

THE HIGH COURT

2019 NO.10 CAB

PROCEEDS OF CRIME

IN THE MATTER OF SECTION 3(1) OF THE PROCEEDS OF CRIME ACT 1996 - 2016

BETWEEN:

CRIMINAL ASSETS BUREAU

APPLICANT

-AND-

PATRICK CASEY AND ELLEN CAWLEY CASEY

RESPONDENTS

Judgment of Mr. Justice Alexander Owens delivered on 7th October 2020

1. The respondents to this application under s.3 of the Proceeds of Crime Act 1996 are Patrick Casey and his wife Ellen Cawley Casey. They were born in the late 1970s. They married in 1999. They have lived for some years at the *Toppins Field* halting site near Roxboro on the outskirts of Limerick in circumstances of ostensible poverty. Until 2016 they had no recorded employment or business. Their sole recorded income consisted of social welfare payments. They have nine children ranging from two to twenty years of age.
2. In 2016 Ellen Cawley Casey bought a strip of land ("*Ballycummin*") on the outskirts of Limerick for €100,000. She was registered as owner of this site on 24th August 2016. This land is in Folio 37627F, County Limerick. Patrick Casey and Ellen Cawley Casey control this property. In 2017 Patrick Casey bought eleven acres of land in the townlands of Ardvarna and Laghtane East near Annacotty ("*Annacotty*") in County Limerick for €40,000. He was registered as owner of this land on 4th January 2018. This land is in Folio 71177F, County Limerick. Patrick Casey controls this property.
3. The Criminal Assets Bureau ("the Bureau") claims that Ballycummin and Annacotty were acquired with assets derived from proceeds of crime. I am invited to conclude that the sources of the value given to acquire the two properties comprise in whole or in part "*proceeds of crime*" and that each of the properties "*constitutes, directly or indirectly, proceeds of crime*" and "*was acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes proceeds of crime*" within s.3(1)(a), (i) and (ii) of the 1996 Act.
4. The Bureau claims that the money used to pay for *Ballycummin* was funded by effects lodged to bank accounts which were either directly or indirectly derived from proceeds of crime. Patrick Casey used his business associate Sean Murray to front negotiations for the purchase. Some of the funds were assembled in a series of lodgements of cash and drafts into accounts of Ellen Cawley Casey at AIB Clonmel. Old credit balances in accounts of Patrick Casey and Ellen Cawley Casey were used to make up the rest of the cost of the purchase, stamp duty, and legal fees.
5. Most of the money used to buy *Annacotty* came from legitimate sources. The issue here is whether there is sufficient proof that credits of €9,500 and €14,500 to the account of Patrick Casey at Bank of Ireland O'Connell Street, Limerick which partially funded the

purchase of this property are derived from proceeds of crime. Just over three quarters of the cost of acquisition of this property, including an estimated €2,500 for stamp duty and legal fees, came from an injury compensation settlement and an insurance payment. Patrick Casey received €32,200 from these sources.

