

**THE HIGH COURT  
PROCEEDS OF CRIME**

**[2006 No. 14 C.A.B.]**

**IN THE MATTER OF SECTION 16(B)(4) OF THE PROCEEDS OF CRIME ACT, 1996**

**BETWEEN**

**CRIMINAL ASSETS BUREAU**

**PLAINTIFF/RESPONDENT**

**AND  
J. W. P. L.**

**DEFENDANT/APPLICANT**

**Judgment of Mr. Justice Feeney delivered on the 24th day of May, 2007.**

1.1 On the 26th July, 2006, the High Court made an order pursuant to O. 11 r. 1(r) of the Rules of the Superior Courts granting the plaintiff liberty to serve notice of an originating notice of motion on the then intended defendant, that is the defendant herein, at an address in England. A notice or originating notice of motion in lieu of service was duly made on the defendant out of the jurisdiction by notice dated the 1st August, 2006. A conditional appearance was entered on behalf of the defendant on the 6th October, 2006. The appearance was without prejudice as to jurisdiction and for the purpose of contesting jurisdiction. The defendant brought a notice of motion seeking to set aside the order of the High Court made on the 26th July, 2006.

1.2 In the proceedings herein the plaintiff seeks an order pursuant to s. 16B(2) of the Proceeds of Crime Act 1996 (as amended) directing the defendant to pay to the Minister for Finance or such other person as the court may specify an amount equivalent to the amount by which the court determines that the defendant has allegedly been corruptly enriched.

1.3 The basis upon which the defendant seeks to set aside the order for service is based upon a claim that the proceedings herein fall within the scope of Council Regulation (EC) No. 44/2001 of the 22nd December, 2000, on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ("the Brussels Regulation") and that accordingly these proceedings cannot be commenced within this jurisdiction as the defendant company is domiciled in the United Kingdom. The sole issue for determination by this court is whether service ought to have been effected under O. 11 given the provisions of the Brussels Regulation. The defendant contends that the use of O. 11 was misconceived and that the High Court does not have jurisdiction to entertain the proceedings herein.

1.4 The plaintiff opposes this application on the basis that the proceedings herein do not constitute a "civil and commercial matter" within the meaning of the Brussels Regulation and that such regulations accordingly have no application to the proceedings and that the High Court's order was properly made pursuant to the provisions of O. 11 of the Rules of the Superior Courts (as amended).

1.5 Section 12 of the Proceeds of Crime (Amendment) Act 2005 amended the Proceeds of Crime Act 1996 by inserting new sections 16A and 16B in the principal Act. Section 16B(2) provides for a corrupt enrichment order and s. 16B(2) states:

"Where, on application to it in that behalf by the applicant, it appears to the Court, on evidence tendered by the applicant, consisting of or including evidence admissible by virtue of subsection (5), that a person (a 'defendant') has been corruptly enriched, the Court may make an order (a 'corrupt enrichment order') directing the defendant to pay to the Minister or such other persons as the court may specify an amount equivalent to the amount by which it determines that the defendant has been so enriched."

Section 16B(9) provides that:

"The rules of court applicable in civil proceedings shall apply in relation to proceedings under this section."

1.6 Paragraph 7(1) of statutory instrument no. 242 of 2006 provides that an application for an order under s. 16B(2) shall be made by originating notice of motion, grounded on an affidavit or affidavits sworn on behalf of the applicant. Order 11 r. 1(r) of the Rules of the Superior Courts provide that, provided that an originating summons is not a summons to which O. 11(a) applies, service out of the jurisdiction of an originating summons or notice of an originating summons may be allowed by the court wherever "any relief is sought in proceeding commenced in accordance with O. 136 of these rules". Order 136 relates to proceedings under the Proceeds of Crime Acts 1996 and 2005.

1.7 The Brussels Regulation is a Regulation concerned with the jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. The scope of the Brussels Convention is defined in Article 1 thereof, which provides:

"This Regulation shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue customs or administrative matters."

And it is further provided at Article 2:

"Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State."

