

**THE HIGH COURT
PROCEEDS OF CRIME**

[2017 No. 6 CAB]

[2017 No. 9 CAB]

[2017 No. 11 CAB]

[2018 No. 34 CAB]

BETWEEN

CRIMINAL ASSETS BUREAU

APPLICANT

AND

JOHN POWER (AKA JOHN BOYLAN)

AND

LEONIE KINSELLA

RESPONDENTS

THE HIGH COURT

[2018 No. 1929 P]

BETWEEN

JOHN BOYLAN

PLAINTIFF

AND

CRIMINAL ASSETS BUREAU

AND

THE MINISTER FOR JUSTICE AND EQUALITY

DEFENDANTS

JUDGMENT of Ms. Justice Stewart delivered on the 25th day of October, 2019.

1. The first four proceedings in the above named title are brought by the Applicant (hereinafter referred to as "the Bureau") whereby they seek orders pursuant to s. 3 of the Proceeds of Crime Act, 1996 (as amended) (hereinafter referred to as "the Act of 1996") over items specified in the schedules attached to the originating notices of motion in the respective proceedings.
2. The assets which are the subject matter of the s. 3 application before this Court are namely as follows:
 1. A Mercedes Benz E Class motor vehicle bearing registration no. 131 D 28923.
 2. The racehorse "Labaik" currently registered with Horse Racing Ireland as being under the ownership of Aidan O'Ryan and Anthony O'Sullivan, registered and dated the 29th March, 2017 with passport no. UELN:2500FR 11476337U with microchip no. 250259805648871.
 3. Account no. 20EH3 held with Horse Racing Ireland in respect of the horse "Labaik".
 4. The "Willaby" Aspen Mac7 Mobile Home, Chassis No. WH4336/005.
 5. The property known as 73 Forest Hill, Rathcoole, Co. Dublin, contained in folio 83774F Co. Dublin.
3. All the above named cases were consolidated and came on for hearing together on the 1st April, 2019.

4. Following the commencement of the first set of proceedings i.e. 2017 No. 6 CAB, the race horse the subject matter of a s. 2 freezing order made by this Court on the 19th April, 2017 pursuant to the Act of 1996 was entered into the Punchestown Grade 1 Champion Hurdle race on 28th April, 2017 in the course of which, and as was widely reported in the media at the time, it suffered an injury.
5. At the time of the making of the s. 2 freezing order on 19th April, 2017 the Bureau sought an order pursuant to s. 9 of the Act of 1996 directing the Respondents to file an affidavit setting out their income and the source of that income in respect of the period between the 1st January, 2013 to the date of the order. It further sought that those affidavits be filed and delivered on the solicitors for the applicant by close of business on 4th May, 2017. The Court on that date also granted an order pursuant to s. 7 of the Act of 1996 appointing Declan O'Reilly solicitor and Bureau Legal Officer as receiver over the property specified in no. 1 in the schedule to the notice of motion. The effect of this appointment was that it thereby enabled Declan O'Reilly to take possession and manage the asset, namely the Mercedes Benz E Class motor vehicle bearing the registration no. 131 D 28923. No application to the court was made on that date in respect of the appointment of a receiver in respect of the race horse "Labaik".
6. On the 3rd May, 2017, the Bureau commenced a second set of proceedings named in the title thereof for orders pursuant to ss. 3 and 7 of the Act of 1996 over the Horse Racing Ireland account no. 20EH3 held in respect of "Labaik". It further sought the appointment of the solicitor and Bureau Legal Officer Declan O'Reilly as receiver over the said account. On the application of the Bureau the Court directed that the receiver was entitled to (i) make such disbursement necessary to pay fees to allow "Labaik" to compete in races; (ii) to make any other necessary disbursements in respect of "Labaik" and (iii) to receive any winnings that might accrue into the account. The Court was not advised on the date of the application on 3rd May, 2017 that in the intervening period that the horse "Labaik" had been entered into a race at Punchestown on 28th April, 2017 and had sustained an injury as set out above.
7. In the circumstances where the horses had allegedly sustained an injury as a result of running in the race at Punchestown the Respondent to the Bureau's proceedings, John Boylan, commenced the plenary proceedings named in the title hereof as against the Bureau. He claims damages for negligence and/or breach of duty, damages for breach of statutory duty, damages for misfeasance in a public office and, finally, aggravated and/or exemplary damages arising from the decision to race "Labaik" on the 28th April, 2017. The Respondent/Plaintiff pleads therein that he was the beneficial owner of 90% of the race horse but that he had no part in a decision to enter the horse in the race on 28th April, 2017. On the contrary, he pleads that shortly after the horse won the Novice Hurdle in Cheltenham in March, 2017 that it was his, Mr. Boylan's intention, to sell the horse. He further pleads that this sale was prevented by the actions of the Bureau through preventing his dealing with the horse pursuant to s. 2 of the Act of 1996, and through the seizure of the passport which accompanies and validates the horse from the then trainer of the horse, Gordon Elliott. Further Mr. Boylan pleads that prior to the race

on the 28th April, 2017 that he had been visited by two officers acting for and on behalf of the Bureau who informed him that the horse was going to run on that date and that he was not to attend at the racecourse.

