

**IN THE CARIBBEAN COURT OF JUSTICE
APPELLATE JURISDICTION**

**ON APPEAL FROM THE COURT OF APPEAL OF THE
EASTERN CARIBBEAN SUPREME COURT (DOMINICA)**

**CCJ Appeal No DMCV2024/001
DM Civil Appeal No DOMHCVAP2020/0005**

BETWEEN

**JHAWNIE GAGE
ARAH PAULA CECIL DAVIS
EDGAR AUGUSTUS PELTIER**

APELLANTS

AND

**THE ATTORNEY GENERAL OF THE
COMMONWEALTH OF DOMINICA**

RESPONDENT

Before:
Mr Justice Saunders, President
Mr Justice Anderson
Mme Justice Rajnauth-Lee
Mr Justice Barrow
Mme Justice Ononaiwu

Date of Reasons: **9 June 2025**

Appearances

Mr Douglas L Mendes SC and Mrs Gina Dyer Munro for the Appellants

Mr Rishi P A Dass SC, Ms Sasha Bridgemohansingh and Mrs Tameka Burton for the Respondent

Practice and Procedure – Proceeds of crime – Property freezing order – Registered land – Whether failure to register property freezing order should result in discharge – Statutory interpretation – Proceeds of Crime Act, Chap 12:29 – Title by Registration Act, Chap 56:50.

SUMMARY

This is a procedural appeal, originating from the Commonwealth of Dominica, from the decision of the Court of Appeal of the Eastern Caribbean Supreme Court. The appellants are persons whose property was ordered to be frozen as a result of an application made by the Attorney General. The main issue addressed in this appeal concerned the interpretation of s 59BB(2) of the Proceeds of Crime Act, Chap 12:29, as amended by Act 7 of 2013 ('POCA') and the legal effect of a property freezing order ('freezing order') that was not registered as a charge on registered land. The appellants challenged the continued validity of the freezing order, particularly in relation to a parcel of registered land known as Shawford Estate, arguing that the Attorney General's failure to register the freezing order rendered it ineffective, and liable to be discharged.

The freezing order was issued by the High Court on 23 December 2014. The appellants sought to have the freezing order discharged, but their applications were dismissed by the High Court. The decision of the High Court was upheld by the Court of Appeal. The issues of the interpretation of s 59BB(2) of the POCA and the effect of the non-registration of the freezing order were not expressly raised before the lower courts.

On the filing of the appellants' application to the Court of Appeal for leave to appeal to the Caribbean Court of Justice ('the Court') on 23 July 2021, the appellants' main argument was that the Attorney General failed to comply with s 59BB(2) of the POCA with the result that the freezing order ought to be treated as being of no effect. This was not a ground of appeal before the Court of Appeal. It was, however, argued by the parties in their oral and written submissions before the Court of Appeal but was not addressed by the Court of Appeal in its judgment.

At the time of the filing of the leave application before the Court of Appeal, s 59BB(2) of the POCA provided that a freezing order was 'of no effect' with respect to registered land unless registered as a charge under the Title by Registration Act ('TRA'). Subsequently, the POCA was amended by the Proceeds of Crime (Amendment) Act 4 of 2022 ('2022 Amendment Act') which removed the provision that the freezing order would be of no

effect if not registered as a charge. On 14 October 2021, the Attorney General lodged the freezing order as a caveat on the Shawford Estate property. The caveat is being opposed by the appellants in separate proceedings which are pending.

Notwithstanding the decidedly oblique and belated way the issue of the effect of the non-registration of the freezing order was treated by the appellants in the courts below, and the subsequent legislative changes to the POCA, the appellants were granted leave by the Court of Appeal, to appeal to the Court. The Court of Appeal was of the view that the matter raised a discrete novel point of law regarding the interpretation of s 59BB(2) of the POCA.

In their arguments before the Court, the appellants contended that the Attorney General's failure to register the freezing order as a charge should result in a discharge of the freezing order as it relates to registered land, namely the Shawford Estate property; that the Attorney General had an implied duty to register the order promptly; and that the prolonged delay on the part of the Attorney General caused them prejudice, and was an abuse of process. They also argued that the 2022 Amendment Act ought not be applied retrospectively to revive a 'dead' freezing order.

On 18 February 2025, the Court heard this appeal and on 21 February 2025, the Court dismissed the appeal with reasons to follow. In the judgment of the Court authored by Rajnauth-Lee J, it was held that the freezing order remained valid and binding on the appellants until it was discharged by a court, despite it not having been registered as a charge. The Court emphasised that the purpose of registration under s 59BB(2) was not to validate the freezing order but to provide notice to anyone inspecting the registered title of the Shawford Estate property that the Attorney General was claiming a legal interest therein which would rank in priority over any later dealings, charges and incumbrances. The Court made it clear that the consequence of non-registration as 'a charge' in relation to registered land was not that the freezing order was made automatically ineffective and must be varied, discharged, or set aside, but that the Attorney General could not claim a legal interest in the registered property against an innocent third party who had obtained an interest in the registered land without knowledge of the freezing order.

