

THE HIGH COURT

[2022] IEHC 26
[2021 NO. 2 CAB]

**PROCEEDS OF CRIME
IN THE MATTER OF SECTION 3(1) OF THE PROCEEDS OF CRIME ACTS 1996-2016
BETWEEN**

CRIMINAL ASSETS BUREAU

APPLICANT

-AND-

GRAHAM WHELAN

RESPONDENT

**JUDGMENT of The Hon. Mr. Justice Alexander Owens delivered on the 19th day of
January 2022.**

1. The issue in this application is whether the evidence demonstrates that the credit balance of over €75,000 in a current account of Graham Whelan at the Crumlin Branch of Allied Irish Banks PLC (AIB Bank) in Dublin is money “acquired” by Graham Whelan “...in connection with property that, directly or indirectly, constitutes proceeds of crime”, as provided for by s.3(1)(a)(ii) of the Proceeds of Crime Act 1996 (the 1996 Act).
2. The source of this credit balance was a lodgement of €75,000 on 18 January 2019. This money came from a current account of John Wilson at Blackrock branch of AIB Bank in County Dublin. The credit balance in John Wilson’s bank account was derived from compensation of €110,000 which he received on 17 April 2018.
3. On 31 January 2019 Graham Whelan was caught by Gardaí in a room in the Intercontinental Hotel in Dublin. Gardaí found a drugs tick list, 6 mobile phones, including an “Encrochat” device commonly used by sophisticated drug dealers and other criminals, some cash, a small quantity of controlled drugs, and an “Audemars Piguet” watch worth €28,000. Graham Whelan has been convicted of money laundering offences in relation to the cash and the watch.
4. John Wilson is married to Graham Whelan’s aunt. A loan agreement relating to the €75,000 was executed by Graham Whelan and John Wilson on the day after the Garda raid at the Intercontinental Hotel.
5. Following the finds at the Intercontinental Hotel, the Criminal Assets Bureau (the Bureau) began to investigate and discovered the transfer of the €75,000 into Graham Whelan’s bank account.
6. A direction was given to AIB Bank to prevent transactions on this bank account under s.17 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (the 2010 Act) on 5 February 2019. This was continued by orders of the District Court under s.17(2) of the 2010 Act. The Bureau was granted an order under s.2 of the 1996 Act by this court on the morning of 16 February 2021.
7. An application by Graham Whelan to the District Court under s.19 of the 2010 Act for revocation of the order which that court had made under s.17(2) of the 2010 Act then

became redundant. The effect of the order under s.2 of the 1996 Act was to prevent Graham Whelan from dealing with the money.

8. A submission on behalf of Graham Whelan relied on an assertion that that the District Court made an order under s.19 of the 2010 Act on consent on 16 February 2021 which revoked the previous order of that court under s.17(2) of that Act preventing transactions on the account.
9. It was submitted that the effect of this consent order was to decide conclusively that Graham Whelan was entitled to the credit balance in his bank account. The order of the District Court was not produced to this court and it is unclear whether an order under s.17(2) was allowed to lapse or whether there was consent to its revocation.
10. Where a claim is advanced that a decision of any court of record gives rise to a determination which binds another court, it is necessary to produce the order which is relied on as having this effect. The order of the District Court of 16 February 2021 was not produced to this court.
11. Even if such an order of the District Court had been produced, and if it had been established that such order preceded in time the order of this court under s.2 of the 1996 Act, these facts would not lead to a conclusion in favour of Graham Whelan.
12. This court was advised by the Bureau of the pending matter in the District Court when the Bureau moved the application under s.2 of the 1996 Act on the morning of 16 February 2021. This court directed in the order that the District Court be made aware of the fact that this court had granted an order under s.2 of the 1996 Act. My conclusion on this issue would not be affected if, as asserted in the Affidavit of Graham Whelan, the District Court was not advised of the making of the order under s.2 of the 1996 Act until after it had made its own order.
13. The issue before this court is not the same as that which was required to be decided by the District Court. The issue before the District Court was whether it was necessary during the course of a money laundering investigation that a bank be directed or ordered not to carry out dealings on Graham Whelan's bank account because it was reasonably suspected that such dealings, if permitted, would comprise or assist in money laundering. The issue before this court is whether the credit balance in the current account is property which was acquired by Graham Whelan in connection with proceeds of crime.
14. Was the money which passed from John Wilson into the current account at AIB Bank in Crumlin obtained by Graham Whelan as part of a scheme by him to get in clean money and repay John Wilson from proceeds of crime?
15. Having reviewed the evidence presented by the Bureau in this application, I have concluded that there are reasonable grounds for the belief of Detective Chief Superintendent Gubbins that the money which came from John Wilson was got in by Graham Whelan as part of a money laundering exercise and that his intention at the time

when he received the money was to repay John Wilson from proceeds of crime. I am accepting this belief evidence as evidence of the correctness of the underlying proposition.

