Proceedings (Bailiwick of Guernsey) Law, 2007 (“The Law”). The monies involved are US \$26,529.73 and €70,757.68 held in an account with ABN Amro (Channel Islands) Limited and frozen in accordance with Section 10 of the Law. A bundle has been produced with the relevant documentation included, and references to dividers and page numbers refer to that. Other than the freezing order of 25th January, 2018, early proceedings related to the release of legal expenses for the Respondent, Mr Heykers (“R”). On 19th July, 2018 a sum of up to £10,000 was allowed for such expenses. The forfeiture is opposed and the important documents are the three affidavits of Mr K J Taylor of Guernsey Customs of Excise (at dividers 2, 6 and 9) and the affidavit of R (at divider 8). At the oral hearing Mr Taylor substantiated his affidavits on oath and was not cross-examined; R did not appear, but Advocate Tee made submissions on his behalf.
2. The application results from a mutual assistance request from the King’s Prosecutor of Belgium. The details are set out at Mr Taylor’s 1st affidavit at paragraph 2.2. In summary R was convicted of drug-trafficking offences in Belgium involving the transportation of drugs from Morocco to the Netherlands, hidden in trucks. The matter was reviewed extensively by the Court of Appeal and R was sentenced to imprisonment and a confiscation order in the sum of 12 million Belgium francs was made. The Court of Cassation rejected a further appeal. The sterling equivalent at the relevant time was £266,459.00 and was held then by Mees Pierson (CI) Limited, formerly Banque Belge (Guernsey) Limited. The overseas Forfeiture Order was registered by the Royal Court on 21st April, 2006. On 12th September, 2007 the External Confiscation Order was enforced in the amount of £267,496.32. These remaining funds which have been located, after various bank name changes, etc. are the subject of the present application, including accrued interest.
3. Further details of R’s drug-trafficking activities are given in Mr Taylor’s second affidavit at paragraph 2.1. It suffices for the purposes of the present application to quote from the Belgian Court of Appeal judgment at pages 21-23 (annexed to Mr Taylor’s first affidavit):

Page 21

“Considering that from the judicial investigation it is now certain that the NV.MB International Transport with registered office in Antwerp, of which the defendant was the managing director was founded early 1991 as a cover for the transport of huge quantities of drugs (hash) from Morocco.”

Pages 21-page 22

“... from the phone bills and the notes found in the diary kept by computer of the defendant, it appeared that the defendant had contacts with persons from the international drugs scene.”

Page 23

“... the defendant is being prosecuted for having tried, as a leading person in the main or secondary activity of an association, to import a lot of drugs, of which the possession is not even allowed, from Morocco to Belgium” and

“... that this supposes a series of acts with regard to possession, transport of and trafficking in drugs, the setting-up of an association, the founding of a transport company, the purchase of trucks, planning and execution of the trip to Morocco, waiting for the drugs to arrive, the loading of the same and the trip back of Belgium, all this in mutual collaboration between the gangsters, until the seizure of the drugs and the arrest of the transporters; that the defendant had a leading part in it ...”

It is also to be noted that the dates of the offences were given by the Court of Appeal as “between 1st July 1991 and 5th February, 1992, repeatedly” (page 20).

R’s Submissions

4. Particular attention was given to R’s explanatory affidavit for these proceedings, dated 8th June 2018 (tab 8). It was submitted that in view of the range of dates given by the Court of Appeal, R was trading lawfully with that period as an exception. In R’s “Notice of Objection” (tab 7) it was asserted that the monies in question “are in whole the proceeds of lawful conduct”, were not intended for “use in unlawful conduct” and there was no evidence in support of the application to satisfy the court that these monies were any persons proceeds of unlawful conduct or intended therefor.
5. R refers to his employment as a trucker (paragraphs 10-13 of affidavit) and asserts that in relation to NV MB International Transport, he was concerned principally in the “transport of perishable goods, such as fruit and vegetables”. In summary R then goes on to say:
 - (i) he did “not establish the company as a means to transport large quantities of drugs from Morocco” and “it had never crossed my mind to establish the company for such a purpose and I had no involvement in transporting drugs up to that point any way” (paragraph 19);
 - (ii) he did and does not accept that he flew to Morocco on 18th December 1991 to arrange and provide instructions for the transport and delivery of another consignment of drugs (paragraph 22);
 - (iii) “all transfers into the account prior to July 1991 were the proceeds of lawful conduct”. This is in view of the determination by the Court of Appeal of the 7 month period for the commission of the offences (para 29).
6. In her submissions Advocate Tee emphasized that R had a limited association with drug-trafficking for a limited period and A’s case was based on supposition, a “giant leap of faith” and was opportunistic without merit. It has not been shown what the unlawful conduct was or where it took place, it cannot be inferred.

