Neutral Citation Number: [2011] IEHC 62

THE HIGH COURT

1996 10143 P

IN THE MATTER OF THE PROCEEDS OF CRIME ACT 1996

BETWEEN

MICHAEL F. MURPHY

APPLICANT

AND

JOHN GILLIGAN, GERALDINE GILLIGAN, DARREN GILLIGAN

AND TRACEY GILLIGAN

RESPONDENTS

Judgment of Mr. Justice Feeney delivered on the 27th day of January, 2011.

1. This judgment deals with four separate applications brought by each of the respondents pursuant to s. 3(3) of the Proceeds of Crime Act 1996 (the 1996 Act). Section 3(3) provides:

> "Where an interlocutory order is in force, the Court, on application to it in that behalf at any time by the respondent or any other person claiming ownership of any of the property concerned, may, if it is shown to the satisfaction of the Court that the property or a specified part of it is property to which paragraph (I) of subsection (1) applies, or that the order causes any other injustice, discharge or, as may be appropriate, vary the order."

The first named respondent is the separated husband of the second named respondent and they are the parents of the third and fourth named respondents.

1.2 The proceedings were commenced by plenary summons dated 21st November, 1996 and were brought under the provisions of the 1996 Act. The proceedings were brought by the then Chief Superintendent, Michael F. Murphy, the applicant, who was a "Member" of An Garda Síochána within the meaning of the 1996 Act. That Act provides that if a court is satisfied on the evidence tendered by the applicant that property over a particular value is the proceeds of crime, a s. 2 order may be made in respect of that property. Thereafter a s. 3 order can be made where it appears appropriate to do so on the evidence tendered by the applicant and the property the subject of that order is in effect frozen. After a period of seven years, an application may be made to the Court under s. 4 of the 1996 Act for a disposal order which can result in the property, the subject of the s. 3 order, or part of it, being transferred to the Minster for Finance or to such other person as the Court may determine.

1.3 The order made under s. 3(1) of the 1996 Act and these proceedings have been the subject of a number of applications to this Court and by way of appeal to the Supreme Court. The Supreme Court ruled on the various matters raised before it in the case of *Murphy v. Gilligan* (Unreported, Supreme Court decision of 13th May, 1997) and also in the reported decision of *Murphy v. Gilligan* [2009] 2 I.R. 271. The recent Supreme Court decision made it clear that the respondents were entitled to bring s. 3(3) applications and that each of the respondents could seek relief under that section. The applicant has not disputed the entitlement of the respondents to bring these applications. Applications under s. 3(3) of the 1996 Act can be taken by persons affected by a s. 3 order where a s. 3 order is in force. As was set out in the judgment of Geoghegan J. in the recent Supreme Court decision (at 294):

> "It is not in dispute and cannot be in dispute that an operative order under
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> s. 3(1) was and remains in force."

1.4 It is the existence of that operative order which provides this Court with jurisdiction to consider an application under s. 3(3) which is predicated upon such application being taken in circumstances where an interlocutory order, that is a s. 3(1) order, is in force. That position was identified in the judgment of Geoghegan J. in the Supreme Court when, in *obiter dicta* (at 298), Geoghegan J. stated:

> "… I am firmly of the view that an application under s. 3(3) can still be brought and that that might well be a more appropriate remedy than raising the questions in the s. 4 application but that is all a matter for the defendants' advisers."

1.5 Each of the defendant/respondents have brought applications under s. 3(3) of the Act. Geoghegan J., in the judgment of the Court in Murphy v. Gilligan, identified the nature of a s. 3(3) application in the following terms (at 295/296):

> "Section 3(3) on the other hand provides for the possibility of discharging or varying an order under s. 3(1) if the order under s. 3(1) 'causes any other injustice'. Finnegan P. rightly takes the view that injustice covered by s. 3(3) is an injustice resulting from the earlier order not an injustice leading up to the making of that order."

Geoghegan J. went on to further address the scope of s. 3(3) of the Act at paragraph 53 of his judgment (at 299) in the following terms:

> "This brings me to the rest of the machinery. For that very reason and with an eye on the Constitution, the Oireachtas enacted s. 3(3) which enabled the respondent in an application under that subsection and in a situation where an order under s. 3(1) was already in force to apply to a court to have that order discharged or varied. Such

> an order could be made if such respondent satisfied the court that the property or a specified part of it was property to which para. (I) of subs. (1) applies or in other words that the property frozen or part of it was not directly or indirectly proceeds of crime or if he satisfies the court that the order under s. 3(1) 'causes any other injustice'."

Geoghegan J. had also addressed the scope of a s. 3(3) when he stated (at p. 278):

> "The scheme of s. 3(3) is that even if a freezing order is in fact made, the respondent … may have it discharged or varied as long as that order is in force, if he or she shows to the satisfaction of the court that the property or a part of it is not proceeds of crime or that the order already made under s. 3(1) causes any other injustice."

1.6 The respondents in this case have sought to operate that machinery and have each brought applications under s. 3(3). In considering those applications the Court has to consider whether the respondents or any of them have satisfied the Court that the property frozen or any part of it was not directly or indirectly proceeds of crime and also to consider whether any of the respondents have discharged the onus of establishing that the s. 3(1) order causes any other injustice. The issue as to whether or not the property or part of it is either directly or indirectly the proceeds of crime is primarily a matter for fact. Section 3(3) also allows and permits the Court to discharge or vary an order if it is shown that the order causes "any other injustice". As regards the approach which this Court should take to considering the issue of "any other injustice", the Court is assisted by the interpretation of s. 3(3) as set out by Finnegan P. in the case of *MFM v. BM and KM,* judgment delivered on the 3rd November, 2006, where he stated (at p. 4):

> "There is a proviso in section 3(1) that the Court should not make an Order under section 3 if it is satisfied that there would be a serious risk of injustice. Section 3(3) applies where the Order having been made causes an injustice. The intention of the provision is to allow the Court to intervene by discharging or varying a section 3 Order where the Order although properly obtained is for some reason causing an injustice for example by a change in circumstances. It is not directed to the circumstances in which the Order was made but to the circumstances which apply at the time of the application and in which circumstances the Order is operating."

1.7 This Court will follow the interpretation identified by Finnegan P. in considering the applications before this Court. This Court, in considering the issue as to whether any other injustice has been established to the satisfaction of the Court by any of the applicants, will consider the circumstances which apply at the time of the application to this Court and not the circumstances which applied at the time that the s. 3 order was made. The approach adopted by Finnegan P. in MFM v. BM and KM followed the analysis and approach which Finnegan P. had identified in the earlier case of *M(MF) v. C(M) and M(G) and Ors.* [2002] WJSC-HC-3759 where he had identified that one of the matters that the Court had to have regard to in an application pursuant to s. 3(3) was whether the order causes injustice. "Causes" was identified as being in the present tense and Finnegan P. therefore concluded that the Court in considering an application under s. 3(3) had to have regard to the effect that the order is having at the time of the application to it under s. 3(3). That approach was approved by Geoghegan J. in his judgment in the Supreme Court in *Murphy v. Gilligan* (see paragraph 45).

2. Prior to the commencement of this hearing the Court made a number of rulings on the 9th June, 2010. Those rulings determined that the Court was proceeding on the basis first that a s. 3(1) order was in place and that that order affected, to some extent, each of the four defendant respondents who were before the Court and, secondly, that that order was a final order. The Court confirmed that each of the four respondents were entitled to bring s. 3(3) applications and that those applications were the matters which were for consideration by the Court. The Court expressly held:-

> "All those applicants raise various issues in relation to items of property which are common, and there is an overlap in relation to the evidence of which the Court will have to consider in relation to factual matters concerning each of the four applicants and there is no argument but that the evidence in relation to the four applicants should be heard together and that the evidence in relation to one applicant is evidence in relation to all applicants. The Court intends to proceed on that basis, that there will be one united and combined hearing, and that that has consequences in relation to how the Court intends to proceed."

2.2 In the light of that ruling the Court proceeded to hear all four applicants at one hearing on the basis that all and any evidence that was adduced was admissible in relation to each of the four applications. On the 9th June, 2010 the Court referred to the judgment of the Supreme Court in this case and identified that it was clear from the Supreme Court's judgment that the onus is on the respondents in this case and that it was for each of those respondents to satisfy the Court that s. 3(3) relief should be granted. The Court also ruled, in relation to the procedures which were to be followed and identified, that it was for the respondents to lead evidence in support of either of the two grounds upon which a s. 3(3) application can be brought and to satisfy the Court that they or any of them are entitled to succeed in their applications. The Court also stipulated that cross-examination would be permitted and that notices of cross-examination could be served by the applicant or any of the respondents. The applicant had delivered six folders of "pleadings" to all parties, including all affidavits sworn within these proceedings, and the Court proceeded, by agreement, on the basis that those affidavits were in evidence and that it was open to any of the parties to seek to cross-examine any of the deponents who had sworn affidavits within these proceedings. The procedures adopted and followed by the Court was that all affidavits sworn within these proceedings were in evidence and that all the parties were free to serve notice of cross-examination and to seek to cross-examine any of the deponents who had sworn affidavits. The Court also allowed and permitted each of the respondents to seek to call witnesses in oral evidence and in each and every instance where such an application was made the Court allowed and permitted such oral evidence.

3. The property which was the subject matter of the s. 3 order was amended and updated from that set out in the original order to reflect the then current status of the several Folios. That was done by order of the Court of the 30th January, 1998. Following that order the updated and revised schedule of property covered by the s. 3 order was as follows:

> (1) The property described in Folio 18881F of the Register Co Kildare comprising 2.426 hectares at Mucklon, Enfield, Co. Kildare.
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> (2) The property described in Folio 4003F of the Register Co. Kildare comprising 8.688 acres Mucklon, 2.051 hectacres at Mucklon and 16.2388 acres at Mucklon, all at Enfield, Co. Kildare.
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> (3) The property described in Folio 23407F in the Register Co. Kildare comprising 5.514 hectares at Mucklon and 0.344 hectares at Mulgeeth, Enfield, Co. Kildare.
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> (4) The property described in Folio 95512F of the Register Co. Dublin comprising dwellinghouse and premises 1,

Willsbrook View, Lucan, Dublin.

(5) The property described in Folio 97423F of the Register Co. Dublin comprising the dwellinghouse and premises 6, Weston Green, Lucan, Dublin.

(6) The lands and hereditaments described in Folio 27201F of the Register of Freeholders County Kildare.

(7) The lands and hereditments described in Folio 26282F of the Register of Freeholders County Kildare.

(8) The property described in Folio 12391 of the Register of Freeholders County Kildare and the property described in Folio 25800F of the Register of Freeholders County Kildare.

(9) The property described in Folio 109800F of the Register Co. Dublin being the dwellinghouse and premises 13, Corduff Avenue, Blanchardstown, Dublin.

3.2 It is that updated and revised schedule which the Court will refer to in this judgment. By notice of motion returnable for the 16th February, 2009 the first named respondent, John Gilligan, sought relief under s. 3(3) of the 1996 Act. In a document attached to that application the first named respondent, who was at that time a lay litigant, identified that he wanted to avail of the s. 3(3) application process so as to have a chance to prove that the money he had was not the proceeds of crime. During the course of his evidence the first named respondent identified his case in relation to the nine items of property set forth in the updated and revised schedule and those claims will be dealt with later in this judgment. On the 16th March, 2009 solicitors for the third named respondent, Darren Gilligan, issued a motion seeking a discharge of the s. 3 order made by this Court on the 16th July, 1997 insofar as that order affected the third named respondent. In an affidavit sworn by the third named respondent on the 13th March, 2009, he identified that the property in respect of which he was making a s. 3(3) application was the property at 6, Weston Green, Lucan, Dublin which is the property at paragraph (5) of the updated and revised schedule. He sought to have the s. 3 order in respect of that property discharged. By notice of motion dated the 7th April, 2009, the fourth named respondent, Tracey Gilligan, sought relief pursuant to s. 3(3) of the 1996 Act. She sought relief insofar as the s. 3 order affected the property at 1, Willsbrook View, Lucan, Dublin which is the property at paragraph (4) of the updated and revised schedule. She sought to have the s. 3 order in respect of that property discharged. By notice of motion dated the 28th March, 2009, the second named respondent, Geraldine Gilligan, sought to discharge the s. 3 order herein insofar as that order affected the second named respondent. That application related to each item of property set forth in the updated and revised schedule other than the two properties which were the subject of s. 3(3) applications by the third and fourth named respondents. The second named respondent's s. 3(3) application related to the items set forth at paragraphs (1), (2), (3), (6), (7), (8) and (9) of the updated and revised schedule.

4. The nine items of property set out at paragraph 3 of this judgment are the subject of a s. 3 order. The s. 3 order was made on the application of the applicant and in circumstances where it appeared to the Court on the evidence tendered by the applicant, that each and every item of property was in the possession or control of one or other of the respondents and that such property constituted directly or indirectly proceeds of crime or had been acquired in whole or in part with or in connection with property which, directly or indirectly, constitutes the proceeds of crime. The evidence which led the Court to making such order included, but was not limited to, hearsay evidence admissible by virtue of s. 8 of the Proceeds of Crime Act 1996. That evidence can be counteracted, in a s. 3 hearing, by evidence called by or on behalf of a respondent. In the s. 3(3) applications, brought herein by the respondents, each of them has sought to satisfy the Court that property the subject matter of the s. 3 order is not directly or indirectly the proceeds of crime. The applications taken together relate to all the properties. The second, third and fourth named respondents have provided evidence, which will be detailed later, identifying as part of their claims that portion or all of the funds used to purchase certain of the properties came from their own funds and were not provided by the first named respondent. Insofar as properties were purchased with funds which emanated from the first named respondent, he has given evidence that such funds as were used emanated from activities which were not criminal and such funds were neither directly or indirectly the proceeds of crime. The second, third and fourth named respondents have relied upon the evidence of the first named respondent as to how he obtained the funds used to purchase and develop properties in their possession or control and subject to the s. 3 order. Relying on the evidence of the first named respondent the other respondents have sought to discharge the onus which is on them under the provisions of s. 3(3) of the Act and to establish that the funds used are not the proceeds of crime. The respondents have sought to put before the Court what is claimed to be a credible explanation as to how the funds used in the purchase and development of the properties were obtained and that such funds came from economic activities other than criminal activities. The second, third and fourth named respondents adopted the evidence of the first named respondent as to the manner in which he claimed to have sourced and provided the funds for the purchase and development of the properties in issue insofar as such proceeds were not funded from the second, third and fourth named respondents' own funds or assets.

5. A number of issues were raised on behalf of the respondents in argument. Prior to considering the evidence the Court will identify the approach that it takes to each of those issues. It was submitted on behalf of the second named respondent that, as a matter of public policy, assets legitimately belonging to a third party should not be confiscated. The submission included an argument that if a third party, such as the second named respondent, established to the satisfaction of the Court that the property or any part of it was not the proceeds of crime, the s. 3 order relating to that property should be discharged. In support of that argument reliance was placed on the judgment of Geoghegan J. in *Murphy v. Gilligan* [2009] 2 I.R. 271 and, in particular, (on the statement (at 278) which read as follows):

> "The scheme of a s. 3(3) is that even if a freezing order is in fact made, the respondent or any other party may have it discharged or varied as long as that order is in force, if he or she shows to the satisfaction of the court that the property or a part of it is not proceeds of crime or that the order already made under s. 3(1) causes any other injustice."

5.2 In the argument put forward on behalf of the second named respondent emphasis was placed upon the words "or a part of it". Relying on this emphasis it was contended that if the second named respondent identified that part of the proceeds used to purchase a particular property could be shown to be proceeds of crime, then the order in relation to that property should be discharged in its entirety. The argument fails to have regard to the fact that what is being considered by the Supreme Court in its judgment is the discharge or variation of the s. 3 order. If it is established that the entire funds used to purchase a property were not proceeds of crime then it would follow that the order in relation to that property should be discharged in full. However, if it is established that part of the funds were not the proceeds of crime then the Court must consider whether it is appropriate to discharge or vary the order. Where it is established that part of the funds used to purchase a property were not proceeds of crime, then the Court has the option to consider whether the order should be discharged in its entirety or whether it is appropriate to vary the order. The Court can either discharge or vary. The approach which this Court takes is that in this judgment it will identify the extent of the funds, if any, used to purchase any of the properties the subject matter of the proceedings which are not the proceeds of crime and will then identify

whether the existing order should be discharged or varied depending on the facts relating to such property. In considering this matter, including the nature and extent of any variation, the Court will take into account the percentage of the proceeds used in the purchase of a property which are established as not proceeds of crime and as used in the purchase or development of the property.

5.3 Another issue raised in argument was the standard of proof to be applied. This is expressly dealt with in the 1996 Act in s. 8(2) where it is stated:

> "The standard of proof required to determine any question arising under this Act shall be that applicable to civil proceedings."

