

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

GRENADA

CLAIM NO. GDAHCV2023/0223 (ELP) (FORMERLY CLAIM NO. GDAHCV2019/0551)

**IN THE MATTER OF A CLAIM FOR RECOVERY ORDER PURSUANT TO SECTIONS
31K AND 31BB OF THE PROCEEDS OF CRIME (AMENDMENT) NO.2 ACT NO. 35 OF
2014**

BETWEEN:

PTX

Claimant

AND

[1] **BLH**
[2] **QLD**
[3] **MAF**
[4] **STW**
[5] **VOC**
[6] **QPK**
[7] **ESE**
[8] **MPR**
[9] **EWN**
[10] **BJP5**

Respondents

Before:

The Hon. Justice Paula Gilford

High Court Judge

Appearances:

Mr. Paul Garlick KC, Ms. Caryn Adams and Ms. Aleya Williams of Counsel for
PTX

Mr. Ruggles Ferguson KC and Mr. Zuriel Francique of Counsel for the 1st, 2nd, 3rd,
4th, 7th, 8th 9th and 10th Respondents

2024: January 11th, 15th

November 28th

2025: September 16th, 23rd

JUDGMENT

- [1] **GILFORD, J.:** The Claimant ("PTX") initiated a Fixed Date Claim pursuant to sections 31K and 31BB of the Proceeds of Crime (Amendment) Act, (hereinafter referred to as "the POCA,"¹) seeking a civil recovery order against the First-named Respondent (hereinafter referred to as "BLH"), along with several other Respondents. The claim is based on allegations of unlawful conduct and the acquisition of property through illicit means.
- [2] In accordance with a Confidentiality Order issued by the Court, the names referenced in this judgment have been anonymised to protect the privacy of the individuals involved and to serve the public interest.
- [3] The Court notes that among the Respondents named, only the First and Eighth Respondents actively participated in the proceedings by attending court and offering testimony.
- [4] In support of its claim, PTX presented six witnesses. In response, the Respondents called five witnesses, including BLH and MPR, to testify on their behalf.

Preliminary Issue: Admissibility of the U.S. Documents

- [5] Before addressing the substantive merits of PTX's case, the Court must resolve a key preliminary issue, whether the documents relating to BLH's arrest and conviction in the United States are admissible under Section 36E of the Evidence Act² (hereinafter referred to as "the Act").
- [6] Section 36E of the Act governs the admissibility of first-hand hearsay statements in civil proceedings. It allows the admission of such statements, whether oral, written,

¹ No 2 Act 35/2014

² Cap. 92

or otherwise, provided that the declarant would have been competent to give oral testimony.

- [7] The party relying on the hearsay statement must provide at least 21 days' notice to all other parties, identifying the statement and its maker. The opposing party may request that the declarant be called as a witness. However, under Section 36E (6) of the Act, the Court may waive this requirement, depending on the circumstances of the case.
- [8] Section 36E of the Act also provides exceptions to the requirement for live testimony. These include situations where the declarant is deceased, medically unable to attend, overseas and cannot reasonably be brought before the Court, missing despite reasonable efforts to locate them, or prevented from attending due to threats or intimidation. In such instances, the Court may admit the statement without requiring the witness's presence.
- [9] In the present case, PTX has complied with all procedural requirements. The statements of DS and CL were disclosed well in advance of the trial, and the Respondents did not object. Both declarants reside outside Grenada and could not reasonably be secured to attend the proceedings.
- [10] Accordingly, the Court concludes that the affidavits of DS and CL are admissible and will form part of the evidentiary record.

FACTS

- [11] In 2008, BLH came under the scrutiny of Grenadian law enforcement. By November of that year, the Financial Intelligence Unit (hereinafter called "the FIU") launched a formal investigation into his suspected involvement in drug trafficking. BLH operated two waterfront businesses, QLD and MAF, which were integral to his commercial footprint.

- [12] Between November 2008 and April 2010, BLH was repeatedly observed travelling to and from Grenada aboard various vessels, including one identified as “Boat X”. These movements were allegedly conducted without notifying the Grenada Immigration Department, in breach of mandatory sailing and immigration regulations. This pattern raised serious concerns among local law enforcement agencies regarding the nature and purpose of these voyages.
- [13] BLH also held multiple citizenships, which facilitated his international travel. On 12th April 2010, while en route from Grenada to the U.S. Virgin Islands, Boat X was intercepted by the U.S. Coast Guard. Aboard the vessel were BLH and CW. A K-9 inspection signalled the presence of narcotics, and a subsequent scan revealed “an anomaly within the hull near the rear of the vessel.”³ Upon further investigation, authorities discovered approximately 250 kilograms of cocaine concealed within the structure of the vessel. The value of the cocaine was estimated at approximately \$20 million XCD (or \$7.4 million USD). This discovery formed the basis for the criminal charges subsequently brought against BLH and CW.
- [14] BLH and CW were formally indicted in the United States on three charges, namely,
- (i) conspiracy to possess with intent to distribute five kilograms or more of cocaine while aboard a vessel subject to the jurisdiction of the United States (46 U.S.C. §§ 70503(a)(1), 70506(a), 70506(b); 21 U.S.C. § 841(a)(1), 841(b)(1)(A)(ii);
 - (ii) aiding and abetting possession with intent to distribute five kilograms or more of cocaine while aboard a vessel subject to the jurisdiction of the United States (46 U.S.C. §§ 70503(a), 70506(a); 18 U.S.C. § 2; 21 U.S.C. §§ 960(b)(1)(B)(ii), 841(a)(1), 841(b)(1)(A)(ii)); and
 - (iii) attempted importation of cocaine (21 U.S.C. §§ 846, 952(a), 960(b)(1)(B)(ii), 963).⁴

³ USA v AB, Criminal NO. 2010-39 Affidavit of DS para 9

⁴ Ibid Annex A

[15] BLH pleaded not guilty but was convicted on the first two counts and sentenced to 240 months' imprisonment. His appeal was unsuccessful.

[16] A Property Freezing Order was granted to PTX in 2016. On 5th December 2019, PTX, the lawful authority, initiated the present proceedings seeking a civil recovery order for various properties allegedly acquired by BLH through unlawful conduct, including drug trafficking, money laundering, and tax evasion, or otherwise tainted by illegal conduct.

The Properties

[17] PTX seeks the recovery of a substantial portfolio of property allegedly acquired by BLH through unlawful means. These properties span multiple categories, including motor vehicles, real property, vessels, and bank accounts.

Motor Vehicles

- [18] PTX identifies nine vehicles registered under BLH, MAF, QPK, and EC:
- a. Yamaha motorcycle registration number 0000, registered in the name of EC, obtained on 19th February 2010 from VOC in December 2013.
 - b. Yamaha motorcycle registration number 0000, registered in the name of EC, obtained on 19th February 2010 from VOC in December 2013.
 - c. Isuzu Dump truck registration number TAE, registered in the name of BLH, obtained on 11th March 2010.
 - d. Isuzu Truck registration number TAE, registered in the name of BLH, obtained on 11th March 2010.
 - e. International Dump truck registration number SL, registered in the name of VOC, obtained on 20th November 2009.
 - f. Minibus registration number H, registered in the name of MAF, purchased on 27th August 2008.
 - g. Motor car registration number PA, registered in the name of MAF, obtained on 27th July 2008.
 - h. Truck registration number T, registered in the name of MAF, obtained on 14th February 2008.

- i. Lexus RX SUV Jeep registration number PU, registered in the name of VOC, obtained on 17th September 2009.

Real Property

- [19] PTX seeks recovery of nine parcels of land registered in the names of BLH and MAF:
- a. Plot 4"
 - b. Lot A
 - c. Lot B
 - d. Lot C
 - e. Lot D
 - f. Lot E
 - g. Lot F
 - h. 3 ¼ Acres, the equivalent of 141,570 square feet of land,
 - i. 2,759 square feet of land

Vessels

- [20] PTX identifies two vessels, namely,
- a. Boat H, registered in the name of BLH/VOC, purchased on 16th May 2009.
 - b. Boat I," purchased by MAF on 30th October 2009.

Bank Accounts

- [21] PTX lists seven bank accounts held at the Grenada Cooperative Bank in the names BLH, his companies, and associates:
- a. United States Dollar Account No. 0002 at Grenada Cooperative Bank in the name of BLH.
 - b. Account No. 0031 at Grenada Cooperative Bank in the name of MHG.
 - c. Account No. 0923 at Grenada Cooperative Bank in the name of BLH.
 - d. Account No. 1403 at Grenada Cooperative Bank in the names of MPR and BLH.

- e. Account No. 1804 at Grenada Cooperative Bank in the names of ESE and BLH.
- f. Account No. 0214 at Grenada Cooperative Bank in the names of ESE and EWN
- g. Account No. 0213 at Grenada Cooperative Bank in the names of ESE and BJP

Case for the Claimant

- [22] PTX, represented by Mr. Paul Garlick, Learned KC, alleges that BLH engaged in unlawful conduct under the POCA, including drug trafficking, tax evasion, and money laundering through a network of businesses and personal transactions.
- [23] PTX alleges that businesses such as MHG, MAF, and OYC served as a front for laundering the proceeds of drug trafficking. They claimed that these businesses were either inactive or minimally operational, lacked proper registration and financial documentation, and showed no credible evidence of legitimate income.
- [24] In particular, OYC was found to be devoid of essential records, such as passenger logs, marketing materials, and vessel documentation, further undermining its legitimacy.
- [25] PTX presented evidence of substantial cash deposits, wire transfers, balloon payments, and disbursements to third parties inconsistent with the declared income of BLH's businesses. Notably, over EC \$1.6 million was paid into the client account of DWE under VOC, with no legitimate source of funds.
- [26] Payments for purported yacht charters were made in U.S. dollars, which PTX contends is atypical for local services and indicative of unlawful conduct.
- [27] Mr. Garlick KC argued that even without relying on the affidavits of DS, the circumstantial evidence, including BLH's departure from Grenada, the discovery of narcotics aboard Boat X, and his conviction abroad, supports the inference of

unlawful conduct under sections 4⁵, 10,⁶ and 18⁷ of Grenada's Drug Abuse (Prevention and Control) Act.⁸

- [28] PTX further alleges that BLH engaged in tax evasion, having admitted to earning income from various ventures but failing to declare it to the Grenadian authorities for tax purposes.
- [29] Based on the testimony of MS, PTX contends that although a tax amnesty was available for taxes dating back to 2007, BLH made no effort to regularise his tax obligations.
- [30] PTX argues that BLH's acknowledgement of responsibility and continued possession of Boat X after its alleged sale in 2009 demonstrates his central role in the drug trafficking operation. This includes his knowledge of or involvement in its modifications, his repeated movements aboard the vessel without informing immigration authorities, and the fact that Boat X was reportedly sold in 2009 but remained in BLH's possession at the time of his 2010 arrest.
- [31] PTX submitted that no drug trafficking organisation would entrust such a valuable cargo to a skipper unless he had demonstrated reliability, thereby reinforcing BLH's involvement.
- [32] PTX submitted that the Court-appointed Forensic Accountant, CBP (hereinafter referred to as "the Expert"), reported a significant increase in BLH's financial inflows during 2009 to 2010, far exceeding his declared losses to the Inland Revenue.

⁵ Importation and Exportation of Controlled Drugs - This section prohibits the importation and exportation of controlled drugs without proper authorisation.

⁶ Acts Preparatory to the Importation, Supply, etc., of Controlled Drugs - This section addresses any preparatory acts related to the importation, supply, or production of controlled drugs.

⁷ Drug Trafficking - This section defines and penalises drug trafficking activities.

⁸ Cap. 84A

- [33] Her analysis revealed over US\$1 million in unexplained cash deposits, structured same-day deposits, payments to family members and third parties without legitimate justification, commingling of personal and business funds and, falsified and contradictory Bills of Sale for vessels. Mr. Garlick KC argued that these findings are consistent with money laundering practices
- [34] Mr. Garlick KC argued that during cross-examination, BLH's accountant and the Respondents' witness, PG, conceded that the financial transactions in question would raise serious concerns and warrant further scrutiny.
- [35] PTX contended that several properties, particularly those purchased in the name of MAF, were financed from BLH's personal accounts, using funds that were inconsistent with legitimate business activities.
- [36] Mr. Garlick KC emphasised that Plot 4, although acquired outside of the statutory limitation period, was used in preparing Boat X for drug trafficking and therefore should be considered tainted property.
- [37] PTX rejected BLH's claims of income from yacht charters, boat sales, and restaurant operations, citing the absence of supporting documentation. Mr. Garlick KC contended that contradictory and falsified Bills of Sale were produced, including instances where vessels were allegedly sold before they were purchased. The Expert's analysis confirmed that MHG operated at a loss during the relevant period.
- [38] Mr. Garlick KC urged the Court to consider the significant irregularities identified in BLH's financial dealings, including a balloon payment of EC\$28,773.63 on a car loan without legitimate income, a final loan payment of EC\$1,060,176.49 in July with no credible source of funds, and payments to DWE for property purchases made from personal accounts. He contended that these transactions support the inference that BLH used funds from unlawful conduct to acquire and maintain the properties.

- [39] Mr. Garlick KC asked the Court to note that between February 2009 and April 2010, BLH completed 39 Source of Funds Declaration forms totalling EC \$1.9 million. These declarations, he contended, cited vague and inconsistent sources such as “business funds”, “yacht charters”, and “tool rentals”, without supporting documentation.
- [40] Mr Garlick KC argued that the formulaic and repetitive nature of these declarations undermines their credibility and attempts to legitimise illicit funds.
- [41] Evidence was presented of payments to BLH’s family members and associates, including transfers to joint accounts with MPR and ESE, and payments to individuals such as GL, DR, and MB, totalling EC\$91,346.60. PTX argued that no credible explanation was provided for these payments, which are considered recoverable property resulting from unlawful conduct.
- [42] PTX challenged BLH’s credibility, citing multiple falsehoods and inconsistencies in his testimony. BLH alleged that law enforcement seized his documents but failed to raise this during cross-examination or in earlier complaints.

Case for the Respondents

- [43] The Respondents were represented by Mr. Ruggles Ferguson, Learned KC, who submitted that BLH had long envisioned the development of a marina and dry dock in Grenada. This ambition, dating back to 1975, was allegedly supported by former Prime Ministers Eric Gairy and Maurice Bishop.
- [44] Between 1975 and 1982, BLH worked as a boat captain and engineer on private charters and mega yachts. He reportedly became the first black crew member aboard the 96-foot yacht OR and later captain of the KA.
- [45] In 1984, BLH began managing the Westerhall Estate and joined OYC, earning a substantial salary, while purchasing and refurbishing vessels. By 1986, ownership

of the Westerhall property was transferred to BLH and his first wife. BLH developed key infrastructure on the estate, including a dock, roads, and fencing, and invested in a fishing boat, which reportedly earned between \$250 and \$300 USD per day.

