

SUPREME COURT OF QUEENSLAND

CITATION: *State of Queensland v Chalkley* [2014] QSC 91

PARTIES: **STATE OF QUEENSLAND**
(Applicant)
v
JAMES MICHAEL CHALKLEY
(Respondent)

FILE NO/S: SC No 2841 of 2014

DIVISION: Trial

PROCEEDING: Application

ORIGINATING COURT: Supreme Court of Queensland

DELIVERED ON: 1 May 2014

DELIVERED AT: Brisbane

HEARING DATE: 1 May 2014

JUDGE: Atkinson J

ORDERS: **1. The application is dismissed.**

CATCHWORDS: CRIMINAL LAW – PROCEDURE – CONFISCATION OF PROCEEDS OF CRIME AND RELATED MATTERS – RESTRAINING OR FREEZING ORDER – VARIATION GENERALLY – where a restraining order was made on 15 April 2014 pursuant to the *Criminal Proceeds Confiscation Act 2002* - where the material put forward by the applicant was deficient – whether the Court should vary the restraining order

Criminal Proceeds Confiscation Act 2002, s 17, s 37(1),
s 38(1)(a)

COUNSEL: K F Bradford 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 made under ss 37(1) and 38(1)(a) of the *Criminal Proceeds Confiscation Act 2002* to vary a restraining order which was made on 15 April 2014. The applicant's submissions refer to various affidavits filed in support of the application.

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An affidavit has been filed by David Goody from the Crime and Misconduct Commission in which he deposes that he suspects the respondent has engaged in serious crime related activity or serious crime related activities, namely, inter alia, supplying dangerous drugs. He deposes that he has formed that suspicion having regard to the contents of an affidavit of a Constable of Police, David Dixon. He refers in particular to paragraph 4 of that affidavit which states that the respondent was charged with a number of offences which included supplying dangerous drugs. Mr Goody deposes that the offence of supplying dangerous drugs is a serious criminal offence within the meaning of s 17 of the *Criminal Proceeds Confiscation Act 2002*.

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Accordingly, I have referred to the affidavit of David Dixon. The affidavit refers to some charges that the respondent faced in 2007. They included a charge of supplying dangerous drugs. However, the affidavit also shows that he was not convicted of that charge. Indeed, other affidavit material shows that no evidence was offered on that charge. Counsel for the applicant was unable to explain to me how a suspicion could be formed by Mr Goody that the respondent had engaged in the serious crime related activity of supplying dangerous drugs when no evidence had been offered, and therefore the charge against him did not result in a conviction. In the circumstances, the material before me is severely deficient. It is inappropriate for the Court to make orders based on material which is so clearly deficient.

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Very often in these cases, the respondent who is facing criminal charges does not appear due to their concentration on those criminal charges. It is always important that the applicant, who is the State of Queensland, acts as a model litigant and puts forward material on which the court can rely. That has not happened here and, accordingly, in view of the state of the affidavit material before me, it would be inappropriate for me to make the order. I dismiss the application.

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