

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 12

Criminal Revision No 10 of 2019

Between

AB PARTNERS PTE LTD

... Applicant

And

PUBLIC PROSECUTOR

... Respondent

JUDGMENT

[Criminal Procedure and Sentencing] — [Criminal Revision] — [Release of
seized properties]

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AB Partners Pte Ltd

v

Public Prosecutor

[2020] SGHC 12

High Court — Criminal Revision Number 10 of 2019

Aedit Abdullah J

1 November 2019, 3 February 2020

3 February 2020

Judgment reserved.

Aedit Abdullah J:

Introduction

1 The Applicant seeks criminal revision of the order made by the learned District Judge below on 27 February 2019 (“the Order”), which allowed an extension of the seizure of funds which were the subject of investigations relating to criminal conduct in Russia. Having considered the evidence and submissions, I am not persuaded that revision should be ordered. However, if further extensions are required from here on, the investigating agencies and the Prosecution should ensure that there are sufficient grounds given the time that has passed since the original seizure in 2016.

Facts

2 The Applicant is AB Partners Pte Ltd (“AB Partners”). AB Partners is a company incorporated in Singapore on 3 October 2013 and its sole shareholder at the time of incorporation was Mr Boytsov Alexey Anatolyevich (“Boytsov”).

3 On 2 September 2016, the Commercial Affairs Department of the Singapore Police Force (“CAD”) seized a Credit Suisse AG account number 141469 (“the Account”) which was in the Applicant’s name, pursuant to s 35(1)(a) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) (“CPC”).¹ This was on grounds that the funds in the Account were the proceeds of criminal conduct in Russia.² The Account contains US\$2,935,594.62.³

4 On 22 February 2017, Boytsov sold all his shares in the Applicant to Ang Hock Chye (“Ang”) for US\$10,000.00.⁴

5 On 2 June 2017, counsel for the Applicant wrote to the CAD stating that they acted for the Applicant.⁵

6 On 31 August 2017, CAD reported the seizure pursuant to s 370(1)(b) CPC (“the 1st report”), sought an order for continuation of the seizure, and for the matter to be adjourned within 12 months or until investigations were complete, whichever was earlier.⁶

¹ Tan Ruiyun’s affidavit dated 18 October 2019 (“Tan Ruiyun’s Affidavit”) at para 6

² Tan Ruiyun’s affidavit at para 6

³ Liu Kaili’s affidavit dated 28 August 2019 (“Liu Kaili’s affidavit”) at Tab 1

⁴ Tan Ruiyun’s affidavit at Tab A

⁵ Tan Ruiyun’s affidavit at para 8

⁶ Liu Kaili’s affidavit at Tab 1

7 On 26 October 2017, the learned District Judge (“the first District Judge”) passed an order of court allowing CAD to retain the seized property for purposes of investigation and for court review six months later on 26 April 2018.⁷

8 On 1 March 2018, all the shares in the Applicant were transferred from Ang to Liu Kaili (“Liu”) for consideration of S\$1.00.⁸ Liu remains the current sole shareholder of the Applicant.⁹

9 On 13 April 2018, CAD wrote to counsel for the Applicant to give the Applicant notice of the 26 April 2018 court review.¹⁰

10 On 24 April 2018, counsel for the Applicant informed CAD over a telephone call that the Applicant did not wish to be heard at the court review.¹¹

11 On 26 April 2018, CAD made a further report pursuant to s 370(1)(b) CPC (“the 2nd report”) and sought for the matter to be adjourned until investigations were complete or within 12 months, whichever was earlier.¹²

12 On 4 May 2018, the first District Judge passed another order of court allowing the CAD to retain the seized funds for the purposes of investigations and for court review to be six months later on 25 October 2018.¹³

⁷ Liu Kaili’s affidavit at Tab 2

⁸ Tan Ruiyun’s affidavit at Tab B

⁹ Liu Kaili’s affidavit at para 1

¹⁰ Tan Ruiyun’s affidavit at para 12

¹¹ Tan Ruiyun’s affidavit at para 13

¹² Liu Kaili’s affidavit at Tab 4

¹³ Liu Kaili’s affidavit at Tab 5

13 On 25 October 2018, CAD made a further third report pursuant to s 370(1)(b) CPC (“the 3rd report”) and sought an order for the matter to be adjourned until investigations were complete or within 12 months, whichever was earlier.¹⁴

14 On 27 February 2019, the learned District Judge (“the second District Judge”) passed the Order which allowed the CAD to retain the seized funds for the purposes of investigations and for court review to be 12 months later on 27 February 2020.¹⁵

