



[2023] JMSC Civ. 177

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN CIVIL DIVISION

CLAIM NO. SU 2019 CV 04077

BETWEEN	THE ASSETS RECOVERY AGENCY	APPLICANT
AND	ANDREW PAUL HAMILTON	1ST RESPONDENT
AND	SAMAR DAVIS	2ND RESPONDENT
AND	AKAYLA PARIE HAMILTON	3RD RESPONDENT
AND	LOUISE ANNE MILLER	4TH RESPONDENT
AND	GEORGE BERNARD LYNCH	5TH RESPONDENT
AND	MAURICE ANTHONY CHIN SHUE	6TH RESPONDENT
AND	TAMARA GAYLE BERGER	7TH RESPONDENT
AND	JOHNATHAN CLIFTON BROWNING	8TH RESPONDENT
AND	MAURICE HASKILL	9TH RESPONDENT
AND	WEBSTER CAMPBELL	10TH RESPONDENT

IN CHAMBERS

Mrs. Caroline P. Hay K.C. and Mr. Zurie O. Johnson instructed by Caroline P. Hay Attorneys-at-law for the Applicant

Mr. Lenroy Stewart and Mr. Daniel Beckford instructed by Wilkinson Law, Attorneys-at-law for the 1st, 2nd, and 10th Respondents

Heard on 28th July, 2022, 13th January, 21st April, 16th June, 28th July and 11th August, 2023

Sections 55, 56, 57, 58, 84, 85, 86, 87 and 89 of the Proceeds of Crime Act - Parts 10 and 12 of the Civil Procedure Rules, 2002- Application for Leave to Enter Judgment in absence of Defence - Civil recovery orders- Recoverable property - Unlawful conduct

STEPHANE JACKSON-HAISLEY J.

THE CLAIM

- [1] The Claimant and Applicant is the Assets Recovery Agency (hereafter ARA) established by virtue of section 3 of the Proceeds of Crime Act, 2007 (hereafter POCA) and has as one of its primary functions the institution of proceedings in the Supreme Court against any person that it believes hold recoverable property.
- [2] The Claimant filed a Claim Form and Particulars of Claim on October 17, 2019, the essence of which is that the Claimant seeks civil recovery orders against the Respondents in respect of assets set out in a Table described at Table 1, pursuant to section 57 of the POCA. On January 7, 2021, the Claimant filed a Notice of Application for Leave to Enter Judgment supported by affidavit evidence of Selvin Hay, the Chief Technical Director of Financial Investigations Division (FID). Leave was sought to enter judgment as there is in place a restraint order made pursuant to section 33 of the POCA and the same will need to be discharged upon the entry of judgment in the Claim. They base their application on the fact that the Claim remains undefended as none of the Respondents has filed a Defence.
- [3] The 1st and 2nd Respondents filed their Acknowledgment of Service of Claim Form on March 11, 2021 and the 10th Respondent filed his Acknowledgment of Service on November 9, 2021. Other than those, there has been no indication that any of the other Respondents intends to defend the claim. The Claim is undefended as none of the Respondents has filed a Defence in the matter.
- [4] The 1st Respondent Andrew Paul Hamilton is described by the Claimant as a twice convicted drug dealer who has been associated with the following alias names:
- I. "Anthony Randazzo"

- II. "Andrew Campbell"
- III. "Barri Houston"
- IV. "Milton Ramsay"
- V. "Webster Cunningham", and
- VI. "Curtis Malone."

[5] It is the Claimant's case that Mr. Hamilton was engaged in unlawful conduct between the period 1998 and 2012 and was arrested on or about June 24, 1998 for the sale of a controlled substance in the United States of America. He was convicted of this offence on or about July 21, 1998 either under his name or the name of an alias. On or about October 22, 2012 in the State of California, United States of America, he pleaded guilty to Conspiracy to Distribute Marijuana and Conspiracy to Launder Money and was sentenced on February 3, 2014 to serve 54 months in a Federal Prison in the United States of America. He purchased or facilitated the purchase of the parcels of real estate identified and described in Table 1 between 2007 to 2012 from the proceeds of the unlawful conduct.

[6] Samar Davis is the 2nd Respondent and the mother of the 3rd Respondent Akayla Parie Hamilton and Akeem Pierre Hamilton, a minor who has not been named a party in these proceedings. She is a joint owner of property itemized at numbers two, three and four of Table 1.

[7] It is alleged that Akayla Parie Hamilton is the daughter of Andrew Hamilton and Samar Davis. She is a joint owner of property itemized at numbers two, three and four of Table 1. At the time when Akayla Hamilton was registered on the Certificates of Title, she was a minor having been born on November 24, 1999. Her date of birth is reflected on the Certificate of Title for property itemized at two, three and four in Table 1.