The nature of that standard of proof was considered by O'Higgins J. in *Murphy v. G.M., P.B., P.C. Ltd & G.H.* in the High Court, unreported judgment of 4th June, 1999, where he held in relation to s. 8(2) of the Proceeds of Crime Act as follows (at 35):

> "The standard of proof required to determine any question arising under this Act shall be that applicable to civil proceedings. … If such a disposal order could be obtained by virtue of an order obtained on a lower standard of proof than that of the balance of probabilities – that could be a fundamentally unfair procedure and unconstitutional. I must, therefore adopt the interpretation which is constitutional – that is the balance of probabilities."

In considering the constitutionality of the Act in *Murphy v. G.M. and Ors.* [2001] 4 I.R. 113, the Supreme Court examined the provisions of the Proceeds of Crime Act 1996, and identified that that Act concerned the right of the State to take property which was proved on the balance of probabilities to represent the proceeds of crime. The Court held that in general, such a forfeiture was not a punishment and its operation did not require criminal procedures. One of the issues before the Supreme Court for its consideration was whether the procedures described by the Act were in substance criminal in nature. In the judgment of the Court (at 137) it was held:

> "The general question as to whether proceedings authorised by statute which may result in the forfeiture of property, are civil or criminal in nature has been considered in a number of authorities to which the court was referred."

Having considered the authorities, the Supreme Court held (at 154) that the applicants:

> " … failed to discharge the onus on them of establishing that the sections referred to in the Act of 1996 were invalid having regard to the provisions of the Constitution on this ground."

The ground relied on was that the proceedings were criminal rather than civil. These being civil proceedings, the standard of proof which this Court applies to its consideration of the evidence is the civil standard, that is, the balance of probabilities.

6. Another issue which was raised by a number of the respondents was the issue of possession. Counsel on behalf of the first named respondent contended that John Gilligan was not in possession or control of any of the properties and that therefore no order should be made under the Act which would amount to forfeiture of the assets of "the innocent". A further argument under this heading raised on behalf of the first named respondent was that the Court, in deciding on whether or not it should exercise its discretion in the interests of justice, should give credit to a party who holds property partly acquired with "clean" money and partly with "tainted" funds, and that the Court must bear in mind that the property rights of that party under the Constitution of Ireland 1937 and Article 1 of the First Protocol to the European Convention on Human Rights. It was submitted on behalf of the second named respondent that the evidence established that the first named respondent had no possession or control of the second named respondent's home at Mucklon after the 4th August, 1996 which was the date upon which the Proceeds of Crime Act 1996, came into play. It was submitted that that Act was prospective and not retrospective and that it therefore followed that it was only possession or control after the 4th August, 1996 to which the Act applies and the Act was claimed not to apply to possession or control of anything prior to the coming into force of the Act.

6.2 Another issue which was raised as regards possession was that it was claimed that the properties were, since the appointment of a receiver, in the possession or control of the receiver and not of any of the respondents and were therefore not covered by the Act. The argument concerning the possession or control of a receiver was considered by the Supreme Court in *Murphy v. G.M.* [2001] 4 I.R. 113 at 127 where Keane C.J. stated in relation to such argument:

> "If this submission were correct, it would inevitably follow that, in every case where a receiver was appointed following the making of an interim order but before an interlocutory order was made, the interlocutory order could never be made, since at that stage the property would be in the 'possession or control' of the court. A construction leading to so patently absurd and unintended a result should not be adopted unless the language used leaves no alternative: see *Nestor v. Murphy* [1979] I.R. 326. At the stage when the application for an interlocutory order is made, the property can be said to be in the 'possession or control' of the receiver, but since the restraining order can be made prohibiting 'the respondent or any other specified person' from disposing of or dealing with the property account, the fact that it is in the receiver's possession or control is of no consequence. I am satisfied that this argument is without foundation."

The approach identified by Keane C.J. to a s. 3 application is equally applicable to a

s. 3(3) application.

Possession or control of property by a person who is not himself or herself alleged to have been in any way involved in criminal activity and the potential of that property being the subject of an order under the Proceeds of Crime Act 1996 was considered by the Supreme Court in *Murphy v. G.M.* and the judgment of the Court dealt with this matter (at 148) in the following manner, namely:

> "The fact that the person in possession or control of the property against whom the order is sought may not himself or herself have been in any way involved in any criminal activity and, specifically, may not have been aware that the property constituted the proceeds of crime, would not prevent the court from making the order freezing the property under ss. 2 or 3, unless it was satisfied that there would be 'a serious risk of injustice'. If the legislature had intended that no such order should be made unless it had first been established that the person in possession or control of the property had acquired it with a criminal intent, it would have said so. No doubt the court might decline to make the order in a case where the person in possession or control was in a position to establish that he

> or she had purchased the particular property in good faith for valuable consideration: it might, on the other hand, make the order in circumstances where an innocent recipient of the property had made no payment for it."

6.3 In considering the facts of this case the Court will look to see whether the second, third or fourth named respondent provided funds from their own resources and not from the resources of the first named respondent. If the Court is satisfied that all or any of the second, third and fourth named respondents purchased in whole or in part any of the properties in issue from funds that did not emanate from the first named respondent, the Court will consider to what extent, if any, it is necessary to either vary or vacate the s. 3 order in respect of any of the properties. The Court will, however, proceed on the basis that it is open to the Court to make effective s. 3 orders even though it has not been shown that there was *mens rea* on the part of the person in possession or control of the property. As regards the argument raised on behalf of the second named respondent as to the claim that the first named respondent had no possession or control of the second named respondent's home at Mucklon after the 4th August, 1996, the Court is satisfied that this approach is not a correct approach. In considering whether or not an effective s. 3 order can be made the Court will proceed on the basis that once the Proceeds of Crime Act 1996 came into effect the matter for determination was whether a property after that date was in the possession or control of a particular respondent and whether or not such property constituted directly or indirectly the proceeds of crime or was acquired in whole or in part with or in connection with property that directly or indirectly constitutes the proceeds of crime. The fact that the second named respondent was in possession or control of Mucklon at all times after the 4th August, 1996 and that the first named respondent had no possession or control of the property after that date is not determinative and an effective order can be made against the second named respondent if such property was funded from the proceeds of crime whether such funding was made before or after the passing of the Act. The definitions of proceeds of crime and of property contained in s. 1 of the Proceeds of Crime Act 1996 and 2005 have been amended but under both of the definitions it is clear that proceeds of crime includes any property, including money, obtained or received at any time either before or after the 4th August, 1996. As pointed out at paragraph 1 of this judgment in considering the issue of whether any other injustice has been identified which would cause the Court to discharge or vary the s. 3 order, the Court will consider the circumstances currently prevailing and will follow the approach identified by Finnegan J. to the effect that the Court, in considering the issue of injustice under s. 3(3), had to have regard to the effect that the order is having at the time of the application to it under s. 3(3).

7. Counsel on behalf of the first named respondent contended that no order could be made under the Act unless the property was in the possession of "the criminal". It was contended that none of the properties were in the possession or control of the first respondent and that therefore since it was accepted that none of the other three respondents were involved in criminal activities no s. 3 order should be allowed to stand. This argument disregards the finding by the Supreme Court in *Murphy v. G.M.* that orders can be made under s. 3 or s. 4 of the Act even though it was not shown that there was *mens rea* on the part of the person in possession or control of the property. As stated in that judgment, the fact that the person in possession or control of the property against whom the order was sought might not have been in any way involved in any criminal activity and might not have been aware that the property constituted the proceeds of crime, would not prevent the Court from making orders under s. 2 or s. 3 of the Act unless the Court was satisfied that there would be "a serious risk of injustice". The argument on behalf of the first named respondent that it is a necessary ingredient to an effective s. 3 order for the applicant to establish that the person accused of the criminal activity is in possession or control of the property has no basis given the terms of the Act.

8. It was contended on behalf of the first named respondent that for an effective order to be made the criminal activity relied upon by the applicant must be directly connected to the money alleged to be tainted. It was contended that the applicant must establish and identify particular and specified crimes and then link the funds generated by those crimes to a particular item of property. Only in those circumstances, according to the first named respondent, could an effective s. 3 order be made. As part of this contention it was claimed, on behalf of the first named respondent, that of the various crimes in respect of which the first named respondent was convicted, the only crimes which had generated him any profit or gain were the offences for which he is currently serving a prison sentence which related to the possession of cannabis with intention to supply to others. It was contended on behalf of the first named respondent that the sum generated in profit by him out of those particular crimes amounts to less than €150,000 and this was the only sum which could be relied on by the applicant as proceeds of crime. It was contended that there was no link established between those proceeds and any item of property and therefore no effective order could be made. The case put forward on behalf of the first named respondent was that he had generated no profit from crime and therefore no order could be made. It was claimed that the applicant failed to establish that there were ever any proceeds of crime. Central to this argument was the contention on behalf of the first named respondent that an applicant in proceedings under the Proceeds of Crime Act 1996, is obliged to identify the crimes in question and to establish when and where and by whom they were committed and to identify the proceeds generated by those crimes.

8.2 This issue was raised *in Murphy v. G.M.* but the Supreme Court determined (in its judgment at 130) that the facts of that case did not require such issue to be determined by the Court in the light of the evidence which was accepted by the High Court. The Supreme Court identified the issue which was raised in the following terms:

> "The sixth submission was that an applicant in proceedings under the Act of 1996 was obliged to identify the crimes in question and when where and by whom they were alleged to have been committed. It is unnecessary in this case to consider whether, and if so to what extent, the applicant in the proceedings under the Act of 1996 must satisfy the court that the property, whose disposition he seeks to restrain, is the proceeds of a specific crime. In this case, the plaintiff gave detailed evidence as to the nature of the criminal activities allegedly committed by the first named defendant which were the source of the property sought to be frozen. (This evidence was undoubtedly hearsay, but, as already noted, such evidence is admissible under s. 8.). This evidence was accepted by the learned High Court Judge and his findings of fact in this context have not been disputed on the hearing of this appeal. Accordingly, no argument on this ground can succeed."

The contention that it is necessary for an applicant in cases under the 1996 Act to rely on specific crimes and to relate items of property sought to be attached by order under s. 3 to the commission of specific crimes was considered by Finnegan P. in the case of *McK v. F. & F.,* unreported judgment of the 24th February, 2003. The judgment dealt with this issue (at p. 5) as follows:

> "However the Act applies not alone to the person alleged to have been involved in the crime but to a person in possession or control of the property. This may make more difficult the task of the defendant. However, under s. 3 of the Act the court shall not make an order under that section if it is satisfied that there would be a serious risk of injustice and this provision represents an appropriate and sufficient protection for such a defendant. Having regard to this circumstance and to the decision of the Supreme Court in *Michael Murphy v. M.G., P.B., P.C. Ltd., G.H.* [2001] 4 I.R. 113 I am satisfied that it is unnecessary for the plaintiff to rely upon specific crimes or to relate items of property sought to be attached by an order under s. 3 of the Proceeds of Crime Act 1996 to the commission of specific crimes. The plaintiff can make a sufficient case by relying on opinion evidence that the property in question constitutes directly or indirectly the proceeds of crime or that the property was acquired in whole or in part with or

> in connection with property that directly or indirectly constitutes the proceeds of crime pursuant to s. 8(1) of the Proceeds of Crime Act 1996. The Act, in sections 2, 3 and 8, refers to 'proceeds of crime': the word 'crime' is not preceded by a definite or indefinite article and this clearly indicates that it is the legislative intention that the Act should have application in circumstances where the plaintiff is unable to show a relationship between the property alleged to be the proceeds of crime and the particular crime or crimes."

8.3 The issue as to whether or not the plaintiff or an applicant in proceedings under the 1996 Act is obliged to rely upon specific crimes and to relate the assets in question to specific crimes was further considered by Finnegan P. in relation to an application for particulars in the judgment of *McK v. M.D., P.P, D.W. and P.W.,* unreported judgment delivered on the 3rd March, 2003. Finnegan P. (on p. 10 of the judgment) held:

> "In relation to paragraph 7 of the statement of claim the second, third and fourth named Defendants seek particulars of the specific crimes upon which the plaintiff will rely at the hearing of the action. The true scheme of the Act is that the Plaintiff is not required to rely on specific crimes or to relate the assets in question to any specific crime: see *McKenna v. Farrell and Another,* High Court (Unreported) Finnegan P. 24th February, 2003. In the reply to particulars dated the 4th November, 2002 the plaintiff sets out full particulars of the criminal activity alleged against the 1st named defendant and the 2nd, 3rd and 4th named defendants. The plaintiff at paragraph 7 of the Statement of Claim pleads that the assets in issue constitute directly or indirectly the proceeds of crime and in the alternative that the same were acquired in whole or in part with or in connection with property that directly or indirectly constitutes the proceeds of crime. The Defendant seeks in particulars to have the Plaintiff distinguish between those of the assets which it is alleged fall into each of these alternative categories. As the plea is in the alternative it is not necessary that the Plaintiff should do so. Again having regard to the fact that the plea is in the alternative it is not necessary that the Plaintiff should distinguish between assets which are related to crimes alleged to have been committed by the first named Defendant and crimes alleged to have been committed by the 2nd, 3rd and 4th named Defendants. The 2nd, 3rd and 4th Defendants also seek that the Plaintiff identify more precisely the proceeds of crime referred to stating the basis upon which it is alleged that such property actually constitutes the proceeds of crime giving full particulars of the crimes allegedly committed. The Plaintiff's reply to this request is sufficient having regard to the circumstances that he will be confined to the particulars which he has given and also having regard to the provision of the Proceeds of Crime Act 1996 and s. 8 and the Criminal Bureau Assets Act 1996, s. 8(7)."

Since the two decisions of Finnegan P. in the above cases, the High Court has followed the approach therein identified and refused to order particulars where defendant respondents have sought to have the plaintiff applicant identify specific crimes or to relate items of property sought to be attached by an order under s. 3 of the 1996 Act to the commission of specific crimes. In this case the plaintiff applicant gave evidence as to the nature of the criminal activities allegedly committed by the first named respondent and the funds claimed to have been obtained thereby were identified as the source or funding for the purchase and development of the property which was frozen. Part of that evidence was undoubtedly hearsay, but, as provided for in the Act such evidence is admissible under s. 8. That evidence was admitted by the Court when the s. 3 order was made. Further, in considering the respondents' applications under s. 3(3) of the Act and the issue as to whether the s. 3 order causes any injustice, the plaintiff applicant led evidence to the Court in relation to the criminal conviction of the first named respondent since the s. 3 order was made. Evidence was led to the Court that the first named respondent had been convicted, since the making of the s. 3 order, by the Special Criminal Court. He was convicted of eleven drug related offences involving the importation into the State and the possession for the purposes of sale and supply of considerable quantities of cannabis resin between July 1994 and October 1996. Those convictions were appealed to the Court of Criminal Appeal and by judgment of that Court delivered on the 8th August, 2003 the first named respondent's appeal against conviction was refused. He also appealed against the severity of the sentences which he received and the Court of Criminal Appeal by its judgment delivered on the 12th November, 2003 reduced the first named respondent's sentence for possession of cannabis resin for the purposes of sale or supply to twenty years imprisonment. The first named respondent appealed on two points of law which were certified to the Supreme Court and the judgment of the Supreme Court is reported in *The People (Director of Public Prosecutions) v. Gilligan* [2006] 1 I.R. 107.

9. In the unreported judgment of the Court of Criminal Appeal delivered on the 12th November, 2003 dealing with the appeal in relation to severity of sentence, the Court dealt with the issue of the evidence which was considered by the Special Criminal Court and held (at p. 5):

> "We consider that the present case is one in which the court was entitled to take into account the facts and circumstances surrounding the commission of the offences. The applicant appeared to mastermind a sophisticated procedure whereby the drugs were imported into Ireland from the Netherlands, and were transported from the port of importation in Cork to the car park of a hotel in Naas and were collected there by persons who distributed the drugs in Dublin. While this court has held that it would be unsafe to find that the applicant was the leader of a gang of which Charles Bowden was part, there is no doubt that he was the leader and prime mover and organiser of the importation and sale of the drugs in respect of which he was charged. This was properly taken into account by the sentencing court."

That Court further held (at p. 9) "The surrounding circumstances clearly showed that the accused had a serious involvement in organised crime".

