



Neutral Citation Number: [\[2004\] EWHC 2739 \(Admin\)](#)

Case No: CJA NO 73 OF 2004

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT

Royal Courts of Justice

Strand, London, WC2A 2LL

Date: 26/11/2004

Before :

THE HONOURABLE MR JUSTICE LIGHTMAN

	IN THE MATTER OF CHRISTOPHER ADAMS	Defendant
	- and -	
	IN THE MATTER OF THE CRIMINAL JUSTICE ACT 1988	

Mr Christopher Adams in person

Mr Stephen Hellman (instructed by CPS, 50 Ludgate Hill, London EC4M 7EX)

Hearing dates: 27th October 2004

**Judgment Approved by the court
for handing down
(subject to editorial corrections)**

Mr Justice Lightman:

INTRODUCTION

1.

The defendant Mr Christopher Adams ("Mr Adams") was on the 24th February 2003 convicted on 17 counts of theft and sentenced to three and a half years in prison. On the 1st March 2004, Southwark Crown Court made a confiscation order against him in the sum of £53,478. The entirety of this sum remains outstanding. On this application Mr Adams seeks a certificate of inadequacy.

2.

Mr Adams contends that two items of property of Mr Adams taken into account in fixing the amount of the confiscation order against him have reduced in value to nil. The first item was a 50% share of the equity of the leasehold property known as Flat 3, 64 Pont Street, London SW1X OAE ("the Property"). Mr Adams has entered into a contract ("the Sale Contract") to sell the Property and, if the Sale Contract is completed, the price will only be sufficient to pay off the incumbrances on the Property which take priority over satisfaction of the confiscation order. The second item was a gift by Mr Adams of the value of £44,000 to his wife Carol Ann Adams ("Mrs Adams"). Mrs Adams has no realisable property and says that she is indebted to Mr Richard Swain ("Mr Swain") in respect of a loan made by him to her of between £8,000 and £10,000. I accept Mr Adams' contention subject to satisfactory evidence being adduced that the Sale Contract is completed and of the loan by Mr Swain.

3.

But on the 20th August 2004 Mr Adams entered into a contract ("the Contract") with Burgon Street Management Limited ("Burgon") for the provision to Burgon by Mr Adams as a self employed Business Development Consultant of consultancy services. The two significant features of the Consultancy Contract are that Burgon agreed to pay the annual fee of £52,000 and that the Consultancy Contract is summarily terminable at any time by either party. The questions of law raised are whether the Consultancy Contract and the entitlement to income thereunder constitute "realisable property" for the purposes of this legislation and should be taken into account in determining the entitlement of Mr Adams to the certificate of inadequacy which he seeks. The Crown Prosecution Service say that the answer to both questions is in the affirmative. Mr Adams says that the answer to both is in the negative.

THE CRIMINAL JUSTICE ACT 1988 ("the 1988 Act")

4.

Section 83(1) of the 1988 Act provides that, if on an application made in respect of a confiscation order by the defendant the High Court is satisfied that the realisable property is inadequate for the payment of the amount remaining to be recovered under the order, the court shall issue a certificate to that effect giving the court's reasons. The realisable property for this purpose is what the High Court determines to be the realisable property: the High Court is not constrained by what the Crown Court has held when making the confiscation order to be the realisable property: see *Re Glatt* [2002] EWHC 2495 (Admin). Section 74(1) provides (so far as is material) that in section 83(1) realisable property means "any property held by the defendant". Section 102(1) provides that "property" for this purpose includes money and all other property, real or personal, heritable or moveable, including choses in action and other intangible or incorporeal property. Section 102(7) provides that property is held by a person if he holds any interest in it. Section 102(1) provides that "interest" in relation to property includes right. Section 83(3) provides that, where a certificate of inadequacy has been issued, the person who applied for it may apply for the amount to be recovered under the confiscation order to be reduced to the Crown Court which made the confiscation order. Section 83(4) provides

that on such application the Crown Court may substitute for the amount to be recovered under the order such lesser amount as the court thinks just in all the circumstances of the case.

AFTER ACQUIRED PROPERTY

5.

The primary purpose of the legislation is to separate the criminal from the proceeds of his crime. But the defendant's realisable property is not confined to that part of his property which represents the proceeds of his crime: it includes legitimately acquired property and that includes property legitimately acquired after the date of the confiscation order. In its definition of realisable property section 74(1) does not confine it to property held when the confiscation order was made: see Re O'Donoghue [2004] EWHC 176 (Admin). I accordingly determine the first question in favour of the Crown Prosecution Service.

CONSULTANCY CONTRACT

6.

The second and critical question is accordingly whether the Consultancy Contract or the entitlement to payment thereunder constitutes realisable property. In my judgment the answer is in the negative.

7.

The Consultancy Contract is a chose in action but, since it is a contract for the provision of services where the identity of the provider is of the essence, the chose is personal to the parties to it and not assignable. It is accordingly not realisable property. It is also not realisable because it is summarily determinable by Burgon at any time.

8.

In my judgment the entitlement under the Consultancy Contract to payment for services to be provided in the future under the Consultancy Contract is not a present chose in action. It arises if the Consultancy Contract is not determined and if the services required of Mr Adams are provided: such conditional and future entitlement plainly is not property, let alone realisable property, of Mr Adams. The position is very different from the situation when the defendant is owed a debt or has a contractual right to receive a payment on a future date or is entitled to a contingent beneficial interest under a will (compare Re Walbrook and Glasgow (1994) 15 C.App R (S) 783). The law cannot be said to be entirely clear, but on principle and in accordance with the balance of authority there is no existing chose in action where there is a contract, but it is uncertain whether anything will become due under it in the future: see Chitty on Contracts 29th ed, vol 1 para 19-029 and Norman v. Federal Commissioner of Taxation (1963) 109 CLR 9. The position is a fortiori in a case such as the present where the contract is summarily terminable, its duration is totally uncertain and any liability of Burgon subsists only at its will. In any event the "chose" (if it is a "chose") is scarcely realisable and can have no substantial realisable value.

CONCLUSION

9.

I accordingly hold and direct that Mr Adams is entitled to the certificate of inadequacy which he seeks conditional upon: (1) completion of the Sale Contract; (2) provision within 14 days by Mr Adams to the Crown Prosecution Service of (a) bank statements for Barclays Bank plc account number 73717275 in the name of Mrs Adams; and (b) written confirmation by Mr Swain that he made the loan of £8,000 to Mrs Adams; and provided that the Crown Prosecution Service shall be at liberty to apply to the court

within 14 days thereafter if of the view that the documents produced disclose facts or matters which suggest that Mrs Adams does have realisable property. In the event of the Crown Prosecution Service making such an application, the order which I make regarding Mr Adams' entitlement to a certificate of inadequacy shall be suspended until further order or until it is discharged. I also direct that proceedings to enforce the confiscation order shall remain stayed until further order. The parties' Counsel shall prepare and agree the appropriate form of order.