[8] The ARA avers that the given names for the 4th to 10th Respondents in this claim are not connected with the associated addresses and the addresses themselves are not genuine addresses in the United States of America and Canada. It is averred that these fictitious addresses were placed on the respective Certificates of Title for the parcels of property sought to be recovered in this claim by persons associated with the 1st Respondent.

[9] The ARA pleads a constructive and/or resulting trust in all estate and interest in the properties the subject of this claim to the benefit of Andrew Paul Hamilton. The Agency further avers that the realty described in Table 1 realty below, directly or indirectly represents the proceeds of the unlawful conduct of Andrew Paul Hamilton in drug trafficking and in laundering.

[10] The gravamen of the Applicant's case is that the 1ST Respondent was involved in the trafficking of narcotics and money laundering in the United States of America and as a result, he gained monetarily from his unlawful, 'criminal' conduct, allowing him to use the proceeds gained from his conduct to acquire what are now identified as thirteen different real properties. All the real estate that have been located through investigations carried out by entities working on behalf of the Financial Investigations Division, and which are also the subject of the Application for Judgment are identified in Tables 1 below.

Table 1 – Real Property						
Cons. #	Description of Property	Registered Proprietor(s)	Volume / Folio	Date of Acquisition	Consideration	Market or estimated Market Value JAD/USD
1	Lot 2 Buena Vista Mandeville Manchester	Andrew Paul Hamilton & Andrene Peta-Gaye Hamilton (deceased)	1415/617	07/12/2007	J\$8,000,000.00	J\$11,000,000.00
2	Strata Lot 9, 19 and 21 Ballater Avenue, Kingston, St. Andrew	Samar Davis Akayla Parie Hamilton Akeem Pierre Hamilton Andrew Paul Hamilton Jnr	1394/792	11/01/2007	USD\$160,000.00	USD\$600,000.00 together with Items # 3 and 4

Table 1 – Real Property

Cons. #	Description of Property	Registered Proprietor(s)	Volume / Folio	Date of Acquisition	Consideration	Market or estimated Market Value JAD/USD
3	Strata Lot 4 of 19 and 21 Ballater Avenue, Kingston, St. Andrew	Samar Davis Akayla Parie Hamilton Akeem Pierre Hamilton Andrew Paul Hamilton Jnr	1394/787	11/01/2007	USD\$160,000.00	USD\$600,000.00 together with Items # 2 and 4
4	Strata Lot 5 of 19 and 21 Ballater Avenue, Kingston, St. Andrew	Samar Davis Akayla Parie Hamilton Akeem Pierre Hamilton Andrew Paul Hamilton Jnr	1394/788	11/01/2007	USD\$160,000.00	USD\$600,000.00 together with Items # 2 and 3
5	Strata Lot 8 of Ironshore and Hartfield Estate, St. James	Louise Anne Miller of 2002 Steffi Avenue, Lawrenceville GA 30049 United States of America (address believed fictional)	1421/677	04/04/2012	USD\$320,000.00	USD\$350,000.00
6	Lot 43, Barbara Avenue, Bridgeport, Edgewater, Portmore, St. Catherine	George Bernard Lynch of 30035 Honeyway Street, Canoga Place, California 91306, United States of America (address believed fictional)	1100/257	04/01/2011	J\$9,000,000.00	J\$14,000,000.00
7	Lot 1, 32 Caledonia Road, Mandeville, Manchester	Maurice Anthony Chin Shue of 122 Topscott Road, Scarborough, Ontario, MIB 3G7, Canada (address believed fictional)	1118/61	14/02/2011	J\$29,050,000.00	J\$35,000,000.00
8	Lot 11 Fullerswood, St. Elizabeth	Louise Anne Miller of 2002 Steffi Avenue, Lawrenceville, GA 30049 United States of America (address believed fictional)	1152/445	14/01/2011	USD\$250,000.00	USD\$300,000.00
9	Strata Lot 10 of Providence, Ironshore and Hartfield and parts of Lots 1087 and 1088B, St. James	Tamara Gayle Berger of 210-50 24 th Avenue, Unit 20 Queens New York 11260, United States of America (address believed fictional)	1398/302	14/01/2011	J\$30,000,000.00 together with Item #11	J\$35,000,000.00 Together with Item #11
10	28 Caledonia Road, Caledonia, Manchester	Johnathan Clifton Browning of 2425 Strag Avenue, Bronx, New York 10466, United States of America (address believed fictional)	1150/646	23/04/2012	USD\$200,000.00	USD\$250,000.00