In interpreting the statute, the Court adopted a purposive approach, mindful of the broader public interest in depriving criminals of the proceeds of crime. Rajnauth-Lee J reasoned that to accept the appellants' interpretation would undermine the effectiveness of civil recovery proceedings and allow individuals to disregard valid court orders. The Court found no basis in the statutory language to support the claim that non-registration automatically nullified the freezing order.

On the issue of delay, the Court acknowledged the length of time that had elapsed before any action was taken by the Attorney General in this matter. Indeed, the Attorney General had only registered the freezing order as a caveat several years after it was issued. However, the Court noted that the appellants had only raised the issue of delay in their written submissions filed before the Court. The Court also bore in mind that since 30 January 2015, there had been in place a stay of the substantive claim entered with the consent of the parties. The issues of delay, prejudice and the consequential abuse of process had not been raised in the lower courts, and the parties had not filed any evidence in support of their contentions. The Court was not persuaded that having regard to the wide public interest element in the POCA, that it ought to discharge the freezing order because of the complaints of delay, prejudice or abuse of process.

The Court also addressed the 2022 Amendment Act, which removed the provision from the former legislation that a freezing order would be 'of no effect' if not registered as a charge. The amended provision allows the Registrar of Titles to order the entry of a caveat on an application by the Attorney General under s 59BB(1). The Court held that this amendment did not affect the outcome of these proceedings since there was no question of the amendment reviving a 'dead' order because the freezing order had never ceased to exist. Therefore, questions of retrospectivity or constitutional validity of the amendment were otiose.

The appeal was dismissed. The Court continued the freezing order save for the disclosure obligations discharged by the Court of Appeal. The Court ordered that the costs of this appeal be costs in the cause.

Cases referred to:

A-G of the Commonwealth of Dominica v Gage DM 2020 HC 1 (CARILAW), (5 January 2020); *Criminal Assets Bureau v Kelly* [2012] IESC 64; *Gage v A-G of the Commonwealth of Dominica* DM 2024 CA 1 (CARILAW), (15 April 2024); *George v Guye* [2019] CCJ 19 (AJ) (DM), (2019) 97 WIR 180; *Gibbs v Messer* [1891] AC 248; *Isaacs v Robertson* (1984) 43 WIR 126 (VC PC); *OO v BK* [2023] CCJ 10 (AJ) BB, (2023) 103 WIR 36; *R v Rezvi* [2003] 1 AC 1099; *R v Waya* [2013] 1 AC 294; *Sefton (as Liquidator of Online Corporate Services Ltd) v Gallucci* [2008] EWHC 738 (Ch); *Walsh v Deloitte & Touche Inc* [2001] UKPC 58, (2001) 59 WIR 30 (BS).

Legislation referred to:

Dominica – Interpretation and General Clauses Act, Chap 3:01, Proceeds of Crime Act, Chap 12:29, Proceeds of Crime (Amendment) Act 2013, Proceeds of Crime (Amendment) Act 2022, Title by Registration Act, Chap 56:50.

Treaties and International Materials referred to:

United Nations Convention Against Corruption (adopted 31 October 2003, entered into force 14 December 2005) 2349 UNTS 41; United Nations Convention Against Transnational Organized Crime (adopted 15 November 2000, entered into force 29 September 2003) 2225 UNTS 209.

Other Sources referred to:

Kodilinye G, *Commonwealth Caribbean Property Law* (5th edn, Routledge 2022); Millington T and Williams M S, *Millington and Sutherland Williams on the Proceeds of Crime* (3rd edn, Oxford University Press 2010); ‘Needham’s Point Declaration on Criminal Justice Reform in the Caribbean: Achieving A Modern Criminal Justice System’ (CCJ Academy for Law Seventh Biennial Conference, Barbados, 20 October 2023); Owusu S, *Commonwealth Caribbean Land Law* (Routledge-Cavendish 2007).

REASONS FOR DECISION**Reasons:**

Rajnauth-Lee J (Saunders P, Anderson, Barrow and Ononaiwu JJ concurring) [1] – [47]

Disposition [48]

RAJNAUTH-LEE J:

Introduction

[1] This case involves a procedural appeal from the Court of Appeal of the Eastern Caribbean Supreme Court of the Commonwealth of Dominica. The Court of Appeal upheld the High Court judge's decision to dismiss the appellants' applications to discharge a property freezing order issued pending the outcome of a civil recovery claim. On 15 April 2024, the Court of Appeal granted leave to the appellants to appeal to the Caribbean Court of Justice ('the Court' or 'this Court'). This appeal was filed by the appellants, Jhawnie Gage, Arah Paule Cecil Davis, and Edgar Augustus Peltier against the Attorney General of the Commonwealth of Dominica ('the Attorney General'). This is the first matter which has come to the Court concerning the Proceeds of Crime Act¹ ('the POCA') of the Commonwealth of Dominica. The case raises an important issue, that is, the legal effect of the failure of the Attorney General to register the freezing order as a charge in relation to registered land in accordance with s 59BB(2) of the POCA.

[2] The Court heard this appeal on 18 February 2025. By order dated 21 February 2025, this Court dismissed the appeal with reasons to follow, and ordered that the freezing order made on 23 December 2014, save for the disclosure obligations discharged by the Court of Appeal, is continued until further order. This Court also ordered that costs in this procedural appeal be costs in the cause. The Court now provides the reasons for its decision.