15 Also on 27 February 2019, Tan Ruiyun, a Commercial Affairs Officer of the CAD, interviewed Liu as part of CAD’s investigations into the Applicant. During the interview, Liu could not provide any details or particulars regarding any bank accounts in the Applicant’s name in Singapore and could not provide any information as to the source of the funds in the Account.¹⁶

16 On 18 April 2019, counsel for the Applicant wrote to CAD stating that Liu, who was also their client, had a right to be heard at all hearings pursuant to s 370 CPC and to further information concerning the seized property.¹⁷

17 The Applicant is unsatisfied with the Order and seeks this criminal revision to set aside the Order.

¹⁴ Liu Kaili’s affidavit at Tab 6

¹⁵ Liu Kaili’s affidavit at Tab 7

¹⁶ Tan Ruiyun’s affidavit at para 19

¹⁷ Tan Ruiyun’s affidavit at para 18

The parties' cases

The Applicant's submissions

18 The Applicant argued that the threshold for the court to exercise its criminal revisionary powers is if there was serious injustice (*Rajendar Prasad Rai and another v Public Prosecutor and another matter* [2017] 4 SLR 333 (“*Rajendar*”) at [24]).¹⁸ The wrongful retention of seized property where there is no basis in law for its continued seizure is sufficient to constitute serious injustice (*Lee Chen Seong Jeremy and others v Public Prosecutor* [2019] 4 SLR 867 (“*Jeremy Lee*”) at [110]-[115]).¹⁹

19 The Applicant points to the legal basis for the continued seizure of the Account being s 370 CPC. Before the Magistrate grants continued seizure under s 370 CPC, the Magistrate must be satisfied that there is a reasonable basis for believing that the seized property is relevant for the purposes of any investigation, inquiry or trial (s 370(3) CPC).²⁰

20 Serious injustice was argued to be have been caused in the present case as:

- (a) A substantial sum of US\$2,935,594.62 had been seized. Seizure of a substantial amount of assets is a factor that weighs in favour of finding serious injustice (*Rajendar* at [68]).²¹

¹⁸ Applicant's skeletal arguments dated 22 October 2019 (“Applicant's skeletal arguments”) at para 24

¹⁹ Applicant's skeletal arguments at para 26

²⁰ Applicant's skeletal arguments at para 41

²¹ Applicant's skeletal arguments at para 25

(b) There was no reasonable basis for the second District Judge to believe that the funds in the Account were still relevant for the purposes of any investigation, inquiry, trial or other proceeding, as:

(i) The 3rd Report contained nothing but bare assertions that the seized funds were still relevant for investigations. Such bland assertions are insufficient to constitute such reasonable basis (*Jeremy Lee* at [122]; *Rajendar* at [48]).²²

(ii) The funds had been seized for more than 3 years. The longer the period that the property has been seized and detained, the greater the justification needed to show that the property is still relevant to the investigation or inquiry (*Mustafa Ahunbay v Public Prosecutor* [2015] 2 SLR 903 (“*Mustafa CA*”) at [84]).²³

(iii) The 3rd Report was even less certain than the 2nd Report as to the relevance of the seized funds to the investigations.²⁴ The 2nd Report stated that: “funds in the... [A]ccount are traceable to criminal proceeds derived from the offences committed in Russia”²⁵ [emphasis removed], whereas the 3rd Report stated that “the criminal proceeds derived from the said offences may have been transferred to the abovementioned accounts in Singapore”²⁶ [emphasis in original].

²² Applicant’s skeletal arguments at para 37

²³ Applicant’s skeletal arguments at para 36

²⁴ Applicant’s skeletal arguments at para 12(a)

²⁵ Applicant’s skeletal arguments at para 8

²⁶ Applicant’s skeletal arguments at para 11

(iv) There is no record that the second District Judge had requested for more information or an explanation which could have led her to conclude that there was a reasonable basis that the Account was still relevant for investigations.²⁷

(v) The investigations in Singapore had hit a brick wall as the CAD lacked requisite and critical information which was not forthcoming from the Russian authorities.²⁸

21 Alternatively, the Applicant argued that this court should order a release of monies from the Account pursuant to s 35(7) and s 35(8) CPC for the payment of expense incurred from the day-to-day operations of the Applicant and for the payment of professional fees and reimbursement of any expenses incurred in connection with the provision of legal services to the Applicant.²⁹