8. The Bureau filed a defence to the plenary proceedings which was delivered on 11th July, 2018 and contrary to the entire basis of its application in the Proceeds of Crime proceedings whereby it was alleged that Mr. Boylan was the 90% beneficial owner of the race horse, the Bureau made no admission as to the beneficial ownership of the said race horse. Further, Mr. Boylan was put on proof of various matters including the search of his premises by the Bureau, the seizure of the horse's passport from Mr. Elliott, and of whether he told officers that he intended to sell the horse. The Bureau also took issue with the legal basis of the claim for the reliefs sought. In light of the nature of the defence delivered on behalf of the Bureau, the Plaintiff in the plenary proceedings and the Respondent in the Bureau proceedings served a notice to admit certain facts on 7th March, 2019. The facts which were sought to have admitted were as follows:
 - (i) That on 3rd of April, 2017, officers acting on behalf of the Bureau seized the equine passport no. UELN:2500FR 11476337U for the race horse "Labaik" from Mr. Gordon Elliott;
 - (ii) This passport was required to sell, transport, or to enter "Labaik" in a race;
 - (iii) That it was the decision of the Bureau to enter "Labaik" in the Punchestown Grade 1 Champion Hurdle on 28th April, 2017;
 - (iv) That "Labaik" suffered an injury in the course of that race as a result of which he has been, and will be, unable to race again.
9. Rather than file a substantive reply to this notice, by letter dated 20th March, 2019 the Bureau pointed to the fact that it had a motion to dismiss the plenary proceedings outstanding and that, as no replying affidavit had been received to that motion, the issue of a notice to admit facts did not arise at that stage.
10. The matter came on for hearing on the 1st April, 2019. The hearing continued on the 2nd April, 2019, 3rd April, 2019 and concluded on the 11th April, 2019 when the Court reserved its judgment in the matter.
11. It was determined that the Bureau would proceed with its s. 3 applications and that any cross-examination required in respect of affidavits filed in those proceedings would also serve as oral evidence with respect to the plenary proceedings. A similar approach was adopted in respect of the witnesses called by and on behalf of the Plaintiff in the plenary proceedings. There are substantial affidavits put before the Court on behalf of the Bureau in respect of the s. 3 applications.
12. Detective Chief Superintendent Patrick Clavin, Chief Bureau Officer of the Criminal Assets Bureau swore affidavits in all four s. 3 applications wherein he set out the grounds for his belief that the assets, the subject matter of the s. 3 applications, were acquired directly and/or indirectly through the proceeds of crime and constituted directly and/or indirectly

the proceeds of crime. Those beliefs are set out in para. 9, subparas. (a) to (k) of the first affidavit sworn on the 18th April, 2017, The grounds set out provide as follows:

- “(a) My personal experience in and knowledge of the trade in drugs and controlled substances both in Dublin and elsewhere in the country and the persons engaged in such trade;
- (b) My familiarity with the generation of proceeds from the crime of possessing and selling controlled substances;
- (c) My knowledge of Mr. John Power (aka John Boylan) in particular and his long-standing role in the trade in the controlled substances in Ronanstown, Dublin;
- (d) The presence of documentation in the home of John Power and Leonie Kinsella which can be reconciled to other persons engaged in the illegal trade in controlled substances, as noted by Marcus Roantree [details of which are out in the affidavit of Garda Marcus Roantree sworn herein on 18th April, 2017];
- (e) Neither Mr. Power nor his partner, Leonie Kinsella, have identified income from legitimate sources which is consistent with their lifestyle and in particular, the acquisition of assets such as the vehicle and horse which are the subject of the proceedings herein;
- (f) The motor vehicle at issue in the application is of a type not ordinarily associated with persons of modest means and/or recently (in the case of Leonie Kinsella) in receipt of social protection payments and was apparently purchased in cash;
- (g) The inconsistent explanation furnished by Mr. Power to Detective Garda McGeown in relation to the acquisition of the vehicle) (“the Mercedes”) which is the subject matter of these proceedings [details of which are out in the affidavit of Garda Oisin McGeown sworn herein on 18th April, 2017];
- (h) The payment of a significant amount of money (in excess of 25,000 euro) on a horse is not a purchase ordinarily associated with persons of modest means and/or recently (in the case of Leonie Kinsella) in receipt of social protection payments;
- (i) The fact that the horse which is the subject of the instant application has been kept registered in the name of someone other than Mr. Power, notwithstanding the fact that he provided 90% of the purchase price;
- (j) My general experience of the concealment of monies generated by criminal activity. This may take a number of forms, including holding such proceeds in the names of persons other than the person generating such monies and/or to deny ownership of monies; and
- (k) The available records do not show the proposed respondent to have enjoyed such a level of legitimate income as would provide a credible explanation of the acquisition of the property set out in the schedule [to the notice of motion].”

