



No. VLC-S-S-228350
Vancouver Registry

In the Supreme Court of British Columbia

Civil Forfeiture Action In Rem Against

\$129,880.00 in Canadian currency seized by the Southeast District RCMP on March 28, 2022
(the “**Money**”), and its proceeds

Between

Director of Civil Forfeiture

Plaintiff

and

The Owners and all Others Interested in the Money,
in Particular, Coleten Tyler C.S. Garnier and Irfan Suri, Jr.

Defendants

NOTICE OF APPLICATION

Name of applicant: the plaintiff, Director of Civil Forfeiture

A **WITHOUT NOTICE** application will be made by the applicant, Director of Civil Forfeiture, to the presiding judge or master at the courthouse at 800 Smithe Street, Vancouver, BC at 9:45am on 03/APR/2023 for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. Judgment is granted in favour of the plaintiff, Director of Civil Forfeiture (the “**Director**”), and the \$129,880.00 in Canadian currency seized by the Southeast District RCMP on March 28, 2022 (the “**Money**”), and its proceeds, is forfeited to His Majesty the King in Right of the Province of British Columbia (the “**Government**”) in accordance with the *Civil Forfeiture Act*, SBC 2005, c. 29 (the “**Act**”).
2. The effective date of forfeiture of the Money to the Government is October 17, 2022, the date the Director commenced proceedings under s. 3 of the *Act*.
3. Any person in possession of the Money must forthwith upon receiving notice of this order cause the Money to be paid to the Director.
4. Upon receiving the Money, the Director shall pay the Money into the civil forfeiture account of the consolidated revenue fund pursuant to s. 26 of the *Act*.

Part 2: FACTUAL BASIS

The Defendants

1. The defendant, Coleten Tyler C.S. Garnier (“**C. Garnier**”), whose occupation is unknown to the plaintiff, has a last known address of 1643 42 Street NW, Edmonton, Alberta.
2. The defendant, Irfan Suri, Jr. (“**I. Suri**”), whose occupation is unknown to the plaintiff, has a last known address of 1820 25 Street NW, Edmonton, Alberta.

Procedural History

3. On October 17, 2022, the Director filed a notice of civil claim in the Vancouver Supreme Court Registry initiating this proceeding
4. On October 27, 2022, the defendants were served with the Director’s notice of civil claim via their counsel, Daniel Song (“**D. Song**”), who acknowledged receipt and delivery that same day.

Affidavit #1 of Leah Miller made January 24, 2023 (“Miller #1”), para. 3, Ex. “A” and “B”

5. On October 28, 2022, D. Song wrote to Sarah Nelligan (“**Ms. Nelligan**”), counsel for the Director, requesting an extension to December 7, 2022, to file a response to civil claim on behalf of the defendants. Ms. Nelligan responded to D. Song granting the extension to December 7, 2022.

Miller #1, para. 4, Ex. “C” and “D”

6. By email dated December 18, 2022, D. Song advised that the defendants were seeking new counsel.

Miller #1, para. 5, Ex. “E”

7. Neither the Director nor counsel for the Director have received communication from the defendants or anyone on their behalf since December 18, 2022.

Miller #1, para. 6-7;

Affidavit #1 of C. Millwater made February 14, 2023 (“Millwater #1”), para. 3

8. To date, neither of the defendants have filed or served a response to civil claim.

Miller #1, paras. 7-8, Ex. “F”

9. The plaintiff knows of no person other than the named defendants who may have a registered or unregistered interest in the Money.

Millwater #1, para. 4

10. Further, the plaintiff:

- a. knows of no fact that would constitute a defence to this claim; and
- b. knows of no reason why the default judgment being sought should not be granted.

