

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

P LYONS J

No 3160 of 2006

STATE OF QUEENSLAND

Applicant

and

CHRISTOPHER JOHN HARPER

Respondent

BRISBANE

..DATE 13/08/2009

ORDER

HIS HONOUR: In April 1990 Mr Harper and his wife jointly purchased a property at Wellcamp Road, Wellcamp. On the 10th of March 2005 Mr Harper was charged with a number of offences under the Drugs Misuse Act.

On the 18th of May 2006 the State obtained restraining orders pursuant to section 28(3)(a)(iii) and section 32(1) of the Criminal Proceeds Confiscation Act 2002 (the Confiscation Act) with respect to all of Mr Harper's property. On the 23rd of May 2006 the State filed a forfeiture application pursuant to sections 56(1) and 58(1) of the Confiscation Act.

On the 14th of July 2008 Mr Harper was declared bankrupt. His trustee in bankruptcy now seeks an exclusion order under section 65 of the Confiscation Act. Under section 68(2), this Court must make an exclusion order if it is satisfied that the applicant for the order has or apart from the effect of a forfeiture order would have an interest in the property the subject of the application and that it is more probable than not that the property, the subject of the application, is not illegally-acquired property.

It is common ground that the trustee in bankruptcy, who is the applicant, has an interest in property. The interest seems to be a contingent interest which is sufficient to bring the interest within the definition of property in schedule 6 of the Confiscation Act. It seems also to be common ground that it is more probable than not that the property is not illegally-acquired property. The fact that it was acquired in

1990 well before any of the alleged criminal activity would support that view.

In the course of argument I have been referred, in particular, to section 58A of the Bankruptcy Act 1966 (Cth) which provides that if property of a bankrupt is covered by a restraining order made before the date of the bankruptcy then section 58(1) does not apply to such property. Section 58 of the Bankruptcy Act provides for the vesting of property of the bankrupt in the trustee in bankruptcy. The effect, therefore, of section 58A is that the property, the subject of this application, is not at present vested in the trustee by reason of the restraining order. It is for that reason that the interest of the trustee has been referred to as being a contingent interest.

I have also been referred to section 114B of the Bankruptcy Act. It provides that if an application is made for a restraining order or a forfeiture order and if the order were made it would cover the property of a bankrupt then proceeds of any of the property of the bankrupt that would be covered by the order must not be applied amongst the creditors before that application is finally determined.

The effect of that section, it seems to me, is that while there is an application which is current and which seeks a forfeiture order in respect of property which has vested in the trustee in bankruptcy, proceeds of that property cannot be distributed amongst creditors. However, it does not seem to me that the provisions of section 114B have any effect on the

operation of section 68 of the Confiscation Act. It, therefore, seems to me that I am bound to make an exclusion order.

Under section 69(1) an exclusion order is one that states the extent and, if necessary, the value when the order is made of the applicant's interest in the property and, for present purposes, excludes the applicant's property from the application for the forfeiture order.

Section 69(2) provides that if the applicant is the prescribed respondent and an application has been made for a proceeds assessment order against the prescribed respondent then the exclusion order may exclude the applicant's property from the application only if the Court is satisfied the property is unlikely to be required to satisfy any proceeds assessment order that the Court might make.

An application has been made for a proceeds assessment order. Section 28 identifies prescribed respondents. They are persons suspected of having engaged in one or more serious crime-related activities. The present applicant is the trustee in bankruptcy. The present applicant is not the prescribed respondent. Accordingly, it seems to me, that section 69(2) cannot apply.

It follows that I am bound to make an order which states the nature of the trustee's interest in the property at Wellcamp Road and excludes the interest formerly held by Mr Harper in that property from the application for the forfeiture order.

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