16. I have considered the materials relied on by Detective Chief Superintendent Gubbins. These materials justify this belief. I have also considered affidavits filed by the Bureau which post-date the affidavit of Detective Chief Superintendent Gubbins. The material in these affidavits further supports and confirms my conclusion that the belief of the Chief Superintendent, based on the materials which he had available to him at the time, is well-founded.
17. This does not mean that I am concluding that John Wilson was privy to this intention of Graham Whelan or that there is no basis on which John Wilson could have a valid claim to the money under s.3(3) of the 1996 Act. John Wilson was not a party to this application.
18. This application illustrates dangers which those who come into substantial money from sources such as compensation payments or inheritances should be made aware of. These beneficiaries may be vulnerable to tricks, pressures and blandishments of criminal relatives or acquaintances who spot an opportunity to launder proceeds of crime. This is not the first application under the 1996 Act in which evidence has established that proceeds of a compensation award or settlement were taken by a criminal for use in money laundering.
19. John Wilson knew of Graham Whelan's criminal reputation and lack of track record in legitimate business. John Wilson should, perhaps, have known that an arrangement which involves handling money which cannot be shown to come from a legitimate source carries risks because €10,000 in cash had been seized from him by Customs. Evidence shows that John Wilson received cash payments which related to money advanced by him at the behest of Graham Whelan in order to assist a business called "Wheelie Clean".
20. It remains to be seen whether John Wilson was an honest participant who was duped and taken advantage of, or whether he entered into the €75,000 loan transaction with his eyes open and aware that he would be reimbursed out of proceeds of crime. Any decision on whether John Wilson may have a valid claim to the €75,000 is a matter for another day.
21. It was suggested on behalf of the Bureau to John Wilson in an interview that it is significant that although the €75,000 was transferred by John Wilson into the account of Graham Whelan in mid-January 2019, the loan document was not executed until the day after the Intercontinental Hotel incident. The affidavit presented to the District Court by the solicitor who acted in relation to the loan agreement states that he received instructions to prepare this in mid-January 2019.
22. An affidavit of Detective Garda Lisa McHugh sworn on 8 April 2021 discloses that the only documentation which was located in Niall O'Connor's office relating to the loan agreement was a soft copy of the agreement itself. The relevant computer file was opened on 25

January 2019 and the next entry is on 29 January 2019. This must relate to the drafting of the agreement which was executed the following day.

23. This evidence does not support a proposition that the agreement was conjured up to re-characterise a prior transaction after the Intercontinental Hotel incident. There is nothing to prevent parties to an oral agreement relating to a loan or any other contract from later reducing the terms to writing. A formalised agreement of this sort may contain additions or other variations which supersede terms previously orally agreed.
24. If it was appreciated by John Wilson that his arrangement with Graham Whelan would be viewed as a loan to assist in money laundering, the obvious step for him to have taken was to seek the immediate return of his money. It is not clear whether John Wilson or the solicitor who acted in the preparation of the loan agreement were aware of the Intercontinental Hotel incident when the loan agreement was executed. The effect of subsequent Garda and Bureau interventions in exercise of statutory powers has been that the €75,000 could not be used for any purpose for which it was lent.
25. The evidence establishes that Graham Whelan is a career criminal. It is clear that Graham Whelan was involved in organised crime long before 2019 and that he engaged in substantial drug dealing and other serious criminal activities. Garda intelligence is that he operated as a significant importer of drugs and is associated with a major crime gang. Between 2010 and 2015 he received nearly €38,000 in money transfers through Western Union. Most of this money came from well-known Dublin criminals or their associates.
26. Graham Whelan was born in 1982. He has never been in receipt of social welfare payments. An analysis of returns to Revenue discloses that he has no employment history and scant business history. His first recorded taxable income was in 2018. His declared income in the years 2018 to 2020 came from the business of "Wheelie Clean," which was set up by his friend Keith Murphy, and the business of Eco Green Wheelie Clean Ireland DAC. This company was incorporated in 2018 and I infer that its purpose was to take over the running of the business of "Wheelie Clean". Graham Whelan and Keith Murphy are the directors of this DAC.
27. Graham Whelan's current account with AIB Bank was opened, or was reactivated from dormant status, on 20 April 2018. Credits to that bank account have been treated in his returns to Revenue as income from the "Wheelie Clean" businesses. The purpose of the bank account was to demonstrate a legitimate source of income. This bank account statements show few outgoings on day to day living expenses. This arrangement involved an element of pretence of operation of an ordinary current account to receive and disburse legitimate earnings. This bank account was used by Graham Whelan as evidence to support an application to get a motor vehicle on a "PCP" agreement.
28. It is clear that Graham Whelan had substantial income from sources other than the "Wheelie Clean" businesses. As a major player in organised crime, Graham Whelan had access to large amounts of cash from proceeds of crime and I am satisfied that he lived off income derived from crime for years. He may also own property in the United