6. My conclusion is that the evidence presented by the Bureau persuades me that *Ballycummin* was bought with assets derived from proceeds of crime. The evidence presented by the Bureau is insufficient to persuade me that any part of the money used to buy *Annacotty* was derived from proceeds of crime.
7. The Bureau evidence is that Patrick Casey has been involved in organised crime in the Limerick area for a number of years and that his criminal activities have generated the wherewithal to purchase property.
8. Garda intelligence points to him as consorting with Limerick gangsters and as being involved with Eastern European gangsters known to be in the drugs trade. Confidential sources indicate that he is engaged in sale and supply of drugs and serious criminality. Garda information also points to his involvement in serious organised assaults.
9. Intelligence going back several years puts him as having connection at various times with cartridges, an airgun, and a balaclava found on a search of his property. On another occasion stolen laptops and a stolen generator were found on this property. He was convicted of possession of live rounds of ammunition in 2008. More recently, information has put him as behind an extortion racket which involved payments of protection money by contractors building houses in Limerick.
10. Patrick Casey denies criminality in his affidavit. He points out that some of the sightings relied on in garda intelligence relate to events where many persons were in attendance and that instances where he was repeatedly stopped on a journey related to a holiday trip. He disputes criminal associations claimed by the Bureau.
11. While I accept that some of the information relied on as showing association of Patrick Casey with criminals is unconvincing if considered in isolation, there is sufficient reliable material to show that there are reasonable grounds for the belief of Detective Chief Superintendent Gubbins that Patrick Casey has been a significant player in organised crime in Limerick for some years and that proceeds of crime are the source of his wherewithal to buy *Ballycummin*. This belief is fully supported by the banking materials exhibited. I accept this belief as evidence of the underlying proposition.
12. It is clear from the evidence that Patrick Casey has been involved in business with a car dealer called Sean Murray who is based in Sixmilebridge, County Clare. Patrick Casey does not have the necessary paperwork to buy and sell cars for profit and Sean Murray acts as a front to enable him to engage in this business. Business records of Martin Murphy who is another car dealer show that a number of cars were bought by Patrick Casey from him in 2016 and 2017 for €68,650. The duration and extent of Patrick Casey's involvement with Sean Murray is unclear due to absence of business records. Their

relationship is significant because Ellen Cawley Casey has claimed that a payment of €10,000 made by Sean Murray on the sale of a Hilux van in 2016 was used towards the purchase of *Ballycummin*. The Caseys claim that in late 2016 they sold the family Ford Galaxy car to Sean Murray for €14,500. This money was used to buy *Annacotty*.

13. We do not know if Patrick Casey was involved in any other business ventures. The bank statements suggest that he bought a van in 2008 and they show withdrawals of large amounts in cash and bank drafts. This points to significant business activity. When interviewed he did not admit to anything except that he bought and sold an odd car and that he traded in horses. He claimed that he got money from his father. He claimed in his affidavit that he began trading as a motor dealer in March 2016. He first registered an involvement in buying and selling cars as a business activity with Revenue in early 2016. With the exception of his wife's injury compensation, there is nothing in bank accounts or revenue and social welfare records to indicate where or how he could have generated or received an iota of legitimate capital to establish, run, or participate in any business venture or activity capable of generating large sums of cash.
14. The evidence establishes that Patrick Casey and Ellen Cawley Casey failed to disclose their true means to the social welfare authorities over a number of years. They were in receipt of benefits which they were not entitled to. The overpayment of social welfare to Patrick Casey and Ellen Cawley Casey as a result of these frauds has been quantified at €363,401.45. They had the benefit of these proceeds to help defray their day to day expenses.
15. Not all of the bank accounts have been put in evidence and in some cases statements which go back as far as the date of opening of relevant accounts are not available. I have no picture of how social welfare payments were used over the years or of how household expenses were met.
16. I examined statements relating to bank and post office accounts operated by Patrick Casey and Ellen Cawley Casey in evaluating whether the Bureau has provided sufficient evidence to enable me to come to a *prima facie* conclusion that *Ballycummin* and *Annacotty* were acquired with proceeds of crime. These statements are part of the material relied on by Detective Chief Superintendent Gubbins in support of his belief evidence.
17. Analysis of the transactions on these accounts shows that the source of funding for the purchase of *Ballycummin* was not derived from gifts from parents or money saved from any injury compensation payment. The various explanations offered by Patrick Casey and Ellen Cawley Casey to the Bureau investigators were false.
18. Furthermore, the explanations in the affidavits filed by Patrick Casey and Ellen Cawley Casey are unbelievable and at odds with the documentary evidence presented in their bank accounts. They failed to engage with the issues on matters which called for a coherent explanation. They made no real effort to explain why their accounts were awash with large cash lodgements in the period between 2005 and 2007. Their explanations

relating to the sources of the cash and drafts which were lodged into those accounts more recently to fund the purchase of Ballycummin are unbelievable.

