

Neutral Citation No: [2023] NIKB 77

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

ICOS No:

Delivered: 19/06/2023

POCA No. 5 of 2020

IN THE HIGH COURT OF JUSTICE OF NORTHERN IRELAND

KING'S BENCH DIVISION

IN THE MATTER OF THE PROCEEDS OF CRIME ACT 2002

Between:

NATIONAL CRIME AGENCY

Applicant

and

AIDAN (AIDEN) GREW

and

NUALA GREW
(No.1)

Respondents/Defendants

Dr Tony McGleenan KC with Mr David McNeill BL (instructed by the National Crime Agency) for the Applicant

Joseph O'Keefe BL (instructed by Phoenix Law Solicitors) for the Respondents

ROONEY J

Introduction

[1] Pursuant to Section 362A of the Proceeds of Crime Act 2002 ("POCA"), the National Crime Agency ("NCA") has brought an application for an Unexplained Wealth Order ("UWO") against both defendants. The application was made ex parte. The purpose of the application for the UWO was to obtain information, in the form of affidavits and documentation from the defendants concerning their interests in 36A Grange Blundel Road, Loughgall, County Armagh.

[2] Although the property in question is in this jurisdiction, the defendants reside in County Monaghan, Republic of Ireland.

[3] On 30 June 2022, the NCA brought an application before me to serve the originating summons for the UWO out of the jurisdiction. The court was provided with the following documents:

- (a) An amended skeleton argument on behalf of the NCA dated 29 June 2022 setting out the relevant law and procedure governing the application. It had been amended at the Court's request to incorporate references to the analogous provisions of the Civil Procedure Rules in force in England and Wales;
- (b) An affidavit sworn by Patrick Crothers, solicitor, dated 3 May 2022, setting out the evidential basis for the application for service outside the jurisdiction;
- (c) An affidavit sworn by Anne Bennett on 3 May 2022 setting out the evidential basis for the substantive UWO application.
- (d) A skeleton argument on behalf of the NCA dealing with the substantive UWO application dated 29 April 2022.

[4] Following oral submissions from Mr McNeill BL, on behalf of the NCA, and having considered the above documentation, I granted the application and made an order to serve the summons out of the jurisdiction. The court directed that service of the summons, and the application was to be as indicated by Patrick Crothers in his affidavit of 3 May 2022, namely, that it would be personally hand delivered by an officer of the Criminal Assets Bureau ("CAB") to the defendants' home address in County Monaghan. The court also indicated that it would be for the NCA to satisfy the court that service had been effected by affidavit evidence.

[5] In an affidavit from Detective Sergeant Brady, An Garda Síochána, it was stated as follows:

"I am a Detective Sergeant in An Garda Síochána and I am also an officer of the Criminal Assets Bureau ("CAB") duly appointed pursuant to Section 8 of the Criminal Assets Bureau Act 1996, as amended. I say that on Tuesday, 19 July 2022 at 11.30 a.m., accompanied by Detective Inspector Thomas Lynch of the Criminal Assets Bureau, I met with Mr Aidan Grew outside Monaghan Garda Station, County Monaghan by appointment. Aidan Grew confirmed to me that he would accept service of any documents for himself and on behalf of his wife, Nuala Grew. I say that I handed Aidan Grew the following material for each defendant:

- (i) Summons in respect of an application by the National Crime Agency for an Unexplained Wealth Order under Sections 362A of the Proceeds of Crime Act 2002.

- (ii) Grounding affidavit of Anne Bennett, Financial Investigator, National Crime Agency.
- (iii) Exhibit AB1 to the affidavit of Anne Bennett, Financial Investigator, National Crime Agency.
- (iv) The National Crime Agency's skeleton argument.
- (v) A draft Unexplained Wealth Order.
- (vi) A schedule of questions.

[6] On 6 September 2022 the defendants entered an unconditional appearance to the originating summons.

Application to set aside service of the Originating Summons

[7] The defendants make an application to set aside their respective appearances and for leave to enter conditional appearances for the purpose of applying to set aside the service of the originating summons outside the jurisdiction.

[8] Essentially, the defendants apply for the following:

- (a) an order to set aside service of the originating summons on the defendants since there is no order of the court granting leave to serve the originating summons outside the jurisdiction;
- (b) in the alternative, an order to set aside the order granting leave to serve the originating summons on the first defendant outside the jurisdiction on the basis that the purported service of the originating summons breached the conditions under which the NCA averred to the court that it would affect service;
- (c) in the alternative, an order to set aside the order granting leave to serve the originating summons on the second defendant outside the jurisdiction on the basis that the purported service of the originating summons breached the conditions under which the NCA averred to the court that it would affect service.