The Brussels Regulation provides in section 8 at Article 25 in relation to examination as to jurisdiction and admissibility and imposes a duty on a court to examine jurisdiction of its own motion declining same if it is not ceased of the case under the terms of the Regulation. It is contended by the defendant that under the Brussels Regulation the Irish High Court has no jurisdiction to hear the matter as the proceedings herein are a civil and commercial matter within the scope of provisions of the Regulation.

1.8 The essential question which this court must address is whether or not the claim herein pursuant to s. 16B(2) of the Proceeds of Crime Act 1996 (as amended) is a civil and commercial matter within the scope and meaning of Article 1 of the Brussels Regulation. This court must consider and determine whether the concept of civil and commercial matters in Article 1 encompasses a claim pursuant to s. 16B(2) of the Proceeds of Crime Act 1996 (as amended).

2.1 If the Brussels Regulation applies to the proceeding herein it would follow that Article 2 would oblige the defendant to be sued in the national court of the defendant's domicile. The purpose and intent of Article 2 is to ensure that persons domiciled in a Member State shall in civil and commercial matters be sued in the courts of that Member State. Recital 11 of the Brussels Regulation identifies the rationale in the following terms, namely:

"The rules of jurisdiction must be highly predictable and founded on the principle that jurisdiction is generally based on the defendant's domicile and jurisdiction must always be available on this ground save in a few well defined situations in which the subject matter of the litigation or the autonomy of the parties warrants a different linking factor. The domicile of a legal person must be defined autonomously so as to make the common rules more transparent and avoid conflicts of jurisdiction."

2.2 In considering Article 1 the approach to be taken by the court is guided by the judgment of the European Court of Justice in *Netherlands v. Ruffer* [1980] ECR 3807 (para. 7 and 8) where it is stated:

"It is apparent from the case law of the court... that the concept of 'civil and commercial matters' used in article 1 of the Brussels Convention must be regarded as an independent concept which must be construed with reference first to the objectives and scheme of the Convention and secondly to the general principles which stem from the corpus of the national legal system. In the light of these considerations the court has specifically held in that same case law that whilst certain judgments given in an action between a public authority and a person governed by private law may come within the area of application of the Convention that is not the case if the public authority is acting in the exercise of its public authority powers."

It is to be noted that the Brussels Convention was the predecessor of the Brussels Regulation.

2.3 Both the plaintiff and the defendant relied on a quotation from Layton and Mercer's European Civil Practice (2nd Edition) London 2004 and in particular upon para. 12.021 at p. 345 as succinctly setting forth the current state of the European Court case law in relation to the applicability of the Brussels/Lugano Regime. Paragraph 12.021 states:

"It is apparent from these decisions that, on the current state of the cases, it is not sufficient to exclude a case from the scope of the Brussels/Lugano Regime that the action is one brought by or against a public body acting in the exercise of its public law powers. It is necessary to go further and consider whether the rights and duties of the public body or those which are conferred on it as such, that is, whether they go beyond those which apply to private persons. If they are rights and duties which would attach to private persons, the claim is not thereby excluded from the scope of the regime. This is true even if the public body's conduct was governed by rules which, as a matter of domestic law, are regarded as public law, and irrespective of whether in the State where the public body is constituted, those rights and obligations would be justiciable before administrative courts rather than the ordinary courts."

2.4 The European Court of Justice in considering Article 1 of the Brussels Convention stated in *Gemeente Steenberg v. Baten* [2002] ECR I-10527 at para. 28, as follows:

"It is settled case law that, since Article 1 of the Brussels Convention serves to indicate the area of application of the Convention, it is necessary, in order to ensure, as far as possible, that the rights and obligations which derive from it for the Contracting States and the persons to whom it applies are equal and uniform, that the terms of that provision should not be interpreted as a mere reference to the internal law of one or other of the States concerned. The concept referred to must therefore be regarded as an independent concept to be interpreted by reference, first, to the objectives and, secondly, to the general principles which stem from the national legal systems as a whole."

The Court went on at para. 30 to state:

"Thus the Court has held that, although certain judgments in actions between a public authority and a person governed by private law may come within the scope of the Brussels Convention, it is otherwise where the public authority is acting in the exercise of its public powers."