Kingdom. He explained during an interview that he was out of Ireland for 10 years and this accords with Garda information that he was in the United Kingdom between 2009 and 2016.

29. The bank accounts relating to the DAC and "Wheelie Clean" show legitimate trading. The business activity is cleaning wheelie bins for reputable established waste operators and for businesses and householders. Expenses relating to a diesel card debited to the bank accounts indicate that the business uses one or more vehicles. Credits to the bank accounts include lodgements of cash. Householders usually pay for this type of service in cash.
30. I have not been provided with accounts or revenue returns for the "Wheelie Clean" businesses. I have no way of knowing whether cash receipts were fully accounted for. Such accounts might shed light on long term loans and sources of funding for fixed assets such as motor vehicles or other plant and machinery.
31. Analysis of the bank accounts of these businesses shows that between June 2017 and December 2017 a total of €57,481 odd was lodged to the "Wheelie Clean" bank account operated by Keith Murphy. This total includes €23,000 which came from an account of John Wilson. During 2018 a total of €63,257 odd was lodged to this account. During the period between January and June 2019 € 17,826 odd was lodged to this account. During the period between October 2018 and mid-June 2019 a total of €28,146 odd was lodged to the DAC bank account. These figures and the operation of the associated bank accounts do not demonstrate either a level of turnover or an accumulation of reserves which would enable the "Wheelie Clean" businesses to repay the €35,000 which John Wilson invested in 2017.
32. It is accepted that the money found in the hotel, the watch and a credit balance of €1,000 in Graham Whelan's investment account with J&E Davy stockbrokers are derived from proceeds of crime. This investment was funded from Graham Whelan's current account on 18 January 2019. His credit balance was sufficient to make this payment without recourse to money from John Wilson. The two transactions were not connected.
33. John Wilson's house was searched on 1 May 2019 and he was interviewed by Gardaí on that date. In the course of the search a sock was discovered in a hole behind the bed in the master bedroom which had a thread attached to it to enable it to be located. The sock contained an envelope which held three withdrawal docketts relating to a Bank of Ireland account maintained by John Wilson and lodgement docket to a joint Bank of Ireland account opened by John Wilson and his sister Sandra Wilson. The envelope also included a lodgement docket relating to the €75,000 given by John Wilson to Graham Whelan.
34. I am wary of concluding that a purpose of the sock arrangement was to hide evidence of money laundering. At the time of this search it was already known by John Wilson that the Graham Whelan account with the €75,000 in it was frozen.

