

UPDATE

Guernsey court found monies in bank account not the proceeds of crime

Update prepared by Christopher Edwards and Iona Mitchell (Guernsey).

In *BD Limited v Investec Bank (Channel Island) Limited* [2022] GRC103, the Bailiff found that the bank should comply with the customer's instruction to transfer the funds away and close the account.

Introduction

Under Guernsey's anti-money laundering and counter terrorist financing regime, it is an offence for a business to deal with property where it knows or suspects that the property represents the proceeds of criminal conduct. Obtaining Guernsey's Financial Intelligence Service (FIS)'s consent to the proposed act provides a statutory defence to the act in question. If the FIS does not provide consent, the business is unable to deal with the assets without the risk of committing a criminal offence.

In a recent case, the account holder brought a private law action against the bank to establish that the monies were not the proceeds of criminal conduct, allowing the business to deal with the property with the protection of a court order.

Background

The Plaintiff held a bank account with the Defendant and the monies were contained in three sub-accounts. Mr Stroll, the ultimate beneficial owner of the Plaintiff, was connected with an entity that had been convicted of criminal offences relating to services provided to an online gambling business and deceptive telemarketing and direct mail practices. Mr Stroll was remunerated by the gambling business as a consultant and funds paid into the accounts were said to be from that source.

The Defendant suspected that the funds paid into the accounts were the proceeds of crime and its MLRO filed a Suspicious Activity Report (SAR) with the FIS. Prior to that, the Defendant had given the Plaintiff notice that its accounts would be closed because it no longer wanted customers involved in the online gambling industry. After the Plaintiff had difficulty finding alternative banking arrangements, the Defendant obtained FIS consent to re-activate the accounts (which had already been deactivated in anticipation of closure), maintain them, and take its charges for doing so.

When the Plaintiff found an alternative bank, the Defendant sought FIS consent to carry out the Plaintiff's instructions to transfer the monies to the new bank. The FIS refused consent and, without this protection, the Defendant did not comply with the transfer instructions.

Proceedings

The Plaintiff brought proceedings against the Defendant in the Royal Court seeking to establish that the monies in the account were not the proceeds of crime. The test to be applied in these circumstances, set out in *Liang v RBC Trustees (Guernsey) Limited* 2018 GLR 189, was not in dispute. The Defendant must establish the suspicion and, in the present case, the Plaintiff accepted it was more than fanciful. The burden then shifted to the Plaintiff to establish that the monies were not the proceeds of crime.

The Bailiff considered the evidence as to the provenance of the monies in the accounts and was satisfied, on the balance of probabilities, that none of the amounts standing in the accounts were the proceeds of

criminal conduct. Accordingly, he granted the declarations to this effect sought by the Plaintiffs and ordered the Defendant to comply with the Plaintiff's instructions to transfer the monies to the new bank within 14 days.

Comment

This decision should provide comfort to businesses who, in the absence of FIS consent, may deal with assets subject to a SAR by obtaining the protection of a court order. In the present case, the parties agreed that the Plaintiff would pay the Defendant's costs of the provenance issue on the indemnity basis, which meant that the Defendant was not out of pocket, at least in relation to legal fees and court costs. Being sued is not usually a welcome outcome, but in cases such as the above, it can provide a practical means to resolve what could otherwise be an ongoing stalemate.

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