

**IN THE SUPREME COURT OF SEYCHELLES**

**Civil Side: MC 58/2015**

**And**

**Civil Side: MC 35/2016**

**(Consolidated)**

**[2017] SCSC 145**

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In re the Proceeds of Crime (Civil Confiscation) Act 2008

The Financial Intelligence Unit

Applicant

versus

1. St. Christopher's Trust

2. Swingaxle Limited

3. Barclays Bank (Seychelles) Ltd.

Respondents

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Heard: 5 -12 December 2016

Counsel: Mr. Barry Galvin for the Applicant  
Mr. Frank Elizabeth for 1<sup>st</sup> Respondent  
Second Respondent absent and unrepresented.  
Mr. Divino Sabino (Watching Brief) for the 3<sup>rd</sup> Respondent

Delivered: 17 February 2017

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**JUDGMENT**

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**M. TWOMEY, CJ**

- [1]** The Applicant is a statutory body with the functions inter alia of identifying assets wherever situated of persons which derive or are suspected to derive, directly or indirectly from criminal conduct. The First Respondent is an

international trust established on the 6 June 2008 under the Internationals Trusts Act. The Second Respondent is a Seychelles International Company incorporated on 27 August 2004 but has since been struck off the company register. The Third Respondent is a commercial bank in Seychelles which is joined for the sole reason that the bank accounts of the First and Second Respondents stand to credit and are domiciled in it and as such are in its possession or control. No allegation of impropriety is made against the Third Respondent.

- [2] Two applications (consolidated) were brought to Court by the Applicant. The first (MC 58/2015) was for an order pursuant to section 10(7) of the Anti-Money Laundering Act 2006 as amended by the Anti-Money Laundering Act 2008 and 2011 (AMLA) extending the direction of the Applicant to freeze the sum of EUR 242, 509.80 standing to credit in EUR account number XXXXXXXX in the name of the First Respondent held in an account with the Third Respondent.
- [3] An application (MA 275/2016) was then brought by the First Respondent for an order pursuant to section 10(9) of AMLA to revoke the freezing order but although some evidence was adduced by the First Respondent the application was not pursued. The reasons for this are unclear from the proceedings. I took the carriage of the case from then on from my brother judge Karunakaran.
- [4] The second application (MC 35/2016) by the Applicant was for an order pursuant to section 4 of the Proceeds of Crime (Civil Confiscation) Act (POCA) prohibiting the Respondents or any person from disposing of or dealing with or diminishing in value sums of money, namely EUR 242,509.80 held in the First Respondent's account no XXXXXXXX with the Third Respondent; USD 2,011.66 held in the Second Respondent's account no XXXXXXXX with the Third Respondent; and GBP 2,565.49 held in the Second Respondent's account no XXXXXXXX with the Third Respondent.

- [5] The Applicant sought a further order under section 8 of POCA, that is, the appointment of a Receiver of the specified property to hold the same until further orders of this court.
- [6] The applications are brought by way of notice of motion and supported by an affidavit sworn by Mr. Quilter, the then Director of the Applicant.
- [7] I shall deal with the section 4 application which in any case would supersede other applications in this suit.
- [8] In terms of understanding this matter, the following facts need to be brought to light. The Applicant is alleging that one Peter Chapman with some executives of an Australian company, Securrency International Pty Ltd (hereafter Securrency) engaged with Donald Ian McArthur and others to bribe public officials, namely one Ehidiamehne Okoyomon to facilitate or permit the Nigerian Security Printing and Minting PLC to place large orders for polymer substrate from Securrency. Polymer substrate is used in bank note production and supplied to different countries. In return Mr. Chapman, Mr. McArthur and others would receive large amounts of commission. The commission would be paid directly to them or to entities set up and controlled by them. The entity through which most of the payments were made to Mr. Okoyomon and to which commission was paid to by Securrency was the Second Respondent. The First Respondent was also used as a vehicle for the transfer of the payments linked to the scheme described above.
- [9] It is also the case for the Applicant that to justify the payments of commission by Securrency, a documentary trail had to be established. Hence, an agency agreement was signed between Securrency and a company named SPT Limited, a company incorporated under the Seychelles Companies Act 1972 (hereinafter SPT). The Applicant alleges that this agreement is a forgery as although the agreement is dated 1 January 2008, the company was not incorporated until May 2008. Payments were made by Securrency to SPT Limited which transferred them either to the First or Second Respondents.