22 The amount that the Applicant is seeking for its operational expenses comprise:³⁰

- (a) S\$3,000.00 for the provision of nominee director services (March 2018 to February 2019);
- (b) S\$1,080.00 for the provision of secretarial service and registered address (March 2018 to February 2019);

²⁷ Applicant's skeletal arguments at para 41

²⁸ Applicant's skeletal arguments at 12(b)

²⁹ Applicant's skeletal arguments at para 44

³⁰ Applicant's skeletal arguments at para 46

- (c) S\$510.00 for the “preparation of the year ended [*sic*] 30 September 2017 unaudited report”, annual general meeting documents and filing of annual return;
- (d) US\$3,700.00 for the provision of the nominee director, secretary, registered address, compilation report, filing of annual return and taxation services (March 2019 to February 2020); and
- (e) S\$5,000.00 for the provision of legal services by counsel for the Applicant.

The Respondent’s submissions

23 The Respondent’s submissions on the legal framework are similar to the Applicant’s submissions (see [18]-[19] above).

24 The Respondent submits that this court should not exercise its criminal revisionary jurisdiction as there was no substantial injustice caused in this case.

25 Firstly, the Respondent submits that there was no substantial injustice as there was no error in the Order.³¹

26 In relation to the duration of the 12-month extension granted in the Order, the Respondent argues that it was within the Applicant’s remit to write to the Magistrate to request for the court review to be brought forward in light of the change in circumstances, as the Applicant now wishes to be heard on the matter.³²

³¹ Respondent’s Submissions dated 22 October 2019 (“Respondent’s Submissions”) at para 11

³² Respondent’s Submissions at para 22

27 In relation to the grounds of granting the extension, the Respondent argues that there was reasonable basis to believe that the funds in the Account are the traceable proceeds of a crime, based on information provided in the 3 reports.³³ The Respondent also argues that “continued seizure is necessary to prevent the dissipation of the funds pending their return to the persons lawfully entitled to them”.³⁴ In particular, the Respondent emphasises that the 1st, 2nd and 3rd reports “repeatedly state CAD’s intention to return the funds to their rightful owners, which is the basis upon which CAD sought retention of the Account and the funds therein”.³⁵

28 The Respondent further argues that the second District Judge should give a wider margin of appreciation in assessing investigations that have a substantial cross-border element, such as the Russian investigations in the present case.³⁶ Further, it was clear from the 1st, 2nd, and 3rd reports that CAD was making progress in its investigations.³⁷

29 Secondly, the Respondent submits that even if the second District Judge had made an error, no substantial injustice was caused as the Applicant is unable to show lawful entitlement to possession of the seized property (*Oon Heng Lye v Public Prosecutor* [2017] 5 SLR 1064 (“*Oon Heng Lye*”) at [21]).³⁸

30 In relation to the Applicant’s submissions concerning ss 35(7)-(8) CPC, the Respondent submits that this court does not have criminal revisionary

³³ Respondent’s Submissions at paras 23-24

³⁴ Respondent’s Submissions at para 24

³⁵ Respondent’s Submissions at para 25

³⁶ Respondent’s Submissions at para 27

³⁷ Respondent’s Submissions at para 29

³⁸ Respondent’s Submissions at paras 32 to 38

powers to grant the relief sought as no application has ever been made under these sections.³⁹ Alternatively, the Respondent submits that these funds should not be released as there is no evidence to show that the release of funds are necessary for the Applicant's day-to-day expenses or its legal fees.⁴⁰

Decision of this court

Issues

31 The issues before this court are:

- (a) Whether criminal revision should be ordered to set aside the Order and grant the release of the funds; or
- (b) Whether this court should order release of such amount to the Applicant as is sufficient for the payment of expenses stipulated under ss 35(7)-(8) CPC.

32 I am satisfied that neither of the above should be granted and I set out my reasons below.

The legal framework for criminal revision of an order under s 370 CPC

Criminal revisionary jurisdiction of the High Court

33 It is uncontentionous that this court should exercise its criminal revisionary jurisdiction only if there is substantial injustice caused (*Oon Heng Lye* at [14]). It has been emphasised but bears repeating that a criminal revision is not an

³⁹ Respondent's Submissions at para 40

⁴⁰ Respondent's Submissions at para 50

appeal. Such substantial injustice will be caused if there is no basis in law for the continued seizure (*Jeremy Lee* at [112]).

Legal basis for the seizure

34 The legal basis for the initial seizure of the Account and the funds therein in the present case is s 35(1)(a) CPC. In comparison, the continued seizure is governed by s 370 CPC.