Factual Background

High Court Proceedings

[3] On 19 December 2014, the Attorney General filed a fixed date claim against the appellants. The Attorney General sought a recovery order against the appellants in

¹ Chap 12:29.

respect of real and personal property pursuant to Part IIIA of the Proceeds of Crime Act, Chap 12:29 as amended by the Proceeds of Crime (Amendment) Act 7 of 2013. On 23 December 2014, the Attorney General obtained an interim property freezing order ('the freezing order') against the appellants which, among other things, prohibited them from disposing of, tampering with or removing from the jurisdiction or in any way diminishing the value of the property and assets set out in the freezing order. Among the assets listed in the freezing order was a parcel of land at Shawford Estate registered in the name of Arah Paula Cecil Davis (the second appellant) and the concrete house thereon with attic and built-in jacuzzi ('the Shawford Estate property'). The Shawford Estate property constituted registered land falling under the Title by Registration Act² ('the TRA'). The freezing order also imposed on the appellants obligations to inform the Financial Intelligence Unit ('the FIU') of all their assets, whether inside or outside of the jurisdiction, and to give the location of all their assets.

- [4] On 27 January 2015, the first and second appellants jointly, and the third appellant by a separate notice of application, filed applications to discharge the freezing order. The applications were dismissed by Stephenson J on 5 January 2020.
- [5] On 27 January 2015, the appellants also filed an application to stay the substantive proceedings pending the hearing of their applications to set aside the freezing order. A consent order staying the substantive proceedings was approved by Thomas J on 30 January 2015.

Court of Appeal

- [6] On 2 June 2020, the appellants appealed against the decision of the High Court judge to dismiss the applications to discharge the freezing order. The Notice of Appeal set out some 14 grounds of appeal, that included: (i) that the judge failed to consider the written submissions filed by the appellants in the court below in reply to the Attorney General's submissions; (ii) that the judge failed to consider that the

² Chap 56:50.

second appellant held an indefeasible certificate of title to the Shawford Estate property and that, in accordance with the TRA, it was not open to the Attorney General to challenge her ownership; and (iii) that the property freezing order could not apply to property outside of Dominica.

- [7] On 11 June 2021 (judgment re-issued on 15 June 2021), the Court of Appeal (Michel, Baptiste, and Webster JJA) dismissed the appeal. Although the Court of Appeal was unanimous that the appeal should be dismissed, Michel JA differed from the majority in his conclusion on the omission of the High Court judge to mention the appellants' reply submissions in her judgment. Michel JA expressed the view that given the extensive and intensive nature of the overlooked submissions, and the fact that they specifically controverted the submissions of the Attorney General upon which the judge appeared to have based her findings and conclusions that the freezing order should not be discharged, those findings and conclusions could not be sustained. Michel JA therefore set aside the judge's decision to dismiss the applications to discharge the freezing order and conducted a fresh analysis as to whether the freezing order ought to be discharged.
- [8] On the other hand, the majority (Baptiste and Webster JJA) were of the view that it was only when a judge's failure to deal with material facts or legal submissions can be shown to have led to or contributed to an error in the findings, that the appellate court should set aside those findings. The judge had the entire record before her, and in the absence of compelling evidence, the assumption was made that the judge took the reply submissions into account.
- [9] The Court of Appeal agreed that the indefeasibility of the title of the second appellant did not render the Shawford Estate property automatically ineligible from falling within the freezing order pursuant to the POCA. Importantly, the Court of Appeal was of the view that the judge was entitled to find that there was at least a good arguable case that the first appellant was engaged in unlawful conduct involving illicit drugs, and that the property listed in the freezing order, which

included the Shawford Estate property, was acquired through this unlawful conduct. Senior Counsel for the Attorney General, Mr Dass, has correctly submitted that there is no challenge to this finding. The Court of Appeal therefore held that the property listed in the freezing order was property for which a recovery order could be obtained by the Attorney General.

- [10] As to the extraterritorial reach of the freezing order, and in the light of the disclosures made by the appellants, the Court of Appeal formed the view that the freezing order ought to be continued but without the obligations which it placed on the appellants to disclose to the FIU details of any property that they owned outside of the Commonwealth of Dominica. Accordingly, no restrictions were placed on the appellants with respect to any properties that they may have owned outside of the Commonwealth of Dominica.

