

SUPREME COURT OF QUEENSLAND

CITATION: *State of Queensland v Bush* [2003] QSC 375

PARTIES: **STATE OF QUEENSLAND**
(applicant)
and
ANTHONY FREDERICK BUSH
(respondent)

FILE NO: SC No 6311 of 2003

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 5 November 2003

DELIVERED AT: Brisbane

HEARING DATE: 15 September 2003

JUDGE: Mackenzie J

ORDERS:

- 1. The respondent file and serve any application for exclusion under s 65 of the *Criminal Proceeds Confiscation Act 2002 (Qld)* together with supporting affidavit material on or before 21 November 2003**
- 2. The applicant file and serve any material in reply on or before 10 December 2003**
- 3. Either party have liberty to apply upon giving 2 days written notice to the other party**
- 4. Costs be reserved**

CATCHWORDS: CRIMINAL LAW – GENERAL MATTERS – OTHER GENERAL MATTERS – STAY OF CIVIL PROCEEDINGS PENDING CRIMINAL PROCEEDINGS – where forfeiture order sought in respect of property of respondent restrained by earlier order of Court – where criminal proceedings not yet determined against respondent – whether forfeiture proceedings should be adjourned until after such determination

Criminal Proceeds Confiscation Act 2002 (Qld), s 8, s 56, s 58, s 93

State of Queensland v Henderson, unreported, 16 May 2003, Supreme Court of Queensland, Fryberg J, S1246 of 2003

COUNSEL: P Freeleagus for the applicant
J D Wilken for the respondent

SOLICITORS: Director of Public Prosecutions (Qld) for the applicant
A W Bale & Son for the respondent

- [1] **MACKENZIE J:** In this matter an application was made on behalf of the State of Queensland for an order under s 56 and s 58 of the *Criminal Proceeds Confiscation Act 2002* (Qld) for a forfeiture order in respect of certain property restrained by an earlier order of this Court. The property consists of the respondent's interest as joint tenant in two parcels of land. By the terms of the order, the right of the other joint tenant to possession, to the extent that she was exercising the right to possession at the date of the order, is not affected.
- [2] The respondent submitted that the forfeiture proceedings should be adjourned until after the determination of criminal proceedings against him. The difficulty with that submission in its broadest form is that s 93 of the Act provides:
- “93 No stay of proceedings**
The fact that a criminal proceeding has been started against a person, whether or not under this Act, is not a ground on which the Supreme Court may stay a proceeding against or in relating to the person under this chapter that is not a criminal proceeding.”
- [3] Proceedings for forfeiture are subject to the civil standard of proof (s 8). Forfeiture is, broadly speaking, dependent upon a finding that it is more probable than not that the restrained property is the property of a person suspected of having engaged in serious crime related activities or property derived from serious crime related activities. This obviously provides an extremely broad basis for forfeiture.
- [4] The form of s 93 does not suggest, in my view, that in no circumstances can a respondent to a forfeiture application gain a deferral of the forfeiture proceedings until after the criminal proceedings have been resolved. The concept underlying it is that the mere fact that a criminal proceeding has been started against a person is not a ground for staying the forfeiture proceedings. It is not useful to try to define, by resort to particular adjectives or phrases, what might suffice to justify deferral of the proceedings. In my view at the minimum, it would require that it be demonstrated by reference to circumstances of the particular case, why the interests of justice will not be served by the forfeiture proceedings being heard in advance of the criminal proceedings.
- [5] The discussion by Fryberg J in *State of Queensland v Henderson*, (S1246 of 2003), reasons in which were delivered on 16 May 2003, illustrates a range of issues that may arise in a particular case. It was unnecessary for him to attempt to determine the ambit of s 93. It may be thought in any event that any such exercise is unlikely to provide a formula for determining individual cases. In the present case no evidence of circumstances of a kind that may conceivably be sufficient to justify an order that the forfeiture proceedings be deferred until after the criminal proceedings have been determined was placed before me. Nor were any other cogent reasons advanced for doing so. The respondent's application therefore fails. The following directions are made for the purpose of facilitating further steps in the proceedings:
1. The respondent file and serve any application for exclusion under s 65 of the *Criminal Proceeds Confiscation Act 2002* (Qld) together with supporting affidavit material on or before 21 November 2003.

2. The applicant file and serve any material in reply on or before 10 December 2003.
3. Either party have liberty to apply upon giving 2 days written notice to the other party.
4. Costs be reserved.