

SUPREME COURT OF QUEENSLAND

CITATION: *State of Qld v Sephton* [2016] QSC 8

PARTIES: **STATE OF QUEENSLAND**
(applicant)
v
ANDREW JAMES SEPHTON
(respondent)

FILE NO/S: No 749 of 2016

DIVISION: Trial

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 18 January 2016

DELIVERED AT: Brisbane

HEARING DATE: 18 January 2016

JUDGE: Dalton J

ORDER: **Adjourned to a date to be fixed**

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

- [1] HER HONOUR: This is an application by the State of Queensland pursuant to the Criminal Proceeds Confiscation Act 2002. The application is made ex parte to freeze the redraw facility on the home loan account of the named respondent to the application, Andrew James Sephton, and to prevent Mr Sephton dealing with his interest in his home property.
- [2] Police applied for and obtained a search warrant for Mr Sephton's home. Upon attendance there, they found an ounce of green leafy material hidden in a sunglasses case in Mr Sephton's bedroom.
- [3] They also found \$226,000 in cash hidden in various places – four different places – within the residence. There were other things seized: there were 10 mobile phones seized as well as a set of digital scales, a heat sealing machine, something which would appear to be a tick sheet, two knives and a set of knuckledusters. These things might, after further investigation, become evidence to support a charge, perhaps, of trafficking in drugs levelled against Mr Sephton. At the moment, the affidavit material before me is that Mr Sephton will be charged with the offence of possessing a dangerous drug, namely, the ounce of marijuana, presumably after analysis that shows that it is, in fact, cannabis.

- [4] The police officer who swore the affidavit does not say anything about whether or not other charges are being considered against Mr Sephton at this time. It was said from the bar table that investigations are ongoing, and as I say, the contents found in the home and seized by police may, in the fullness of time, be part of the evidence to support a charge of trafficking against Mr Sephton, but at the moment, all that is being considered is a charge of possession of one ounce of cannabis.
- [5] I cannot see that it is in any way likely that that possession will ever be shown by the Crown to be anything more than possession of cannabis for personal use. If Mr Sephton was involved in a drug trafficking operation big enough to require 10 mobile phones and big enough to generate an amount of over \$226,000 cash found at the home, I very much doubt that it was a trafficking operation based on selling isolated amounts of one ounce of cannabis. So it would appear that if there is, or was, a trafficking operation being carried on, it is something separate from the drug which is currently the basis of a proposed charge.
- [6] Because of the definition in s17 of the Criminal Proceeds Confiscation Act, at s17(1)(a), possession of one ounce of cannabis is defined as a serious criminal offence because possession of a Schedule 2 drug carries a maximum penalty of 15 years imprisonment. Thus, although possession of one ounce of cannabis is not, in the ordinary meaning of the words, a serious criminal offence, it is a serious criminal offence as defined by the Criminal Proceeds Confiscation Act 2002.
- [7] Because of s16(1) of the Act, possession of one ounce of cannabis is also a serious crime related activity. That becomes relevant because to support an application to restrain a person dealing with property pursuant to s 28(1) of the Act, an authorised person must swear to a belief that (relevantly here) the person has engaged in one or more serious crime related activities and must depose to the reasons for that suspicion. So here, Mr Goody deposes to the fact that he suspects Mr Sephton has engaged in the serious crime related activity (as defined) of possessing an ounce of cannabis and gives the reason for the suspicion to be that green leafy material resembling cannabis (but not yet analysed) was found at Mr Sephton's premises.
- [8] It was said that, pursuant to s31 of the Criminal Proceeds Confiscation Act, this Court must make a restraining order in relation to property if, after considering the application and the relevant affidavit, the Court is satisfied that there are reasonable grounds for the suspicion on which the application is based. It was said that the suspicion on which the application is based must be a reference to the suspicion referred to at s29(1)(a) (in this case) that Mr Sephton has engaged in a serious crime related activity. So that if I consider there are reasonable grounds for the suspicion that Mr Sephton had in his possession one ounce of cannabis, I must grant the order restraining him from dealing with the property, which is his home, and the redraw facility on the mortgage for that home.
- [9] I find it somewhat difficult to accept that, in a case like this, that is all that needs to be proved before a restraining order must be made. But I need not decide that point on this application, because I refused to deal with the application ex parte – see section 28(2)(b). It was urged that I ought to deal with the application ex parte because Mr Goody says, at paragraph 9 of his affidavit, in relation to the funds for the redraw facility:

[10] *I believe there is a risk of dissipation if Mr Sephton is given notice of an application to restrain property, which would result in the dissipation of equity in the real property located at [address].*

[11] There was no basis for this belief given in the affidavit, and the submission was that the mere availability of the funds in the redraw facility gave rise to a risk of dissipation. In my view, that is insufficient evidence for me to form the view that there is a real risk of dissipation such that I would hear this matter ex parte. It certainly would not justify the making of a freezing order in the court's inherent jurisdiction simply to swear to a belief that because funds are available, there is a risk that they will be dissipated.

[12] I take into account the material does show that Mr Sephton would be well aware that police are investigating not just the possession of the ounce of marijuana, but also that they are investigating what might transpire to be quite a serious trafficking operation, but even then, there is no evidence before this court to show that Mr Sephton's response to that would be to use the redraw facility on his home or that he would use it in a way in which the funds are lost to the State should the State eventually prove it has a right to them. For those reasons, I refuse to deal with this matter ex parte.

[13] Now, Ms Griffiths, I think what I should do is simply adjourn – just make an order adjourning your application so that it can be brought back on - - -

[14] MS GRIFFITHS: Thank you, your Honour.

[15] HER HONOUR: - - - when you've served it. So that's the order I'll make. I'll adjourn to a date to be fixed.

[16] MS GRIFFITHS: Thank you, your Honour.