10. The evidence available to this Court included the fact that John Gilligan was convicted by the Special Criminal Court of various offences relating to the importation and possession of drugs. He was initially sentenced to 28 years imprisonment and he appealed to the Court of Criminal Appeal against both conviction and sentence. The Court of Criminal Appeal dismissed the appeal in relation to conviction but reduced the sentence to 20 years. On application to it the Court of Criminal Appeal certified two points of law for appeal to the Supreme Court pursuant to s. 29 of the Courts of Justice Act 1924. The Supreme Court, in its first judgment, dismissed the appeal insofar as it related to conviction but invited further submissions on the issue of whether sentence was a matter which the Supreme Court could rule on absent a specific question as to sentence being referred to it by the Court of Criminal Appeal. That issue is dealt with by the Supreme Court and the decision is reported in *The People (Director of Public Prosecutions) v. Gilligan (No. 3)* [2006] 3 I.R. (273). The Supreme Court held that it had the jurisdiction to hear the appeal against sentence and dismissed the appeal. In giving the Court's decision on sentences Denham J. identified circumstances which were relevant to sentence and held (at 289):

> "The circumstances in this case which are relevant and which are aggravating factors include as follows: (a) the applicant was the prime mover; (b) it was a large commercial operation; (c) the applicant made significant profits; (d) it was not a case where the applicant was himself a drug addict seeking to feed a habit; (e) the applicant had

previous convictions; and (f) there were no signs of remorse."

11. The evidence led to this Court gave details of the first named respondent's conviction and sentence subsequent to the s. 3 order. That evidence forms part of this Court's consideration of the s. 3(3) applications. In addressing those applications the Court must address the claim made by the first named respondent, and relied upon by the other three respondents, that the property in issue was funded entirely or to a considerable extent by the first named respondent from funds provided by him which funds were not the proceeds of crime. The Court will return later in this judgment to consideration of the first named respondent's evidence as to the source of funds which enabled the purchase and development of the properties the subject matter of these proceedings. The judgment will deal separately with the funds alleged to have been provided by the other three respondents which were used either for the purchase in whole or in part of certain of the properties.

12. A further issue raised on behalf of the first named respondent was a claim that due to the long delay in getting "what *de facto* amounts to the substantive hearing of the Criminal Assets Bureau application", the first named respondent has thereby lost out on the ability to call a number of his gambling associates or to review the bookmaker's records in a forensic manner and the Court must take this factor into account in weighing the evidence. The nature of the scheme provided for in the Act in s. 3 is that a person who is affected by the provisions of a s. 3 order can apply "at any time" for an order discharging or varying the s. 3 order. It was therefore open to any of the respondents to seek relief under s. 3(3) from the date upon which the s. 3 order was made. Therefore, even though the scheme under the Act provides that a disposal order under s. 4 cannot be sought unless a period of seven years has elapsed from the making of the s. 3 order, this does not inhibit a person making an application under s. 3(3) within the seven year period. (The 1996 Act was amended to permit of a disposal order by consent within a period of less than seven years but that amendment is not relevant to this case). Under the provisions of s. 3(3) a person who is affected by a s. 3 order can apply at any time before the expiration of the seven year period provided for in s. 4. The first named respondent's entitlement to apply under s. 3(3) of the Proceeds of Crime Act 1996, was expressly drawn to his attention in a letter from the plaintiff applicant's solicitor of the 22nd June, 1999. The first named respondent chose, for reasons identified in his then solicitor's affidavit (the affidavit of Paul McNally sworn on the 18th February, 2000) in paragraphs five and six thereof, to decline to make an application under s. 3(3) of the Proceeds of Crime Act 1996, and sought to pursue other claims. It was not until after the Supreme Court gave its judgment in *Murphy v. Gilligan* on the 19th December, 2008 that any of the respondents sought to exercise their entitlement under s. 3(3) of the 1996 Act seeking to discharge or vary the s. 3 order. The procedures under the Proceeds of Crime Act 1996 provide for affidavits to ground both the s. 2 and s. 3 applications. This results in the respondents being aware from the early stages of the proceedings of the nature of the case being made on behalf of the applicant. The second, third and fourth named respondents swore affidavits responding to the case being made by the applicant in January of 1997 and the first named respondent had his then Irish solicitor swear an affidavit on his behalf on the 13th February, 1997. The affidavit was sworn by the first named respondent's solicitor on the basis of instructions received from the first named respondent. The first named respondent was at that time in custody in England. At that stage the respondents knew the nature of the case being made against them and could address such case at a time when no issue of delay arose. The Court is satisfied that there has not been a delay so as to prejudice the first named respondent's ability to respond to the s. 3 application or to present his application under s. 3(3) nor has the first named respondent been prejudiced to such an extent as to cause such prejudice as to render it appropriate to discharge the s. 3 order made herein. The first named respondent has known the nature of the case being made against him since 1997 and since the s. 3 order was made in July of 1997 has had an entitlement to bring a s. 3(3) application at any time. He did not instigate an application under s. 3(3) until he issued a notice of motion returnable for the 16th February, 2009. Even though the first respondent was in custody in England in 1997 he had legal assistance and was able to instruct his solicitor in reply to the claims made in these proceedings. It is in the public interest and the interest of individual litigants that litigation should be conducted expeditiously and with as little delay as possible. In this case the respondents could make an application at any time and it was for them to institute a claim. Claims were not brought until the early months of 2009 and therefore could not have been considered by the Court at any time prior to that date.

13. In exercising its fact finding role, this Court takes into account the facts and circumstances which are established as of the date of the hearing. Those include the fact that the nature of the applicant's claim was set out in affidavits in 1997 and was responded to at that time by or on behalf of all the respondents. The Court has therefore been able to consider the nature and content of the response made by the respondents in 1997 and to take that into account when weighing and considering all the evidence including the oral evidence given by the respondents and affidavits sworn on behalf of the applicant and by and on behalf of the respondents. In considering the evidence in that context, the Court has been able to have regard to the quality of the evidence with due regard to the passage of time.

13.2 No matter of substance has been identified by the first named respondent to support his argument as there being such prejudice that he is unable to deal with this matter in a fair and complete manner. He gave evidence from his own recollection as to what he claimed occurred in relation to his finances and in considering that evidence the Court has had the benefit of being able to compare and validate his oral evidence by reference to his response to the s. 3 application in 1997 and thereafter.

14. Insofar as the first named respondent's contention in relation to delay is based upon a claim that the 1996 Act mandates a seven year delay prior to a disposal application being brought and that the present proceedings have lasted for nearly seven more years and such delay is excessive, the Court is satisfied that the first named respondent cannot rely upon this contention as it was open to him at any time since the making of the s. 3 order, including during the seven year period provided for in s. 4, to bring an application under s. 3(3). It is the first named respondent himself who chose not to commence such an application until 2009 and in those circumstances the legal authorities relied upon by the first named respondent in relation to delay in criminal trials have no application. In criminal trials it is for the prosecution to bring matters before the Court whilst in s. 3(3) applications it is for persons, such as the first named respondent, who are affected by s. 3 orders to commence such applications. If they delay in commencing such applications they cannot seek to rely on such delay.

15. A number of the respondents raised the issue of confiscation or "the forfeiture of the assets of the innocent". Reliance was placed upon a number of English authorities relating to civil forfeiture under the country's proceeds of crime legislation. However, as pointed out in *Murphy v. G.M.* (at 155), the Criminal Justice Act 1994, in this jurisdiction which enables a court to make a confiscation order requiring a person convicted of a drug trafficking offence to pay a certain sum, has procedures which are in contrast to the procedures under the Proceeds of Crime Act 1996, where the precondition of the conviction of the person against whom the freezing order is to be directed does not exist. The Supreme Court went on to adopt with approval a passage from the speech of Lord Hope of Craighead as to the approach a court should adopt in considering provisions of this nature, whether in the context of the Constitution or the European Convention on Human Rights (at p. 155 and 166) and adopted the statement of Lord Hope of Craighead in *McIntosh v. Lord Advocate* [2001] 3 WLR 107 (at 123 and 124):

> "People engage in this activity (drug trafficking) to make money and it is notorious that they hide what they are doing. Direct proof of the proceeds is often difficult, if not impossible. The nature of the activity and the harm it does to the community provide a sufficient basis for the making of these assumption [i.e. assumptions that property

> held by the accused could in certain circumstances be assumed to have been received in connection with drug trafficking]. They serve a legitimate aim in the public interest of combating that activity. They do so in a way that is proportionate. They relate to matters that ought to be within the accused's knowledge, and they are rebuttable by him at a hearing before a judge on the balance of probabilities. In my opinion a fair balance is struck between the legitimate aim and the rights of the accused."

The approach which this Court will follow is that identified by the Supreme Court in *Murphy v. G.M.* (at 153) where the Court held:

> "The issue in the present case does not raise a challenge to a valid constitutional right of property. It concerns the right of the State to take, or the right of a citizen to resist the State in taking, property which is proved on the balance of probabilities to represent the proceeds of crime. In general such a forfeiture is not a punishment and its operation does not require criminal procedures. Application of such legislation must be sensitive to the actual property and other rights of citizens but in principle and subject, no doubt, to special problems which may arise in particular cases, a person in possession of the proceeds of crime can have no constitutional grievance if deprived of their use."

15.2 This Court in considering the evidence and in applying the provision of the Proceeds of Crime Act 1996 does so in a manner which pays due regard and is responsive to the actual property and other rights of the respondents but recognising that a person in possession of the proceeds of crime does not have a constitutional grievance if deprived of their use. The Court is also is conscious of its obligation, in considering the provisions of the Proceeds of Crime Act 1996, of ensuring that a s. 3 order does not cause an injustice to any of the respondents and that in considering whether such an injustice has been established that such consideration is carried out in circumstances where the Court considers such evidence in accordance with the requirements of constitutional and natural justice. In addressing the issue as to whether or not the s. 3 order or any portion of that order should be discharged or varied, the Court must determine whether or not the s. 3 order is proportionate and in the public interest or whether any of the respondents have established in respect of any item of property covered by the s. 3 order that it would be unjust not to discharge or vary such order. On the facts of this case, central to each of the respondents' s. 3(3) applications is a claim that each of the respondents, either through their own evidence or relying on the evidence of the first named respondent, has provided a credible explanation as to how that respondent came into possession or control of the property in question and paid for such property and its development.

16. Tracey Gilligan, the fourth named respondent, makes an application pursuant to s. 3(3) in respect of the property at 1, Willsbrook View, Lucan, County Dublin (i.e. No. 4 in the schedule). She claims that £10,000 of the total purchase price of £73,000 was provided by her former partner and father of her eldest child, Gary Keating. She also claims that from the date of its purchase in November 1994 she expended between IR£15,000 and IR£20,000 on improvements and this expenditure was funded by herself and her then partner, Liam Judge. In relation to the balance of the purchase price it is accepted and acknowledged that this was provided by the first named respondent, John Gilligan, and she, in common with the second and third named respondents, insofar as funds were provided by John Gilligan, rely on his evidence and the evidence of his witnesses in support of a claim that such funding came from legitimate sources of income. The second, third and fourth named respondents all rely on the first named respondent's evidence in support of his claim that he has a credible explanation as how he lawfully came into the funds which were used to purchase properties and carry out developments and improvements thereon.

17. The third named respondent brings his application pursuant to s. 3(3) of the 1996 Act in relation to the property; 6, Weston Green, Lucan, County Dublin (i.e. the property at paragraph 5 of the schedule). Darren Gilligan makes the case that that property was funded out of the proceeds of a personal injury settlement which resulted in him receiving a payment out of court after he reached his majority in September 1993. A cheque for £15,302.67 was paid out dated the 12th October, 1993 and it is Darren Gilligan's case that he gave the proceeds of that cheque to his father. Darren Gilligan claims, and is supported in this by the evidence of his father, that in the middle of 1995 John Gilligan used the sum that he had received from his son as a fund to finance a series of successful bets and that the initial fund together with the profits generated from the gambling enabled the property in question to be fully financed when it was purchased in December 1995.

18. Geraldine Gilligan, the second named respondent, made the case that the purchase of the property at Mucklon, Enfield, County Kildare together with the lands immediately adjacent thereto which occurred in 1987 at the cost of IR£7,000 was funded out of an award or settlement that she had received in respect of an unfair dismissal claim that she had brought against Mostech Ireland Ltd. That claim resulted in her receiving the sum of IR£10,000 and costs. Geraldine Gilligan made the case that the purchase of Mucklon in 1987 was entirely funded by her out of such proceeds and that therefore such property did not constitute directly or indirectly the proceeds of crime and had not been acquired with the proceeds of crime. It was also claimed on behalf of the second named respondent that she was entitled to her legal and beneficial interest in all the property belonging to herself and her husband as a result of a separation agreement of July 1995 whereby the first named respondent transferred his entire legal and beneficial interest in the house at Mucklon to her in lieu of maintenance. The second named respondent also claimed that she is entitled to a legal and beneficial interest in all of the property which is held jointly in her name and that of the first respondent. She also claims that she is entitled to a fifty per cent share or interest in the property in the sole name of the first respondent as set out at paragraphs 2, 3, 6, 7, 8 and 9 of the schedule. She also makes an alternative claim that she is entitled to a fifty per cent interest in the property at paragraph 1 of the schedule if her claim for a one hundred per cent interest in that property is unsuccessful. She makes no claim in respect of either of the properties in respect of which her children make claim.

18.2 Insofar as the second, third and fourth named respondents received funds from the first named respondent, each of those respondents adopt the evidence and submissions made by the first named respondent and support his case that the entirety of the money which he provided to fund the properties in question was not the proceeds of crime.

19. In considering both the evidence given by John Gilligan and led by him in support of his evidence and his claim that he has a credible explanation as to how he lawfully came into the funds which financed the properties in question, it is necessary to consider that evidence in the context of the evidence which was led on behalf of the applicant to obtain the s. 3 order and also the later evidence adduced on behalf of the applicant in response to the s. 3(3) applications.

20. At the time that the s. 3 order was made the case made and the evidence put before the Court relating to the first named respondent included the following, namely:

> (a) That in the period from 1967 to 1993 the first named respondent had sixteen convictions among which there were convictions for assault, larceny, burglary and receiving stolen property. He was in custody for the period from November 1990 to September 1993.

(b) On the 6th October, 1996 the first named respondent was arrested at Heathrow Airport London, prior to boarding a flight to Amsterdam and was found to be in possession of a suitcase which contained £330,030 in cash.

(c) Two days later he appeared at Uxbridge Magistrates' Court on a charge of concealing or transferring the proceeds of drug trafficking under s. 49(1)(a) of the Drug Trafficking Act (UK) and was remanded in custody. On the 14th November, 1996 he was further charged with an offence under s. 50(1) of the Drug Trafficking Act 1994 (UK).

(d) The first named respondent's verifiable and recorded employment history since 1977 was such that it did not provide any true explanation for the accumulated wealth assets and available cash identified in evidence.

(e) That the first respondent had claimed unemployment assistance for a fifty week period up to the 2nd July, 1990.

(f) That a house, which was described as derelict, on five acres at Mucklon in County Kildare was purchased for a sum of £7,000 in 1987 and was registered in the first respondent's name and was subsequently transferred into the joint names of the first and second named respondents.

(g) That a property described in Folio 4003F of the County Register County Kildare was purchased in the names of the first and second named respondents for the sum of £50,000 with a closing date of the 14th November, 1994. The evidence was that the vendors were paid the purchase price but as of the date of the s. 2 application a search against the relevant Folio made on the 14th August, 1996 revealed that Geraldine Gilligan, the second named respondent who was the person to be registered as owner on purchase had not registered her title to same.

(h) That the first and second named respondents had purchased a portion of the lands of Mucklon and Mulgeeth, County Kildare, formerly part of the property described in Folio 16775 of the Register County of Kildare for the sum of £28,000 and that property was subsequently registered in the name of the second named respondent in Folio 23407F of the County Register of Kildare.

(i) That the property at 1, Willsbrook View, Lucan, County Dublin was purchased outright for £73,000 on the 30th November, 1994 and was registered in the joint names of John Gilligan and Tracey Gilligan.

(j) That the property at 6, Weston Green, Lucan, County Dublin was purchased for IR£78,000 in December 1995 and was registered in the joint names of Darren Gilligan and John Gilligan.

(k) That Garda investigations and information from vendors identified that the first named respondent purchased 8.9 acres of property described in Folio 12522F County Kildare for a sum of £16,000 and that a search in respect of that property on the 14th August, 1996 disclosed that the second named respondent was to be the registered owner but had not registered a title as of that date. Further Garda investigations and information from the vendor identified that the first and second named respondents purchased a portion of the property described in Folio 12481 of the Register County Kildare comprising 4.9 acres of lands of Mucklon and a search on the 14th August, 1996 revealed that the second named respondent was to be registered as owner but had not as of that date registered title. Further Garda investigations and information from vendors identified that the first and second named respondents had purchased, for €40,000, three plots of land consisting of 18 acres and 2 roods, 4.588 hectares and 1.137 hectares respectively. At the time of the making of the s. 2 application it was stated that the sale had not closed and a copy of the draft transfer and a copy of the Folio was referred to.

