

THE HIGH COURT

RECORD NO. 2005/21SP

BETWEEN

F McK

APPLICANT

AND
B M AND K M

RESPONDENTS

Judgment of Finnegan P. delivered on the 3rd day of November 2006.

1. In these proceedings commenced by Special Summons the Applicant seeks an Order pursuant to the Proceeds of Crime Act 1996 section 4 – a Disposal Order in respect of sums of money standing to the credit of the Respondents in an Austrian bank.
2. By Notice of Motion dated 20th July 2005 the Respondents sought an Order dismissing the proceedings on the grounds that they were not commenced in accordance with the Rules of the Superior Courts 1986 and that it was not open to the Plaintiff to proceed by way of Special Summons. At the hearing of the Notice of Motion the argument was formally made but not pursued in detail: the arguments relied upon were those advanced before me without success in *McK v G* and in which judgment was delivered on the 30th day of January 2006 and which is under appeal now pending before the Supreme Court. For the like reasons that I gave in that case I find against the Respondents on this submission.
3. A second matter arises however. The Respondents submit that the Court may not by reason of the existence of proceedings in Austria make any Order pursuant to section 4 in these proceedings. On the 27th June 1997 the Superior Court for Criminal Cases Vienna Austria made a preliminary injunction in the nature of a restraint order over the accounts the subject matter of these proceedings. That injunction remains valid until the final disposition of the proceedings before that Court. The Austrian Prosecutor has I am told applied for a permanent confiscation order in respect of the monies.
4. On behalf of the Respondents it is submitted that as a matter of private international law this Court should cede jurisdiction to the Austrian Court on the basis of comity of courts. Further without the concurrence of the Austrian Court the Respondents here could not themselves ensure compliance with an Order pursuant to section 4: accordingly such an Order should not be made.
5. It is wrong to think that the Court can only act in one of two ways in personam or in rem. If the party to be subject to the Order is within the jurisdiction of the Court it may act in personam and require him to take steps within his power to give effect to the Court's Order in respect of assets situate in another jurisdiction. I see no difficulty in the Court making an Order pursuant to section 4 thereby depriving the Respondents of such title or interest as they may have in the sums on deposit in Austria. In this case the section 4 Order would transfer the estate right and title of the Respondents in the funds to the Minister or to such other person as the Court may determine. The ultimate release of the funds is a matter which would require to be dealt with before the Court in Austria. In making the Order the Court is not determining any question of Austrian law but merely substituting the Minister (or the other person so determined) for the Respondents and giving them no better right or title to the funds than the Respondents themselves may have. By way of analogy the Order has the like effect of a transfer of immovable property subject to a mortgage.
6. The argument as to extra territoriality is also misconceived – extra territorial legislation simply means legislation which attaches significance for Courts within the jurisdiction to facts and events occurring outside the jurisdiction. It does not imply that one State can pass laws for another State or that several systems of law will be in operation regulating a particular sphere within any given State (see Bennion Statutory Interpretation Second Edition page 257). It does not per se offend against the comity of courts.
7. Accordingly I am satisfied that the existence of the Order of the Austrian Court does not present a bar to the Applicant proceeding further in this matter.