

Neutral Citation: [2019] NIQB 33

Ref: KEE10892

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: 22/03/2019

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
QUEEN'S BENCH DIVISION

IN THE MATTER OF THE PROCEEDS OF CRIME ACT 2002
AND IN THE MATTER OF THE PROCEEDS OF CRIME ACT 2002
(ENFORCEMENT IN DIFFERENT PARTS OF THE
UNITED KINGDOM) ORDER 2002

IN THE MATTER OF AN APPLICATION BY
JOHN GARDNER BRAES LAMBERTON

KEEGAN J

Introduction

[1] The above-named, John Gardner Braes Lamberton, applies to set aside the Restraint Order and the Scottish Administration Order registered by this court on 15 May 2018. The application for registration came before me and upon consideration of the papers I made the Order as follows:

“Whereas an application was made on the 14th day of May 2018 by the Director of Public Prosecutions to Mrs Justice Keegan for registration of a Scottish Restraint Order dated the 29th October 2009 made in relation to John Gardner Braes Lamberton and a Scottish Administration Order dated 21st July 2016 also made in relation to John Gardner Braes Lamberton Mrs Justice Keegan considered the application and read the supporting documents namely the affidavit of Nadya Stewart, Senior Procurator Fiscal Depute.

Whereas under Article 16(1) of the Proceeds of Crime Act (2002) (Enforcement in Different Parts of the United

Kingdom) Order 2002, where an application is made for registration of a Scottish Restraint Order and/or a Scottish Administration Order to the High Court in Northern Ireland, the High Court must direct that the Order be registered in that court.

As a result of the application it is ordered by Mrs Justice Keegan that:

The said Restraint Order dated 27th October 2009 and the Administration Order dated 21st July 2016 be registered in the High Court of Northern Ireland.

Unless the court otherwise orders, the Order will not be enforced until after the expiration of a 14 day period.

On variation or setting aside of this Order the defendant (or anyone notified of this Order) may apply to the court within 14 days of service of the said Order to vary or set aside the registration of this Order (or as much as it affects that person), but anyone wishing to do so must first inform the Director of Public Prosecutions in writing giving 2 days' notice of the application."

[2] Mr Lamberton appeared in person in these proceedings. I commend him for the respectful way in which he conducted himself in court and also for his helpful written note of his submissions which greatly assisted me in dealing with this case. I have considered all of the written documentation provided by Mr Lamberton and the oral submissions he made to me. I am also grateful to Mr Magee BL who appeared on behalf of the prosecuting authorities and who submitted a helpful skeleton argument and legal authorities to me.

Chronology

[3] On 29 September 2003 Mr Lamberton was convicted, after trial before a jury, of charges of embezzlement and fraud at Edinburgh Sheriff Court. He appealed his conviction. On 2 September 2009, the appeal was refused.

[4] On 27 October 2009 a Restraint Order was made against Mr Lamberton by Sheriff O'Grady sitting at Edinburgh Sheriff Court, pursuant to section 28 of the Proceeds of Crime (Scotland) Act 1995 ("the 1995 Act"). The Order was made as, pursuant to section 29 of the 1995 Act, in that proceedings had been instituted in Scotland for a qualifying offence, proceedings have not been concluded and either a Confiscation Order had been made or where it appeared to the court that in the event of conviction, there were reasonable grounds for thinking that a Confiscation Order would be made in those proceedings.

[5] The Restraint Order did not specify the asset later identified as 79 Tamnaherin Road, however it prohibited the defendant from “dealing with any realisable property whether or not said property is described in the Order. ”

[6] On 3 February 2012, a Confiscation Order was made in the sum of £200,000 by Sheriff K M Maciver. This Order was made pursuant to section 1 of the 1995 Act against Mr Lamberton at Edinburgh Sherriff Court. It was recorded that the particular criminal conduct amounted to £408,842.11. This agreement was reached prior to a proof hearing which was listed on 8-10 February 2012. However, agreement was reached in advance by consent between the Advocate Depute and counsel on behalf of Mr Lamberton. The joint minutes which state as follows:

“ The Advocate Depute for the Crown and Kennedy, counsel for John Lamberton hereby concur in stating to the Court that for the purposes of this application, they are agreed and hereby agree as follows:

- (2) That the realisable assets of the said John Lamberton are as follows:-
 - (i) The heritable property at 26 Calle Isbert, Ober, Alicante, Spain.
 - (ii) The heritable property at 79 Tamnaherin Road, Eglinton, Northern Ireland.”

