

**ID PROPERTIES LTD & ORS v THE INDEPENDENT COMMISSION
AGAINST CORRUPTION**

2021 SCJ 426

In Chambers
SN 1955/2020

THE SUPREME COURT OF MAURITIUS

In the matter of:

- 1. ID PROPERTIES LTD**
- 2. MORPHOS ARCHITECTS CO LTD**
- 3. INNOVEA DESIGN CO LTD**

APPLICANTS

v

THE INDEPENDENT COMMISSION AGAINST CORRUPTION

RESPONDENT

JUDGMENT

On 17 August 2020, the respondent applied for, and obtained, an attachment order under section 56(1) and (2) of the Prevention of Corruption Act (“the POCA”). The attachment order was renewed on 13 October 2020. The applicants have lodged the present application, dated 10 December 2020, where they are seeking the following orders-

- (i) an Order directing the Respondent to communicate to them a copy of the application for attachment made on or about 17 August 2020 and a copy of the application for renewal made on or about 13 October 2020; and*
- (ii) an Order discharging and/or revoking the attachment order dated 17 August 2020 and renewed on 13 October 2020, lodged in the hands of the Applicants at the request of the Respondent.*

The respondent is resisting the application.

It is important to set out in some detail what were the properties which were attached pursuant to the attachment order which ran through several pages. In so far as the applicants are concerned the relevant extracts of the attachment order were as follows-

It is hereby ordered that -

- (a) (i) ...
- (ii) all money due or owing or belonging to or held on behalf of (i) Phil Alain Didier Company Ltd (Administrator Appointed), (ii) Hao Thyn Voon HA SHUN, NID H300941290966G, (iii) Philippe Alain Hao Thyn Chuan HA SHUN, NID H240768310578B, (iv) Mrs Chin Yian Ha Shun born Ah See, NID A0806410110370 and (v) Didier Kwet Chan Hao Thyn Voon HA SHUN, NID H290774280453A as shares, dividends, loans rights, or others , BE AND SAME ARE ATTACHED in the hands of 50 corporate entities whose names need not be spelt out for the purposes of the present application including the three applicants;
- (iii) all motor vehicles, plants, equipment and other assets purchased on lease, most especially the following assets, viz –
- ...
- Morphos Architects Co Ltd – Jaguar F Pace 1221 FB 17
- Mini Cooper Countryman 8188 SP 19
- BMW X5 5828 AG 14
- Nissan Pick Up 2728 MY 08
- Nissan March 5146 ZX 09
- Ford Ranger 3890 JU 08
- Nissan Juke 8950 DC 14
- BMW X3 428 JN 09
- BMW X3 XDrive 201 Auto -
- Landrover 4828 AG 08
- GMW Sailor D/CAB 3708 JL 10
- Equipment – 1 Xerox DC 400 Photocopier

BE AND SAME ARE ATTACHED both in the hands of all leasing companies and in the hands of (i) Phil Alain Didier Company Ltd (Administrator Appointed), (ii) Hao Thyn Voon HA SHUN, NID H300941290966G, (iii) Philippe Alain Hao

Thyn Chuan HA SHUN, NID H240768310578B, (iv) Mrs Chin Yian Ha Shun born Ah See, NID A0806410110370 and (v) Didier Kwet Chan Hao Thyn Voon HA SHUN, NID H290774280453A as lessees.

- (iv)
- (v)
- (vi)
- (vii)
- (viii)
- (ix)
- (x)

(b)

(c) all the abovenamed parties mentioned in (a) (i) to (x) BE and SAME ARE PROHIBITED from transferring, pledging or otherwise disposing of the moneys, assets, all immovable properties or policies belonging to and subscribed by them, except upon an Order from the Honourable Judge sitting at Chambers,

(d) ...

