

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. POCL 19 of 2018

**IN THE MATTER OF AN APPLICATION FOR A RESTRAINT ORDER
PURSUANT TO SECTION 45 OF THE PROCEEDS OF CRIME LAW (2018)**

IN THE MATTER OF LACEY LAKAYSHA CASTRO-QUESADA

Appearances: Mr. Garcia Kirt Kelly, Crown Counsel for the Office of the
Director of Public Prosecutions

Before: Hon. Justice Richard Williams

Heard: 20 December 2018

Date of Judgment: 20 December 2018

Transcript of Judgment: 20 December 2018



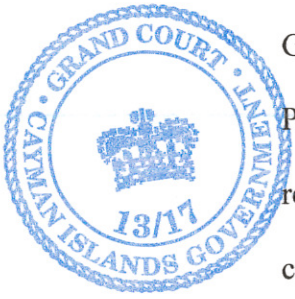
HEADNOTE

Proceeds of Crime Law (2018 Revision) ("the Law") - application for restraint order (s.45(1) of the Law) - whether appropriate to hear application ex parte (s.46(1)(b) of the Law) - purpose of restraint orders - condition(s) to be established to enable a restraint order to be made (s.44(1) (a) of the Law) - supplementary provisions where a restraint order is made in respect of land (s.51 of the Law)

EX-TEMPORE JUDGMENT

Procedural Background

1. This matter came before me in Chambers.
2. I have before me the Summons filed by the Director of Public Prosecutions ("the Crown") seeking a restraint order, pursuant to s.45 of the Proceeds of Crime Law (2018 Revision) ("the Law"), prohibiting Lacey Lakaysha Castro-Quesada



("LQ") in her capacity as owner of the property at #42 Poinsettia Lane, Tropical Gardens, George Town registered at Georgetown East, Block 22E, Parcel 84 ("the Property"), except as otherwise authorised by this order, from transferring or relinquishing control or in any way disposing of or dealing with the Property or causing the Property to diminish its value.

3. I note that in the bundle LQ is referred to as being the Defendant. However, pursuant to s.44(3)(a) of the Law, as the condition relied upon for the making of the restraint order is s.44(1)(a) of the Law, it would be preferable if she is referred to, at this stage, as "the alleged offender" rather than as the Defendant.

The Hearing

4. At the hearing I have received oral and written submissions from Crown Counsel. I have also considered the content in the Application Bundle and, in particular, the contents of the affidavit sworn by Ingrid Spence on 20 December 2018.
5. The application has been heard *ex-parte*. Therefore, I am conscious that I have not had the benefit of hearing from LQ. The Crown is, of course, aware of its responsibility at *ex-parte* hearings to give full and frank disclosure, including sharing with the Court any possible defence or information which it recognises that LQ would raise if she was in attendance. At paragraphs 3 and 29 of her affidavit, Ingrid Spence sets out the reason why the application has been made *ex-parte*, namely that if LQ became aware of an application before a restraint order



was made there is a real risk that she will attempt to dissipate or transfer the Property and thereby frustrate the purpose of the application. At paragraph 29 of the affidavit, it is also contended that notice of the hearing of this application will hinder or halt the investigation. Having reviewed the affidavit, in the circumstances of this case, I am satisfied that it is appropriate for me, pursuant to s.46(1)(b) of the Law, to consider this application without notice being given to LQ.

6. The Affidavit of Ingrid Spence sets out in quite some detail, from paragraphs 5 to 14, the evidence leading to the currently ongoing criminal investigation. At paragraphs 15 to 24 of her affidavit, Ms. Spence sets out the nature of the criminal investigation that has hitherto been conducted, leading to a conclusion that LQ is facing the possibility of being convicted of serious offences under the Penal Code, including obtaining property by deception and theft. Although I have carefully considered those paragraphs, I do not intend to set out that detail herein, because at this stage I am satisfied that a photocopy of my sealed Order and a copy of the transcript of this Ex-Tempore Judgment written in this manner will be sufficient for the purposes of putting the relevant parties on notice.