Leave to Appeal Granted by the Court of Appeal

- [11] On 23 July 2021, the appellants applied to the Court of Appeal (Ellis, Ward, and St Clair Farara JJA) for leave to appeal to this Court. The main argument of the appellants, raised in their submissions to the Court of Appeal, and on which they sought leave to appeal to this Court, was that the Attorney General failed to comply with s 59BB(2) of the POCA with the result that the freezing order ought to be treated as being of no effect. Although this issue was not a discrete ground of appeal before the Court of Appeal, it was argued by the parties in their oral and written submissions before the Court of Appeal but was not addressed by the Court of Appeal in its judgment.
- [12] The Court of Appeal noted that on 24 August 2022, s 59BB(2) of the POCA was amended by the Proceeds of Crime (Amendment) Act 4 of 2022 ('the 2022 Amendment Act') to remove the provision that the freezing order would be of 'no effect' if not registered as a charge. This amendment came into effect subsequent to the judgment of the Court of Appeal re-issued on 15 June 2021, and the filing of

the appellants' notice of application for leave to appeal to this Court on 23 July 2021. Notwithstanding the decidedly oblique and belated way the issue was treated by the appellants in the courts below,³ and the recent legislative changes to the POCA, the Court of Appeal granted leave to appeal to this Court on 15 April 2024. In their view, the application raised a discrete novel point in law relating to the unregistered freezing order in the context of registered land.⁴

[13] Prior to the grant of leave to appeal by the Court of Appeal, and on 14 October 2021, the Attorney General lodged the freezing order as a caveat on the Shawford Estate property. The caveat is being opposed by the appellants in separate proceedings which are pending.

Appeal to the Caribbean Court of Justice

[14] On 9 August 2024, the appellants filed their Notice of Appeal. A summary of the grounds of appeal on which the appellants rely is set out as follows:

- a. The Court of Appeal failed to consider whether the failure of the Attorney General to comply with s 59BB of the POCA should have resulted in the discharge of the freezing order issued against the appellants.
- b. The Court of Appeal failed to consider the effect of the Attorney General's non-compliance with s 59BB of the POCA.
- c. The Court of Appeal failed to consider the appellants' arguments with respect to s 59BB of the POCA and the correlation between s 59BB of the POCA and the TRA.

³ *Gage v A-G of the Commonwealth of Dominica* DM 2024 CA 1 (CARILAW), (15 April 2024) at [51].

⁴ *ibid* at [54].

- d. The Court of Appeal failed to consider s 59BB of the POCA in the context of the TRA and the requirements for registration under the said TRA.
- e. The Court of Appeal failed to properly consider the registration of charges under the TRA and the correlation to the registration requirement of a freezing order under s 59BB of the POCA.
- f. The Court of Appeal failed to consider s 59BB of the POCA and that as the Attorney General failed to register the freezing order, the said freezing order was of no effect.
- g. The Court of Appeal failed to consider s 59BB of the POCA and its relevance to the TRA.
- h. The Court of Appeal failed to consider the TRA and its applicability to s 59BB of the POCA.
- i. The Court of Appeal failed to consider that the decision of Stephenson J dated 5 January 2020, continuing the freezing order made on 23 December 2014 exceeded the generous ambit within which reasonable disagreement was possible.

[15] The appellants seek the following reliefs:

- i. That the appeal be allowed.
- ii. That the judgment of the Eastern Caribbean Supreme Court of Appeal of the Commonwealth of Dominica delivered on 15 June 2021 be set aside save the disclosure obligations contained in paragraphs 11(1), 12(1) and 13(1) of the freezing order made on 23 December 2014.

- iii. That the freezing order made on 23 December 2014 and continued by Stephenson J in her order dated 5 January 2020 be discharged.

[16] The parties have agreed that the main issue for the determination of the Court is whether the non-registration of the freezing order as a charge in accordance with s 59BB(2) of the POCA should result in the discharge of the freezing order as it relates to the registered land at Shawford Estate.

[17] Two further issues have been raised in the submissions of the parties:

- i. Whether the failure of the Attorney General to register the freezing order within a reasonable time should result in the discharge of the order as it relates to the registered property; and
- ii. Whether the repeal of s 59BB(2) of the POCA and its replacement by s 7(b) of the 2022 Amendment Act was effectual to revive the freezing order, should the Court be of the opinion that the freezing order ceased to have any effect because of its non-registration.

Whether the Failure of the Attorney General to Register the Freezing Order as a Charge in Accordance with s 59BB(2) of the POCA Should Result in the Discharge of the Order as it Relates to Registered Property

The Relevant Provisions and Objectives of the POCA

[18] The key provision of the POCA to be considered by the Court is set out at s 59BB which provides:

59BB. (1) Where the Attorney General has applied for a property freezing order or an interim receiving order, he shall be treated for the purposes of section 114 of the Title by Registration Act, as a person entitled to stay the registration of dealing with land to which the application relates, or to which a property freezing order or an interim receiving order made on the application relates.

(2) A property freezing order or an interim receiving order is of no effect with respect to registered land unless it is registered as a charge under the Title by Registration Act.

[19] According to s 59M(4) of the POCA, a court may make a property freezing order if it is satisfied that there is a good arguable case that (a) the property includes recoverable property; and if any of the property is not recoverable property, it is associated property; and (b) if the property includes property alleged to be associated property, and the Attorney General has not established the identity of the person who holds it, the Attorney General has taken all reasonable steps to do so.

