



Neutral Citation Number: [2020] EWHC 3491 (TCC)

Case No: QB-2018-003897

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 18<sup>th</sup> December 2020

**Before :**

**THE HON. MRS JUSTICE MCGOWAN DBE**

**Between :**

**NATIONAL CRIME AGENCY**

**Claimant**

**- and -**

**~~NICHE CARS LIMITED~~**

**-and-**

**THE SOLICITOR FOR THE AFFAIRS OF HER  
MAJESTY'S TREASURY**

**Defendant**

**(as the Crown's nominee for bona vacantia)**

**Interested Party**

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Albert Sampson (instructed by National Crime Agency Legal Department) for the Claimant  
The Interested Party was not represented

Hearing date: 4th May 2020  
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**Approved Judgment**

COVID-19: This judgment was handed down remotely by circulation to the parties' representatives by email. It will also be released for publication on BAILII and other websites. The date and time for hand-down is deemed to be at 10.30am on 18.12.2020.

## **The Hon. Mrs Justice McGowan:**

### **Introduction**

1. This is a claim by the National Crime Agency (“NCA”) brought under s. 243 of the Proceeds of Crime Act 2002 (“POCA”). Under Part 5 of POCA, s. 266, the NCA is enabled to recover property which is, or represents, property obtained through unlawful conduct. The NCA seeks a civil recovery order over the balance standing in a bank account, said to be the proceeds of unlawful conduct.
2. Niche Cars Limited (“Niche Cars”) was a company incorporated in England & Wales under the Companies Act 2006. Its registered office was at 1075, Thornton Road, Bradford, BD8 0PA. It purported to carry on a business dealing in expensive motor cars. At all material times the sole director and shareholder in the company was Mr Amjid Ali.
3. Niche Cars was dissolved by a compulsory strike-off on 23 October 2018. The NCA learned of the dissolution of the company on 11 February 2019. Accordingly, the property which is the subject of this claim was deemed to be bona vacantia pursuant to s. 1012 of the Companies Act 2006 and therefore belongs to the Crown.
4. The NCA has, with leave, amended its claim to add the Treasury Solicitor and remove Niche Cars. The Treasury Solicitor has taken a neutral stance in these proceedings.
5. Having been dissolved Niche Cars could play no part in these proceedings. Effectively the application is unopposed but the NCA still carries the burden of proving its case.
6. Mr Sampson represents the NCA and has provided helpful submissions in writing and orally, and he has carefully complied with his duty to the court in the absence of the representation of any other interested party to the proceedings.
7. I am invited to find, on the balance of probabilities, that the funds were obtained through unlawful conduct and are recoverable property under POCA.
8. It is said that the funds are the proceeds of fraud, namely a “payroll” fraud, and are constituted of, or represent, withheld tax, National Insurance and Value Added Tax. Further, it is said, that they were received by Niche Cars in bad faith. As an alternative position the claimant argues that, even if not received in bad faith as the proceeds of fraud, the pattern of receipt is only consistent with money laundering.

### **Factual Background**

9. Niche Cars had an account at Barclay’s Bank, on 9 May 2018 that account held a sum of £527,076.11. It is the claimant’s case that that sum is, or represents, property that has been obtained through unlawful conduct, ss. 304-307 POCA.
10. The funds in that account were frozen pursuant to a property freezing order, s. 245A POCA, on 16 February 2017.
11. The sole director of and shareholder in Niche Cars was Mr Amjid Ali.