Millwater #1, para. 5

Deemed Admissions

11. By default to the notice of civil claim, the following facts are deemed to have been admitted by the defendants:
 - a. On March 28, 2022, at approximately 7:03 pm, a 2020 Toyota Camry bearing British Columbia licence plate KV6 56B (the “**Vehicle**”) was observed by officers of the Southeast District RCMP (the “**RCMP**”) traveling above the posted speed limit on Highway 5 at or near Valemount, British Columbia;
 - b. At all material times, the Vehicle was a rental vehicle owned by Enterprise Rental Company;
 - c. The RCMP subsequently conducted a traffic stop of the Vehicle and found that C. Garnier was the driver and I. Suri was the sole passenger;
 - d. The defendants were detained for a possession of a controlled substance for the purpose of trafficking investigation;
 - e. The Vehicle was subjected to a police service dog (“**PSD**”) examination. The PSD provided a positive indication for the presence of a controlled substance;
 - f. The defendants were arrested for possession of a controlled substance for the purpose of trafficking;
 - g. The RCMP searched the Vehicle and located, among other things, a black bag containing the Money which was bundled and wrapped with elastic bands;
 - h. The Money (being the sum of \$129,880.00 in Canadian currency) was discovered as follows:
 - i. 16 bundles of currency totaling \$89,300.00;
 - ii. four bundles of currency totaling \$17,500.00;
 - iii. three bundles of currency totaling \$10,765.00;
 - iv. two bundles of currency totaling \$6,765.00;
 - v. one bundle of currency totaling \$5,000.00; and
 - vi. \$550.00 of loose currency;

- i. The Money was bundled or packaged in a manner not consistent with standard banking practices;
- j. The defendants were arrested for possession of the proceeds of crime and the RCMP seized the Money;
- k. Also located in the Vehicle were 10 cellular telephones;
- l. On April 7, 2022, the Money was subjected to PSD examination. The PSD provided a positive indication for the presence of a controlled substance;
- m. On May 4, 2022, the Money was analyzed by the Cash Recording and Tracing System, which is a process to record, trace, and report on banknote serial numbers that are involved in police investigations nationally. Upon analysis, five bank notes in the Money were determined to be associated to currency that had been tracked by police and utilized to commit criminal offences;
- n. The Money is proceeds and an instrument of unlawful activity;
- o. The Money has been used by the defendants to engage in unlawful activities which variously resulted in, or were likely to result in, the acquisition of property or an interest in property, or caused, or were likely to cause serious bodily harm. To the extent that those unlawful activities (collectively, the “**Unlawful Activity**”) are known to the Director, they consist of:
 - i. possession of the proceeds of crime contrary to the Criminal Code of Canada, RSC 1985, c. C-46 (the “*Criminal Code*”);
 - ii. laundering the proceeds of crime contrary to the *Criminal Code*; and
 - iii. failure to declare taxable income contrary to the *Income Tax Act*, RSC 1985, c. 1;
- p. The defendants obtained the Money by participating in the Unlawful Activity;
- q. The defendants intended to use the Money to engage in the Unlawful Activity; and
- r. If the Money is released to the defendants, it will likely be used for the Unlawful Activity.

Part 3: LEGAL BASIS

Nature of Application

1. This is an application for default judgment under sub-rules 3-8 (9) and (10) of the *Supreme Court Civil Rules*.

2. The Director is seeking judgment against the Money on the basis that it is both proceeds and an instrument of past unlawful activity. The Director is not seeking judgment based upon the future use of the Money as an instrument of unlawful activity.
3. The Director's claim is not one referred to in sub-rules (3), (5) or (6) of Rule 3-8. The Director is therefore permitted, pursuant to sub-rule 3-8(9), to apply for judgment against the defendant under sub-rule 3-8(10).

British Columbia (Director of Civil Forfeiture) v. Kingdon, 2011 BCSC 1501 ("Kingdon"), at paras. 58-64

4. Applications for default judgment by the Director must be heard in regular chambers and may not proceed by desk order.

Kingdon, at para. 78

5. Under Rule 3-8(1), a plaintiff may proceed against a defendant for default judgment if the defendant has not filed and served a response to civil claim and the period for such filing and service has expired.
6. Counsel for the defendants acknowledged service and delivery of the Director's notice of civil claim and the prescribed timeline for filing a response to civil claim has expired.
7. In determining whether a cause of action has been made out in a default application, facts alleged in the notice of civil claim are deemed admitted in the absence of a response. The defendant is deemed to have admitted the facts alleged in the Director's notice of civil claim.

