

**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

**ANTIGUA AND BARBUDA
ANUHCv 2013/0329**

In the Matter of Section 20(A) of the Money Laundering (Prevention) Act, 2001 As Amended By Section 12 of the Money Laundering (Prevention) (Amendment) Act 2001 and Section 20 of the Money Laundering (Prevention) Amendment Act 2002.

AND

In the Matter of An Application For An Order of Forfeiture Against Specified Interest of the Defendant in Certain Property

BETWEEN

Idrissa Andre

CLAIMANT

AND

Ahmed Williams

The Supervisory Authority

DEFENDANTS

APPEARANCES:

Counsel for the Claimant: Mr. Cosbert Cumberbatch

Counsel for the 1st Defendant: Mr. Warren Cassell

Counsel for the 2nd Defendant: Mr. Westly George

2022: December 2nd

December 5th

Oral Judgment

- [1] **Robertson J.** The claimant has initiated these proceedings seeking a determination of the claimant's interest in properties, Registration Section: English Harbour: Block No. 35 2480E; Parcel No. 143 (property with structures thereon) and Registration Section: St. Phillips South: Block No. 32 2884A; Parcel No. 218 (land only). The claimant also seeks an order that she be excluded from any freezing,

forfeiture and/or confiscation order made by the court on 10th September 2015 pursuant to an application made under section 21 of the Money Laundering (Prevention) Act. The Director of the Office of National Drug and Money Laundering Control Policy (herein after “ONDCP”) having obtained a freeze order on 7th July 2009.

[2] These proceedings are consolidated proceedings¹.

[3] **The Factual Matrix.** The claimant was in a common law relationship with Ahmed Williams, the first defendant. The parties had two children. The first defendant was on 26th May 2008 found guilty of the offence of unlawful possession of cocaine with the intent to supply contrary to section 6(3) and with possession of cocaine with the intent to sell contrary to section 12 of the Misuse of Drugs Act. Cap 283, (as amended). The first defendant was charged on 7th November 2007. The first defendant was convicted of previous criminal offences.

[4] It is the case for the claimant that the property located at Lyons Hill was acquired from the Central Housing and Planning Authority in 2002 with the intention to build a family home for the claimant and the first defendant. It was acquired at the costs of \$31,816.80. The initial payment of \$15,000.00 was made in January 2002 and subsequent payments were made on 9th February 2002 and 19th June 2002.

[5] The second property in English Harbour was acquired in November 2003. The evidence of the claimant is that the purchase was intended to be a family venture with the specific purpose of building three Greenheart houses for rental. That property was purchased with contributions made by a family member, the claimant and the first defendant.

[6] The properties in question are in the name of the first defendant and the claimant contends that she has an interest in the said properties.

[7] The evidence of the claimant is that in order to purchase the properties both parties contributed financial resources. Specifically, the evidence of the claimant is that the claimant was always employed and contributed to the acquisition of the property. In the claimant’s evidence before this

¹ Claim No. 0443 of 2009 and Claim No. 329 of 2013.

court the claimant also indicated that she assisted with the maintenance of the property. The claimant indicated that she worked at Carib Sports Antigua Limited from 1998 to 2000; Cable and Wireless from 2000 to 2002, Antigua Overseas Bank Limited from 2001 to 2005, ABI Bank Limited from 2007 to March 2010, Sports Offshore from 2004 to 2009, Kelcom International Antigua and Barbuda Ltd from 2011 to 2012; Dixie Operations Ltd 2012 to 2016 and Lovell & Company (Attorney-at-law) 2016 and continuing. The claimant exhibited a statement of the contributions to Social Security and Medical Benefits Scheme as evidence of a pattern of employment from 1998 to 30th September 2020.

[8] The claimant also indicated that she lived and was employed in the Turks and Caicos Islands and was able to repatriate to Antigua and Barbuda money which was used for paying for the properties. In evidence before this court the claimant also indicated that the funds were also used for the maintenance and completion of the properties. The claimant was employed in Turks and Caicos between 2005 and 2007.

[9] During cross examination the claimant was asked to comment on the records produced which demonstrated a gap in employment between the claimant's employment at Cable & Wireless Carib Cellular which ended on 31st March 2001 and the Antigua Overseas Bank Ltd when the claimant's employment commenced on 30th November 2001. The claimant confirmed that she was unemployed during this period. Additionally, the claimant conceded that her employment in Turks and Caicos was between 2006 and 2007 and at that time the claimant's funds earned from employment in Turks and Caicos would not have been available for the purchase of the properties or for the construction of the cottages which were placed on the one of the properties.