19. Patrick Casey and Ellen Cawley Casey maintained a number of bank accounts in various branches of Bank of Ireland and Allied Irish Banks during the period between 2001 and 2017.
20. From the beginning of 2005 to the end of 2007 Patrick Casey and Ellen Cawley Casey made very large round sum cash lodgements to some of these bank accounts. They amassed considerable reserves in the form of savings. Most of these savings were reduced by large withdrawals of cash and high value bank drafts. Patrick Casey and Ellen Cawley Casey have failed to explain what the money withdrawn was used for. Much of the money which was eventually used to buy *Ballycummin* represents what was left in the accounts after these withdrawals. This money had rested as dormant credit balances in their accounts for a number of years.
21. When I looked at the operation of the accounts I could see that there was a common pattern of activity.
22. Lodgements were made to Patrick Casey's savings account at Bank of Ireland O'Connell Street, Limerick through Bank of Ireland Roxboro. This account had a credit balance of nearly €23,000 at the end of 2004. Earlier statements for this account have not been exhibited. Lodgements totalling €55,600 odd were made in 2005. Most of the effects lodged to the account were large round sum cash amounts and one item of €21,167.35 possibly included a cheque. Large round sum cash lodgements totalling €21,000 and €72,500 were credited to this account in 2006 and 2007. Between 2005 and 2007 withdrawals from this account totalled €50,900 odd in cash and nearly €55,800 in bank drafts. Further large round sums totalling €38,000 in cash and €10,800 in the form of a bank draft were withdrawn in 2008. At the end of 2008 there was a credit balance of over €20,000 in the account. This was not touched until years later when *Ballycummin* was bought. By that stage a further €9,500 had been lodged to the account by credit transfer in 2010. The source of this credit transfer is unknown. It did not have a significant impact on funding for the purchase of *Ballycummin*.
23. On 6th May 2016 a draft for €14,000 was bought at Bank of Ireland Roxboro and the cost was debited to the Bank of Ireland account. This draft was lodged to the credit of Ellen Cawley Casey's account 13971148 at AIB Clonmel. On the same date another draft for €11,000 was bought at Bank of Ireland Roxboro and the cost was debited to the same account. This draft was lodged to the credit of Ellen Cawley Casey's account 13971304 at AIB Clonmel. The proceeds of both of these drafts were used in the purchase of *Ballycummin*.
24. Examination of Patrick Casey's bank account at AIB Upper William Street, Limerick in the period between 2006 and 2008 reveals a similar pattern of activity. This account was opened at the end of October 2006. Large round sum cash lodgements totalling €23,500 and €33,600 were made in 2006 and 2007. The last recorded lodgement was €5,000 in

April 2008. In May 2008 two withdrawals of €10,000 were attributed in the bank statement to the purchase of a van and a car. Another withdrawal of €15,000 at the same time was attributed to the purchase of another car. Revenue records relating to Patrick Casey's vehicle registrations do not show entries reflecting the purchase of vehicles around this time. Two further cash withdrawals of €10,000 each were made on 11th and 18th May 2011. A credit balance of nearly €7,000 has remained in the account since then.

