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

Delivered: **17/12/2007**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

**IN THE MATTER OF WILLIAM JOSEPH LOVELL,
PAULINE MARIE LOVELL, MARGARET LOVELL and
WILLIAM LOVELL and
THE PROCEEDS OF CRIME ACT 2002**

Between:

THE DIRECTOR OF THE ASSET RECOVERY AGENCY

Plaintiff;

-and-

**WILLIAM JOSEPH LOVELL and PAULINE MARIE LOVELL
and MARGARET LOVELL and WILLIAM LOVELL**

Defendants;

COGHLIN J

[1] This is an application by the Assets Recovery Agency ("the Agency") for a recovery order in accordance with Part 5 of the Proceeds of Crime Act 2002 ("POCA") under the terms of which the Agency seek to vest certain properties held by or on behalf of the defendants in the Trustee for Civil Recovery. The application has been made by the Director of the Agency ("the Director") under the provisions of Section 266 of POCA.

Representation

[2] The application was listed before me for hearing at the Royal Courts of Justice on 19 September 2007. Upon that occasion the Agency was represented by Mr Lockhart QC and Mr Aiken while Mr Doran appeared on

behalf of the second-named defendant and Mr Lannon represented the third and fourth-named defendants. Mr William Joseph Lovell appeared in person and was unrepresented by either counsel or solicitor.

[3] The substantive hearing in this case was previously listed on 30 May 2007 and, shortly before that date, the first-named defendant dispensed with the services of the firm of solicitors by which he had been represented since the initiation of the proceedings by the Agency in January 2006. That firm of solicitors then formally came off record and on 30 May 2007 Mr Lovell appeared in person and informed the court that he was not prepared to represent himself but had not as yet secured alternative legal representation. The first-named defendant was then given an opportunity to make arrangements for alternative representation and he reappeared before the court on 31 May 2007. Upon that occasion he informed the court that he had made arrangements to speak to a solicitor in Dublin on 1 June with regard to providing representation. He was informed of the difficulties which might arise if he were to be represented by a solicitor outside the jurisdiction of the Northern Ireland courts but it was made clear to him that, ultimately, his legal representation was a matter of personal choice. The case was listed for mention on 7 June 2007.

[4] On 7 June 2007 Mr Lovell again appeared in person and informed the court at approximately 10.30 am that his solicitor had not yet arrived. Accordingly the first defendant was given an opportunity to make enquiries as to the whereabouts of his solicitor and he was directed to attend in court with his solicitor at 12.55 am when a date would be fixed for the hearing. At 12.55 am Mr Lovell returned to court stating that his solicitor still hadn't appeared. Mr Lovell was given a further opportunity to telephone his solicitor and, when that was unsuccessful, he was directed to leave details of his solicitor's business address and telephone numbers with the court office. Mr Lovell was then informed that the case would be adjourned to 19 September 2007 when it would proceed and that, in the meantime, he should take whatever steps he considered fit to secure effective legal representation.

[5] On 7 and 8 June 2007 the court office made a number of attempts to telephone the Dublin solicitor whose office address and telephone numbers had been provided to the court by the first-named defendant. On 8 June 2007 the court office made contact with a representative of the solicitors' firm who stated that he had just come "on record" on 7 June 2007 and that he would send in a letter explaining this as well as providing an address for service in Northern Ireland. The solicitor was made aware of the fact that the substantive hearing had been fixed for 19 September 2007. The court office received no further contact from the Dublin solicitor prior to 19 September 2007. On 12 September 2007 a representative of the Agency telephoned the office of the Dublin solicitors and was informed by the same representative that he was in the process of appointing an agent in Northern Ireland but he

was unable to provide a name as the matter was being dealt with by his secretary. Upon that occasion he was reminded that the hearing had been fixed for 19 September.

[6] On 19 September 2007 the case was listed before me and Mr Lovell again appeared unrepresented. He informed me that neither his solicitor nor counsel had appeared to act on his behalf. In view of the previous history the first-named defendant was asked what arrangements he had made since his last appearance in court. He informed the court that he had attended the office of the Dublin solicitors upon a number of occasions during the Summer and that he had been informed by the named representative that there would be no difficulty in arranging for him to be represented by solicitor and counsel at the hearing on 19 September. In such circumstances I allowed some further time for the first-named defendant to contact his solicitor. When he reappeared before the court the first-named defendant stated that he had telephoned his Dublin solicitor who had informed him that he had not attended the hearing because he was not entitled to practice in Northern Ireland.