**[10]** In particular the Applicant's case as made out of the statutory beliefs in the affidavit of Mr. Quilter can be summarised as follows:

- 1) The Applicant's investigation began in 2015 following the receipt of confidential information from the UK law enforcement agencies in relation to SPT. This was subsequently followed by a formal mutual legal assistance request made to the Central Authority in Seychelles. Proceedings are currently underway in this respect (see MC 111/2014 FIU v SPT).
- 2) After preliminary enquiries were made, freezing orders were placed on the accounts of the first two Respondents. The investigation was prolonged by the failure of the two Respondents to demonstrate a legitimate source of funds after it was indicated to the Respondents that Peter Chapman, the beneficial owner of the Second Respondent and the protector of the First Respondent was directly implicated in very serious criminal conduct and had been put on trial in the United Kingdom.
- 3) The business activity of the Second Respondent was disclosed as "Consultancy Services – including assisting with the execution of oil trading contracts and placing sellers of crude oil with premier European oil buyers and traders, including Macefield (sic) and Vitol" with the expected turnover disclosed as USD 3 to 4 million. The Second Respondent's accounts were subsequently closed with only accounts 7611622 and 9615307 remaining open. The beneficial owner of these accounts was Peter Chapman. In October 2012, International Law & Corporate Services (Pty) Ltd was appointed as new trustees of the Second Respondent.
- 4) Insofar as the First Respondent is concerned, its settlor was Donald Ian MacArthur and the protector of the trust Peter Chapman and the declared beneficiaries, the family members of Mr. MacArthur, namely: Penelope Susan McArthur, Ryan Geoffrey MacArthur, Jessica Anne McArthur and Lorri Pinnick.

- 5) In June 2008, Euro account number XXXXXXXX was opened with the Third Respondent in the name of Mayfair as a Trustee of the First Respondent and in June 2013 the account name was changed to St. Christopher's Trust.
- 6) The Second Respondent is a shareholder of SPT and two dividends of SPT of Euro 50,000 each were declared in favour of the Second Respondent and the Martindale Trust (also registered in Seychelles) although these trusts were not set up until 6 June 2008.
- 7) The Second Respondent was created as part of the corporate structure of SPT with its controlling shareholder being the Mayfair Trust Group acting as corporate trustee for the Martindale Trust and the First Respondent with SPT stated as its beneficial owner.
- 8) Donald MacArthur was convicted in South Africa of thirty regulatory and corporate charges relating to reckless and fraudulent company transactions in relation to the financial failure of Macmed, a South African health care company.
- 9) Securency was the subject of extensive international criminal investigations and prosecution arising from the payment of bribes to foreign public officials to secure contracts for the sale of Securency's product and SPT was the agent for Securency with its account in Seychelles used to facilitate the criminal conduct of Securency and its agents.
- 10) The transfers made from the accounts of SPT to the First and Second Respondent's account show the connection between the companies and represent the diversion of profits from the criminal enterprise of Securency to the benefit of Mr. Chapman and Mr. MacArthur among others thereby constituting tax fraud, conspiracy to commit bribery and money laundering in Seychelles.

**11)** The trust structure was also a scheme to divert the profits from SPT's criminal enterprise which trust scheme is also a tax fraud and an attempt to conceal the criminal profits of Mr. MacArthur. Dividends were authorised to each of the trusts notwithstanding the fact that they were not formed.

**12)** Peter Chapman, the protector of the Second Respondent was the former director of business development for Securrency in Africa. He was extradited from Brazil to the UK in February to 2015 and indicted on several charges with a formal indictment stating specific allegations to Seychelles namely the routing of corrupt payments to the Second Respondent. Similarly the Federal High Court of Nigeria ordered the extradition to the UK of Ehidiamhen Okoyomon of the Nigerian Security Printing and Minting Company.

**13)** The Second Respondent transferred a total of GBP45,500 from its account numbered XXXXXXXX into the name of Mr. Okoyomon between 14 February 2008 and 8 January 2009 with the payments purporting to be a loan repayment with no supporting loan documentation. Payments were made into the accounts of the first two Respondents' accounts via Diamond Bank Plc, a Nigerian Bank where Mr. Okoyomon had an account with no commercial explanation and no legitimate explanation.

**14)** On 4 March 2009 USD 114,759 was transferred into the account of the Second Respondent from Mayfair account (later the First Respondent) and then transferred out on 12 March 2009 and 18 March 2009 via the Nigerian Bank Diamond Bank Plc.