12. Mr Nicholas Bradley was the sole director of each of nine companies, referred to collectively as the Bradleygieves Companies, (“**Bradleygieves**”). For the month of October 2013, Mr Hussain Talib was the director of one of those companies, Kingston (BG) Asset Management Ltd.
13. Mr Andrew Coles is a financial investigator who has carried out a civil recovery investigation into the activities of Bradleygieves and related companies, including Niche Cars. He has provided written and oral evidence in these proceedings.
14. His enquiries show that a payroll fraud was committed by the Bradleygieves companies through a number of client companies, including Niche Cars. Pay As You Earn (“**PAYE**”) and Value Added Taxes (“**VAT**”) were withheld from Her Majesty’s Revenue and Customs (“**HMRC**”). The proceeds of those frauds were laundered by dispersal through a series of transfers. One of those dispersal routes was through Niche Cars. The money came into the Niche Cars account purportedly as legitimate payments under an Enterprise Investment Scheme, (“**EIS**”).
15. One of the Bradleygieves companies was BGP Services Corporation Ltd, (“**BGPSC**”). Between 5 January 2016 and 25 April 2016 BGPSC transferred £3,805,852 to the Niche Cars account. The payments were said to be in respect of EIS payments made by three other Bradleygieves companies; Victoria (BGNI) Asset Management Ltd, Kingston (BGNI) Asset Management Ltd and Marylebone (BGNI) Asset Management Ltd.
16. Within that period, namely between 5 January 2016 and 16 March 2016, Niche Cars remitted £2,990,000 to a bank account held in its own name in the United Arab Emirates.

### **The Unlawful Conduct**

17. The unlawful conduct is said to be the fraudulent trading of the Bradleygieves companies and the withholding by them of PAYE tax, National Insurance contributions and VAT. In the alternative, the NCA say that the proceeds paid to the Niche Cars account were being paid as part of a money laundering process and are recoverable in any event.

#### Fraudulent Trading, Tax Offences.

18. The Bradleygieves companies traded as providing payroll business services. The services offered are summarised by the NCA as follows:
  - i) A client company would transfer its employees to one of the Bradleygieves companies,
  - ii) The Bradleygieves company would become responsible for all employment related matters. The client company would remit the gross wages of its employees to the Bradleygieves company. That Bradleygieves company would then pay the sums, net of PAYE tax or VAT, to the employees. The Bradleygieves company was then responsible for paying all sums deducted by way of tax and National Insurance contributions to HMRC,

- iii) The relevant Bradleygieves company had an arrangement with its employees which purported to allow them to invest up to 100% of their salaries in EIS authorised companies, enabling the employees to take advantage of the tax relief allowed under the EIS,
  - iv) All employees were entitled to sums by way of an interest-free loan to meet their living expenses. The loans were facilitated by the relevant Bradleygieves company.
19. These services appear to have been provided by Bradleygieves without charge to their clients. In addition they offered a fee-share incentive scheme to their clients.
20. Under the terms of the agreements, the relevant Bradleygieves company was responsible to HMRC for payments of PAYE and VAT sums deducted from gross payments to employees of its client companies.
- i) PAYE. As part of the process the Bradleygieves company took over the responsibility under the Income Tax (Pay As You Earn) Regulations 2003 for submitting “Real Time Information” returns (“**RTI**”) to HMRC in respect of the employees. Those returns provide necessary information about the sums deducted from salary payments for tax and National Insurance.
  - ii) VAT. The Bradleygieves companies were providing services on which VAT was chargeable. They were required to register, to make returns and to account for all sums due to HMRC.
21. The relevant Bradleygieves company submitted the RTI and VAT returns to HMRC. Despite their responsibility to do so, they did not pay all the sums deducted for tax or VAT to HMRC. They knew they were liable to make such payments.
22. Instead they remitted sums representing PAYE tax and VAT to Niche Cars, describing them as EIS payments.
23. The Bradleygieves companies did not charge Niche Cars for the services they provided.
24. All acts carried out by the Bradleygieves companies were procured by their sole director, Mr Bradley.
25. A schedule prepared by the NCA shows unpaid PAYE tax of £3,938,402.03 and VAT of £6,990,076.92 in the relevant period. That amounts to a total sum of £10,928,478.95 owed and unpaid to HMRC.
26. The NCA assert that this course of conduct amounted to the commission the offences of being knowingly concerned in the fraudulent evasion of income tax contrary to section 106A of the Taxes Management Act 1970 and the fraudulent evasion of VAT contrary to section 72 of the Value Added Tax Act 1994. They assert that this conduct would, in any event, amount to acts intended to cheat the revenue.

Money Laundering.

