

SUPREME COURT OF QUEENSLAND

CITATION: *State of Queensland v Stavrow* [2013] QSC 300

PARTIES: **STATE OF QUEENSLAND**
(applicant)
v
WAYNE JOHN STAVROW
(respondent)

FILE NO/S: BS 3942 of 2006

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court of Queensland

DELIVERED ON: 30 October 2013

DELIVERED AT: Brisbane

HEARING DATE: 30 October 2013

JUDGE: Philip McMurdo J

ORDER: **The present application is adjourned to 8 November 2013 at 10:00am in the applications list.**

CATCHWORDS: CRIMINAL LAW – PROCEDURE – CONFISCATION OF PROCEEDS OF CRIME AND RELATED MATTERS – FORFEITURE OR CONFISCATION – GENERALLY – where applicant and respondent presented consent orders to the court to finalise confiscation proceedings – where the restrained property includes real property in which the respondent has a 50 per cent share – where the Public Trustee has taken control of the respondent’s share in the real property – where the consent orders provide for the Public Trustee to sell the entire real property, not just the respondent’s 50 per cent share – whether the Court has the power to authorise the public trustee to sell the entire real property

COUNSEL: K F Bradford (sol) for the applicant
The respondent appeared on his own behalf

SOLICITORS: Crime and Misconduct Commission for the application
The respondent appeared on his own behalf

HIS HONOUR: An application has been made by the State of Queensland for leave to proceed under rule 389, sub-rule (2), no step having been taken for more than two years. The inactivity in this case appears to be well explained in the affidavit of Ms Bradford. And the respondents at first had indicated that they would not oppose leave being granted or any of the other orders for forfeiture and sale of property as set out in a draft which I will have marked as MFI1. However, there was a complication presented by the draft which, in my view, makes it inappropriate for an order to be made precisely in those terms. That complication comes from the fact that the real property is owned only as to 50 per cent by the respondent, Mr Stavrow.

The other 50 per cent is owned by Ms Delaney. No restraining order has been made in relation to any of her property. The restraining order, so far as the real property is concerned, affects only Mr Stavrow's 50 per cent. The Public Trustee, pursuant to earlier orders, has taken control of the restrained property, but of course that is the control of Mr Stavrow's 50 per cent interest only. Section 218 of the Criminal Proceeds Confiscation Act 2002 provides that Part 1 of Chapter 6 of that Act applies if the Public Trustee has taken control of restrained property because of a direction in a restraining order and a confiscation order is made against the person entitled to the restrained property, or the property is automatically forfeited.

The proposed orders include orders for the confiscation of Mr Stavrow's property. Section 219 provides that the Public Trustee may apply for certain orders in relation to property "under the control of the Public Trustee". Section 219(3) provides that the relevant Court may make any other order the Court considers necessary to enable the Public Trustee to comply with the order, including, but not limited, to an order directing the Public Trustee to dispose of stated property under the control of the Public Trustee. The problem remains that the real property under the Public Trustee's control is, or would be, Mr Stavrow's 50 per cent interest. The draft order provides in paragraph 4 that pursuant to section 219(3)(a), the Public Trustee is directed to dispose of that real property.

The intention, however, is that the Public Trustee be permitted to and authorised to sell the entire property and not a 50 per cent interest. That appears to have been the intention also of Mr Stavrow and Ms Delaney. The draft orders further provide for the disposition of the proceeds of sale of the entire real property and recognise Ms Delaney's 50 per cent interest and her entitlement accordingly to the net proceeds of sale, or 50 per cent of them. But as should appear from what I have said, section 219 does not permit, of itself, the Court to authorise the Public Trustee to sell the entirety of the property. I have explained this to Mr Stavrow and Ms Delaney, who appear without legal representation.

Ms Delaney wishes to obtain legal advice on one course which I proposed which was that she could ask the Court to make an order under section 38 of the Property Law Act 1974 for the appointment of the Public Trustee as the trustee for the sale of the entirety of the property. It does seem to me that, in that way, the Public Trustee could receive due authority to sell the entirety and that the orders for the disposition of the proceeds as set out in paragraph 8 of this draft could remain. But it is fair, in my view, that Ms Delaney have the opportunity to obtain her own advice upon that. Accordingly, the present application will have to be adjourned. Ms Delaney requested a week and a half. The application will be adjourned to 8 November at 10 am in the applications list.