35 Section 370(1) of the CPC reads:

370.—(1) If a law enforcement officer seizes any property in the exercise of any power under section 35 or 78, the law enforcement officer must make a report of the seizure to the relevant court at the earlier of the following times:

(a) when the law enforcement officer considers that the property is not relevant for the purposes of any investigation, inquiry, trial or other proceeding under any written law;

(b) one year after the date of seizure of the property.

36 Upon receiving a s 370(1) CPC report, the court must make an order as stipulated under s 370(2) CPC.

Which version of s 370(2) of the CPC applies

37 It is pertinent to point out that s 370 CPC had been repealed in its entirety and replaced with a new version, with effect from 31 October 2018, pursuant to s 100 of the Criminal Justice Reform Act 2018 (No. 19 of 2018) (“CJRA”). This means that the old version of s 370 CPC was in force on 25 October 2018, which was the date of the court review when the Respondent applied for an extension of the seizure, whilst the new version of s 370 CPC was in force on 27 February 2019, the date when the second District Judge passed the Order.

38 Parties did not make clear submissions on the issue of which version of s 370 CPC applies. The Applicant, in a footnote, submits that the old version of s 370 CPC should apply but did not set out any reasons in support.⁴¹ The Respondent did not make any submissions on which version should apply but simply cites the new version of s 370 CPC in its submissions. For completeness, the issue will be dealt with briefly in this judgment.

39 The new version of ss 370(1) and 370(3) CPC are essentially the same as the old version, however, there are material differences in the two versions of s 370(2) CPC. The two versions of s 370(2) CPC are set out in a table here for comparison:

Old s 370(2) CPC	New s 370(2) CPC
(2) Subject to subsection (3), the Magistrate's Court must, upon the receipt of such report referred to in subsection (1), make such order as it thinks fit respecting the delivery of the property to the person entitled to the possession of it or, if that person cannot be ascertained, respecting the custody and production of the property.	(2) Subject to subsection (3), and to any provisions on forfeiture, confiscation, destruction or delivery in any other written law under which property may be seized, the relevant court must, upon receiving a report mentioned in subsection (1), make such of the following orders as may be applicable: (a) in any case where the property consists of a computer and any data stored in the computer, and the relevant court is satisfied that an offence was committed in respect of the data, or that the data was used or intended to be used to commit an offence — an order for —

⁴¹ Applicant's skeletal arguments at footnote 2

Old s 370(2) CPC	New s 370(2) CPC
	<p>(i) the deletion of the data from the computer, and the delivery of the computer (after the deletion of the data) to the person entitled to possession of the computer; or</p> <p>(ii) if that person cannot be ascertained, the deletion of the data from the computer, and the custody and production of the computer (after the deletion of the data);</p> <p>(b) in any case where the relevant court is satisfied that an offence was committed in respect of the property, or that the property was used or intended to be used to commit an offence—such order as the relevant court thinks fit for the disposal of the property;</p> <p>(c) in any case where the relevant court is satisfied that the property consists of anything into which any property mentioned in paragraph (b) has been converted, anything for which any property mentioned in paragraph (b) has been exchanged, or anything acquired (whether immediately or later) by this conversion or</p>

Old s 370(2) CPC	New s 370(2) CPC
	<p>exchange — such order as the relevant court thinks fit for the disposal of the property;</p> <p>(d) in any case where the relevant court is satisfied that the property does not consist of any property mentioned in paragraph (a), (b) or (c), and the person entitled to possession of the property consents to the use of the property for compensation or restitution, or to the forfeiture of the property — such order as the relevant court thinks fit for the disposal of the property;</p> <p>(e) in any other case, an order relating to —</p> <p style="padding-left: 40px;">(i) the delivery of the property to the person entitled to possession of the property; or</p> <p style="padding-left: 40px;">(ii) if that person cannot be ascertained, the custody and production of the property.</p>

40 The old s 370(2) CPC is *in pari materia* with the new s 370(2)(e) CPC and essentially requires the Magistrate to make an order as it thinks fit respecting the delivery of the seized property to the person entitled to the possession of it. The difference in the new s 370(2) CPC is that this requirement is further subject to ss 370(2)(a)-(d) CPC such that s 370(2)(e) will not apply if

the property falls within one of the categories in ss 370(2)(a) to 370(2)(d). This difference may hence affect the relief that is available to a person who is entitled to possession of the seized property.