25. A similar pattern of activity is also shown in Ellen Cawley Casey's bank accounts numbered 13971148 and 13971064 at AIB Clonmel during the same period. In 2005 and 2006 the totals of round sum large cash lodgements to these accounts were €76,450 and €110,000. What I have taken to be a cheque for slightly over €10,000 was also lodged in 2006. A cash withdrawal of €20,000 was made in June 2006 and substantial sums totalling over €133,000 were moved to a bond and term deposits in July 2006. A lodgement of just over €100,000 from these savings in July 2006 was followed by three withdrawals of €25,000 each within a few days of each other in October 2006. At least one of these withdrawals was in cash. No information is available on what this money was used for. This left a credit balance of over €32,000 in account 13971148 and on 14th July 2016 a residual balance of €15,647 was applied out of this account towards the purchase of *Ballycummin*.
26. A credit balance of over €34,000 remained in account 13971064 over the years from 2007. This was increased as a result of some small lodgements and then decreased as a result of a withdrawal of €10,000 in May 2012. The resulting balance was nearly €28,500. An *Ark Life* savings bond was encashed in September of that year and the proceeds of just over €100,000 were credited to the account. In May, June, and July 2014 an equivalent sum of €100,000 was withdrawn from this account. Three withdrawals were made of €30,000 each and a bank draft for €10,000 payable to *Martin Murphy Car Sales* was bought. The credit balance on the account after these transactions took place and interest was credited stood at over €28,604. This credit balance remained undisturbed until it was increased by a €10,000 cash lodgement in May 2016. The credit balance of €38,604 was applied out of this account towards the purchase of *Ballycummin* on 14th July 2016.
27. It can be seen from this analysis that the pattern of large cash lodgements to the four accounts which I have referred to took place between 2005 and 2007 and then stopped abruptly. An obvious explanation for this is that the banks refused to handle the large amounts of unexplained cash which was coming into these accounts. Patrick Casey and Ellen Cawley Casey were interviewed by the Bureau about the sources of these cash lodgements. They were not able to come up with any credible explanation. It is impossible to believe that the cash lodged to Ellen Cawley Casey's accounts during this period was sourced from her mother as gifts or repayment of loans as she claimed. Only one lodgement which came in well after the bulk of the cash was lodged is attributed in a lodgement note to this source. The claims by Patrick Casey that he was left or given substantial money by his father are unbelievable.

28. Given the well-established pattern of transactions between 2005 and 2007, it is most improbable that Patrick Casey stopped being in receipt of large sums of cash when the lodgements to the bank accounts stopped.
29. I have come to the conclusion that the explanation for all of this is that contended for by the Bureau. The only credible inference which I can draw is that Patrick Casey was in receipt of substantial cash as proceeds of crime for years and that since 2007 he has no longer been using the bank accounts to launder money. The sources of the funds available to Patrick Casey which led to the cash lodgements commencing at the beginning of 2005 are most unlikely to have arisen out of nothing at that time. It is likely that he was in receipt of large sums of cash prior to 2005. This conclusion is strengthened by the €23,000 balance which was in the Bank of Ireland O'Connell Street account at the date of the earliest available record.
30. I have also concluded that any business activities, other than the business of crime, which Patrick Casey engaged in were financed directly or indirectly by proceeds of crime and that any assets which he generated through these activities are derived from crime. An additional element of criminality which may have freed up reserves available to be deployed in acquisition of assets, such as stock in trade of his car business, was failure to pay tax on any taxable activity. All modes of conducting trade or business with a view to cheating the Revenue out of tax or duty and all conspiracies and arrangements to commit these types of fraud are criminal contraventions of s.1078 (1A) of the Taxes Consolidation Act 1997, as inserted by s.142 of the Finance Act 2005. The value of any benefit which is obtained or received as a result of or in connection with this tax evasion constitutes proceeds of crime. This applies to all trades or businesses and it does not matter whether the business conducted is legal or illegal.
31. I have examined the claim by Ellen Cawley Casey that funds used to buy Ballycummin were partly derived from injury compensation which she received in the late 1990s. The evidence does not support this claim.
32. The proceeds of a matured *Ark Life* bond which amounted to just over €100,000 were lodged into her account 13971064 in September 2012. This bond was bought in 2006. It was funded by €34,067 which was withdrawn from account 13971148 and by a further €66,005 representing the proceeds of an earlier *Ark Life* bond which she had bought with part of her injury compensation.
33. I am prepared to assume that the balance on account 13971148 at the date of the start of the first statement available on that account was legitimate funds. This credit balance stood at €23,343 on 28th December 2001. Ellen Cawley Casey had the benefit of substantial funds from injury compensation shortly beforehand. The Bureau complains that she has not provided documentary evidence of the origin of this money. I cannot fault her for being unable to produce bank and other records relating to matters which took place twenty years ago. There is no evidence that the €23,343 was derived from criminal activity.