[7] The Confiscation Order was followed by an Administration Order made by Sheriff NMP Morrison QC on 21 July 2016 against Mr Lamberton pursuant to Schedule 1 of the 1995 Act. That Order was made for the purpose of managing and realising the property at 79 Tamnaherin Road under the Confiscation Order made pursuant section 1 of the 1995 Act on 3 February 2012.

[8] I was referred to the note of the minutes of the hearing before Sheriff Morrison on 21 July 2016. This was the application for appointment of the administrator. I note paragraph 4 in particular which states as follows:

“In any event, the respondent had agreed to the Confiscation Order because it was agreed in a joint minute signed by counsel on his behalf. Furthermore, the respondent had paid £2,600 towards the Confiscation Order.”

At paragraph 6 of the same minute it states:

“It seems to me that the agreement by the respondent to the Confiscation Order negates the argument about the legality of the extradition. I note of course that Mr Lamberton disputes that he agreed anything in the course of these proceedings.”

[9] On 25 November 2016, Mr Lamberton appealed the determination of the Sheriff to appoint an administrator. The appeal was made to the Sheriff Appeal Court. However it was refused. Mr Lamberton sought leave to appeal to the Court of Session from the Sheriff Appeal Court but this was also refused. Mr Lamberton then sought leave to appeal directly to the Court of Session and leave was again refused. Accordingly the Order of the Sheriff Court stands.

[10] Thereafter the various Orders were registered in Northern Ireland by me on 15 May 2018.

The arguments of the parties

[11] In his written argument Mr Lamberton made a number of points which I summarise and quote from as follows:

(i) Paragraph 5 of his argument contains the following submission:

“This court is effectively being asked to rubberstamp a judgment made in respect of previous proceedings undertaken in a different jurisdiction which I submit were incompetent, illegal and represented a significant breach of international law. I further submit that no court properly informed can possibly make a ruling based on a previous incompetent and prejudicial decision. This is not a normal situation and consequently cannot be treated as such, contrary to what the Crown would wish.”

(ii) Mr Lamberton also made the case that his extradition from Madrid in 2003 was illegal. His written argument refers to this point as follows:

“Extradition is not a devolved issue but a reserved matter. As such it is the UK Supreme Court which has ultimate jurisdiction. With this objective in mind I appealed the registration of the Scottish Administration Order to the Sheriff Appeal Court. This appeal was refused. I then sought leave to appeal to the Court of Session but leave was again refused. Under the Scottish system no further appeal can be lodged as this effectively blocks all avenues to the UK Supreme Court.”

- (iii) Mr Lamberton contended that the Confiscation Order made on 3 February 2012 was made on the basis of a joint minute which was not agreed by him. Indeed he maintains the court based this Order on certain assumptions which were false and misstated. He also states that “the court also failed to consider the devolution minute which had been properly lodged prior to proceedings”. Mr Lamberton submits that this “was a significant failure in the due process.”
 - (iv) Mr Lamberton made the point that the Restraint Order dated 27 October 2009 makes no reference whatsoever to heritable property in Northern Ireland since no such property existed. He states that the much later inclusion of such property in the Confiscation Order was incompetent and falsely related his personal circumstances. He says he has owned a heritable property in Spain since August 2000 but has not owned any heritable property in Northern Ireland since 1986.
 - (v) Mr Lamberton asserted that the Scottish judicial authorities are clearly in breach of the Extradition Order made in respect of him in Madrid on 4 November 2003. He stated that the judicial authorities exceeded their authority in respect of the consequences of the Order. He maintained that the Restraint Order and Confiscation Order were made without legal competence. He says that this court is wholly within its rights to disregard such Orders on the basis of that incompetency and illegality. He stated that this court is obliged under European and International Law to uphold the requirements of the relevant extradition treaties and protocols entered into by the United Kingdom Government.
 - (vi) Mr Lamberton also stated that the Transfer of Fines Order was wrongly sent to the court to be enforced in Londonderry and he was forced to make payments of some £2,600 before that was withdrawn and accepted as a mistake.
 - (vii) Overall Mr Lamberton stressed the consequences of extradition which he said had been a very serious breach by the judicial authorities. He stated that he did not agree with the submissions of the prosecuting authorities that this court had no jurisdiction to deal with the substantive breaches alleged against the Scottish authorities. He argued that in any event he had no property in Northern Ireland and he argued that the Transfer of Fines Order was also a mistake.
- [12] Mr Magee made a number of core points as follows:
- (i) He submitted that the application of the defendant is entirely wrong-footed. He stated that upon the defendant having been convicted of a qualifying