13. In addition to the evidence proffered on behalf of the Bureau in their first application and subsequent applications, i.e. in Cases B, C and D, these applications were supported by,

inter alia, not only the belief evidence of the Chief Bureau Officer but also the grounds for those beliefs in each respective application. In respect of Case B, the Chief Bureau Officer relied on, *inter alia*, the affidavit of Garda Lisa McHugh which was sworn on the 2nd May, 2017 in respect of the HRI account. In Case C, in respect of the "Willaby" Aspen Mac7 Mobile Home an affidavit from the Chief Bureau Officer and, *inter alia*, Detective Garda McHugh sworn on the 14th December, 2017 in support of the said application. Finally, on the 12th December 2018, the Chief Bureau Officer and, *inter alia*, Detective Garda Lisa McHugh swore affidavits in respect of the property at 73 Forest Hill, Rathcoole, Co. Dublin. Exhibit "LMcH 3" of the latter affidavit contained a detailed report from the architect retained by the Bureau, and which calculated the total cost of the works carried out at the property in Forest Hill as €629,911.13. It is worth noting at this point that no response was put before the Court in respect of Cases C and D, nor there was any evidence proffered to refute the Bureau's evidence.

14. Garda Lisa McHugh, a member of An Garda Síochána and a Bureau Officer duly appointed pursuant to s. 8 of the Criminal Assets Bureau Act, 1996 to 2005, set out in an extensive affidavit sworn on the 18th April, 2017 details of her knowledge of John Power and his income generating ability. She states that John Power was born on 26th October, 1986 and that he lives at 73 Forest Hill, Rathcoole, Co. Dublin with his partner Leonie Kinsella who is the second named Respondent in the Bureau proceedings. She states that John Power has 67 previous convictions, two of which relate to offences contrary to s. 15 of the Misuse of Drugs Act. She stated her shared belief that John Power was involved in the trading of controlled substances in the Foxdene and Neilstown areas of Dublin in particular. She also states her belief that he started as a street dealer in such substances and had progressed to recruiting and directing persons who were engaged in such trade by approximately the year 2008. Garda McHugh set out that the Mercedes Motor Vehicle was purchased for approximately €28,000 and the purchase price was paid in two amounts of cash. The vehicle when seized displayed an insurance disk showing the vehicle was insured with Liberty Insurance. Inquiries with Liberty Insurance established that on 27th May, 2016 Leonie Kinsella had added the vehicle namely 131 D 28923 a Mercedes Benz E Class 250 to her policy and further that Leonie Kinsella declared herself as the registered owner of the vehicle and declared the value of it as €32,000. The premium for the insurance policy on the said vehicle was €1,639.79.
15. The race horse "Labaik" is a thoroughbred race horse. At the time of the commencement of the first set of Bureau proceedings the Bureau believed Mr. Power to be the beneficial owner thereof in the amount of 90% of the value of the said race horse. The balance of the purchase monies required to purchase the horse was paid from a joint account held in the name of John Power and Leonie Kinsella via Mr. Aidan O'Ryan. Further, Goffs (UK) issued an invoice to Forest Hill Animal Feeds Limited in respect of the purchase price of the horse and that, as is set out in the affidavit of Detective Garda Nigel Petrie sworn in the within proceedings on the 18th April, 2017, the said company was established by John Power albeit that it does not appear to have carried out any significant trade and/or business.