[10] The claimant maintains that she has always been gainfully employed and therefore able to contribute to the purchase of the property, that she has paid mortgage installments on the properties, and she maintained the property. The combination of these items meant to the claimant that she acquired a beneficial interest in the properties.

The Law.

[11] Section 21 of the Money Laundering (Prevention) Amendment Act 2001 provides:

“(1) If property is forfeited to the Crown under section 20 and 20A, a person (other than the defendant) who claims to have had an interest in the property immediately before it was forfeited may, subject to subsection (2) and (4), apply to the High Court for an order under section 22.

(2) The application must, subject to subsection (3), be made before the end of the period of 60 days when the property is forfeited to the Crown.

(3) The High Court may grant a person leave to apply after the end of the period referred to in subsection (2) if it is satisfied that the delay in making the application is not due to neglect on the part of the applicant.

(4) An application for an order under section 22 in relation to an interest in property must not be made by a person who was given notice of-

(a) proceedings on the application for the relevant freeze order; or

(b) the making of the relevant freeze order, except with leave of the court.

(5) The High Court may grant a person leave under subsection (4) to make an application if the Court is satisfied that the person’s failure to seek to have the property excluded from the relevant freeze order was not due to neglect on the part of the applicant.

(6) An applicant must give written notice of the application, and of the grounds on which it is made-

(a) to the Director of the ONDCP; and

(b) to any person whom the applicant has reason to believe had an interest in the property immediately before it was forfeited.

(7) Any person notified under subsection (6) is entitled to appear and give evidence at the hearing of the application but the absence of that person does not prevent the Court from making an order under section 22.

[12]Section 22 of the Money Laundering (Prevention) Amendment Act 2001 provides:

“(1) On an application made under section 21, the High Court may make an order excluding property in which the applicant claims an interest from the operation of section 20 if the court is satisfied that –

(a) the applicant was not, in any way, involved in the commission of the offence: and

(b) the applicant's interest in the property is not subject to the effective control of the defendant; and

(c) the applicant had no knowledge of the commission of the offence or of any illegal use to which instrumentalities the subject of the application may have been put (providing that this lack of knowledge was not the result of willful blindness); and

(d) the applicant's interest in the property was not acquired by means of a gift from the defendant or any person or entity under the effective control of the defendant; and

(e) where the applicant acquired the interest at the time or after the commission, or alleged commission, of the offence – the applicant acquired the interest without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property was an instrumentality of the offence”.

[13]These provisions seek to preserve the rights of third parties who are bona fides and claim to have interest in the forfeited property prior to its forfeiture. The provisions of section 22 (l) are to be read conjunctively. This means that a claimant seeking to assert an interest in the property must satisfy the court on the elements in section 22(l) of the Act. The counsel for the defendant has not, in his submissions, specifically addressed the provisions of section 22 of the Act.

[14]Involvement in the Offence. The second defendant conceded that there is no evidence which implicates the claimant in money laundering or any of the offences for which the first defendant was convicted.

[15]Whether the Applicant's Interest in the Property is Subject to the Effective Control of the first Defendant. The first defendant is the registered owner of the property. The evidence before the court is that the claimant and the first defendant were in a common law relationship and resided on one of the properties for which this application has been sought. There is a presumption that the first defendant exercised effective control over the property. The claimant has failed to rebut the presumption through the provision of evidence including, but not limited to, evidence about the roles the parties played in the purchase and, where appropriate, the development of the properties and, the roles of the parties in the household.

[16]Whether the applicant had knowledge of the commission of the offence or whether the lack of knowledge was the result of willful blindness. In a case from Trinidad and Tobago, Justice Rajkumar, as he then was, in the case of **James Wattley v Ronald Lopez et al**² considered the authorities and made the following observation on willful blindness:

“... in *Macquarie Bank Ltd v Sixty-Fourth Throne Pty Ltd*- [1998] 3 VR 133 the Supreme Court of Victoria found that At 126

“There was no evidence in my opinion, to support a finding of willful blindness in the sense in which that expression is commonly used in order to indicate a form of cognizance which law and equity alike equate to subjective knowledge from which dishonesty may be inferred. I understand the expression to connote more than a failure to see or look: the adjective is to be given its due value. The compound expression connotes a concealment, deliberately and by pretence, from oneself, a dissembling or dissimulation. In other words willful blindness connotes a form of designed or calculated ignorance, ”

Per Ashley A.J.A. at 159

“(the description willful blindness) “imports a certain dishonesty. It is something more than negligent failure to inquire.