41 It should be noted that it is not entirely clear which version of s 370(2) CPC applies as s 128 of the CJRA which deals with saving and transitional provisions, the 2nd Reading of the Criminal Justice Reform Bill 2018 (Bill 14 of 2018) found in *Singapore Parliamentary Debates, Official Report*, (19 March 2018) vol 94 at <https://sprs.parl.gov.sg/search/fullreport?sittingdate=19-03-2018> (14 January 2020), as well as the Explanatory Statement to the Criminal Justice Reform Bill 2018 (Bill 14 of 2018) are all silent as to which version of s 370 CPC should apply. In the absence of any express provision, and if it had been necessary to decide this issue, I would have been inclined to find that the provision at the time of the latest application for continued seizure should apply.

42 It is not necessary for me to reach a decision on which version of s 370(2) CPC applies as regardless of which version of s 370 is considered, s 370(2) CPC will not apply if s 370(3) CPC applies, and I find that s 370(3) CPC applies in the present case (see below).

Section 370(3) CPC and the requirement for reasonable basis

43 Under both versions of the CPC, s 370(2) CPC is subject to s 370(3) CPC. Section 370(3) CPC reads:

- (3) The relevant court must not dispose of the property if —
 - (a) there is any pending court proceeding under any written law in relation to the property; or

(b) the relevant court is satisfied that the property is relevant for the purposes of any investigation, inquiry, trial or other proceeding under any written law.

44 Under s 370(3) CPC, the Magistrate must not dispose of the property if: (a) there is any pending court proceeding under any written law in relation to the property in respect of which the report referred to in s 370(1) is made; or (b) it is satisfied that such property is relevant for the purposes of any: (1) investigation; (2) inquiry; (3) trial; or (4) other proceeding under any written law. This list of four purposes in s 370(3) is exhaustive.

45 It should be pointed out that under the previous version of s 370(3) CPC, the phrase “other proceeding under any written law” was originally “other proceeding under this Code”. This difference is not material, as the Respondent did not make submissions that the seized funds are relevant for either proceedings under the CPC, or proceedings under any written law, and does not appear to be relying on this ground of relevancy.⁴²

46 In determining whether the property is relevant for a s 370(3) CPC purpose, there should be enough information put before the court so that the Magistrate can have a reasonable basis for concluding that these statutory requirements are met (*Rajendar* at [48]):

48 The Prosecution would also have to inform the Magistrate of the justification for the extension and of such facts as form the basis of its request. I accept that notwithstanding the passage of a year since the seizure, investigations might not yet be complete. But this does not mean that a bland assertion from the IO to the effect that investigations are continuing and that the seized assets are relevant will suffice. In such circumstances, the Magistrate would be entitled to some explanation for the delay. The short point is that the Magistrate should be provided with such information as would enable her to be satisfied that there is a *reasonable* basis for thinking that

⁴² Respondent’s Submissions at pp 11-18

the seized property is “relevant for the purposes of any investigation, inquiry, trial or other proceeding under [the CPC]” if, as is the case here, that is the basis on which the required extension is being sought.

[emphasis in original]

47 Further, sufficient information has to be put before the court, otherwise, no real purpose is served by the involvement of the court (*Rajendar* at [49]):

... [if insufficient information is put before the court], the Magistrate would be reduced to acting in a purely formal role to endorse whatever she was presented with, without any basis for satisfying herself that these assertions were validly made, and it is meaningless in such circumstances to speak of judicial oversight of the seizure process, as was contemplated in [*Mustafa CA*].

48 The threshold for the information required is higher than that for the initial seizure (*Rajendar* at [50]):

50 In my judgment, the threshold for *continued* seizure under s 370 of the CPC should be and is more stringent than the threshold for *initial* seizure under s 35 of the CPC. This follows from the fact that:

(a) by the time the matter is reviewed under s 370, a period of up to one year would have passed;

(b) judicial oversight is introduced at this stage and this is only meaningful, as I have noted above, if the court is presented with enough information to assess and calibrate the balance between the private interests of an applicant who has not yet been convicted and the public interest in the contemplated prosecution; and

(c) otherwise, the only remedy in respect of a seizure under s 35 would be judicial review, which as I have noted at [41] above presents a demanding threshold to meet given the broad powers conferred upon the Police by s 35.

[emphasis in original]

49 In summary, therefore, an extension should be supported by:

- (a) Sufficient information instead of mere bland or bald assertions;
- (b) Information on the state of investigations; and
- (c) Timelines on the expected progress of the investigations.

50 In determining whether the information disclosed is sufficient to provide reasonable basis for thinking that the seized property is relevant to a specified purpose under s 370(3), the court is entitled to take into account, *inter alia*, the period which has elapsed since the property was first seized, and the nature of the wrongdoing which gave rise to the investigation or inquiry (*Mustafa CA* at [84]). The longer the period the property has been seized and detained, the greater will be the justification needed to show that it is still relevant to the investigation or inquiry (*Mustafa CA* at [84]).

