

SUPREME COURT OF QUEENSLAND

CITATION: *State of Queensland v Kahn Nhat Bui* [2005] QSC 292

PARTIES: **STATE OF QUEENSLAND**
(applicant)
v
Kahn Nhat Bui
(respondent)

FILE NO/S:

PROCEEDING: Ex parte application

DIVISION: Supreme Court

DELIVERED ON: 18 October 2005

DELIVERED AT: Brisbane

HEARING DATE: 6 September 2005

JUDGE: Mackenzie J

ORDER: **1. Application dismissed (6 September 2005)**
2. Order that reasons for judgment be confidential to the applicant until further order (6 September 2005)
3. Notwithstanding order 2, order that reasons for judgment delivered on 6 September 2005 be published in accordance with usual practice (18 October 2005)

CATCHWORDS: CRIMINAL LAW – GENERAL MATTERS – FORFEITURE FOR FELONY – where applicant sought forfeiture of money in bank account and money found on premises of respondent - where alleged that respondent had been engaged in “serious crime related activity” because of past convictions for possession of a dangerous drug – where no details of past offences made available to the Court – where lapse of time since past offences committed – whether past offences were of a kind where an inference might be drawn or suspicion reasonably formed that repetition of those offences lead to the accumulation of the property to be restrained – whether application proceeded on less than full disclosure of the real facts to the court

Criminal Proceeds Confiscation Act 2002 (Qld), s28(3)

COUNSEL: S Flann for the applicant

SOLICITORS: Director of Public Prosecutions (Queensland) for the applicant

- [1] **MACKENZIE J:** This was an application under s28(3)(a) of the *Criminal Proceeds Confiscation Act 2002*. It was an application in respect of stated property of a person suspected of having engaged in serious crime related activity. The property was about \$240,000 in a bank account and \$180,000 found at premises and claimed by the respondent as his.
- [2] The applicant's case was that the respondent had been engaged in serious crime related activity as defined in s20 because he had been convicted on 31 August 2001 of possession of a dangerous drug on 13 June 2000, and on 12 August 2004 of possession of a dangerous drug on 10 October 2003. On the occasion of his appearance on 31 August 2001, charges of supplying a dangerous drug and possession of property obtained by supplying it were the subject of *nolle prosequi*.
- [3] No details of the facts of the offences were made available to me but it is unlikely that they involved commerciality because of the penalties involved. Further, there is the circumstance that charges relating to supply, which may have involved commerciality, were not proceeded with on the earlier occasion.
- [4] The affidavit of the authorised commission officer in support of the application says that he suspects that the respondent has engaged in serious crime related activity on the basis of the prior convictions.
- [5] There was a lapse of time since those offences were committed. Also, the offences were not, of themselves, of a kind where an inference might be drawn or a suspicion reasonably formed that repetition of those offences was the source of the property to be restrained, cash and bank credit in the sums found in his possession.
- [6] On the limited basis disclosed in the affidavit of the authorised commission officer, I am not persuaded that the suspicion deposed to is reasonably based. The obligation of this Court to make an order under s31(1) is dependent on my being satisfied that there are reasonable grounds for it.
- [7] I wish to comment on two other matters which arose during the hearing. One is that I do not accept the notion that, provided any serious criminal offence can be identified within the six year period provided for in relation to forfeiture orders, it is sufficient, for the purpose of establishing a reasonable suspicion, to assume that any property subsequently found in the possession of the former offender is the product of serious crime related activity. Cases to which I was referred in support of the notion typically showed a prior history of offences with an element of commerciality from which a suspicion might reasonably have been drawn, in the particular circumstances of the case, that there had been a repetition of such conduct leading to accumulation of the property sought to be restrained. That is distinguishable from the present case.
- [8] The second matter is that I am concerned that the present application proceeded on a less than full disclosure of the real facts to the Court. I use that bland term rather than "less than candid" only because of a matter that will be mentioned soon, and which probably led to the matter being litigated on the basis it was.
- [9] When I raised doubts about the prospects of the application being successful for the reasons explained above, Counsel told me orally of certain separate circumstances which, had they been relied on, would have provided a much more compelling basis

for considering whether to make a restraining order. An offer to allow evidence to be led with regard to them was declined on specific instructions because, I was told, for operational reasons, the police officer concerned was not permitted to divulge details of the current police operation.

- [10] While it is understood that there may be a perceived need, often well founded, to keep current operational matters confidential, it is axiomatic that if the assistance of the Court is sought in aid of or ancillary to the operation, there is a duty to be frank with the Court and not present the matter to it on a basis that may result in its being induced to act on an artificial version of events. Scrupulous care must be taken not to cross the line to a position where the Court is misled.
- [11] The order is that the application is refused.