

THE REPUBLIC OF SEYCHELLES
IN THE SUPREME COURT OF SEYCHELLES HOLDEN AT
VICTORIA

Civil Side No. 342 of 2010

The Financial Intelligence Unit

Applicant

Versus

Zijin Limited

Respondent

David Esparon, Principal State Attorney, for the Applicant

Respondent unrepresented

RULING

Egonda-Ntende CJ

1. This is an application made under section 4 of the Proceeds of Crime (Civil Confiscation) Act, hereinafter referred to as POCCCA, prohibiting the respondent, or any other person from disposing of or otherwise dealing with the whole or any part of the sum of £200,454.13, hereinafter referred to as the specified property, with BMI Offshore Bank Seychelles in the names of the respondent. Secondly this application seeks the appointment of a Receiver for the said moneys in accordance with section 8 of POCCCA. It is supported by an affidavit of Mr. Liam Hogan sworn on 11 November 2010. The hearing proceeded ex parte as the respondent did not turn up in spite of service at its registered office.
2. The grounds of this application are that the specified property in the control and or possession of the respondent constitutes directly or

indirectly benefit from criminal conduct. Secondly that the specified property was acquired wholly or in part with property that directly or indirectly constitutes benefit from criminal conduct. The total value of the specified property is in excess of SR50,000.00.

3. It is further contended that from the information obtained from the UK Serious Fraud Office, the respondent is a participant in a 'boiler room scam' that involves a number of companies. One of the victims has been a one David Day. The creation of the respondent with the name Zijin, which was part of the name of a legitimate Chinese company, Zijin Mining Group, was part of a fraudulent scheme.
4. In his affidavit in support of this application Mr. Liam Hogan states that he is the possession of credible information from the UK Serious Fraud Office and David Day, that October 2009 David Day invested £100,000 in Zijin Limited after it was misrepresented as Zijin Mining Group Limited, a multi-national mining group by 'a boiler room' called IGM Securities. The said sums of money were paid into the BMI Offshore Bank Seychelles Limited account that is run by one Sharif Omar Choudhary.
5. Mr. Hogan believes that the said account has been used for similar purposes of criminal conduct given that the conduct mentioned herein above in the UK amounted to criminal conduct of fraud contrary to Section 1 of the UK Fraud Act, 2006 and in Seychelles it is money laundering contrary to Section 3 of the Anti Money Laundering Act, 2006.

6. Numerous attempts have been made to withdraw money from this account and if it is not placed in receivership it remains at risk.

7. The applicant has relied on section 9 of POCCCA, which states in part,

‘(1) where the Director or Deputy Director states in proceedings under section 3 or 4 on affidavit or, if the Court so permits or directs, in oral evidence, that he believes, that-

(a) the respondent is in possession or control of specified property and that the property constitutes, directly or indirectly, benefit from criminal conduct; or

(b) the respondent is in possession or control of specified property and that the property was acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes benefit from criminal conduct; and

(c) the value of the property or as the case may be the total value of the property referred to in both paragraphs (a) and (b), as may be appropriate, and of the value of the property.

(2) The applicant shall not make an application under section 3 or 4 or submit evidence of his belief described in this section, except after reasonable inquiries and investigations and on the basis of credible and reliable information that has reasonable grounds for suspecting-

(a) the respondent is in possession or control of specified property and that the property constitutes, directly or indirectly, benefit from criminal conduct; or

(b) the respondent is in possession or control of specified property and that the property was acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes benefit from criminal conduct, and that the value of the property or as the case may be, the total value of the property referred to in subsection (1)(a) and (b) is not less than R50,000.

(3) The standard of proof required to determine any question arising under this Act, other than proceedings for an offence contrary to section 23 shall be that applicable to civil proceedings.’

8. It is clear from the affidavit of Mr. Liam Hogan, the Deputy Director of the Applicant, that he had ample grounds for believing that the specified property is property that constitutes directly or indirectly benefit from criminal conduct or that it was acquired in whole or in part, with property that, directly or indirectly, constitutes benefit from criminal conduct.

There is the statement of David Day. There is information from the UK

Serious Fraud Office as detailed in his affidavit. For the moment this information is not challenged. The sums in question are definitely in excess of SR50,000.00.

9. In the result I will allow this application. An interlocutory order is issued forthwith pursuant to section 4 of POCCCA prohibiting the respondent or such other person having notice of this order from disposing of or otherwise dealing with the whole or any part of the specified property.

10. Mr Liam Hogan is appointed Receiver of the specified property pursuant to section 8 of POCCCA, on the following terms:
 - (a) to take possession of the said money forthwith and hold the same to the credit of this suit pending further orders of this court.
 - (b) to place the same in an interest bearing deposit account at BMI Offshore Bank Seychelles,
 - (c) to report by affidavit filed in this suit as the Court may from time to time direct;
 - (d) to pay out all or part of the said money as this Court shall from time to time direct;
 - (e) that this appointment as Receiver is subject to such further directions and terms as the court may decide.

11. Costs of this proceeding shall be in the cause.

Signed, dated and delivered at Victoria this 21st day of February 2011

FMS Egonda-Ntende
Chief Justice