- [46] The Respondents further contended that between 1987 and 1990, BLH expanded his operations to boat rebuilding in Nassau and the Turks and Caicos Islands, conducted charters across the Caribbean and earned over \$400 USD per day. In 1990, BLH co-founded AIP and IT, though tea production ceased in 2004 due to Hurricane Ivan.
- [47] During the 1990s, BLH and his first wife completed payments to secure the Westerhall land from C and LD⁹, although the deed was not received until 2004. In 1995, they sold their Ft. Lauderdale property and reinvested the proceeds into the marina project. BLH later expanded into sewage disposal and marine services. In 2000, he entered a financial arrangement¹⁰ with RM, offering the Westerhall property as collateral. Upon fulfilling his obligations, the deed was transferred to MAF in 2004¹¹.
- [48] In 2008, BLH launched a restaurant named GHGH, which also catered to charter boats and reportedly generated US \$36,000 monthly. The restaurant hosted festivals that earned over US\$15,000 on 3rd April, 2009, and US\$35,000 on 4th April, 2010. BLH employed ME to manage the accounts, but PG later replaced him, due to alleged mismanagement.
- [49] Mr. Ferguson KC submitted that between 1980 and 2010, BLH was actively involved in boat salvaging throughout Florida and the Caribbean, reportedly as the only black individual in that field. BLH transported supplies and served clients across several Caribbean islands, including St. Vincent, St. Lucia, Dominica, Antigua, and Saint Martin. Between 2007 and 2011, the total sales amounted to approximately US\$1.738 million.

⁹ WS para 13

¹⁰ WS para 14

¹¹ EXH 3

- [50] The Respondents argued that on 12th April 2010, BLH was arrested, and the FIU confiscated various documents, including land deeds and boat bills of sale. Mr. Ferguson KC asserted that BLH was actively involved in legitimate boating business activities during the period 2008-2010.
- [51] The Respondent contended that PTX failed to substantiate the recovery orders sought regarding the Westerhall properties and other properties listed in the Claim. Under section 31(c)(1) of the POCA, the legal burden rests with PTX to prove that the properties were obtained through unlawful conduct. The Respondents maintain that this burden has not been met.
- [52] Mr. Ferguson KC argued that PTX's case is speculative and lacks concrete evidence. He submitted that BLH's conviction for drug trafficking does not establish a nexus with the Grenadian properties. It was argued that Boat X was not modified in Grenada and that BLH was acting solely as a delivery captain, not an owner, at the time of his arrest.
- [53] The Respondents rejected PTX's challenge to the authenticity of several Bills of Sale, asserting that BLH provided credible, notarised documentation from a reputable law firm. Mr Ferguson KC maintained that the sales of Boat X and Boat W were legitimate and supported by testimony and documentation.
- [54] The Respondents rejected PTX' challenge to BLH's maritime credentials, citing witnesses AJ and DD, who confirmed BLH's involvement in yacht charters, salvaging, vehicle rentals, and herbal tea manufacturing.
- [55] While acknowledging deficiencies in BLH's accounting practices, the Respondents argued that these do not amount to money laundering. They claimed the source of funds, primarily from boat sales, was clearly established. The repayment of the Grenada Co-operative Bank loan using a Certificate of Deposit, after BLH's arrest, was presented as a lawful and practical decision.

[56] The Respondents denied allegations of undeclared yacht movements, explaining that many charters did not require immigration clearance. They argued that the seizure of documents by the authorities prevented them from providing further evidence.

[57] Mr. Ferguson KC concluded that PTX has failed to prove any unlawful conduct. He argued that poor financial records and unpaid taxes do not amount to criminal behaviour, and BLH had taken steps to address these issues. The Respondents maintain that PTX's case is speculative, unsupported by substantial evidence, and that no direct link has been established between the Grenadian properties and unlawful conduct. They further contended that allegations of fraud and alternative theories remain unproven.

Issues to be Determined

[58] The central issue before the Court is whether PTX has established, on a balance of probabilities, entitlement to a civil recovery order concerning the properties identified as belonging to the Respondents.

[59] To resolve this overarching question, the Court must address the following sub-issues:

(i) **Connection Between the Properties and Unlawful Conduct**

Whether the properties in question, particularly those owned or controlled by BLH, were:

- Obtained through unlawful conduct, or
- Used in connection with unlawful conduct

This assessment forms the core of PTX's argument for asset recovery.

(ii) **Intended Use of Property in Unlawful Conduct**

Whether any of the property were:

- Used, or

- Intended to be used in furtherance of unlawful conduct or
- constituted tainted property.

This expands the scope of recoverable property to include assets not yet used but demonstrably intended for illicit purposes.

(iii) **Credibility of the Respondent's Explanation**

Finally, whether the First-Named Respondent has provided a credible and satisfactory explanation in response to the allegations made by PTX. This rebuttal is crucial, as it will impact the Court's findings on the previous issues and influence the outcome of the recovery proceedings.

The Law

[60] Section 31A outlines the dual purpose of the POCA and the dual purpose of the legislation:

“(a) enable the Attorney-General to recover in civil proceedings before the Court, property which is, or represents property-

- (i) obtained through unlawful conduct; or
- (ii) that has been used in, or in connection with, or is intended to be used in, or in connection with, unlawful conduct; and

(b) enable cash which is, or represents, property obtained through unlawful conduct, or which is intended to be used in unlawful conduct, to be forfeited in civil proceedings before the Magistrate's Court”.

[61] Under Part IVA of the POCA, the Attorney General may initiate civil proceedings before the High or Magistrate's Court to recover property that is either derived from, or used in connection with, unlawful conduct. These proceedings are independent of any criminal prosecution and may be pursued even in the absence of a criminal charge or conviction. This allows the Attorney General to pursue asset recovery based solely on civil standards.¹²

¹² section 31A (2)

- [62] The Attorney General must identify the property, establish its status as recoverable or associated property, identify the holder (or demonstrate efforts to do so), and nominate a qualified trustee for civil recovery. The claim must be served on the respondent and any other person the Attorney General wishes to include in the order, unless the court dispenses with service¹³.
- [63] Section 31B of the POCA authorises the Court to issue a recovery order if it is satisfied that the property is recoverable. However, the Court may decline to issue the recovery order if the property was obtained in good faith, the respondent was unaware of its recoverable nature, and issuing the order would result in undue detriment.
- [64] The recovery order may incorporate conditions, permit the severance of property, and encompass reasonable legal costs. The Attorney General is obligated to serve affected parties within ten days of the issuance of the order.

The Standard of Proof

- [65] Section 31B of the POCA establishes that the applicable standard in civil recovery proceedings is the balance of probabilities, meaning the Court must be satisfied that it is more likely than not that the alleged conduct occurred.
- [66] The civil standard is notably lower than the criminal standard of “beyond reasonable doubt.” Parliament’s intention to adopt the civil standard is clear and consistent across jurisdictions.
- [67] Previous interpretations, such as the **R v Dickens**¹⁴ initially suggested that the criminal standard¹⁵ was applicable in cases of confiscation. However, this view was subsequently clarified and rectified.

¹³ section 31K

¹⁴ [1990] 2 QB 102 CA

¹⁵ *Ibid* at 108

[68] To address the misconception which arose in **Dickens**¹⁶, the Parliament of the United Kingdom enacted Section 71(7A) of the Criminal Justice Act 1988, affirming that the civil standard applies to asset recovery proceedings. This aligns with Section 31B of the POCA, which adopts the same standard.¹⁷

[69] This standard was retained in the 2002 Act.¹⁸

“In the debates on the relevant provision, the minister responsible referred to a judgment in a case:

“The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities, the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation, the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability. Fraud is usually less likely than negligence. Deliberate physical injury is usually less likely than accidental physical injury.... Built into the preponderance of probability standard is a generous degree of flexibility in respect of the seriousness of the allegation.”

“Although the result is much the same, this does not mean that where a serious allegation is in issue, the standard of proof required is higher. It means only that the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. The more improbable the event, the stronger must be the

¹⁶ Ibid

¹⁷ DTA 1994 s 2(8) was in identical term

¹⁸ UK PCA 2002 s 67

evidence that it did occur before, on the balance of probability, its occurrence will be established.”¹⁹

[70] During the parliamentary debates, the responsible minister referenced the judgment of Lord Nicholls in **Re H (Minors)**²⁰, which emphasised that, although serious allegations necessitate more substantial evidence, the standard of proof remains that of civil proceedings. The Court is required to consider the inherent improbability of an event when evaluating whether it is more likely than not to have taken place.

[71] **Lord Nicholls**²¹, stated,

“The more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probability, its occurrence will be established.”

He cautioned against the introduction of a “third standard” between the civil and criminal thresholds, emphasising that the criterion should be based on probability rather than certainty in civil cases. Additionally, he clarified that while serious allegations require more compelling evidence, this does not raise the standard itself.

[72] In **Attorney General v. Keith Allen**²², Byer J echoed Lord Nicholls’ approach but added,

“It is therefore clear that the standard of proof that where the allegation is a serious one as in the case where the recovery agency is seeking to deprive an individual of certain constitutional rights to property, that the court must be “more sure” which can only occur if the court is given “...cogent evidence before deciding the balance of probabilities has been made out.”

This statement conveys the impression that a higher evidentiary threshold is required in cases involving the deprivation of constitutional rights, such as property.

¹⁹ Peter Allridge “Money Laundering Law “Forfeiture, Confiscation, Civil Recovery, Criminal Laundering and Taxation of the Proceeds of Crime, 2003; HC Debs Standing Committee B Tuesday 20 November 2001 (Bob Ainsworth) quoting Lord Nichols in *Re H (Minors)* (Sexual Abuse: Standard of Proof), *Re* [1996] AC 563; [1996] 1 All ER 1

²⁰ [1996] AC 563 at 586 D-F.

²¹ *Ibid*

²² (SVGHCV2018/0002A)

[73] This Court prefers Lord Nicholls' approach in **Re H (Minors)**²³, thereby maintaining doctrinal consistency and avoiding the introduction of a "third standard" between the civil and criminal thresholds. Although serious allegations demand cogent evidence, they do not elevate the standard itself.

[74] This approach was reaffirmed in **Secretary of State for the Home Department v Rehman**²⁴, where Lord Hoffmann emphasised that the question is always whether the tribunal believes it is more probable than not that the alleged conduct occurred. He emphasised that serious allegations necessitate strong evidence, but the standard of proof remains civil.

[75] In **R (on the application of the Director of the Asset Recovery Agency) v (1) Jia Jin He and (2) Dan Dan Chen**²⁵ the court gave guidance. Collins J emphasised that,

"...since it is necessary to establish that there has been criminal conduct in the obtaining of the property, the court should look for cogent evidence before deciding that the balance of probabilities has been met. But I have no doubt that Parliament deliberately referred to the balance of probabilities, and that the court should not place a gloss upon it, so as to require that the standard approaches that appropriate in a criminal case. Since it is clear that Parliament intended that it should be used, even if criminal proceedings could not be successfully instituted, it is plain that Parliament deliberately imposed a lower standard of proof as the standard appropriate for these proceedings"²⁶

Here, Collins J. warned against placing a gloss on the standard that would render it indistinguishable from the criminal threshold. He reiterated that Parliament deliberately imposed a lower standard for civil recovery.

²³ Ibid

²⁴ [2003] 1 AC 153

²⁵ (2004) HTML Version of Judgment Admin 3021

²⁶ Ibid, para 66

[76] Similarly, in **Serious Organised Crime Agency v Gale**²⁷ Griffith Williams J reiterated that –

“The burden of proof is on the claimant, and the standard of proof they must satisfy is the balance of probabilities. While the claimant alleged serious criminal conduct, the criminal standard of proof does not apply, although ‘cogent evidence is generally required to satisfy a civil tribunal that a person has been fraudulent or behaved in some other reprehensible manner. But the question is always whether the tribunal thinks it more probable than not’—see *Secretary of State for the Home Department v Rehman* [2003] 1 AC 153, para 55, per Lord Hoffmann.”²⁸

Williams J. emphasised that while cogent evidence is generally required for serious allegations, the balance of probabilities remains the applicable standard.

[77] In civil recovery cases, even serious allegations such as drug trafficking or money laundering are assessed using the balance of probabilities. While cogent evidence is required due to the gravity of the claims, the standard itself remains civil. The Court must weigh the evidence and determine whether the unlawful conduct is more probable than not.

Adverse Inference

[78] Where PTX has met its evidentiary burden, the law permits the Court to draw adverse inferences if the Respondents fail to offer a credible explanation or supporting evidence regarding the origin of the property. This principle is particularly significant in civil recovery proceedings, where the applicable standard of proof is the balance of probabilities.

[79] In **Serious Organised Crime Agency v Gale**²⁹, Griffith Williams J clarified that while the respondent is not legally obligated to answer every allegation, the Court

²⁷ [2009] EWHC 1015 (QB)

²⁸ Ibid at para 9

²⁹ Ibid at para 10

may draw adverse inferences if the respondent fails to respond to material questions, especially where it is evident that the respondent had the knowledge and opportunity to do so. However, the Court must first rule out delay or other legitimate reasons for the failure before drawing such inferences. Williams J further emphasised:

“While there is no burden on a Respondent to provide answers, clearly, if an answer is not provided to an important question, and the court is satisfied that the Respondent had the knowledge to answer the question and chose not to, an inference adverse to the respondent may be drawn, but any decision as to a failure to answer must have regard to delay, which must be ruled out as a possible explanation for the failure to answer before any adverse inference may be drawn³⁰.

[80] Further Alldridge stated that –

“If a respondent fails to provide evidence of the legitimate origins of property or fails to provide an explanation for such a failure, the court, in considering whether the Director has discharged the burden of proof upon him, is able to draw such inferences as it thinks fit.”³¹

[81] The Court concurs with PTX that the applicable standard under the POCA is the balance of probabilities. Parliament has consistently maintained this standard, even in cases involving grave allegations.

[82] This standard enables authorities to recover assets associated with unlawful conduct without having to meet the higher evidentiary threshold required by criminal law. Although the burden of proof is exclusively on PTX, a Respondent’s failure to furnish a legitimate explanation or evidence allows the Court to infer adverse

³⁰ Ibid

³¹ Peter Alldridge, *Money Laundering Law, Forfeiture, Confiscation, Civil Recovery, Criminal Laundering and Taxation of the Proceeds of Crime*, p 235

conclusions, including the presumption that the property was obtained through unlawful conduct.³²

Unlawful Conduct

[83] With the admissibility of the U.S. documents now confirmed, the Court must now turn to the critical question of whether the properties identified in the claim were either acquired through or used in connection with unlawful conduct. This determination lies at the heart of PTX's case for civil asset recovery under the POCA, and its resolution will significantly influence the outcome of the proceedings.