34. A number of transactions took place on account 13971148 between 2002 and July 2006 when the second *Ark Life* bond was bought. This account was used to launder large sums of cash from the beginning of 2005. This makes it difficult to identify the €23,343 credit balance which was in that account in December 2001 with money which was withdrawn to buy the second *Ark Life* bond in 2006.
35. At least part of the sum received in September 2012 can be regarded as derived from legitimate funds of Ellen Cawley Casey. If I were to apply a first-in, first-out principle in identifying the sources of the ultimate balance in account 13971064 as of 14th July 2016 when a payment of €38,604 was made from the account to fund *Ballycummin*, I would deduct €10,000 lodged on 12th May 2016. This would leave a balance of €28,604 attributable to the *Ark Life* proceeds. I would then attribute a contribution of slightly in excess of two thirds of the €28,604 as traceable back to the injury compensation. This is because about two thirds of the amount invested in the *Ark Life* bond which was bought in 2006 came from proceeds of the injury compensation. The rest of the money came from account 13971148. On this analysis Ellen Cawley Casey could account for about one fifth of the purchase price of *Ballycummin* as coming from legitimate savings.
36. If I were also to treat the €23,343 which was in account 13971148 in December 2001 as the source of part of the money applied from that account to buy the 2006 *Ark Life* bond, the proportion of the €28,604 traceable back to the personal injury compensation would be greater.
37. The first-in, first-out principle and other rules attributing assets with sources of funding are used in insolvency and trust litigation. In these disputes policy considerations of preventing unjust enrichment are relevant. Sometimes investments can be associated with payments in determining ownership of assets or their application in insolvency. Some of these considerations may not be relevant to assessment of whether funds are derived from proceeds of crime. Many proceeds of crime cases involve money-laundering by substitution. When the first-in, first-out rule is applied, an assumption is made that the operator of an account intends that funds be paid out in the order in which they have been paid in. This inference may be displaced by evidence of a contrary intention. The circumstances may be such as to make it more appropriate to identify funds by reference to the last-in, first-out principle which associates payments out of a fund with those most recently paid into that fund.
38. It is inappropriate to draw any inference that Ellen Cawley Casey was operating bank account 13971064 with the intention of resorting to the funds in that account in the historical order in which they were credited when she was dealing with the proceeds of the *Ark Life* bond. A sum equivalent to the proceeds of the *Ark Life* bond was withdrawn over a short period of time in 2014. The correct inference is that she intended to spend anything left from her injury compensation in 2014 and leave the balance in the account. This balance represented money which came from her husband and it was not her money. Patrick Casey organised the purchase of *Ballycummin* and he controlled this money.

39. I now turn to evidence relating to the sources of the remaining funding for the purchase of *Ballycummin*. In May 2016 two further sums of €10,000 each were lodged to Ellen Cawley Casey's account 13971304 at AIB Clonmel using cash and a bank draft. A final small sum came from another deposit account of Ellen Cawley Casey and was partially funded by an unexplained cash lodgement in 2013. Ellen Cawley Casey explained to her solicitor when she was buying *Ballycummin* that the money which came from the Bank of Ireland account was her husband's savings and that two of the three €10,000 sums came from cash savings which she had at home. The other €10,000 came from the sale of a Hilux Van to Sean Murray. She said that she had taken cash out some years previously at the time of the recession. Investigation did not establish any record of ownership or sale of a Hilux van at that time and the explanations for the cash are not credible. No evidence has been put before me on the source of the €10,000 bank draft which was lodged to account 13971304.
40. I am satisfied that the remaining funding for the purchase of *Ballycummin* which was introduced into the bank accounts of Ellen Cawley Casey by these lodgements of cash and a bank draft was derived from proceeds of crime. The evidence advanced by the Bureau establishes that proceeds of crime was the likely source of this funding and the evidence tendered by Patrick Casey and Ellen Cawley Casey is not sufficient to persuade me that this conclusion is incorrect.
41. The evidence is insufficient to persuade me to take a *prima facie* view that *Annacotty* was bought with money derived from proceeds of crime.
42. It is accepted that a cheque was given by Sean Murray to Patrick Casey for €14,500 in November 2016. The cheque was lodged to Patrick Casey's savings account at Bank of Ireland on 16th November 2016. The evidence from the Caseys is that one or other of them sold the family car to Sean Murray for €14,500 around this time.
43. The car is identified as a 2011 Ford Galaxy. Revenue records disclose that Ellen Cawley Casey was registered as owner on 11th April 2013 and that she transferred ownership to her husband on 17th July 2013. He is recorded as selling it on 28th October 2016. This information is set out in the affidavit of Bureau Revenue Officer 64. The affidavit of Bureau Revenue Officer 101 shows that on 1st November 2016 a lady with an address in Munster replaced Patrick Casey as registered owner. In February 2013 Ellen Cawley Casey received an insurance payment of nearly €16,000 for loss arising from destruction by fire of her VW Sharan car in January 2013. This money was lodged to a bank account which has not been exhibited and there is no evidence of how it was spent.
44. The focus of the case made in the Bureau affidavits is that the relationship between Patrick Casey and Sean Murray, coupled with absence of records by *Sean Murray Car Sales* relating to the purchase and onward sale of the Ford Galaxy or any registration of the dealer as an intermediate owner, show that the claimed sale of this vehicle and receipt of the €14,500 for it were not genuine transactions.