Table 1 – Real Property						
Cons. #	Description of Property	Registered Proprietor(s)	Volume / Folio	Date of Acquisition	Consideration	Market or estimated Market Value JAD/USD
11	Strata Lot 3 of Providence, Ironshore and Hartfield and part of Lots 1087 and 1088B, St. James	Tamara Gayle Berger of 210-50, 24 th Avenue, Unit 20, Queens New York 11260, United States of America (address believed fictional)	1398/295	14/01/2011	J\$30,000,000.00 together with Item #9	J\$35,000,000.00 together with Item #9
12	Lots 8 and 8A Forest Hills, St. Andrew	Maurice Haskill of 8527 Walters Edge Drive, Stonemont GA 30087, United States of America (address believed fictional)	976/666	14/01/2011	J\$15,000,000.00	J\$20,000,000.00
13	Lot 49 Woodlawn, Mandeville, Manchester	Webster Campbell of 4430 Arizona Avenue, Los Angeles, CA 90046, United States of America (address believed fictional)	1447/736	12/01/2011	USD\$980,000,00	USD\$1,200,000.00
	Total					J\$150,000,000.00 US\$3,900,000.000

EVIDENCE RELIED ON BY THE CLAIMANT

- [11] A further affidavit was also relied on from Courtney Smith, the Director of Legal Services of the Financial Investigations Division.
- [12] In the affidavit of Selvin Hay filed January 7, 2021, he stated that personal service of the statement of case was effected on the 1st Respondent on April 2, 2020. He further stated that the Affidavits of Brenton Brown filed May 29 and November 9, 2020 supports personal service on the 1st Respondent.
- [13] According to Mr. Hay, permission to dispense with personal service and to serve the 2nd, 3rd, 5th to 8th and 10th Respondents outside the jurisdiction by registered post was granted by the Honourable Miss Justice Pusey on February 19, 2020. The Order also granted service by publication of notice of proceedings on the 4th and 9th Respondents for a period of 5 days in a newspaper of national circulation in Georgia USA.

- [14]** Mr. Hay averred that the 2nd, 3rd, 5th to 8th and 10th Respondents were served by registered post on March 24, 2000 and that Affidavit of Preston Johnson filed July 24, 2020 evidences service by registered post on the 2nd, 3rd, 5th to 8th and 10th Respondents. The 4th and 9th Respondents were served by publication of notice of proceedings in the Gwinnett Daily Post on 09/16/2020, 09/20/2020, 09/23/2020 and 09/27/2020. He stated that the 2nd Affidavit of Yvette Love filed November 9, 2020 evidences that service by publication was complied with.
- [15]** According to Mr. Hay, the deadline within which the Respondents are to respond has passed therefore, it is clear that the parties do not intend to defend the claim.
- [16]** In the affidavit of Courtney Smith in response to affidavit of Andrew Paul Hamilton in opposition to Notice of Application for Judgment filed September 22, 2021, Mr. Smith stated that though Mr. Hamilton disputes being served with the pleadings, he is silent on the question of when he became aware of the claim or of the content of the statement of case. He further stated that by letter dated May 8, 2020, the offices of Caroline P. Hay, Attorneys-at-law for the Claimant received a letter from Messrs. Wilkinson Law indicating that they have received preliminary instructions to represent Mr. Andrew Hamilton in Claim No. SU 2019 04077 recently filed.
- [17]** He further stated that the position of the Attorneys-at-law representing Mr. Andrew Hamilton has shifted from time to time, as after receipt of the May 8, 2020 letter indicating that they have preliminary instructions, a Notice of Adjourned Hearing was served on Messrs. Wilkinson Law. The Notice of Adjourned Hearing was however, returned with an indication that they had not filed an Acknowledgment of Service. The Acknowledgment of Service of Claim Form was later filed on March 1, 2021.
- [18]** As it relates to Samar Davis, Mr. Smith stated that every effort was made to serve her with the statement of case using the name and address which appear on the Certificates of Title for Strata Lots 9, 4 and 5 situated at 19 and 21 Ballater Avenue in the parish of Saint Andrew. He indicated that all three Certificates of Title noted

Samar Davis' address as 9312 Capobella, Alison Vidjo California. He averred that Samar Davis has not indicated how she became aware of the proceedings or when she was made aware of them. He further indicated that he has however seen an Acknowledgement of Service filed on March 11, 2021 but no Defence filed.

- [19] In relation to Webster Campbell, Mr. Smith stated that after conducting intelligence research, the address listed as 4430 Arizona Avenue Los Angeles, CA 90046 in the United States of America that is associated with Webster Campbell could not be verified, though his name and address are noted on the Certificate of Title registered at Volume 1447 Folio 736 of the Register Book of Titles.