[7] I gave careful consideration to all of the circumstances relating to the first-named defendant's account of the steps that he had taken to secure alternative legal representation and familiarised myself with the log notes relating to the previous explanations that he had tendered to the court. In the circumstances I concluded that the explanations put forward by the first defendant were simply not credible and that the likelihood was that either he had not made any real attempt to secure representation or that he had deliberately left any such attempt to the last minute with a view to persuading the court that a further adjournment should be granted. September 19 was the second occasion upon which the Agency had attended together with its witnesses including the Interim Receiver, who had travelled from London. The case had been fixed peremptorily to proceed on 19 September and, prior to that date, neither the Agency nor the court had been given any indication that the first-named defendant had failed to secure effective legal representation for the purpose of the hearing. I considered that the first-named defendant had been given an adequate opportunity to make arrangements for whatever legal representation he wished to secure and that, in fact, he was simply engaging in a course of conduct aimed at the continuing deferment of the hearing. In such circumstances, balancing the rights of both parties, I determined that the case should proceed. I offered the first-named defendant the opportunity to represent himself confirming that I would do all that was reasonably in my power to assist him during the course of the hearing. The first-named defendant rejected such an opportunity and left the court taking no further part in the hearing.

[8] The Agency reached agreed settlements with the second, third and fourth defendants and the claim then proceeded against the first defendant alone.

The background facts

[9] The facts upon which the Director seeks to rely have been set out in the affidavit sworn on 13 January 2006 by John Davidson who is a financial investigator employed by the Agency and authorised to exercise the powers available to the Director under Parts 5, 6, 8 and 10 of POCA together with the report from the Interim Receiver (“the Receiver”) dated 22 July 2005.

[10] The first defendant has a substantial criminal record commencing, after the omission of “spent” convictions for the purposes of these proceedings, on 8 June 1981. His record includes a number of convictions for theft, burglary, attempted theft, conspiracy to steal and handling stolen goods. Detective Sergeant McComb, who is a member of the Economic Crime Bureau of the Police Service of Northern Ireland, gave evidence of the facts relating to the first defendant’s conviction of the offence of burglary and theft on 8 April 2002 when two men forced their way into the home of a 76 year old man at Fintona and stole a sum of cash whilst a third man waited in a car outside the premises. On the same date a vehicle with the same registration number as the car used in the offence was stopped by the police in Armagh and the first-named defendant was found to be driving the vehicle. Two other men were present in the vehicle and all three roughly fitted the description of men said to have been involved in the offence. A blue baseball bat was found in the vehicle similar to one seen at the scene of the offence by a witness. All three pleaded guilty and were sentenced to 3 years imprisonment suspended for 3 years. In a replying affidavit dated 25 November 2006 the first-named defendant accepted that the criminal record attributed to him and exhibited to the affidavit of John Davidson was correct.

[11] On 25 September 2004 Ms Louise Rivers was appointed as the Receiver and, having completed her investigations, she provided a report for the court in July 2005 in accordance with Section 255 of POCA. During the course of her investigations the Interim Receiver interviewed the first defendant upon two occasions in accordance with her powers of investigation under Schedule 6 of POCA and she also carried out detailed enquiries in relation to any bank accounts, cash purchases and identified sources of income.

[12] The first defendant told the Interim Receiver that he left school at 13 with no qualifications. He said that he had worked for his father from 13 to 17 and that, apart from a period of approximately 6 to 8 months when he worked for R J W Motors, he had been self employed trading in second hand vehicles. The first defendant produced a P45 form indicating that he left R J W Motors in 1999. The first defendant claimed that his trading profits in a

“bad year” would have been £12,000 whereas in a good year he might have earned up to £19,000. He told the Interim Receiver that he had not kept any books or records relating to his business dealings in motorcars and that he had never paid either income tax or national insurance. He stated that he had rented premises at the rear of Dunmore Service Station for the purpose of carrying on his car dealing business.

[13] The first defendant produced what purported to be a form P45 relating to leaving employment with R J W Motors but enquiries pursued by the Interim Receiver with the Inland Revenue produced no trace of any other document indicating that the first defendant had ever been so employed. The first defendant’s accountant, Liam McAvoy, produced three sets of accounts each of which purported to show earnings from the car dealing business of £9,400 per annum. Mr McAvoy said that he had prepared these accounts from bank statements and cheque stubs produced by the first defendant but that the first defendant had taken away all the paperwork after the accounts had been prepared. The Interim Receiver never saw any cheque stubs.