[84] Section 31XX (1) of the POCA defines unlawful conduct as

“conduct which–

(a) if it occurs in Grenada, is unlawful under the criminal law of Grenada; or

(b) if it occurs in a country outside of Grenada, is unlawful under the criminal law applying in that country.

This statutory definition establishes a comprehensive framework for identifying unlawful conduct, encompassing both domestic and foreign criminal acts.

Dual Criminality Principle and POCA's Departure

[85] Traditionally, the principle of dual criminality requires that the conduct in question be criminal in both the jurisdiction where it occurred and the jurisdiction seeking to take legal action. This principle is commonly applied in extradition and mutual legal assistance cases, ensuring legal compatibility across borders.

[86] However, the POCA deliberately departs from this conventional approach in the context of civil recovery. Under Section 31XX(1)(b), conduct is considered unlawful if it contravenes the criminal law of a foreign jurisdiction, even if it does not constitute

³² Detective Sergeant Dwayne Falconer v Michelle Hall, [2023] JMCA Civ 38, para 58

an offence under Grenadian law. This provision reflects the POCA's primary objective, to identify and recover illicit assets located in Grenada, regardless of where the underlying criminal conduct occurred or how it is classified under domestic law³³.

[87] This expansive approach significantly enhances the reach of the Grenadian authorities in asset recovery efforts. It enables civil proceedings to be initiated based on foreign criminal conduct, even when such conduct would not be prosecutable under Grenadian law. This approach reflects the POCA's transnational orientation and its alignment with international standards³⁴, promoting a more flexible and globally responsive framework for tackling financial crime and asset concealment.

[88] Money laundering typically involves disguising the origins of illicit funds through intricate financial transactions and entities, thereby creating an appearance of legitimacy.³⁵ The evidence presented by PTX, including structured deposits, unexplained inflows, and commingling of funds, is consistent with this pattern.

Legal Framework for Civil Recovery

[89] The POCA's civil recovery regime operates independently of criminal proceedings. It does not require that the individual be charged or convicted of a criminal offence. The statute explicitly provides for the recovery of property obtained through unlawful conduct, whether committed domestically or abroad, even in the absence of formal criminal proceedings.³⁶

[90] Section 5(b) of the POCA provides,

³³ See Section 241 United Kingdom Proceeds of Crime Act 2002 and S241A which has removed the need for dual criminality if conduct meets the strict criteria that constitutes a "gross human rights abuse or violation".

³⁴ UN Convention Against Transnational Organized Crime and FATF Recommendations

³⁵ Peter Allridge "Money Laundering Law "Forfeiture, Confiscation, Civil Recovery, Criminal Laundering and Taxation of the Proceeds of Crime, 2003, pp2-3

³⁶ Evan Wright, POCA Part 5 Department: Business Crime 1 March 2022

“it is not necessary to show that the conduct was of a particular kind if it is shown that the property was obtained through conduct of one of a number of kinds, each of which would have been unlawful conduct”

- [91] This provision affords the Court considerable latitude in determining the origin of property, especially in cases involving complex or overlapping criminal activities. It permits the Court to conclude that property was derived from unlawful conduct without pinpointing a specific offence.
- [92] Consequently, the argument advanced by Mr. Ferguson KC, that PTX must plead and prove mens rea (intent to defraud), is unpersuasive. BLH’s admission of outstanding tax liabilities, when viewed in conjunction with the broader evidentiary context, supports a finding on the balance of probabilities that tax evasion³⁷ occurred. This constitutes unlawful conduct within the meaning of section 5(b) of the POCA³⁸.
- [93] The Court’s interpretation finds support in the case of **Director of Assets Recovery Agency and Others v Jeffrey David Green and Others**³⁹, where Sullivan J. examined Sections **240 (recovery of cash)** and 241(1) and (2) of the Proceeds of Crime Act 2002⁴⁰. These provisions are in pari materia with Section 31XX (1) of the POCA and offer valuable guidance.
- [94] Sullivan J. held that ‘the Director is not required to specify the exact criminal offence when initiating civil recovery proceedings. The conduct may encompass a wide range of illegal activities beyond traditional offences such as drug trafficking or money laundering. However, when the conduct occurs abroad, additional detail may be required to demonstrate that it was unlawful both in the foreign jurisdiction and under domestic law’⁴¹. This requirement, however, does not apply in the same way under Grenadian law.

³⁷ Section 118 Income Tax Act Cap. 149

³⁸ Ibid

³⁹ [2005] All ER (D) 261 (Dec)

⁴⁰ United Kingdom

⁴¹ [2005] EWHC 3168 (Admin) paras 17 and 18

[95] Section 31XX(1) of the POCA establishes a dual standard rather than a dual requirement. That is, if the conduct occurred abroad, it must be unlawful under the criminal law of the foreign jurisdiction, but it need not also be unlawful under the Grenadian law. This distinction allows the Court to treat foreign criminal conduct as unlawful for the purposes of civil recovery, provided it is criminal in the country where it occurred. Therefore, the Court would be open to considering the conviction of BLH for these civil recovery proceedings, even if the acts in question did not constitute offences under Grenadian law.

Admissibility and Evidentiary Basis

[96] The Court finds the affidavits of DS and CL to be admissible and accords them full evidentiary weight. These affidavits provide credible, corroborated accounts of the interdiction and subsequent criminal conviction of BLH in the United States, which are directly relevant to the present proceedings.

[97] In support of its claim, PTX submitted a certificate of conviction dated 6th August 2015, confirming BLH's criminal convictions in the United States. Pursuant to section 85 of the Evidence Act⁴², certified foreign judicial records are presumed to be authentic and admissible unless proven otherwise. No challenge was raised in this instance, and the Court accepts the certificate as genuine and probative.

[98] During cross-examination, BLH conceded that he was the individual responsible for Boat X at the time of its interception. Although he denied ownership of the vessel, he acknowledged that he would have observed any hull modifications had it been visible above the waterline.

[99] BLH further confirmed that he provided sworn testimony during his trial in the United States, which culminated in his conviction for conspiracy to distribute cocaine and

⁴² Cap 92 Evidence Act

possession with intent to distribute cocaine. These offences constitute unlawful conduct under both U.S. and Grenadian law.

[100] BLH was sentenced to 240 months' imprisonment, and the conviction was subsequently affirmed on appeal. His testimony and the U.S. court's findings serve as direct and compelling evidence of unlawful conduct.

[101] In view of the foregoing, the Court determines that BLH's convictions in the United States satisfy the statutory criteria of "unlawful conduct" as delineated in section 31XX(1)(b) of the POCA. The evidence submitted is adequate to establish this element on a balance of probabilities. The Respondent has not provided evidence to refute this assertion, thereby failing to persuade the Court otherwise.

Circumstantial Evidence Supporting Unlawful Conduct

[102] The Court is guided by the principle affirmed in **R v Solanki et al.**⁴³, where the Court of Appeal upheld a conviction based on strong circumstantial evidence. That ruling established that a consistent and corroborated pattern of behaviour, even in the absence of direct evidence, may be sufficient to support a finding of criminal conduct.

[103] In this case, PTX has presented a compelling body of circumstantial evidence, which, when considered collectively, supports the inference that BLH engaged in unlawful conduct.

Immigration Irregularities

[104] The testimony from TM indicated that "between 2008 and 2010, BLH repeatedly failed to notify immigration authorities of his movements, despite acknowledging his involvement in the boat business during that period".

⁴³ [2020] EWCA Crim 47

[105] EP, then Supervisor of Information and Communication Technology at the Immigration Department, identified discrepancies in the inbound and outbound records of Boat X. These inconsistencies suggest unreported entries and exits, indicating that the vessel operated outside official oversight. For example, his evidence is that-

“The Boat X is recorded as departing Grenada on the 10th and 13th of November. However, it is not recorded as arriving in Grenada until the 5th of December. Similarly, in 2008, the Boat X is recorded as departing Grenada on 1st January, 17th March and 23rd March. However, it is not recorded as arriving in Grenada until 10th May. Accordingly, there are arrivals and departures which are unaccounted for by the Royal Grenada Police Force and indicate that the vessel was leaving and arriving in Grenada without notifying the Immigration authorities”.⁴⁴

Suspicious Vessel Activity

[106] The movements of Boat X and other vessels associated with BLH from February 2007 to October 2009 revealed several suspicious patterns:

- i. BLH operated multiple vessels (Boat X, Boat N, Boat K and often appeared to captain two vessels simultaneously).
- ii. BLH frequently travelled with different individuals who were not considered clients, notably CW, despite claiming to run a charter business. Both were interdicted together.
- iii. Official records show undocumented travel of Boat X, including no outbound record during the month it was interdicted.

⁴⁴ Para 12 WS

- iv. Boat X was often classified as a hired and chartered vessel. However, Boat X had previously been identified as a vessel used to transport narcotics.”⁴⁵
- v. Although Boat X was registered with OYC, it retained the same registration number. It was listed as both privately owned and chartered, even after its purported sale in 2009.
- vi. On 10th October 2009, BLH was recorded as departing Saint Maarten aboard two different vessels within minutes of each other, suggesting simultaneous operations – Boat N at around 10:57 a.m. en route to Grenada with two crew members aboard, and Boat K at approximately 10:51 a.m., both of which he reportedly owned.
- vii. Similarly, on 15th October 2009, BLH was recorded arriving from Sampson Bay, Sint Maarten, aboard both Boat k and Boat N again within minutes, reinforcing the inference of coordinated vessel activity.

These patterns suggest coordinated vessel activity inconsistent with legitimate charter operations.

[107] BLH’s travel history included frequent, unexplained trips, especially with CW, to high-risk destinations known for drug trafficking. These destinations included Puerto Rico, the U.S. Virgin Islands, and the Dominican Republic. These regions are recognised transshipment hubs for cocaine and heroin destined for the continental United States. It has been reported that –

“The distribution and abuse as well as the transshipment of illicit drugs, pose serious threats to the Commonwealth of Puerto Rico and the Territory of the U.S. Virgin Islands. Puerto Rico and the U.S. Virgin Islands are major transshipment points for cocaine destined for the continental United States. Puerto Rico also serves as a major transshipment site for South American heroin smuggled into the continental United States. Cocaine poses a

⁴⁵ Affidavit of CL para 2

significant drug threat to Puerto Rico and the U.S. Virgin Islands.”⁴⁶ “Drug transporters commonly use commercial maritime conveyances to smuggle cocaine into and through Puerto Rico and the USVI.”⁴⁷

- [108] The Dominican Republic, also recognised as a drug transit route, was among BLH’s frequent destinations. BLH’s travel history included regular visits to many of these high-risk locations. BLH’s interception en route to the Dominican Republic with a substantial quantity of cocaine reflects established drug trafficking patterns, particularly the use of commercial maritime vessels, consistent with his alleged operation of a charter business.

Contradiction

- [109] BLH claimed he was delivering Boat X to a purchaser in the Dominican Republic. However, CW contradicted this, stating “he was travelling from Grenada to the Dominican Republic with BLH to purchase boat parts”⁴⁸. This inconsistency undermines BLH’s credibility and supports the inference of unlawful conduct.

Findings on Unlawful Conduct

- [110] The last recorded inbound entry of Boat X was on 31st August 2009. It was next documented in operation on 12th April 2010, when it was interdicted with 250 kilograms of cocaine concealed in its hull. This extended period of apparent inactivity in Grenada supports the inference that BLH had sufficient time and opportunity to modify the vessel for drug concealment.
- [111] The Respondents argued that the sale of Boat X on 1st October 2009 was legitimate, and that BLH was merely delivering it to its new owner. They further claimed that BLH had no knowledge of the concealed drugs.

⁴⁶ Puerto Rico and the US Virgin Islands “Drug Threat Assessment” National Drug Intelligence Center U.S. Department of Justice, July 2003 p. iii n 7

⁴⁷ Puerto Rico and the US Virgin Islands “Drug Threat Assessment” National Drug Intelligence Center U.S. Department of Justice, July 2003 p. iii n 7

⁴⁸ Affidavit of CL ar para 9

[112] Although the Respondents did not contest BLH's U.S. conviction, they disputed PTX's hypothesis by referencing authentic immigration stamps, the absence of a requirement for immigration approval for domestic charters, and missing documents purportedly confiscated during a police raid. Nonetheless, BLH's explanations are deemed inconsistent and unsubstantiated when evaluated against the objective evidence. The Court remains unconvinced that these explanations effectively rebut the compelling inference of unlawful conduct.

[113] BLH's repeated travel to known drug trafficking destinations, combined with his presence aboard Boat X when it was discovered carrying concealed narcotics, supports a strong inference of his involvement in drug exportation⁴⁹ and trafficking.⁵⁰ The Court further finds that Boat X was intentionally modified at BLH's Plot 4 property to facilitate the concealment of the narcotics. Given that the vessel had not been used since August 2009, it is reasonable to conclude that it was being prepared explicitly for the transshipment of illicit substances. Plot 4's secluded access and strategic proximity to maritime routes made it particularly suitable for such operations.

[114] The Court has applied the civil standard of proof, namely the balance of probabilities, as mandated under Section 31B of the POCA. In accordance with the jurisprudence of **Re H (Minors)**, **Secretary of State v Rehman**, and **Gale**, the Court acknowledges that while serious allegations require cogent and compelling evidence, the standard itself remains unchanged.

[115] PTX has presented a comprehensive and coherent body of direct and circumstantial evidence that is consistent with its allegation of unlawful conduct. The Respondents

⁴⁹ Section 4 -Importation and Exportation of Controlled Drugs - This section prohibits the importation and exportation of controlled drugs without proper authorisation.

⁵⁰ Section 18- Drug Trafficking - This section defines and penalises drug trafficking activities

have failed to provide a credible or substantiated explanation to rebut the allegations, permitting the Court to draw adverse inferences.

- [116] On the balance of probabilities, the Court finds that BLH engaged in unlawful conduct, including drug trafficking, money laundering, and, to a limited extent, tax evasion, in contravention of both Grenadian and foreign criminal law.

Assessment of Property Connection to Unlawful Conduct

- [117] Having established BLH's involvement in unlawful conduct, the Court must now determine, on a balance of probabilities, whether the properties listed in the Claim Form were either acquired through or used in connection with that conduct. This determination is central to the civil recovery process under the POCA, which requires a demonstrable link between the unlawful conduct and the properties in question. Although the civil standard is lower than the criminal threshold, it nonetheless demands cogent, credible and persuasive evidence.

- [118] PTX contends that each item in the Claim Form either represents the proceeds of unlawful conduct or was instrumental in facilitating it. In contrast, the Respondents deny any wrongdoing, maintaining that their businesses and property acquisitions are entirely legitimate.