EVIDENCE RELIED ON BY THE 1ST, 2ND AND 10TH RESPONDENTS

- [20] In his affidavit filed November 10, 2021, Mr. Andrew Paul Hamilton stated that he was not personally served with the documents. According to Mr. Hamilton, he has never seen or spoken to anyone named Brenton Brown and deny that he was personally served with the Court documents as alleged or any at all. Mr. Hamilton further indicated that the Affidavit of Brenton Brown did not exhibit a copy of the WhatsApp message nor the photograph he purportedly received from Mrs. Caroline P. Hay to indicate the correct individual to be served. Mr. Hamilton also raised a defence of limitation and jurisdiction. He claimed that he has a good defence based on these procedural issues.

- [21] Ms. Samar Davis in her affidavit filed November 10, 2021 denies that she was served with all the documents in relation to the claim. Ms. Davis further denies being personally served and stated that a failure to serve the statement of case within the stipulated time means that the claim is null and void. She also stated that she is not subjected to the jurisdiction of the Court since her Acknowledgment of Service of Claim Form clearly states that she did not receive the Claim Form and the Particulars of Claim.

[22] In his affidavit filed November 11, 2021, Mr. Webster Campbell states that he has been residing in the United States of America for several years and has been ill for some time. He stated that although he was not served with any court documents, he recently learned that a law suit was filed against him. Mr Campbell also disputes the Court's jurisdiction to proceed with the claim against him on the basis that the time within which the claim should be served has expired.

SUBMISSIONS ON BEHALF OF THE APPLICANT

[23] King's Counsel, Mrs. Hay commenced her submissions by stating that just before the filing of the application, three (3) of the properties listed in Table 1 were sold, therefore orders cannot be made against the properties listed at items 8, 9 and 11 of Table 1. She further averred that orders are only being sought against items 1-7 and 10, 12 and 13.

[24] King's Counsel submitted that in order for the Court to enter judgment, the Court has to be satisfied of the evidentiary basis to support the claim despite there being no defence filed by any of the Respondents. She indicated that the Court would have to consider whether the response amounts to a defence in keeping with the Civil Procedure Rules and if it does not then the Claimant is entitled to judgment. She submitted that the Court's concern should be whether the identified properties are recoverable property.

[25] King's Counsel indicated the evidence supports that the 1st, 2nd and 3rd Respondents are real people however, it is not accepted that the 4th-10th Respondents are real persons. King's Counsel submitted that even though there is an Affidavit sworn to by Webster Campbell on November 10, 2021, she does not accept his existence as his existence is devoid of an identity as well as an address. Mrs. Hay further maintains that the property acquired by Webster Campbell is the same property that Andrew Paul Hamilton resides in. King's Counsel submitted that all the evidence tips against finding that Webster Campbell is a real person.

- [26]** King's Counsel also pointed out that Mr. Andrew Hamilton was personally served at his home address at 49 Woodlawn, Godfrey Lands, Mandeville, Manchester. She argued that Mr. Hamilton failed to disclose how he became aware of the content of the claim if he was not served. She submitted that the Affidavit of Brenton Brown confirms a personal handing over of the documents to Mr. Andrew Paul Hamilton and he was properly served.
- [27]** King's Counsel further submitted that all the Respondents have been served in compliance with the Order of the Honourable Mrs. Justice Tie-Powell. She further submitted that the Order made on September 2, 2020 extended the validity of the Claim Form and Particulars of Claim and also permits service by publication on the 4th and 9th Respondents in a newspaper circulated in Gwinnett County, Georgia United States of America.
- [28]** King's Counsel further emphasized that the affidavits of Selvin Hay and Courtney Smith filed in support of the claim provide clear and convincing evidence that satisfies the statutory requirements that must be met for the granting of the civil recovery orders sought. She contended that when the affidavits are examined there is sufficient material to show that the 1st Respondent is the main character and that a clear connection had been established between him and the property owners, the other Respondents.
- [29]** She further advanced that the investigations into the conduct of the 1st Respondent, which commenced from as far back as 2012, revealed unlawful conduct on his part. Further, that a search conducted linked him to a number of illegal firearms and ammunition. She contended that there is evidence to support the fact that he had no legitimate source of income that would substantiate the acquisition of the properties, the subject of this investigation. Based on the fact that the evidence demonstrates that the lawful income of the 1st Respondent is not demonstrably capable of acquiring these assets then it leads to the irresistible inference that the assets acquired are not lawful.

[30] She referred to the provisions of the newly enacted Judicature (Supreme Court) (Proceeds of Crime) Rules (hereafter “POCA Rules”) and submitted that even taking that into account the position remains the same as there is a requirement under Part 10 for a Defence to be filed which the Respondents have failed to do. Having filed no Defence they have submitted to the jurisdiction of the Court and are therefore bound by Rule 10.