**[11]** On 11 May 2016 subsequent to the making of the applications of the Applicant, Peter Chapman was convicted in London of four counts of making corrupt payments to a foreign official, contrary to the Prevention of Corruption Act 1906.

**[12]** On 25 May 2016 Geoffrey Llewellyn Carter in his capacity as co-trustee of the First Respondent swore an Affidavit in reply to that of Mr. Quilter. The contents of the affidavit are confirmed and adopted by Mr. Donald Ian MacArthur acting in his capacity as Beneficiary and Settlor of the First Respondent.

**[13]** The averments in the affidavit are to the effect that:

- 1) The money subject to a freezing order was acquired legitimately as a result of inheritance money and equities invested and managed by the independent offshore trustees on the Isle of Man and placed in the Martinique Trust set up in 1996. The original source of the funds was through the Settlor's inheritance from his grandmother which he received in cash from his mother and that when such evidence was received the same would be adduced.
- 2) The First Respondent was set up and established to receive the assets of the Martinique Trust. Mr. Carter is its co-trustee together with Shelton Jolicoeur, the representative of International Law and Corporate Services (Pty) Ltd. The First Respondent was set up after due diligence processes were complied with.
- 3) In respect of SPT, the First Respondent confirmed that it was the agent of Securrency (Pty) Limited which is 50% owned by the Reserve Bank of Australia and that it acted within the scope of the terms of its agency agreement.
- 4) Between January and March 2009 the trustees of the Martinique Trust transferred the cash into the bank account of the First Respondent as confirmed by documents showing the Declaration of Trust and a confirmation from Mr. McArthur as to the source of funds, namely traded equities.
- 5) The source of the funds has no connection with SPT or the Second Respondent and was derived exclusively from the Martinique Trust. This is confirmed by two fixed deposit receipts dated 13 January 2010

and 25 June 2010 (Annexures R2 (1) R2 (2)). It has never received any funds from SPT.

- 6) In regard to SPT it is averred that SPT entered into an agency agreement with Securrency (now Innovia Security (Pty) Ltd) which marketed and promoted polymer substrate for the manufacture of bank notes for Nigerian Print Works and Southern Africa on behalf of Securrency. Securrency has acknowledged this fact and has admitted that commissions were due and payable to SPT for the work done by itself and sub-agents.
- 7) SPT or its sub-agents were not implicated in any bribery of Nigerian officials and that payments to it exceed those owed under the agreement with Securrency.
- 8) It is admitted that on 27 June 2008 a Euro account number XXXXXXXX was opened in the name of the Mayfair Trust Group Limited as Trustee of the First Respondent. The account name was changed to St. Christopher's Trust because on 2 October 2012 Mayfair Trust Group resigned as trustee and Mr. Jolicoeur together with Mr. Carter were appointed as the new trustees.
- 9) Although two dividends of Euro 50, 436.28 were made in favour of the First Respondent and Martindale Trust, each having 50% of the shareholding in SPT this was never implemented nor was it the intention of the resolution to make the payments despite the payment being recorded in the Financial Statements of SPT for the financial year endings of 2008 and 2009.
- 10) It is denied that Mr. MacArthur had a criminal record and a clearance certificate from the South African Police Record Centre in Pretoria confirming the same is attached



**11)** It is denied that SPT was used to facilitate the criminal conduct of Securrency and its agents. It is denied that any payment to the Second Respondent is the diversion of profits for the benefit of Mr. Chapman.

**12)** It is averred that SPT was absolved of bribery and corruption with its dispute with Innovia Securities Limited (previously Securrency) in the Supreme Court of Australia.

**13)** In regards to the allegation of the connection between Securrency and the first two Respondents and transfers of money from the First Respondent and Second Respondent via the Diamond Bank Plc of Nigeria, the deponent explained that that was in respect of a joint venture company, Caliline Investments (Pty) Ltd (Caliline) which was formed for the sole purpose of registering an immovable property situated in Johannesburg. The First Respondent transferred the 50% shareholding paid by the Mayfair Trust Group (that is, EUR 93, 240.00) to Caliline and the Second Respondent another SA Rand 2,360,000.00 to Caliline. This money was then paid to the seller's attorney.

**[14]** In accordance with section 8(9) of the POCA, the deponents of the affidavits were directed to attend court for cross examination. All the deponents were duly cross examined and they more or less confirmed the averments of their affidavits.