(l) That the first and second named respondents purchased the freehold interest in their family home at 13, Corduff Avenue, Blanchardstown, which had been rented by the first and second named respondents from Dublin Corporation.

(m) That the total cost of the properties purchased by the first and second named respondents since 1987 up until the date of the swearing of the affidavit to ground the s. 2 application in November 1996 was identified as amounting to the sum of £331,525.

(n) That after acquiring the lands at Mucklon, County Kildare, the first and second named respondents renovated and extended the dwellinghouse and developed a separate equestrian centre and by the date of the swearing of the affidavit to ground the s. 2 application expenditure of £1,516,553 had been made in respect of such works.

(o) That in the period from January 1995 to January 1996 the first named respondent purchased four motor vehicles to a total value of in excess of £85,000 which vehicles were registered in different names including Jessbrook Equestrian Centre, Matilda Dunne (the maiden name of the second named respondent) and Tracey Gilligan, the fourth named respondent.

(p) That in the period of less than three years from the date of his release from prison in September 1993 up until June of 1996 the first named respondent made at least 39 flights to Amsterdam together with certain flights to England and Brussels at a total cost of approximately £27,091.

(q) That on the 6th October, 1996 An Garda Síochána searched a warehouse at Greenmount Industrial Estate, Harold's Cross, Dublin and discovered 49.5 kilos of cannabis.

(r) That in the period from the 8th June, 1996 up to the 21st November, 1996 when the affidavit grounding the s. 2 application was made, a sum of £205,260 approximately in cash had been seized during the course of Garda operations which was claimed to have been seized from persons who were known associates of the first named respondent.

(s) That Garda inquiries established that sixteen accounts were being controlled by one or more of the respondents in various banks and building societies within the country and that seven of those accounts were in the name of the second named respondent and two in the name of the second named respondent in her maiden name and four in the name of the third named respondent and two in the name of the fourth named respondent and one in the name of Jessbrook Equestrian Centre.

(t) That examination of the bank records of Jessbrook Equestrian Centre identified total lodgements in the period from the 9th March, 1995 to the 26th July, 1996 in an amount of £338,484.60 and payments out in the sum of £373,595.15.

(u) That examination of a current account held by the second named respondent in the name of Matilda Dunne in Bank of Ireland Lucan identified that that account was opened in that name on the 31st August, 1994 and that written instructions had been given by the second named respondent to allow the first named respondent, John Gilligan, to carry out transactions on that account and an analysis of that account identified that from the date of its opening total lodgements up to the 2nd August, 1996 amounted to £839,689.73 and total payments out of that account in the same period amounted to £839,217.04. It was claimed that the majority of the lodgements to that account were made up of bookmaker's cheques and that an analysis of the account identified that there had been transfers to Jessbrook Equestrian Centre of £286,939, payments to the first named respondent of £165,450 and cash withdrawals by the second named respondent of £193,641. The records of that account identified that between the 24th July, 1996 and the 29th July, 1996 four withdrawals were carried out in the total sum of £85,000 leaving a balance of £472.69 in the account. Certain details were identified in respect of the three other numbered bank accounts, the most significant being account no. 7465860013 which was opened in the name of the second named respondent on the 31st March, 1996 with a lodgement of £50,000 and was closed on the 31st July of that year following the transfer of £49,988.11 to the Jessbrook Equestrian Centre account.

(v) That investigations of betting transactions carried out by the first named respondent covering the period from March 1994 up to June 1996 identified that in respect of five named bookmakers that the first named respondent had placed total bets which amounted to £5,371,696 (including betting tax at 10%) and he had received returns on successful bets amounting in total to £4,834,224 and that the investigations showed a deficit of £537,472. (A more detailed analysis of the betting activity of the first named respondent from documents obtained from five major bookmaker firms and the cash requirements to fund that betting was provided in the affidavit of Bureau Forensic Account at No 1 sworn on the 30th September, 2009 and in his oral evidence).

(w) That the plaintiff claimed that the first named respondent used cash payments in order to place bets and mainly insisted on receiving payment from bookmakers in the form of cheques.

(x) That at the time the affidavits were sworn to ground the s. 2 application opinion evidence was given pursuant to s. 8 of the Proceeds of Crime Act 1996 by a Chief Superintendent of An Garda Síochána. The opinion expressed by the Chief Superintendent included the belief that the first named respondent had been involved in criminal activity for many years and that since 1977 the first named respondent had devoted his energies to the pursuit of criminal activity and had not held any regular employment during that period. It was stated that it was the Chief Superintendent's belief that the first named respondent recommenced his criminal activities upon his release from prison in 1993 and became involved in the importation of controlled drugs for the purposes of sale or supply within the jurisdiction and that in that period the first named respondent had become heavily involved in drug trafficking and had developed a criminal enterprise to facilitate the importation of cannabis on an enormous scale and that shortly after his release from prison in 1993 the first named respondent had begun to travel regularly from Dublin to Amsterdam and to London and this travel was undertaken as part of the development of the first named respondent's drug trafficking activities. The Chief Superintendent gave evidence of his belief that between 1993 and 1996 the first named respondent organised a covert system for the importation of cannabis from Holland into Ireland. The Chief Superintendent believed that the first named respondent travelled to Holland, purchased consignments of drugs and arranged to ship them to Cork Harbour and that he utilised the services of two Dutch companies to dispatch packages falsely labelled as "spare machine parts" to this country. Those packages were shipped to a freight forwarding company in County Cork and during the inquiries of An Garda Síochána printed details of shipments made between the 11th July, 1994 and the 27th September, 1996 were obtained and that based upon those details it was the belief of the Chief Superintendent that the first named respondent had acquired an estimated gross profit of £16,800,000 between July 1994 and September 1996. The Chief Superintendent further averred that arising out of a search on the 6th October, 1996 at a warehouse at Greenmount Industrial Estate, Harold's Cross, the Gardaí discovered 49.5 kilos of cannabis and it was his belief that from markings on the cardboard boxes the cannabis was located in boxes which were identical to those which were used by the first named respondent to transfer goods through Cork. The Chief Superintendent also swore his belief that the first named respondent was himself involved in the transportation of cash and that the sum of £330,000 cash which he had with him at the time of his arrest in London was itself the proceeds of crime. The Chief Superintendent also swore his belief that the first named respondent engaged in an elaborate process of money laundering in relation to the proceeds of crime by betting large sums of money through legitimate betting shops. The Chief Superintendent swore to his belief that the property the subject matter of the application constituted directly or indirectly the proceeds of crime or specified property that was acquired in whole or in part with or in connection with property that directly or indirectly constitutes the proceeds of crime.

21. A s. 2 order was made in respect of each of the items of property which is the subject matter of these proceedings. On the 16th July, 1997 the High Court made a s. 3 order in respect of each of the items of property which is the subject matter of these applications and it is that order which is the subject matter of the s. 3(3) applications by the respondents. By the date on which that order was made, the respondents had sworn affidavits or had affidavits sworn on their behalf which were before the Court at the time that the s. 3 orders were made. These affidavits are referred to earlier in this judgment.

22. The second named respondent, Geraldine Gilligan, swore in an affidavit of the 15th January, 1997 that she married the first named respondent, John Gilligan, on the 27th March, 1974 and in or about July 1995 she entered into a separation agreement with him and she exhibited a copy of that agreement. She averred that apart from a period of employment in Mostech in the 1980s and other casual employment from time to time she had, in general, been maintained by her husband during the period of their marriage and also had the benefit of social welfare payments from time to time. She also averred, in an affidavit sworn on the 5th February, 1997, that she was not privy to her husband's financial affairs of which he retained exclusive control of himself. She also averred that although large sums of money had passed through accounts held in her name, they did so at the behest of her husband who on some occasions lodged monies through the accounts for the purposes of paying builders and other workers on the site at Enfield, County Meath (i.e. Jessbrook) and she further averred that she was aware that over recent years her husband had gambled on a very large scale and apparently with considerable success. She swore she was a stranger to the allegations about drug trafficking. It was her hope that there would be a proper investigation and with co-operation from her husband it could be established whether her husband was in fact a hugely successful gambler.

23. The fourth named respondent, Tracey Gilligan, swore an affidavit on the 30th January, 1997 stating that on or about the 30th November, 1994 she purchased her house at 1, Willsbrook View, Lucan, County Dublin and that the purchase price was approximately £74,500. She swore that her then partner, Gary Keating, gave her father, John Gilligan, approximately £10,000 towards the cost of the house and that her father paid the balance of the purchase price and the house was purchased in the joint names of herself and her father. At the time she swore her affidavit, the fourth named respondent stated she had no other means of support other than social welfare and occasional gifts from her mother and also that the motor car which had been purchased in January 1996 which was a Toyota Carina had been bought for her by her father. The third named respondent swore an affidavit of the 15th January, 1997 that set out that he gave his cheque of some £15,000 to his father who used these funds to gamble which resulted in sufficient funds being available to purchase the house, 6, Weston Green, Lucan in his and his father's name.

24. The first named respondent, John Gilligan, was in custody in England at the time that these proceedings commenced. In response to the s. 2 order an affidavit was sworn on his behalf by his then solicitor, Paul McNally, on the 13th February, 1997. The basis upon which the affidavit was sworn was set out in paragraph 2 of that affidavit where it was sworn "because of the first named defendant being remanded in custody in Belmarsh Prison and also because he is in the high security unit of that prison, I have had great difficulty in receiving instructions from him and in particular I have not been able to arrange for him to swear an affidavit in time for the hearing herein. I therefore make this affidavit on the basis of instructions received from the applicant". John Gilligan's solicitor swore that he had been informed that according to a separation agreement that his client had signed in 1995 the property known as Jessbrook House had been agreed to be transferred into his wife's name, that is the name of Geraldine Gilligan, and it was only as a consequence of the legal proceedings that John Gilligan has ascertained that the property was in joint names and had not been transferred. The affidavit went on to state that the first named defendant, John Gilligan, had spent substantial amounts of money in the improvement of Jessbrook Equestrian Centre and that he had received the money for those payments by way of a loan made jointly to his wife, Geraldine Gilligan, and himself from Mr. Joseph Saouma. The affidavit of the solicitor averred that he would produce documents as proof of that loan as soon as he received them together with an affidavit of Joseph Saouma sworn at the British Embassy in the Lebanon on the 12th November, 1996, which affidavit exhibited a copy of the loan agreement between Joseph Saouma and Geraldine Gilligan dated the 10th July, 1994 and a list of payments made under that agreement and a copy statement of affairs dated the 26th September, 1996 signed by Joseph Saouma. The affidavit went on to aver that the first named defendant is the personal guarantor jointly with his wife of that loan and as of the date of the swearing of the affidavit no sums had been repaid under the agreement and the first named defendant and his wife therefore jointly owed Joseph Saouma the sum of £4m as of that date. The affidavit went on to aver, at paragraph 8, that "it is very difficult to say with precision which properties the first named defendant (John Gilligan) is the owner of and to identify the various parcels of land without access to all the land registry documents". However, the first named defendant's understanding of the position in relation to the properties was then set out in the affidavit. In relation to the property in Folio 4003F which was identified as comprising approximately thirty acres of land which adjoined property already owned by the first and second named defendant, it was stated that that property had been purchased from the vendor and that John Gilligan tendered the money for this property with part of the money he had received from Mr. Saouma. It was averred that John Gilligan might have paid an initial deposit or part of the price from his "tank/float" which he would have subsequently recovered from the monies received from Mr. Saouma. The affidavit went on to aver that, to the best of the first named defendant's recollection, the land in Folio 16775 was purchased for £28,800 which was also land acquired to enlarge the Jessbrook Equestrian Centre land holding and that the purchase money came from the monies the first named defendant had received from Mr. Saouma. It was averred that if John Gilligan laid out monies in respect of that property before he received the loan monies from Mr. Saouma on the 15th July, 1994 he would have reimbursed himself for any such expenditure by payment from the loan monies from Mr. Saouma. The affidavit further stated that in late 1995 the first named defendant purchased a parcel of land adjacent to Jessbrook Equestrian Centre from Mr. and Mrs. Brady comprising about 8.9 acres for £16,000 and that the money used to pay for that property was from the monies advanced to the first named defendant from Mr. Saouma. It was also averred that in relation to Folio 12481 comprising 4.9 hectares of land that that land was immediately in front of what was by then Jessbrook House and that that property was purchased probably in 1994 or 1995 and that the money used to purchase the land came from Mr. Saouma. It was further averred that in or about 1995 or early 1996 the first named defendant's wife, Geraldine Gilligan, agreed to purchase various lands which were about one and a half miles away from Jessbrook comprising the properties described in Folio 12391 and comprising eighteen acres. No further averment was made in relation to those lands. In relation to Folio 4050 comprising 4.588 hectares and Folio 4050 comprising 1.137 hectares, all those properties were averred as having been purchased with monies obtained from Mr. Saouma and like other properties were put into the name of the first named defendant's wife, Geraldine Gilligan.

24.2 In paragraph 9 of the affidavit the first named respondent's then solicitor swore that "the first named defendant has been as specific as he possibly can be in relation, to the above mentioned properties, given the restrictions imposed upon him and his lack of access to information". The affidavit thereafter went on to deal with other properties. In relation to the property at 13, Corduff Avenue, the first named respondent's solicitor averred that the first named respondent, John Gilligan, owns half a share in that property and that it is jointly owned with his wife Geraldine. He averred that it had been specifically excluded from the separation agreement and that the house which had originally been owned by the County Council had been purchased from that local authority and that the first named defendant, John Gilligan and his wife applied in or about 1990 to buy that house and that they eventually purchased the house in 1994 and that there is no mortgage on that house. The affidavit then went on to deal with the property at 1, Willsbrook View where it was averred that that property was jointly owned by John Gilligan and his daughter Tracey and the property had been purchased by Tracey in 1995 and that he had provided some of the money to assist in purchasing the property. The affidavit further averred John Gilligan had provided some of the purchase money to assist Tracey in purchasing the property so that she would not become involved with a third party and then transfer one half of the property to that third party and that it was John Gilligan's intention to give that property to his daughter by way of a free and unencumbered gift. The solicitor's affidavit further averred that he was informed that part of the money for the purchase of 1, Willsbrook Grove was provided by way of a cheque made out to Tracey Gilligan from a bookmaker which was winnings on bets and that the balance of the money came from the first named defendant's tank/float. The affidavit also dealt with the property at 6, Weston Green which was jointly owned by John Gilligan and his son Darren and it was averred that John Gilligan put that property in the joint names of his son and himself in order to avoid his son transferring one half of the property to a third party and that his son Darren gave him a sum of £3,000 which he, John Gilligan, used for gambling with which he won £70,000 and those monies were used to purchase the property. As regards the purchase of the Land Rover for £5,290 it was averred that John Gilligan may well have provided the purchase money from his tank/float or from Mr. Saouma's monies to enable that vehicle to be purchased. As regards the purchase of the Land Rover Discovery vehicle for the sum of £20,995, it was averred that it was Chapmans, the company which sold the vehicle, who asked that it be paid for in cash and that the cash came from either John Gilligan's tank/float or from Mr. Saouma's monies. The affidavit also dealt with the motor vehicles which had been provided for the third and fourth named respondents.