The Court determined (at para. 37) that:

"In the light of the foregoing considerations, ... paragraph of Article 1 of the Brussels Convention must be interpreted as meaning that the concept of civil matters encompasses an action under a right of recourse whereby a public body seeks from a person governed by private law recovery of sums paid by it by way of social assistance to the divorced spouse and child of that person, provided that the basis and the detailed rules relating to the bringing of that action are governed by the law of the ordinary law in regard to maintenance obligations. Where the action under a right of recourse is founded on provisions by which the legislature conferred on the public body a prerogative of its own, that action cannot be regarded as being brought in civil matters."

The defendant herein relies on that statement of the law by the European Court of Justice and claims that it is essential for the C.A.B. to establish that the claim it brings herein is under a prerogative of its own and that it must do so to take the claim herein outside the general rule and therefore outside the scope of Article 1.

2.5 There is no dispute but that the C.A.B. is a public body acting in the exercise of its public law powers. However the defendant contends that the real issue for consideration is whether the rights and duties of which the C.A.B. is endeavouring to exercise in bringing the claim herein and in seeking a corrupt enrichment order go beyond those which apply to private persons. Are they a public body exercising a prerogative of its own? The defendant contends that the C.A.B. is not exercising a prerogative of its own because a private individual could bring analogous proceedings in the form of a claim for unjust enrichment. The defendant claims that the proceedings brought by the C.A.B. are similar or comparable in function as a civil claim for unjust enrichment.

3.1 A civil claim for unjust enrichment arises from the law of restitution. That law imposes an obligation, on a person who receives an unintended benefit, to repay the sum by which he or she has been "unjustly enriched". A distinguishing feature is that the law of restitution applies to cases where the person who received the benefit may have done no wrong. Restitution is not concerned with compensation for losses but rather with the return of unjust enrichments.

3.2 A definition of the law of restitution is provided in the text book Goff and Jones *The Law of Restitution* (7th Edition) at para. 1.001:

"The law of restitution is the law relating to all claims, quasi contractual or otherwise, which are founded upon the principle of unjust enrichment. Restitutionary claims are to be found in equity as well as at law. But the common laws of quasi-contract is the most ancient part of restitution."

The authorities and the text books demonstrate that the civil law provides for a civil relief based upon reversing unjust enrichment on the part of a defendant. In doing that it involves removing from the defendant some accretion to his wealth which, in the eyes of the law, he should not be entitled to retain or making the defendant pay for some non-money benefit on the basis that it be wrong to allow him to retain it for nothing.

3.3 The Supreme Court considered the position of unjust enrichment in Irish law in *Corporation of Dublin v. Building and Allied Trade Union* [1996] 1 I.R. 468. Keane J. gave the judgment for the court and stated (at p. 483) as follows:

"It is clear that, under our law, a person can in certain circumstances be obliged to effect restitution of money or other property to another where it would be unjust for him to retain the property. Moreover, as Henchy J. noted in *East Cork Foods Limited v. O'Dwyer Steel Co.* [1978] I.R. 103, this principle no longer rests on the fiction of an implied promise to return the property which, in the days when the forms of action still ruled English law, led to its tortuous rationalisation as being 'quasi-contractual' in nature.

The modern authorities in this and other common law jurisdictions, of which *Murphy v. The Attorney General* [1982] I.R. 241 is a leading Irish example have demonstrated that unjust enrichment exists as a distinctive legal concept, separate from both contract and tort, which in the words of Deane J. in the High Court of Australia in *Pavey & Matthews Proprietary Ltd. v. Paul* (1987) 162 C.L.R. 221:

'... explains why the law recognises, in a variety of distinct categories of cases, an obligation on the part of the defendant to make fair and just restitution for a benefit derived at the expense of a plaintiff and which assists in the determination, by the ordinary process of legal reasoning, of the question of whether the law should in justice, recognise the obligation in a new and developing category of case.'

The authorities also demonstrate that, while there is seldom any problem in ascertaining whether two essential preconditions for the application of the doctrine have been met - i.e. an enrichment of the defendant at the expense of the plaintiff - considerably more difficulty has been experienced in determining when the enrichment should be regarded as 'unjust' and whether there are any reasons why, even where it can be regarded as 'unjust', restitution should nevertheless be denied to the plaintiff."