[31] King’s Counsel submitted further that according to Part 10, a party who intends to defend a claim must file a Defence and if a Defence is not filed, judgment may be entered and therefore, the requirements for entering default judgment, as set out under Part 12 of the Civil Procedure Rules have been satisfied and on that basis, the application for judgment to be entered should be granted.

SUBMISSIONS ON BEHALF OF THE 1ST, 2ND AND 10TH RESPONDENTS

[32] Mr. Lenroy Stewart indicated that his submissions on behalf of the 1st, 2nd and 10th Respondents are being made under protest after his oral application for recusal was refused. He submitted that the three named Respondents are disputing service. He averred that service is fundamental and that the Applicant seeking Judgment in Default must evidence proof of service before Judgment is entered.

[33] Mr. Stewart averred that neither the 1st, 2nd or 10th Respondents have been personally served. Counsel submitted that the onus is on the Applicant to prove that the claim has been properly served and in the absence of proof, the Judgment should not be entertained. Mr. Stewart further submitted that the Affidavit of Selvin Hay filed January 7, 2021 admits that the individuals did not receive the parcels by registered post as the parcels were returned unclaimed.

[34] Counsel submitted that at the material time, the 2nd Respondent was residing in Jamaica and it is clear that she has not been served with the claim documents. He further submitted that there is no affidavit in proof that service has been

effected. Counsel stated that where the parcels are returned unclaimed, it is highly questionable whether the other Respondents have been served with the proceedings. He further averred that the 10th Respondent has also denied being personally served.

[35] Counsel stated that at the time when the Claimant sought permission for service by registered post and publication on the 2nd and 10th Respondents, the Claim Form had already expired and the Court cannot proceed against them. He further submitted that the Claimant failed to clear the first hurdle in regards to the 2nd and 10th Respondents and the challenge raised by the 1st Respondent must be resolved before considering the substantive issue.

ISSUES

[36] Two issues arise for my consideration. They are as follows:

1. Whether the Respondents have been properly served?
2. Whether the Claimant is entitled to obtain Judgment against the Respondents.

DISCUSSION

ISSUE ONE

Whether the Respondents have been properly served?

[37] The essence of the Respondents contention is that there has not been proper service on them. Before proceeding to enter judgment, it is important that the Court be satisfied that there have in fact been proper service of the Claim Form, Particulars of Claim and supporting documents as well as the Notice of Application to Enter Judgment and the supporting affidavits.

- [38]** The Affidavit of Selvin Hay in support of the application has summarized all the steps taken towards serving the Respondents and he sets out the sequence of events that (i) the Statement of Case was personally served on the 1st Respondent (ii) efforts were made to serve the 2nd to 10th Respondents (iii) to date, no acknowledgment of Service or Defence has been filed.
- [39]** There is also Affidavit evidence presented by Brenton Brown which speaks to service on the 1st Respondent of the Claim Form and Particulars of Claim. It is the uncontested evidence that he was served personally on April 2, 2020 with the Claim Form, Particulars of Claim, Notice of Restraint Order and Affidavit in Support. Similarly, the Notice of Application to enter judgment supported by the Affidavit of Selvin Hay was served on Andrew Hamilton personally on February 18, 2021 by Brenton Brown.
- [40]** Mr. Hamilton in his affidavit of November 10, 2021 has asserted that he was not personally served and disputes the personal service sworn to by Brenton Brown. I do note that the documents were said to have been served by Mr. Brown on April 2, 2020 and by May 8, 2020 the ARA was in receipt of a letter from Messrs Wilkinson Law in which it was indicated that they received preliminary instructions to represent Mr Hamilton in this Claim. This lends credence to the averments of Mr Brown in his affidavits that he did served these documents on Mr. Hamilton. On the other hand, although Mr. Hamilton has indicated a lack of proper service on him, he has not indicated how it is that he came to engage attorneys to represent him. In light of that, I prefer the evidence of Mr. Brown and accept on a balance of probabilities that he went to the home of Mr. Hamilton, having been provided with a photograph of Mr. Hamilton and that Mr. Hamilton identified himself to him. I am satisfied on a balance of probabilities that this is in fact what took place and that Mr. Hamilton was in fact personally served.
- [41]** As it relates to the 2nd to 10th Respondents, permission to dispense with personal service of the Claim Form and Particulars of Claim was granted in respect of the 2nd to 10th Respondents and permission granted to serve them out of the

jurisdiction. I accept the affidavit evidence of Preston Johnson that on March 24, 2020 he served by registered post same documents on Samar Davis, George Bernard Lynch, Maurice Anthony Chin Sue, Tamara Gayle Berger, Johnathan Clifton Browning and Webster Campbell at their addresses.

