

THE HIGH COURT

2019 No. 8 CAB

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

BETWEEN:

CRIMINAL ASSETS BUREAU

APPLICANT

-V-

PAUL GRAY AND KEVIN GRAY JUNIOR

RESPONDENTS

Judgment of Mr. Justice Alexander Owens delivered on 21st February 2020

1. I have read the various affidavits and exhibits and I have considered the submissions made by counsel on behalf of the Criminal Assets Bureau and Mr. Kevin Gray junior. I am satisfied that Paul Gray has been duly served and note that he has now discharged the solicitor who entered an appearance on his behalf. In considering matters I have had regard to the content of the fourth affidavit of Kevin Gray sworn on 12th February 2020 which may have been delivered after a deadline. The application by the respondents to cross-examine a person who did not swear an affidavit is misconceived.
2. My finding is that the applicant has proved, prima facie, that both the watch found in the search of 18 Mallin Avenue, Rialto and 18 Mallin Avenue itself are items of property acquired using the proceeds of crime and that at the time of seizure of the watch Mr. Paul Gray was in possession or control of it within the meaning of that term in s.3 (1) of the 1996 Act. The applicant has proved, prima facie, that 18 Mallin Avenue is in the possession or control of Mr. Kevin Gray but that this possession or control is more ostensible than real. The applicant has also proved, prima facie, that the real control and possession of this asset is with Mr. Paul Gray. It is clear from the evidence that these items of property have a value in excess of €5,000.
3. In coming to this conclusion, I have considered the content of the affidavit of the Chief Bureau Officer and the materials which he relies on to underpin his belief on these issues. In my view, there is ample material in the affidavits to support his belief that the watch was acquired with the proceeds of crime and that the house was acquired in connection with a loan taken out to launder the proceeds of crime. There is also ample material to support his belief that the house was then extended and extensively refurbished using the proceeds of crime. There are reasonable grounds for the belief of the Chief Bureau Officer on all of the matters on which his belief evidence is tendered and I am accepting that belief as evidence. I have also considered the other evidence before me, including the evidence which underpins the belief evidence. My overall view is that it is established, prima facie, that the Bureau has made out its case against both Paul Gary and Kevin Gray junior under all limbs of s. 3 (1) in relation to both the watch and the house.
4. The watch was acquired with the proceeds of crime. The Bureau has established that, prima facie, the house was also acquired with the proceeds of crime and that the arrangement for the credit union loan to be deployed in the purchase was a bogus

arrangement for the purpose of creating a lawful source for the €20,000 payment for the house under a scheme which involved repayment from funds supplied by Paul Gray which were generated from drug-dealing. The issue of whether the €20,000 went straight back into the hands of Paul Gray from the Lees has not been followed in the sense that it is unclear how the sale proceeds were distributed by the solicitor for the vendors and how the Lees got value in their hands and might have distributed it. I agree that the valuation evidence shows the house to have been worth €37,500 at the date of death of the former owner and that there is no acceptable valuation evidence of what the house was in fact worth at the date of the transfer to the second respondent.

5. I also note that the source of the intelligence deposed to by James McGeogh to support what is stated in paragraph 18 of his Affidavit is not indicated. This is not a matter relied on by the Chief Bureau Officer in the summary of his grounds for belief. Accordingly, I have not taken the claim that the house was handed over to satisfy a €40,000 drug debt to Paul Gray into account in considering whether to accept that there are reasonable grounds for the belief of the Chief Bureau Officer.
6. However, that is not the end of the matter because an effort was made on behalf of the respondents to put distance between the Lees and Paul Gray which has not succeeded. The affidavit evidence demonstrates to my satisfaction that the Lees and Paul Gray are fully familiar with each other for a number of years and that Patrick Lee is in the same line of criminal business as Paul Gray. The affidavit of Patrick Lee sworn on 3rd February 2020 was put in to assist the case of Kevin Gray junior who swore an affidavit at the same time before the same solicitor. It is difficult to avoid the conclusion that Kevin Gray junior must have been aware of the obvious falsity of Patrick Lee's claim that he did not know Paul Gray.
7. When I look at the purpose of this false claim by Patrick Lee, it seems to me that what is being disputed here is the Lee drug debt aspect of the case made by the Bureau. In my view, this points towards the correctness of what was previously an unsupported contention by the Bureau that the house was given to settle a drug debt. The likely mechanism of this would have been that the Lees gave the €20,000 back to Paul Gray after the house was transferred to Kevin Gray. At very least, this false evidence undermines the evidence that the Lees sold as a result of an approach by Kevin Gray. Patrick Lee claims that this approach was made as a result of the Lees indicating by word of mouth in the community that they were selling the house. Patrick Lee is an obvious liar and I cannot rely on anything he says.
8. It is clear to my mind that there is abundant evidence to support me drawing an inference that this house was in fact acquired by Paul Gray, and that it was extensively refurbished in the manner described in the report of William Doran which has been exhibited at a cost which was much greater than Kevin Gray junior is prepared to admit. It is apparent from the photographs and the report that the works which have been carried out to this house were very extensive. While I doubt if they cost anything like the prices quoted which assume payment of VAT and a building built by a builder who is putting the cost through