Section 370(2) CPC and the requirement for lawful entitlement

51 Section 370(2) CPC applies if s 370(3) CPC does not apply. Under s 370(2) CPC (s 370(2)(e) of the new version), an order to release the seized funds to the person seeking release is only required when the person seeking release proves that he is entitled to the possession of the property. In *Oon Heng Lye* at [46], Chief Justice Sundaresh Menon interpreted the phrase “entitled to the possession” to mean that “the person in question must be able to show that the property was ‘legally acquired by him’”.

52 Although the relevant provision that was interpreted in *Oon Heng Lye* was s 392(1) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) (“CPC 1985”), I am of the view that the reasoning in *Oon Heng Lye* can be extended to the present case.

53 Firstly, s 392(1) CPC 1985 appears to be the predecessor provision to s 370(2) CPC as the two provisions are substantially similar. Section 392(1) CPC 1985 reads:

392.—(1) The seizure by any police officer of property taken under section 29 or alleged or suspected to have been stolen, or found under circumstances which create suspicion of the commission of any offence shall be forthwith reported to a Magistrate’s Court which shall make such order as it thinks fit respecting the delivery of the property to the person entitled to the possession of it or, if that person cannot be ascertained, respecting the custody and production of the property.

54 Pursuant to the Criminal Procedure Code Bill (Bill 11 of 2010), s 392(1) CPC 1985 was removed and s 370 CPC was added instead. The two provisions are similar as they deal with the procedure after police have seized property, and both set out the situations where a court must make an order as it thinks fit, including ordering delivery of the seized property to the person entitled to the possession of it. Given the similar wording, *Oon Heng Lye* can be extended to the present case. *Oon Heng Lye* in itself was an extension of the rule in previous cases, as the provision in *Oon Heng Lye* was similarly worded to those previous cases (*Oon Heng Lye* at [47]).

55 Secondly, more than anything else, the reasoning in *Oon Heng Lye* is persuasive. *Oon Heng Lye* distinguished actual possession from lawful entitlement to possession and held that a person in actual possession may not be the person in lawful possession, depending on the circumstances (*Oon Heng Lye* at [49]). A person in actual possession of traceable proceeds of a crime has no basis for asserting any enforceable proprietary interest in such property (*Oon Heng Lye* at [49]). Instead, the person seeking delivery of the property has the burden of proof of showing such lawful entitlement to possession (*Oon Heng Lye* at [46]; s 103 of Evidence Act (Cap 97, 1997 Rev Ed)). The distinction drawn in that case between “actual possession” and “entitlement to possession”

is logical and since s 370(2) CPC requires “entitlement to possession”, it should be a requirement for the person seeking delivery to prove lawful entitlement.

56 I also note that the High Court in *Jeremy Lee* had similarly extended the rule in *Oon Heng Lye* to apply to s 370 CPC (*Jeremy Lee* at [115]).

57 For these reasons, I find that the reasoning in *Oon Heng Lye* is similarly applicable to s 370(2) CPC. Since a person not legally entitled to possession has no legal right to demand delivery of the property to him, substantive injustice will only be caused to a person who can prove that he is legally entitled to possession (*Oon Heng Lye* at [55]).

Application to the facts

Reasonable basis

58 The first question then is whether the second District Judge had a reasonable basis for believing that the seized funds were relevant for one of the specified purposes under s 370(3) CPC.

59 As set out above at paragraph 27, the Respondent submitted that the seized funds are relevant for the purposes of preventing the dissipation of the assets, and for returning them to their rightful owners.

60 However, the Respondent’s stated purpose for the continued seizure differs from the second District Judge’s Order. The second District Judge in the Order specifically ordered for the “[e]nforcement agency to retain the seized property for the purposes of investigations”,⁴³ and made no mention about preventing dissipation of funds or returning of funds to the rightful owner.

⁴³ Liu Kaili’s affidavit at Tab 7

61 In my view, the Respondent's newly stated purpose should be disregarded as the issue is not whether this court has reasonable basis to believe that the seized property is relevant to the Respondent's newly stated purpose. Instead, the issue is whether the second District Judge had reasonable basis to believe that the seized property is relevant to the purpose stated in the Order, namely, for the purposes of investigations. This issue should hence be examined in relation to the second District Judge's Order and not the Respondent's newly stated purpose.

