



Neutral Citation Number: [2019] EWCA Crim 690

Case No: 201604716/C3

IN THE COURT OF APPEAL (CRIMINAL DIVISION)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Tuesday, 9 April 2019

Before:

LORD JUSTICE GROSS
MR JUSTICE GOOSE

THE RECORDER OF GREENWICH HIS HONOUR JUDGE KINCH QC
(Sitting as a Judge of the CACD)

Between:

REGINA

V

STUART REID

Mr O O'Donoghoe appeared on behalf of the Appellant Reid.
Mr S Esprit appeared on behalf of Jayne Griffiths (Intervener).
Mr A Smith QC appeared on behalf of the Crown.

Approved Judgment

1. **LORD JUSTICE GROSS:** On 6 January 2014 in the Crown Court at Leicester before His Honour Judge Brown, the appellant Reid changed his plea to guilty to one count of conspiracy to supply a controlled drug of class A (count 1) and three counts of conspiracy to supply a controlled drug of class B (counts 2, 3 and 4). On 14 February 2014 before the same court and constitution he was sentenced to 14 years' imprisonment on count 1 and nine years' imprisonment on each of the other counts to be served concurrently. The sentence was to be served consecutively to a sentence of imprisonment the appellant was already serving.
2. On 16 September 2016, again in the Crown Court at Leicester before His Honour Judge Brown, following confiscation proceedings under the Proceeds of Crime Act 2002 ("POCA"), a confiscation order was made against Reid in the sum of £1,330,284.20 after determining that he had benefited by £3,081,602.50. Payment was to be made within three months with a default term of nine years' imprisonment.
3. For completeness, Reid appealed against his conviction but the application for an extension of time and for leave to appeal was refused.
4. Both Reid and Miss Griffiths now appeal by leave of the single judge. Miss Griffiths is an intervener with an interest in the property in question to which we shall come. Their appeals go to the confiscation proceedings only. Miss Griffiths advances four grounds of appeal, grounds 1 to 4. Reid advances a single ground only. That ground is the same as Miss Griffiths' ground 3.
5. The legal framework is not in dispute. The first and second conditions of section 6 of POCA are satisfied as Reid has been convicted of offences in proceedings before the Crown Court and the prosecutor has asked the court to proceed under this provision. Reid has a criminal lifestyle in terms of section 6(4)(a) of POCA . The assumptions to be made in a criminal lifestyle apply under section 10 of POCA . It is for the appellant Reid to displace those assumptions.
6. There was and is no dispute that Reid has benefited from his general criminal conduct, including his particular criminal conduct (section 6(4)(b) and (c) of POCA). Reid however contended that certain assumptions should not be made on the basis that they were either incorrect or there would be a serious risk of injustice if the assumptions were made (section 10(6)(a) and (b)).
7. The task of the court, i.e., Judge Brown, was to decide the recoverable amount and make a confiscation order requiring Reid to pay that amount (section 6(5)(a) and (b) . The recoverable amount is an amount equal to the defendant's (that is Reid's) benefit from his criminal conduct, unless he (Reid) shows that the available amount is less than the breach. The burden on this point to the civil standard rests on Reid. The prosecution contended that Reid had undisclosed assets.
8. In the case of Miss Griffiths the position is different. She is an intervener. The burden of proof is on the prosecution to disprove her assertions to the civil standard.
9. Against that background, we turn to the facts.

