

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

Civil Side No. 102 of 2011

The Financial Intelligence Unit=====Applicant

Versus

Asia Pacific Group International Limited=====Respondent

Barry Galvin for the Applicant

(Respondents did not appear.)

INTERLOCUTORY RULING

Egonda-Ntende, CJ

1. The applicants are seeking an Interlocutory Order pursuant to Section 4 of the Proceeds of Crime (Civil Confiscation) Act, hereinafter referred to as POCA, prohibiting the respondent or such other persons as may have notice of this order from disposing of or otherwise dealing with the whole or any part of the property set out in the table annexed to the Notice of Motion, hereinafter referred to as specified property, or diminishing its value. Secondly the applicant seeks the appointment of Liam Hogan, pursuant to section 8 of POCA, as a Receiver of the specified property subject to such terms as this court may decide.

2. The grounds of this application are that the respondent are in possession or control of specified property which constitutes directly or indirectly

benefit from criminal conduct. Secondly that the applicants contend that the respondents are in possession or control of specified property acquired in whole or in part, with or in connection with property that, directly or indirectly, constitutes benefit from criminal conduct. Lastly that the specified property exceeds in value R50,000.00.

3. The notice of motion is supported by an affidavit sworn by Mr Liam Hogan, Deputy Director of the applicant. The specified property is in a US dollar account with the Barclays Bank (Seychelles) Ltd, Independence Avenue.
4. The respondents were served with court process but did not appear at the hearing of this application. The hearing proceeded in their absence.
5. In opening the bank accounts the respondent stated that they are in the business of development and design of website software including software maintenance and software consulting services.
6. The scheme in which the respondents are alleged to have participated is summarised in the affidavit of Mr Hogan. I shall set the same out.

‘5. On or about the 6th January 2011, Asset Agents of the FIU became aware of a boiler room fraud that was being perpetrated across Europe, mainly, in the UK, Sweden, Denmark, Slovenia and Latvia, of which the respondent herein, is an integral participant. “Boiler Rooms” is an industry phrase used to describe unauthorised investment brokers who seek, through using high pressure sales techniques, to persuade investors in the UK, and elsewhere to purchase shares with little or no realisable value. In this case, it had been identified that the fraudsters had devised a new

technique to further defraud those victims of other monies. After having been persuaded to buy shares of companies such as Advance Medical AVMD which held little or no value, the victims received phone calls from individuals such as Jack Bernowitz, claiming to be from a company called Guardian International Limited, a British Virgin Island Company, and lured them into paying more money to rid themselves of those worthless shares. They were told that those shares would be converted to shares of other companies such as companies named, FCX and ISRG, but that in order to do so they had to pay the difference in the prices of the shares.'

7. The applicant has produced evidence to show that one Mr Pettersen from Sweden was a victim of such a scheme and had been directed to pay the money into the respondents account with Barclays Bank of Seychelles Ltd, Independence Avenue and had in fact paid a total of US\$ 66,000.00 into that account. Secondly he had been mailed an image of a cheque purporting to be the cheque that would pay him a sum of US\$122,240.20, purportedly drawn on the respondent with Barclays Bank Seychelles Ltd. Officials of Barclays Bank Seychelles Ltd have denied ever issuing a cheque book to the account of the respondent and believe that the purported cheque is a forgery.
8. The case for the applicant is uncontroverted at this stage. It is clear that the respondent's account with Barclays Bank Seychelles Ltd has been part of a network of criminal conduct that has resulted in at least one Mr Pettersen losing significant sums of money. The account has received funds unconnected with the main object of the company as stated in the documents opening their account which was software development, maintenance and consultancy. After examining the evidence before me I am satisfied that a case has been made out for the issue of an

interlocutory order prohibiting respondent or anyone with notice of this order, from disposing of, or dealing with the specified property.

9. The section 4 interlocutory order is granted. I appoint Mr Liam Hogan to be the Receiver, pursuant to Section 8 of POCA, of the specified property and to hold the same in an interest bearing account in Barclays Bank (Seychelles) Ltd until further orders of this court.

Signed, dated and delivered at Victoria this 31st October 2011

FMS Egonda-Ntende
Chief Justice