[14] The Interim Receiver created hypothetical accounts for the first-named defendant in respect of the financial years from 1992 to September 2004. For the purpose of this exercise she used a figure of £12,000 net per annum in respect of car dealing, a figure some £2,600 above that disclosed in the accounts produced by Mr McAvoy. Even then comparison of such accounts with the actual lodgments and cash purchases made by the first-named defendant still revealed an unexplained and unaccounted for figure of £179,280 in respect of which it was not possible to attribute any legitimate source of income. In practice, as noted above, a detailed examination of the financial history of the various bank accounts used by the first-named defendant by the Interim Receiver did not produce any evidence consistent with any form of regular income or business activity. By way of example the defendant told the interim receiver that he was present at his premises at the rear of Dunmore Service Station upon an occasion when a delivery of petrol was made to the Service Station but no member of staff was present. The first-named defendant said that he himself paid for the delivery in cash and that he subsequently received a cheque drawn upon Dunmore Service Station by way of reimbursement. He then deposited that cheque in his account. On the other hand, Mr McAvoy, who was also the accountant at Dunmore Service Station, told the Interim Receiver that the cheque for £11,000 was in exchange for cash given by the first-named defendant to Mr McAvoy in respect of an alleged car sale. Mr McAvoy said that the cash was handed over in used bank notes with bank seals and the first defendant had stated that he preferred not to carry such a large amount of cash. In return Mr McAvoy arranged for his partner, Barbara Hillock, to sign the cheque drawn upon Dunmore Service Station for £11,000. It appears that Ms Hillock had an interest in the service station business.

[15] On 24 March 1999 the first defendant purchased a house at 3 Muskett Road, Carryduff for £68,500. This purchase was financed by way of a mortgage of £61,650 with the balance of £6,850 provided by a banker's draft drawn on the first defendant's account with the Ulster Bank. The first-named defendant informed the Interim Receiver that the deposit of £6,850 represented the proceeds of car sales. However, no evidence was forthcoming to support this claim. The first defendant subsequently remortgaged the premises at 3 Muskett Road generating a further £12,950.58 which was used to purchase another property at 51 Beresford Hill, Dromore. The remortgage application forms submitted to the Woolwich plc recorded Barbara Hillock as the applicant's mortgage adviser and the forms were signed by the first defendant on 6 June 2003. In the course of completing those forms the first-named defendant represented himself to be a sales manager employed by Dunmore Service Station in receipt of a salary of £25,800 per annum together with regular bonuses of £3,500. The first-named defendant did not provide the Interim Receiver with any documentation to support such a claim which was contrary to the information provided by Mr McAvoy, his own accountant, during his interview with the interim receiver. In the circumstances, I am satisfied that the details of employment furnished to the Woolwich were false.

[16] On 26 January 2001 the first defendant purchased a further property at 1 Muskett Road, Carryduff for £80,000. The consideration was furnished by way of a £60,000 mortgage with the balance of £20,000 being financed by a banker's draft for £12,000 drawn on the defendant's Ulster Bank account together with an unidentified cash payment of £8,000. In the course of completing the application forms submitted to the Woolwich upon this occasion the first defendant represented that he was a car sales manager employed by R J W Motors of 172 Ormeau Road, Belfast and that he had been so employed for a period of 6 years 5 months at a basic salary of £25,000 per annum. The first defendant was unable to furnish any records in support of such an alleged employment and the P45 form that he produced was confirmed by the Inland Revenue to be false. In August 2003 the first defendant subsequently applied to remortgage these premises with Birmingham Midshires. Upon this occasion he represented his occupation to be "management" with Dunmore Service Station as a result of which he was receiving a total income of £35,000 per annum made up of £24,500 in respect of income and £10,500 in respect of rental receipts. During interview with the Interim Receiver the first defendant stated that he had paid £2,000 in cash directly to the vendor to secure the sale which he claimed to be the profits from car dealing but he was unable to identify the source of the other £6,000.

[17] On 12 June 2003 the first defendant purchased a property at 51 Beresford Hill, Dromore for £71,500. He provided this sum by obtaining a mortgage of £60,750 and a deposit of £10,750. The latter was financed by remortgaging the premises at 3 Muskett Road, Carryduff. The mortgage was

taken out with the Woolwich and the payments were made from the first-named defendant's bank accounts.

[18] On 5 February 2004 the first-named defendant purchased apartment E3 Waterfoot, Newcastle for £88,500. Upon this occasion the purchase price was made up by way of a mortgage of £68,085 with Birmingham Midshires and the balance of £20,415 financed by a remortgage of 1 Muskett road, Carryduff. In the application forms submitted to Birmingham Midshires the first defendant described his occupation as "management" in respect of which he alleged he was receiving an income of £24,500 per annum together with rental income of £10,500 per annum. Again, the mortgage repayments were made out of his bank accounts.

[19] DVLNI records indicated that on 2 August 2004 the first defendant purchased a Range Rover motor vehicle and this has been valued by the Interim Receiver at £2,200. In interview with the Interim Receiver the first-named defendant maintained that he had purchased this vehicle with a trade-in and £900. No records were produced to support this claim. After being seized by the Interim Receiver the vehicle, registration number VCZ 9386 was returned to the first defendant to enable him to attend court appointments.