Decision

[9] Following the hearing on 30 June 2022, the NCA omitted to file with the court a copy of the draft order. Accordingly, it was necessary to listen to the recording of the hearing. It is clear from the said recording and now accepted by both parties that the court did make an order granting the application and service of the originating summons outside the jurisdiction. The recording also confirms that service of the summons would be affected in the terms as stated by Mr Crothers in his affidavit dated 3 May 2022.

[10] The affidavit from Detective Sergeant Anthony Brady confirms that personal service was not affected at the home of both defendants in County Monaghan, but rather by appointment with the first defendant at Monaghan Garda Station. Accordingly, the defendants argue that service as directed by the court has not been complied with and the court should set aside service of the originating summons on the defendants. Secondly, even if the court deems service to be good on the first defendant, service was not affected on the second defendant by the applicant's servant or agent. Rather, it is submitted that the purported service on the second defendant was via the first defendant and was in breach of the conditions under which the court granted leave to serve the originating summons.

[11] The defendants refer the court to Order 32, Rule 8 of the Rules of the Court of Judicature 1980 ("RsCJ)" which provide the court with a power to discharge or vary any order which has been made ex parte by a judge or master, including circumstances where it considers that it gave leave under a misapprehension. The defendants submit that on the basis of the above, the conditions proposed by the NCA for service outside the jurisdiction were not complied with and the court granted its order when under a misapprehension as to how the order would be given effect.

[12] The Proceeds of Crime Act 2002 was amended by the provisions of the Criminal Finances Act 2007 which, inter alia, introduced Unexplained Wealth Orders into Part 8 of the 2002 Act on 31 January 2018. The power permitting the High Court to make UWOs was subsequently commenced in Northern Ireland on 29 June 2021. The specific procedural rules for the provision and service of UWOs have not been implemented. However, pursuant RsCJ Order 123, Rules 13 - 16, provision is already in place for applications under Part 8 of the Proceeds of Crime Act 2002, such as production orders, search and seizure warrants and disclosure orders.

[13] RsCJ Order 123, Rule 13 states as follows:

"Title and service of proceedings

13. - (1) Subject to rules 20 and 22, an originating summons under this Part of this Order shall be entitled in the matter of the defendant, naming him, and in the matter of the Act, and all subsequent documents in the matter shall be so entitled.

(2) Any originating summons, or other document, required to be served under this Part of this Order may be served outside the jurisdiction with the leave of the Court."

[14] RsCJ Order 11, Rules 1(1) and Rule 9 provides that service out of the jurisdiction of an originating summons requires the leave of the court.

[15] Having carefully considered the oral and written submissions of the defendants, it is my decision that there has been valid service of the defendants. In my judgment the following is relevant. Firstly, the primary objective of any order

granting leave to serve outside the jurisdiction must be to ensure that provision is made to effect good and proper service of the originating summons. Based on the affidavit from Detective Sergeant Brady, it is clear that the first defendant confirmed that he would accept service of any documents on his behalf and on behalf of his wife. It is not known whether attempts were made to effect service at the property of the defendants in County Monaghan. Whether such an attempt was made is not determinative. What matters is that, according to the affidavit of Detective Sergeant Brady, the first defendant met two officers of the Criminal Assets Bureau at Monaghan Garda Station, County Monaghan by appointment. Service was duly affected.

[16] No affidavits have been filed on behalf of the defendants taking any issue with the affidavit of Detective Sergeant Brady. No affidavit is filed by the second defendant stating that the first defendant did not have her authority to accept service of the documents. Irrespective as to the challenged mode of service, it was always open to the second defendant to bring a challenge to the stated confirmation made by the first defendant that he would accept service of any documents on behalf of the second defendant.

[17] The defendants have entered unconditional appearances to the originating summons. No legal authorities have been cited to this court in support of the contention that the court should exercise its power under RsCJ, Order 32, Rule 8 or its inherent jurisdiction to discharge or vary its order. In the circumstances of this case, the lack of any persuasive authority is not surprising.

[18] The defendants' application to set aside their respective appearances and for leave to enter conditional appearances for the purpose of applying to set aside the service of the originating summons outside the jurisdiction is hereby refused.