

SUPREME COURT OF QUEENSLAND

CITATION: *State of Queensland v Moore* [2014] QSC 90

PARTIES: **STATE OF QUEENSLAND**
(Applicant)
v
IAN REGINALD MOORE
(Respondent)

FILE NO/S: SC No 4129 of 2013

DIVISION: Trial

PROCEEDING: Application

ORIGINATING COURT: Supreme Court of Queensland

DELIVERED ON: 30 April 2014

DELIVERED AT: Brisbane

HEARING DATE: 30 April 2014

JUDGE: Atkinson J

ORDERS:

- 1. Pursuant to section 32 of the *Criminal Proceeds Confiscation Act 2002* the Public Trustee of Queensland take possession of the restrained property specified in paragraph 1(f) of the order made by this Court on 28 May 2013.**
- 2. That pursuant to section 37(1) and section 46 of the *Criminal Proceeds Confiscation Act 2002* the Public Trustee of Queensland is directed to sell the restrained property in paragraph 1(f) of that order.**
- 3. That pursuant to section 46(5) of the *Criminal Proceeds Confiscation Act 2002* the net proceeds of the sale of the restrained property described in paragraph 2 are taken to be restrained under the restraining order made on 28 May 2013, and;**
- 4. that pursuant to section 35 of the *Criminal Proceeds Confiscation Act 2002* the Public Trustee of Queensland take control of the net proceeds of sale referred to in paragraph 3.**
- 5. The costs of the application will be reserved.**

CATCHWORDS: CRIMINAL LAW – JURISDICTION, PRACTICE AND PROCEDURE – JUDGMENT AND PUNISHMENT – ORDERS FOR COMPENSATION, REPARATION,

RESTITUTION, FORFEITURE AND OTHER MATTERS
RELATING TO DISPOSAL OF PROPERTY –
FORFEITURE OR CONFISCATION – CONFISCATION –
- where a vehicle was restrained pursuant to the *Criminal
Proceeds Confiscation Act 2002* – where notice had been
given to each person with an interest in the restrained vehicle
– where the vehicle was held in an open holding yard - where
the vehicle may deteriorate or lose value before the forfeiture
order application would be decided - where the applicant
undertakes to pay any damages, costs or loss caused to the
owner of the restrained property in relation to any diminution
in value of the property caused by its being kept in open
storage between the date on which it was restrained and the
date of sale – whether the Court should order the sale of the
restrained vehicle

Criminal Proceeds Confiscation Act 2002, s 32, s 35, s 37(1),
s 46,

COUNSEL: G M Elmore for the applicant
No appearance for the respondent

SOLICITORS: The Crime and Misconduct Commission for the applicant
No appearance for the respondent

HER HONOUR: This is an application for the sale of restrained property made under s 46 of the *Criminal Proceeds Confiscation Act 2002* with regard to a 2011 Porsche PLR SCHE KN motor vehicle Queensland registration number Q01, which was restrained by this Court by an order made on 28 May 2013.

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The circumstances in which the Court may order the sale of the restrained property are set out in s 46(1) which provides that:

10 *This section applies to restrained property under a restraining order only if the State applies to the Supreme Court for a forfeiture order for the property and the application has not been decided.*

A forfeiture order was filed in this matter on 31 May 2013 and has not yet been decided. Subsection (3) provides that:

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The State must give notice of the application to each person who has an interest in the application property.

I am satisfied that in this case that has been done as there was an appearance for the company which owns the property on the last occasion on which this matter was before me.

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Subsection (4)(a) provides that the court may make the order if satisfied on evidence of the public trustee or otherwise that the application property may deteriorate or lose value before the forfeiture order application is decided.

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Material was put before me to satisfy me that that was the case. An affidavit by Timothy Brian Geraghty sworn on 24 March 2014, filed on 27 March 2014 deposed that he was informed by Detective Grace that the Queensland Police Service currently had possession of the motor vehicle which was restrained and that the vehicle was being held in open storage at the Queensland Police Service holding yard in Edmonton in far north Queensland. He deposed that given the time the matter would take before the forfeiture order application was determined, there was a risk that the vehicle would continue to deteriorate and that the vehicle should be sold in order to preserve its value for both the respondent and the State until the proceeding was determined.

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The matter was adjourned to obtain further evidence about the conditions under which this restrained property had been kept. A restraining order of this type is of course a severe restriction on the right of private ownership by members of our community, done with the important public purpose of depriving those who commit serious criminal offences of property which has been obtained from illegal activity or has been used for such illegal activity. However, because it is such an imposition on the property rights of citizens, the State bears various responsibilities under the statute.

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Section 32(1) of the *Criminal Proceeds Confiscation Act 2002* provides that:

It is a condition of every restraining order that the person whose property is restrained under the order must preserve the property.

5 It was not possible for the owner of the property to preserve the property since it had
been taken into custody by the police. It appears from a further affidavit filed by
leave today by Detective Sergeant Grace that this property has been kept since the
time it was seized after a search at the closure of the operation, which appears to
10 Queensland has been subject to the usual wet season and a cyclone has been through
that area. Accordingly, the vehicle has no doubt already deteriorated in value.

No undertaking was given by the State with regard to loss which might be caused to
the owner of any property seized upon the making of the order, however an
15 undertaking is offered now that should I make the order sought, the applicant will
pay any damages, costs or loss caused to the owner of the restrained property in
relation to any diminution in value of the property caused by its being kept in open
storage between the date on which it was restrained and the date of sale.
Accordingly, upon that undertaking I order that:

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- (1) Pursuant to section 32 of the *Criminal Proceeds Confiscation Act 2002* the Public Trustee of Queensland take possession of the restrained property specified in paragraph 1(f) of the order made by this Court on 28 May 2013.

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 - (2) That pursuant to section 37(1) and section 46 of the *Criminal Proceeds Confiscation Act 2002* the Public Trustee of Queensland is directed to sell the restrained property in paragraph 1(f) of that order.

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 - (3) That pursuant to section 46(5) of the *Criminal Proceeds Confiscation Act 2002* the net proceeds of the sale of the restrained property described in paragraph 2 are taken to be restrained under the restraining order made on 28 May 2013, and;

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 - (4) that pursuant to section 35 of the *Criminal Proceeds Confiscation Act 2002* the Public Trustee of Queensland take control of the net proceeds of sale referred to in paragraph 3.

40 The costs of the application will be reserved.