A’s Submissions

7. It was stressed that Mr Taylor’s evidence was not contested. Advocate Gist then developed the succinct skeleton argument he had produced for the hearing. This included reference to Section 13(2) of the Law and that the burden is on the balance of probabilities to show the money is any person’s proceeds of unlawful conduct, or intended by any person for use in unlawful conduct. Section 61 defines such conduct, for the purposes of this type of case, as being conduct unlawful when it occurs in a country outside the Bailiwick and the corresponding requirement of it being unlawful in the Bailiwick if it occurred there. Considerable reliance was placed on the Belgian Court of Appeal decision and the findings which were set out there. This was a sophisticated drugs ring in which R was a leading person and, on the papers, was involved over a period of time. Indeed the Belgian Court of Appeal found (page 21) that R’s company was set-up “as a cover for the transport of huge quantities of drugs (hash) from Morocco”. It was also emphasized that R’s assertion that his flight to Morocco on 18th December, 1991 was not connected with his drug-trafficking activities is specifically rejected by the Court of Appeal (page 22). He went, it is found “to give the necessary instructions to the drivers as well; that this transport would yield 875,000 Guilders”.
8. A also referred to the finding at page 24 by the Court of Appeal which reads:

“Considering that the defendant had a leading part in this professionally organized, big scaled, illegal and lucrative drugs traffic, denying all the serious consequences known by everybody ...”

In relation to R’s affidavit (Tab 8), his assertions are untested, as he has not given oral evidence. Also Mr Taylor’s evidence was not contested, there was no cross-examination. R is unable to provide documentation, (paragraph 3 of the affidavit) and refers to a burglary, but there are no copy documents. In summary, it would be incredible to say that the offences disclosed were the first time R had done this. This was a pattern of activity and appropriate inferences can be properly made. This was plainly unlawful conduct both in Belgium and Guernsey. Advocate Gist adopted his skeleton argument, at paragraph 15, that R has “quite simply” not demonstrated that the monies “were anything other than the proceeds of unlawful conduct”.

Law

9. The main statutory provisions which are relevant to the present application have already been referred to. Various cases were touched on. Two Royal Court decisions, 17/2/17 (No. 8/2017) and 13/5/14 (No. 23/2014) were mentioned briefly by Advocate Tee. It is always comforting to hear one’s own judgments referred to with approval in the course of subsequent legal argument, and the point she made, to the effect that in both cases explanations which Respondents put up were rejected is correct. Of course in this case, R produced an affidavit, but no oral evidence. A referred to two English cases: Bassick and Another v Commissioners of Customs and Excise (1993) 161 JP 377 and Muneka v Customs & Excise Commissioners [2005] EWHC 495 (Admin). These, happily, are to the same effect as the two Guernsey cases cited. Here it is correct that R has not been caught with a large quantity of cash and not given an insufficient explanation – the facts are different. That is correct, and the cases, although interesting, do not add a great deal to the determination of the present matter. What has to be done is to place R’s affidavit together with those given by Mr Taylor (and substantiated by him in evidence) and evaluate them against the facts found in Belgian judicial proceedings.

Merits

10. R’s affidavit was responded to by Mr Taylor’s 3rd affidavit, (divider 9), which is clear and convincing. He emphasizes (inter alia) the contradictions in R’s account found in the Belgian judgment. In addition (at page 6) he states:

“The time frame of the deposits ... cover the period of ten (10) months prior to his arrest, which without any further documentary evidence would equate to the time when HEYKERS formed his own transport business at the time of opening the account and on his own admission transported drugs from Morocco into the Netherlands.

It is the belief that the funds represent the proceeds of HEYKERS drug trafficking activities and therefore represent the proceeds of unlawful conduct.”

11. Plainly (and it is not necessary to say any more than this), the test applied to “unlawful conduct” in section 61 of the Law is met. Drug-trafficking is an offence in Belgium and in Guernsey. On the affidavits, the evidence adduced on behalf of A, especially the Belgian courts’ findings, is powerful and persuasive. R has not provided any supporting documentation and, as indicated, a number of his main contentions are undermined by the judgment already quoted. It is not an impermissible inferential leap to conclude A has

discharged the burden on the balance of probabilities, and R has not produced anything beyond bare assertion to the contrary. Despite Advocate Tee's admirably clear and economical suggestions, A's application succeeds.

Conclusion

12. The application is therefore granted, subject to the payment of legal expenses of up to £10,000 already authorized. The exact amount should be embodied in the Order, which counsel are asked to draw up please.

J R Finch, O.B.E.
Judge of the Royal Court