16. Notwithstanding that John Power made the payments for the upkeep and training of the horse, the horse was registered in the name of a Mr. Anthony O'Sullivan. Anthony O'Sullivan during the currency of these proceedings and prior to the matter coming on for hearing brought a notice of motion before the Court seeking and claiming a payment owed to him of 50% of the value standing in the account no. 20EH3 in respect of the horse "Labaik". However, on the final day of the hearing namely the 11th April, 2019, Mr. Dara Robinson, Solicitor of Sheehan Solicitors on record on behalf of Mr. O'Sullivan advised the Court that his client was no longer pursuing this application and that the motion could be struck out. The Court indicated that it would strike out the motion at the conclusion of these proceedings. That being the case Mr. Power otherwise (Boylan) remains the alleged sole beneficiary owner of the race horse "Labaik" and of the amount outstanding in the Horse Racing Ireland Account associated with "Labaik".
17. At the conclusion of the opening of the Bureau applications by counsel on behalf of the Bureau, the cross-examination of the Bureau witnesses took place as follows: Detective Garda McHugh, Detective Garda Nigel Petrie and Chief Superintendent Patrick Clavin were cross-examined by counsel on behalf of John Boylan (Power). John Boylan (Power) then gave evidence and was cross-examined by counsel on behalf of the Bureau, as did Leonie Kinsella who was also cross-examined by counsel on behalf of the Bureau. Finally, Gordon Elliott was called by the Bureau and was cross-examined by counsel on behalf of the Respondent with the re-examination by counsel on behalf of the Bureau.
18. The Court also notes at this stage that aside from the affidavit sworn in respect of the intention to inspect "Labaik" (which did not proceed) that the only affidavit evidence filed by John Power in respect of these proceedings was the s. 9 affidavit on foot of the order of this Court. This affidavit was ultimately filed in the name of John Power and was sworn on the 19th September, 2017, bearing the record number 2017 No. 6 CAB. Leonie Kinsella swore a replying affidavit on the 19th September, 2017 in respect of the same proceedings. He sets out his past work and earning history stating that he left school aged fifteen and that he had worked for his father who was a self-employed carpenter. In 2013 he states that he started working by laying floors for a Mr. Robert Heenan. He states that he was initially employed on a casual basis and paid in or around €500 per week in cash. He states that from January, 2014 he was paid directly into his bank account every fortnight in the sum of €1,339. He also refers to the affidavit of the Revenue Bureau Officer No. 65 which shows that his total income from Mr. Heenan for 2014 was €34,814. At para. 6 he states that he was paid a sum of €710.33 on a weekly basis in 2015 by the same Mr. Heenan. He left the employment of Mr. Heenan at the end of October 2015 and set up Forest Hill Animal Feeds Limited in June, 2016. He said that he still works for this company and he earns €419.56 per week. At para. 9 of his affidavit he states that in reference to an "unknown" source of income identified by Detective Garda Nigel Petrie in his grounding affidavit that throughout the period in question that he had an account with Paddy Power Bookmakers and that he earned considerable sums from gambling. He further states that he had attempted to obtain details from the area manager of Paddy Power in Rathcoole for the purposes of swearing the affidavit before the Court but that he had been unsuccessful. He further exhibits a cheque in the sum of

€15,840.91 which was paid by Paddy Power Bookmakers on the 11th February, 2016. In addition, he states that he was in receipt of other income from the sale of two piebald horses to a Mr. Sean Hanley on 5th January, 2016 and he refers to a bank draft in the sum of €25,000 in respect thereof. He concludes by saying that the only large sums which were lodged to his account are the sums of €13,000 from his mother, €10,000 from his partner and €17,500 from his godmother which he used to fund the deposit on his family home. He cross references those sums with the sums referred to at para. 12 of the affidavit of Detective Garda Nigel Petrie. He finally states that the only other assets that he owns is a 2015 Volkswagen Golf which he purchased for €19,450 four weeks previously i.e. mid-August, 2017.

19. Ms. Kinsella states in her affidavit that for most of her relationship with the first named Respondent that he has been the main earner and has looked after their finances. This extended to Mr. Power making a number of lodgements into her account to assist with their household expenses. Ms. Kinsella said that her income since January, 2013 accrued from her work as a hairdresser for Revive Hair and Beauty Clinic where she initially worked two days a week earning €140 per week but from August, 2014 she worked three days a week earning €210 per week. She was on maternity leave following the birth of her son for a period of time and when she returned she resumed two days per week. Her weekly wage was in the sum of €140 and in September, 2016 her weekly wage was increased to €160 per week. She stated that she had from time to time throughout her career as a hairdresser she carried on casual work for which she received cash payments. She said that she finally set up her own hairstyling business in May, 2016 and that she had registered a business name. She concludes by saying that from January, 2013 to date that her only income had been either from hairdressing or from her partner John Power.
20. In relation to the oral evidence adduced at the hearing the first witness to be cross examined was Detective Garda Lisa McHugh and she was cross-examined on behalf of the Respondents by Mr. John Fitzgerald S.C. in respect of her affidavit sworn on the 18th April, 2017. She described her work as supporting the application of the Chief Bureau Officer. She indicated that she would have started profiling and looking at John Power (otherwise Boylan) after "Labaik" won a race at Cheltenham and she spoke to some colleagues about him. She stated that she learned of the income of John Power and in her view that everything pointed to him being the owner of the racehorse "Labaik". The cross-examination concentrated on the question of the returning of the passport to the trainer Gordon Elliott for the purpose of entering the horse in the race at Punchestown on the 28th April, 2017. She stated that Gordon Elliott told her colleague that he needed the passport in order to race the horse. She confirmed that she did not seek permission from the Court to return the passport, and that she arranged that the passport would be brought to Punchestown for the purposes of the race meeting. She confirmed that the horse ran at Punchestown on two occasions namely on the 25th April, 2017 and on the 28th April, 2017. She confirmed that the passport was given to the trainer before the race and was retrieved afterwards. She confirmed that her colleague Detective Garda Martin Harrington had served the notice of the s. 2 order on Mr. Elliott and that it was at

that time that Mr. Elliott had requested that the passport be made available for the purposes of entering and racing "Labaik" in a future race.