- [119] In **Regina v Anwoir and others**⁵¹, the Court of Appeal clarified that the Crown does not need to identify the precise criminal conduct that generated the property. Instead, it may rely on circumstantial evidence to support the inference that the property is criminal in origin-

(a) by showing that it derives from conduct of a specific kind or kinds and that conduct of that kind or those kinds is unlawful, or

⁵¹ [2009] 1 WLR 980: see *Mauritius Director of Public Prosecutions v AA Bholah* [2011] PC and *R v Solanki* [2020] EWCA Crim 47

(b) by evidence of the circumstances in which the property is handled, which are such as to give rise to the irresistible inference that it can only be derived from crime.⁵²

[120] In **Director of the Assets Recovery Agency v Szepietowski and others**⁵³, Waller LJ, emphasised that where an individual fails to truthfully disclose the origin of funds amid credible allegations of fraud, the Court may infer that the assets were dishonestly obtained. He noted,

“If JS chooses not to say truthfully where the funds come from, when the allegation is that they come from income produced through an extensive mortgage fraud, and there is some evidence of an extensive mortgage fraud, the court is entitled to conclude (1) no legitimate source of these monies has been identified and there is a good arguable case they were dishonestly obtained; (2), there is evidence of mortgage fraud on a grand scale which is quite possibly more extensive than that so far identified and thus a possible source of the funds; and (3) there is no explanation to demonstrate that mortgage fraud was not the source of the funds, and that lack of explanation if it persisted to trial would provide a basis on which it would be legitimate to draw the inference that mortgage fraud was the source.”⁵⁴

[121] Similarly, in **Director of Assets Recovery Agency v Green**⁵⁵, the Court held that a civil recovery claim may succeed even without identifying the specific criminal offence, provided there is a demonstrable connection between the property and the criminal conduct.

⁵² [2009] 1 WLR 980 at para 22

⁵³ [2007] EWCA Civ 766

⁵⁴ [2007] EWCA Civ 766 at para 41

⁵⁵ [2005] All ER (D) 261 (Dec)

[122] The Supreme Court in **Gale**⁵⁶ reaffirmed that civil recovery under the POCA does not require a criminal conviction. The Court may rely on circumstantial evidence and apply the civil standard of proof to determine whether property is recoverable.

[123] In **R v Rezvi**⁵⁷, the House of Lords recognised the fairness of the confiscation regime, which balances the offender's rights as well as the public interest. Lord Bingham in **McIntosh v Lord Advocate**⁵⁸, stated,

“It is only if a significant discrepancy is shown between the property and expenditure of the accused on the one hand and his known sources of income on the other that the court will think it right to make the s 3(2) assumptions, and unless the accounting details reveal such a discrepancy the prosecutor will not in practice apply for an order. It would be an obviously futile exercise to seek an order where the assets and expenditure of the accused are fully explained by his known sources of legitimate income. If a significant discrepancy is shown, and in the first instance it is for the prosecutor to show it, I do not for my part think it unreasonable or oppressive to call on the accused to proffer an explanation. He must know the source of his assets and what he has been living on.”⁵⁹

Lord Steyn supported this view, affirming that failure to do so allows the Court to conclude that the assets are proceeds of crime.

[124] In the **United States of America v Real Property located at 1407 North Street and others**⁶⁰, the Court of Appeals affirmed that money laundering schemes often involve the commingling of illicit proceeds with legitimate funds to obscure their criminal origin. Haynes, Circuit Judge, noted that,

⁵⁶[2009] EWHC 1015 (QB)

⁵⁷ [2002] 1 All ER 801

⁵⁸ [2001] UKPC D1 at para 35

⁵⁹ [2001] UKPC D1 at para 35

⁶⁰ No. 17-10624/ c/w No. 17-10626

“Criminal activity such as money laundering largely depends upon the use of legitimate monies to advance or facilitate the scheme...commingling of tainted funds with legitimate money that facilitates the laundering and enables it to continue.” Tencer, 107 F.3d at 1135 (quoting *United States v. Contents of Account Numbers 208-06070 & 208-06068-1-2*, 847 F. Supp. 329, 334–35 (S.D.N.Y. 1994)) ... “[evidence that the defendant commingled illegal proceeds with legitimate business funds has been held to be sufficient to support the design element.” See *United States v. Willey*, 57 F.3d 1374, 1386 (5th Cir. 1995) (collecting cases). Converting criminal proceeds “into an ostensibly legitimate form, such as business profits or loans may show the requisite purpose. So, too, does “moving money through a large number of accounts . . . in the light of other evidence,” even if all the accounts were held in a defendant’s own name.”⁶¹

Analysis of Business Entities and Financial Conduct

- [125] The evidence demonstrates that OYC was registered on 17th May 1985, as a United States-based entity with operations in Chicago, Fort Lauderdale, and St. Thomas. A branch was established in Grenada that same year. BLH claimed to have commenced employment with OYC in 1984, earning a monthly salary of USD \$6,000 plus expenses. He alleged that his responsibilities included managing OYC’s operations, such as salvaging, reconstructing, and acquiring vintage and abandoned vessels.
- [126] VOC was registered on 26th April 1990, offering services in yacht, automobile, and tool rentals. However, it was never registered with the National Insurance Scheme, (hereinafter referred to as “the NIS”). BLH described OYC as an extension of VOC.

⁶¹ No. 17-10624/ c/w No. 17-10626 at p. 11

- [127] PTX challenged the legitimacy⁶² of OYC and VOC, citing their failure to register with the Inland Revenue Department (hereinafter referred to as “the IRD”), and the NIS⁶³, and the absence of bank accounts in OYC’s name. PTX asserted that this lack of regulatory compliance and financial transparency undermined the credibility of the businesses. PTX also disputed BLH’s claim of earning US \$432,000 annually from yacht charters, arguing that the figure was based on unrealistic assumptions and contradicted by immigration records, which showed limited passenger activity and frequent personal use of Boat X by BLH and CW.
- [128] The testimony of EP confirmed that of the 37 recorded movements of Boat X between 2008 and April 2010, only nine involved passengers other than CW. The remaining trips were personal, contradicting the claims of commercial chartering. PTX asserted that BLH failed to provide any passenger manifests, marketing materials, or other documentation to support the alleged income; instead, he attributed the absence of records to others.
- [129] PTX maintained that the Respondents have failed to provide sufficient evidence of OYC’s profitability. The Expert concluded that the number of trips and passengers identified through her analysis of the business could not have produced a substantial amount of income⁶⁴. The absence of payment records, crew wages, or client lists supported the inference that the business was not operational. BLH’s explanation that records were lost or withheld is unsubstantiated and appears fabricated.
- [130] BLH testified that he had no obligation to contribute to the NIS, as all personnel were employed on a part-time and contractual basis. He stated that the vessels operated by OYC were registered in the United States, thereby exempting the crew members from NIS contributions. He further explained that OYC functioned as a subdivision

⁶² TM WS para 27

⁶³ Ibid para 23

⁶⁴ Forensic Accountant Report para 50

of VOC,⁶⁵ with VOC staff conducting business on its behalf. He testified that the income from yacht charters and boat sales was deposited into VOC accounts, which he co-owned with OYC and that payments were made in US Dollars due to the currency's international nature. Although BLH was listed as the owner of OYC alongside another party, no details were available or provided regarding the identity or involvement of that other party to substantiate the legitimacy of this business.

[131] The Respondents relied on the testimony of JA, who confirmed BLH's long-standing involvement in yacht chartering, salvaging, and boat delivery. JA described,

“for Brandinburg Yachts and Elegant Yachts, Mr. BLH was responsible for clearing all vessels that landed on the Port of Miami from Asia. He would have electronics installed, repairs done and any detailing. He would then deliver the boats to the Miami and Fort Lauderdale Boat Shows to show the boats to potential buyers.”

However, the Court finds this testimony insufficient to overcome the lack of documentary evidence and the inconsistencies in the financial records.

[132] BLH also attempted to shift the blame for the poor financial records onto his former accountant, ME. However, PG, a certified accountant and a witness for the Respondents, testified that BLH's business practices were improper. He stated,

“When they have a business, they are not allowed to treat it as their own money, and it would be irregular if the money were posted into their personal account. It should be mentioned in the account of OYC, and if not, it would be highly improper. It would not show a fair view of the company's business since those transactions would be missing.”

[133] PG further testified that such behaviour constituted false accounting and could be considered fraudulent, as it amounts to defrauding the company. He acknowledged

⁶⁵ Ibid.

he has a duty to report suspicious activity, indirectly affirming that the activities were suspicious and irregular.

- [134] The Expert concluded that the immigration data strongly indicated that BLH did not operate a genuine yacht chartering business.⁶⁶ The Expert also noted that for a supposedly well-established and viable business, “there were no bank accounts for this business, nor any employees registered to it.”⁶⁷ The Court finds that, despite the Respondents’ claims, it is evident that OYC was not a sustainable commercial business.

Company VOC and Associated Businesses

- [135] BLH claimed that OYC was an extension of VOC and that the income generated by this business was reinvested into company property. The financial records showed modest activity, with sales of EC\$185,634 in 2005 and expenses of EC\$181,851, and sales of EC\$179,564 in 2006 and expenses of EC\$183,558. The figures resulted in a small profit of \$3,783 in 2005, followed by a deficit of \$3,994 in 2006. The Expert concluded that the financial instability was not reflected in the broader financial records and noted the absence of any evidence of corporate tax payment and reinvestment, rebutting the claim of economic viability.⁶⁸

Companies-IMT, IMH and MHR

- [136] IMT, IMH, and MHR were all incorporated on 9 November 2009, with BLH registered as the sole director. Despite their differing stated objectives, none of these businesses showed evidence of having commenced operations.
- IMT was described as specialising in repairs and auxiliary services related to the storage and maintenance of mega yachts.

⁶⁶ Forensic Accountant Report para 49

⁶⁷ Forensic Accountant Report para 50

⁶⁸ Forensic Accountant’ Report

- IMH aimed to own, acquire, and invest in a dry dock marina, offering ancillary services for the storage and repair of mega yachts. This entity reflected BLH's personal vision for a high-end marina enterprise.
- MHR was incorporated for the purpose of operating as a restaurant. While BLH is the sole director, ownership is attributed to MAF. The company does not maintain a bank account, and there is no evidence that it assumed the operations of the MHRB, although the statements reflect "MHG"⁶⁹. This claim lacks supporting documentation or operational records.

Company-STW

- [137] STW was initially a partnership between NA and VB, registered on 26th April 1990, and was later re-registered under OYC and BLH as the owners in May 1991. G confirmed that although a bank account existed, the company was not registered with the IRD or the NIS. BLH testified again that the staff were temporary and that the income from OYC was deposited into the STW's account. The business was later rebranded as MAF, and the NIS payments were subsequently addressed.
- [138] PTX argued that IMT, IMH and MHRB, and STW were shell companies used to conceal the origins of illicit funds, particularly in connection with drug trafficking. The Respondents countered that these businesses represented genuine ventures or future plans, attributing the lack of documentation to the same reasons given for OYC.
- [139] The Court finds that several entities associated with BLH, namely OYC, STW, MAF, MHG, IMT, IMH, MHRHB, and VOC, exhibited characteristics consistent with shell companies used to facilitate money laundering and conceal illicit funds. These characteristics include:

⁶⁹ Forensic Accountant's Report

- Lack of operational activity- Most entities showed no evidence of actual business operations, such as customer transactions, employee records, or service delivery.
- Absence of financial documentation- The companies failed to produce proper invoices, receipts, tax filings, or audited financial statements.
- No bank accounts or minimal banking activity- Several entities had no dedicated bank accounts and had accounts that received large unexplained cash deposits inconsistent with declared income.
- Failure to register with regulatory bodies- Many were not registered with the IRD or the NIS.
- Use of similar-sounding names that appeared calculated to obscure ownership and create confusion among individuals interacting with the businesses.
- Commingling of funds- BLH routinely deposited business income into personal accounts and vice versa, undermining financial transparency.
- Cessation of activity post-arrest- Business operations ceased following BLH's arrest, suggesting that the entities were not viable independent businesses.

[140] The features are consistent with internationally recognised money laundering typologies, particularly the layering phase, which involves the use of complex business structures to obscure the origin and ownership of illicit funds. The Court concludes that these businesses were not legitimate commercial enterprises but rather vehicles of financial deception, deliberately structured to facilitate and conceal BLH's unlawful conduct.

[141] In **the Law Society of British Columbia v Neal Burton Wang**⁷⁰ the Tribunal stated,

⁷⁰ 2023 LSBC 38

“The FLSC Report, at p. 5, also provides the following helpful remarks to keep lawyers alive to the issue of money laundering, particularly as it relates to the use of shell companies:

Criminals are increasingly turning to shell companies to facilitate money laundering. Anonymous shell companies allow criminals to hide their identities, conceal the origin and flow of money, and hide the identities of true owners, beneficiaries, or enhance the perception of legitimacy. They are typically used during the “layering phase” of money laundering, involving often complex financial transactions designed to hide illegal sources of funds.”⁷¹

- [142] The Court agrees with PTX that the structure and conduct of these companies are consistent with the recognised methods of money laundering. The evidence supports a compelling inference that the companies were not genuine commercial enterprises, but instruments of financial deception intended to serve BLH’s unlawful objectives.

Company-MAF

- [143] MAF was officially incorporated on 10th January 2001, although operations reportedly began in September 1997. The business claimed to offer waste disposal services, portable toilet rentals, and building equipment. BLH served as the sole director throughout its existence, while MHG was listed as the registered owner, which raises significant questions about the corporate structure, beneficial ownership, and the potential use of nominee entities. This arrangement mirrored patterns seen in **R v Daley**⁷², where a company was used to obscure fraudulent activities.

Bank Accounts

⁷¹ 2023 LSBC 38 at para 45

⁷² [2023] EWCA Crim 501

[144] On 16th November 2009, two bank accounts were opened at the Grenada Cooperative Bank under the name of MAF-

- savings account No.1323 and
- current account No.0070.

Savings Account No. 1323

[145] The savings account was opened with an initial deposit of EC\$267,175.19, followed by an additional cash deposit of EC\$20,000 the following day. No further deposits were recorded into this account after March 2010. This abrupt cessation in activity coincided with BLH's interdiction for drug-related offences, suggesting a direct correlation between the account's dormancy and his subsequent charge and conviction for drug-related offences.

[146] In April 2010, a significant sum of EC\$330,000 was transferred from the savings account linked to the current account (No. 0070). This was followed by a second transfer of EC\$110,000 in 2011. These substantial transactions, like most business and other bank transactions, lacked supporting documentation, such as financial statements, to justify the movement of such large sums.

Current Account No. 0070

[147] The current account was established with an initial cash deposit of EC\$50,000, followed by a subsequent deposit of EC\$10,000. Furthermore, no documentation was provided to verify the origin of these funds. The Expert hypothesised that the deposits may have originated from BLH's U.S. Dollar account (No. 8189) maintained at RBTT Grenada Bank Ltd, which was closed on November 13, 2009, with a final balance of US\$117,989.84. However, she concluded that no transfer records or corroborating documentation were presented to substantiate this hypothesis or the lawful provenance of the funds.