offence, and a Confiscation Order having been properly made, there is no basis upon which the court can entertain any challenge by the defendant to the validity of the order. Moreover Mr Magee contended that the Confiscation Order was made in relation to the property which was found to be realisable property in the possession of Mr Lamberton. Therefore Mr Magee argued that the court is required to restrain such property in accordance with the spirit of the legislation and not look behind that finding at the point of enforcement. Mr Magee highlighted the mandatory function of the court under the 2002 Act.

- (ii) Mr Magee stressed that the remedy here was essentially to appeal the conviction or the Confiscation Order or the Restraint Order and that all avenues had been pursued in Scotland and there was no further remedy here.
- (iii) Mr Magee also argued that there was no basis for looking behind the Orders. In this regard he referred me to a number of authorities in particular *Re Kone* [2007] EWHC 3763, *Re A* [2016] EWHC 304 and *Re P* [1998] EWHC 1049. Mr Magee also quoted from the text *Millington and Sutherland Williams on Proceeds of Crime 5th Edition* at paragraph 11.21 as follows:

“The court will not, on an application for the appointment of an enforcement receiver, entertain any challenge by the defendant to the validity of the Confiscation Order to which it relates. In *Re A* [2016] EWHC 304 (*Admin*) Mitting J considered an application for the appointment of an enforcement receiver to recover sums due under Confiscation Orders under the CJA. The defendant offender sought to offset against the order of sums recovered from money launderers relying on *R v Ahmad* [2014] UKSC 36. Mitting J held that the defendant should have raised the issue in the Court of Appeal and the Supreme Court if they were subsequently to rely on it when the first instance court was considering enforcement of the orders. In *Customs & Excise Commissioners v Togher* [2005] EWCA Civ 294 the defendant contended that a Confiscation Order made against him under the DTA was invalid because it should have been made under the Drug Trafficking Offences Act 1986. Sedley LJ in refusing the defendant leave to appeal said:

“This submission is, in my judgment, entirely misconceived. The Confiscation Order exists. It has the authority of the Criminal Division of the Court of Appeal and of the Crown Court. Customs and Excise are not only entitled but are

required, as a matter of public duty, to enforce it if they can. The time for challenging its validity has passed. The place for challenging its validity in any event is not the receivership proceedings consequent upon it. I intended to go into the reasons why it seems to me that the underlying argument is a bad one. But to do so would be to accept the very thing that I do not accept, which is that it is open to the administrative, or therefore to this court, in receivership proceedings, to embark upon the question whether the order upon which Customs and Excise rely is a properly made order. The time and place for such a challenge are not here and are not now.”

Conclusion

[13] In reaching my conclusion I bear in mind that the jurisdiction of this court is in relation to the registration of Orders from another court. There is no discretion in relation to registration if the court receives the requisite Orders and evidence. I have received the Orders and evidence on affidavit from Scotland. I quite understand that Mr Lamberton does not accept matters that have transpired against him, in particular his extradition. However, that was some time ago and these matters have been canvassed before a number of courts in Scotland and all appeal avenues have been taken. In that context I am clearly of the view that I should not look behind the making of the Orders at issue in this case. Fundamentally, I do not consider it appropriate to examine the validity of Orders made by courts of competent jurisdiction in Scotland. This matter has been extensively litigated there. I also note that Mr Lamberton had the benefit of counsel and that the Confiscation Order was not contested. I therefore agree with the primary submission of the prosecuting authorities as set out by Mr Magee and supported by the various cases that he referred me to which are helpfully summarised in the quotation from *Millington* at paragraph [12] (iii) above.

[14] I note Mr Lamberton’s point about the title to the property however again it seems to me this issue has been canvassed for a considerable time before the courts in Scotland. In any event, consideration of any third party interests are a matter for the administrator or enforcement receiver and so can be considered as part of the process.

[15] It follows that having considered all of the well-made written submissions and the focussed oral submissions in this case I am of a mind that there is no basis upon which I should set aside the Order I made on 14 May 2018 registering the relevant Scottish Orders. I therefore dismiss the application.