35. Furthermore, the lodgement docket relates to a lodgement of €37,702.10 which was made to the joint account on 12 July 2017. This bank account holds funds for Sandra Wilson which represent proceeds from the sale of John Wilson's mother's house. There is no evidence of any impropriety in the operation of this account.
36. John Wilson made withdrawals of €12,002.40 and €23,000 from his Bank of Ireland account on 18 May 2017 and 18 July 2017. The three withdrawal dockets relate to these two withdrawals and to the purchase of a bank draft for €12,000 with the amount withdrawn on 18 May 2017. This sole account of John Wilson in Bank of Ireland was opened with a lodgement of €43,443.56 on 6 March 2017. The source of these funds was regular.
37. It is obvious that Graham Whelan persuaded John Wilson to make these payments of €12,000 and €23,000. There is no reason to doubt that the money provided by John Wilson was used for purposes of "Wheelie Clean" business. The evidence points to use of the money to buy a motor vehicle and some other fixed asset.
38. The draft for €12,000 was payable to "Wheelie Clean". The withdrawal of the €23,000 from the Bank of Ireland account of John Wilson is linked to a lodgement to the "Wheelie Clean" bank account on 18 July 2017. Most of this money was used to make a payment of nearly €20,000 from the "Wheelie Clean" bank account ten days later. This appears to be for some major item of expenditure.
39. Bank accounts of John Wilson, the DAC and Keith Murphy t/a "Wheelie Clean" do not record any repayment referable to the €12,000 or the €23,000 or interest on these sums. These sums does not correspond with any of the receipts or payments listed in manuscript on the envelope found in the sock. There is nothing to show that interest was ever paid on these advances by John Wilson to "Wheelie Clean".
40. John Wilson explained at the time of the search that he loaned money to a "Keith" whose surname he did not know as a "loan into a company called Wheelie Bin Company". He stated that he was due to get the money back in five years and that Niall O'Connor solicitor had done the paper work on it.
41. In a subsequent interview on 19 May 2019, John Wilson stated that he had lent the €12,000 and the €23,000 to this business. The first loan was for a van. His answers to questions suggest that he knew little about the business. The business was involved in cleaning wheelie bins. Keith Murphy ran it from somewhere near the East Wall or Ringsend. John Wilson explained that the loan was for 5 years at 6% and that he was asked to loan money. He stated that a written loan agreement exists which indicates that the purpose of the loan was to rebuild the company and that it covered the full €35,000. If he is correct in this, it is likely that the written agreement came into existence after he made the first payment of €12,000.
42. In 2018 John Wilson and his wife engaged a builder to put an extension on their house in Crumlin. The builder was paid in cash. A manuscript receipt found in the bedroom of John

Wilson's house shows total payments of €34,900 up to 8 August in that year. The payment amounts and dates recorded on this document do not correspond with any withdrawals from the Bank of Ireland or other accounts of John Wilson. With the exception of perhaps €6,000, John Wilson did not use the €110,000 compensation money received from his solicitor on 7 April 2018 to fund payment for this house extension.

43. The payments to the builder also do not correspond with payments on a manuscript list of payments and receipts which is written on the back of the envelope in the sock. When interviewed about the figures on this envelope on 19 May 2019, John Wilson was unable to explain them. It is clear that in 2018 he paid a builder cash for an extension to his house and that this cash came from an unknown source. He claimed that most the cash used to pay the builder came to him from his brother and sister. His notations on the envelope that he received sums totalling €28,000 remain unexplained.
44. The explanations which John Wilson has provided are unsatisfactory. The likely explanation is that he received cash payments referable to his investment in the business of "Wheelie Clean" through Graham Whelan. The likely source of this cash was proceeds of crime and not cash receipts of "Wheelie Clean".
45. John Wilson also stated during the search of his home on 1 May 2019 that he loaned different money in a matter which involved Graham Whelan on the basis that after five years he would get back his money and a percentage. He said that a document which he signed in relation to this loan was with his solicitor and that he had tried to get the document recently. He also disclosed that €10,000 in cash had been taken from him by Customs and that his solicitor was also acting for him in trying to get this back.
46. In the course of the search of John Wilson's home, a document was discovered in a safe relating to Graham Whelan headed "Sale of mortgage accounts to Rosinca Mortgages", dated February 2018. This related to the transfer by the Bradford and Bingley Building Society in England to a vulture fund of a mortgage held over some asset of Graham Whelan. Irish Revenue records do not disclose that Graham Whelan owns any land in the State. The letter is addressed to the original home address of Graham Whelan.
47. This points to Graham Whelan having property in the United Kingdom. Other evidence in the application indicates that he spent some time in the United Kingdom and was involved in criminal activities there. There is no indication of how he might have financed any property acquisition in the United Kingdom or where he got resources to pay a mortgage relating to such property. The reason why John Wilson retained a document relating to this matter in his safe in his home is unexplained. The obvious inference is that John Wilson is a trusted confidant of Graham Whelan and that the document was left with him for safe keeping so that the Gardaí would not discover it if they searched Graham Whelan's home addresses in Crumlin or Walkinstown.
48. On 8 April 2019, Graham Whelan swore an affidavit in support of an application under s.19 of the 2010 Act seeking revocation of a District Court order freezing his account

holding the €75,000. This exhibited the loan agreement dated 1 February 2019 relating to the €75,000. The affidavit of Graham Whelan claimed that the purpose of the loan was “investment in Imperium Developments Limited”.