25. On the 5th June, 1998, John Gilligan swore an affidavit in Supreme Court proceedings in which he was the plaintiff and the Criminal Assets Bureau and others were defendants. On that date he was still in custody in Belmarsh Prison and described himself as a professional gambler. The affidavit was filed on behalf of John Gilligan by Paul McNally, his solicitor, who was the solicitor who had sworn the earlier affidavit on John Gilligan's behalf on the 30th February, 1997. In his affidavit John Gilligan averred that allegations made against him of his involvement with others in the importation of approximately £42m worth of cannabis resin together with an

alleged profit of approximately £16,800,000 "are totally untrue and denied completely". This averment was made prior to the criminal prosecution brought against John Gilligan in relation to the importation of drugs which resulted in his conviction. John Gilligan dealt in paragraph 7 of his affidavit of the 5th June, 1998 with the allegation that he had invested approximately £1,685,553 in the Jessbrook Equestrian Centre and that in 1986 his former wife, Geraldine Gilligan, had bought a derelict house and six acres out of the proceeds of crime and how those funds were provided. He went on to aver that "on or about the 10th July, 1994 I agreed to borrow from Joseph Saouma, a Lebanese citizen, the sum of £4,000,000.00 to invest in the development of the said centre". John Gilligan averred that, under the terms of his agreement, Mr. Saouma would receive a one third share in the said Centre at the end of the development and John Gilligan referred to a copy of the agreement which was exhibited. John Gilligan also exhibited a copy affidavit of Joseph Saouma sworn on the 12th November, 1996 and the exhibits therein referred to. John Gilligan averred that Mr. Saouma was a man of considerable wealth and that he had been advised that "Mr. Saouma recently sold a half share in a casino in Deauville in France for approximately £500,000,000.00". John Gilligan's affidavit went on to aver that in 1994, fourteen additional acres were purchased for approximately £28,000 out of the said loan, that is the loan from Mr. Saouma and it was further averred that in 1994, thirty three further acres were purchased for approximately £50,000 out of the funds of the said loan and/or "the proceeds of my gambling". It was also averred that in 1995, ten acres were purchased for approximately £16,000 out of the same source of funds and that a further twenty four/twenty five acres were purchased for £40,000. John Gilligan then averred that the house in front of Jessbrook and five acres were purchased for £28,000 out of what was said to be the same funds. In relation to his daughter's house at 1, Willsbrook View, John Gilligan averred that that had been paid for out of "the proceeds of my gambling as received in cheques from bookmakers" and that in relation to his son's house that out of a sum of £15,000 which his son received on his majority, a sum of £3,000 was given to him by his son to invest in gambling activities and that as a result of John Gilligan's gambling he was able to accumulate approximately £78,000 with which to purchase the house. In relation to the property at 13, Corduff Avenue, John Gilligan averred that it was brought from Dublin Corporation for approximately £10,000 and it had been funded out of his gambling. John Gilligan averred that he had no knowledge of the sixteen bank accounts which had been averred to on behalf of the applicants and that he had a bank account with Bank of Ireland, Ballyfermot which was opened in 1966. John Gilligan responded to the claim that his betting had been used for money laundering purposes and averred that he was not in a position to comment on that allegation as he did not have exhibited details of the alleged bets and winnings. He denied that he mainly received payments in respect of winnings in the form of cheques and that he received money from bookmakers in the form of cash. He averred that the purpose of his betting transactions was not to launder cash and that it was not a means to provide an elaborate ruse to construct an explanation for the sums of money held by him and that those sums arose as a result of his activities as a professional gambler. John Gilligan went on to aver that the sum of £330,000 in cash which was in his possession at Heathrow Airport on the 6th October, 1996 at the time of his arrest represented part of his gambling funds and was money to be used for business dealings in Holland and that that money was not the proceeds of drug trafficking in Dublin or any other illegal activity. He averred that he had voluntarily disclosed the said sum of money to the Custom Officers and that he fully intended to contest any application by the Crown to confiscate that sum of money. At paragraph eighteen of his affidavit John Gilligan averred "I admit that I exchanged £3m in a Bureau de Change in Holland. I say that some of this money was my own gambling money. However most of the money belonged to others who had asked me to arrange to change money for them at preferential rates for which I would receive a profit". The affidavit concluded by John Gilligan expressly denying that he had been involved in drug trafficking.

26. In the affidavit sworn in 1998 John Gilligan exhibited the loan agreement which he claimed was made between Joseph Saouma and himself and his wife, Geraldine Gilligan. The agreement provided for Joseph Sasouma to lend John and Geraldine Gilligan a sum not exceeding £4m Sterling. This sum was to be drawn in stage payments as required and that the loan was for a term of ten years at two per cent per annum above LIBOR. The agreement provided that no repayments were to be made until four years from the first draw down. In the paragraph dealing with indemnities and guarantees, John and Geraldine Gilligan both jointly and severally irrevocably undertook and promised to indemnify Joseph Saouma for the full amount of the loan plus agreed interest and the agreement went on to provide:

> " … with this in mind the Borrowers, both jointly and severally, shall Assign their full interest in the Jessbrook Project (known as "Jessbrook Equestrian Centre") to the Lender for the duration of the loan to secure the Lender and furthermore as an inducement to the Lender the borrowers shall assign to the Lender one third (33⅓%) of the final and finished project to the Lender and/or his nominees in perpetuity."

That loan agreement was signed by Joseph Saouma, John Gilligan and Geraldine Gilligan and was dated the 10th July, 1994. John Gilligan exhibited Joseph Saouma's affidavits sworn on the 12th November, 1996 and the exhibits therein referred to and at exhibit JS2 in the affidavit a list of payments which, it was claimed was made by Joseph Saouma, were set out, namely, £500,000 Sterling on the 15th July, 1994, £500,000 Sterling on the 20th November, 1994, £750,000 Sterling on the 8th March, 1995, £750,000 Sterling on the 15th August, 1995, £750,000 Sterling on the 22nd November, 1995 and a final payment of £750,000 Sterling on the 30th January, 1996. The total amount identified as having been paid by Joseph Sauoma to John and Geraldine Gilligan was £4m Sterling, the payments being alleged to have been made between the 15th July, 1994 and the 30th January, 1996. In exhibit JS3 to the same affidavit, a statement of affairs from Joseph Saouma dated the 29th September, 1996 was exhibited. The statement of affairs referred to the loan agreement of the 10th July, 1994, which was enclosed, and stated that thereby he agreed to provide a total of £4m Sterling in stage payments and that John Gilligan requested that the payments be in cash "as he was convinced that he could save up to 20% by purchasing all the necessary materials … for cash". The statement of affairs stated that to safeguard Joseph Saouma's position, John Gilligan signed a receipt for every amount of cash that he paid him and those were stated to be exhibited with the statement of affairs. John Gilligan also exhibited, at JG2 of his affidavit, the affidavit sworn by Joseph Saouma in the British Embassy in Beirut on the 12th November, 1996 which was identified as being sworn in support of an application to admit Mr. Gilligan to bail in England and was headed "In the High Court of Justice Queen's Bench Division".

27. The affidavit of Joseph Saouma sworn on the 12th November, 1996, the statement of affairs and the loan agreement exhibited therein were relied upon in an application brought in the High Court in London in 1997 for the purposes of having a Dr. Michael Grimes of Cork appointed as receiver over the Jessbrook Equestrian Centre. In the affidavit sworn by John Gilligan on the 5th June, 1998 no averment was made in relation to any alleged repayment to Joseph Saouma and that affidavit was sworn on the basis that the £4m Sterling lent by Joseph Saouma remained entirely unpaid and that £4m Sterling remained outstanding.

28. On the 5th March, 2001 John Gilligan swore an affidavit in these proceedings relating to the issue of legal costs and he dealt with his income and assets and his then financial position in paragraph seven of that affidavit where he swore:

> "I am jointly – with my estranged wife, Geraldine Gilligan – in debt to Joseph Saouma in the sum of approximately £4m on foot of a loan agreement dated the 10th July, 1994. The said loan monies were invested in the Jessbrook Equestrian Centre, Mucklon, Enfield, County Meath which is owned by Geraldine Gilligan."

John Gilligan went on to swear that "none of the monies borrowed from Mr. Saouma have been repaid". In support of that averment John Gilligan exhibited with his affidavit the loan agreement between Joseph Saouma and John and Geraldine Gilligan dated the 10th

July, 1994.

29. As already set out in this judgment each of the four respondents have brought applications under s. 3(3) of the Proceeds of Crime Act 1996 and as part of those applications various affidavits were sworn prior to the oral hearing. The third named respondent swore an affidavit on the 13th March, 2009 wherein he averred that he had been injured in an accident when he was three years of age and he received a settlement which ultimately resulted in him receiving £15,600 as a payment out when he reached his majority. Darren Gilligan averred that he asked his "father to manage my settlement proceeds as part of his gaming undertakings" and that he avers that his father "succeeded in increasing the value of his funds through successful gambling and that the profits of that gambling were lodged into my account with the Bank of Ireland, Blanchardstown, in the sums of £50,000, £11,000 and £21,000" and he went on to aver that 6, Weston Green, which is the property in respect of which Darren Gilligan makes a claim, was purchased from the proceeds of the settlement and the profits of the gambling for a sum equivalent to £96,000.

30. The fourth named respondent, Tracey Gilligan, in support of her application under s. 3(3) filed an affidavit sworn by her solicitor, Paul McNally, on the 6th April, 2009. That affidavit was concerned with the property, 1, Willsbrook View, Lucan, County Dublin, which was identified as being jointly owned by Tracey Gilligan and her father. Paul McNally, Tracey Gilligan's solicitor, averred that he had been instructed that that property had been purchased by his client and her father on the 30th November, 1994 for £74,500 and that her then partner, Gary Keating, who was the father of her daughter, Shannon, contributed £10,000 to the purchase and that he has since died. It was further averred on behalf of Tracey Gilligan that her instructions were that the balance of the purchase monies were contributed by Tracey Gilligan's father. The affidavit went on to aver that since the purchase of the property, Tracey Gilligan had installed wooden floors in both sitting rooms, hall and kitchen and a new wooden ceiling in the kitchen and a new worktop in the kitchen, a patio in the back garden, a new bathroom suite and tiling throughout the bathroom. Tracey Gilligan swore an affidavit to the same effect on the 14th April, 2009 which confirmed the instructions averred by her solicitor in his earlier affidavit.

31. Geraldine Gilligan swore an affidavit on the 26th March, 2009 in support of her s. 3(3) application. She averred in paragraph four of the affidavit that she had settled a claim against Mostech Ltd. in the sum of £12,500 in the early 1980s and that in the early 1980s she had purchased the property at Mucklon, Endfield, County Meath and that that house and lands were purchased for £7,000 and that the purchase was paid for out of the proceeds of her claim monies. She also averred that the property following renovation work became the family home of herself and John Gilligan and that on foot of a separation agreement he signed over his interest in that family home to her. She averred, in relation to six other purchases of property, that they were intended to be used for the furtherance of the Jessbrook Equestrian Centre and in each and every instance the purchase was funded by Mr. John Gilligan. In relation to the house at 13, Corduff Avenue, Geraldine Gilligan averred that it had been previously the matrimonial home since 1977 and that that property was purchased from Dublin Corporation for the sum of £10,400. She averred that it was her belief that the monies provided by John Gilligan for the purchase of the land and the erection of Jessbrook Equestrian Centre were not the proceeds of crime and that it was her belief that John Gilligan would deal with the source of the monies in his application.

32. In evidence at the hearing of the s. 3(3) applications John Gilligan gave oral evidence. He said that after he had been in prison for the period from the 7th November, 1990 to his release on the 8th September, 1993, his major occupation was betting and that his main income came from gambling (see Transcript 3, page 61). John Gilligan's evidence was that the construction and development of the Jessbrook Equestrian Centre was substantially funded from his gambling profits and not from the £4m Sterling loan that he received from Mr. Saouma. John Gilligan's evidence was that he received the £4m Sterling in staged payments from Mr. Saouma (see Transcript 4, page 20) but that he did not use them for the development of Jessbrook. He gave evidence that there was no money outstanding to Mr. Saouma as the entire sum together with a sum for interest had been repaid to him in that towards the end of 1996 John Gilligan had given Mr. Saouma a sum in Guilders which was the equivalent of £1m Sterling and that he also gave him £1m in Sterling. John Gilligan gave evidence that Mr. Saouma also collected the outstanding balance by receiving £1.6m Sterling from Mr. Gilligan's father and a sum of £600,000 Sterling from Mr. Gilligan's brother, making total repayments of £4.2m Sterling. Those payments were to cover the loan of £4m Sterling together with £200,000 Sterling for interest (see Transcript 4, page 21). When questioned in relation to the averment made by John Gilligan in 2001 to the effect that he was in debt to Mr. Saouma as of that date in the sum of £4m, John Gilligan claimed not to have read the document (i.e. the affidavit) that he signed (Transcript 4, page 21). Later in his evidence John Gilligan claimed that in 1996 he made repayments to Mr. Saouma and that coming up to July of 1996 he made arrangements for him to get the balance outstanding from his father and his brother. John Gilligan's evidence was to the effect that Mr. Saouma was repaid in 1996 or at the very start of 1997 and that the last repayment was collected in December 1996 or in January of the following year (Transcript 4, page 28). John Gilligan gave no explanation as to why he was still taking up the last instalment of the loan at the end of January 1996 when he was about to repay the entire loan or how or in what manner he used or secured the monies he claimed to have received from Mr. Saouma. In his evidence John Gilligan claimed that the averment made by Paul McNally, his then solicitor, in the affidavit of the 13th February, 1997, that as of that date John Gilligan and his wife jointly owed Joseph Saouma the sum of £4m was incorrect as Mr. Saouma had been entirely repaid by that date. Mr. Gilligan claimed that the averment that £4m was outstanding as of the date when his solicitor swore the affidavit was untrue. John Gilligan claimed to have never seen the solicitor's affidavit and said that he never authorised his solicitor to swear that document (see Transcript 4, page 32). This explanation is entirely lacking in credibility and the Court does not accept that explanation. John Gilligan himself swore an affidavit on the 5th June, 1998 which expressly referred to the £4m Sterling loan from Mr. Saouma and made no reference to any repayment. Also, as is herein before set out, Mrs. Gilligan expressly averred that it was her understanding from her husband that it was the loan from Mr. Saouma which had funded the purchase and development of the Jessbrook Equestrian Centre and did so in her affidavit sworn on the 29th March, 2009. John Gilligan had also sworn in an affidavit sworn on the 5th March, 2001 in these proceedings which stated that as of that date he was jointly with his wife in debt to Joseph Saouma in the sum of approximately £4m. John Gilligan claimed not to have properly read that averment. The Court is satisfied that John Gilligan's evidence in relation to this matter is untruthful and that he was well aware of what was being sworn by his solicitor, who was acting on his instructions and when he swore his own affidavits he was fully aware of the contents. John Gilligan demonstrated in the manner of his evidence to the Court that he is a person who carefully controls litigation and ensures that his lawyers act on his instructions and would be well aware of the contents of his own affidavits. His sworn evidence as contained in affidavits and his oral evidence on oath to this Court is irreconcilable and his explanation that such inconsistency arises from the fact that sworn documents were sworn by him or on his behalf which were either not read or understood or sworn without his knowledge is not credible. John Gilligan demonstrated a willingness to swear and to have sworn on his behalf an account of his financial transactions which was based upon him being in receipt of a £4m loan from Joseph Saouma and that such loan remained unpaid when such account was perceived by John Gilligan as being to his benefit. Such account was put before this Court at a time when John Gilligan was endeavouring to explain the source of funds for the purchase and development of Jessbrook. He made that claim in a clear and unequivocal manner relying on documents which were exhibited. He claimed that the purchase of the lands which made up the Jessbrook Equestrian Centre and its development was funded by Joseph Saouma's loan and this loan remained outstanding. That version was persisted with by John Gilligan for a substantial number of years and was clearly conveyed by him to his wife who as late as 2009 averred her belief that Joseph Saouma's loan had been the source of funds for the purchase of the lands and the development of the Jessbrook Equestrian Centre. At the hearing before this Court, John Gilligan claimed that the purchase of lands and the development of Jessbrook was primarily funded by his gambling profits together with certain other profits generated by him from activities such as foreign exchange dealings and not

from the loan funds. The two accounts are not just inconsistent, they are irreconcilable. The attempt to explain such inconsistency is so implausible and so transparent as to place the Court in a position that it can believe neither of the accounts and to proceed on the basis that neither is to be believed. The two divergent accounts that John Gilligan has given, on oath, are incompatible and his explanation for such divergence requires the Court to proceed on the basis that John Gilligan did not read the affidavits which he swore nor did he instruct the solicitor to swear the information contained in the solicitor's affidavit. The Court does not accept John Gilligan's evidence that he did not read his affidavits or instruct his solicitor to the effect that Jessbrook Equestrian Centre lands were purchased and its development carried out with the loan from Joseph Saouma and that such loan remained outstanding. The existence of such loan and the fact that it was outstanding was used as a basis for an application for a receiver to be appointed over the Jessbrook Equestrian Centre in 1997. That explanation provided Mr. Gilligan with a potential explanation for access to substantial sums of cash and an identifiable source of funds other than from the proceeds of crime and also allowed for an application to be brought to appoint a receiver to Jessbrook Equestrian Centre at a time when the Criminal Assets Bureau had already obtained an order in these proceedings. Other than for a copy of the purported loan agreement, a statement of affairs from Joseph Saouma and an affidavit sworn in that name in Beirut in 1996, no documentary evidence was available or produced by John Gilligan to support either the receipt of the funds from Joseph Saouma or the repayment of any part of such sums. Joseph Saouma was not called to give evidence and the Court is satisfied that on the balance of probabilities a true explanation is that Joseph Saouma made no loan to John Gilligan or Geraldine Gilligan and that no sums were repaid and that the averments made to that effect by John Gilligan are untrue. The Court is satisfied that if sums of such magnitude had been made available and were subsequently repaid there would be available documentary evidence in support of same. No such evidence was produced and the Court is satisfied that this arises because the true position is there was no loan and no repayments. The willingness of John Gilligan to make such false claims in relation to the loan and its repayment and to swear an account as to source of funding for the purchase of the lands and the development of the Jessbrook Equestrian Centre results in the Court being in the position that it cannot accept John Gilligan's evidence in relation to the funding for the purchase of lands and the development of the Jessbrook Equestrian Centre as being truthful. The explanation as ultimately relied on by John Gilligan in his sworn evidence is also incredible not only because it is inconsistent with his own previous averments but also because his evidence as to his source of funds is improbable and his proved involvement in illegal drugs and the profits generated thereby is ignored. It is also the case that the oral evidence given by John Gilligan that the substantial portion of the funding for the purchase of the lands and the development of the Jessbrook Equestrian Centre came from his profits in gambling and from foreign exchange dealings is not supported by the evidence. An analysis of his own evidence and his own claimed source of funds demonstrates that even on his own account he did not generate sufficient funds to cover this expenditure. There is no explanation for the additional funds used. John Gilligan's evidence must also be viewed in light of the fact that he expressly averred that he had no involvement in the illegal drug trade notwithstanding that after such averment was made he was convicted by the Special Criminal Court which conviction was upheld by the Court of Criminal Appeal. That conviction and John Gilligan's express averment of having no involvement in illegal drugs is again indicative of his willingness to swear falsehoods. The Court will return later in this judgment to consider John Gilligan's evidence in relation to his claim that funds were available for the purchase of the Jessbrook lands and its development from his profits from gambling and foreign exchange and other activities.