27. Over the period 5 January 2016 and 25 April 2016 Niche Cars received a total of £3,805,852 from BGPSC. Of that total £3,785,852 was paid directly by BGPSC and £20,000 was paid by Mr Ali. BGPSC paid Mr Ali £20,000 on 26 January 2016 and on the same day he transferred the same sum into the Niche Cars account.
28. Between 5 January 2016 and 21 March 2016 Niche Cars remitted £2,990,000 to its account in the UAE.
29. The money that BGPSC paid to Niche Cars was preceded by payments of equivalent amounts to BGPSC from the Bradleygieves companies. The NCA asserts that, because all the funds in the Bradleygieves Ltd accounts were monies withheld from HMRC, they are recoverable property within the meaning of section 304 POCA, having been obtained through unlawful conduct.
30. There was a police investigation. Mr Ali was interviewed by the police on 21 April 2016. In a prepared statement he claimed that Niche Cars was a legitimate business and that the sums received from BGPSC were legitimate payments under the EIS to enable the company to purchase stock. He repeated those statements in an interview with the NCA on 5 September 2018.
31. Mr Bradley provided a witness statement dated 6 May 2016 in Crown Court proceedings. He also stated that payments made by BGPSC to Niche Cars were legitimate payments under the EIS scheme.

#### Enterprise Investment Schemes.

32. HMRC has established a scheme, EIS, whereby individuals are encouraged to invest in small, unquoted companies. Qualifying investments attract tax relief. The scheme was required to be authorised by HMRC, who would only authorise a company running activities that would qualify under the scheme.
33. One of the principal requirements was that the company had to issue shares that would attract tax relief under such a scheme. A legitimate scheme required the involvement of an independent finance company. Employees taking part in such a scheme would have known about it and cooperated.
34. On 23 December 2015 Niche Cars applied to HMRC for advance assurance that it met the requirements of the EIS. That application was rejected on 6 June 2016. Niche Cars never provided any compliance statement nor did it obtain authority to issue compliance statements to investors pursuant to s. 204 of Income Taxes Act 2007, (“ITA”).
35. Niche Cars was not a qualifying company for an EIS. It did not exist wholly for the purpose of carrying on a qualifying trade within the meaning of s. 189 and therefore the terms of s. 181 prevented its qualification under an EIS. It was not trading on a commercial basis with a view to the realisation of profits. It did not issue shares to meet the requirements of s. 173. In fact, it failed to meet any of the requirements for a company seeking to qualify under the EIS.
36. Niche Cars did not trade on a commercial basis because,

- i) It did not acquire stock on a commercial basis nor for a commercial purpose.
  - ii) All its income came from payments from BGPSC,
  - iii) It did not purchase stock in the UAE, despite claims that that was the purpose of the transfer of funds to its account in the UAE,
  - iv) It did not acquire any property in return for the sums transferred to the UAE,
  - v) Only four vehicles appear to have been purchased by Niche Cars in the relevant period. None of these purchases was a commercial transaction.
37. The NCA asserts that Niche Cars and/or Mr Ali received and/or converted funds which represented the tax and VAT withheld from HMRC, contrary to ss. 327-3329 of POCA.

### **Legal Framework**

38. The NCA may bring a claim for a recovery order against any person holding recoverable property, under s. 243 POCA. The court must make a recovery order if it is satisfied that any property is recoverable, s. 266(1) POCA.
39. The court may not make a recovery order where it finds that certain conditions in respect of the property are met, **and** it would not be just and equitable to make a recovery order over that property. Those conditions are as follows:
- i) That the respondent obtained the property in good faith,
  - ii) That the respondent changed his position in reliance on the fact that he received (or would receive) the property;
  - iii) That the respondent had no notice that the property was recoverable; and
  - iv) That if a recovery order were made, it would be detrimental to the respondent because of his change of position ss. 266(3) and (4) POCA.
40. Recoverable property is any property obtained through unlawful conduct s. 304 POCA. It remains recoverable if it can be traced into the hands of a recipient, s. 304(2) POCA.
41. It is alleged that the Bradleygies companies were involved in criminal activity as a direct result of which funds were paid to Niche Cars.
42. Fraudulent Trading is defined by s. 993 of the Companies Act 2006 as the carrying on of a business with the intent to defraud creditors or any other person, or for any fraudulent purpose. The test of whether the conduct is dishonest is laid down in R v Booth and Barton [2020] EWCA Crim 575.
43. It is an offence under s. 106A of the Taxes Management Act 1970 to be knowingly concerned in the fraudulent evasion of income tax. It is an offence under s. 72 of the Value Added Tax Act 1994 to be knowingly concerned in the fraudulent evasion of

paying VAT. It is an offence to cheat the revenue, preserved by s. 32 of the Theft Act 1968.