49. John Wilson and Graham Whelan attended Niall O’Connor’s office to execute the loan agreement on 1 February 2019. John Wilson provided an affidavit in the District Court which stated that he loaned the €75,000 to Graham Whelan to invest in his business Imperium Investments Limited. No detail was given in the affidavits of Graham Whelan or John Wilson in the District Court application about the affairs of Imperium Investments Limited or why it would require this investment. This company was incorporated on 21 September 2018. It was dissolved during 2020. Graham Whelan was a director and the other director was a builder.
50. In an interview with Bureau officers on 1 May 2019 Graham Whelan stated that this company had one vehicle on the road. He claimed that the money was borrowed from John Wilson to buy a plot of land and that the site cost €48,000. He refused to indicate where the site was and he also said that the site was owned by his company. He claimed that Imperium Investments Limited had a bank account. He said that the €75,000 had not gone into that bank account because the money had been frozen before he could transfer the money. The interview was under caution and Graham Whelan was entitled to decline to answer questions. Vague answers and his refusal to state where the site was located tend to undermine the weight which I should give to his explanations that the money was to be used for the stated purpose and his assertions that a site either existed or was owned as he claimed. His explanations in relation to the loan and its purpose were unsatisfactory and unbelievable.
51. John Wilson was interviewed by Bureau members on 19 May 2019. He had very little knowledge of the purpose for which the €75,000 was being given. While John Wilson’s affidavit for the District Court application by Graham Whelan to free up the money specified that the purpose of the loan was to invest in Graham Whelan’s business Imperium Investments Limited, he made no mention of this company in his answers to questions put during his interviews on 19 May 2019.
52. John Wilson told Bureau investigators that the arrangement was for a loan of €75,000 for 5 years at 6% per annum. The loan agreement reflects this. He told the investigators that he loaned the €35,000 given to “Wheelie Clean” on similar terms. These loans were unlikely business propositions. They were also unwise arrangements for a person such as John Wilson who is middle aged and has limited income. A solicitor would normally advise a client in the position of John Wilson of risks associated with unsecured lending of large amounts of savings for vague projects to borrowers who have no demonstrable capacity to repay. A solicitor might try to discourage the client from proceeding.
53. It is not clear how Niall O’Connor solicitor, who represents Graham Whelan in these proceedings, came to be instructed for the purposes of the loan agreement. Niall O’Connor’s affidavit in the District Court application stated that he received instructions from both John Wilson and Graham Whelan.

54. It is clear from the evidence that Graham Whelan was the instigator and arranger of the deals relating to the €35,000 and the €75,000 and that they gave him access to John Wilson's money.
55. I do not believe that Graham Whelan intended to repay the money to John Wilson after the expiration of 5 years or that he intended to pay €4,500 in interest per year on it. I am not satisfied that he intended to use the loan to invest in land or property development. His explanations during his interviews with Bureau officers in May 2019 were vague and unconvincing. More importantly, I am persuaded by the evidence tendered by the Bureau that Graham Whelan got the money to use it for money laundering and that he intended to repay John Wilson from proceeds of crime.
56. I am also persuaded on the balance of probabilities that this was Graham Whelan's second "trip to the well" of John Wilson's assets for the purpose of money laundering. I am satisfied on the balance of probabilities that most of the cash used by John Wilson to pay the builder in 2018 came from payments by Graham Whelan and that this cash originated in Graham Whelan's proceeds of crime and related to the money given by John Wilson to "Wheelie Clean" in 2017.
57. It follows from my findings that the evidence provided by the Bureau establishes that that the credit balance of €75,000 odd which is frozen in his bank account is caught by section 3(1)(a)(ii) of the 1996 Act.
58. Graham Whelan's replying affidavit in this application is uninformative. It does not engage with the issues raised in the affidavits and exhibits relied on by the Bureau in relation to the €75,000 or in relation to Graham Whelan's dealings with John Wilson. Graham Whelan has not provided explanations which come anywhere close to persuading me that his intention was to borrow the €75,000 on the basis that that clean money would go back to John Wilson. The material in this affidavit does not rebut the provisional conclusion which I arrived at after I evaluated the evidence presented by the Bureau.