

SESSION 2: GROUP WORK

Money Laundering

Assume that the State leads evidence to establish the above alleged facts. Mr Reuben and Mr Ono give the following evidence.

Mr Reuben

The money he received from the company in Australia was a show of appreciation because after the product began being used by the Department other private and public contractors started to order it. He did not ask for the money and he honestly believed that he was entitled to it. The company is a private company. He did not intend to defraud anyone by receiving it.

Mr Ono

Mr Ono gives evidence that he is a hardworking businessman. He met with Mr Reuben in an effort to persuade him to invest in the Super Fix product. He has been living in Australia for a long time and needed to crack the local market. The best way to do that was through the Department of Works and the best way to do that was to persuade its Secretary in person that the product was a good one. He did not agree to give Mr Reuben any benefit in return.

He did not launder the proceeds of the contracts. He did not receive it. His company did. The contracts were in the company's name and paid to its account. There is nothing unusual about the fact that monies were transferred in tranches of \$999,999. The international daily allowance for overseas remittance is \$1m and he was trying to send the maximum possible in the shortest period of time.

The product was supplied in accordance with the contracts. It is a good product. The prosecution have failed to show otherwise.

The \$200,000 sent by Hard Work in August to Mr Reuben was months after the deal. Once other companies and departments heard about how good Super Fix was business was booming. The company wanted to show its appreciation to Mr Reuben. He is a true leader.

Group Work: Has the prosecution established the guilt of each of Mr Reuben and Mr Ono in Count 4?

You have been broken into groups.

Using the Australian provisions referred to by Justice Wigney, or the applicable offence provision in one of your jurisdictions consider whether the offence of money laundering has been proven against each accused.

Remember:

In determining whether or not the prosecution has established the guilt of the accused beyond reasonable doubt, it is necessary to ask:

- What are the elements of the offence?
- What is the evidence in support of each of those elements?
- Does the evidence establish or prove each of the elements beyond reasonable doubt taking into account any possible defence?



Consider:

- What are the proceeds of crime or criminal property/what is the criminal conduct from which it is derived?
- Did the accused deal with the proceeds of crime/criminal property?
- Did the accused know or ought reasonably to have known it was criminal property?

Suggested Answers

In general terms, a money laundering offence will require the prosecution to prove beyond reasonable doubt that the accused:

- *Dealt with*
- *Property*
- *That is the proceeds of crime/criminal property*
- *With a particular intention, eg knowing, believing, that it is the proceeds of crime/criminal property*

Legislation will often include a less serious offence of dealing with property reasonably suspected of being criminal property, such that the prosecution must prove beyond reasonable doubt that the accused:

- *Dealt with*
- *Property*
- *In circumstances where it is reasonable to suspect that the property is proceeds of crime/criminal property*

But here Count 4 alleges that Mr Ono dealt with criminal property in the sum of K9.7m by receiving it into the account of Super Fix Ltd when he knew or ought reasonably to have known that it was criminal property.

Dealt with

- *“Dealing” is usually defined broadly, eg concealing, transferring, receiving, acquiring, using, possessing etc*
- *In this case it is alleged that Mr Ono dealt with the property by receiving it into his company’s bank account.*
- *As to the fact it was his company’s account it is an interesting argument but receiving should be given its ordinary meaning. The legislation will not usually require that the accused received title to the property.*
- *The evidence establishes that K9.7m was received into a bank account of which the accused was the sole signatory and over which he had control. He received it.*

Property

- *The property alleged in the indictment is K9.7m.*
- *Property is usually broadly defined, eg all assets, tangible, intangible, including enforceable rights of action, bank credits etc*



- The \$9.7m credited to the company bank account is property.

Proceeds of Crime/Criminal Property

- In general terms, to be the proceeds of crime, the property must derive wholly or in part, directly or indirectly, from criminal conduct, that is conduct which constitutes an offence – this offence is sometimes referred to as the predicate offence.
- The predicate offence in this case is official corruption/bribery.
- IE the K9.7m was criminal property for being derived from the contracts that were awarded as a result of the corrupt agreement by Mr Reuben to receive \$200,000 on account of awarding 20 contracts in favour of Super Fix Ltd in the discharge of Reuben's official duty as Secretary of the Department.
- See below re official corruption/bribery

Knowing that it is the proceeds of crime

- Assuming that the prosecution established that Mr Reuben agreed to receive and Mr Ono offered to give \$200,000 on account of awarding the contracts to Super Fix Ltd then Mr Ono knew that the property received into the account resulted from that offence.

Re Official corruption/bribery

On Count 1:

- Mr Reuben whilst employed in the Public Service as the Secretary of the Department
- Charged by virtue of that employment with the duty of supervising generally the operation of the Department, including the procurement of goods and services
- Agreed to receive: The offence is complete at the time Reuben agreed to receive the money. Can it be inferred that he agreed to receive before contracts paid? And if so, when?
 - Splitting of contracts under financial limit
 - Outside normal procurement process
 - Untested product
 - Contracts, poorly drafted, outside Office of Legal Counsel etc.
 - Without tender
 - Certificates of Inexpediency issued without Board approval by Ms Masi, without departmental request
 - Appointment of Ms Masi's daughter
 - Memo directing immediate payment upon approval of requisitions
 - False statement about demand by Provincial Works Managers
 - Five days later monies paid
 - Meetings, messages during period with both Masi and Ono
 - Payment of \$200000 from overseas company to Reuben's personal bank account
- Property, \$200,000
- For himself
- On account of any thing done – the award of 20 contracts to Super Fix Ltd
- In the discharge of the duty of supervising procurement
- Corruptly
 - Consider meaning of "corruptly" in your jurisdiction. May mean dishonesty or improperly depending on case law. In either case, it was corrupt to award government contracts for personal gain in the above circumstances. Given the



experience, training, and position of Mr Reuben he must have appreciated that it was dishonest/improper for him to do so.

Similar analysis re Count 3 BUT for consider what is the effect, if any, of the fact that the prosecution charged “gave” as opposed to “agreeing to give”?

Other scenarios for discussion if time permits

A person purchased a \$3m property in your capital city despite only earning \$50,000 a year as a public servant.

Suggested Answer

The issue for this and the next question is whether the prosecution can establish beyond reasonable doubt the requisite intention for the offence, particularly if the prosecution charge knowledge or belief. It may depend on what other evidence is produced about the conduct and the particular individual concerned.

The prosecution may also charge as an alternative or the legislation may allow for the court to find the less serious offence of dealing with suspected proceeds of crime, which is less difficult to establish.

Assuming the prosecution prove with that offence the accused here:

- *Dealt with property by purchasing a property*
- *The property is \$3m*
- *In circumstances where it is reasonable to suspect that the property is proceeds of crime/criminal property – this is an objective test*
- *le on its face the value of the property appears grossly disproportionate to the accused’s lawful income*
- *NB. It will usually be a defence that the accused had no reasonable grounds for suspecting that the property was proceeds of crime. The legislation may require the accused to prove this to the balance of probabilities.*

A person is apprehended with \$400,000 in cash in a sports bag in the boot of their car. They are unemployed.

Suggested Answer

The accused:

- *Dealt with property by possessing it*
- *The property is \$400,000*
- *In circumstances where it is reasonable to suspect that the property is proceeds of crime/criminal property – this is an objective test*
 - *Again, value grossly disproportionate to income given that accused is unemployed.*
 - *Kept in suspicious circumstances – very large amount of cash, in a sports bag, in the boot of car*
- *NB. It will usually be a defence that the accused had no reasonable grounds for suspecting.*