62 In any event, it is unclear if the Respondent's newly stated purpose even falls within the ambit of one of the four specified purposes set out in s 370(3) CPC. At face value, the purpose of preventing dissipation of assets and returning assets to their rightful owner does not seem to fall within the ambit of either: (1) investigation; (2) inquiry; (3) trial; or (4) other proceeding under any written law.

63 In *Rajendar*, Menon CJ held that an extension of seizure under s 370 CPC can be allowed for the purpose of preserving assets for a disposal order under s 364 CPC (*Rajendar* at [49]). However, the Respondent themselves distinguished the case of *Rajendar* by stating that extension of the seizure of funds in that case was for the purposes of obtaining a disposal order under s 364 CPC, whereas in the present case, the seizure is sought for the purpose of returning the funds to the rightful owner lawfully entitled to them.⁴⁴ The former would constitute a "proceeding under this Code" and would fall under the ambit of one of the s 370(3) CPC purposes, whereas the latter would not. The Respondent did not make any submissions on how its newly stated purpose for

⁴⁴ Respondent's Submissions at para 26

the extended seizure falls under one of the four specified purposes under s 370(3) CPC.

64 In addition, the Respondent's newly stated purpose for the continued seizure seems to contradict the three reports. Contrary to the assertion of the Respondent, there is nothing in the 1st, 2nd and 3rd report explicitly stating CAD's intention to return the funds to the rightful owners. Even if such intention can be implied, it was not stated that this was the basis of the continued seizure sought. Instead, the 1st and 2nd reports make clear that the basis for seeking extended seizure was that the funds were relevant to investigations. Paragraph 7 of the 1st report states that "the seized property continues to be relevant to investigations",⁴⁵ and accordingly, the first District Judge issued an order of court stating that "[e]nforcement agency to retain the seized property for the purposes of investigations".⁴⁶ Similarly, paragraph 7 of the 2nd report states that "the seized property continues to be relevant for investigations",⁴⁷ and accordingly, the first District Judge issued an order of court ordering the "[e]nforcement agency to retain the seized property for the purposes of investigations".⁴⁸ Peculiarly, the 3rd report does not explicitly mention that the seized property continues to be relevant for investigations. Instead, it removed the phrase "for investigations" in paragraph 7 and simply stated that the "seized property continues to be relevant".⁴⁹ It is unclear what CAD's intention in removing this phrase was, as the 3rd Report is vague and does not provide a

⁴⁵ Liu Kaili's affidavit at Tab 1

⁴⁶ Liu Kaili's affidavit at Tab 2

⁴⁷ Liu Kaili's affidavit at Tab 4

⁴⁸ Liu Kaili's affidavit at Tab 5

⁴⁹ Liu Kaili's affidavit at Tab 6

clear basis for seeking the extension. As a result, the second District Judge granted the extension for purposes of investigations.

65 The issue that has to be resolved is whether the second District Judge had a reasonable basis for believing that the seized funds were relevant for investigations.

66 I do accept that the second District Judge had sufficient information to provide reasonable basis for believing that the seized property is relevant to investigations:

- (a) The CAD had provided a report stating that the authorities in the Russian Federation are investigating Boytsov for allegedly embezzling a minimum of RUB 4 billion from a state-owned shipyard construction project;⁵⁰
- (b) Boytsov was the sole shareholder of the Applicant at the time that the Account was seized, and the entire sum of US\$2,935,594.62 was in the Account at that time;
- (c) RUB 4 billion is approximately US\$65,360,00.00, and this is significantly more than the US\$2,935,594.62 which was seized which means that there is a possibility that the entire sum of the seized funds was from the embezzled Russian funds;
- (d) CAD had also commenced an investigation into the Applicant under s 47 of the Corruption, Drug Trafficking And Other Serious

⁵⁰ Liu Kaili's affidavit at Tab 6 at para 4

Crimes (Confiscation Of Benefits) Act (Cap 65A, 2000 Rev Ed) in relation to the seized funds;⁵¹ and

(e) CAD investigation revealed that the seized funds are traceable to the Russian authorities' investigation.⁵²

67 Nevertheless, it must be emphasized that the above information was only just sufficient at this stage of proceedings and by the next court review, more information should be provided given the substantial time that has already passed.

68 I appreciate that it is difficult to estimate the time that may be taken by investigations. But the longer investigations are carried out, the greater the degree of clarity one would expect, unless complications arise. If there are such complications, they should be stated. It would not be either realistic or useful to specify the degree of detail or support that is required. If at one end of the spectrum, bald statements are not sufficient, at the other end, one would not require copious details or extensive support. What is stated should at least show that the extension is *bona fide*, that there are investigations still ongoing, and what progress has been made or not made since the last report, and at least a brief explanation for any delay or need for further time.