10. So far as concerns the drugs offences, they involved the large scale purchase and supply of substantial quantities of class A and class B drugs throughout the country over a period of about 13 months. The organisation was well run and able to continue despite the police periodically recovering large amounts of drugs and arresting conspirators. The organisation was headed by Reid who ensured that he never handled the drugs. He controlled others in the conspiracy through telephone calls and face to face meetings, a number of which were observed when he was under surveillance. During the latter part of the investigation, a listening device was placed in the office used by Reid and police recorded a number of conversations with people based abroad and consisted of him organising what was properly described as a drugs empire. The total street value of the drugs seized was over £5.2 million. It is to be emphasised, and we underline it so it is clear that we have it in mind, that Miss Griffiths was not a co-defendant on the drugs charges. She is here simply as an intervener.
11. The issue on confiscation centres essentially on property known as 14 Church Lane, item 13 on the schedule of assets, and it was whether Reid had acquired a beneficial interest in the property after 10 January 2004 and, if so, in what amount. The reason 10 January 2004 matters is that it is the date of a previous confiscation order made in respect of earlier drugs offending. At that time it was accepted that 14 Church Lane belonged to Miss Griffiths and no beneficial interest was then ascribed to Reid.
12. It was submitted by the prosecution that Reid was either the owner of, or had a very significant beneficial interest in, the property. His financial contribution to mortgage repayments and other purchases relating to the property had generated a resulting trust created after the previous confiscation order was made. The existence of such a trust was demonstrated by the inability of Miss Griffiths to have funded the mortgage repayments or other household expenses since 10 January 2004. It was suggested that in reality Miss Griffiths was collecting rent from Reid's properties and using it to pay the mortgage. It was also submitted that Reid's ability to satisfy an earlier confiscation order without selling properties that he owned was clear evidence of him having concealed assets from the court on that occasion and having procured financial sums to discharge the court order from what must have been hidden assets.
13. It was submitted on behalf of Reid before the judge that he had no interest in the property and that Miss Griffiths had sufficient income to pay the mortgage and meet the other running costs of the property. Miss Griffiths maintained and supported this assertion in her witness statement. She gave evidence of earning significant sums of money from the sale of horses which, taken with her other income, made it possible for her to afford the mortgage repayments which was what she was doing. Her evidence was supported by Reid and also by a forensic accountant, Miss Berrington, called on her behalf.
14. It had been conceded that Reid had a criminal lifestyle as defined by section 6(4)(a) of POCA . Whilst he accepted that he had made significant benefit from general criminal conduct, as already foreshadowed, he did not accept all the assertions made by the prosecution.
15. The judge, as he made clear in his ruling, considered the written and oral evidence of a number of witnesses, including DI Everett of the West Midlands Regional Asset Recovery Team, Mr Daniel Ford (a police analyst), Miss Berrington (the forensic accountant instructed by Miss Griffiths), Reid and Miss Griffiths herself. It was common ground that the burden of proof that the assumptions did not apply was on Reid to the civil standard. Contrastingly, again as already canvassed, the burden of proof with regard to Miss Griffiths' claims rested upon the prosecution who had to disprove her

assertions also to the civil standard.

16. In determining issues of credibility, as the judge observed, it had to be borne in mind that Reid was a career criminal who over two decades had committed a series of high value and very serious crimes. He had been ordered to serve a number of prison sentences and was currently serving a total of 20 years for the drugs, fraud and escape matters, which were his most recent convictions. He was the subject of POCA proceedings in 2004 in which he was found to have benefited from criminal conduct arising out of drugs offences in the sum of £1 million. He was also found by agreement between the parties to have realisable assets of £660,000. He repaid that entire sum within four years to avoid serving the default period without having to sell any of the properties he owned.
17. The judge ruled that the evidence showed that the property 14 Church Lane had been purchased in 1992 for £182,000. Building work had been carried out in 2003 to the value of £90,000. All the receipts for the work were in the name of Mr Reid. Mortgage payments had been paid regularly over the lifetime of the purchase: £109,000-odd was the value of mortgage payments made in cash, from monies which could not be traced by accounting methods, representing 84 per cent of the repayments made between February 2004 and March 2013;. The relevance of the March 2013 date was that was when Reid was arrested for the present drugs offences.
18. The judge held that Miss Griffiths had been an unconvincing witness and her evidence that she had paid all of the mortgage repayments was rejected. In reality, they had been paid mostly, if not completely, by the use of cash sums which derived from Reid. Miss Griffiths had not had either the cash or other income of her own to pay the mortgage and the evidence of the existence of the horse breeding business was deeply suspicious since no proper documentary evidence had been produced to support it. Reid had been paying the mortgage since 10 January 2004. Griffiths had been running her partner's property portfolio on his behalf and using his money, always cash, to pay the mortgage. Reid had acquired an interest in the property by his substantial financial contribution. The independent valuation suggested the property was worth between £650,000 and £700,000. The judge, it would appear, rounding down these figures, calculated Reid's beneficial interest as 75 per cent of £650,000. There was a further point. The planning application for the property, £2,000 (item 34 of the asset schedule) was in the name of Reid and was made by him. It was not an administrative mistake. It supported the findings and observations about the level of control that Reid had in the property. It was both a benefit and a realisable asset, applying the assumptions.
19. On behalf of Miss Griffiths, Mr Esprit in his able submissions advanced four grounds of appeal.
20. Ground 1 The judge had erred in finding that Miss Griffiths did not have the cash or other income to pay the mortgage on 14 Church Lane and had made no or no significant contribution to the mortgage repayments. Mr Esprit submitted that the judge failed to consider adequately or at all the evidence of Miss Berrington, the forensic accountant, who had analysed the bank statements and said they showed that she had more than sufficient funds to pay not only her mortgage but other household costs.
21. Ground 2. The judge had erred in finding that the couple had a common intention to create a trust of property to prevent the cash from Reid's rental properties being traced. There was no evidential basis for this finding. The rents that Miss Griffiths received from the property portfolio were paid directly

into her bank account and there was no evidence that any of this income was ever received in cash. Furthermore, those payments were disclosed to Her Majesty's Revenue and Customs and she discharged the resulting tax liabilities.

