

THE REPUBLIC OF SEYCHELLES

IN THE SUPREME COURT OF SEYCHELLES HOLDEN AT VICTORIA

Civil Side No. 24 of 2011

Financial Intelligence Unit=====Applicant

versus

DCA Group Ltd=====Respondent No.1

BMI Offshore Bank (Seychelles) Ltd =====Respondent No.2

Barry Galvin, State Counsel for the Applicant

Respondents unrepresented

RULING

Egonda-Ntende, CJ

1. This is a ruling in respect of an application pursuant to sections 4 and 8 of the Proceeds of Crime (Civil Confiscation) Act, 2008, hereinafter referred to as POCA, seeking an order of this court to prohibit the respondents or such other person as this Court shall order or any other person having notice of this order, from disposing of or otherwise dealing with the whole or any part of the property, the subject matter of this application. The application seeks a further order to

appoint Liam Hogan as the Receiver of the said property.

2. The application is by notice of motion with an affidavit in support. The applicant is a statutory body created under the Anti Money Laundering Act, hereinafter referred to as AMLA. The respondent no. 1 is stated to be a body corporate domiciled in the Commonwealth of Dominica. The respondent no.2 is a bank domiciled in Seychelles. The respondents were served with notice of the application but did not appear or otherwise participate in the proceedings.
3. This application is made on the grounds that the respondents are in possession of specified property that is property that constitutes directly or indirectly benefit from criminal conduct or property that was acquired in whole or in part with or in connection with property that is directly and or indirectly benefit from criminal conduct. The property in question exceeds R50,000.00.
4. On the evidence before me, in the affidavit of Liam Hogan, Deputy Director of the applicant, the respondent no.1 opened up a bank account with the respondent no.2 and in his opening documents indicated his business to be offering architectural services. Money was remitted to his account from different sources outside of Seychelles and at the time the application was brought there was a bank balance of US\$276,284.66 only.
5. The respondent no.1 was called upon by the applicant to substantiate that it was engaged in legitimate business. It provided documents that purported to show that it was rendering architectural services for which it received income remitted to the account with the respondent no.2.

6. A case in point is that Mr Holger Gerwin of Marburg, Germany. He remitted the equivalent of US\$32,450.00 to the respondent no.1's account in respondent no.2 believing he was purchasing 2,700 shares in Solar World AG. The order number is 220015284. He remitted the funds to the respondent no.1's account in respondent no.2. The respondent no.1 provided an invoice for architectural services to Mr Gerwin with the same order number which is actually reflected in the swift transfer documents for the money.
7. Mr Wolfgang Neusch of Germany believing that he was purchasing 1000 shares in Solar World AG remitted to the respondent no1's account in respondent no.2 the equivalent of US\$12,089.70. Respondent no.1 supplied to the applicant an invoice showing that it had supplied architectural services to Mr Wolfgang Neusch.
8. I am satisfied, on a balance of probability, that on the basis of the evidence, by way of affidavit with detailed annexures, put before me by the applicant the specified property is wholly or in part directly or indirectly benefit from criminal conduct, perpetuated in and outside of Seychelles. I will allow this application and issue the orders sought.
9. An interlocutory order, pursuant to section 4 of POCA, is issued prohibiting the respondents or any other person having notice of this order from disposing of or otherwise dealing with the whole or any part of the specified property. A further order, pursuant to section 8 of POCA is issued appointing Liam Hogan of the applicant Receiver of the specified property on the following terms and conditions
 - (a) To take possession of the said property;
 - (b) To place the same in an interest bearing deposit account at the respondent no.2;
 - (c) This appointment shall be subject to such directions and terms as the court may

decide.

10. Notice of this Order must be served upon the respondents. The costs of this proceeding shall abide the final orders in relation to the specified property.

Signed, dated and delivered at Victoria this 30th day of May 2011

FMS Egonda-Ntende
Chief Justice