[20] Counsel for the Attorney General, Mr Dass, has correctly submitted that the only statutory requirements of which the court must be satisfied in the making of the freezing order are set out in s 59M of the POCA.⁵ Senior Counsel for the appellants, Mr Mendes, in his written submissions, also makes clear that there is no challenge to the jurisdiction of the court to issue the freezing order, and that registration of a freezing order is not a pre-condition to the issue of the order by the court. Accordingly, Mr Mendes agrees that the validity of the freezing order is not in issue. The Attorney General was therefore entitled to seek a recovery order and a freezing order against the appellants in respect of the property listed in the freezing order. The main issue before the Court is the effect of the failure to register the freezing order ‘as a charge’ against registered land, and whether, in those circumstances, the freezing order should be discharged but only as it relates to the Shawford Estate property.⁶

[21] Despite the relief set out at para 3(iii) of the appellants’ Notice of Appeal, which sought the discharge of the freezing order, the appellants in effect seek a variation of the freezing order and not a discharge. This has been clarified by Mr Mendes during the hearing of this matter on 18 February 2025. There is no dispute that the

⁵ A-G of the Commonwealth of Dominica, ‘The Respondent’s Written Submissions’, Submission in *Gage v A-G of the Commonwealth of Dominica*, DMCV2024/001, 13 December 2024, [4].

⁶ Jhawnie Gage and others, ‘The Appellants’ Written Reply’, Submission in *Gage v A-G of the Commonwealth of Dominica*, DMCV2024/001, 8 January 2025, [7].

Court has the power to vary a freezing order pursuant to ss 59N and 59O of the POCA in accordance with the provisions set out therein. It is not necessary in the circumstances of this appeal to examine these provisions in detail. The Court, however, would wish to emphasise s 59O(4) which provides that notwithstanding sub-s (2) or (3) (exclusions for reasonable living or legal expenses and the like) the power to make exclusions must be exercised with a view to ensuring, so far as practicable, that the satisfaction of any right of the Attorney General to recover the property obtained through unlawful conduct or tainted property is not unduly prejudiced.

The Relevant Provisions of the TRA

- [22] The Court of Appeal in its substantive judgment noted the judgment of the majority of this Court in *George v Guye*⁷ which provided a brief background to the TRA and the system of title by registration introduced into the laws of the Commonwealth of Dominica. In that judgment, Saunders P noted that the purpose of the TRA was to enact the system of land ownership that had been adopted in some countries and named after Sir Robert Richard Torrens who designed and first introduced it into South Australia. Referred to as the Torrens system, it encouraged landowners to bring their land under a registered system of land ownership and so obtain a registered certificate of title.
- [23] At [10] in *George v Guye*, Saunders P went on to observe the legislative scheme behind the Torrens system which was aptly described in *Gibbs v Messer*⁸ as being a system which saved persons dealing with registered proprietors the trouble and expense of going behind the register, in order to investigate the history of the author's title and to satisfy themselves of its validity. That end was accomplished by providing that everyone who purchases, bona fide and for value, from a registered proprietor, and enters his deed of transfer or mortgage on the register,

⁷ [2019] CCJ 19 (AJ) (DM), (2019) 97 WIR 180.

⁸ [1891] AC 248 at 254.

shall thereby acquire an indefeasible right, notwithstanding the infirmity of his author's title.

- [24] Section 114 of the TRA falls under Part VII of the TRA entitled CAVEATS, and provides:

114. Subject to the provisions of section 117, any person claiming to be entitled to stay the registration of any dealing in land, until his rights therein shall be recognised and registered, may present a caveat to the Registrar of Titles.

- [25] In accordance with s 113, a caveat is to be in Form 23 of the TRA and shall be verified by oath. Section 115 provides that the Registrar of Titles shall register the caveat in the same form and manner as an incumbrance affecting the land set forth in the caveat, and the date of registration shall be the date of the presentation of the caveat. In addition, the Registrar of Titles shall have the right to demand the duplicate certificate of title from the possessor in order to note the caveat on the register.

- [26] Section 117 provides for the effect of registration of a caveat as follows:

117. (1) Where a caveat has been registered, until such caveat is removed no second caveat or any other dealing with the land embraced in the registered caveat shall be lawful and the Registrar of Titles shall refuse to receive or register the same.

(2) Any entry in the presentation book or registration contrary to subsection (1) is void and shall be struck off by the Registrar of Titles.

- [27] The TRA does not define the word 'charge'. In relation to registered land, a charge is to be distinguished from a caveat. A charge is notification of the existence of a legal interest in land, and it is most commonly used as security for a debt, whilst a caveat is notice to the world of the caveator's potential interest. It is a warning that

the caveator claims an interest in the land and its registration prevents dealings with the land until the claim is resolved and the caveat removed.⁹

- [28] It is to be noted that both the TRA and the POCA are silent on the procedure applicable to the registration of ‘a charge’ under s 59BB(2). At the hearing, Mrs Dyer Munro referred to s 112 of the TRA which provides the modality by which a judgment is made a charge. In part, s 112 provides that a judgment for the payment of any money or costs shall constitute the money or costs a charge, subject to charges having a priority. It outlines the procedure by which the charge is to be noted upon the title. In addition, s 34 of the TRA provides that the land tax imposed by any Act shall be the first charge on the land on which the tax is payable. The Registrar of Titles shall make the note on all certificates of titles hereafter issued as to a ‘Charge in favour of the Government for land tax now due or hereafter becoming due’. The appellants argue that the procedure outlined in s 112 of the TRA could have been applied to the registration of a charge pursuant to s 59BB(2). Although we do not consider it necessary in this appeal to determine whether that is so, it should be noted that s 112 expressly refers to money judgments and it would be difficult to see how that section could be applied to the registration of a freezing order.