It is relevant to note that a number of the vehicles which were initially attached under paragraph (a)(iii) have in the meantime been released from the purview of the attachment order following an order made by me, since at the time the application for the attachment order was made the said vehicles had already been sold by applicant No. 2. It is also relevant to note that at the time the present application was heard, the properties of the applicants which were still attached were as follows-

(a) in the hands of the applicants –

(i) all money due or owing or belonging to or held on behalf of –

- (A) Phil Alain Didier Company Ltd (Administrator Appointed);
- (B) Hao Thyn Voon Ha SHUN;
- (C) Philippe Alain Hao Thyn Chuan HA SHUN;
- (D) Mrs Chin Yian HA SHUN (born Ah See); and
- (E) Didier Kwet Chan Hao Thyn Voon HA SHUN,

as shares, dividends, loan rights or others;

(b) in the hands of all leasing companies and of -

- (A) Phil Alain Didier Company Ltd (Administrator Appointed);
- (B) Hao Thyn Voon Ha SHUN;
- (C) Philippe Alain Hao Thyn Chuan HA SHUN;
- (D) Mrs Chin Yian HA SHUN (born Ah See); and
- (E) Didier Kwet Chan Hao Thyn Voon HA SHUN,

as lessees-

- (i) a motor vehicle of make Jaguar F PACE, bearing registration number 1221 FB 17;
- (ii) a motor vehicle of make Mini Cooper Countryman, bearing registration number 8188 SP 19;
- (iii) a BMW X5 bearing registration number 5828 AG 14;
- (iv) a Nissan March, bearing registration number 5146 ZX 09;
- (v) a GMW sailor D/CAB, bearing registration number 3708 JL 10; and
- (vi) a Xerox DC 400, photocopier.

(c) the moneys, assets, all immovable properties or policies belonging to and subscribed by the applicants.

Communication of a copy of the application for the attachment order and the renewal

Regarding the first prayer being sought by the applicants, they have averred that –

1. the renewal order was wrongly issued inasmuch as any renewal ought to be made inter partes and not *ex parte*;
2. they require a copy of the application for renewal made on 13 October 2020 in order to know the grounds of such renewal and to meet the case of the respondent;
3. they are requesting that a copy of the application made by the respondent to attach vehicles in respect of which the attachment order was made as they are eager to know the grounds and documents relied upon by the respondent to obtain the said attachment order;
4. the order dated 17 August 2020 has been issued on wrong premises.

In view of the provisions of sections 56 and 57 of the POCA” [...] *an application for ... an attachment order by the Commission can only have any significance if it is made to the Judge in Chambers and granted ex parte. The procedure envisaged by the legislator ... is that the Commission should be allowed to obtain the freezing of the assets of the suspect first*

*and that the latter, upon being served with the attachment order, would then be given an opportunity to contest the order and have it revoked upon showing good grounds (vide: **Technology Soft Corporation & Ors vThe Independent Commission Against Corruption [2005 SCJ 99]**).* No doubt the same principle would apply in so far as the renewal of an order is concerned. Further, if it had been the intention of the legislator to provide that a renewal should be made inter partes, this would have been specifically provided for under the Act. However, it is clear from a perusal of section 57 that there is no such requirement for the renewal of an attachment order.

In addition, the respondent has explained that the enquiry is being carried out in strict confidentiality in accordance with the provisions of the POCA. The enquiry is ongoing and the affidavits in support of its application for obtaining the attachment order and its renewal contain confidential information on third parties, names of possible witnesses and suspects, other than the applicants, which the respondent has obtained during the course of the investigation.

More importantly, the applicants have failed to provide cogent grounds as to why the respondent should be ordered to provide a copy of the application for the attachment order and of the application for a renewal order. In the circumstances, I decline to grant the prayer sought under paragraph (A)(i) of the praecipe.

Revocation of the attachment order

At the outset, I must observe that the applicants are seeking the revocation of the whole order which was made on 17 August 2020 and which was subsequently renewed on a number of occasions. It is noteworthy that the attachment order does not solely concern the property of the applicants but has also been issued in respect of the property belonging to or held by more than 50 other corporate entities. The reasons which have been put forward by the applicants to challenge the attachment order concern only themselves and are of no incidence on the purview of the attachment order with respect to the other persons/corporate entities whose properties have been attached or in whose hands property has been attached. In the circumstances, the prayer for revoking the **whole** *[emphasis added]* attachment order clearly cannot be entertained.