22. Ground 3 The judge erred in calculating that Reid was the beneficial owner of 75 per cent of the market value of the property, on the basis of his purported contribution of 75 per cent of the mortgage repayments, without taking into account the more significant contributions made by Miss Griffiths - in particular, the equity of some £320,000 accrued since 1993 and the mortgage in her sole name. Accordingly, ascribing the lion's share of the property to Reid was wrong in principle and failed to produce a just and proportionate result.
23. Ground 4 The judge erred in finding that the purported contributions made by Reid were tainted gifts and at the same time were capable of acquiring a beneficial interest in his favour. Inevitably, Mr Esprit, contending in this respect on behalf of Miss Griffiths, submitted that the correct approach was to treat these monies as tainted gifts and to reduce the share of Mr Reid in the property. At all events, however, Mr Esprit submitted that the two findings were inconsistent. Item 35 in the schedule of assets could not be both a tainted gift in the amount of £127,000-odd and contribute towards Reid's beneficial interest in the property.
24. On behalf of Reid, Mr Barraclough in writing concentrated solely on ground 3, that is the quantification of the appellant Reid's interest in 14 Church Lane. In a nutshell, Mr Barraclough's submission was that the figure of 75 per cent overstated Reid's beneficial interest and paid insufficient attention to the finding in 2004, accepted by the CPS, that the property then belonged to Miss Griffiths alone. Accordingly, the judge had overstated Reid's beneficial interest in the property. It should come down substantially. A figure of up to 50 per cent would have been more reasonable. Orally, so we do not need to return to it, Mr O'Donoghoe (who appeared today for Reid in place of Mr Barraclough) adopted those submissions.
25. The Crown through Mr Smith QC, who appeared both below and today, opposed all those grounds of appeal. Ground 1 was a matter of fact and evidence and the conclusion reached was amply open to the judge. On ground 2, the judge's finding did not depend simply on the rental income from the properties which had been declared to HMRC. There was in any event other evidence supporting a beneficial interest belonging to Reid. On ground 3, Mr Smith QC in writing sought to defend the Judge's conclusion but, realistically today, did not dispute an indication from the court that a figure of around 50 per cent was more realistic, just and proportionate. On ground 4, Mr Smith submitted that there was no inconsistency between the findings. The judge had dealt separately with the £120,000-odd constituting the tainted gift and the payment of the mortgage. That is by way of broad outline and we turn now to each of the grounds.
26. Ground 1:
27. This ground goes to the ability of Miss Griffiths to make the mortgage payments, although it is of course the gateway to a consideration of whether Reid had a beneficial interest in the property and, if so, in what amount. The judge's conclusion was expressed trenchantly in these terms:
 - i. "Miss Griffiths did not mention the horse business in her police interview in connection with this investigation. She replied no comment to their questions.

- ii. I am driven to the conclusion that Miss Griffiths was before me an unconvincing witness. I reject her evidence that she has paid all the mortgage repayments: she has not. In reality they have been paid mostly if not completely by the use of cash sums, which derive from Mr Reid.
- iii. I am quite satisfied that Miss Griffiths has not had the cash or other income of her own to pay the mortgage. I am deeply suspicious as to whether the horse feeding business is a genuine business at all. There is no proper documentation, there has been no financial investigation into it and there has been no satisfactory evidence produced before me to support it. The evidence that she traded regularly in horses is both, in my assessment, unsatisfactory, contradictory and almost wholly without documentary support. But if I am wrong about that and she was running a business selling horses for large sums I am nonetheless satisfied that she made no contribution to the payment of these cash sums of this mortgage. Stuart Reid was paying the mortgage and has done so since 10 January 2014.”

28. The question is one of fact and evidence. The judge saw the witnesses and heard the evidence over two days. The income from the suggested horse breeding business was never declared. Our task is not to begin again from scratch; it is instead to consider whether any error on the part of the judge has been shown. On this ground the conclusion to which the judge came is one he was amply entitled to reach. There is, with respect to Mr Esprit’s submissions to the contrary, nothing in ground 1.