69 It is appreciated that cross-border crimes may be complex, and that there will generally be some delay in communications with foreign agencies, as both the local and foreign investigative and prosecution agencies will need to work through their own structures in requesting and responding to requests, as well

⁵¹ Liu Kaili's affidavit at Tab 6 at para 5

⁵² Liu Kaili's affidavit at Tab 6 at para 5

as in clarifying matters. In a large jurisdiction such as Russia, this may sometimes require communications between the headquarters or capital and officers further afield, through its own chain of communications. On the other hand, the rights of the persons affected by the seizure also need to be considered; the court needs to balance facilitating investigations while ensuring that any release is not unduly or inappropriately held up.

70 I note that the Applicant argues that the level of certainty in the CAD's own reports about the traceability of the funds to the subject of the alleged offences appeared to have gone down, as compared to the initial reports. Nevertheless, this did not indicate the lack of reasonable basis by the second District Judge.

71 But on the next round one would expect, if things have not yet been brought to a conclusion, at least such information as would explain the need for further investigations, and what has happened in the meantime. As judgment is issued shortly before the next court review, it may be appropriate for the next Magistrate to consider a shorter extension to allow further details to be given at an intermediate point in time, rather than giving the maximum twelve month extension.

72 Since there is reasonable basis for the second District Judge's Order, s 370(3) CPC is satisfied and there is no need to discuss whether the Applicant is entitled to possession under s 370(2) CPC. However, for completeness, I will proceed to do so.

Lawful entitlement to possession

73 I accept the contentions of the Respondent that the Applicant has failed to show that it is lawfully entitled to the possession of the funds. It is insufficient

to show that the funds were seized from the Applicant. Some evidence should be disclosed to show that the funds were lawfully obtained, or that there was some legitimate source, whether from investments, trading or otherwise. Without this, the Applicant would not be able to make out a right to the possession of those funds. Such evidence was not presented in the present case.

74 The following factors further cast doubt that the Applicant has lawful entitlement to possession of the funds:

- (a) On 22 February 2017, Boytsov sold all his shares in the Applicant to Ang for US\$10,000.00,⁵³ which raises a significant doubt about why Boytsov would sell his company at such a significant undervalue if he had legal entitlement to the funds;
- (b) On 1 March 2018, all the shares in the Applicant were transferred from Ang to Liu for consideration of S\$1.00,⁵⁴ which raises a significant doubt about why Ang would sell his company at such a significant undervalue if he had legal entitlement to the funds; and
- (c) Liu was unable to provide any explanation about how the Applicant came to acquire the seized funds and was also unable to explain the business that the Applicant carried out, if any, and was hence unable to provide any support for the Applicant's legal entitlement to the funds.⁵⁵

⁵³ Tan Ruiyun's affidavit at Tab A

⁵⁴ Tan Ruiyun's affidavit at Tab B

⁵⁵ Respondent's Submissions at para 37

75 Hence, the Applicant has failed to show lawful entitlement to the funds and no substantial injustice would be caused to the Applicant even if there had been no reasonable basis for the second District Judge to make the Order.

Release of funds under ss 35(7)-(8) CPC

76 No application for a s 35(7) or s 35(8) CPC order was made before the second District Judge. The second District Judge hence did not pass any “judgment, sentence or order” pertaining to these provisions and the criminal revisionary jurisdiction of this court does not arise with respect to this issue. Where no application on a specific order was in fact made, the appropriate outcome would generally be to leave it to the Applicant to make that application before the original court.

77 In any event, I agree with the Respondent that there was insufficient evidence of the need for such payment.

Miscellaneous

78 The Respondent argues that the proper course should have been for the applicant to have sought review by the Magistrate of the current extension at an earlier date. I am not certain that this is a strong enough argument to deflect a criminal revision if the grounds had been made out: if there was substantial injustice in that there were insufficient grounds for an extension, there was no need to go back to the Magistrate; doing so would in effect allow the investigation agency a mulligan.

Conclusion

79 There was no substantial injustice caused to the Applicant and criminal revision is not warranted in this case. The application is hence dismissed.

Aedit Abdullah
Judge

Pereira Russell Si-Hao, Liu Guiliang and Lum Kwong Hoe Melvin
(WongPartnership LLP) for the Applicant;
Vincent Ong and Lee Jing Yan (Attorney General's Chambers) for
the Respondent;