The Effect of Non-Registration of the Freezing Order Under s 59BB(2)

- [29] The importance of taking the profit out of crime has been recognized internationally.¹⁰ Accordingly, proceeds of crime legislation has been enacted in the public interest regionally, and more particularly in the Commonwealth of Dominica, to provide an effective deterrent for criminal activity, and to ensure that criminals do not benefit from their illegal actions. The Court notes the *Needham’s Point Declaration of Criminal Justice Reform: Achieving a Modern Criminal Justice System*, adopted at the CCJ Academy for Law, Seventh Biennial

⁹ Gilbert Kodilinye, *Commonwealth Caribbean Property Law* (5th edn, Routledge 2022) 251. See also Sampson Owusu, *Commonwealth Caribbean Land Law* (Routledge-Cavendish 2007) 254.

¹⁰ See United Nations Convention Against Corruption (adopted 31 October 2003, entered into force 14 December 2005) 2349 UNTS 41. See also United Nations Convention Against Transnational Organized Crime (adopted 15 November 2000, entered into force 29 September 2003) 2225 UNTS 209, art 12.

Conference, on 20 October 2023 in Bridgetown, Barbados. The main objective of the Declaration is the creation of modern, efficient, just, and effective criminal justice systems in the Commonwealth Caribbean. Among its many very useful recommendations is the enactment of laws and appropriate mechanisms to establish and implement effective criminal and civil asset forfeiture to take the money out of crime and out of the pockets of criminals.¹¹

[30] It is in this context that the Court will employ a purposive approach to statutory interpretation as it considers the legal effect of s 59BB(2).¹² As this Court noted in *George v Guye*, a certificate granted to a registered proprietor provides a guarantee that at the time the title was obtained that title was good and free from defect.¹³ In other words, apart from the statutory exceptions of fraud and adverse possession set out in the TRA¹⁴, a bona fide purchaser for value takes the title of the registered proprietor without notice of any incumbrance or interest that has not been noted on the certificate of title. *George v Guye* therefore recognises the important distinction between registered and unregistered land. Whilst all interests and encumbrances must be noted on the certificate of title of registered land, there may be hidden interests which may not be included in the title of unregistered land, and which may require investigation by the purchaser.¹⁵

[31] It is not disputed that the court had jurisdiction to make the freezing order, and that the freezing order made by Stephenson J was validly issued. The appellants were therefore bound by the freezing order until the order was either discharged or set aside. This Court does not accept that the language of s 59BB(2) could have the sweeping effects argued by Mr Mendes that (1) the appellants could have disobeyed the freezing order with impunity since they were only bound by the order on its registration under s 59BB(2); and (2) the discharge of the freezing order

¹¹‘Needham’s Point Declaration on Criminal Justice Reform in the Caribbean: Achieving A Modern Criminal Justice System’ (CCJ Academy for Law Seventh Biennial Conference, Barbados, 20 October 2023 art 5.

¹² See the Court’s approach to statutory interpretation in *OO v BK* [2023] CCJ 10 (AJ) BB, (2023) 103 WIR 36 at [58]-[66].

¹³ *George* (n 7) at [25].

¹⁴ See, TRA (n 2) s 19 which provides for the wrongful issuance of a Certificate of Title, and ss 142 - 145 which provide for the correction of errors on a certificate of title.

¹⁵ *George* (n 7) at [35].

automatically followed due to its non-registration by the Attorney General. We believe that to accept this argument is to conflate the existence of the freezing order which has been validly issued by the court, and which has not been discharged by a further order of the court, with the effect of non-registration of the freezing order under s 59BB.

- [32] Support for this view can be found in the useful judgment from Saint Vincent and the Grenadines of *Isaacs v Robertson* delivered by the Judicial Committee of the Privy Council.¹⁶ *Isaacs* was held in contempt of court for disobeying an injunction. He relied on Ord 34 r 11(1)(a) of the Rules of the West Indies Associated States Supreme Court (rev 1970) which provided that a cause or matter shall be deemed altogether abandoned and incapable of being revived if prior to the filing of a request for hearing... any party has failed to take any proceedings or file any document therein for one year from the date of the last proceeding. At the time the injunction was granted, the matter had been deemed abandoned under Ord 34 r 11(1)(a). Therefore, it was argued on behalf of *Isaacs*, he could not be held in contempt since the rule was applicable in the instant case when the injunction was granted. The Board noted:

The main attack by the defendant on the Court of Appeal's judgment was based on the contention that as a consequence of the operation of Order 34, rule 11(1)(a), of the Rules of the West Indies Associated States Supreme Court 1970, the order made by the High Court granting the interlocutory injunction on 31st May 1979 was a nullity; so disobedience to it could not constitute a contempt of court. Glasgow J accepted this contention; the Court of Appeal rejected it (in their lordships' view correctly) upon the short and well-established ground that *an order made by a court of unlimited jurisdiction, such as the High Court of St Vincent, must be obeyed unless and until it has been set aside by the court*¹⁷ (emphasis added).