In considering the civil claim for unjust enrichment Keane J. identifies two essential preconditions which require to be met namely an enrichment of the defendant at the expense of the plaintiff and a determination that such enrichment should be regarded as unjust. Those two elements are described as essential preconditions for the application of the doctrine.

3.4 The essential precondition of enrichment of the defendant at the expense of the plaintiff requires consideration in the light of the facts of this case. The straightforward position of a claim for unjust enrichment would be a situation where a plaintiff could identify that the benefit gained by the defendant is the same as the loss suffered by him. That would arise where the plaintiff had paid money or rendered services or delivered goods which the defendant received from the claimant. However that is not the end of the matter as the scope of unjust enrichment extends beyond such claims. In dealing with this matter Goff and Jones (at para. 1-050) stated:

"...if the claimant's claim is based upon the defendant's wrongful act, there may or may not be an equation between what the claimant has lost and what the defendant wrongdoer has gained. Nonetheless the gain is said to be made at the claimant's expense.

There is an equation between loss suffered and benefit gained if, for example, the defendant converts and sells the claimant's chattels, or if the defendant, in breach of his fiduciary duty, buys trust property at an undervalue. But there may be no such equation if the fiduciary exploits his position of trust to acquire an asset which his principal could not have acquired.

It is not at all clear from the decided case law whether a particular wrongdoer is required to disgorge gains where the injured party has suffered little or no loss. For example, not all torts ground a restitutionary claim. Existing authority suggests that only tortious acts which infringe the claimant's proprietary or possessory title can ground a restitutionary claim."

3.5 In its submissions the defendant seeks to rely on the House of Lords authority of *A.G. v. Blake* [2001] 1 AC 268. Reliance is placed upon that authority to suggest that a claim for unjust enrichment can lie in circumstances even where the plaintiff has suffered no comparable loss. In that case the House of Lords held that exceptionally, a court may order an account of profits made from a breach of contract if it is proper to do so, even though the plaintiff has suffered no comparable loss. It was identified as an exceptional situation but was linked to a breach of fiduciary duty in that there had been a breach of the duty of loyalty by the defendant to his principles. It was that link which enabled the court to order the defendant to disgorge the profit that he had made from his wrongful acts. The court made it clear that there was no common law power to take or confiscate property without compensation.

3.6 The above authorities demonstrate that absent extraordinary or exceptional circumstances an essential precondition for the application of the doctrine of unjust enrichment is a requirement to establish the enrichment of the defendant at the expense of the plaintiff. Whilst there does not have to be a direct equation between what the claimant has lost and what the defendant wrongdoer has gained it is certainly the case that, except in exceptional cases, that the gain must be capable of being identified as having been made at the claimant's expense. The extent to which there might be an exception to that is limited to exceptional cases and situations requiring the existence of an obligation or contractual duty such as fiduciary duty. Even if one was to accept the extension to exceptional cases identified in *A.G. v. Blake* it would still be the situation that a number of claims which the C.A.B. could make under s. 16B for a corrupt enrichment order would be outside or over and above the claims that could be brought in civil proceedings. On the facts of this case the claim brought pursuant to statute by the C.A.B. does not require for it to be established that the alleged unjust enrichment of the defendant is at the expense of the plaintiff or indeed of any party nor could it in any way be suggested that the exceptional jurisdiction identified in *A.G. v. Blake* could arise as there is no suggestion of any breach of duty fiduciary or otherwise.

3.7 The claim being pursued by the C.A.B. is a claim for a corrupt enrichment order under s. 16B of the Act. It is a claim based upon a

contention that the defendant has benefited from obtaining planning permission as a result of or in connection with corrupt conduct. This court is satisfied that a correct analysis of the true position is that the rights and duties which the C.A.B. is seeking to exercise in pursuing a claim for a corrupt enrichment order goes beyond those which apply to private persons. This Court is satisfied that a private person could not bring analogous proceedings against the defendant in similar circumstances. The position is that the C.A.B. neither has to establish enrichment of the defendant at the expense of the C.A.B. nor does the C.A.B. have to establish any loss nor does it have to identify any exceptional or fiduciary relationship with the defendant. The C.A.B. is entitled to pursue a corrupt enrichment order without establishing any loss or any special relationship and does so pursuant to statute.