29. Ground 2:

30. Under this ground Mr Esprit’s submissions were concisely and logically formulated. He submits that the basis for the judge’s inference of a beneficial share belonging to Reid was a common intention formed between Reid and Miss Griffiths to use the rental sums to fund the mortgage and to spirit them away in cash from the authorities. Mr Esprit submits, with justification, that the fact finding does not appear to be wholly accurate. He relies in this regard on the sums passing through Miss Griffiths’ bank account, together with the fact that those amounts were declared and tax was paid on them. It follows, submits Mr Esprit, that the basis for the judge’s conclusion of an intention to confer a beneficial interest on Reid disappears. Accordingly, his conclusion in that regard should be reversed.

31. We do not agree. Mr Esprit’s submissions are well-founded as far as they go, but they do not go far enough for these purposes. Even on the assumption that there is indeed an error with regards to the judge’s finding in this regard, it remains the fact that Reid paid something like at least 84 per cent of the cash payments on the mortgage - and we do not know the source of the funds for the balance of the mortgage repayments. Against this conclusion, and even if Reid paid no more than 84 per cent of the mortgage repayments, the inescapable inference is that the intention was for Reid to have a beneficial interest in the property.

32. The judge took full account of Mr Esprit’s submission. Mr Esprit had argued that one should not lightly divorce the legal and beneficial interests in the property. The judge acknowledged that (at page 15 of his ruling), but, having approached the matter, as he termed it, with care and caution, it was a conclusion to which he was entitled to come: namely, that there was an intention to confer on Reid a beneficial interest in the property.

33. Strikingly this ground is advanced by Miss Griffiths alone. With perhaps greater realism, with

respect, it has not been pursued on behalf of Reid.

34. Ground 3:

35. On the assumption that the judge's conclusion, if not necessarily his reasoning, on ground 2 is upheld, the next question is necessarily the quantification of Reid's beneficial interest in the property. The judge concluded that it amounted to 75 per cent. That conclusion is attacked both by Reid and on behalf of Miss Griffiths. For Reid, Mr Barraclough and, today, Mr O'Donoghoe focused powerfully on the original property purchase and the fact that it was accepted as being Miss Griffiths' alone at the time of the January 2004 confiscation order.
36. Their submission proceeded as follows. The purchase price was £182,000 in 1992. In 2004 the value was in the region of £450,000. Let it be assumed that Reid had made some payment for the building costs prior to 2004, said to amount to some £90,000, nonetheless the correct calculation was not 75 per cent of the entire £650,000 value but 75 per cent of the increase in value between 2004 and 2016, ie some £200,000 of which 75 per cent would amount to £150,000. At all events, Mr Barraclough submitted a figure not exceeding 50 per cent would be more reasonable.
37. Mr Esprit for his part advanced these submissions. The mortgage amounted to some 26.6 per cent of the £450,000 figure. The important point here was the equity which belonged to Miss Griffiths. If the matter was to be approached in terms of percentage contributions then the right percentage calculation was to take whatever Reid's contribution was as a percentage of the mortgage, not of the underlying equity in the property. It would follow, Mr Esprit contended, that the correct figure on the judge's 75 per cent figure was 75 per cent of 26 per cent, rather than 75 per cent of the whole.
38. For his part, Mr Smith submitted that matters did not rest simply with the 84 per cent contributions of the mortgage paid in cash. He accepted realistically that he could not do better, so to speak, than a 50 per cent share in the property, but in his submission Reid's involvement in the property went beyond simply mortgage repayments. The matter was not merely one of mathematical or arithmetical calculation. There was over a period of in excess of 10 years a wider picture of Mr Reid's involvement with the property. In this regard, taking 75 per cent of the mortgage payments or of the increase in the value since 2004, would not give a sufficient allowance. It was illuminating that, in 2013, Mr Reid's name was on a planning application in respect of the property. That evidenced his wider interest in it, extending beyond mortgage repayments.
39. In our view, *Jones v Kernott* [2011] UKSC 53x; [2012] 1 AC 776, furnishes authoritative guidance: the quantification of the beneficial share should turn on an objective evaluation of the course of dealings between the parties over the period in question. With respect to the judge and the Crown's original position, this approach does not support the conclusion to which the judge came. Making all allowances for the operation of the assumptions against Reid, the fact of his criminal and wholly unreliable background, and Miss Griffiths being found by the judge to be an unsatisfactory witness, we do not think that the judge's conclusion of a 75 per cent share belonging to Reid can be sustained.
40. What figure should be substituted? In our judgment, again, we think it necessary to recognise the equitable interest of Miss Griffiths. We think that justice will be done if we recognise that that figure is somewhere perhaps a little over £300,000. We think in that regard that Mr Reid's payment of the

mortgage, which may well have been the entirety of the mortgage payments, much of which in untraceable cash, together with his wider interest in the property, not to mention the fact that his benefit figure with regard to the confiscation order was way in excess of the schedule of assets, amply justifies a conclusion that he had acquired a 50 per cent beneficial interest in the property. To such extent we allow the appeal on ground 3. We reduce the finding that Reid had a beneficial interest of 75 per cent to one of 50 per cent.