- [42]** There is also evidence from Preston Johnson in an Affidavit filed July 24, 2020, that the 2nd, 5th to 8th and 10th Respondents were served by registered post. The Affidavit exhibit letters dated March 6, 2020 addressed to the 2nd, 5th to 8th and 10th Respondents as well as certificates of postings for each Respondent.
- [43]** Yvette Love in an Affidavit filed November 9, 2020 indicated that the 4th and 9th Respondents were served by publication in the Gwinnett Daily Post by 4 separate publications on 09/16/2020; 09/20/2020; 09/23/2020 and 09/27/2020 however, the Order of Miss Justice Pusey J., stipulated that the publication should have been for a period of 5 days. Further, the original tear sheets were not exhibited to Yvette Love's Affidavit in support. The Claimant instead exhibited an email explaining that the original tear sheets cannot be obtained due to COVID and a closure of office.
- [44]** By Affidavit of Yvette Love filed November 10, 2020, the Claimant evidenced that the 2nd and 3rd Respondents were served by DHL. The Affidavit exhibits the DHL Shipment Receipt for Waybill No. 4317832982 dated 2020/09/10. The Affidavit also evidenced an email from Nicole Transue dated September 14, 2020 indicating that she is the property manager of Irvine Company Apartment Communities and that a current resident informed her that the letter addressed to 3rd Respondent was accidentally opened by a resident who realized it did not belong to them nor is there anyone at that address by that name.
- [45]** There is evidence from the 2nd Respondent Ms. Davis indicating that she was not personally served, however it was never the contention of the Claimant that she was personally served. They have asserted that she was served by registered post pursuant to the order of the Court. However, the Claimant has presented affidavit

evidence that the packages sent to her address and that of Akayla Hamilton were returned so they are possessed of information that the documents did not come to her attention. It is difficult in those circumstances to say that service on Ms Davis and Ms. Hamilton is good service.

- [46]** The 10th Defendant Webster Campbell has filed affidavit evidence indicating that he has not been served. There is on file a statement from Brian Scotthouse who spoke to using the publicly available USPS.com database in an attempt to confirm that the address associated with Webster Campbell was in fact a physical address in Los Angeles California. However, this address was not found. He also conducted search in “Accurint”, a law enforcement database housing a multitude of public records which identifies names, addresses, dates of birth, social security numbers, phone numbers, relatives, business associates, assets and other publicly available information and found no records. He conducted similar searches in relation to the 4th, 5th, 7th, 8th and 9th Respondents. It is the belief of the ARA that the Respondents listed as the 4th to 10th Respondents are not real persons. There has been no application to set aside the service on the 10th Defendant so the Order of the Court dispensing with personal service still stands and the service by registered post remains proper service.
- [47]** With respect to the 7th and 10th Respondents, the evidence from the ARA is that these packages were also returned to them. They have not done anything to effect any other service so they too have not been properly served.
- [48]** The issue was raised by Counsel Mr. Stewart that at the time of service the Claim Form would have already expired. Even if this were so, it would still have required an application to set aside service on the basis of the expiration of the Claim Form and there is no such application before the Court.
- [49]** Having considered all the evidence presented, I am of the view that it satisfactorily proves service on the 1st, 4th, 5th, 7th, 9th and 10th Respondents. Service on the 2nd, 3rd, 6th and 8th Respondents has not been proven to my satisfaction.

ISSUE TWO

Whether the Claimant is entitled to obtain Judgment against the Respondents.

[50] The next issue therefore is whether the Claimant has satisfied the test for judgment to be entered in its favour. In order for judgment to be entered the Court must be satisfied that the properties sought to be recovered are indeed recoverable. They would be recoverable if there is proof that they were obtained through unlawful conduct. This is the essence of the provisions of section 84(1) of the POCA which provides that property obtained through unlawful conduct is recoverable property. The question therefore is whether there is evidence of unlawful conduct which can be attributable to the acquisition of these properties.

[51] The definition accorded to unlawful conduct is reflected in section 55 (1) as follows:

"property obtained directly or indirectly by or in return for or in connection with unlawful conduct, and for the purpose of deciding whether any person obtains property through unlawful conduct-

- (a) it is immaterial whether or not any money, goods or services were provided in order to put the person in a position to carry out the conduct;***
- (b) it is not necessary to show the particulars of the conduct.***

“Unlawful conduct” is further defined as:

- a. conduct that occurs in, and is unlawful under the criminal law of, Jamaica; or.***
- b. conduct that -***
 - i. occurs in a country outside of Jamaica and is unlawful under the criminal law of that country; and***
 - ii. if it occurred in Jamaica would be unlawful under the criminal law of Jamaica.***

Another relevant provision under POCA is section 58 which provides as follows:

58.-(1) If in proceedings under this Part the Court is satisfied that any property is recoverable, the Court shall make an order under this section (hereinafter called a recovery order).