[148] BLH testified that,

“Sometime in 2009 the RBTT Bank told me the FIU was looking at my account and saying I was putting too much money on my account. Some months later, the manager of the bank told me the FIU was still looking at my account, and they would have to close my account...Sometime later, they gave me a cheque and told me my account was closed.”⁷³

This testimony strongly supports the inference that the financial activity associated with BLH’s account was considered suspicious by the authorities. The involvement of the FIU, an agency tasked with detecting and preventing financial crimes, suggests that the deposits raised red flags regarding their legitimacy and reinforces the inference that the financial activity was deemed suspicious by the authorities. The absence of transparency surrounding the source of large cash deposits is consistent with patterns commonly associated with money laundering or other unlawful conduct, such as drug trafficking. The sequence of events suggests a deliberate attempt to conceal the origins of the funds, reinforcing suspicions of unlawful conduct.

[149] The Court considers it necessary to highlight a fundamental legal principle under the Grenadian law. Pursuant to Section 39 of the POCA⁷⁴, it is a criminal offence for any person to disclose to another individual that they are the subject of an investigation concerning suspicious financial activity. This offence, commonly referred to as “tipping off”, is intended to preserve the integrity of financial investigations and to prevent individuals from taking steps to conceal or dissipate assets that may be illicit in origin. The statutory prohibition against tipping off is a cornerstone of Grenada’s anti-money laundering framework.

[150] In the present matter, the testimony of BLH raises serious concerns. It suggests that personnel at the financial institution may have informed him that his account was under scrutiny by the FIU. If this disclosure occurred in the manner described, it may

⁷³ BLH WS para 18

⁷⁴ 2012 Proceeds of Crime Act 6

constitute a breach of Section 39 of the POCA, specifically the prohibition against tipping off. Such conduct, if proven, could expose the disclosing party to criminal liability.

[151] The Court emphasises that unauthorised disclosures of this nature directly undermine the statutory mechanism designed to detect and prevent money laundering and related offences. Financial institutions and individuals who are privy to confidential investigations must exercise utmost caution and be fully cognisant of the legal ramifications of such disclosures. The integrity of the investigative process depends on strict compliance with these legal safeguards. Any deviation not only compromises ongoing investigations but also erodes public confidence in the financial regulatory system.

[152] The FIU identified a series of transactions and behavioural patterns that raised significant red flags indicative of potential money laundering activity. Most notably, approximately EC \$347,175 was deposited into the two accounts over the span of just two days. As with previous transactions, these substantial cash inflows were made without any supporting documentation or identifiable sources of legitimate income. The absence of explanation or verifiable origin for these funds raises serious concerns regarding their provenance. This deficiency supports a strong inference that the deposits did not originate from lawful commercial activity but instead are linked to unlawful conduct.

[153] BLH claimed that the EC \$300,000 in cash deposit into the Grenada Cooperative Bank originated from revenues generated by various business activities, including restaurant services, yacht charters, sewage disposal, portable toilet rentals, and tool rentals.⁷⁵ However, after review, the Court notes a complete lack of supporting documentation to verify these claims. Additionally, the Court concludes that the businesses allegedly operated by BLH either never started or engaged in minimal,

⁷⁵ Forensic Accountant's Report para 62

irregular activity that fell well short of the commercial scope suggested, raising doubts about the legitimacy of the stated income.

- [154] Records obtained from the NIS show that MAF maintained minimal staffing levels during its early years, with only one employee from 2005 to July 2007, indicating limited commercial activity. PTX highlighted that the staffing increased to five in August 2007 and seven by November 2009, coinciding with the opening of the two new bank accounts, which potentially signalled a shift toward more active financial operations. In February 2010, the company recorded its highest single-month deposit of EC\$287,458 into its account, and the staff numbers rose to nine. PTX argued that this pattern suggests an attempt to present the appearance of legitimate business growth.
- [155] However, by June 2012, staffing levels had declined significantly, coinciding with the cessation of financial deposits. The correlation between the reduced economic activity and shrinking staff raises questions about the sustainability and authenticity of the operations. Upon reviewing this pattern, the Court infers that the earlier increases in staffing may have been artificially inflated to mirror financial movements, rather than reflecting genuine business growth. Such a pattern suggests that the operational structure was constructed to give the appearance of legitimacy, while lacking substantial commercial activity.
- [156] The evidence shows that several months after Boat X ceased operations, a series of unexplained deposits appeared in the MAF bank accounts. The circumstantial evidence suggests that Boat X was dry-docked specifically to be outfitted for the loading and subsequent transportation of cocaine. These deposits occurred shortly before BLH's interdiction with over 250 kilograms of cocaine aboard Boat X. The timing and lack of lawful financial explanation support the inference that the funds were proceeds of unlawful conduct, likely received in anticipation of the drug shipment by BLH.

[157] This inference is further reinforced by the estimated street value of the cocaine, which exceeded EC\$20 million, highlighting the scale and sophistication of the operation. Such a valuation points to a well-organised and high-stakes criminal enterprise, indicative of advanced logistical coordination and substantial financial backing. This observation strongly supports PTX's assertion that BLH was a seasoned drug trafficker, entrusted with the handling of high-value shipments and operating within a network capable of executing large-scale narcotics transactions.

[158] In assessing the financial transactions, the Court observes that the pattern and volume of deposits, particularly in the absence of legitimate business activity, strongly indicate that the funds were not derived from lawful conduct. The use of cash deposits and inter-account transfers is consistent with the layering stage of money laundering, designed to obscure the origin of unlawful funds.

[159] In **United States of America v Real Property**⁷⁶, the court emphasised that -

“Criminal activity such as money laundering largely depends upon the use of legitimate monies to advance or facilitate the scheme...commingling of tainted funds with legitimate money that facilitates the laundering and enables it to continue.... Converting criminal proceeds “into an ostensibly legitimate form, such as business profits or loans.”

Similarly, in **R v Rosenfeld**,⁷⁷ the court, in analysing the facts of the case, supported the principle that large, unexplained cash deposits, primarily when associated with minimal or non-existent business activity, justify an inference of money laundering.

[160] The **Cullen Commission**⁷⁸ further illuminated the broader systemic vulnerabilities exploited in such schemes, including the use of shell companies and under-documented business entities, which facilitate both the layering and integration phases of money laundering. The Commission stressed the importance of transparency in corporate structures, including the disclosure of beneficial and

⁷⁶ No. 17-10624/ c/w No. 17-10626 at p. 11

⁷⁷ 2009 ONCA 307 (CanLII),

⁷⁸ Commission of Inquiry into Money Laundering in British Columbia Final Report June 2022

financial ownership, as well as rigorous record-keeping to prevent the abuse of corporate structures.

Real Property Acquisitions

[161] Between 2004 and 2010, BLH and MAF acquired multiple parcels of land in Westerhall, St. David, totalling EC\$2,451,545. The scale and timing of these acquisitions raised early concerns, as they appeared inconsistent with QLD's declared business activities. Notably, six properties were acquired within a remarkably short timeframe, just two days, albeit across different months. This rapid and substantial investment suggested a level of financial activity inconsistent with the company's stated operations. The properties acquired included:-

- 2,759 square feet of land: EC\$41,385 (10 Jul 2009),
- Lot A: EC\$204,450 (10 Jul 2009)
- Lot B: EC\$200,400 (10 Jul 2009)
- Lot C: EC\$205,620 (10 Jul 2009)
- Lot D: EC\$174,270 (16 Nov 2009)
- Lot E: EC\$206,850 (16 Nov 2009)
- Lot F: EC\$210,225 (16 Nov 2009)
- 3¼ acres (141,570 sq. ft): EC\$1,203,345 (paid off 10 Feb 2010 \$1,640,000)

BLH also personally acquired Plot 4 in 2004 for EC\$5,000.00.

[162] During cross-examination, BLH failed to provide a coherent rationale for acquiring the properties in the name of MAF, especially given the absence of corresponding withdrawals from MAF's bank accounts. BLH's assertion that MAF was the "parent company" lacked substantive evidentiary support and is viewed by the Court as a deliberate attempt by BLH to obscure the true source of the funds.

[163] It is well-established that real estate transactions are frequently exploited as a means of laundering illicit funds, often through manipulated property valuations and collusion with industry professionals, such as brokers, developers, and mortgage

advisors. These schemes facilitate the layering and integration stages of money laundering, allowing criminal proceeds to be absorbed into seemingly legitimate assets via complex financial arrangements and opaque ownership structures.⁷⁹

[164] A common tactic involves using third-party accounts, in which individuals deposit and withdraw illicit funds through accounts held by friends, family members, or intermediaries. This strategy serves to conceal the actual ownership of the assets, reduce the direct association of the criminal with the transaction, and reduce the likelihood of regulatory detection or scrutiny⁸⁰. Spotting red flags and suspicious patterns, such as unusual payment structures, rapid resales, or non-transparent ownership arrangements, is essential for detecting and preventing real estate-based financial crimes.⁸¹

[165] The Expert analysis revealed that EC\$1,633,186.87 used for the acquisition of the properties was funnelled through the law firm DWE's trust account between June and November 2009. A large portion of the cash deposits was made in US currency. The deposits included:

- EC\$327,395.40 in cash (US\$122,620.00)
- EC\$165,490.00 in EC cash and cheques
- EC\$1,066,301.47 from BLH's personal accounts
- EC\$74,000.00 from MHG's bank account (not recorded in QuickBooks).

The use of a law firm's trust account in this context to facilitate these transactions is particularly concerning. According to the **Financial Action Task Force** (hereinafter referred to as "FATF"), such accounts are high-risk conduits for laundering funds, particularly in real estate transactions.⁸²

⁷⁹ European Parliament, "Briefing" Understanding money laundering through real estate transactions

⁸⁰ Posted in Anti-Money Laundering (AML) on December 5, 2024 "The Art of Disguise: Common Money Laundering Techniques Revealed"

⁸¹ Ibid.

⁸² FATF Guidance For A Risk-Based Approach "Real Estate Sector" July 2022

- [166] The deposits were categorised as business income from bar sales and yacht rentals, yet they were simultaneously channelled through both the business and legal accounts. This dual routing, in the absence of supporting documentation, suggests a deliberate effort to obscure and integrate illicit proceeds, a characteristic hallmark of money laundering, as asserted by PTX. Notably, two substantial transfers, US\$400,000.47 in September 2009 and US\$250,980 in November 2009, were traced directly to BLH's personal account, reinforcing the inference of calculated layering. The concurrent deposits into both business and lawyer accounts further support the inference of a calculated strategy to layer transactions and obscure the criminal origin of funds.
- [167] The Court finds that the law firm exhibited evident complicity in facilitating the integration of illicit funds into the formal financial system. The substantial volume of foreign currency deposits, coupled with the absence of documentation in MHG's records, should have triggered immediate scrutiny. This failure to exercise due diligence reflects a serious breach of professional and regulatory obligations.
- [168] In **Law Society of British Columbia v. Yen** ⁸³the respondent argued that it was acceptable to receive and disburse funds through a trust account if there was an indirect connection to legal work being done or potentially to be done for the client. The disciplinary panel rejected this argument, stating that such a broad interpretation would allow lawyers to bypass their duty to make proper inquiries about the source and purpose of funds. The panel emphasised that a clear and direct correlation between the legal services provided and the trust transactions is required. Simply doing some legal work for a client is not sufficient justification for using the trust account.⁸⁴
- [169] William Joseph Harris, a solicitor and sole practitioner in residential conveyancing, was struck off the roll for serious breaches of anti-money laundering regulations. He had not conducted source of funds or wealth checks on sixty-three clients involved

⁸³ 2023 LSBC 02

⁸⁴ The Law Society of British Columbia Tribunal v Neal Burton Wang 2023 LSBC 38 at para 77;

in conveyancing transactions totalling 8.8 million pounds between January 2022 and September 2023, leaving the firm vulnerable to money laundering and terrorist financing risks⁸⁵. Furthermore, this Court highlights the critical importance of vigilance and compliance with AML/CFT obligations. Legal practitioners must not only understand these responsibilities but also implement them rigorously. Such diligence is essential to protect themselves from potential criminal liability and, equally, to uphold the integrity of the legal profession. Full adherence to statutory and ethical obligations is non-negotiable and remains a cornerstone of public trust in the legal system.

[170] MAF, a company ostensibly engaged in the sewage disposal services, acquired a portfolio of real estate holdings that was markedly inconsistent with its declared business model. This discrepancy, when viewed alongside the timing of the substantial deposits, occurring less than nine months before BLH's interdiction with approximately 250 kilograms of cocaine, strengthens the inference that the funds used for these acquisitions were derived from unlawful conduct. Moreover, the fact that many of the properties were purchased at prices significantly above the market value⁸⁶, further supports the conclusion that the transactions were not commercially viable, but rather indicative of efforts to launder illicit proceeds through inflated property purchases.

[171] The Respondents claimed that BLH intended to develop a marina and dry dock, necessitating the land purchases, and that the funds were derived from vessel sales. However, the Expert found that the timing and nature of the deposits did not support this narrative, undermining its credibility.

⁸⁵ The Law Society Gazette 7 August 2025; see also 17 July 2025 "The report included case studies of where lawyers have facilitated money laundering activities. One involved a solicitor whose client had recently paid £4m toward the purchase of a property in London's Mayfair. This solicitor supplied a fake 'letter of engagement' that set out his role representing a British Virgin Island company, which was bought by the client and used to move funds for the purchase of the Mayfair property. This solicitor was sentenced to nine months in prison, suspended for 18 months, and later suspended by the SDT for a year."

⁸⁶ See Report & Valuation of Properties at Westerhall, St. David, prepared by BMH, Valuer.

- [172] In **Szepietowski**⁸⁷ the Court of Appeal affirmed that a refusal to truthfully disclose the origin of funds, especially when the surrounding evidence suggests they stem from large-scale fraud, allows the court to infer that the funds were dishonestly obtained⁸⁸. This principle is directly applicable to the present case, where, despite extensive forensic analysis and investigation, no credible or lawful origin for the funds in question has been established. The persistent lack of transparency on the part of BLH, along with the implausibility of alternative explanations, reinforces the inference of criminal provenance.
- [173] Similarly in **R v Anwoir**⁸⁹, the Court of Appeal held that the criminal origin of property may be inferred from the circumstances in which it is handled, even in the absence of proof of a specific predicate offence. The court emphasised that where the only reasonable explanation for the possession or movement of property is that it derives from crime, an “irresistible inference” of unlawful origin may be drawn. This case reinforces the evidentiary value of patterns such as unexplained wealth, complex financial arrangements, and the absence of legitimate business activity in establishing money laundering.
- [174] Taken together, the unexplained and suspicious nature of the deposits, the use of third-party accounts, the absence of legitimate business activity, and BLH’s conviction for drug-related offences support the compelling inference, on the balance of probabilities, that the properties were acquired using proceeds of unlawful conduct.