21. Detective Garda Nigel Petrie was then cross-examined in relation to his calculations on the financial analysis which is set out in his affidavit in respect of the income, expenditure and earning capacity of the Respondents.
22. The Chief Bureau Officer Chief Superintendent Patrick Clavin was then proffered for cross-examination by counsel on behalf of the Respondents in the plenary proceedings. He confirmed that he had been in court when Detective Garda McHugh gave her evidence and that he was aware of the matters that she had outlined to the Court at the time that they occurred. He also confirmed that he had been present in court for the s. 2 hearing. He said that the passport had been placed into an administrative safe at the headquarters of the Bureau and that when the request in respect of returning the passport for the purposes of entering the horse in a race was relayed, and having first looked at precedent in relation to a previous case, that he made a decision not to seek receivership of the horse at the initial stage i.e. at the date of s. 2 hearing. In his view he states that the horse was in the care and custody of Gordon Elliott at that stage. He said that intelligence had been relayed to him that there was a proposal to remove the horse from the jurisdiction where it could be sold. He stated that the decision in respect of racing the horse came to his attention in his capacity as the Chief Bureau Officer. He said he had to weigh up the security of the horse as against being accused of devaluing the horse i.e. by not allowing it to race. He stated that his understanding was that the decision to race the horse was that of Gordon Elliott the trainer and that no receivership was in place. He said that he made the decision that the best place the horse could be left would be with the trainer Gordon Elliott. He confirmed that he was aware that the race horse was injured during the course of that race however he stated that the horse was still alive and was still in training. When asked as to whether he had considered advising this Court of the decision to allow the horse to race his response was that he did not consider the racing of the horse to be his decision, but rather that it was Mr. Elliot's decision which he facilitated. He stated that it was his decision to allow the passport to be taken to the racecourse, and that it would at all times be under the supervision of Bureau Officers. He accepted that it was his decision to authorise the release of the passport to Gordon Elliott to enable the horse to run in the race. He proffered a view that he still thinks the horse might race again.
23. The Respondent to the Bureau proceedings and the Plaintiff in the plenary proceedings John Power (otherwise Boylan) then gave evidence. It was confirmed at the outset by his counsel that Mr. Power was dealing only with the plenary proceedings. He stated that he was entitled to 90% of the ownership of "Labaik". He described that his friend Anthony O'Sullivan bought the horse through Gordon Elliott and asked Mr. Power if he wanted to buy into the horse a few weeks later. He said that Mr. O'Sullivan had come into the shop and asked him if he was interested. He said he had been involved with horses since he was three to four years with his father. He said they would have had both piebald and trotting horses. He said "Labaik" was the first thoroughbred that he had ever owned. He

described having owned fifteen to twenty horses over the course of his life. He stated that he got his first horse when he was four to five years old. He said he raced with trotting horses in places like Portmarnock. He described the piebald horses as being more show horses and the emphasis being upon how they looked. Mr. Power described that he had gambled since he was approximately eight years of age. He stated that he could tell stories, that it was up and down and at one stage he would have gambled every day. He described how he would receive information out of big yards. When asked what amount he would have gambled he said it would depend on how strong the information was and how reliable it was. He described how he had people in different yards in the UK and he had people in yards in Ireland. He said he had an understanding with Anthony O'Sullivan that he was buying half the horse and would pay all the price. He said he had been told that this horse was a real special one. He described his only difficulty being with his partner Leonie Kinsella and stated that it took a bit of time to convince her to proceed with the purchase. He said he put away €500 per week into joint savings on behalf of both himself and Leonie Kinsella. He maintains that he didn't see much paperwork in relation to the horse, he just simply got an invoice. He describes that Anthony O'Sullivan, whom he referred to as Anto, knew Aidan O'Ryan at the time and the Mr. Power was just happy to have the horse because he knew that he was a good one. On 25th April, 2017 he stated that the horse refused to run, but that the horse then took off after the horses had left so therefore it wasn't marked down as a refusal by and on behalf of the authorities as he was listed as having come last in the race.

