

Unexplained Wealth Order setback for the National Crime Agency

Background

In April Mrs Justice Lang DBE delivered judgment in *NCA v Baker*.² The Respondents applied to discharge three unexplained wealth orders (“UWOs”)³ Mr Justice Supperstone made in May 2019 at an ex parte hearing of applications by the National Crime Agency (“NCA”).

The UWOs related to London properties. The NCA produced evidence in support of the applications to the effect that the properties were acquired as a means of laundering the proceeds of unlawful conduct by Mr Rakhat Aliyev (“RA”), a Kazakh national, who died in 2015. The information sought related to the purchases and transfers of the properties and the registered owners and ultimate beneficial owners (“UBOs”) of them.

The Respondents, together with the UBOs, provided significant information about the purchase and transfer of the properties, their registered owners, and the UBOs. The UBO of properties relating to the first and third UWOs is RA’s ex-wife. The UBO of the property relating to the second UWO was their son. The properties were stated to be unconnected to RA and his alleged criminal activities, and that he was never the UBO of the properties.

The Law

UWOs compel a person to disclose how they obtained certain property described in the UWO. Failure to comply “without reasonable excuse” leads to a presumption that the property is recoverable property for the purposes of possible civil recovery proceedings.

To make an UWO,⁴ the High Court must be satisfied there is reasonable cause to believe the respondent holds the property and its value is greater than £50,000. Furthermore, there must be reasonable grounds for suspecting the known sources of the respondent’s lawfully obtained income would have been insufficient for the respondent to obtain the property.

Finally, the respondent must be a politically exposed person, or there must be reasonable grounds for suspecting they or a person connected with them are, or have been, involved in serious crime.

Decision

Mrs Justice Lang DBE discharged the UWOs. She described the NCA’s assumptions as

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³There were related interim freezing orders.

⁴See section 362B Proceeds of Crime Act 2002.

⁵At paragraph 217

“unreliable” and that they had been rebutted by “cogent” evidence. She was not persuaded that there was material non-disclosure at the ex parte hearing, but she did note that “the NCA case which was presented at the ex parte hearing was flawed by inadequate investigation into some obvious lines of enquiry” and that the NCA “failed to carry out a fair-minded evaluation of the new information provided by the UBOs and Respondents”.⁵

Comment

This is the first successful challenge of a UWO. It is reassuring to see the courts carefully scrutinising the NCA’s evidence. The law of UWOs is in its infancy and the setback for the NCA is an unavoidable litigation risk. The NCA say they will appeal and no doubt practitioners will be interested in what the Court of Appeal says.

Edmund Gross
Furnival Chambers

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