Loan Repayments: Property Acquisition by BLH, Certificate of Deposit and Balloon Payment

- [181] On 2nd February 2010, BLH secured a loan of EC\$1,083,000 from the Grenada Cooperative Bank to purchase 3 ¼ acres (141,570 square feet) of land in Westerhall, St. David. This loan followed the establishment of a Certificate of

⁸⁷ [2007] EWCA Civ. 766

⁸⁸ Ibid at para 41

⁸⁹[2009] 1 WLR 980

Deposit on 31st December 2009, which was funded by a combination of US currency and a cheque, totalling EC\$1,027,366. The terms of the loan required monthly repayments of EC\$13,719 over a 10-year period (120 months) at an interest rate of 9%.

[182] According to the Expert, BLH serviced the loan from 26th February to 28th June, 2010. However, on 27th July 2010, BLH made a “balloon payment” of EC\$1,060,176.49 using funds from both the Certificate of Deposit and his personal savings account. This early settlement of the loan, just five months after issuance, resulted in a total repayment of EC\$1,128,771.49 in 2010.

[183] BLH claimed that the early repayment was due to his incarceration, which would hinder his business operations and expose him to accumulating interest. However, PTX argued that the timing and source of the funds suggest a deliberate attempt by BLH to obscure their origin.

[184] PTX contended that this pattern mirrored BLH's 2008 loan of EC \$50,000 from RBTT Grenada Bank Ltd., for the acquisition of a 2002 BMW. This loan, which entailed monthly payments of EC \$1,950 over 30 months at an interest rate of 6.774%, was prematurely settled with a balloon payment of EC \$28,773.63 in December 2009, 15 months before the original maturity date. BLH provided no credible justification for this early repayment.

[185] PTX argued that both loans served as methods to launder proceeds from unlawful conduct. The Expert supported this view and concluded that,

“The loans that he applied for both in 2008 and 2010 were not needed. At both times, BLH’s personal bank accounts held more than the value of these loans. The collateral for the EC \$1,083,000 loan was a Certificate of Deposit account that held US \$380,000. Both loans were paid off well in advance of the final repayment dates.”⁹⁰

⁹⁰ Forensic Accountant Report

- [186] The financial records indicate that most repayments for the Westerhall property loan were made after BLH's arrest in April 2010. Despite BLH's claims of earning over US\$755,000 from boat sales between 2007 and 2011, he sought loans that were either minimal in amount or considered unnecessary. Additionally, the land was bought at a price well above its market value and was purchased around the same time as other properties, shortly before his arrest. In the Court's view, these circumstances raise questions about the legality of his financial transactions.
- [187] The use of real estate and vehicle loans to disguise illicit funds is consistent with the established money laundering typologies. The FATF identifies real estate as a high-risk sector for money laundering due to its high-value transactions and potential for complex ownership structures⁹¹. Similarly, **the European Parliamentary Research Service**⁹² notes that criminals often use property purchases and early loan repayments to integrate illicit funds into the legitimate financial system⁹³.
- [188] **Typology Tales**⁹⁴ further affirms this pattern, explicitly demonstrating that early loan repayments, especially when disproportionate to declared income, can serve as indicators of potential money laundering activities. According to **Tookitaki's Anti-Financial Crime Ecosystem**, these repayments often occur during the layering phase of money laundering, where illicit funds are concealed through seemingly legitimate financial transactions –

“Customers initiate early repayments on loans with sums significantly larger than their reported or declared income... These repayments are characterized by an unusually high sum and frequency of incoming

⁹¹ FATF Guidance For A Risk-Based Approach “Real Estate Sector” 2022

⁹² EPRS European Parliamentary Research Service, “Understanding Money Laundering Through Real Estate Transactions”

⁹³ EPRS European Parliamentary Research Service, “Understanding Money Laundering Through Real Estate Transactions at page 3

⁹⁴ Tookitaki Typology Tales: Early Loan Repayments Exceeding Declared Client Income 06 Apr 2024

transactions that do not match the customer's established income pattern".⁹⁵

[189] BLH's utilisation of the law firm's trust account and early loan settlements, without any economic need, exemplifies typical laundering behaviour. As seen in **R v Rezvi**⁹⁶ the court has upheld the principle that unexplained wealth and financial structuring inconsistent with declared income may support inferences of unlawful conduct. The Court concludes that BLH's financial manoeuvres, particularly the sham loans and early repayments, were designed to obscure the origin of illicit funds from unlawful conduct and the integration of them into the financial system, consistent with PTX's assertions.

Company-MHG

[190] MHG was incorporated in December 2008 under the ownership of QLD and MAF. In February 2009, two bank accounts were opened in the business's name, a current account (No. 0046) and a savings account (No. 0031), each with an initial deposit of US\$2,000. These accounts later became central to the FIU investigations.

[191] PTX contended that the evidence provided by the Expert strongly indicates BLH's involvement in money laundering activities, with BLH using the business to conceal proceeds derived from drug trafficking. The evidence, PTX argued, undermines BLH's claims of legitimate income sources, as the deposits ceased upon BLH's arrest in April 2010.

[192] The Expert found that the deposit patterns were consistent with narcotics-related cash flows. Specifically, the accounts received

- 195 x \$100 bills;
- 238 x \$50 bills,
- 8,497 x \$20 bills, and

⁹⁵ Ibid

⁹⁶ [2002] 1 All ER 801

- 7 x \$10 bills.

In February 2009, deposits were primarily made simultaneously into both the current and savings accounts. The Expert noted that most deposits into the savings account (No.0031) consisted of US\$20 notes, a denomination commonly associated with street-level drug transactions. The Expert concluded that the heavy reliance on cash rather than traceable financial instruments is consistent with the money laundering typologies identified by the FATF, which warns that cash-intensive businesses are frequently exploited to integrate funds into the legitimate financial system.

[193] The Expert reviewed the Profit and Loss Statements from QuickBooks for the MHG and found that the business was operating at a consistent loss. Specifically, the net losses were

- January to April 2009: Net loss of \$24,301.95
- Full year 2009: Net loss of \$81,240.27; and
- Year 2010: Net loss of 11,949.53

These figures contradict BLH's claim of selling 38 boats for US\$1,738,000 between 2007 and 2011, especially since no receipts for these sales were found in the company's financial records.

[194] The Expert's analysis of QuickBooks records for MHG revealed US \$580,636.97 in "Other Income" from December 2008 to December 2012, including US \$324,984.22 attributed to yacht charters. An analysis of legitimate income compared to funds deposited into bank accounts revealed discrepancies between sales and deposits. Further, there was no documentary evidence or tax returns to support these yacht charter transactions. The continued lack of documentary evidence supports the inference of unlawful conduct, as emphasised in **Green**⁹⁷, where the court permitted recovery of assets based on circumstantial evidence of money laundering.

⁹⁷ (2005) All E.R. (D) 261

- [195] The Expert concluded that the cash deposits into the savings account (No. 0031) did not reflect restaurant sales. This conclusion was reinforced by the cessation of deposits following BLH's arrest.⁹⁸ Additionally, the bar's location at Calivigny Harbour in Westerhall, St. David, which would typically generate revenue in Eastern Caribbean currency, raises concerns about substantial US dollar deposits that are suspicious and inconsistent with expected business operations.
- [196] The Respondents argued that BLH operated multiple businesses, including restaurants, sewage disposal, vehicle rental, yacht charters, and a dry dock marina, as part of a broader entrepreneurial vision. However, BLH personally managed all transactions and treated business income as personal funds, resulting in improper accounting practices. Nevertheless, the Respondents argued that this was not deliberate, but rather due to BLH's accounting shortcomings, which he attempted to remedy by appointing an accountant. The Court finds that the conduct in question is consistent with the FATF's typology of "commingling," a money laundering method in which illicit funds are blended with legitimate revenues to obscure their origin and evade financial scrutiny. This technique is commonly employed to integrate criminal proceeds into the formal economy under the guise of lawful business activity.
- [197] The Court further concludes that the substantial deposits, particularly in US\$20 denominations, are consistent with known patterns of drug trafficking. The absence of legitimate business operations, the presence of unexplained cash flows, and the fabrication of income entries collectively support the inference that the funds were derived from unlawful conduct.

Distribution Across Accounts

- [198] The Expert's evaluation analysed cash deposits made into bank accounts controlled by BLH during 2009 and 2010. These deposits totalled

⁹⁸ Forensic Accountant Report

- USD\$1,046,563 in 2009; and
- USD\$359,864 in 2010.

[199] The Expert's evaluation of MAF's expenses revealed a significant unexplained payment of EC\$91,346.60 transferred from the company's current account (No.0070) to ESE. This payment accounted for 22% of the company's largest expense payments between March and August 2010, a period during which BLH was under interdiction for drug-related offences.

[200] There were also deposits which were distributed across both business and personal accounts, including those held by BLH, ESE, and their children. For example:

- USD\$55,300 and USD\$36,900 were deposited into a joint account held by BLH and the MPR.
- USD\$73,960 was deposited into BLH's personal savings account no. (0923).
- USD\$61,583 and USD\$25,095 were deposited into the MHT account No. (0031).

Only USD\$188,783 of the 2009 deposits went into business accounts, with the remaining USD\$857,780 deposited into personal accounts.

[201] Additional account activity included:

- MHG Current Account No. (0046): Deposits of USD \$38,500 in 2009 and USD \$61,306 in 2010.
- QLD Current Account No. (0070): Deposits of USD \$5,700 in 2009 and USD \$103,183 in 2010.
- MHG Savings Account No. (0031): Deposits of USD \$61,583 in 2009 and USD \$25,095 in 2010.⁹⁹.

- VOC Savings Account No. (1323): Deposits of USD \$14,000 in 2009 and USD \$101,030 in 2010.
- BLH's Personal Savings Account No. (0923): Deposits of USD \$73,960 in 2009 and USD \$24,450 in 2010.
- Joint Account No. (1403) – BLH and MPR: Deposits of USD \$2,000 in 2009 and none in 2010.¹⁰⁰

[202] PTX submitted that MHG and the associated bank accounts were used to conceal proceeds from unlawful conduct. The Expert's findings, combined with the lack of legitimate documentation and the suspicious cash deposits, support this assertion. PTX also highlighted discrepancies between reported income and actual deposits. The Expert's comprehensive analysis revealed inaccuracies in BLH's financial records, further undermining the credibility of BLH's claims.

[203] The Respondents' consistent justification for the lack of proper accounting was BLH's lack of accounting skills and the need to fulfil his dream.

[204] The Expert noted that on several occasions in 2009, BLH, or someone acting on his instructions, made multiple deposits into different accounts on the same day, often in multiples of \$1,000. The key transactions included:

- 12th February - \$2,000 each to open three new accounts;
- 15th and 19th February- \$5,000 each to two accounts.
- 26th and 27th February- \$11,000 and \$10,000 in separate transactions.
- 23rd June- \$34,900 across five accounts.
- July- \$270,410 in 18 deposits, including \$201,410 on July 29.

[205] The Expert determined that consistent deposits were made into the accounts of ESE (1804), BLH (0002), MHG (0046) and (0031), BLH (0923), and MPR (1403). During cross-examination, MPR admitted she was unaware of the nature of her father's daily activities or the origin of the cash deposits into accounts bearing her name.

¹⁰⁰ Forensic Accountant Report

Similarly, MPR acknowledged that she did not know what the deposits represented, though she was aware they were cash deposits. Additional accounts were created in the name of ESE for BJP (0213) and ESE for EWN (0214). The evidence indicates that BLH exercised control over all these accounts.

[206] The Expert's analysis of Source of Funds Declaration forms completed between February 2009 and April 2010 revealed that the declared sources were consistently listed as "business funds, restaurant services, yacht charters, portable rentals, and tool rentals," even when the deposits were made into personal accounts. The two largest deposits, USD\$201,410 on the 9th July 2009, and USD\$94,000 on the 6th November 2009, were attributed to vessel sales; however, no credible documentation supported these claims. Notably, many of these deposits consisted of cash, with many falling below the reporting threshold. These deposits continued until BLH's arrest in 2010.

[207] The deposit patterns are consistent with smurfing, also known as "structuring" or "structuring transactions," a money laundering technique that involves dividing large sums of money into smaller, less-suspicious amounts, which are then deposited across multiple accounts. This technique allows criminals to avoid triggering suspicious activity reports that could alert financial institutions and authorities. Individuals known as "Smurfs" often work in teams to make multiple small transactions, further avoiding detection.¹⁰¹

[208] Furthermore, the only vessel reportedly sold before the end of July 2009 was Boat W for EC\$130,000, which was significantly less than the US\$201,410¹⁰² cash deposit made on 29th July 2009. Additionally, deposits of EC\$40,000 were made daily from 24th to 26th August. In total, US\$1,046,563 was deposited in 2009, of

¹⁰¹ The Art of Disguise: Common Money Laundering Techniques Revealed Posted in Anti-Money Laundering (AML) on December 5, 2024

which only US\$188,783 went into business accounts. In 2010, US\$359,864 was deposited, primarily into the business accounts.

[209] PG spoke to the unusual nature of such transactions, that is, the commingling of business funds with personal funds. He also testified that the nature and volume of these deposits, particularly the splitting of large sums into multiple accounts on the same day, would have raised serious concerns. He confirmed that if such funds were not recorded in the company's books, it would amount to false accounting and defrauding the company.

Financial Transfers by BLH and Associates

[210] The forensic examination of financial transfers involving BLH, GL, and ESE uncovered a recurring pattern of significant monetary activity spanning multiple international jurisdictions. These transactions, conducted primarily through money transfer services, involved recipients located in the United States, Dominican Republic, Canada, St. Maarten, Trinidad, and Puerto Rico. Two of them in particular were identified as major transshipment points for drugs going to the United States.

[211] The analysis revealed frequent, high-value transfers, particularly concentrated in the early part of 2010, shortly before BLH was arrested. Notable examples include:

- In January and February 2010, BLH initiated several transfers exceeding USD \$4,000 to various individuals, including JDP;
- In February 2010, GL transferred USD \$6,000 to FC;
- In March 2020, ESE sent USD \$5,000 to HD.

These transactions occurred within short time frames, indicating a sense of urgency and possible coordination among the parties concerned.

[212] The recipients were extensively dispersed, indicating the presence of a broad and potentially organised drug trafficking network. Regular transfers were conducted to individuals such as AP (USA) and JDP (Dominican Republic). Notably, in the case

involving JDP, although BLH reportedly sold a vessel to him for over US\$100,000, BLH subsequently wire-transferred US\$44,865 to JDP. This raises questions about the transaction's legitimacy and prompts this Court to infer that BLH engaged in unlawful conduct, given the circumstances of these transactions and his actions.