24. At this point, it is worth noting that the examination by counsel and the answers from Mr. Power state that the race in which "Labaik" was injured took place on the 27th April 2017. At para. 4 of Mr. Power's (otherwise Boylan) affidavit dated the 7th March, 2018 (sworn in support of the application to inspect "Labaik") Mr. Power relies on media coverage of the injury to "Labaik" and exhibits a newspaper report from the Irish Times dated the 29th April, 2017. This report clearly makes reference to the Punchestown Champion Hurdle having taken place on Friday, which was the 28th April 2017, and this is consistent with previous evidence proffered before the Court. As such, I believe that both Mr. Power and his counsel were simply mistaken in their reference to the 27th, April 2017 and I will refer to the correct date.
25. On 28th April, he said it was a race for four-year-old novices. It was decided to run him in the Champion Hurdle on 28th April, 2017 and that Mr Power stated that he only became aware that the horse was running in Punchestown when he saw the race advertised on a betting app. The horse was ridden by Davy Russell who gave an interview straight after the race. Mr. Power was certain on the date that "Labaik" would never race again. He said that if asked for his opinion he would say that the horse was worth buttons. In his view if the horse had been sold after its first win at Cheltenham that it could have fetched £250,000 and upwards. In his view the horse was now worth approximately €500 to €1,500. On cross-examination Mr. Power accepted that he put up 90% of the monies to purchase "Labaik". He also stated that in his view it was a "no brainer" as to who would train him. He said he didn't know Gordon Elliott personally but that he knew of him and he confirmed that he had no difficulties with how Mr. Elliott dealt

with the horse. He confirmed that the horse had run in a novice hurdle in December when the going was soft or heavy, and that it had again run at Naas in January when the going was soft or heavy. He confirmed that the horse had failed to start at Naas and had run in Punchestown and Navan. He confirmed that when the horse had run in the Novice Hurdle at Cheltenham that the going was good to soft and the horse won that race. He stated that in his view Gordon Elliott and Aidan O’Ryan were not in agreement with selling “Labaik” after the win at Cheltenham. He stated that he was not aware that Gordon Elliott intended to run the horse in Punchestown and that he had come upon it when tracking it on his betting app. He stated that the Bureau came to his house and told him that the horse was going to run at Punchestown and not to go near Punchestown and/or the horse. He stated that the horse ran in Punchestown on 25th but he had no knowledge as to who had entered the horse in the race. He stated that the ground was good to yielding but that he wasn’t at the race and instead watched it on TV. He stated that in his view the horse was a novice horse and was up against seven to nine year olds in that race whom he described as experienced horses. In relation to the content of the affidavit of Nigel Petrie, Mr. Power when asked about the €25,000 that he stated he had been paid for two piebald horses he replied that he couldn’t recall what it was used for and thinks it was lodged into an account. He agreed that his expenditure was even greater than what Detective Garda Petrie had identified in his affidavit.

26. On the final day of the hearing the Court heard evidence from Gordon Elliott, race horse trainer. He confirmed that he trains horses for a living and that he had made two statements to the Bureau for the purposes of these proceedings. He stated that he and Aidan O’Ryan had put up 10% and as far as he was concerned Anthony O’Sullivan owned the other 90%. He said that he made the decision on every race entry, he states that the owner gives him the authority to act and he makes the decision about where to enter and race a horse. He said he has a software system in his office and they check for races. In relation to the horse “Labaik” he described him as having a “quirk in him”, he said sometimes he didn’t like to jump off, he described him (Labaik) as a bit a “boyo” but he said when the horse was bought that there was two to three previous occasions in France that he hadn’t come out of the starting stalls so they “bought him then to take a chance going jumping”. He further stated that “[w]hen he jumped off he was very good and very fast but he obviously was a bit of a boyo and he could stand at the start as well”. He states that after the win in Cheltenham that he took him to Punchestown the following week and that he didn’t jump off. He said then the Bureau came to his yard on a Sunday and it came as a bit of surprise to him. He said he gave a statement on Sunday and on the Monday and the passport was handed over to the Bureau Officers on the Monday. He confirmed that the horse can’t travel without a passport and therefore “Labaik” couldn’t be moved out of the yard. He said the horse didn’t start during the first race that he had been entered in Punchestown after the making of the s. 2 order (25th April, 2017). He said that he ran again on Friday in the Champions Hurdle (28th April, 2017). He was asked to comment or to give his view as to whether the race was an unsuitable race or not and his response was no. He disagreed that anyone should express concern in relation to the nature of the race. He said the horse was the second or third favourite and if he had not hurt himself that day he thinks he would have won the race.

