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No. CO/671/2021

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

[2021] EWHC 3358 (Admin)

Royal Courts of Justice

Tuesday, 9 November 2021

Before:

MRS JUSTICE WHIPPLE

B E T W E E N :

THE QUEEN ON THE APPLICATION OF
ANGELA DEACON Claimant

- and -

WIMBLEDON MAGISTRATES' COURT Defendant

-and -

THE METROPOLITAN POLICE Interested Party

MS J. GRETSTAD (instructed by Tuckers Solicitors) appeared on behalf of the Claimant.

THE DEFENDANT was not represented.

MR P. LAVERACK (instructed by the Metropolitan Police) appeared on behalf of the Interested Party

JUDGMENT

MRS JUSTICE WHIPPLE:

1

This is an application for judicial review, permission having been granted by Chamberlain J. The decision under challenge is the refusal of the Wimbledon Magistrates' Court to state a case for the opinion of the High Court. That refusal is dated 7 January 2021.

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The background, in brief, is that following a criminal investigation the first interested party ("the police") seized nearly £135,000 in cash from the claimant's home address. The police applied for the cash to be forfeited on the basis that the money was derived from unlawful conduct, their suspicion being that it represented fraudulently obtained benefits.

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On 30 October 2020 an order for forfeiture under [section 298\(2\)\(b\)](#) of the [Proceeds of Crime Act 2002](#) ("POCA") was made in respect of the entirety of this cash. That forfeiture order was made by the named defendant, the Wimbledon Magistrates' Court.

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The claimant applied on 19 November to state a case for the opinion of the High Court and the questions that the claimant wanted to be asked were as follows:

"1. Can the Commissioner [the police] put the application under [section 298](#) under two alternative bases simultaneously, namely in terms that 'the probable source of the cash is fraud' (Commissioner's Skeleton para.4) or that the source of the cash was some unidentified criminal conduct ([section 298\(2\)\(b\)](#))?"

2. Were the Magistrates right to exclude the aggregate cash withdrawals by Esme Deacon and/or the appellant [now the claimant] as being the origin of the cash?"

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There was a third question which is no longer pursued.

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The Magistrates refused to state a case on grounds that the application was frivolous and that decision is now challenged. The certificate of refusal to state a case set out extensive reasons. In summary the Magistrates concluded that the first question had already been answered in settled case law and/or the answer was plain from the statute. There were statutory alternatives for the forfeiture of cash and the Magistrates had found that the case did fall into one of the two alternatives, namely limb (b). They had concluded that the various explanations given by the appellant (now claimant) and her mother (Esme Deacon) were incredible and they rejected those explanations as lacking credibility and defying logic. They made a finding of fact that the money was or represented the proceeds of unidentified unlawful conduct on the basis of what they said was an irresistible inference from all the evidence in the case. This, they said, did not involve any misdirection of law. It was in part based on the lies told by the appellant (now claimant) but that was just one of the various evidential factors considered by the Panel in reaching their conclusion that there was no credible explanation for the source of the cash and therefore drew the inference that it was the proceeds of unidentified unlawful conduct. They said that question two did not raise a question of law at all.

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The police pressed the forfeiture proceedings on the basis of cash found at the claimant's house on 29 November 2018. The suspicion was that the money was derived from benefit fraud, and thus the

application for forfeiture was advanced. I have already indicated in summary what the reasons were for refusing to provide a case stated, but I also note the reasons given in court at the time for ordering forfeiture, which reasons are summarised in the Legal Assessor's notes which have been provided for this court, as follows:

"Reasons- RP defined as prop obtained through unlawful conduct. Having considered evidence on this point, we find there is insufficient evidence available related to any alleged benefit fraud or related underlying offences and do not find on B of p that limb 1 has been satisfied. Second limb- relates to cash intended for unlawful conduct, this is by nature an unidentified and unidentifiable crime. The app must prove by evidence that the circs of handling property give rise to irresistible inference that it can that it can only be derived from crime. We heard evid from both you and your elderly mother. We found that your evid lacked credibility. There were many inconsistencies in your varying accounts, both to the police and to the court. Your mother's evid was of a limited nature and her memory appeared poor. There is no credible explanation for the unusually large amounts of cash found in your home. This gives rise to the irresistible inference that this cash can only be considered in some way derived from crime. On the balance of probabilities, we find the applicant has proved their case under the second limb and we order the forfeiture of the whole sum plus accrued interest."