In so far as the applicants are concerned, it is not disputed that applicant No.1 is a private company limited by shares and is involved in the development of building projects for sale (Land Promoter and Property developer), applicant No. 2 is a private company limited by shares and provides business and management consultancy as well as professional services

and applicant No. 3 is a private company limited by shares and is involved in the manufacture of furniture. Mrs Marylyn Isabelle Fok Lok ("Mrs Fok Lok") is one of the two directors and one of the two shareholders of the applicant companies. She is the wife of Philippe Alain Hao Thyn Chuan HA SHUN ("Philippe Ha Shun") who is the main suspect in the respondent's enquiry in a case of corruption and money laundering, in relation to the award of a contract by the Central Electricity Board to Burmeister and Wain Scandinavian Contractor ("BWSC").

The applicants have averred that the attachment order issued against them at the request of the respondent is causing much prejudice to them inasmuch as -

- (i) they are not linked in any way whatsoever with Phil Alain Didier Company Ltd ("PADCO") PADCO and/or Hao Thyn Voon HA SHUN and/or Philippe Alain Hao Thyn Chuan HA SHUN and/or Mrs. Chin Yian HA SHUN and/or Didier Kwet Chan Hao Thyn Voon HA SHUN;
- (ii) the vehicles bearing the registration numbers 1221 FB 17 and 8188 SP 19 are not in possession of, or directly and/or indirectly owned by PADCO and/or Hao Thyn Voon HA SHUN and/or Philippe Alain Hao Thyn Chuan HA SHUN and/or Mrs. Chin Yian HA SHUN and/or Didier Kwet Chan Hao Thyn Voon HA SHUN;
- (iii) the funds used to acquire the vehicles mentioned above and which still fall within the purview of the Order are not tainted and are not proceeds of crime;
- (iv) there is no evidence put forward by the respondent that could prove that the vehicles and equipment attached by the respondent were acquired from proceeds of crime or that those funds are tainted;
- (v) the image and goodwill of the applicants Nos. 1, 2 and 3 have been tarnished;
- (vi) the daily operations of the applicants Nos. 1, 2 and 3 have been significantly affected;
- (vii) the respondent has not shown any evidence as to how PADCO and/or Hao Thyn Voon HA SHUN and/or Philippe Alain Hao Thyn Chuan HA SHUN and/or Mrs. Chin Yian HA SHUN and/or Didier Kwet Chan Hao Thyn Voon HA SHUN are linked directly and/or indirectly towards the acquisitions of the vehicles and equipment so attached; and
- (viii) the attachment order was issued on the wrong premises and ought to be discharged.

The respondent, on the other hand, has averred, inter alia, that –

- (i) based on money trails carried out by it, during the course of its investigation, it has reasonable grounds to suspect that important sums of money have been channelled through different bank accounts of PADCO, and that of related companies, family members of Philippe Alain Hao Thyn Chuan HA SHUN and companies in which his family members are directors or shareholders;
- (ii) its investigation has revealed that –
 - (a) Mrs Fok Lok, has benefitted from an approximate sum of MUR 2 million from PADCO, which the respondent suspects to be proceeds of crime;
 - (b) in the year 2019, applicant No.1, which had been continuously reporting a loss for the period 2013 to 2019, obtained a substantial investment of MUR 8,000,000, which the respondent suspects to be the proceeds of crime which have been transferred to applicant No.1 through PADCO and/or Mr Philippe Alain Hao Thyn Chuan HA SHUN;
- (iii) as regards applicant No.2, financial statements submitted to the Mauritius Revenue Authority have revealed that during the period 2016 to 2019, there was a considerable increase in its directors' emoluments. The respondent's investigation goes back to 02 March 2016, when the contract for the redevelopment of the St Louis Power Station Project was awarded to BWSC. The respondent has reasonable suspicion that the increase in the directors' emoluments was deliberate with a view to launder illegal monies which applicant No.2 may have benefitted from PADCO;
- (iv) an analysis of the financial statements of applicant No.3 filed with the Mauritius Revenue Authority has revealed that applicant No.3 did not generate any turnover during the period 2017 to 2019, and it did not incur any expense in respect of wages and salaries. Despite zero turnover for that period of time, there was however an increase in Trade & other receivables of the company. The turnover of applicant No.3 for the year 2016 was MUR 3,749,413 which the respondent suspects was deliberately inflated to launder the proceeds of crime;
- (v) its investigation has revealed that –