his books and other items such as supervision fees, it is clear to my mind that the explanations provided by Kevin Gray junior as to his source of funds to buy this property and to repay the cost of the loan used in the purchase within a very short time and to refurbish the house and put in the extension were unsatisfactory and unbelievable.

9. These payments and expenditures were far in excess of his sources of income. He says he did all this work in 2013 and 2014. If so, this must have occurred after the house was bought and the planning permission was obtained. I cannot see how he could have put together the money to achieve this from his own resources which were limited. It is clear that by 2016 Paul Gray was living in the house and that he had the CCTV system that one expects to find in the house of a drug dealer there. The kitchen unit was put in in 2016 in accordance with the design provided by Mr. Leonard and Mr. Kevin Gray has not addressed this issue in his evidence. This is a point which I will come back to when commenting on recent evidence relating to this kitchen. When asked to explain who built the extension and how it was funded, Kevin Gray junior gave nonsense explanations which I do not accept of cash of €18,000 saved and €18,000 out of his bank account over a year and a half. He was unable to produce a single voucher and an examination of his bank account did not disclose any transactions which were referable to any of the big expenditures required to do the work or fit out the house and buy the fridge, cooker or any item shown in the photographs. While his bank account was not exhibited and I would like to have seen it as I go through the underlying materials in these files with a toothcomb to ensure that the detail of the back-up relied on supports the opinion evidence given, we have the affidavit of the financial analyst on the absence of any evidence of this expenditure.
10. Is an improvement of a property which has been already acquired an "acquisition" within the 1996 Act? The Act gives a wide definition of the concept of property and in my view, an acquisition of property includes anything which might give value to property or a claim on property, including accretions to property such as extensions and refurbishments, even if they are to the property of another. For instance, a gift of an extension funded by the proceeds of crime adds a value to an existing property. The resulting property interest or claim of whatever nature, and whether or not the item improved by such works was acquired with the proceeds of crime, partly represents the proceeds of crime. The same goes for property paid for with a loan under an arrangement that the loan be paid off by use of proceeds of crime. That is sufficient connection with property constituting the proceeds of crime for the purposes of s. 3 (1) (a) of the 1996 Act which catches all these types of arrangements. In any event, the false attempt to distance the Lees from Paul Gray was enough to make me revise my view of what the initial evidence presented by the Bureau established and conclude that the probability is that the money was routed by the Lees back to Paul Gray.
11. Having arrived at my view on the evidence presented by the applicant, I looked at the rest of the evidential material which has been placed before me and see if it in some way displaces my prima facie view of what the evidence tendered by the applicant establishes. The answer is "no" in this case. Kevin Gray has not engaged with important elements of

the case made by the Criminal Assets Bureau. He has not chosen to take issue with or explain why Paul Gray would be involved in installing a kitchen in the property which he owns in late 2016 and how these matters square with the completion of works in 2014. I am not impressed with the evidence of removal of the kitchen by Paul Gray. This is not the sort of action which a tenant would engage in. It is the act of an owner who was aware that the Bureau was examining how this house came to be bought and extended and who decided to clear it out when he left.