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The claimant did not appeal to the Crown Court. Instead, having applied unsuccessfully to the Magistrates to state a case, the claimant brings this application by way of judicial review of the Magistrates on the basis that they have acted unlawfully in refusing to state that case. By way of submission before me, the claimant, represented by Mr Gretstad, maintains that there must be a case stated to answer these two questions which are questions of law which properly fall to be answered by the High Court. The defendant, in the usual way, is not present, but I have heard submissions from the police, represented by Mr Laverack, and I am grateful for the help I have received.

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The law is not in dispute and I summarise it briefly. Under section 111(1) of the Magistrates Court Act any person can seek a case to be stated for the opinion of the High Court, but only on a question of law or jurisdiction. A case stated cannot extend to any issue on the facts. The justices can refuse to state a case where they consider that the application is frivolous, and the meaning of that term has been considered in case law, particular R v North West Suffolk (Mildenhall) Magistrates' Court Ex parte Forest Heath District Council[1997] EWCA Civ 1575.

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As to the application for forfeiture, section 297A provides for a forfeiture notice in certain circumstances. [Section 298](#) of POCA provides the test to be applied by the court when determining forfeiture. That is that under (2):

"(2) The court or sheriff may order the forfeiture of the cash or any part of it if satisfied that the cash or part -

(a) is recoverable property, or

(b) is intended by any person for use in unlawful conduct."

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Section 299 provides a right of appeal to the Crown Court for any party aggrieved by an order made under [section 298](#).

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The offence of money laundering created by Part 7 of POCA is also relevant, see section 327. It is an offence to conceal, disguise, convert, transfer or remove criminal property. That means that, in effect, any use of cash which is unlawfully obtained, such as converting it by spending it, or using it by keeping it in one's possession, would constitute a criminal use of that cash and would at least potentially come within the ambit of limb (b) of [section 298](#) as "unlawful conduct".

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I turn then to the grounds for judicial review. They are simply that the questions put to the Magistrates' Court to state for the opinion of the High Court were not frivolous.

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The first question relates to the suggested alternative bases under [section 298](#). There has been some debate before me whether, as matters proceeded in front of the Magistrates, both bases were in fact in play -- in other words limbs (a) and (b) of [section 298](#). I am satisfied they were. [Section 298](#) asks in terms whether the court is satisfied that the cash is either recoverable property or intended by any person for use in unlawful conduct. I see no limitation within that provision to suggest that a prosecutor must put the case on the basis of one or the other, or that the court can only consider one or the other. It seems to me, on a straightforward reading of the provision, that it is for the court to ask itself whether it is satisfied of one or other, or possibly even both. So, there is no obvious difficulty in the statutory language.

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That analysis is supported by various cases I have been referred to, specifically *Fletcher v The Chief Constable of Leicestershire Constabulary*[2013] EWHC 3357 (Admin), *Sandhu v The Chief Constable*[2019] EWHC 3316 (Admin) and *Campbell v Bromley Magistrates Court* [\[2017\] EWCA Civ 1161](#). Those cases suggest that the issue is a short and simple question, whether the terms of the statute are satisfied, and that question is for the court. In addition, I have been assisted by the case of *Muneka v Commissioner of Customs & Excise*[2005] EWHC 495 (Admin) which bears some analogy with this case. In *Muneka* the court was faced with arguments under both limb (a) and limb (b) and the High Court upheld the Magistrates' conclusion that having rejected the case under limb (a) the Magistrates could nonetheless go on to consider the case under limb (b) and conclude as they did.

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Based on authority and my analysis of the statute, and all the other matters which have been argued before me, I conclude that there is no substantive merit in the first question because the position in law is clear. The question raises no matter that needs to go on appeal to the High Court. The question is indeed frivolous.