But in so far as recklessness could amount to statutory fraud it must mean, I think, a reckless indifference to consideration of a relevant matter- this again importing something with a flavor of dishonesty rather than mere negligence.”

[17] In the circumstances of this case the claimant and the first defendant were in a common law relationship and the evidence of the claimant is that the parties pooled their resources for the purpose of the household and for business ventures. In such circumstances the claimant would be expected to have clear information regarding the source and approximate sum of income of the first defendant, however, no evidence has been presented to the court by the claimant regarding the source of income of the first named defendant.

² TT 2015 HC 26.

[18] Additionally, it is noted that the claimant was in a relationship with the first defendant and was likely to have been aware, as it would have been public knowledge, that the first defendant had previous convictions for drugs and ammunition. Specifically, on 25th March 1999 the first defendant was convicted for unlawful possession of cocaine, possession of an unlicensed firearm and possession of ammunition and was sentenced to a fine or six months imprisonment. The second defendant has also produced evidence that the father of the first defendant was also convicted of drug offences, specifically, unlawful possession of cocaine, unlawful possession of cannabis and trafficking in cocaine.

[19] Further, the evidence of the claimant that the properties were placed in the name of the first defendant because of convenience and because the claimant trusted the first defendant is disingenuous. The claimant knew or was likely to have known that the first defendant was involved in narcotic related offences. The claimant's explanation that while she was employed at a bank, she had difficulties finding time to have the property registered in her name is highly implausible.

[20] These matters lead the court to ask the question...was there a mere lack of interest or negligence regarding the information of the sources of defendant's financial resources when resources are "pooled" or did this lack of information arise from the claimant turning a blind eye to a situation where there was a flavor of dishonesty and illegality? This court concludes that it is the latter. The court also notes that the reasonable suspicion of the claimant ought to have been aroused.

[21] For completeness it is stated that there is no evidence on the matter of whether the applicant's interest in the property was acquired by means of a gift from the first defendant or any person or entity under the effective control of the defendant.

Whether the Claimant has Proven an Interest in the Property.

[22] The claimant indicated that she made contributions to the properties in question and therefore has an interest in the properties. The claimant indicated that:

"6. The money to purchase that land came from money which we both put together to effect the said purchase and to the best of my knowledge no monies came from any illegal activities. No monies put in by me came from any illegal activities.

7. During the time myself and the First Defendant lived together I did several jobs both in Antigua and Overseas in Turks and Caicos Islands where I was able to earn sizable sums of money, as they paid in US currency, which I repatriated to Antigua and Barbuda to assist in paying for, maintain and completing the properties in question when I returned to Antigua. I have been employed continuously in Antigua and Barbuda and out of Antigua and Barbuda from the time I left school and began my working career until present time.”

[23] The claimant has provided her employment history however, the claimant has not provided evidence of the contributions specifically made by the claimant to the acquisition of the properties or for the maintenance of the properties. This court accepts the submission of the counsel for the second defendant that such evidence may have been given in the form of the provision of receipts or mortgage deductions from the claimant’s salary. This court notes that the claimant has neither produced evidence of financial contributions nor evidence of non-financial contributions which could demonstrate that the claimant acquired interests in the properties.

[24] Counsel for the claimant submits that a resulting trust was created in favour of the claimant so that the claimant acquired a beneficial interest in the properties in question. The burden of proof rests on the party asserting a beneficial interest to prove its existence. This burden of proof is beyond bare assertion that the claimant has a beneficial interest in the property. The claimant must go beyond stating that the parties lived together in a common law relationship, that the claimant was employed, and the parties pooled their assets. The claimant seeking to assert that a trust was created must show specifically how the property was acquired, what contributions (financial and non-financial) were made, how and when those contributions were made. The claimant has not done this. It is also relevant for the court to understand the reason(s) for the property being placed in the name of another person. Such explanation must be plausible in the circumstances. An explanation that the claimant trusted the first defendant who was previously convicted of narcotic related charges is implausible.

[25] In this court’s view the claimant has not proven the beneficial interest alleged. Even if the court were to find that the claimant held an interest in the property, there is no evidence which would assist the court in determining the extent of that interest.

[26]As a consequence of the foregoing the claim is dismissed with prescribed costs payable by the claimant to the defendants.

**Justice Marissa Robertson
High Court Judge**

By the Court

Registrar