33. Under cross-examination John Gilligan stated that his previous explanation as to the source of money based upon a claim that the loan to Mr. Saouma remained outstanding was made in circumstances where that explanation was put in against his will and was not intended to form part of a s. 3(3) application to account for the monies but was made in circumstances that such explanation was to support an application for legal aid. That account (Transcript 6, page 104) is inconsistent with John Gilligan's previous explanation that he did not know of the averments concerning the outstanding loan made in his solicitor's affidavit and by himself in two affidavits. His claim that the assertion made in relation to the loan remaining outstanding being put in against his will is predicated upon him being aware of such assertion. This again illustrates John Gilligan's willingness to alter or change facts, without reference to the truth, dependent upon the intended purpose for which a particular affidavit is sworn. John Gilligan's claim that his averments in relation to the loan remaining due were only made to support an application for legal aid disregards the contents of his affidavit of the 5th June, 1998 as it was only his affidavit of the 5th March, 2001 which was sworn in support of an application for "legal aid". It is also the case that even if the Court were to accept Mr. Gilligan's account that the claim made by him and on his behalf that, a loan remained outstanding to Mr. Saouma was made in circumstances where he wanted to obtain legal aid both in this country and in England, is of itself indicative of a witness who is prepared to disregard the true facts and prepared to swear an untruth if that untruth is viewed by him as supporting a particular application or outcome. Such willingness to falsify and fabricate evidence demonstrates a lack of candour and establishes a willingness on the part of John Gilligan to swear on oath to matters which are untrue. This inconsistency under oath was put to John Gilligan (Transcript 6, page 106 onwards) and he failed to provide any credible or tenable explanation for his willingness to swear on oath diametric opposites.

34. Insofar as John Gilligan's explanation for the contradictory and false affidavits is based on a claim that his lawyers in this jurisdiction and in England swore to matters on John Gilligan's behalf in respect of which they had not received his instructions, the Court is satisfied that such explanation is without foundation. No attempt was made by John Gilligan to call any of those lawyers and the contents of the lawyers' affidavits and, in particular that of his Irish solicitor is entirely consistent with John Gilligan's own sworn affidavits. This demonstrates to the Court that John Gilligan's solicitor was indeed acting on his instructions and the attempt to suggest otherwise is untrue.

35. It was during the course of his evidence to this Court that John Gilligan for the first time claimed that part of the funding for the Jessbrook Equestrian Centre came from foreign exchange profits. There had been reference in paragraph eighteen of his affidavit of the 5th June, 1998 to foreign exchange dealings where he acknowledged that he had exchanged £3m in a Bureau de Change in Holland but had said that that money was his own gambling money and money belonging to others who had asked him to arrange to change money for them at preferential rates "for which I would receive a profit". Whilst that averment made reference to a profit, there had been and was no suggestion that profits from foreign exchange formed part of the source of the funding for Jessbrook Equestrian Centre until John Gilligan's oral evidence to this Court. There were a number of factors which leads this Court to the conclusion that John Gilligan's evidence to the effect that he generated profits from foreign exchange dealings which were used in the funding of the Jessbrook Equestrian Centre is without foundation. First, there was no indication that such profits were the source of funding for the Jessbrook Equestrian Centre until John Gilligan's oral evidence in this case and that claim was made in circumstances where he was endeavouring to explain his access to and use of a quantum of funds which could not be explained, even on John Gilligan's own evidence as having been generated from his claimed gambling profits. Secondly, there is no documentation or any detail in support of John Gilligan's claim of having generated substantial foreign exchange profits. The Court was not provided with information concerning where such transactions took place, where such money was obtained, from whom it was obtained and no witness was called to support such a claim. The account given by John Gilligan, when analysed, was so implausible as to be incapable of belief. There was a complete lack of detail or information concerning the alleged dealings and in his evidence John Gilligan referred to the fact that he was changing money for English people coming over there (i.e. Holland) and they were all dealers, whatever they were dealing, tobacco, cigarettes, or jeans or whatever they were dealing in and they would require Guilders. No names were identified, no dates and no specific transaction other than an admission of having been on one occasion involved in the exchange of £3m. In dealing with his alleged foreign exchange dealings, John Gilligan claimed that he generated a thirteen cent in the pound or thirteen pence in the English pound on his foreign exchange dealings. He claimed that he always worked on a rate that had to make

thirteen cent and that he did so from mid-1994 to September 1996 and that he shared the profits with a person who John Gilligan identified by the name of Ed Ponytail. John Gilligan was unable to give any other details in relation to his alleged partner but it was clear from his evidence that he was claiming to be able to generate a thirteen per cent profit on foreign exchange dealings which would then be split with his partner. This profit was, on John Gilligan's evidence, used to partly fund his expenditure on Jessbrook Equestrian Centre. During his evidence to this Court, John Gilligan claimed that he had made £500,000 profit, which was available for expenditure by him, from his foreign dealings. When questioned as to why this had not been identified at any time prior to his oral evidence in July of 2010 as a source of significant profit, he sought to blame his Irish lawyers for the failure to make such a case (see Transcript 7, page 98). The Court is satisfied that that claim is without foundation. It is apparent that the purported profit claimed by John Gilligan is based upon a profit margin which is implausible and commercially unavailable. The fact that John Gilligan's claim is based upon him obtaining a profit margin of such a high percentage which is commercially unobtainable demonstrates that such claim is a fabrication. In arriving at the conclusion that the profit rate and margin claimed by John Gilligan for his foreign exchange dealings was entirely unrealistic and therefore fabricated, the Court relies on the evidence of the forensic accountant. When cross-examined on behalf of John Gilligan, the forensic accountant analysed the figures claimed by John Gilligan and expressed the considered conclusion that there was no commercial reality to the claim made by John Gilligan as to his rate of return (see Transcript 9, pages 55 and 56). The forensic accountant gave evidence that he had experience of a number of investigations relating to Bureau de Change and was aware of the profits that could be generated from foreign exchange dealings. He gave evidence that even if all the calculations were made on the basis of minimising the claimed profit or commission rate to John Gilligan, this resulted in a profit rate of 5.35% and such profit rate or commission was without commercial reality. The Court is satisfied that John Gilligan's claim that part of the funds available for the purchase of lands and the development of the Jessbrook Equestrian Centre came from foreign exchange profits is untrue. On the evidence available to this Court a much more probable explanation for John Gilligan's admitted involvement in a £3m foreign exchange dealing is his involvement in the importation and sale of illegal drugs as demonstrated by his conviction before the Special Criminal Court and as further supported by the admitted evidence of John Gilligan's regular travel to Amsterdam. John Gilligan sought to justify his regular trips to Amsterdam over a three year period as being part of business dealings but he failed to provide any details or any information which made it possible to verify the existence of such dealings nor was any documentation produced, nor were any witnesses called to support such alleged business dealings.

John Gilligan claimed that the £330,000 Sterling which was in his possession when he was arrested in England was for business. He had the money with him and any business transaction must have been imminent, yet no details of any deal was provided nor any evidence or documents. The absence of any precision in relation to large scale business dealings leads the Court to the conclusion that the more probable reason for such trips was to facilitate the illegal importation of drugs as claimed by the applicant in the s. 2 and s. 3 applications. John Gilligan's evidence in relation to foreign exchange dealings generating a significant profit of some £500,000 and the basis upon which it was suggested that such profits were generated is so implausible that the Court is satisfied that such evidence is fabricated. The claim that profits were available from foreign exchange dealings cannot in any way assist John Gilligan in his attempt to discharge the onus on him of establishing that a s. 3(3) order should be made vacating or varying the s. 3 order.

36. During the course of evidence when it became apparent that, even on John Gilligan's own account as to the extent of his profits from gambling that he had expended sums in excess of such profits on the purchase of lands and the development of Jessbrook Equestrian Centre, John Gilligan sought not only to claim profits from foreign exchange dealings but also profits generated from gambling in casinos on the Continent. The only reference to John Gilligan generating profits in casinos in the period 1993 to 1996 prior to the hearing of this action in July of 2010 was in the second paragraph of Joseph Saouma's statement of affairs of the 26th September, 1996 wherein he sought to establish the basis upon he came to know John Gilligan. Joseph Saouma stated that he had known John Gilligan since October 1993 and had had regular contact with him in Europe and Ireland and had known John Gilligan to be a formidable and consistent professional gambler who was successful throughout Europe and that he had accompanied him to a number of casinos and seen his gambling skill result in very substantial winnings. John Gilligan made no reference in any of his affidavits either sworn by him or on his behalf to such gambling winnings nor did he at any time prior to the hearing in July of 2010 in any way suggest that Jessbrook Equestrian Centre was funded from such alleged winnings. No details as to the casinos which were the alleged location of John Gilligan's gambling were given to the Court nor were any documents produced nor any evidence called. The entire lack of precision and the circumstances in which the claim to casino betting profits came to be raised by John Gilligan, which was at a time when he was endeavouring to explain a shortfall between his claimed gambling profits in Ireland and his expenditure, is such that the Court is satisfied that the claim of substantial gambling profits in relation to bets placed in casinos in Europe is implausible and provides no credible explanation for the expenditure made by John Gilligan or the funds available to him.

37. During cross-examination it became apparent that even if the Court was to accept the entirety of John Gilligan's evidence in relation to his available funds during the period 1993 to 1996 and compare that sum with the admitted and acknowledged expenditure, including the expenditure on the development of Jessbrook Equestrian Centre, there was a significant shortfall between the funds available and the expenditure. When questioned, in cross-examination, concerning this shortfall (Transcript 7, page 47 onwards) John Gilligan was unable to provide any credible explanation to cover such shortfall. On John Gilligan's own evidence he had available, at most, some £1.7m and he had acknowledged expenditure of some £2.2m together with a further £200,000 in respect of interest paid to Mr. Saouma. It was at that stage, in an attempt to explain the shortfall, that John Gilligan sought to rely not only on his Irish gambling profits which he had claimed up to that time, but on further claimed profits from gambling and from money that he made on the Continent (see Transcript 7, page 52). The lack of any prior reference to those sources of profit and the findings already made by this Court in relation to foreign exchange dealings and gambling on the Continent are such that the Court is satisfied that the true explanation for there being a shortfall between expenditure and claimed profits from gambling in Ireland is that the funds available to John Gilligan did not come from gambling profits, foreign exchange dealings or casino betting but are to be explained from John Gilligan's involvement in the illegal importation and sale of drugs. The fact that he was convicted in respect of a particular consignment does not result in this Court having to close its eyes to the full extent of the evidence. That evidence leads the Court to the conclusion that the most probable explanation as to the funds available to John Gilligan for the purchase of lands and the development of the Jessbrook Equestrian Centre was his involvement in the importation and sale of illegal drugs. The Court has already ruled on the legal approach to be taken in relation to the argument put forward by John Gilligan that the Court is limited to considering only crimes in respect of which John Gilligan has been convicted in considering the provisions under the Act. The Court is satisfied that the Court is not so limited and the Court can look to the entirety of the evidence and in so doing the Court is satisfied that on the balance of probabilities the source of funds available to John Gilligan is that contended for by the Criminal Assets Bureau in its s. 2 and s. 3 applications, namely, profits generated from the illegal importation and sale of drugs, rather than from the sources claimed by John Gilligan. In arriving at that determination the Court has in part relied upon the evidence of the forensic accountant and his conclusion that from his examination of the records and documentation available from five bookmakers that on the balance of probability John Gilligan's betting activities in this jurisdiction over the period 1994 to 1996 generated a loss and not a profit. The betting activity analysis carried out by the forensic accountant, based upon the records and documentation available, arrives at the conclusion that such demonstrates that John Gilligan did not make a profit on his gambling activities and that there were actual losses, when account is taken of the betting tax, being a sum in excess of £500,000. The evidence of the forensic accountant also establishes that John Gilligan had substantial sums of cash available to him to fund his betting activities (i.e. cash flow). The evidence to the Court was that cash funds of some £1.5m were introduced by John Gilligan into his gambling activities which were not sourced

from any recorded income nor were they sourced from any betting winnings or rollover of betting funds generated from the documented bets which generated a profit and as such, such funds derive from unknown sources.

38. In his affidavit of 5th June, 1998 John Gilligan claimed that the lands which formed Jessbrook Equestrian Centre and the development of the Equestrian Centre were paid for out of the loan provided by Joseph Saouma. In that affidavit he identified himself as a professional gambler and swore that his daughter's house had been funded by his profits from gambling and that other than for a £3,000 contribution from his son towards a gambling fund, his son's house was also funded from gambling profits. As identified earlier in this judgment, John Gilligan's evidence altered during the hearing in that he claimed the purchase of the Jessbrook Equestrian Centre's lands and its development were either entirely or primarily funded from gambling profits. Extensive evidence was heard by the Court in relation to John Gilligan's betting. John Gilligan claimed that he earned sufficient profits from gambling in the 1993 to 1996 period to fund the purchase of the lands necessary for Jessbrook Equestrian Centre and its development. Later in his evidence, when it became apparent that even on his own figures there were insufficient funds generated from gambling to pay for such purchases and development, John Gilligan claimed that there were additional economic activities which earned him profits, namely, foreign exchange dealings and gambling in casinos on the Continent. John Gilligan also claimed that his gambling activities prior to his imprisonment in 1990 were such that during the period up to 1990 he was able to develop "a nest egg or fund" which was available to him on his release from prison. John Gilligan's evidence in relation to these gambling profits was imprecise and lacking in detail. The Court is satisfied that it cannot rely on John Gilligan's evidence of gambling profits as he has established that he is willing to give false evidence and swear to contradictory accounts. He also never addressed his involvement in drugs.

39. In the submissions made on behalf of John Gilligan it was claimed that his evidence established that he had substantial non-criminal funds at his disposal upon his release from prison in September 1993. He identified a history of various sources of income which he claimed were sufficient to build up a substantial nest egg or fund. Those included working as a car salesman, selling horses, dealing in goods as well as gambling. There were no records of these claimed profits nor was there any documentary evidence, nor was any witness called to support the making of such profits. Such claims were inconsistent with John Gilligan's own income tax returns in that in only one year, namely 1979, did he make an income tax return indicating any liability for tax. Evidence to the Court also established that John Gilligan's response to an income tax demand in the form of a tax assessment dated the 26th July, 1985 was that he had no liability. In evidence John Gilligan endeavoured to distance himself from his response to that tax assessment by describing the assessment as "mad". John Gilligan's own acts and the financial records available are inconsistent with him having substantial legal earnings prior to 1990 sufficient to build up a £300,000 nest egg. In evidence John Gilligan accepted that during that period his earnings could have exceeded the threshold which would have made him liable for tax but that he did not pay any tax (see Transcript 6, page 93). John Gilligan accepted that he was aware of the obligation to pay tax and acknowledged that his evidence was such that no tax was paid. He also was unable to give any specific details of his actual earnings and his evidence consisted of generalities (see Transcript 6, page 93). It was also the evidence of John Gilligan that during the period that he was generating sufficient profits to build up a substantial nest egg that not only was he paying no tax but that for part of the time he was claiming social welfare in the form of unemployment assistance. The Court heard evidence that one of the periods for which social welfare was claimed was the period from July 1989 to July 1990. During that period John Gilligan claimed unemployment assistance. John Gilligan gave evidence to the Court that during the same period he was earning substantial sums of money and building up a large nest egg or fund. John Gilligan endeavoured to minimise this inconsistency by claiming that he did not always collect his "dole money" and that he would only go every three, four or five weeks (see Transcript 4, page 49). John Gilligan also claimed that not only did he regularly not collect his "dole money" but that the reason he sought and obtained the entitlement to social welfare was that he would get legal aid in a pending criminal trial (see Transcript 4, page 50). In this part of his evidence, as in many other areas, John Gilligan provided the Court with inherently inconsistent and contradictory evidence and demonstrated that he was prepared to make false and inconsistent claims without regard to the true position. This was a further instance which leads this Court to the conclusion that John Gilligan's evidence in relation to his alleged "lawful earnings" is so inconsistent, imprecise and contradictory the Court can place no reliance on it.