**[15]** In summary, the central plank of the First Respondent's case is that it has no connection with illegal payments from or to either SPT or the Second Respondent. About Euro 500,000 was transferred from the Isle of Man to the First Respondent's account which money had originally started off as an inheritance amount of about Euro Two thousand. The sum of Euro 93,240 transferred to the Second Respondent on 4 March 2009 was repayment for its share in the purchase in connection with a joint venture (Calliline) between the First and Second Respondent. The First Respondent's share was initially paid by the Second Respondent as at the time the property was acquired the money from the Isle of Man had not arrived into the First Respondent's account. The

sum of Euro 4,201.78 was paid by the First Respondent to the Second Respondent as reimbursement for the cost of setting up and incorporating the First Respondent in Seychelles. The offences with which Mr. Chapman was convicted in London do not relate to the financial transactions of the First Respondent.

[16] The evidence of the parties in this case have to be examined in the light of the provisions of POCA, specifically, sections 4, 2 and 9 and section 3 of the AMLA.

[17] Section 4 of POCA provides in relevant part that:

*“(1) Where, on an inter partes application to Court, in that behalf by the applicant, it appears to the Court, on evidence, including evidence admissible by virtue of section 9, tendered by the applicant, that —*

*(a) a person is in possession or control of —*

*(i) specified property and that the property constitutes, directly or indirectly, benefit from criminal conduct; or*

*(ii) specified property that was acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes benefit from criminal conduct; and*

*(b) the value of the property or the total value of the property referred to in sub-paragraphs (i) and (ii) of paragraph (a) is not less than R50,000,*

*the Court shall make an interlocutory order prohibiting the person specified in the order or any other person having notice of the making of the order from disposing of or otherwise dealing with the whole or, any part of the property, or diminishing its value, unless, it is shown to the satisfaction of the Court, on evidence tendered by the respondent or any other person, that —*

- (i) the particular property does not constitute, directly or indirectly, benefit from criminal conduct and was not acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes benefit from criminal conduct; or*
- (ii) the total value of all the property to which the order would relate is less than R50,000:*

*Provided that the Court shall not make the order if it is satisfied that there would be a risk of injustice to any person (the onus of establishing which shall be on that person), and the Court shall not decline to make the order in whole or in part to the extent that there appears to be knowledge or negligence of the person seeking to establish injustice, as to whether the property was as described in subsection (1) (a) when becoming involved with the property.”(Emphasis added)*

- [18]** The phrase “benefit from criminal conduct” is defined in section 2 of POCA as the “meaning set out in the Anti-Money Laundering Act, 2006.” Section 3 of AMLA provides in relevant part:

*““Benefit from criminal conduct” means any property obtained or received at any time (whether before or after the passing of this Act) by, or as a result of, or in connection with the commission of criminal conduct.”*

- [19]** Section 9 of POCA provides the definition of “evidence” admissible under section 4(1) supra as follows:

*“(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) is not less than R50, 000,*

*then, if the Court is satisfied that there are reasonable grounds for the belief aforesaid, the statement shall be evidence of the matters referred to in paragraph (a) or in paragraph (b) or 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 enquiries and investigations and on the basis of credible and reliable information that he 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.* (Emphasis added)

**[20]** Case law in Seychelles, namely *FIU v Mares* (2011) SLR 405, *Financial Intelligence Unit v Sentry Global Securities Ltd & Ors* (2012) SLR 331, and *Financial Intelligence Unit v Cyber Space Ltd* (2013) SLR 97 has interpreted the combination of these provisions to mean:

1. “...that once the applicant provides the Court with *prima facie* evidence that is, reasonable grounds for his belief in compliance with section 9(1) in terms of his application under section 4(1) of POCA, the evidential burden shifts to the respondent to show on a balance of

*probability that the property is not the proceeds of crime...*” (Mares supra)

2. *“...All that is necessary is “a reasonable belief” that the property has been obtained or derived from criminal conduct by the designated officer of the FIU. That belief pertains to the designated officer and hence involves a subjective element. It is therefore only prima facie evidence or belief evidence. No criminal offence need be proved, nor mens rea be shown...If the FIU relies on belief evidence under section 9 the court has to examine the grounds for the belief and if it satisfied that there are reasonable grounds for the belief it should grant the order. There are appropriate and serious protections for the respondents as at different stages they are permitted to adduce evidence to show the Court that the property does not constitute benefit from criminal conduct. Their burden in this endeavour is that “on a balance of probabilities.” In other words, once the applicant establishes his belief that the property is the proceeds of crime, the burden of proof shifts to the respondent to show that it is not. Hence, unless the court doubts the belief of the officer of the FIU which is reasonably made he cannot refuse the order. (Sentry supra)*