The Law

7. The purpose of restraint orders under the Law is to preserve any realisable property if there is a real risk of it being dissipated. In this case I am satisfied, on

the evidence before me, that that risk exists in relation to the Property and that this would frustrate any attempts made to recover the Property.

8. A restraint order is an interlocutory remedy. The Crown do not have to prove the case to the criminal or even the civil standard when applying for a restraint order. In *Compton v CPS* [2002] EWCA Civ. 1720, the Court of Appeal held that the test is the same as on an application for a civil freezing order, namely that a good arguable case been established that the alleged offender has benefited from criminal conduct and that he has an interest in the assets in relation to which the application is made. Although *Compton* was a case dealing with an application under the Drug Trafficking Act 1994, the approach advocated is equally applicable to restraint orders under the Proceeds of Crime Law.

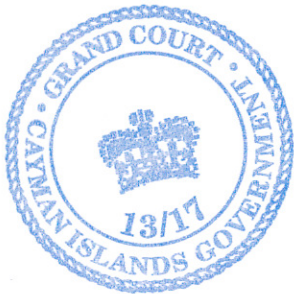
9. Section 44 of the Law lays down a number of preconditions, one of which must be satisfied before a restraint order may be made. The relevant part, in this case, is s.44(1) of the Law which provides that:

“The court may grant a restraint order in accordance with section 45 if any one of the following conditions is satisfied -

(a) a criminal investigation has been started in the Islands with regard to an offence and there is reasonable cause to believe that the alleged offender has benefited from his criminal conduct;

.....”

10. Section 69(4) of the Law provides that a person benefits from an offence if he obtains property as a result of or in connection with his conduct. Pursuant to





s.69(7) where he benefits from the conduct his benefit is the value of the property so obtained.

Conclusions

11. On the evidence before me, the Crown has established a good arguable case that LQ has benefited from conduct which constitutes an offence in the Cayman Islands¹ and that she has an interest in the Property. I am satisfied that the condition set out at s.44(1)(a) of the Law has been established by the Crown as they have started a criminal investigation in the Cayman Islands in relation to such offences and that, on the limited evidence before me, there is reasonable cause to believe that LQ has benefited from criminal conduct.

12. Accordingly, pursuant to s.45(1) of the Law, I make a restraint order prohibiting LQ, in her capacity as owner of the Property at #42 Poinsettia Lane, Tropical Gardens, George Town registered at Georgetown East, Block 22E, Parcel 84, whether by herself or by instructing another, from transferring or relinquishing control or in any way disposing of or dealing with the Property or causing the Property to diminish its value.

13. As the restraint order is made in respect of land, the supplementary restraint orders set out at s.51(a)-(c) of the Law apply. A copy of the restraint order under the seal of the Court should be sent to the Registrar of Lands.

¹ Section 69(1)(a) of the Law.

14. Pursuant to s.45(5) of the Law, I make the following orders to ensure that the restraint order is effective. Firstly, that a photocopy of the sealed Order and a transcript of this Ex-Tempore Judgment are sufficient for the purpose of putting relevant parties on notice and that a copy of the sealed Order is sufficient for the purposes of putting all of the relevant third parties on notice. Secondly, that LQ shall be notified and served within seven days with a copy of the Order and a copy of the transcript of this Ex-Tempore Judgment, but shall not without further order of this Court or consent from the Office of the Director of Public Prosecutions, be provided with the evidence upon which the order was made.
15. The Office of the Director of Public Prosecutions gives to the Court the undertakings at Schedule 1.
16. As the Order has been made on the condition at s.44(1)(a) of the Law, the Crown is respectfully reminded that s.46(4) of the Law provides that the Court “*shall discharge the order if, within a reasonable time proceedings for the offence are not started*”, in other words, if the time comes when there becomes an undue delay in charging LQ with any offences.


.....
The Honourable Mr. Justice Richard Williams
JUDGE OF THE GRAND COURT