27. He described the injury as a suspensory tendon issue and that he had to have time off since then in order to recover from this injury. He described it as a common injury for race horses, and that it could have happened at home on the gallop or on a racecourse. He described the horse as being in light work. He stated that he couldn't guarantee that he would ever come back 100% but he said it is just a day by day recovery. On cross-examination he confirmed that he made every decision to enter the horse into a race. He said he discussed the entries with Anthony O'Sullivan and Aidan O'Ryan and he said he had no conversation with John Power (otherwise Boylan). With regard to the day in Cheltenham, he said on that particular day he wasn't as keen as the owners to race the horse. He said that Anthony O'Sullivan was very keen for the horse to run and then within days the horse had been entered in a sale in Aintree but that he was not as keen for the horse to go to the sales. He confirmed that the horse was not brought to Aintree for the sale because of the CAB intervention. He explained this was because a horse is not allowed or supposed to travel without the passport.
28. He stated that at the time he asked for the passport to be returned to him for the purposes of racing the horse (the horse having been entered in the race(s) some weeks previously) and that he got the passport on both mornings. The horse took part in both races. He stated that a Bureau Officer called to him and furnished him with the passport and they then collected the passport afterwards. He stated that he was almost certain that they followed the horse to the race. He confirmed that he doesn't normally travel with the horses, that he drives himself and that the passport would have been with the girls who were in the horsebox with the horse. He again stated that it was his decision to enter the horse and to run the horse in the race. He stated that he had spoken to Aidan O'Ryan before the race but he was not certain if he spoke to Anthony O'Sullivan. On re-examination he stated that if the horse was to come back from his injury and was to run a race again and win, that it could potentially be very valuable again.
29. Both the Applicants and the Respondents filed written submissions in support of their respective applications by way of response to the other five applications.
30. With regard to the s. 3 proceedings which are before the Court there was no substantial effort or engagement with the substance of the proceedings. The affidavit pursuant to the s. 9 Order which was sworn and filed by John Power (otherwise Boylan) on 19th September, 2017 and the short affidavit supporting an application for the inspection of the horse (which said application never proceeded) contained nothing by way of financial information or documentary evidence to rebut the claims made on behalf of the Bureau. Albeit, that in the affidavit of 19th September, 2017 Mr. Power indicated that he had won substantial monies on gambling and that a request was pending from Paddy Power Bookmakers in respect of documentation to support this claim. At the hearing and during the course of cross-examination Mr. Power admitted that he would have lost more than he had won over the years. The result of this is that in fact his financial position is even more bleak on the earnings side than that described by Detective Garda Nigel Petrie. The Court notes that Detective Garda Nigel Petrie in his analysis of the period 2013 to 2017 noted that the identifiable or legitimate income of Mr. Power (otherwise Boylan) was

€204,166. The expenditure for this period was identified as €195,149 (excluding the assets which forms the subject of these applications). The analysis did not include a complete figure for day to day expenses and Leonie Kinsella was unclear as to the amounts spent on such expenses. The second named Respondent estimated it at €7,800 per annum which would add a figure of approximately €39,000 to the expenditure identified by Detective Garda Petrie leaving a shortfall of income of an extent of almost €30,000. Added to this shortfall there is a sum of €629,911 expended by the Respondents in or around March, 2015 on the refurbishment of the Forest Hill property. This figure was identified by Mr. Doran in a report exhibited in the affidavit of Lisa McHugh which was sworn on 12th December, 2018. It is noteworthy that no affidavit has been filed during the currency of these proceedings by either Mr. Power (otherwise Boylan) and/or Ms. Kinsella contradicting or even responding to the findings of Mr. Doran. Mr. Power (otherwise Boylan) in the course of the proceedings in oral evidence effectively accepted the figures proffered in respect of expenditure on the house in which he resides with Ms. Kinsella.

31. Regarding the affidavits filed by the Bureau before the Court, the affidavit of the Chief Bureau Officer in particular included a lengthy statement of his direct personal experience of the first named Respondent's involvement in lucrative criminality. He was not cross-examined on these averments. Detective Garda Petrie made averments that Mr. Boylan was involved in criminality. He was not cross-examined on this averment. Garda Marcus Roantree swore an affidavit providing evidence of links between the first named respondent and named identified criminals. He was not the subject of cross-examination. The sole engagement by and on behalf of the first named Respondent with the entirety of this evidence was a simple denial, and he confirmed in oral evidence that he was not saying anything in relation to any of the specifics of the allegations and assertions made against him in the affidavits filed by and on behalf of the Bureau.
32. It seems to me therefore that the grounds for belief evidence set out in the affidavit of the Chief Bureau Officer, as cited in detail at the outset of this judgment are reasonably held. I am satisfied that pursuant to the terms of s. 8 of the Act of 1996 and in accordance with the test laid down by the Supreme Court and in particular by McCracken J. in *McK v. D.* [2004] IESC 31, that there are reasonable grounds for the holding of that belief by the Chief Bureau Officer. I am satisfied that this belief evidence constitutes evidence for the purpose of the Bureau's applications. I say that I am satisfied that this belief evidence taken in conjunction with the first hand evidence put forward by the Bureau Officers and their agents in support of this application constitute a *prima facie* case pursuant to the provision of s. 3 of the Act of 1996.
33. This being the case, the burden of proof under the applicable test shifts to the Respondents. There has been limited engagement to the extent that there has been no substantial engagement with the financial details of this case by and on behalf of the Respondents. It amounts to little more than a denial. The legitimate income such as it is had been fully taken account of in the analysis conducted by Detective Garda Nigel Petrie. There remains a substantial shortfall which leads this Court to the inescapable conclusion