12. No vouchers have been produced to show the expenditures on the parts of the refurbishment which clearly involved skilled tradespeople such as plumbers and carpenters, the certificates of commissioning and inspection of the new gas unit to demonstrate when these units were in fact made operational or the purchases of the kitchen appliances. It would not have been too difficult for Kevin Gray junior to show from his bank account the costs incurred in buying the boiler or at least some of these items such as the expensive kitchen equipment which is listed out in the supplementary report of William Doran which has been exhibited. I have no hesitation in rejecting the material provided on costings in the H2B report. These are way too low.
13. In the absence of clear Google Earth images, I ask myself if I am prepared to run with the evidence produced by Kevin Gray junior that the renovations were carried out in 2014 and that the property was then let out by him, even though he has not produced so much as one voucher to support an expenditure on an item involved in the renovation or fitting out the house or buying anything for it in any year and I would point out that I invited his counsel to look at this issue after I had read the papers when this case was mentioned in the list a few weeks ago. The answer is that he has not established this point as correct on the balance of probabilities because there is strong circumstantial evidence that the kitchen was put in in 2016 and I consider it unlikely that this occurred at a later stage than the rest of the renovation of the house.
14. However, whether the works were done in 2013 and into 2014 as he claims or were done later, he has not demonstrated that he funded them. I must reject his explanations on these matters and his claims that he had the capacity to fund these expenditures out of ready cash. I am satisfied that all the money came from Paul Gray and was derived from Paul Gray's criminal activities. Even if I was prepared to run with Mr. Kevin Gray's account about works being funded from his own cash resources, bearing in mind that he was involved in cash businesses and ignoring that a business such as a sunbeds business would these days and even in the location of this business have a substantial credit and debit card clientele, the explanation of the €18,000 from under the bed and €18,000 from other sources does not go anywhere near explaining the expenditures in fact incurred. I might add that if he had the sort of ready access to funds which must have been deployed in all of this expenditure in 2013 and 2014, he would not need to borrow from his mother.
15. It follows that there must be an order under section 3 (1) of the 1996 Act in respect of both the watch and the house and this order includes all fixtures and fittings. These must have all been bought with cash supplied by Paul Gray because I am satisfied that this is

Mr. Paul Gray's house and that the renovation which he funded included these items. There is nothing in the evidence which would point to any serious risk of injustice to any person if this order is not made. Mr. Kevin Gray junior has never lived in this house.

16. On the issue of the installation of the kitchen, it seems to me obvious that the hand of a woman was involved in the interior decoration and fitting out of this house and Kevin Gray Junior has not engaged with the Bureau evidence that this was indeed so and pointing to Jade Coakley as the person involved. It is inherently unlikely that the kitchen unit would have been put in after the other units were installed and separately from the other elements in the total refurbishment. It is also inherently unlikely that a tenant of property would take on to put in a new kitchen. Paul Gray's interest in this property was not confined to the kitchen unit which has now been ripped out and has gone missing in mysterious circumstances deposed to in the most recent affidavit sworn by Kevin Gray.
17. I will amend the title to refer to "*Kevin Gray junior*" otherwise known as "*Kevin Grey*" as this is the spelling of the name appearing on the Land Registry Folio and it appears that he signed his name on the transfer of the property "*Kevin Grey*". The issue of whether I should appoint a receiver remains to be decided. In the event that I appoint the Chief Legal Officer of the Criminal Assets Bureau as receiver under section 7, I will direct that he have liberty to take possession of both the watch and the house and that he shall in the event that he takes possession of the house manage it, secure it, let it and otherwise act as he thinks fit in maintaining it and discharging outgoings for taxes and services and of clearing, removing, storing or disposing of items not covered by this order and that he file an affidavit at the end of each calendar year detailing and vouching his costs and expenses incurred in so doing. The receiver can sell the watch and the net sum realised after costs of valuation and sale are deducted must be placed in an interest-bearing account pending further order. He should file an affidavit dealing with the gross and net proceeds of sale and vouching his disbursements.
18. I must emphasise that there is no suggestion that Kevin Gray junior is himself involved in the illegal drugs trade. The conclusion which I have reached means that I have decided on the balance of probabilities that he has assisted his brother in laundering profits of the illegal drugs trade by fronting as ostensible owner of the house.