44. Applying the civil standard this court must make a determination that unlawful conduct has occurred, although I do not have to find that a particular criminal offence has been committed. The NCA has to establish a causal connection between the funds claimed and the unlawful conduct, Assets Recovery Agency v Olupitan [2008] EWCA Civ 104.
45. In the absence of a credible explanation I may draw proper inferences from all the circumstances of the case.

## **Evidence**

46. Mr Coles has prepared schedules which support the factual assertions he makes about the sums paid into and out of the relevant bank accounts. He has considered the evidence produced in the course of the liquidation proceedings referred to below. He has also considered the material provided by the police and HMRC as a result of the enquiries they conducted into the activities of Bradleygieves and its satellite companies. In addition, he has carried out his own detailed financial investigation on behalf of the NCA.
47. In the course of his financial investigation into the Bradleygieves companies Mr Coles provides banking records which show that BGPSC purported to carry out payroll services on behalf of the Bradleygieves companies.
48. He established that from June 2014 the client companies remitted sums representing the gross salaries of their employees to Bradleygieves accounts. The net sums should have paid to employees as salary and the PAYE should have been remitted to HMRC. Regular payments to HMRC did not begin until March 2015 but more importantly the sums remitted were a very small fraction of what should have been paid. Mr Coles illustrates this point with one stark example. In the 10 month period June 2014 to March 2015, Bradleygieves paid £59,628 to HMRC. They had received £11,800,000 in total from their client companies.
49. The commitment to pay employees was always met. As Bradleygieves was not charging its client companies any fee, Mr Coles concludes that the payments to the employees could only ever be met from the monies which should have been remitted to HMRC. Whilst not always determinative of fraudulent conduct, this feature is strongly indicative of fraud.
50. The NCA has drawn up schedules, relying in part, on the material provided in the winding up petitions. There had been a pattern of insolvency and the setting up of phoenix companies amongst the companies in the Bradleygieves group. All companies within the group were liquidated by January 2017.
51. HMRC had begun to look into the activities of the Bradleygieves group but did not commence a formal investigation once it learned that Mr Bradley had left the jurisdiction for the USA in the Summer of 2016.

52. Mr Coles' enquiries established that the funds which had been withheld from HMRC were paid to third parties, including Niche Cars. Niche Cars was one of a number of companies used by Bradleygieves to disperse the sums withheld from HMRC.
53. The NCA argue that, in addition to the excessive sums paid, there is a pattern in the payments made by Bradleygieves to Niche Cars which is probative of money laundering.
54. Between 5 January 2016 and 25 April 2016 £3,805,852 was paid by BGPSC to Niche Cars and Mr Ali. The payments out bear no obvious relation to the sums received by BGPSC, ostensibly as gross salary payments. BGPSC generally paid fixed sums of £100,000 to Niche Cars. These were described as "EIS Investment". As set out above there was no EIS.
55. During this period Niche Cars also began making regular payments in the sum of £100,000 to a payee account in the name of "Exotic Stock". Those payments actually went to an account held by Niche Cars in the UAE. No cars were ever purchased by Niche Cars in the UAE through Exotic Stock or otherwise.
56. The payments into Niche Cars' UAE account matched the payments out to Exotic Stock, both in time and amount. Over this period Niche Cars paid purportedly £2,900,000 to Exotic Stock. In addition, Niche Cars paid £100,000 to "California Consultancy", Mr Bradley was the governing officer of that company. It was to California that Mr Bradley had decamped in the Summer of 2016.
57. The analysis of bank accounts replicates this pattern of circular payments; Bradleygieves to Niche Cars and/or Mr Ali, then payments back to Bradleygieves. Given that there is no evidence that Niche Cars ever traded in cars on a commercial basis in the UK or the UAE the pattern of payments and the surrounding circumstances is highly significant.