[20] DVLNI records indicate that the first defendant purchased a Bentley motor car registration number IKZ 6014 on 1 August 2002. During the course of interview with the Interim Receiver the first defendant stated that he had bought this vehicle for £2,200 with the price being made up of £600 from the third defendant's pension. The first defendant said that he then spent £300 in cash on repairing the vehicle and that it was subsequently sold for £2,500 to his father. The vehicle is currently registered under the name of the first defendant's father. The first defendant was unable to produce any documentary evidence to support his purchase of this vehicle or to corroborate the sale of it to his father.

[21] The first defendant told the Interim Receiver in interview that he had purchased an Austin A60 van registration number EIA 7853 for £600 but he was unable to identify the source of any funds used to purchase this vehicle.

[22] The first defendant also told the Interim Receiver that he had purchased an Austin Champ registration number 29BE62 for £1,300 in early 2002. No documentary evidence was produced by the first defendant to support the source of any funds alleged to have been used for this purchase. The vehicle is currently valued at £1,200.

[23] The first defendant told the Interim Receiver that he purchased a caravan on 3 June 1997 for £14,900 made up of £10,000 in cash and a trade in to the value of £4,900. The trade in was said to be a Hobby Tourer. The Interim Receiver was not able to identify any evidence to support the

existence of the Hobby Tourer or any legitimate source of funds said to be used for the purpose of this purchase. The caravan is currently located at Windsor Holiday Park, Dundrum Road, Newcastle and valued at £3,000.

[24] The first-named defendant held three accounts with the Ulster Bank, namely, 79042079, 12204031 and 12204114. In addition, he had an account with the Halifax plc number 2/51616374-0.

[25] While it is not registered to him, the first defendant also claimed to be the owner of camper van CIL 8093. He was unable to provide any details of the circumstances of its purchase and the Interim Receiver was unable to identify any funds that might have been used for such a purpose.

[26] I have carefully considered all of the evidence called on behalf of the Agency bearing in mind, in particular, that the first defendant has opted not to take part in these proceedings. I bear in mind that the onus of proof remains upon the Agency and that the relevant standard is that of the balance of probabilities. In the circumstances, I am satisfied that the agreed criminal record of the first defendant indicates that he has a propensity for dishonesty and acquisitive crime. By his own admission during the course of his interviews with the Interim Receiver the first defendant concedes that he has never made any declaration of income to the Inland Revenue authorities or paid any income tax. During those interviews he claimed to have enjoyed a regular income from the purchase and sale of motor vehicles but the careful investigation of his various bank accounts carried out by the Interim Receiver has not produced any pattern of lodgments and withdrawals which might conceivably be consistent with such a trade. Apart from some 13 invoices, 9 of which related to purchases and 4 to sales, the only documentary records produced by or on behalf of the first-named defendant were the three sets of accounts produced by Mr McAvoy. Even when the Interim Receiver adjusted the figure for income upwards in those accounts, it was still not possible to reconcile the first defendant's allegations about his car sale business with the activity revealed by his bank accounts. Neither the defendant nor Mr McAvoy was able to produce the paperwork upon the basis of which the accounts were said to have been compiled. There was also a clear conflict of evidence between the first defendant and Mr McAvoy as to the history of the £11,000 cheque drawn on the account of Dunmore Service Station.

[27] The evidence relating to the application forms signed by the first defendant with regard to the four properties referred to above satisfies me that, in completing those forms, he supplied false information. In the context of the first defendant's interviews with the Interim Receiver and the information contained in the application forms I was satisfied that the Agency had established the unlawful conduct of mortgage fraud in respect of each of the real properties.

[28] None of the financial institutions from whom loans were obtained took any steps whatever, whether by asking for documents or otherwise, to confirm the details of the first defendant's claimed employment. During the course of his evidence Mr Davidson confirmed that the question of potential criminal offences had been referred to the Police Service of Northern Ireland. He said that he had been informed that there were guidelines from the Association of Chief Police Officers ("ACPO") discouraging the investigation of such offences which were considered to be too widespread to justify the resources required.

[29] After carefully considering the evidence and submissions I am satisfied that the Agency has established unlawful conduct on the part of the first defendant within the meaning of Section 241 of POCA. I am also satisfied that the property referred to above is recoverable property within the meaning of sections 242 and 304 and, in the case of any interests in the real properties held by the financial institutions, associated property within the meaning of section 245 of POCA having been obtained as a consequence of that unlawful conduct. Accordingly, I shall accede to the Agency's application for a recovery order pursuant to Section 266(1) of POCA in accordance with the draft annexed hereto.