[21] The Irish case of *McK v H and H*[2006] IESC 63 was relied upon by the Seychelles Court of Appeal in the case of *Sentry*(supra) for the proposition that:

*“once the two statutory pre-conditions were met in relation to the belief statement, that it is held and expressed, and that there are reasonable grounds for it, then the belief constitutes evidence...This evidence is not conclusive and may be counteracted by evidence called by or on behalf of the defendant. Accordingly, the effect of the expression of an admissible belief under the Section, if it is not undermined in cross examination, is to create a prima facie case which may be answered by the defendant if he has a credible explanation as to how he lawfully came into possession or*

*control of the property in question, and established this in evidence.*  
(HardimanJ at 10-11)

[22] In *Financial Intelligence Unit v Cyber Space Ltd* (2013) SLR 97, the Irish case of *F McK v GWD* (Proceeds of Crime Outside the State) [2004] 2 IR 470 was cited to explain the correct procedure for a trial judge in circumstances such as those in the present case. These processes which inform the decision making of the trial judge was described by McCracken J as follows:

*“... [The judge] should consider the evidence given by the member or authorised officer of his belief and at the same time consider any other evidence ... which might point to reasonable grounds for that belief; if he is satisfied that there are reasonable grounds for the belief, he should then make a specific finding that the belief of the member or authorised office is evidence; only then should he go on to consider the position under s. 3 (section 4 in the Seychelles POCA). He should consider the evidence tendered by the plaintiff, which in the present case would be both the evidence of the members or authorised officer under s. 8 (section 9 of Seychelles POCA) and indeed the evidence of the other police officers; he should make a finding whether this evidence constitutes a prima facie case under [s. 4] and, if he does so find, the onus shifts to the defendant or other specified person; he should then consider the evidence furnished by the defendant or other specified person and determine whether he is satisfied that the onus undertaken by the defendant or other specified person has been fulfilled; if he is satisfied that the defendant or other specified person has satisfied his onus of proof then the proceedings should be dismissed; if he is not so satisfied he should then consider whether there would be a serious risk of injustice.*

[23] I have examined the evidence against these legal propositions. I am of the view that the affidavit of Mr. Quilter with the annexures to his affidavit, together with

his evidence give ground to a reasonable belief on his part that the properties held by the first two Respondents were acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes benefit from criminal conduct. I am also satisfied that his belief is reasonable in view of the fact that the incorporation of SPT and the Second Respondent and the formation of the First Respondent in Seychelles were not for their stated purposes, nor the monies in whole or in part in the accounts of the first two Respondents obtained from legitimate sources.

- [24] SPT was created by the acquisition of an aged company, Paladin, a shelf International Business Company. SPT's principal activities were stated as marketing services, product and representative, agency and consultancy services. As already mentioned the Second Respondent was incorporated in 2004 and its activities at the opening of its bank accounts with the Third Respondent were disclosed inter alia as the execution of oil trading contracts. The First Respondent was ostensibly a family trust with money invested from an inheritance described as "a couple of thousand pounds in a deposit box at the London Underground.: by Mr. MacArthur the settlor of the trust.
- [25] These entities would appear to be independent of each other and yet the evidence reveals that the beneficial owner of SPT's bank accounts was Peter Chapman a former manager of Securrency and a convicted fraudster. The First Respondent owns 50% shareholding in SPT. Mr. Chapman also owns the Second Respondent. There is a clear and inextricable link between all three entities and there is no reasonable explanation for the transfer of funds from these entities to each of these entities and other individuals or entities.
- [26] Despite the assertions of the First Respondent that the source of the funds in its bank account emanate from genuine and legitimate business transactions it has not only failed to provide documentation of these transactions but in contrast to what was originally stated by Mr. MacArthur relating to the inheritance, in a letter on 5 September 2008, probably in connection with the due diligence process of the corporate service provider he has declared that:

*“The source of funds from Martinique Trust emanated from the sale of listed equities held in a trading partnership. These equities were traded during the course of 1995 to 2001”* (First Respondent’s Exhibits marked as R2(1)).