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I turn then to question 2. Question 2 involves the Magistrates' approach to the facts. They rejected evidence by Esme Deacon and the claimant (then the appellant). The only way that conceivably could be a question for referral to the High Court by way of case stated would be if that was an error of law, and that could only conceivably be if the decision on credibility was irrational. That is a high standard for the claimant to meet, even arguably. I am not satisfied that the claimant can get anywhere near that standard. The Magistrates were entitled to reject the evidence of the two Deacons before them, noting that the claimant had given at least three different accounts over time as to how she had come to be in possession of the money. The Magistrates plainly were entitled to reject the evidence of the

Deacons, and with it to reject the proposition put forward either that the cash came from the sister or from the mother. That being so there really was nothing left of the Deacons' case.

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The Magistrates were not persuaded of the specific case put forward by the police based on their suspicion that this was money that came from false claiming of benefits. The Magistrates drew what they described to be the irresistible inference that the cash could only be considered in some way to have derived from crime, without being able to specify what criminal activity in terms. In my judgment they were entitled to draw this inference. Again, this case is analogous with Muneka, where the court adopted a similar process of reasoning.

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Having rejected the claimant's case and having in truth rejected the case brought by the police as well, it remained open to them to draw the inference that the claimant was involved in some unspecified unlawful activity, and that, of course, took them into the money laundering provisions and justified a conclusion that limb (b) was satisfied, applying [section 298](#). Here too it seems to me that the second question is indeed frivolous. It is not appropriate for it to be the subject of a question for the High Court by way of case stated.

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I dismiss this application for judicial review.

MRS JUSTICE WHIPPLE: Is there anything else that arises?

MR LAVERACK: My Lady, yes. An application for costs.

MRS JUSTICE WHIPPLE: Has the claimant seen your schedule?

MR LAVERACK: Yes.

MR GRETSTAD: I have seen it. (Same handed)

MRS JUSTICE WHIPPLE: Thank you very much. Right, so the total figure is £4,805.13. Is that right.

MR LAVERACK: That is correct, my Lady.

MRS JUSTICE WHIPPLE: What do you want to say about that, Mr Gretstad, if anything?

MR GRETSTAD: Costs follow the events. I am not sure to what extent Ms Deacons' limited means might be a reason for these costs to be reduced. Ms Deacon has been unemployed for a very long time. She is in receipt of numerous benefits. She cares for several children with learning difficulties.

MRS JUSTICE WHIPPLE: What is the position? She does not have legal aid for today?

MR GRETSTAD: No.

MRS JUSTICE WHIPPLE: That was private. That was just on her own account, was it?

MR GRETSTAD: Yes.

MRS JUSTICE WHIPPLE: But do you quibble with the figures?

MR LAVERACK: (After a pause) Perhaps I can deal with some submissions on why the bill is reasonable.

MRS JUSTICE WHIPPLE: Well, there may not be any dispute. Do you just want to wait?

MR GRETSTAD: (After a pause) Can I turn my back, my Lady?

MRS JUSTICE WHIPPLE: Of course.

MR GRETSTAD: On of the observations: £126 for grade D seems quite steep.

MR LAVERACK: My Lady, that is 126 per hour is the national level 2 for Grade D fee earners, which is trainee solicitors, paralegals and other fee earners. It is the guideline hourly rates set out by Her Majesty's Courts and Tribunal Service. It is a reasonable rate. Your Lordship will see that all solicitors side work has been done by a Grade D fee earner, and it is reasonable for the full amount to be recovered at that hourly rate.

MRS JUSTICE WHIPPLE: Thank you. Is there anything else anybody wants to say?

MR GRETSTAD: No.

MRS JUSTICE WHIPPLE:

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This is an application for costs. The principle is that costs should follow the event and it is right that the defendant – the Police effectively in this case – should recover their costs, and that principle is not disputed. The only issue is quantum, but here too there is no major dispute. The amount claimed is £4,805.13. I am satisfied that the £126 an hour for a grade D in principle is in line with HMCTS published guidelines. Taking the overview, in order to try to do justice, albeit on a summary basis between the parties, what I propose is that I summarily assess the amount of costs in the amount of £4,500 to be payable by the claimant to the police within 21 days.

MRS JUSTICE WHIPPLE: Can I thank you both very much indeed and thank everybody behind you for the preparation for this case. I am very grateful for all the help I have received.