41. Ground 4:

42. We have already introduced the nature of the argument deployed by Mr Esprit. The irony is that, if followed through logically, it would benefit Reid – because, in our judgment it would not impact at all on Reid’s beneficial share in the property, the more especially given our conclusion that it is a lesser share than that found by the judge. Thus, ironically, though this ground would reduce the schedule of assets figure, so benefiting Reid, it is a ground advanced only by Miss Griffiths and not by Reid.

43. That irony we could address if we thought it just and necessary to do so, but we think that the point actually disappears. Logical though it may first seem, it hinges on the assumption that the tainted gift (that is item 35 of the schedule of assets) was applied in its entirety to the repayment of the mortgages. That, with respect, is where Mr Esprit’s careful argument breaks down. The judge dealt separately with that figure. There is no need to suppose that he conflated it. Nor, given the benefit figure in respect of Reid, is there any logical need to make that assumption. It follows in our judgment that the findings were not inconsistent, nor has there been double-counting, so we see no reason nor justification for interfering with the overall schedule of assets.

44. Overall conclusion:

45. Accordingly, to the limited extent that Reid’s beneficial interest in 14 Church Lane is reduced from 75 per cent to 50 per cent, to that extent and that extent alone we allow the appeal.

46. Would counsel now like to assist as to the consequences for the figures?

47. MR SMITH: There are two impacts, my Lord. The first is that the schedule of assets, the form 50/50A, will need to be amended to reflect the figure 50 per cent.

48. LORD JUSTICE GROSS: I think the £487,500 comes down to £325,000.

49. MR SMITH: Yes, I had got that far in my handwritten grounds.

50. LORD JUSTICE GROSS: I was not going to risk going further without your assistance.

51. MR SMITH: I will accept that my GCSE math will carry me far enough under pressure.

52. LORD JUSTICE GROSS: I think it results in a reduction –

53. MR SMITH: It should be a reduction of £162,500.
54. LORD JUSTICE GROSS: From £1,330,284.20?
55. MR SMITH: Yes and that was the one calculation I have not yet been able to do.
56. LORD JUSTICE GROSS: Would you like to do it. Make sure Mr Esprit and Mr O'Donoghoe agree.
57. MR SMITH: My calculator tells me, my Lord, it is £1,167,784.20.
58. LORD JUSTICE GROSS: Yes, that looks right. So the order should reflect the reduction in the share and the consequential reduction in the schedule of assets to the figure you have just read out?
59. MR SMITH: I agree.
60. LORD JUSTICE GROSS: Before you leave, if you will be kind enough to make sure my Associate has that figure, it can then be reflected in the order.
61. MR SMITH: I will make sure that happens.
62. LORD JUSTICE GROSS: Is there anything else we need to do by way of orders?
63. MR SMITH: The default term.
64. LORD JUSTICE GROSS: The default term does not alter, from recollection.
65. MR SMITH: No, it is still within the same bracket because of crossing the particular threshold and it will plainly be a matter of discretion as to whether or not a reduction of £162,000 can alter the overall term. But on the authorities, the default period of nine years is still the margin of appreciation.
66. LORD JUSTICE GROSS: Still the right bracket?
67. MR SMITH: Yes.
68. MR O'DONOGHOE: I agree.
69. LORD JUSTICE GROSS: We make no alteration. So again could that feature specifically in the order, as we do not want there to be any doubt about it?
70. Mr Esprit, I am sorry, I may have cut you short.

71. MR ESPRIT: I do not know but in relation to the terms of the appeal succeeding to a certain degree whether I could request the usual order in terms of appellant's costs from central funds.
72. LORD JUSTICE GROSS: May I ask, have you been paid privately?
73. MR ESPRIT: I was, but for today we were given legal aid certificates.
74. LORD JUSTICE GROSS: What is the usual order? I am not quite sure you are right.
75. LORD JUSTICE GROSS: You were given leave to appeal and there is a legal aid representation order in place?
76. MR ESPRIT: Yes.
77. MR JUSTICE GOOSE: Well, if so then you get your fees and there is no question of additional costs.
78. MR SMITH: I would agree with that analysis. As leave was granted there is funding in place. Therefore central funds are not engaged.
79. MR ESPRIT: My Lord, yes, that is correct, leave being granted yes.
80. LORD JUSTICE GROSS: We have been impressed, with respect, with your contribution but not to the extent of paying you twice.