- [27] The evidence outlined above is sufficient in my opinion to satisfy the court that a prima facie case has been made out against the First Respondent based on the provisions of section 4 and that there are reasonable grounds for the Applicant’s belief.
- [28] The onus now shifts onto the First Respondent to provide a credible explanation and to prove on a balance of probability to the Court that it lawfully came into possession or control of the property in question, and establish this by evidence.
- [29] The evidence provided by the First Respondent is thin and mostly self-serving. Even if the Court was to accept that the original source of the funds in the Respondent’s account was from Mr. McArthur’s inheritance from his grandmother of GBP 2000 and then invested in equities, no evidence documentary or otherwise to that effect has been provided to the Court apart from Mr. MacArthur’s own assertions.
- [30] He has also submitted as proof of that assertion the Declaration of Trust in respect of the Martinique Trust from which the funds were transferred to the First Respondent. I do not find his assertions made out in that document. The Declaration only indicates that the initial trust fund is GBP100. The grandmother’s legacy does not seem to figure at all in that trust.
- [31] Mr. MacArthur’s evidence that other money would be invested in the Trust and that the trust monies and accretions were then further invested into European Equity Partners is as I have stated not supported by any documentation. At the end of the day, no evidence has been provided as to how a trust with an initial investment of GBP 100 resulted in an accretion of Euro 500,000 which was then transferred to the First Respondent’s account in Seychelles.
- [32] Mr. McArthur’s assertion that no monies was transferred out of the First Respondent’s account is also not correct as in his own testimony he admitted



transferring Euro 93,240 to the Second Respondent as a repayment of a joint investment in a property. That investment is not sufficiently supported as no title deeds or similar documents were ever produced.

**[33]** The First Respondent has also failed to explain the relationships between itself, the Second Respondent and SPT. It has failed to satisfy the Court that the money in its account was not acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes benefit from criminal conduct. In that regard it has been unable to answer many questions relating to the transactions between the three companies and payments to Peter Chapman and Ehidiamehne Okoyomon. In particular the following questions raised by the evidence adduced by the Applicant remain unanswered by the Respondents:

1. Why was the account in the name of St. Christopher's Trust opened before the Trust itself was set up?
2. Why was Mr. McArthur not forthcoming about proceedings brought in Australia against SPT and Securrency when he was a consultant to Securrency and the settlor of St. Christopher's Trust which is a 50% shareholder of SPT?
3. Why was Mr. MacArthur not forthcoming about the fact that it was the Second Respondent which paid security for costs in Australia in relation to an action brought by SPT against Securrency seeking commission for the sale of polymer to Nigeria?
4. Why does Mr. MacArthur not know or remember exactly where 5.5 million dollars obtained from an out of court settlement from Innovia (Securrency) by SPT is lodged.
5. Why was the agency agreement between SPT and Securrency dated 1 January 2008 when SPT was only formed in May 2008 (supported by its claim in the action in Australia where commission is claimed by SPT against Securrency since 1 January 2008)?

6. Why werethere two resolutions dated 29 April 2008 and 29 April 2009 to ostensibly pay dividends amounting to Euro 150,000 from SPT to the First and Second Respondents?
7. What was the reason for forming SPT from Paladin, a shelf company in Seychelles and why was the decision made to incorporate SPT in May 2008 when its agreement with Securrency was already in place since January 2008.
8. Why did Mr. Chapman “lend” money to Mr. MacArthur to set up the Martindale Trust and the First Respondent and the money paid back by the Second Respondent?
9. Why did SPT “lend” Mr. McArthur money through the Second Respondent?
10. Why was money transferred from the Second Respondent to another company Swimseal International Limited (Swimseal), the directors of which are Mr McKay (also a director of SPT who signed the agreement between Securrency and SPT), Mr Marais and Mr McArthur (principals of SPT).
11. Why were tranches of money paid from SPT to the Second Respondent from October 2008 to November 2009?
12. Why was it necessary to buy two aged companies to form St. Christopher’s’ Trust and Swimseal especially since St. Christopher’s trust was a family trust.
13. Why did Swimseal receive large sums of money from Securrency when it is a company ostensibly involved in the production of protective ear drops?