that the assets the subject of these proceedings were acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes the proceeds of crime and further that the property constitutes directly or indirectly the proceeds of crime. I am not satisfied that the Respondents have discharged the burden of proof which rests upon them and I am further satisfied that there will be no serious risk of injustice if the Court was to make the orders as sought by the Bureau.

34. As set out earlier in this judgment Mr. Anthony O'Sullivan through his solicitor indicated at the commencement of the final day of the proceedings that he was withdrawing his application and not proceeding with same. In the circumstances I dismiss that application and strike out the motion of Anthony O'Sullivan in respect of 50% of the proceeds of the HRI account in respect of the race horse "Labaik".
35. With regards to the plenary proceedings the Court observes at this juncture that perhaps if information with regard to the decision to enter "Labaik" in a race meeting at Punchestown on the 28th April, 2017 had been forthcoming at an earlier stage that this matter may not have proceeded in the manner and to extent to which it did. It was not until, and during, cross-examination of the witnesses called on behalf of the Bureau that it was established in evidence before this Court that the decision to enter the horse in the race was effectively taken by the trainer Mr. Elliott and that this decision was then facilitated by members of the Bureau, from Detective Garda McHugh's discussion with her colleagues in the team room to the Chief Bureau Officer's involvement. I found Mr. Elliott to be a truthful witness and a candid witness. He stated in his evidence that as the trainer of a horse, which was placed with him for the purpose of being so trained, that he would make the decision in relation to the selection of a suitable race meeting. The 28th April, 2017 was in his view such a suitable race. I also accept the evidence of the Chief Bureau Officer in relation to the balancing exercise with which he was required to engage in order to decide whether or not the passport should be returned to Mr. Elliott for the purpose of allowing the horse to be run in a race at the meeting at Punchestown.
36. I would note in passing that it came as a surprise to the Court and, it would appear, to the legal practitioners when it emerged that the horse had in fact run on two occasions that week. Albeit that on the first race in which he had been entered he had failed to jump off properly with the rest of the field. It was a matter of concern to the Court that at the time of the moving of the s. 2 application in respect of the HRI account on 3rd May, 2017 that no reference was made to, and no information put before the Court in relation to, the fact that the horse had in fact been run in the preceding week and had suffered an injury. However, I am satisfied with the explanation that has been proffered by and on behalf of the Bureau in that regard. I am satisfied that no disrespect towards this Court was intended. I am satisfied that the officers and in particular the Chief Bureau Officer at all times acted in the best interest of the Bureau and in the best interest of protecting and preserving the value of the asset with which it was charged pursuant to the s. 2 order. It is apparent, and the Court is satisfied from the evidence which the Court heard on foot of the plenary proceedings, that there was no *mala fides* on behalf of the Chief Bureau Officer and/or his officers. I am not satisfied that there was any act of negligence and/or

failure to exercise due care in respect of the horse "Labaik". On the contrary it seems that the extent of the injuries suffered by the horse was exaggerated and that the negligible worth attributed to the horse by Mr. Power during the course of his evidence is equally exaggerated and at a minimum speculative. It was suggested by Mr. Power that the horse would have sold for a substantial sum of monies if offered for sale at the sales at Aintree following his win at Cheltenham. However, it is equally also clear that the horse had a chequered history in relation to previous failures to start or jump off in various races and that the trainer Mr. Elliott was concerned in respect of the risk that a third failure might have resulted in the loss of the horse's entitlement to run at all i.e. that it would be disqualified by the horse racing authorities.

37. In light of the above I am satisfied on the balance of probabilities that there is no substance to the claim brought by John Power (otherwise Boylan) in respect of the alleged damage and/or injury caused to the horse "Labaik" nor is any claim for negligence, misfeasance in public office or otherwise made out.
38. To conclude, I propose to make the s. 3 orders sought by the Bureau in respect of the items scheduled to the notices of motion as set out above. I will make the usual anonymity orders in respect of Revenue Bureau Officer 65 and Social Welfare Bureau Officer 53.
39. For the reasons set out above I also propose to dismiss the plenary proceedings.