



IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. SU2020CV03090

**In the matter of an Application for
Customer Information Order pursuant
to section 119 of the Proceeds of
Crime Act 2007**

**Proceeds of Crime Act- Customer Information Order- Whether reasonable grounds
to suspect offence has been, is being or, is about to be committed- applicable test.**

Heard Ex Parte: 25th March and 22 April, 2021.

By Zoom.

Mr. Gwayne Gray for Asset Recovery Agency.

Coram: Batts J.

- [1] In order to preserve the confidentiality of this matter no parties or entities will be identified by name.
- [2] The applicant seeks orders called "*Customer Information Orders*" from "*all financial institutions*" pursuant to section 119 of the Proceeds of Crime Act 2007. The Without Notice Application was filed on the 17th April 2020 and amended on the 30th October 2020. The application is supported by affidavits of Stuart Gordon, one filed on the 17th April 2020 and, a further affidavit filed on the 30th October 2020.
- [3] On the 25th March 2021 having heard the submissions of counsel, and after perusing the application and all documents, I dismissed the application. On the 22nd April 2021 an Amended Without Notice Application for Leave to Appeal came on for hearing before me. This application was also dismissed. My reason for

dismissing the application is the same as my reason for refusing leave to appeal and, therefore, can conveniently be stated-at the same time.

[4] The Applicant seeks these orders to assist with the investigation of an individual and an entity with respect to certain suspected money laundering offences. However, there is nothing, in the documents placed before me, to create a reasonable suspicion that the crime of money laundering, or any crime, is being or has been committed by the subjects of the investigation. On the contrary, and when the statements collected are reviewed, the individuals involved provide a perfectly reasonable and credible explanation for the sums received and the amount of disbursement. There is nothing to suggest that the work contracted for has not been performed. I will say no more about the detailed content of the affidavits in order to preserve confidentiality and in the event some other court sees the matter in some other way.

[5] It suffices, I think, to say that section 119, so far as relevant to my decision, provides;

"119.-(1) A Judge may, on an application made to him by an appropriate officer, make a customer information order if the Judge is satisfied that each of the requirements specified in section 121 for the making of the order is fulfilled.

(2) The application for a customer information order shall state that the order is sought –

(a) for the purposes of –

(i) a forfeiture investigation or a money laundering investigation being carried on in respect of a person specified in the application; or

(ii) a civil recovery investigation being carried on in respect of property specified in the application, and a person specified in the application appears to hold the property; and

(b) against one or more financial institutions specified in the application.

(3) An application for a customer information order may specify –

- (a) *all financial institutions;*
 - (b) *a particular description, or particular descriptions of, financial institutions; or*
 - (c) *a particular financial institution or particular financial institutions.*
- (4)
 - (5)
 - (6)"

The provision is intended to aid an investigation. It is not intended to allow investigators to go snooping around in search of a crime where there is no evidence to support a reasonable suspicion that a crime has been, is being, or will be committed. The provision impacts the privacy rights of individuals in Jamaica's Constitution and is not therefore to be given any more liberal interpretation than is absolutely necessary.

[6] In this regard I adopt the words of Lord Hughes in **Assets Recovery Agency (Ex-parte) (Jamaica) [2015] UKPC 1 (PC Appeal No. 00036 of 2014)**, a judgment delivered on the 19th July 2015, at paragraph 21:

"These conclusions do not mean that these evidence gathering orders, including a CIO, are available to the prosecution or Agency whenever they want them..."

The role of the Judge is to ensure that the order is justified. In the context of a CIO that means:

- (a) *In both forfeiture and money laundering investigations, ensuring that the condition in sections 121 (a) or (c) is met and there are objectively reasonable grounds for believing, as the case may be, that the person specified has benefited from his criminal conduct or has committed a money laundering offence, this will normally mean asking the applicant to show what criminal conduct, or what money laundering offence is believed to have been committed and requiring a brief outline of the grounds for suspecting benefit or money laundering, as the case maybe.*

(b) *In the case of a forfeiture investigation, ensuring that the dominant purpose for which the order is sought is the ancillary forfeiture enquiry and not the underlying criminal enquiry; this will normally mean asking the applicant how far the criminal enquiry has got and why the order sought will help, not the criminal enquiry, but the forfeiture enquiry, it will often also mean asking what, if any proposals, are entertained in relation to a restraint order.*

(c) *In both cases, testing whether the condition in section 121 (d) is met, namely, that the information sought is likely to be of substantial value to the relevant investigation; this is likely to mean asking how it will help.*

(d) *In both cases, testing whether the condition in section 121 (e) is met, namely, that there are reasonable grounds for believing that it is in the public interest for the information sought to be ordered to be provided; this means performing a balance between the public interest in the detection of money laundering offences or the recovery of the proceeds of crime (as to case may be) and the legitimate interests of the individual whose affairs are in question to preserve the privacy of the affairs."*

- [9] Suffice it to say when I asked counsel for the Applicant to point me to the evidence supportive of a reasonable ground to believe that a crime had been, is being, or was about to **be** committed he failed to do so. The legislation is not for use by the authorities to go on fishing expeditions and trolling through someone's bank accounts in search of crime where there is no reason to suspect, on objective grounds, that one has been, is being, or is about to be committed.
- [10] In the result therefore I dismissed the application. Leave to Appeal ought only to be granted if there is some real, not fanciful, prospect of success on appeal. I do not see that there is. The application for Leave to Appeal was therefore also refused.