**[34]** These unanswered questions raise serious doubt as to the *raison d’être* of the first two Respondents and as to the source and legitimacy of the funds in their

accounts. The credibility of both Mr. McCarthy and Mr. Carter have been impugned and their evidence therefore dubious especially in the absence of suitable or satisfactory answers to the questions raised above. I also found their demeanour in court to be confrontational, hostile and not forthcoming.

[35] The Court does not find that the Respondents have in any way satisfactorily explained the interaction between SPT, Securrency and the first two respondents or their dissociation from the criminal conspiracy surrounding the bribery of public officials in Nigeria for which Mr. Chapman has been convicted, Mr. Okoyomon awaiting extradition and trial and Securrency fined.

[36] No affidavit in reply to that of the Applicant has ever been received from the Second Respondent. It has in any case been struck off the Register. Learned Counsel, Mr. Frank Elizabeth attempted to appear on its behalf stating he has been instructed by a director who had since resigned.

[37] Section 99 of the International Companies Act which is applicable to these particular circumstances provides in relevant part that:

*“(1) Where the name of a company has been struck off the Register, the company, and the directors, members, liquidators and receivers thereof, may not legally -*

*(a) commence legal proceedings, carry on any business or in any way deal with the assets of the company;*

*(b) defend any legal proceedings, make any claim or claim any right for, or in the name of the company; or*

*(c) act in any way with respect to the affairs of the company.”*

[38] I have therefore not permitted Counsel to make any representation on behalf of the Second Respondent given the clear import of the provisions above. The present suit is therefore heard against it *ex parte* and in the absence of its defence.

- [39] I find that the Applicant has for the reasons above fulfilled its onus of proof pursuant to section 4 of POCA against both the First and the Second Respondent. I do not find that the first two Respondents have discharged the onus put on them to show that the money in their accounts is from legitimate sources. I also find that even if I were to believe that part of the funds in the First Respondent's account is from an inheritance or investments in equities or both, there is clear evidence of other funds from sources that are neither satisfactorily explained and which appear to the Court to be from proceeds of criminal conduct namely the bribery of officials in Nigeria.
- [40] It is in any case not possible for the Court to separate out the money obtained from legitimate sources from the money obtained illegally. It is trite that where there is mixing of funds with money from criminal conduct the whole is tainted. The evidence adduced before the Court by the Applicant and ironically by the First Respondent has demonstrated classic signs of money laundering in the form of placement, layering and integration of the cash. I do not believe for one minute that a family trust ostensibly with the aim of growing a nest egg originating from a grandmother's legacy would be receiving and transferring money from companies associated with shady deals in Nigeria. I therefore reject the evidence of the First Respondent in its entirety.
- [41] I am satisfied that the information in the application, of course, together with the unchallenged evidence of Mr. Quilter in respect of the Second Respondent that there are reasonable grounds to suspect that the property in the first two Respondent's accounts constitutes directly or indirectly, benefit from criminal conduct, or was acquired in whole or in part with or in connection with property that is directly or indirectly, constitutes benefit from criminal conduct.
- [42] In view of my findings against the First and Second Respondents I make the following orders:
1. I make an interlocutory order pursuant to section 4 of the Proceeds of Crime (Civil Confiscation) Act 2008, prohibiting the First Respondent or any other person having notice of the making of this

order from disposing of or otherwise dealing with the whole or any part of the property or dealing with or diminishing in value sums of money standing to credit in the sum of namely EUR 242,509.80 held in the First Respondent's account no XXXXX with the Third Respondent.

2. I make an interlocutory order pursuant to section 4 of the Proceeds of Crime (Civil Confiscation) Act 2008, prohibiting the Second Respondent or any other person having notice of the making of this order from disposing of or otherwise dealing with the whole or any part of the property or dealing with or diminishing in value sums of money standing to credit in the sum of USD 2,011.66 held in the Second Respondent's account no XXXXXXXX with the Third Respondent; and GBP 2,565.49 held in the Second Respondent's account no XXXXXXXX with the Third Respondent.
3. Thereafter, I make an order pursuant to section 8 of the Proceeds of Crime (Civil Confiscation) Act 2008, appointing Phillip Moustache, the Director of the FIU as the Receiver of the specified property and to hold the same in an account in Barclays Bank (Seychelles ) Ltd. until further orders of this Court.
4. Costs of these proceedings will abide the final outcome of the proceedings in relation to the property specified in this matter.

Signed, dated and delivered at Ile du Port on 17 February 2017.

**M. TWOMEY**  
Chief Justice