40. John Gilligan's evidence was that the main source of his so-called "legitimate income" came from his gambling prowess. Evidence concerning John Gilligan's gambling occupied a considerable part of the Court hearing. John Gilligan's case was that he earned substantial profits from gambling. He gave evidence of substantial profits but no details or figures were provided and, insofar as John Gilligan made a rough estimate, that estimated sum provided insufficient profit to cover his real expenditure. John Gilligan's case was that he had earned substantial profit gambling and that that should be accepted by the Court and the Court should be satisfied the profit was sufficient to explain his expenditure. There is no doubt that John Gilligan was a very substantial gambler during the period 1993 to 1996 and to some extent prior to 1990. It is claimed in the submissions on behalf of John Gilligan that the gambling documents and records relied upon by the plaintiff are not accurate and are so incomplete that no reliance can be placed upon those records. There is no doubt but that the gambling records and documents available to the Court do not and cannot represent a complete and total picture of John Gilligan's gambling activities. However, what those records do show is that five of the largest bookmaking companies in Ireland maintained records for various periods from March 1994 up to June 1996 wherein those companies endeavoured to identify and isolate the actual gambling carried out by John Gilligan and on his behalf. John Gilligan gave evidence that a number of the bets recorded in the documentation were bets which were not placed by him and that there were also other successful bets which were not recorded. He claimed that a significant number of the losing bets were not his bets and were incorrectly attributed to him. The Court accepts that the five companies' records of the bets placed by and on behalf of John Gilligan will, of necessity, be incomplete and to some extent will be inaccurate. Each of the companies have to make their own assessment and judgment, on a day to day basis, as to which bets to attribute to John Gilligan including not only the bets put on directly by him but also bets placed by other persons on behalf of John Gilligan. The records and documents of the five bookmakers were available in Court and the extent of those records varied from company to company. The five companies are all large and successful bookmaking companies.

41. The transactions between a gambler and a bookmaker inevitably carry some element of "cat and mouse" where the gambler often endeavours to hide or mask his true identity and the bookmaker endeavours to see behind that mask so as to as accurately as possible correctly attribute bets to individual large scale gamblers. This is done so that the company will be aware as to whether a particular gambler is making a significant profit thereby enabling the company to make a risk assessment judgment as to whether or not to continue accepting bets or certain types of bet from that gambler. In considering the nature and quality of the evidence of betting, the Court had the real benefit of hearing the evidence of Stewart Kenny. He was a senior executive in Paddy Power bookmakers at the relevant time. Mr. Kenny demonstrated a detailed and extensive knowledge of how bookmakers operated and his evidence provided the Court with a considered and objective overview. It is clear that large bookmaker companies carefully monitor substantial gamblers. This is apparent not only from the records kept by Paddy Powers but also by the records kept by the other four companies. Mr. Kenny's evidence confirmed that John Gilligan, as a substantial punter, was a monitored gambler and that the process which his firm endeavoured to operate was that it would have its staff write down all the bets that they took from John Gilligan which would then be recorded in discrete documents. Those documents could then be reviewed and considered on a constant basis. Mr. Kenny's evidence was that a bookmaker like Paddy Power would keep records in relation to individual gamblers who placed large sums in bets and that the keeping of such records was part of his company's expertise in managing risk. He gave evidence that his company kept such records to ascertain if a particular gambler was making large profits or whether a gambler was making substantial

winnings on particular types of bets. Mr. Kenny's evidence also confirmed that his firm was aware that other persons were placing bets on behalf of John Gilligan and that one such person was Derek Baker. He explained that the procedure followed by his company was that if Mr. Baker placed a bet in circumstances where it was clear that he was acting generally in co-operation with John Gilligan that such a bet would be attributed to John Gilligan and therefore Mr. Baker's bets and Mr. Gilligan's bets would be monitored and screened in tandem. Mr. Kenny's evidence was that his firm monitored John Gilligan's betting for the purpose of managing risk and the records for the relevant period demonstrated that John Gilligan staked over IR£950,000 in a ten month period up to April 1995. In the same period he had winning bets to the value of some £880,000. Paddy Powers' risk management system identified that John Gilligan made substantial losses on his bets. One of the purposes of monitoring particular gamblers was to enable a bookmaker firm to discontinue or restrict the acceptance of bets from particular gamblers if they proved consistently successful either overall or in respect of particular types of bets. That did not arise with John Gilligan in his dealings with Paddy Power and Paddy Power ceased to take bets from John Gilligan in April 1995 after a dispute had arisen between John Gilligan and Paddy Power over a cash sum. Mr. Kenny openly acknowledged that bets could be placed on behalf of Mr. Gilligan which would not be recorded and that it would therefore follow that Paddy Power's records could never be viewed as being precise and fully accurate. However, there is no doubt that Mr. Kenny's evidence indicated that detailed and extensive arrangements were made to record John Gilligan's bets and that this was done with a degree of skill and expertise. Mr. Kenny pointed out in his evidence that without expertise in such areas as the recording the bets of particular gamblers, firms like Paddy Power would not still be here. Mr. Kenny gave evidence that such ability is what the expertise of being a bookmaker is and that as a bookmaker "you are assessing the odds and assessing customers and seeing that you come out winning".

42. The evidence that the Court heard in relation to John Gilligan's gambling satisfies the Court that the records and documents which are available from the five major bookmaking firms cannot be viewed as being precise or fully accurate. Given the nature of gambling and the "cat and mouse" nature of the placing of bets, it would inevitably be the case that some bets placed by John Gilligan would not be recorded by the firms as having been placed by him and that those would be both winning and losing bets. The firms, however, make every effort to comprehensively record all bets placed by and on behalf of John Gilligan and those records, whilst they might be deficient in relation to a particular bet or bets, do provide a reasonably accurate overview of the trend or general overall outcome of John Gilligan's betting activities. The Court is satisfied that the records and documents available from the five major bookmakers provide a reasonable indication of the overall outturn and success rate of John Gilligan's gambling with five large bookmakers. Those records demonstrate the probability that on a general and overall basis John Gilligan made losses as a punter. He clearly was an experienced and determined gambler and the records identify that without the betting tax he succeeded in obtaining a return on his bets of over ninety per cent but less than one hundred per cent. When one takes account of the betting tax the probability is that there was a not insignificant loss. Those records are not complete but the Court is satisfied that given the basis and purpose upon which those records were created, maintained and scrutinised by the five major bookmakers they provide a reasonably accurate record of a true overall picture of how successful a gambler John Gilligan was during the relevant period. The evidence establishes that on the balance of probabilities John Gilligan was a losing punter in the relevant period and that gambling profits do not provide an explanation for the funds which were available to John Gilligan which were used to fund his land purchases and the development of Jessbrook Equestrian Centre. The Court has had regard to John Gilligan's evidence in relation to his gambling activities but, given the conclusion that the Court has arrived at in relation to the unreliability of John Gilligan's evidence and his willingness to alter and change his evidence to suit his immediate ends, the Court was unable to place any substance on John Gilligan's testimony. The records of the five major bookmaker companies provide a more credible and authentic account of the likely overall outcome of John Gilligan's betting activities. The Court has also had regard to the complete lack of any detail in John Gilligan's evidence concerning his betting activities. Insofar as John Gilligan made estimates, it became apparent during the course of the case that even on his own estimates, as to the extent of his alleged profits from gambling, those profits were insufficient to explain his expenditure despite the fact that he had previously sworn that such profits were the source of funding for his expenditure. In relation to alleged gambling profits the Court is satisfied, as in relation to the other suggested areas of income, that John Gilligan's evidence did not discharge the onus on him in a s. 3(3) application and that the more credible evidence as to the source of funds is that contended for by the plaintiff. The Court is satisfied that the same conclusion concerning betting profits being the source of funds for John Gilligan in the period up to and including 1990 equally applies. The explanation for the accumulation and build up of any nest egg or fund prior to his imprisonment in 1990 is to be explained from the profits generated from the proceeds of crime and that John Gilligan's evidence in relation to profits from gambling and other economic activities in the period up to and including 1990 is so vague and his actions so contradictory that the Court cannot accept John Gilligan's evidence on this matter.

43. Geraldine Gilligan gave evidence that she was the person who provided funds for the purchase of Mucklon in 1987. That purchase was completed on the 10th September, 1987 and the purchase price was IR£7,000. Geraldine Gilligan gave evidence that she personally paid the deposit by cheque and that she alone signed the contract for purchase. She gave evidence that some time shortly before the closing she paid the balance of the purchase money for Mucklon and that that was paid out of the proceeds of her "claim monies". The "claim monies" were identified by Geraldine Gilligan as being the settlement of £12,500 that she received from the termination of her employment by Mostech Ltd. in the early 1980s. Mucklon was renovated after it was purchased and became the family home. The purchase in 1987 is the only purchase which Geraldine Gilligan claims was funded out of her assets. In relation to all the other properties in respect of which she makes a claim, she does so on the basis that those properties were funded by John Gilligan and she relies on his evidence in support of her s. 3(3) application to establish that such funding did not emanate from the proceeds of crime. The evidence available to the Court shows that Mucklon was purchased in 1987 whilst the suggested source of funds became available to Geraldine Gilligan in 1983. It was in that year that Geraldine Gilligan received a sum in compensation in relation to her claim arising out of the termination of her employment with Mostech. Geraldine Gilligan initially swore that the sum obtained was some £12,500 but documents indicate that the correct sum was in fact an award of £10,000 plus costs. There is an approximate four year gap between Geraldine Gilligan receiving the compensation sum and the purchase of Mucklon. The financial records produced by Geraldine Gilligan and in particular the records of the building society failed to demonstrate or identify the payment in of the compensation sum in 1983. The records which were produced established to the Court that there does not appear to be any documentary evidence to link the compensation received in 1983 and to the funds used in 1987 to provide for the deposit and purchase of Mucklon. The records produced by Geraldine Gilligan established lodgements of approximately £18,000 to her account in 1986. In 1987 there were substantial lodgements and withdrawals and taken together in the years 1986 and 1987 over £50,000 in cash was lodged to her account. There were also cheque lodgements over and above that sum. The explanation provided by Geraldine Gilligan was "I would have been saving here and there" (see Transcript 2, page 16). No explanation was proffered as to the source of the income to enable such savings. At that time Geraldine Gilligan was unemployed and was not receiving social welfare. Geraldine Gilligan failed to provide any explanation as to why the sums lodged were in cash. On the evidence the Court is satisfied that there is no link between the 1983 settlement or award received by Geraldine Gilligan and the sum used to purchase Mucklon. In the intervening four year period, that is between 1983 and 1987, Geraldine Gilligan had made substantial deposits and withdrawals greatly in excess of any compensation award. The facts available to the Court demonstrate that the funds used by Geraldine Gilligan to purchase Mucklon came from funds deposited in her account in 1986 and 1987. The Court has no credible explanation for the source of the substantial cash funds deposited in her account 1986 and 1987. During the course of the case John Gilligan endeavoured to provide evidence of Geraldine Gilligan's work during the 1980s and swore an affidavit dated the 13th July, 2010. The Court indicated that if such evidence was to be given it should be given by Geraldine Gilligan and an opportunity to cross-examine

would be provided. No such evidence was given. The Court, therefore, is faced with the position that Geraldine Gilligan has given no credible evidence as to the source of the cash which was deposited in her building society account in 1986 and 1987. The Court is satisfied that there is no link between the sum received in compensation in 1983 and the purchase of Mucklon in 1987. In the four year period between those two events the extent of the withdrawals establishes that any money received by her had been spent. The funds in her account in 1987 came from other sources. Geraldine Gilligan deposited large sums in her account after the receipt of her settlement and on balance those funds provided the true source for the money used to purchase Mucklon. Geraldine Gilligan has failed to discharge the onus on her in relation to a s. 3(3) application and has failed to establish that the funds used to purchase Mucklon emanated from her own resources. The evidence available to the Court establishes that the case made on behalf of the applicant that the funds used to purchase Mucklon in 1987 were the proceeds of crime is, on the balance of probabilities, the true position and the funds used emanated from John Gilligan and from his criminal activities.

44. The evidence establishes that from 1993 to 1996 substantial sums were available to Geraldine Gilligan and it is her case that these funds emanated from John Gilligan and as already indicated the Court is satisfied that John Gilligan has failed to discharge the onus on him in a s. 3(3) application. He has failed to establish, on the balance of probability, that those funds emanated from legitimate sources. It follows that in relation to each and every one of the properties in respect of which Geraldine Gilligan makes a s. 3(3) claim that the Court is satisfied that neither she nor her husband, John Gilligan, have discharged the onus on them under s. 3(3) of establishing that the funds used to purchase and develop such properties emanated from legitimate sources and are not the proceeds of crime. They have failed to provide any credible evidence that the provenance of the funds used was legitimate and verifiable.

45. Darren Gilligan, the third named respondent, claims that the house at 6, Weston Green, Lucan was purchased with funds which do not constitute directly or indirectly the proceeds of crime. Darren Gilligan claims that he received a payment out in respect of a personal injury settlement on reaching his majority and that he received a cheque of some £15,300 and that he gave that cheque to his father who then used that sum of money or fund to place particular bets which resulted in the sum of £15,300 increasing to a sum of £78,000. That sum was then used to purchase the house. John Gilligan also gave evidence in relation to this matter. Darren Gilligan was eighteen in September 1993 and a cheque in the sum of £15,302.67 was paid out dated the 12th October, 1993 in respect of the settlement of a personal injuries claim concluded a number of years previously. On the 15th January, 1997 Darren Gilligan swore that he gave his father the sum of approximately £15,000 when he came out of prison in 1993 and that his father subsequently gambled the money and increased the amount thereby enabling him to purchase 6, Weston Green. That purchase did not take place until December 1995 and it was John Gilligan's evidence that he did not use the fund provided by his son's cheque until the middle of 1995 and that thereafter he used it in such a manner as to generate a string or run of winning bets sufficient to fund the purchase of the house. John Gilligan's account in relation to this matter is both inconsistent and lacking in credibility. In the affidavit sworn by John Gilligan's then solicitor on the 13th February, 1997, which was sworn on John Gilligan's instructions and from information provided by him, it was averred in relation to 6, Weston Green, that John Gilligan's son, Darren, gave him the sum of £3,000 which was used for gambling with which John Gilligan won £70,000 and those monies were used to purchase the property. The Court is satisfied that the solicitor swearing that affidavit was accurately recounting John Gilligan's instructions. John Gilligan himself swore in his affidavit of 5th June, 1998 that his son, Darren, gave him £3,000 out of the £15,000 that he had received on reaching his majority and that John Gilligan invested that £3,000 in gambling activities and was able to accumulate approximately £78,000. There is therefore a conflict between the account given by Darren Gilligan and John Gilligan as to what occurred in 1993. John Gilligan averred, up until he changed his account in Court, that he received £3,000 from his son to invest whilst his son avers that he gave the entire sum he had received to his father. The evidence before the Court was that the cheque was cashed by a third party and it is claimed on behalf of the first and third named respondents that that was a means of getting the total sum in the form of cash so that it could be given to the father. The Court received no explanation as to the inconsistency between John Gilligan and Darren Gilligan as to the amount allegedly handed over in October 1993. The evidence to the Court was that the sum received by John Gilligan, from his son, remained separate and distinct and unused until the middle of 1995. John Gilligan's evidence was that he then used £3,000 of his son's fund in July 1995 to place a series of safe winning bets, each and every one of which was successful ultimately resulting in a sum of £78,000 being available to purchase the house. John Gilligan gave evidence of a continuous winning streak which culminated in the payment of a cheque for £50,000 at the end of July 1995 to Darren Gilligan. That sum of £50,000 was lodged into the account of Darren Gilligan on the 31st July, 1995 and was used to part fund the purchase of the house. Neither John Gilligan or Darren Gilligan gave any explanation as to why the alleged fund provided by the son to the father was entirely unused for a period of almost two years. John Gilligan's evidence was that the £3,000 fund which he gambled on behalf of his son in July 1995 was placed on secure and safe potentially winning bets and he had a winning streak. John Gilligan initially claimed the streak to consist of some seventeen bets and later claimed in evidence that the streak consisted of some thirty consecutive wining bets. John Gilligan claimed that he did not have a loser over a ten to twelve day period and that that was the reason that he received or was due a cheque for £50,000 which he arranged to give to his son. The Court is satisfied that John Gilligan did receive or was due a cheque from Ladbrokes in the sum of £50,000 at the end of July 1995. The evidence of Bernadette Rooney, the then manager of Ladbrokes in Palmerstown, County Dublin, establishes that such a cheque was paid out by Ladbrokes and was made payable to Darren Gilligan. Bernadette Rooney gave evidence that she arranged such cheque and that it was made payable to Darren Gilligan. Bernadette Rooney gave evidence that she could remember obtaining the cheque and that John Gilligan was a large gambler who was successful on some days and unsuccessful on other days. She was unable to remember a series of winning bets in the days leading up to the 31st July, 1995. John Gilligan's account of a sequence of seventeen or possibly thirty winning bets in a row is improbable. It is even more improbable that if those bets were placed in the one bookmaker's shop, as is claimed by John Gilligan in his explanation for the £50,000 cheque, that such a unique and memorable winning streak would not be recalled by the manager of the shop. The account given in relation to the sourcing of the funds for the purchase of 6, Weston Green, Lucan, by Darren Gilligan and John Gilligan is incredible. Their evidence is inconsistent as to the amount of money which was given by Darren to his father. No explanation is provided for it remaining unused for almost two years and the transformation of the claimed fund of £3,000 into a cheque for £50,000 by a winning streak of bets placed on behalf of Darren by his father is farfetched. It is implausible that the memory of such an alleged winning streak would not be recalled by the shop manager. On a purely mathematical basis, a winning streak of thirty consecutive bets is highly improbable. The Court is satisfied that the evidence in relation to this matter is contrived and is put forward as a means of explaining the use of one of the cheques which John Gilligan received for successful gambles from Ladbrokes in the purchase of 6, Weston Green and that such cheque emanated from the fact that John Gilligan was a substantial gambler who bet in large sums and was on occasions successful thereby generating gambling profits. The Court is satisfied that the claim by Darren Gilligan and John Gilligan that John Gilligan received his son's compensation money, kept it unused for almost two years and then went on a winning streak sufficient to generate a cheque for £50,000 and further profits sufficient to cover the entire £78,000 purchase price is implausible. Therefore, in relation to the claim that 6, Weston Green was purchased with funds which were not the proceeds of crime and are to be explained by the account given by John and Darren Gilligan, the Court is satisfied that such account is untrue and that the third named respondent has failed to discharge the onus on him in establishing that the funds used to purchase 6, Weston Green emanate from proceeds other than the proceeds of crime.