4.1 The legislation establishing the C.A.B. and under which it operates identifies the nature of the C.A.B. and any prerogatives which could properly be identified as "of its own". In considering the legislation regard must be had as to whether or not the C.A.B. could be identified as a public authority and also whether in pursuing a claim, such as the claim herein, it could be identified as acting pursuant to its public powers or in discharge of its public duty.

4.2 An overview of the Criminal Assets Bureau Act 1996, the Proceeds of Crime Act, 1996 and the Proceeds of Crime (Amendment) Act, 2005 identify the intrinsic nature of the C.A.B.. That legalisation indicates the intrinsic public law nature of the asset seizing scheme put in place by the various Acts. There can be no doubt that the consideration of the legislation confirms that proceedings brought by the C.A.B. under legislation are brought in the public interest and in the discharge of a public duty and could not be identified as being brought for the narrow purpose of enforcing private rights or obligations. The very nature of the proceedings and their statutory basis demonstrate, to this court, that such proceedings are not comparable to any action known in private law.

4.3 The above legislation demonstrates that the C.A.B. can correctly be identified as a public authority and in exercising its statutory duty it is doing so in the general public interest and is not seeking to enforce a private right. The public authority nature of the C.A.B. is manifest from the contents of the Criminal Assets Bureau Act of 1996 commencing with the long title which states, "An Act to make provision for the establishment of a body to be known as the Criminal Assets Bureau and to define its functions". The fact that the C.A.B. is exercising or discharging a public duty can be identified from the contents of the legislation and in particular from the Proceeds of Crime Act 1996 as amended. The public duty nature of the C.A.B. is further demonstrated by the contents of that legislation commencing in the long title to the Proceeds of Crime Act 1996 where it states:

"An Act to enable the High Court, as respects the proceeds of crime, to make orders for the preservation and, where appropriate, the disposal of the property concerned and to provide for related matters."

4.4 The provisions of the Proceeds of Crime Act of 1996 have been considered by the courts on numerous occasions. It is apparent from those authorities that the Supreme Court has held that the proceedings for orders or relief under the 1996 Act do not constitute criminal proceedings and that the courts have viewed proceedings under the Act as being in pursuit of the legitimate public policy objective of depriving beneficiaries of criminal conduct of proceeds of such conduct. There are a number of special powers or prerogatives given to the C.A.B. by the legalisation reflecting that particular public policy. Those powers or prerogatives include the facility to enable the admission of opinion evidence of a member of An Garda Síochána not below the rank of Chief Superintendent and the imposition of a burden of proof on the respondent. The principal Act of 1996 was amended by the Proceeds of Crime Amendment Act 2005 which inserted a new section 16A which provided for the admissibility without further proof as evidence certain documents thereby altering the well established hearsay rule. Section 16B of the 2005 Amendment Act which deals with corrupt enrichment orders also provides additional unique powers including express statutory provision, as provided for in s. 16B(6)(a) enabling an application to be made to court seeking to direct the defendant to file an affidavit specifying the property owned by that defendant or the income and sources of income of the defendant or both such property and such income or sources. Such affidavit is not admissible in evidence in any criminal proceedings and is uniquely available in proceedings brought under the proceeds of crime legislation.

4.5 The unique nature of proceedings brought under the Proceeds of Crime Act and the fact that proceedings thereunder are civil proceedings of a very unusual and draconian nature is confirmed by the judgment of the Supreme Court in *Murphy v. G.M.* [2001] 4 I.R. 113 where Keane C.J. stated (at p. 136):

"The effect of the statutory scheme, accordingly, is to 'freeze' property which senior members of the gardaí suspect of representing the proceeds of crime for an indefinite period, subject to the limitations indicated. It is not in dispute - and indeed is a circumstance strongly relied upon on behalf of the appellants - that this unquestionably draconian legislation was enacted by the Oireachtas because professional criminals had developed sophisticated and elaborate forms of what had become known as 'money laundering' in order to conceal from the authorities the proceeds of their criminal activities."