### **Analysis**

58. Whether Niche Cars was party to the fraudulent trading, the fraud on the revenue or merely laundered the proceeds of the fraud, the NCA argues that the funds are recoverable property.
59. The issue can be distilled quite simply; was there a fraud on the revenue and if so, did some of the proceeds of that fraudulent conduct find their way into the Niche Cars bank account? At the very least, was the Niche Cars bank account used to launder the proceeds of that fraudulent activity?
60. Mr Bradley set up a group of companies that offered services to client companies. That service included the outsourcing of payroll activities. The workforce of the client company would be transferred to one of the Bradleygieves companies. The Bradleygieves company would take over the responsibility for paying the staff and for meeting all commitments to HMRC in respect of PAYE tax, VAT and National Insurance contributions.
61. Mr Bradley, and/or the Bradleygieves companies, did not charge for the services they provided to the client companies. Instead they offered a "fee share", the fee share was



a proportion of the total payroll which had been transferred to them as part of the deal. This was apparently to be levied on the relevant EIS companies or taken from the tax relief gained on the EIS investments.

62. Accordingly, the entire proposal was based on an operative EIS being in place. Without such a scheme there is no reason for Bradleygieves to provide the payroll service to any client company. There was no other means of payment for the services which Bradleygieves offered. In fact there was no such EIS scheme in place. Mr Ali knew that no such scheme had ever been established. Indeed on his knowledge of the absence of any trading on the part of Niche Cars, he must have known that no such scheme could ever have been established.
63. Despite the lack of a scheme the Bradleygieves company offered employees the facility of interest free loans for living expenses to facilitate their investing up to 100% of their salaries in start-up schemes.
64. For the reasons set out above there was no legitimate EIS scheme. HMRC had never authorised such a scheme and refused to provide advance assurance that a scheme would be set up; the employees concerned knew nothing of any such arrangement; there was no independent finance company which was an essential element of such a scheme; and in any event, the scheme could not have applied to a company such as Niche Cars which did not issue shares which would have attracted tax relief and was not carrying on any business activities which would fall within such a scheme.
65. I am satisfied on all the evidence, to the civil standard, that the activities of Mr Bradley and the Bradleygieves companies was dishonest. Further, I am satisfied that the conduct and involvement of Niche Cars in the payroll scheme was also dishonest. The arrangements for the payment of employees was based on the false premise that it was a legitimate scheme. On behalf of Niche Cars, Mr Ali was directly involved in the receipt of funds withheld from HMRC. Further he was involved in the transfer of those funds to the UAE. I am sure that Niche Cars through Mr Ali was directly involved in the dishonest scheme to defraud HMRC by withholding PAYE and VAT payments due, for the following reasons
  - i) The arrangement between Bradleygieves and Niche Cars purported to be part of a legitimate payroll scheme but did not account to HMRC for tax, National Insurance and VAT.
  - ii) No fee for this service was paid by Niche Cars, the only source of payment to Bradleygieves was from the money which should have been remitted to HMRC and was not paid to them.
  - iii) The entire scheme was predicated on the operation of an EIS which did not exist, and which Mr Ali knew did not exist.
  - iv) In the relevant period Niche Cars did not trade in cars in the UK or the UAE.
  - v) The pattern and circularity of payments between Bradleygieves and Niche Cars demonstrates the dishonest movement of funds, on one occasion Niche Cars paid £100,000 to a consultancy operated by Mr Bradley for no apparent legitimate purpose.

- vi) There is no legitimate reason why Bradleygieves should have paid £3,805,852 to Niche Cars.
  - vii) Mr Ali has never offered any explanation which offers any sensible account for the method and sums of the transactions.
66. In any event the pattern and amounts of money transferred to and dispersed through the Niche Cars account, set in all the surrounding circumstances, proves the use of that account to launder those funds.
67. Accordingly, the sum held in the frozen account is recoverable as the proceeds of unlawful conduct.
68. A recovery order under s.307 POCA is made over the funds and interest accrued in the bank account held in the name of Niche Cars. The recovered sum is vested in the trustee for civil recovery under s. 266 POCA.