(2) Subject to subsection (8), the recovery order shall vest the recoverable property in the Agency. (3) If each of the conditions in subsection (4) is met, the Court shall not make in a recovery order any provision in respect of recoverable property unless it is just and equitable to do so.

[52] Guidance on this issue has been provided in a number of authorities to include the case of **Delores Elizabeth Miller v The Assets Recovery Agency** [2016] JMCA Civ 25 where it was clearly stated at paragraph 37:

“The effect of section 55 is that the ARA must provide evidence before the Supreme Court that the property is recoverable property by demonstrating that such property was obtained directly or indirectly by unlawful conduct. However, it is not essential for the ARA to establish the precise particulars of the unlawful conduct (see also Director of Assets Recovery Agency and Others v Jeffrey David Green and Others). Further, section 57 empowers the ARA to take civil proceedings if it believes that property constitutes recoverable property.

Learned counsel for the ARA submitted, relying on The Director of Assets Recovery Agency and in the matter of Cecil Walsh, and I accept, that “the court may be asked to draw appropriate inferences from the unlawful conduct established by the Agency combined with the absence of legitimate capital and income”.

[53] The test therefore is whether the ARA has satisfied me that the properties were acquired through unlawful conduct and provide evidence to substantiate this. The standard of proving unlawful conduct is as it is in civil matters which is on a balance

of probabilities as is expressed in section 56(3) that *“the Court...shall decide on a balance of probabilities whether it is proved that- (a) any matters alleged to constitute unlawful conduct have occurred”*.

- [54]** The Court is therefore obliged to assess the evidence presented to determine whether there is some unlawful conduct which has a sufficient relationship to the properties in question and whether there is sufficient admissible evidence to find on a balance of probabilities that the properties were obtained by unlawful conduct and thus recoverable.
- [55]** The ARA has led evidence from several individuals speaking to this unlawful conduct. They have relied on the evidence of deponents and witnesses such Elizabeth Ryan Dorsey, Ronald Rose and Darwin Dias.
- [56]** Elizabeth Ryan Dorsey a special agent of the DEA was assigned to the drug investigation of Andrew Hamilton and gave evidence of the fact that Andrew Hamilton pleaded guilty to drug trafficking conspiracy and conspiracy to launder money. She therefore is of the belief that it is reasonable to assume that he was generating a million dollars annually as a result of narcotics trafficking and that she was never aware of his having any legitimate job or source of income. The belief is that he laundered the proceeds of his criminality and would send monies to Jamaica to purchase assets in his name and the names of family members. Separate and apart from Ms. Dorsey’s belief, she provided documentary evidence of the indictment against Andrew Hamilton which sets out the charges for which he was convicted.
- [57]** Elizabeth Ryan Dorsey spoke to retrieving various documents from the electronic case file and handed them over. She speaks to the computers operating properly and not subject to any malfunction, all of this to substantiate her evidence.
- [58]** Ms Dorsey finds support for her evidence in the evidence of Ronald Rose who spoke to Andrew Hamilton having pleaded guilty to Conspiracy to Distribute

Marijuana and Conspiracy to launder money in the State of California. She spoke to the fact of investigations being carried out over a period of three years during which time an estimated One Million, Five Hundred and Eighty-Two Thousand Eight Hundred and Fifty-Six United States Dollars (US\$1,582,856.00) was seized and that it is believed that the proceeds gained from Andrew Hamilton's drug trafficking have been laundered in Jamaica and used to acquire the properties listed.

[59] Evidence was also relied on from Dharwin Diaz, an Intelligence Research Specialist assigned to the DEA who was assigned to assist in the verification of persons and addresses of persons who purchased properties from Andrew Hamilton and others located at various locations in Jamaica. He employed the use of database to verify the names of persons and their addresses but all attempts to locate and interview the named purchasers were futile. He was unable to verify George Bernard Lynch, Webster Campbell, Maurice Haskill, Louise Anne Miller, Tamara Gayle. None of the addresses were found on the databases queried.