Later in the same judgment Keane C.J. went on to expressly identify the nature of the legislation in the following words (at p. 153):

"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."

4.6 In Ireland the authorities refer to the distinction between civil and criminal proceedings. However when considering the Brussels Regulation and the European authorities the relevant and operative distinction is not between civil and criminal proceedings, as used in Irish law, but rather as to disputes of a public law, and civil/commercial matters. The essential distinction is that civil and commercial matters can and indeed must be distinguished from disputes of public law. Disputes of public law do not come within the scope of the Convention and a distinction between the two categories is made on the basis of a traditional feature of public law in continental jurisprudence namely the exercise of sovereign powers. The proceeds of crime legislation demonstrates that an action taken by the C.A.B. for corrupt enrichment is intended to safeguard the public interest. The power being exercised by the C.A.B. and the proceedings herein represent or arise from an exercise of public powers which can properly be equated with the exercise of sovereign powers and not for the narrower purpose of enforcing private rights or obligations. This court is satisfied that the claim brought by the C.A.B. herein can properly be identified as arising from an exercise of public powers and therefore the Convention does not apply.

5.1 It is important to consider the nature and scope of what is meant and understood by the term "civil and commercial matters" in Article 1 of the Brussels Regulation. The Article itself states that the Regulation shall apply in civil and commercial matters whatever the nature of the court or Tribunal. It is clear from the Irish authorities that proceedings brought by the C.A.B. are not criminal proceedings. That does not mean that the proceedings, which are civil proceedings under Irish law are necessarily to be identified as a civil or commercial matter for the purposes of the Brussels Regulation. It is recognised by both parties that the proceedings the subject matter of this application clearly involve the exercise of public law powers. As stated in para. 35 of the defendant's submissions "In this case, C.A.B. is undoubtedly a public body acting in the exercise of its public law powers." The issue which is

identified by the defendant is whether or not the rights and duties that the C.A.B. is exercising in seeking a corrupt enrichment order go beyond those which apply to private persons and it is suggested that the correct question for the court to address is whether a private individual could bring analogous proceedings against the defendant in similar circumstances.

5.2 The C.A.B. in bringing the proceedings herein is acting in exercise of its public law powers and is also taking proceedings in the interests of the community. It is also the case that certain additional and significant powers and procedural advantages are provided by statute to the C.A.B. in bringing such claims. The court has already identified earlier in this judgment additional and unique powers and procedural advantages which are available to the C.A.B. over and above those which would be available to a private litigant. It also is clear that a private individual could not bring an application for a corrupt enrichment order as the C.A.B. is not exercising a private law right but rather exercising an express statutory right which can only be exercised by the C.A.B..

6.1 In considering the scope and interpretation of Article 1 of the Brussels Regulation assistance is obtained from a number of decisions of the European Court of Justice. The 1980 decision in *Netherlands v. Ruffer* 814/79 [1980] E.C.R. 3807 ECJ determines that an action between a public authority, namely a claim brought by the agent responsible for administering public waterways against a private person did not fall within the scope of the Regulation if the public authority was acting in exercise of its public powers. The judgment stated at para. 8:

"In the light of those considerations the court has specifically held in that same case-law that whilst certain judgments given in an action between a public authority and a person governed by private law may come within the area of application of the convention that is not the case if the public authority is acting in the exercise of its public authority powers."

The case law relied on included the earlier case of *LTU v. Eurocontrol* case 29/76 [1976] E.C.R. 1541. In that case the European Court of Justice held, in an action for the recovery of charges payable by a person governed by private law to a national or international body governed by public law relating to the use of equipment and services provided by such a body, that where such use was obligatory and exclusive it fell outside the scope of the Convention.