Director of Civil Forfeiture v. Vernie (17 August 2012), Victoria 12-1554 (SC), at para. 3; Kingdon, at paras. 73-74

8. Pursuant to these deemed admissions, the Money is both proceeds and an instrument of unlawful activity.

The Civil Forfeiture Act

9. Section 3 of the *Act* permits the Director to apply to this court for an order forfeiting to the Government property located in British Columbia fitting the *Act*'s statutory definition of "proceeds of unlawful activity" or "instruments of unlawful activity".
10. Section 19.03 of the *Act* states that "proof that cash or negotiable instruments, with a total value greater than \$10,000 were found ... (b) ... bundled or packaged in a manner not consistent with standard banking practices is proof in the absence of evidence to the contrary, that the cash or negotiable instruments are proceeds of unlawful activity".
11. The Money was "bundled or packaged in a manner not consistent with standard banking practices", a fact that the Defendants are deemed to have admitted by choosing or neglecting to file a response to civil claim. Based on this and the other deemed admissions outlined above, the Money is both proceeds and an instrument of unlawful activity.

12. Section 5 of the *Act* provides that “subject to section 6” (for proceeds), and “subject to section 6 and 13(1)” (for instruments), if a court finds the subject property to be either proceeds or an instrument of unlawful activity, it must order forfeiture.
13. Section 6(1) of the *Act* provides that if a court determines that the forfeiture of property or the whole or a portion of an interest in property under the *Act* is clearly not in the interests of justice, the court may refuse to issue a forfeiture order, limit the application of the forfeiture order, or put conditions on the forfeiture order.
14. Whenever the court is asked to consider forfeiture pursuant to s. 5 of the *Act*, s. 6 must be taken into account, and the judge must consider whether forfeiture clearly is not in the interests of justice.

***British Columbia (Director of Civil Forfeiture) v. Crowley*, 2013 BCCA 89 (“Crowley”), at para. 63**

15. However, the *Act* places an “evidentiary or practical burden on the defendant to present evidence with respect to the interests of justice”. Indeed, much of the relevant evidence that the court might be asked to consider on the question of interests of justice is likely to be solely in the knowledge or control of the defendant. Failure to adduce such evidence may be at his or her peril.

***Crowley, supra*, at para. 58**

16. Furthermore, relief from forfeiture under s. 6 is circumscribed to those rare cases where forfeiture would be manifestly harsh and inequitable. Indeed, relief is very much the exception and should be granted sparingly.

***British Columbia (Director of Civil Forfeiture) v. Wolff*, 2012 BCCA 473 at para. 38;
Director of Civil Forfeiture v. Hurtubise, 2012 BCSC 1368 at para. 267**

17. In the present case, the Director submits that the factors the court must take into consideration in assessing whether a forfeiture order is clearly not in the interests of justice militate against the granting of this remedy.

***British Columbia (Director of Civil Forfeiture) v. Kazan*, 2013 BCSC 388, at paras. 88-89**

18. The Director submits that this case is not one in which the information available establishes full forfeiture would be manifestly harsh or inequitable:
 - a. The Money was found bundled or packaged in a manner not consistent with standard banking practices. Accordingly, as per s. 19.03(b) of the *Act*, that, in the face of no evidence to the contrary, is proof alone that the Money is proceeds of unlawful activity;
 - b. Further, on the admissions, the Money is deemed to be both proceeds and instruments of unlawful activity;
 - c. There is nothing to indicate that the defendants have not profited from the Unlawful Activity; and

- d. On the admissions, the Money was obtained from the Unlawful Activity. It is in the public interest to remove the profit motive of participating in unlawful activity.
19. The Director knows of no other persons who may have either a registered or unregistered interest in the Money.
20. Finally, the Director knows of no fact that would constitute a defence to this claim, nor or any reason why default judgment should not be granted.
21. Generally, the Director doesn't seek costs on default; however, they reserve the right to do so if the application is opposed.

Part 4: MATERIAL TO BE RELIED ON

1. Notice of civil claim, filed October 17, 2022.
2. Affidavit #1 of C. Millwater, made February 14, 2023.
3. Affidavit #1 of Leah Miller, made January 24, 2023.
4. Affidavit of Attempted Service of Garry Bidniak, made November 1, 2023.
5. Affidavit of Attempted Service of Garry Bidniak, made November 1, 2023.

The applicant estimates that the application will take 10 minutes.

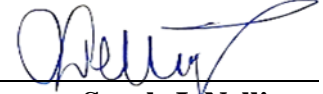
This matter **is** within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to the application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on the person;

(iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7 (9).

Date: 27/FEB/2023



Sarah J. Nelligan
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To be completed by the court only:

Order made

in the terms requested in paragraphs of Part 1 of this notice of application

with the following variations and additional terms:

.....
.....
.....

Date:

[dd/mmm/yyyy]

Signature of Judge Master

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts
- none of the above