[213] BLH asserted that the funds were intended for the procurement of supplies. Nevertheless, this explanation is inconsistent with the transfers and his subsequent apprehension. CW indicated that their travel was “to purchase” rather than “to collect” parts, thereby contradicting BLH’s account. Based on the timing and characteristics of these transactions, the Court infers that these transactions were linked to unlawful conduct, including payments for the narcotics later confiscated, compensation for logistical support in drug trafficking, and/or the early distribution of anticipated criminal proceeds.

[214] The dependence on cash transactions and the utilisation of money transfer services align with conventional practices noted in money laundering and narcotics trafficking operations. The data points to a coordinated effort to discreetly move large sums of money during the period preceding BLH’s transportation of over 250 kilograms of cocaine, which ultimately resulted in his arrest.

[215] The Expert concluded that between 2009 and 2012, BLH, ESE, and GL transferred substantial amounts of US currency out of Grenada. A key example includes the alleged sale of the Boat W in 2009, followed by a transfer of USD \$44,865 to JDP in early 2010. The Expert determined that the funds deposited into BLH’s accounts were not derived from legitimate maritime sales, but rather from activities consistent with money laundering linked to drug-related offences.

Vehicles

[216] PTX contended that vehicles registered under various names but associated with BLH and QLD are more likely than not part of a money laundering operation. This assertion is based on several factors, the absence of financial documentation,

difficulty in tracing ownership and acquisition costs, and BLH's conviction for drug trafficking.

[217] The vehicle registration records revealed a complex and opaque history of ownership and transfers involving BLH, MAF, and related entities. The following vehicles were identified:

- Toyota Bus (H), registered 27th August 2008
- Land Rover Discovery (PV941), registered 17th February 2005 (no ownership documentation)
- Two Yamaha motorcycles (0001 and 0002), transferred to EC on 31st December 2013
- BMW motor, licensed in 2010 (missing transfer and chassis details)
- Multiple trucks (Ford, Hyundai, Mitsubishi, Isuzu) registered between 2004 and 2012
- Additional vehicles (International Truck, Lexus RX300, Ford Tanker Truck) licensed between 2014 and 2015

[218] Notably, no bills of sale were found for the vehicles transferred to EC and MPR, and these transfers occurred after BLH's arrest and conviction in the United States. The Expert was unable to determine the purchase prices for several of the vehicles, and the source of funds used remains unknown, except for a loan used to acquire the crane dump truck (TAE) in 2010.

[219] The Court observes that the unrecorded transfer of vehicles, especially those conducted after BLH's arrest, prompts significant concerns concerning asset dissipation and concealment. Such practices obscure the true ownership of property and hinder efforts to trace financial transactions. The timing of these transfers indicates a deliberate effort to conceal assets obtained through unlawful means.

[220] These findings are consistent with the reasoning in **Szepietowski**¹⁰³, where the use of dormant or opaque entities to hold assets was deemed sufficient to justify a recovery order. The Court concludes that the acquisition and transfer of the vehicles in question exhibit characteristics consistent with those of money laundering.

Vessels

[221] The evidence indicates that BLH was involved in a series of questionable transactions relating to the alleged sale of multiple vessels, including the "Boat Y", Boat N, Boat W, Boat X, and Boat V. Despite these claims, no reliable documentation substantiates the sales. Forensic analysis uncovered numerous inconsistencies in the records and narratives provided by the Respondents.

[222] A notable example is the purported sale of Boat N to MAF. This transaction is marked with inconsistencies that cast serious doubt on its authenticity. While the Bill of Sale names MAF as the purchaser, immigration records reveal that BLH was listed as the vessel's owner as early as 10th October 2009, well before the alleged acquisition from JR on the 30th of October 2009. BLH himself declared ownership of this vessel upon departing Saint Maarten on 10th October 2009 and arriving on 15th October 2009. Further, the Expert confirmed that BLH's "account at RBTT Bank Grenada Ltd, for October 2009, showed no withdrawal of the requisite sum (approximately EC \$135,845.00) before bank charges."¹⁰⁴ The Court finds the absence of any financial trail, coupled with conflicting ownership records, fatally undermines the credibility of this transaction.

[223] Similarly, Boat A was purportedly sold by BLH to TJ for the substantial sum of US \$120,000 on 2nd May 2009, and BLH claimed to have purchased the same vessel from NA for a mere US \$3,000 just two weeks later on 16th May 2009. The sequence of transactions is not only implausible but wholly unsupported by credible evidence.

¹⁰³ [2007] EWCA Civ 766

There is no decal associated with the vessel, nor is there any record of its initial acquisition. BLH's explanation that the boat was sold and subsequently salvaged following an accident lacks any documentary corroboration. Considering these glaring inconsistencies and the absence of supporting documentation, the Court finds the alleged sale lacks authenticity and credibility.

[224] The Expert also expressed concerns regarding the sale of the Boat W to JDP in July 2009. The Bill of Sale lists the date of sale as 20th July 2009 at the top, but it is signed at the bottom as 20th May 2009. Again, this discrepancy casts doubts on the validity of the document and the legitimacy of the transaction.

[225] In an attempt to explain the inconsistencies, BLH stated,

“I see my signature on the document [1256]. The signing of the document took place at his office. It was somewhere in town. I see the signature of JR I was present when JR signed the document. He signed at DWE’s office (DWE) It is safe to say that we signed the document the same day. The last place I knew this document to be was at my office. I have not seen it [the Bill of Sale] since 2010.”¹⁰⁵

[226] The Expert “maintains my initial opinion in paragraph 42 of the original report that all the Bills of Sale are fraudulent and, as such, the sale of the vessels did not occur”. The alleged sale of Boat W in 2009 for US\$130,000 is particularly questionable. The evidence shows that JDP received \$44,865 in eleven transfers from BLH and its associates between January and February 2010. This finding suggests that the funds deposited into BLH’s bank accounts did not originate from vessel sales. It is highly unlikely that BLH, having sold a boat for US\$130,000, would subsequently remit USD\$44,886 to DP, the alleged purchaser, if such a transaction were legitimate.

¹⁰⁵ BLH WS

- [227] Regarding Boat X, immigration records consistently listed OYC as the owner, despite BLH's claim that he had sold Boat X and was delivering it to the new owner. The Bill of Sale for the Boat V was notarised in St. Thomas, even though both parties were Grenadian, suggesting an effort to legitimise illicit income through foreign documentation.
- [228] The Expert noted that substantial cash transactions, notably USD \$120,000 for Boat A and USD \$130,000 for Boat W, were not supported by corresponding bank withdrawals or legitimate sources of income. The report highlighted that in July 2009 alone, BLH's account received 18 cash deposits totalling US\$270,410, including a single cash deposit of US\$201,410 on 29th July. The source of funds declaration form claimed that the funds were from business and yacht sales, yet only Boat W was allegedly sold during that period.
- [229] The Expert further observed that the claimed sale of Boat W occurred on 20th July 2009 for US \$130,000, yet the deposit of US \$201,410 on 29th July far exceeded this amount. This discrepancy undermines the Respondents' assertion that the Bill of Sale was genuine, especially given the absence of a Hull ID and Model Year. The Respondents argued that BLH verified the authenticity of the Bill of Sale and that payments were made from various accounts, including a US\$31,325.00 wire transfer from JDP. However, records show that these transfers were later reversed, further weakening the credibility of his explanation.
- [230] The Expert noted that in most declarations, "the source of deposited funds was consistently stated as 'business funds, restaurant services, yacht charters, portable rentals, and tool rentals,' even when the funds were deposited into BLH's personal accounts. The two largest deposits, US\$201,410 on 9th July 2009 and US\$94,000 on 6th November 2009, both cited the sale of a vessel as the source of funds.¹⁰⁶" She concluded that all the Bills of Sale were fraudulent and that the vessels were

not sold.¹⁰⁷ Having observed BLH's modus operandi regarding the alleged vessel sales, the Court agrees with the Expert and finds that the alleged sales, which accounted for over US \$674,000 in income, never occurred.

[231] The absence of supporting documentation or credible witnesses to validate the purported sale of boats between 2007 and 2011 strongly suggests a calculated attempt by BLH to misrepresent his income and the origin of funds. The use of multiple accounts and companies to transfer and conceal funds is indicative of a structured money laundering operation. The Court finds that BLH's activities, involving purported vessel acquisition, retention, and sale, were designed to integrate drug trafficking proceeds into the legitimate economy.

[232] The Expert stated,

“It is unusual that in today's financial environment, large sums of cash (US\$94,000 and US\$76,200) as mentioned in paragraph 35 would be used as a medium for payment. It is just not a prudent business practice. In 2009, BLH had in excess of 12 bank accounts in Grenada that could have been used to transfer monies into from the sale of the purported vessels. It is my conclusion that these monies were not from the sale of vessels but from another source”.¹⁰⁸

[233] BLH attributed the lack of documentation to the FIU, claiming that they removed his records and failed to return them. However, this explanation was never substantiated during the proceedings, and it was never presented to TM in cross-examination. BLH also blamed his accountant, ME, for poor record-keeping. These deflections diminish BLH's credibility before the Court.

Conclusion on the Connection Between the Properties and Unlawful Conduct

¹⁰⁸ Forensic Accountant's Report

[234] After a comprehensive review of the evidence, the Court finds, on the balance of probabilities, that the properties listed in the claim form, both real and personal, were either acquired through unlawful conduct or used in connection with such conduct. The unlawful conduct includes drug trafficking and money laundering orchestrated by BLH. This conclusion is supported by the principles established in **Gale**¹⁰⁹ where the Supreme Court affirmed that civil recovery under the POCA can proceed without a criminal conviction, provided the evidence supports the inference of unlawful acquisition.

[235] The Court accepts PTX's submission that the businesses created and operated by BLH, including OYC, MHG, and other affiliated companies, lacked the characteristics of legitimate commercial businesses. The absence of financial transparency, regulatory compliance, and credible documentation, combined with the use of shell companies and unexplained cash deposits, supports the inference that these companies were established to conceal and integrate the proceeds from unlawful conduct into the legitimate economy. These findings are also consistent with the reasoning in **Green**¹¹⁰.

[236] Shell companies, entities that exist only on paper and have no significant assets or operations, are commonly used in money laundering schemes to layer transactions and obscure the origin of illicit funds. Their use in this case mirrors the findings in **Szepietowski**¹¹¹, where the Court emphasised that complex and opaque corporate structures may be indicative of efforts to conceal criminal proceeds.

[237] The Expert determined that,

“The setup of company and business accounts of BLH were very complex in structure. In 2008 he registered a business in the same name of MHG

¹⁰⁹ [2009] EWHC 1015 (QB)

¹¹⁰ [2005] EWHC 3168 (Admin)

¹¹¹ [2007] EWCA Civ 766

and opened 2 bank accounts in February 2009 in that name. MAF owns this business.”¹¹²

[238] The findings of the Expert, supported by immigration records, banking data, and witness testimony, reveal a consistent pattern of financial irregularities, including:

- Substantial cash deposits with no verifiable source;
- Fraudulent or unreliable Bills of Sale for vessels;
- Use of law firm trust accounts to facilitate property acquisitions;
- Payments to family members and associates without legitimate justification;
- Early loan repayments inconsistent with declared income;
- Acquisition of high-value properties disproportionate to reported earnings;
- Transfers of vehicles post-conviction without proper documentation; and
- Commingling of personal and business funds

These indicators are consistent with the design and execution of a money laundering scheme, as recognised in **Anwoir**¹¹³, where circumstantial evidence sufficed to establish that the property originated from unlawful conduct.

[239] In **United States of America v. Real Property**¹¹⁴, the Fifth Circuit affirmed that criminal activity, such as money laundering, often relies on legitimate business fronts to facilitate the scheme. The Court held that commingling illicit funds with legitimate money enables laundering and supports the design element of the offence. Similarly, in this case, the integration of criminal proceeds into business and personal accounts and their subsequent conversion into loans and properties constitutes compelling evidence of money laundering.

¹¹² Forensic Accountant’s Report

¹¹³ [2009] 1 WLR 980, [2009] 1 WLR 980

¹¹⁴ No. 17-10624/ c/w No. 17-10626

- [240] The practices observed, commingling, layering, and integration, are recognised stages of money laundering and are consistent with the findings in this case. The Respondents have failed to rebut the presumption of illegitimacy with credible evidence. Their explanations were inconsistent, unsupported, and contradicted by objective financial data.
- [241] The Court finds that BLH exercised full control over all the relevant business entities, accounts, and financial transactions, acting as both the principal and beneficial owner. Despite the formal registration of multiple companies, the evidence shows that these entities were either non-operational or served as vehicles for unlawful conduct. The cessation of business activities following BLH's arrest, combined with the lack of profitability and credible documentation, supports the inference that these properties were not lawfully acquired.
- [242] The use of attorney trust accounts, sham loans, and forged documents reflects a deliberate strategy to obscure the financial trail and evade scrutiny. The geographic dispersion of money transfers, the denominations of cash deposits, and the timing of transactions reinforce the conclusion that BLH engaged in a sophisticated and calculated money laundering operation premised on drug trafficking.
- [243] Accordingly, the Court concludes that the properties listed in the claim form were obtained through unlawful conduct, constitute tainted property, or represent such property. PTX has discharged the burden of proof under the POCA. In contrast, the Respondents have failed to establish a lawful origin for the properties, having provided neither proper documentation nor a coherent explanation for substantial cash deposits, acquisition of high-value properties, or the operation of multiple business entities. Despite repeated opportunities, they did not produce financial records, invoices, tax filings, or credible witness testimony. Given BLH's control over the relevant properties, the Court draws an adverse inference that the properties were not lawfully acquired. These properties are therefore recoverable, and PTX is entitled to follow and recover them from the Respondents and any third parties who received such property without value or in bad faith.

Definition of Recoverable Property

[244] Under Section 31XX (1) of the POCA, recoverable property is defined as:

‘(a) property obtained through unlawful conduct and tainted property;

(b) property obtained through unlawful conduct that has been disposed of or tainted property that has been disposed of since it became tainted property, if it is held by a person into whose hands, it may be followed.”

[245] This definition is intentionally broad, encompassing various forms of property, linked to unlawful conduct¹¹⁵, tainted property¹¹⁶, property that represents such property, property followed into the hands of third parties, or traced property¹¹⁷, mixed property¹¹⁸, accrued profits¹¹⁹ and gifts or grants to third parties. In **Singh v Director of the Asset Recovery Agency**¹²⁰ the Court of Appeal confirmed that even if a prior confiscation is quashed, civil recovery under the POCA remains viable. This ruling emphasised that property linked to unlawful conduct remains recoverable, regardless of the outcome of the criminal proceedings.