6.2 The High Court in England considered the issue of the nature and scope of Article 1 in the case of *re Senator Hanseatische Verwaltungsgesellschaft mbH and Others* [1996] 2 BCL 562 and having reviewed the case law of the European Court of Justice, including the two cases referred to above, Scott VC held that the Secretary of State in that case was exercising public powers in discharge of a public duty and a judicial decision on the petition would not be a civil and commercial matter within Article 1 of the Brussels Convention. The civil and commercial matters referred to in Article 1 were essentially matters in which private rights and obligations were in question. The phrase did not cover situations where a public authority was exercising public powers or discharging a public duty. In his judgment Scott VC stated (at p. 15 of 24):

"The 'civil and commercial matters' to which reference is made in Article 1 are, in my opinion, as appears from the two European Court decisions, essentially matters in which private rights and obligations of individuals are in question. The two European Court cases establish that a case in which the plaintiff is a public authority acting pursuant to its public powers or in discharge of its public duty and is inviting the court to grant relief in the general public interest and not for the narrow purpose of enforcing private rights or obligations, is not 'civil and commercial' within the sense of those words in the first sentence of Article 1. Such a case seems to me analogous to the 'administrative' matters, to which reference is made in the second sentence of Article 1."

6.3 The European Court of Justice once more considered the scope of Article 1 of the Brussels Regulations in the *Gemeente Steenbergen v. Baten* case. The decision in that case represented a re-statement and refinement of the earlier authorities of *Ruffer* and *LTU*. At para. 37 of its judgment the court stated:-

"... The first paragraph of Article 1 of the Brussels Convention must be interpreted as meaning that the concept of civil matters encompasses an action under a right of recourse whereby a public body seeks from a person governed by private law recovery of sums paid by it by way of social assistance to the divorced spouse and the child of that person, provided that the basis and the detailed rules relating to the bringing of that action are governed by the rules of the ordinary law in regard to maintenance obligations. Where the action under a right of recourse is founded on provisions by which the legislature conferred on the public body a prerogative of its own, that action cannot be regarded as being brought in civil matters."

The scope of Article 1 identified in that statement of the law is of guidance and assistance to this court in considering the facts of this application. In particular the emphasis of having regard to whether or not the public body being considered by the court is acting in the exercise of its public law powers and exercising a prerogative of its own and also whether or not the rules of the action being brought by the public body are governed by the rules of the ordinary law.

6.4 The European Court of Justice once more revisited the scope of Article 1 in the recent decision of *Lechouritou and Others v. Dimosio Tis Omospondiakis Dimokratias tis Germanias* Case No. 292/05, date of judgment 15th February, 2007. The court reiterated the general principles established in the *LTU* and *Ruffer* cases at para. 29 of its judgment and went on to state at para. 30:-

"According to the Court, that interpretation results in the exclusion of certain legal actions in judicial decisions from the scope of the Brussels Convention, by reason either of the legal relationships between the parties to the action or of the subject matter of the action."

The court stated at para. 31:-

"Thus, the Court has held that although certain actions between a public authority and a person governed by private law may come within the scope of the Brussels Convention, it is otherwise where the public authority is acting in the exercise of its public powers."

The judgment further highlighted the fact that a public authority acting in the exercise of its public powers is outside the scope of Article 1 where it exercises powers falling outside the scope of the ordinary legal rules applicable to relationships between private individuals. (see para. 34).

6.5 In applying the facts herein to the above authorities I am satisfied of the following, namely:

1. That the C.A.B. in instituting the proceedings herein is instituting such proceedings as a public body acting in the

exercise of its public law powers.

2. The C.A.B. is seeking to bring a claim under rights conferred on it by the legislature and is exercising powers unique to it.

3. It can properly be said that the C.A.B. is exercising a prerogative of its own.

4. In seeking to pursue the claim herein the C.A.B. is bringing an action governed, at least in part, by rules, procedures and powers beyond those which apply to private persons.

5. A private individual could not bring analogous proceedings against the defendant in similar circumstances.

6. A civil claim for unjust enrichment is not an analogue for the statutory claim being pursued by the C.A.B. for a corrupt enrichment order.

7. There is no common law power to take or to confiscate property without compensation and no private individual could bring analogous proceedings.

8. The proceedings herein are not civil and commercial matters within the scope of Article 1.

6.6 In the light of the above finding this court is satisfied that it has jurisdiction to entertain the proceedings.