

Tan Chi Fang and 3 others (Respondents) v His Majesty's Attorney General (Appellant) (Jersey)

Case ID: JCPC 2020/0012

Jurisdiction: Court of Appeal of Jersey

Case summary

Issue

Whether Article 16 of the Proceeds of Crime (Jersey Law) 1999 as modified by the Proceeds of Crime (Enforcement of Confiscation Orders) (Jersey) Regulations 2008, permits the Jersey courts to grant a *saisie judiciaire* (a freezing order) in relation to property outside Jersey at least where the persons who can exercise the rights of ownership or control of that property are subject to the jurisdiction of the Jersey courts.

Where the Jersey courts have made a *saisie judiciaire* over property subject to a mortgage, whether they can prevent the mortgagee assigning its interest under the mortgage and power of sale to a third party. Whether a state that makes a request for mutual legal assistance in criminal matters is deemed to waive state immunity when the Attorney General commences the proceedings and becomes an ordinary party to them such that a costs order can be made against it

What the legal situs is of the shares in a Jersey company. It is in dispute between the parties whether permission has been granted on this issue.

Facts

Mr Robert Tantular was convicted of various offences, including fraud and money laundering in Indonesia. In connection with the convictions, the Indonesian authorities sought to enforce confiscation orders against Mr Tantular. The confiscation orders included an apartment situated in Singapore (the "Property") that was occupied by Mr Tantular's family (Mr Fang and three others) (the "Family Members"). The Property is owned by a Jersey company, which in turn is owned and controlled by the trustee of a discretionary trust governed by the laws of Jersey that Mr Tantular had settled in 2004. The class of potential beneficiaries of the trust includes Mr Tantular and members of his family. At the request for mutual legal assistance from the Indonesian authorities the Attorney General of Jersey sought and obtained two *saisie judiciaires* to restrain "the realisable property situate in Jersey of Robert Tantular" ("the Saisies").

Credit Suisse obtained a variation of the Saisies from the Royal Court, to permit it to exercise its power of sale under a mortgage over the Property. The Family Members applied to the Royal Court for a declaration that the Saisies did not prevent Credit Suisse assigning its interest in the mortgage to them, or, alternatively, for such orders and directions as would permit the assignment to take place. The Royal Court refused the application, but the Court of Appeal allowed the Family Members' appeal and granted the declaration (the "Substantive Decision"). The Court of Appeal awarded costs against the Attorney General and Indonesia jointly and severally (the "Costs Decision").

The Attorney General appeals against the Substantive Decision and the Costs Decision to the Judicial Committee of the Privy Council (JCPC 2020/0012). The Family Members cross-appeal against the Costs Decision, on the basis that that the Government of Indonesia should be joined to the proceedings for the purposes of making a costs order against it (JCPC 2020/0018).

Mr Tantular sought the discharge or variation of the Saisies on the basis that the Court could not prohibit persons from dealing with realisable property held by them outside Jersey. The Royal Court dismissed the application and the Court of Appeal dismissed the appeal. Mr Tantular now appeals to the Judicial Committee of the Privy Council (JCPC 2021/0010).

Parties

Appellant(s)

His Majesty's Attorney General

Respondent(s)

Tan Chi Fang and others

Intervener(s)

Government of the Republic of Indonesia

Appeal

Justices

Lord Sales, Lord Hamblen, Lord Leggatt, Lord Stephens, Lady Rose

Hearing start date

8 February 2023

Hearing finish date

9 February 2023

Watch hearing

8 February 2023 [Morning session](#) [Afternoon session](#)

9 February 2023 [Morning session](#) [Afternoon session](#)