Definition of Tainted Property

[246] Under Section 31XX(1) of the POCA,

“Tainted property” means, subject to sub-section (2), property that–

(a) has been used in, or in connection with, unlawful conduct; or

(b) is intended to be used in, or in connection with, unlawful conduct

¹¹⁵ Section 31XX and 31C

¹¹⁶ Ibid

¹¹⁷ Section 31D

¹¹⁸ Ibid Section 31E

¹¹⁹ Ibid. 31 F

¹²⁰ [2005] EWCA Civ 580, see section 31K of the POCA, Gale and Green

[247] Subsection 31XX(2)¹²¹ provides a safeguard for innocent owners. It exempts property from recovery if it is used in unlawful conduct without the owner's knowledge or intent. However, this exception does not apply where the owner was directly involved in the unlawful conduct. In this case, BLH's direct involvement in the unlawful conduct precludes the application of the exception. The Court agrees with PTX that BLH cannot be considered an innocent owner under the statute.

Limitation

[248] Section 31 VV of the POCA imposes a statutory limitation period for civil recovery proceedings. It states.

- (1) Proceedings shall not be brought for a recovery order in respect of any recoverable property after the expiration of twelve years from, in the case of a recovery order in respect of
 - (a) property obtained through unlawful conduct, when the property was so obtained;
 - (b) tainted property, when the property became tainted property;
 - or
 - (c) any other recoverable property, when the property obtained through unlawful conduct, which it represents, is so obtained.
- (2) For the purpose of sub-section (1), proceedings for a recovery order are brought when an application is
 - (a) filed with the Court under section 31K; or
 - (b) made for an interim receiving order

¹²¹ Section 31XX (2) of POCA not tainted property if (a) the unlawful conduct is not the unlawful conduct of the owner; and (b) where paragraph (a) applies, the owner does not give his consent, expressed or implied, to the property being used in, or in connection with, the unlawful conduct concerned.

[249] This limitation period balances the need for the effective property recovery with the principle of legal certainty. It ensures that claims are brought within a reasonable timeframe, while allowing authorities to pursue complex financial investigations.

[250] The twelve-year limitation period is calculated based on the nature of the property -

- for directly obtained property, the clock starts when the property was acquired
- for tainted property, it begins when the property becomes tainted.
- for representation property, it starts from the acquisition of the original property.

[251] Section 31VV clarifies that proceedings are deemed to have commenced when either an application is filed with the Court under section 31K of the POCA or an interim receiving order is sought.

[252] In this case, PTX filed the civil recovery application on 5th December 2019. Therefore, any property

- obtained through unlawful conduct on or after 5th December 2007;
- that became tainted on or after 5th December 2007; or
- that represents property obtained through unlawful conduct on or after 5th December 2007, is eligible for recovery under the POCA.

Application to Specific Property

[253] PTX asserts that the following categories of property fall within this statutory limitation period and meet the criteria for recoverability under the POCA –

a. Real Property

- Plot 4 - Although acquired before 2007, the property was actively used between 2009 and 2010 to modify Boat X for drug trafficking purposes. This use renders it tainted property, as defined under section 31XX(1)(a) of the POCA.

- Parcels of land in Westerhall, St. David- These were acquired between 2008 and 2010 through shell companies such as MAF and MHG. The timing, method of acquisition, and the lack of legitimate financial documentation support the inference that they were purchased using the proceeds of unlawful conduct.

b. Vessels

- 1981 Motorboat- Purchased by BLH within the relevant timeframe and used in connection with his maritime operations, which were found to be a front for drug trafficking.
- 2008 Fishing Vessel, Boat N- Acquired by VOC in October 2009. The vessel's ownership records and immigration data suggest it was part of the coordinated vessel activity linked to unlawful conduct.

c. Vehicles

- All vehicles registered to BLH or his shell companies (MAF, VOC, etc) were acquired between 2008 and 2010 using laundered funds. The absence of bills of sale and proper registration documentation supports their classification as recoverable property.

d. Financial Accounts

Bank accounts held by BLH, MPR, ESE, ESE (in trust for EWN and BJP), and MHG show suspicious deposit patterns, including large cash flows, structuring, and commingling. These accounts were active during the relevant period and were used to layer and integrate illicit funds into the financial system.

e. Business Entities Used for Laundering

Businesses such as OYC, STW, MAF, MHG, IMT, MHRB, IMH and VOC were either incorporated or actively used between 2008 and 2010. These businesses were used to facilitate money laundering and concealing the origins of the unlawful funds.

Expert Evidence and Financial Analysis

[254] The Expert's analysis provided critical evidence, identifying significant financial irregularities and discrepancies between reported income and actual bank deposits. For instance, at MHG, there was a shortfall of EC\$263,821 in the first quarter of 2010 and at VOC, the discrepancy exceeded EC\$2 million between reported sales and actual deposits. These discrepancies indicate the commingling of illicit funds with legitimate business income to obscure their origins. The Expert stated that –

“He used legitimate cash-focused businesses to co-mingle funds with the legitimate sales receipts of the businesses. BLH used both MHG and VOC to accomplish this task. There is a difference of EC\$263,821 between what was collected and recorded on Sales Sheets or MHG for the first 3 months of 2010 and the amount of cash deposited into the business bank accounts. Likewise, with VOC, there was over EC \$2 million difference in the amount of Sales reported in the Financial Statements and the amount of cash deposited into the business bank accounts of VOC”¹²²

[255] The Expert further revealed that funds were deposited into and moved through a network of bank accounts, including those held by MHG, BLH's USD Certificate Of Deposit and savings accounts, and accounts in the names of BLH and MPR, ESE, and ESE (in trust for EWN and BJP). The movement of funds across multiple accounts, often in small denominations and below reporting thresholds, is consistent with structuring or smurfing.

[256] The shell companies OYC, STW, MAF, MHG, IMH, MHRB, IMT, and VOC exhibited characteristics of entities created solely for money laundering and to conceal the proceeds of unlawful conduct. The Expert concluded that these entities were not

¹²² Forensic Accountant's Report para 143

genuine commercial businesses but were deliberately structured to facilitate and conceal unlawful conduct.

Tainted Property

Plot 4

- [257] PTX acknowledges that BLH acquired Plot 4 outside of the 12-year limitation period. However, PTX argues that the property qualifies as “tainted property” under section 31XX(1) of the POCA, as it was used in connection with unlawful conduct, specifically the modification of Boat X for drug trafficking purposes. The property housed the marine workshop where the vessel was allegedly serviced and outfitted with concealed compartments for narcotics.
- [258] The Respondents contend that there is no evidence from the U.S. Virgin Islands trial or supporting documentation linking Plot 4 to the drugs found aboard Boat X in April 2010. They argued that the properties listed, land, vehicles, boats, and cash, are not illegal and that BLH provided credible explanations for their acquisition and use. BLH testified that he had not seen Boat X since its purported sale and claimed he was merely assisting the new owner in transporting it to the Dominican Republic. He further claimed that he lacked the technical capacity to dry dock the vessel or conceal drugs within its hull.
- [259] He also claimed that he routinely requested police patrols in the area, implying that no illegal activity could have occurred on the property. The Respondents argue that these factors negate any adverse inference of the use of Plot 4.
- [260] While Boat X was ultimately destroyed by US authorities and is not subject to recovery, PTX maintains that its modification occurred on Plot 4, rendering the property tainted. The shell companies used to facilitate money laundering and conceal illicit funds also operated in the proximity of this location, reinforcing its connection to unlawful conduct.

- [261] The Court finds that, despite the acquisition of Plot 4 occurring outside the limitation period, its use between August 2009 and April 2010 in connection with drug trafficking activities satisfies the statutory definition of tainted property under section 31XX(1) of the POCA. The timing of the vessel's last recorded entry and its subsequent interdiction with 250 kilograms of cocaine supports the inference that the property was used to prepare Boat X for its illicit voyage.
- [262] The circumstantial evidence presented by PTX undermines the Respondents' position. BLH retained control over Boat X during the relevant period and had access to the workshop on Plot 4. CW contradicted BLH's account as to the purpose of the trip, and BLH's lack of credibility, primarily as to the reasons why they were aboard Boat X, and his intricate use of shell companies, structuring of deposits, and unexplained financial activities, together with the evidence of PG supports the inference and the movement of monies, particularly closer to the time before Boat X sailed infer on the balance of probabilities, that Plot 4 is tainted property.
- [263] The Respondents have failed to challenge PTX's witnesses or provide effective alternative evidence. As established in **Gale**¹²³ and **Rezvi**¹²⁴ the absence of direct evidence does not preclude recovery under the POCA if circumstantial evidence meets the civil standard of proof. In this case, PTX has met that standard in relation to Plot 4. The Court therefore concludes that Plot 4 is tainted property and is recoverable under the POCA.

Property That Can Be Followed

- [264] Under Section 31C(2)¹²⁵ of the POCA, recoverable property remains subject to recovery even if it has been transferred to another person, provided it can be legally

¹²³ [2009] EWHC 1015 (QB)

¹²⁴ [2002] 1 All ER 801

¹²⁵ "Property obtained through unlawful conduct that has been disposed of since it was obtained through unlawful conduct, or tainted property that has been disposed of since it became tainted, it is recoverable property only if it is held by a person into whose hands, it may be followed."

followed into the hands of that person. This principle ensures that the recovery process is not thwarted by the movement or concealment of assets, especially where transfers are made without value or in bad faith.

[265] Lord Millett clarified the distinction between following and tracing in **Foskett v McKeown**¹²⁶, where he stated,

“Following and tracing are both exercises in locating assets which are or may be taken to represent an asset belonging to the claimants and to which they assert ownership. The process of following and tracing are, however, distinct. Following is the process of following the asset as it moves from hand to hand. Tracing is the process of identifying a new asset as the substitute for the old”¹²⁷

This is critical in civil recovery proceedings. Following allows the Court to track the original property as it changes ownership, while tracing enables identification of substitute property acquired using the original property.

[266] In the context of the POCA, both following and tracing are permitted mechanisms for identifying recoverable property. The statute does not require that the property remain in the possession of the original wrongdoer or in its original form. Instead, it allows recovery from any person who holds the property, provided the link to unlawful conduct can be established and the property was not acquired in good faith or for value.

Property to Be Followed

[267] In this case, PTX has identified several properties that were transferred after BLH's arrest and conviction, including Yamaha motorcycles (Reg. Nos. 1537 and 1538) transferred to QLD to EC on 31st December 2013 and a BMW motor vehicle (Reg. No. 737), transferred from MAF to MPR and subsequently to QPK on 22nd April

¹²⁶ [2001] AC 102

¹²⁷ Ibid

2014. There is no evidence that these transfers were made for value or in good faith. The absence of the bills of sale or credible explanations supports the inference that these properties were transferred to conceal their origin and frustrate any recovery efforts. As such, they qualify as property that can be followed under the POCA and are recoverable.

Respondents 2–10

- [268] PTX submits that all properties listed in the Claim Form, in relation to Respondents 2 through 10, constitute recoverable property under the POCA. These properties, although held in the names of individuals other than BLH, are alleged to have originated from BLH's unlawful conduct. PTX argues that the properties were either transferred without consideration, acquired using funds traceable to BLH's unlawful conduct, or held in trust or on behalf of BLH to obscure ownership and frustrate recovery efforts.
- [269] The Court finds that the evidence supports PTX's position. The properties held by Respondents 2 to 10, whether real estate, vehicles, bank accounts, or business interests, were either directly acquired using proceeds of unlawful conduct, transferred from BLH or his entities after his arrest and conviction, or used in connection with unlawful conduct.
- [270] The forensic analysis presented by the Expert, combined with the absence of any credible rebuttal or documentation from the Respondents, satisfies the civil standard of proof on the balance of probabilities. The Court concludes that these properties are recoverable under the POCA and can be followed and reclaimed from the Respondents, subject to any applicable defence such as bona fide purchase for value or obtained in good faith, which have not been established in this case.

Conclusion

- [271] The evidence presented throughout these proceedings establishes a compelling and coherent case for the recovery of the properties under the POCA. The statutory

definitions of recoverable and tainted property under Section 31XX (1), along with related provisions, clearly encompass the properties identified in PTX's application. These include real estate, vehicles, financial accounts, and business entities that were either obtained through unlawful conduct, used in connection with such conduct or represent proceeds of unlawful conduct.

[272] The Expert's forensic analysis revealed significant discrepancies in the financial records, consistent with internationally recognised money laundering practices. This includes the comingling of illicit funds with little to no legitimate income, layering through multiple accounts and entities, the use of shell companies to obscure ownership and origin, the structuring of deposits to avoid detection and the fabrication or absence of documentation to support claimed income. The circumstantial evidence, supported by credible witness testimony and the Respondents' failure to provide an effective rebuttal, satisfies the civil standard of proof on the balance of probabilities.

[273] The Court further affirms that Plot 4, although acquired outside the 12-year limitation period, qualifies as tainted property due to its use in connection with drug trafficking activities. PTX has also demonstrated that the remaining properties fall within the statutory limitation period, having been obtained or tainted on or after 5th December 2007, the relevant cut-off date for recovery proceedings.

[274] The principles of following and tracing, as clarified by Lord Millett in **Foskett v McKeown**¹²⁸, support the recovery of property that has changed hands, provided a legal and evidentiary basis exists to follow its path from an unlawful origin to its current possession. The Court finds that PTX has successfully followed several assets into the hands of third parties, including Respondents 2 to 10, who have not demonstrated acquisition in good faith or for value.

¹²⁸ [2001] AC 102

[275] Accordingly, the Court concludes that all the properties listed in the Claim Form are recoverable under the POCA. PTX has discharged the burden of proof, while the Respondents have failed to establish a lawful origin for the properties in question, as emphasised in **Gale**¹²⁹. The absence of proper documentation, credible explanations, and financial transparency, combined with BLH's control over the relevant business and accounts, justifies the Court in drawing adverse inferences, consistent with **Gale**¹³⁰ and related precedents. As such, the properties are therefore subject to recovery, and PTX is entitled to follow and reclaim them from the Respondents and any third parties who received such property without value or in bad faith.

[276] The **order will not be appended to this judgment**. The Court directs that **the recovery order**, along with the **list of anonymised names**, **shall be disclosed exclusively to the parties involved in these proceedings**.

Costs

[277] No order to costs is made in this matter. The Court, having carefully considered the circumstances of the case, is of the view that an award of costs would be disproportionate and/or unnecessary. In particular, the nature of the proceedings and the outcome achieved do not justify the imposition of a costs burden on either side, particularly the Respondent. The Court is satisfied that the interests of justice are best served by each party bearing their own costs.

[278] I wish to extend my sincere appreciation to Learned King's Counsel and all Counsel for the courtesy and patience they have demonstrated in awaiting the delivery of this judgment.

Paula Gilford

¹²⁹ [2009] EWHC 1015 (QB)

¹³⁰ Ibid

High Court Judge

BY THE COURT

REGISTRAR