- [33] The clear policy of the POCA to provide for the forfeiture or confiscation of the proceeds of certain crimes, and the vital public interest in ensuring the integrity of the civil recovery proceedings under the proceeds of crime legislative regimes,

¹⁶ (1984) 43 WIR 126 (VC PC).

¹⁷ *ibid* at 101.

must be borne in mind.¹⁸ Indeed, one of the purposes of Part IIIA Civil Recovery as set out in s 59B(1)(a) is to enable the Attorney General to recover in civil proceedings before the court property which is or represents property obtained through unlawful conduct. In the case of *Criminal Assets Bureau v Kelly*, the Irish Supreme Court noted the strong public policy dimension behind the Irish proceeds of crime legislation.¹⁹ That policy seeks to ensure that persons do not benefit from assets which were obtained with the proceeds of crime.

[34] Employing the purposive approach, therefore, it must be recognised that something more would be required if the legislation in question, that is, s 59BB(2) is to have the effect, argued by Mr Mendes, that the freezing order was automatically made of no effect as an order of the court because only of its non-registration by the Attorney General. Indeed, Parliament would have had to use clear words to justify such a far-reaching conclusion.

[35] In the view of the Court, Parliament intended that the purpose of registration under s 59BB(2) was to give notice to anyone inspecting the registered title of the Shawford Estate property that the Attorney General was claiming a legal interest therein which would rank in priority over any later dealings, charges and incumbrances. The Court is therefore satisfied that the purpose of registration of the freezing order under that subsection is to ensure that the appellants were unable lawfully to deal with the land in ways inconsistent with the terms of the freezing order and that innocent third parties had ample notice of the freezing order. It is therefore clear that the consequence of non-registration as ‘a charge’ in relation to registered land is not that the freezing order is made automatically ineffective and must be varied, discharged, or set aside, but that the Attorney General could not claim a legal interest in the registered property against an innocent third party who had obtained an interest in the registered land without knowledge of the freezing order.

¹⁸ Trevor Millington and Mark Sutherland Williams, *Millington and Sutherland Williams on the Proceeds of Crime* (3rd edn, Oxford University Press 2010) paras 1.02 – 1.09, 13.73. See also *R v Waya* [2013] 1 AC 294, 303; *R v Rezvi* [2003] 1 AC 1099, 1152.

¹⁹ [2012] IESC 64 at [32].

[36] The Court is also not convinced by the argument that the Attorney General had an implied obligation to register the freezing order as ‘a charge’, and that his failure to do so resulted in the freezing order having no effect as an order of the court. In our view, Mr Dass has correctly submitted that s 59BB(2) gave the Attorney General a power, or right, or entitlement to register the freezing order as a charge, and not an obligation to register. The plain and ordinary language of the relevant statutory provision supports that submission.

[37] The appellants therefore fail on this issue.

Whether the Failure of the Attorney General to Register the Freezing Order Within a Reasonable Time Results in the Discharge of the Order as it Relates to the Registered Property

[38] We turn now to the appellants’ argument, raised for the first time in their written submissions filed before this Court, that because of the delay on the part of the Attorney General in registering the freezing order under s 59BB of the POCA, this Court ought to discharge the freezing order as it relates to the registered property. The appellants rely on s 66 of the Interpretation and General Clauses Act²⁰ which would require the registration to be done ‘with all convenient speed, and as often as the occasion arises’. The appellants further argue that the failure to register the freezing order with all convenient speed caused them prejudice.

[39] As mentioned earlier, the Attorney General lodged the freezing order as a caveat on 14 October 2021 after the delivery of the substantive judgment of the Court of Appeal. It has been argued on behalf of the Attorney General that had Parliament intended invalidity to follow from a prolonged failure to register the freezing order, it could have easily placed a duty upon the Attorney General to register the freezing order within a defined or reasonable time failing which it would be void or could be discharged. It is further argued that, having regard to the statutory framework of

²⁰ Chap 3:01.

the POCA, and in particular ss 59BB, 59N and 59O, there is no legitimate basis upon which such an interpretation could be sustained.

[40] The appellants have cited *Sefton (as Liquidator of Online Corporate Services Ltd) v Gallucci*²¹ and *Walsh v Deloitte & Touche Inc*²² in support of their contention that the freezing order should be discharged due to the delay in registration. These cases, however, treat with delay in the prosecution of the substantive action or claim, an issue which is not raised in this appeal.