45. The information placed before me is not enough to support a belief by the Detective Chief Superintendent that the element of the money used to buy Annacotty which was claimed to come from the sale of this car was derived from proceeds of crime. In order to accept belief evidence of a witness under s.8(1) of the 1996 Act I must be satisfied that there are reasonable grounds for that belief. This cannot happen unless the belief of the witness is supported in a convincing way by the materials which have been put before that witness.
46. I have no doubt that the Detective Chief Superintendent is fully justified in his belief that Patrick Casey has been involved in serious crime for years and that he has been getting remunerated from that source. It was necessary to go further in relation to the car and the €14,500 and examine whether there was evidence which linked proceeds of crime with those assets, for example, by showing that the value given to Patrick Casey did not represent what the car was worth.
47. The absence of any intermediate registration of a car dealer over a short period does not suggest that the car was not sold through *Sean Murray Car Sales*. On the sale of a second-hand car it is normal for the owner to sign the transfer of ownership form in blank and for the subsequent purchaser from the dealer to fill in the rest. At that point the dealer forwards the completed form to the registration authority.
48. There is no evidence that the car was not worth €14,500 when it was disposed of. The evidence is silent on the circumstances in which the current owner bought the car, the price paid, and who she bought it from. There is no evidence of the value of the car at the time it was bought new. There is no evidence of its value or of the price paid for it and means of payment when it was bought by Ellen Cawley Casey or when it was sold by the previous owner.
49. Given that the issue as to the source of the money to buy the Ford Galaxy was not identified in the evidence relied on by the Bureau, it is hardly surprising that the affidavits of Patrick Casey and Ellen Cawley Casey did not deal with these matters. Their only evidence of possible relevance was her averment that she paid a balance of €10,000 due to *Martin Murphy Car Sales* for the family car in 2014. This came from the proceeds of the *Ark Life* bond which had been cashed in 2012.
50. The source of the lodgement of €9,500 to Patrick Casey's Bank of Ireland deposit account in 2010 is unknown. This may have made a small contribution to the purchase of *Annacotty*. This value came into the account via a credit transfer. There is no evidence that the effects which constituted the credit consisted of cash.
51. I am not prepared to infer that this credit represented proceeds of crime or that the car was an asset derived from proceeds of crime as there is insufficient evidence to enable me to come to *prima facie* conclusions adverse to Patrick Casey and Ellen Cawley Casey on these issues. The evidence presented is also insufficient to enable me to conclude that these items represented proceeds of crime as a result of money-laundering by substitution.

52. I have considered the submission that I should not make a s.3(1) order in respect of *Ballycummin* on the grounds that a serious risk of injustice would result. The evidence establishes that the purchase of this property was totally funded by assets derived from proceeds of crime. Any contribution from assets which did not originate in crime is so small as to be irrelevant. Patrick Casey and Ellen Cawley Casey do not reside in *Ballycummin*. There is no evidence which establishes that any risk of injustice would result from a s.3(1) order.