

JERSEY / JUDGMENT

AG v Ellis 04-Nov-2019 [2019] JRC 220 (04 November 2019)

[2019] JRC 220

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judgment

the COMMISSIONER: 1. On 31 st October 2019, I handed down my judgment (AG v Ellis

[2019] JRC 219 , I will refer to it as the Second Judgment) on the issue of proportionality and the burden of proof. I found that proportionality did arise in the facts of this case, and that the burden of proof lay upon the Attorney General to satisfy the Court that the forfeiture order he sought was proportionate. 2. Advocate Jowitt, on behalf of the Attorney General, seeks leave to appeal both of these findings, taking the view that my decision was interlocutory in nature. 3. The grounds upon which leave to appeal can be granted were summarised by the Court of Appeal in *Crociani v Crociani*

[2014] (1) JLR 426, namely that the applicant for leave has to show that (a) the proposed appeal had a real prospect of success; (b) a question of general principle was to be decided for the first time; or (c) there was an important question of law upon which further argument and the decision of the Court of Appeal would be to the public advantage. 4. I was provisionally of the view that leave should be granted, because this is the first time that the Court has been asked to construe the Forfeiture of Assets (Civil Proceedings) (Jersey) Law 2018 ("the Forfeiture of Assets Law") and a decision of the Court of Appeal on the two issues raised in the Second Judgment would be to the public advantage. 5. However, Article 11 of the Forfeiture of Assets Law is supposed to be a summary procedure. The amount in the account at Standard Chartered Bank ("the Account") is just under £34,000 and the respondent cannot claim costs against the Attorney General, save where the Attorney General can be proved to be acting in bad faith, and there is no such suggestion here (Article 29(4) of the Forfeiture of Assets Law). The respondent, therefore, has to fund his legal representation out of his own resources, and Advocate Nicholls informed me that the costs he has incurred in the first two hearings are already disproportionate to the amounts involved. It is unlikely that the respondent will be able to fund resistance to an appeal in which he would essentially be seeking to uphold the decision of the Court. 6. Furthermore, Advocate Nicholls drew my attention to Article 16(1) of the Forfeiture of Assets Law which is in the following terms:- "16 Appeals against forfeiture orders (1) Any party (other than the Attorney General) to proceedings in which a forfeiture order is made

(whether under Article 11 or Article 5) may appeal to the Court of Appeal against the making of the order." 7. A "forfeiture order" is defined as meaning an order for the forfeiture of tainted property made under Article 11. It is fair to say that whilst at the first hearing the respondent failed to satisfy the Court that the Account was not tainted property, the Court wished to be addressed on proportionality before making any forfeiture order, and we are therefore in the position that, as yet, no forfeiture order has been made. 8. Advocate Jowitt argued that very clear words were needed to deny the Attorney General a right of appeal, citing *In re Désastre Blue Horizon Holdings Limited*

[1997] JLR 124 , but it seems to me arguable that Article 16(1) does prohibit any appeal by the Attorney General against whatever forfeiture order the Court might make. This is after all a summary procedure in relation to bank accounts that have been frozen for a significant period of time, pursuant to a suspicious activity report. The Account may either have been abandoned or no attempt made to prove the legitimacy of the funds within it. 9. Furthermore, if there is no right of appeal by the Attorney General against a forfeiture order, it must be arguable that the greater includes the lesser, and that there can be no right to appeal against interlocutory decisions made by the Court in the process leading up to the making of a forfeiture order. 10. I therefore take the view that the Attorney General must demonstrate to the Court of Appeal in an application to that Court that he has a right of appeal against the Second Judgment, and I am therefore going to refuse leave. Authorities AG v Ellis

[2019] JRC 219 . *Crociani v Crociani*

[2014] (1) JLR 426. *Forfeiture of Assets (Civil Proceedings) (Jersey) Law 2018. In re Désastre Blue Horizon Holdings Limited*

[1997] JLR 124 . Page Last Updated: 13 Nov 2019 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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