[60] When all the evidence is considered certain inescapable inferences can be drawn. I take into account the evidence that there is no indication of any licit source of income of Andrew Hamilton to justify the acquisition of these properties. It is of note that none of the properties were acquired by way of a mortgage as there are no mortgages endorsed on the Certificates of Titles. It is the uncontested view of the ARA that several of these properties were put in the names of persons who do not exist. These properties were originally in the name of Andrew Hamilton and were transferred to the other Respondents. I am of the view that when one examines the time period within which the transfers occurred coupled with the evidence which I accept on a balance of probabilities that these persons are fictitious persons, the inference can be drawn that it was done to divert any attention to Mr Hamilton who at the time had already been convicted. I find that the transfers were done to conceal the extent of ownership of Andrew Hamilton. This demonstrates an attempt to conceal the true ownership of the properties. The

inference from all of this is that the properties were not acquired through lawful means. There is sufficient evidentiary basis to support the Claimant's contention that the properties were acquired through unlawful conduct. It is of note that there is no challenge to any of this evidence as neither the 1st Respondent or any of the other Respondents responded to the Claim. The material before me is uncontroverted. I find that there is sufficient evidentiary basis to support the finding of unlawful conduct.

- [61]** However, the ARA still has a duty to establish a sufficient connection to the properties and to Andrew Hamilton to whom the unlawful conduct is attributable. With respect to the number one property, it is in the name of Andrew Hamilton so there is no issue there. This property is recoverable.
- [62]** With respect to the properties listed at numbers two to four, there is a familial connection in that Ms Davis is alleged to be the mother of the two children who are also the owners of these properties. Andrew Hamilton is their father and the children were minors at the time of acquisition. However, I had already found that service was not proper and for that reason these properties are not recoverable at this time.
- [63]** With respect to the property listed at numbers five and six, Andrew Hamilton was the previous owner and transferred the properties to a Louise Anne Miller and George Bernard Lynch subject to being arrested and charged. That established a sufficient connection between him and these two names. These properties are recoverable.
- [64]** The properties listed at numbers eight, nine and eleven are no longer relevant however the property listed at numbers seven and ten are still relevant. They were not in the name of Andrew Hamilton, but rather in the name of Annmarie Cleary. Evidence was previously led that Ms Cleary (now deceased) was the mother of Andrew Hamilton's son Andre Hamilton. The properties listed at numbers seven and ten would have been recoverable except that I have found that the listed

proprietors Maurice Chin Sue and Johnathan Clifton Browning were not properly served and for that reason those properties are not recoverable at this time.

[65] The property listed at number twelve was previously in the name of Andrew Hamilton and he transferred it to a Maurice Haskill. That established a sufficient connection on a balance of probabilities. The property at number thirteen was always in the name of Webster Campbell however the address is what has been described as the home address of Andrew Hamilton and I have accepted that is where he was served. Extensive checks were carried out regarding Webster Campbell and efforts to locate him. There is some evidence from the Passport and Immigration Office that a person by that name left the island in 2011 and did not return. Despite the affidavit purported to have been signed by him, I am not convinced that he is a real person and find that there is sufficient evidence to draw an inference that he too is a fictitious person and that based on the connection with the property being the home address of the 1st Respondent, I find on a balance of probabilities that there is a sufficient connection between the name Webster Campbell and the 1st Respondent.

[66] The properties being sought to be recovered are currently the subject of a Restraint Order put in place by the Court. Under section 88(5) of the POCA, property is not recoverable while a restraint order applies to the property, the restraint order in place would first have to be discharged.

[67] On August 11, 2023 after announcing my decision orally Counsel Mr Lenroy Stewart attempted to make an application for leave to appeal however the application was not heard as the Court indicated that the orders made were final and so did not require an application for leave. Counsel made an application for the execution of the judgment to be stayed as against the first and tenth Respondents on the basis that if there is no stay the first and tenth Respondents would be prejudiced and that the grant of a stay would facilitate justice being done. This application for a stay was denied on the basis that the first and tenth Respondents have not satisfied the Court that they would suffer any prejudice over

and above that which would be suffered by the Applicant. Any further delay in the matter would prevent the Applicant from being able to reap the fruits of the judgment. This would not further the cause of justice nor would it be in keeping with the overriding objective to deal with cases expeditiously. The applicant has not satisfied the test for a grant of a stay of execution and so the application for a stay is denied.

[68] I am prepared to make the following orders:

1. Civil recovery orders pursuant to section 57 of the Proceeds of Crime Act, 2007 in relation to the assets at listed at numbers 1, 5, 6, 12 and 13 of Table 1.
2. The properties listed at numbers 2, 3, 4, 7 and 10 of Table 1 are not recoverable at this time.
3. No order is made in respect of the properties listed at numbers 8, 9 and 11 of Table 1.
4. That the Restraint Order of the Honourable Ms A. Nembhard made on November 11, 2020 be discharged.
5. Application for a stay of execution of judgment denied.
6. Costs to the Applicant to be agreed or taxed.

.....
Stephane Jackson-Haisley
Puisne Judge