[41] In *Sefton*, the High Court of England and Wales discharged an injunction on grounds of delay in prosecution of the substantive claim having considered the prejudice faced by the defendant in that matter. Purle J observed at [13] that it is well established that a claimant who obtains a freezing order is under a duty to get on with the action as rapidly as he can, and not simply ‘rest content with the injunction’. A claimant who does not act speedily runs the risk that the injunction will be discharged on the grounds of his delay. In *Walsh*, the Judicial Committee of the Privy Council found that delay in the prosecution of the Ontario action may very well be grounds for the discharge of the Mareva injunction obtained in The Bahamas. The Board noted that it had been more than four years since the Ontario action had commenced and no progress had been made. The Board observed that they had no doubt that failure to progress the action, wherever it is taking place, is a ground upon which a court may discharge an injunction previously granted.²³

[42] In *Walsh*, however, the Board refused to allow the appeal or discharge the order on grounds that were never considered by the lower courts. The Board observed:

Their lordships consider that as their jurisdiction is purely appellate, it would be wrong to allow the appeal or discharge the order on grounds which were never considered by the lower courts. This is not simply a matter of procedural nicety. The decision as to whether or not to discharge the order for delay is a matter of discretion and their lordships do not think that the

²¹ [2008] EWHC 738 (Ch).

²² [2001] UKPC 58, (2001) 59 WIR 30 (BS).

²³ *ibid* at [26].

full material for the exercise of that discretion is before them. They note, for example, that the estate has not yet been called upon to comply with the order for disclosure of information made by Evans acting J. That information about dealings with assets may be relevant to the exercise of the discretion if there is an application to the court in the Bahamas to discharge the injunction. Their lordships therefore consider that they should not take cognisance of the question of delay but leave it to the appellant, if so advised, to apply to the court in the Bahamas to discharge the injunction on that ground.²⁴

[43] On the matter of prejudice, the appellants argue that the mere existence of the freezing order made the Shawford Estate property unmarketable, having the practical effect of precluding the second appellant from dealing with the property in a way she might otherwise since any prospective purchaser would be shy to engage in any transaction in relation to this property. They argue further that since the Attorney General applied for and obtained the freezing order but never registered it, this amounted to an abuse of the process of the court.

[44] The Court bears in mind that since 30 January 2015, there has been in place a stay of the substantive claim entered with the consent of the parties. Stephenson J, in her written judgment, pointed out that subsequent to the consent order, there were a number of applications made by the parties, and also lengthy periods of inactivity.²⁵ The issues of delay, prejudice and the consequential abuse of process have not been raised in the lower courts, and the parties have not filed any evidence in support of their contentions. In particular, the Attorney General has not been afforded any opportunity to file evidence on these issues. The Court is therefore not persuaded that in the circumstances of this case, and having regard to the wide public interest element in the POCA, it ought to discharge the freezing order as it relates to the Shawford Estate property because of the complaints of delay, prejudice, or abuse of process, now being lodged by the appellants. The Court is acutely aware that to do so may amount to a violation of the right of the Attorney General to natural justice.

²⁴ *ibid* at [28].

²⁵ *A-G of the Commonwealth of Dominica v Gage* DM 2020 HC 1 (CARILAW), (5 January 2020) at [6].

[45] This is a convenient juncture to observe the very slow pace with which this matter has been winding its way through the courts of the Commonwealth of Dominica. Indeed, in considering the issue of costs, Michel JA in the Court of Appeal referred to the lethargic movement of this case through the court system. This is to be regretted. Matters of this nature should be moved efficiently and effectively through the court system.

Whether the Repeal of s 59BB(2) of the POCA and its Replacement by s 7(b) of the 2022 Amendment Act was Effectual to Revive the Freezing Order, Should the Court be of the Opinion that the Freezing Order Ceased to have any Effect Because of its Non-Registration

[46] By s 7(b) of the 2022 Amendment Act, s 59BB of the POCA was amended as follows:

(a) in subsection (1) by deleting the full-stop appearing at the end of that subsection and substituting a comma and inserting the words “and he may apply to the Registrar of Titles under section 114 of the Title by Registration Act for a caveat.”;

(b) by deleting subsection (2) and substituting the following:

“(2) The Registrar of Titles may, on an application made under subsection (1), order the entry of a caveat.”

[47] As noted earlier, the Attorney General lodged the freezing order as a caveat on 14 October 2021. It is clear that prior to the 2022 Amendment Act, by the conjoint effect of s 59BB(1) of the POCA and s 114 of the TRA, the Attorney General having applied for a freezing order, was entitled to present a caveat to the Registrar of Titles, and so to stay the registration of any dealing with the registered property. The presentation of the caveat therefore gave notice to the world that the Attorney General had obtained a freezing order against the registered property. The Court has expressed the view that the non-registration of the freezing order did not automatically result in the discharge of the freezing order as it relates to the

Shawford Estate property. Accordingly, the repeal of s 59BB(2) and its replacement by s 7(b) of the 2022 Amendment Act, do not affect the outcome of these proceedings. There is no question of the revival of a ‘dead’ freezing order. The issues of retrospectivity of the new s 59BB(2) and whether it was *ad hominem* legislation violative of the separation of powers doctrine are therefore otiose.

Disposition

[48] The appeal is dismissed. The freezing order made on 23 December 2014, save for the disclosure obligations discharged by the Court of Appeal, is continued until further order. The costs of this appeal shall be costs in the cause.

/s/ A Saunders

Mr Justice Saunders (President)

/s/ W Anderson

Mr Justice Anderson

/s/ M Rajnauth-Lee

Mme Justice Rajnauth-Lee

s/ D Barrow

Mr Justice Barrow

/s/ C Ononaiwu

Mme Justice Ononaiwu