46. Tracey Gilligan, the fourth named respondent, makes her application pursuant to s. 3(3) of the 1996 Act in relation to the property at 1, Willsbrook View, Lucan, County Dublin. That house was purchased on the 30th November, 1994 and is registered in the joint names of Tracey Gilligan and her father. The purchase price of the house was £73,000 and it is claimed by Tracey Gilligan that

£10,000 of the purchase price was provided by her former partner, Gary Keating. The balance of the purchase price was discharged by the first named respondent, John Gilligan, and the property is mortgage free. Tracey Gilligan also relies in support of her application on a claim that she expended between £15,000 and £20,000 on improvements on the house from the date of purchase. It is also claimed that it would be unjust on Tracey Gilligan not to grant the relief sought by her on the basis of Tracey Gilligan's current financial and personal circumstances and it is also claimed that a disposal of the property would be a disproportionate interference with Tracey Gilligan's property rights under the Constitution and under the European Convention on Human Rights.

47. Tracey Gilligan's claim that her former partner, Gary Keating, contributed £10,000 towards the purchase price of 1, Willsbrook View was identified in her first affidavit sworn in this case on the 30th January, 1997. The claim then made was that her partner, Gary Keating, had contributed approximately £10,000 towards the purchase price which was given to her father and it was acknowledged that the balance was paid by John Gilligan, her father. The claim of a £10,000 contribution from Gary Keating has been consistently made in these proceedings. Arising out of the claim made by Tracey Gilligan that Gary Keating had contributed to the purchase price of the house at 1, Willsbrook View, in Lucan, Gary Keating was interviewed by a member of An Garda Siochána on behalf of the applicant. That interview resulted in Gary Keating making a statement which was taken down in writing and signed by him. Gary Keating did not give evidence as by the date of the hearing he was deceased, having died on the 24th December, 2005. Gary Keating and Tracey Gilligan had been involved in a relationship in 1993 and their daughter, Shannon, was born in December of 1993. In his statement, of the 1st February, 2000, Gary Keating said that after his relationship with Tracey Gilligan ceased that one of the ways that he envisaged he could keep in contact with his daughter Shannon was by making a financial contribution towards the purchase of Tracey's house and that his father, Liam Keating, had recently retired from Aer Lingus and had received a payment of some £50,000. Gary Keating stated that his mother looked after the family finances and that she gave him £10,000 out of his father's retirement monies and that that money was paid out of an account in AIB on Sundrive Road. He stated that when he received the £10,000 from his mother, he paid it over to John Gilligan in cash to assist in the purchase of Tracey's house. In his statement, Gary Keating indicated that John Gilligan was not anxious to take the money but that the money was nevertheless paid over. Gary Keating also stated that he paid £20 a week into the Irish Permanent to contribute towards Shannon's upkeep. Gary Keating provided Sergeant Bourke with the bank details of his parents' bank account and signed the statement including a declaration that the statement was true and that he had made it knowing that if it was tendered in evidence he would be liable to prosecution if he stated in the statement anything which he knew to be false or did not believe to be true. The Court also had evidence from Monica Keating in the form of an affidavit sworn on the 14th July, 2010. She is the mother of Gary Keating and in that affidavit she swore that in 1993 her husband retired from Aer Lingus and received a lump sum payment in excess of £50,000 which was lodged in a bank account in the joint names of herself and her husband and that sometime after receiving that lump sum she and her husband decided to split some of the money between their son and daughter and that they provided Gary, their son, with a lump sum of £10,000 and Gary informed her that he had given that £10,000 to Tracey Gilligan's father, John Gilligan. Monica Keating was not cross-examined on the contents of her affidavit. Sergeant Bourke was cross-examined in Court in relation to the statement made by Gary Keating and he confirmed that Gary Keating was co-operative and in answer to a question from Tracey Gilligan's counsel he confirmed that he accepted Gary Keating's statement (Transcript 10, page 13). The Court accepts that evidence and is satisfied that that evidence establishes that part of the purchase price of Tracey Gilligan's house came from an identifiable legitimate source and that the evidence which the Court heard in relation to that source being from Gary Keating and his father's funds is credible. In making its final order the Court will take account of its finding that £10,000 of the purchase price of £73,000 came from an identifiable legitimate source and was not funded by the proceeds of crime. The Court is satisfied that it has been shown to its satisfaction that part of the purchase price of the property came from funds which were not directly or indirectly the proceeds of crime and it would follow that if the order made by the Court did not take due account of that, that an injustice would arise. Tracey Gilligan has discharged the onus on her to the extent that she has established that part of the purchase price of her house came from funds which were not directly or indirectly the proceeds of crime. The Court will hear counsel in relation to the order which it should make arising out of this finding.

48. Tracey Gilligan also relies in support of her claim on what is identified as home improvements. She gave evidence that over a period of five to six years she spent some £15,000 to £20,000 on home improvements. She left Ireland to reside in Spain in 2002. Tracey Gilligan's evidence was that the expenditure on the house was funded by her then partner, Liam Judge. It is claimed on behalf of Tracey Gilligan that the improvements which were made to the house substantially added to the value of the house and "that the said improvements increased her equity in the house". A number of invoices were handed into Court and, on examination, those invoices related to a number of different areas of expenditure. They included the purchase of a number of items of furniture and electrical products and certain repairs and maintenance which could not be viewed as being improvements or in any way adding to the equity in the house. There was however evidence before the Court of expenditure on certain items which could be viewed as improvements in the year 2000 and 2001, namely the installation of a new bathroom, for which there was documentary evidence, and oral evidence of other works carried out in the building of a rear garden patio. In considering the issue of injustice, the Court has a wide discretion and that discretion is of such extent to allow and permit consideration that a potential injustice might arise in circumstances where there was expenditure by or on behalf of Tracey Gilligan on her house, from funds which are not the proceeds of crime, and where the works had the potential to enhance its equity. Expenditure on items of furniture or electrical goods together with expenditure on painting, maintenance and flooring would not be within the category of expenditure which could be said to enhance the equity value in the house. However, in ensuring that no injustice would occur, the Court is satisfied that it is appropriate to take account of expenditure on the construction of the new bathroom, which is vouched to the extent of some £3,450 and the oral evidence in relation to the garden patio and that therefore in making its final order the Court should have regard to expenditure of some £5,000 (which is an estimated total sum) in and about the year 2000 and 2001 which the Court is satisfied had the consequence of enhancing the equity value of the house by some five per cent. The five per cent is an estimate based on the fact that the value of the house by that date would have increased somewhat from the date of purchase and would be worth more than its costs and £5,000 could be taken as representing five per cent of its value at 2000/2001. In considering whether an injustice would arise if an order was not discharged in whole or in part, the Court must conduct a balancing act and must consider in whether maintaining the existing order would be proportionate in the light of the full circumstances identified in evidence and having regard to the present circumstances of the respondents. In exercising that judgment, the Court must be sensitive to any actual property rights that might have been identified by any of the respondents. In ensuring that that approach is followed, the Court will, subject to hearing counsel, recognise the increased equity in the house arising out of the expenditure identified above and the deposit of £10,000 sourced from Gary Keating.

49. Each of the respondents seek to rely on a claim that the existing s. 3 order should be discharged or varied on the basis that failure to do so would give rise to "other injustice". This judgement has already identified the approach which the Court will take to this matter which is, that the Court in considering the issue as to whether or not any other injustice has been established to the satisfaction of the Court by any of the applicants, will consider the circumstances which apply at the time that the application was made to this Court and not the circumstances which applied at the time that the s. 3 order was made. The Court will therefore have regard to each of the respondent's current personal and financial circumstances, to the fact that the second, third and fourth named respondents are not claimed to have had any knowledge of the fact that John Gilligan's funds emanated from the proceeds of crime, the family circumstances of each of the respondents including their obligations to children, the necessity to reflect in any order monies expended out of assets other than the proceeds of crime by individual respondents, the claim on behalf of a number of the

respondents that an injustice would be created if they were rendered homeless and that the Court should recognise this by providing for a right of continued residence in certain of the properties. The Court must also address the issue which has been raised on behalf of Tracey Gilligan, which is a claim that since both she and her children were innocent of any criminal wrongdoing that even though the State has an interest in preventing those who engage in crime from profiting from same, that the Court must, it is claimed, equally protect Tracey Gilligan and her children's rights to private life and to their home. It is claimed on behalf of Tracey Gilligan and her children that any order which would result in the disposal of her house would be a disproportionate interference with her family and property rights and would be unjust. The Court has already addressed, in this judgment, the issue as to whether or not the respondents or any of them have satisfied the Court that any of the funds used to purchase or develop the properties the subject of the s. 3 order were not directly or indirectly proceeds of crime. Other than the two sums identified in respect of Tracey Gilligan's house, namely the sum of £10,000 in respect of the purchase price of that house, and the sum of approximately £5,000 in respect of improvements made to that house, the Court is satisfied that none of the respondents have established that any of the properties which are frozen by the s. 3 order were either in whole or in part purchased or developed by funds which were not the proceeds of crime. Other than for the finding relating to 1, Willsbrook View, Lucan, the Court is satisfied that none of the respondents have satisfied the Court that the properties frozen or the cost of development of Jessbrook Equestrian Centre was funded out of monies which were not directly or indirectly proceeds of crime.

50. In considering the issue as to whether or not the respondents have discharged the onus of establishing that the s. 3 order causes any other injustice, the Court has considered all the matters identified in the previous paragraph including the matters raised by the respondents in the light of the Court's finding that other than for the one exception identified, that none of the respondents have satisfied the Court that the properties frozen by the s. 3 order are not directly or indirectly proceeds of crime. This Court has in the past considered the issue of whether the making of a s. 3 order under the 1996 Act would give rise to a serious risk of injustice. In considering whether or not to make a s. 3 order, the Court has to be satisfied that the making of such an order will not give rise to a serious risk of injustice. Section 3 provides that the Court shall not make a s. 3 order if the Court is satisfied that there would be a serious risk of injustice. In this case, the Court is considering a s. 3(3) application under the 1996 Act where what it must consider is whether or not any of the respondents have established that other injustice would arise. The words used in the Act are "other injustice" as opposed to "a serious risk of injustice" which is what must be considered by the Court when considering the making of a s. 3 order. Notwithstanding the difference of words, the overall approach which this Court takes to considering the issue of injustice is the approach which this Court has identified in the case of *Criminal Assets Bureau v. O'B. and Anor.* (Unreported, High Court, Feeney J., 12th January, 2010). In that judgment the Court considered whether the making of a s. 3 order, particularly in relation to a family home would be unjust and would amount to a violation of the second named respondent's rights pursuant to Article 8 of the European Convention on Human Rights and be disproportionate to the purpose of the legislation. This Court is satisfied that the approach to be taken in considering injustice under s. 3 and the approach under s. 3(3) should be similar and in both instances the Court must recognise that its competence to extend relief to persons claiming an injustice is wide in its scope and that in exercising its discretion the Court is obliged to act in accordance with the requirements of constitutional and natural justice. As stated in the Supreme Court judgment in *Murphy v. G.M.* [2001] 4 I.R. 113 at 176:

> "Similarly, while the power of the court to extend relief to persons claiming an interest in the property where there is 'a serious risk of injustice', is undoubtedly wide in its scope, that can only be in ease of the individuals whose rights may be affected and the court, in applying these provisions, will be obliged to act in accordance with the requirements of constitutional and natural justice."

That approach is applicable in considering whether or not in these s. 3(3) applications whether the continued s. 3 order causes any other injustice. In considering whether it would be unjust to allow the s. 3 order to remain in place and unaltered in respect of properties which are either homes or where one of the respondents seeks to use such property as a home and whether the continuance of a s. 3 order would amount to a violation of any of the respondents' rights pursuant to the European Convention on Human Rights and be disproportionate, this Court follows the approach identified in this Court's judgment in *CAB v. O'B. and Anor.* delivered on the 12th January, 2010, and the principles identified in that judgment. The Court has to have regard to the object or intent identified in the Proceeds of Crime Act and to the fact that the legislative intent of that Act, as identified in its title, is to ensure, in appropriate circumstances, that disposal orders will be made so as to ensure that individuals will not benefit from assets obtained with the proceeds of crime. In considering whether or not an injustice has been identified this Court must conduct a balancing act and must consider in reality whether the continuation of the s. 3 order would be proportionate in the light of the evidence heard by the Court with due regard being given to the personal circumstances of the respondents. The fact that a respondent requires a home, of itself, cannot operate to defeat the public interest requirement of depriving persons of property obtained by the use of funds emanating from the proceeds of crime. In exercising its discretion in considering the issue of injustice in relation to a claim to be allowed to remain on in a property or to occupy a property, that claim must be considered on the basis that but for the use of funds obtained from criminal activities, such property would not be owned and would not be available for use. This Court is satisfied that consistent with the approach adopted in the case of *CAB v. O'B. and Anor.,* for injustice to be established a respondent must identify actual and firm grounds over and above past use or possession or need to succeed in the discharge of the onus of establishing that the s. 3 order creates or causes an injustice. This Court has considered the particular circumstances of each of the respondents and the arguments made on their behalf and can identify no basis for concluding that the existing s. 3 order causes an injustice or that in refusing to discharge or vary the s. 3 order that the Court would be acting in a disproportionate manner. On the facts of this case the Court is satisfied that the properties the subject matter of the s. 3 order were purchased, funded and developed by funds which were generated by crime and represented proceeds of crime and the respondents, other than for the one exception, have failed to discharge the onus on them in a s. 3(3) application to establish that such funds came from proceeds which were not the proceeds of crime..

50.2 In considering the issue of proportionality, the Court has also had regard to the fact that a number of the respondents have had the use of or have benefited from income generated by a number of the properties since the making of the s. 3 order and that the same continues to date. The Court recognises that it must be sensitive in considering the competing property and other rights of litigants and must balance those in determining whether or not an injustice is caused by a s. 3 order but none of the respondents, other than for the matter identified above, have identified or established any injustice that is caused by the s. 3 order in respect of the properties covered by that order.

51. The Court will hear counsel in relation to the nature of the order which should be made in the light of the findings contained in this judgment and in particular will hear counsel for the fourth named respondent in relation to the finding that the Court has made concerning 1, Willsbrook View, Lucan.