- (a) applicant No. 3 has depreciated its plants and equipment to an amount which is almost half the value of those plants and equipment. The respondent suspects that applicant No.3 has adopted this strategy to surreptitiously offset proceeds of crime, which the company has benefitted from PADCO and to avoid the detection of ill-gotten moneys that had been injected into the company;
 - (b) applicant No.2 has received monies from BWSC through an overseas entity of which Mr Philippe Alain Hao Thyn Chuan HA SHUN is a beneficial owner;
- (vi) in the light of its investigation, it suspects that an unusual and unjustified complex legal structure involving Société Civile Immobilière D'Attribution Ankura (Société Ankura), Société Noaj, one of the major shareholders of Société Ankura, and PADCO have been used to launder proceeds of crime that PADCO is suspected to have received from BWSC. The respondent's investigation has revealed that there have been transfers of huge sums of money from PADCO to Societe Noaj, and ultimately to applicants No.2 and No.3 through Société Ankura;
- (vii) Mrs Fok Lok and Mr Philippe Alain Hao Thyn Chuan HA SHUN were amongst others, the "gérants" of Société Ankura. One of the major "associés" of Société Ankura was Société Noaj. Société Noaj is directly and wholly owned by Mrs Fok Lok and her husband Mr Philippe Alain Hao Thyn Chuan HA SHUN;
- (viii) a sum of MUR 6,500,000 was lent, on an interest free basis, by Mrs Fok Lok to Mr Philippe Alain Hao Thyn Chuan HA SHUN personally, but for the payment of salaries of employees and creditors of PADCO. Out of the said sum of MUR 6,500,000, a sum of MUR 2 million has been reimbursed to Mrs Fok Lok by another entity, namely Four H Company Ltd. This further strengthens the respondent's suspicion that the protagonists have been shielding behind unusual and unjustified corporate structures to obscure the source of funds that they have received;
- (ix) its investigation has revealed that the motor vehicles bearing registration number 1221 FB 17 and 8188 SCP 19, have been leased by applicant No. 2 in the year 2017 and 2019, respectively. The respondent suspects that the deposits for the said cars and their monthly lease payments have been financed out of tainted

proceeds, which applicant No.2 has benefitted and has not declared to the Mauritius Revenue Authority. The respondent is in the process of carrying out a money trail to investigate the sources of funds that the company has generated. Pending its enquiry, there is therefore a need to maintain the attachment order dated 17 August 2020 quoad motor vehicles bearing registration number 1221 FB 17 and 8188 SP 19, to avoid their dissipation;

- (x) there is therefore a need to maintain the attachment order, pending the completion of the respondent's enquiry, in order to prevent any dissipation of assets.

The applicants have denied the averments made by the respondent and have provided a number of documents with a view to support their averments that they are not involved in money laundering offences and that they have not committed any crime.

The issue which I have to determine is whether the attachment order that was made by me should be revoked. As stated above, the order was obtained under section 56 of the POCA. The material part of section 56 reads as follows-

"56. Application for attachment order

*(1) Notwithstanding any other enactment, where a Judge in Chambers, on an application by the Commission, is satisfied that **the Commission has reasonable ground to suspect** [emphasis added] that a person has committed an offence under this Act or the Financial Intelligence and Anti-Money Laundering Act 2002, he may make an attachment order under this section.*

(2) An order under this section shall—

(a) attach in the hands of any person named in the order, whether that person is himself the suspect or not, all money and other property due or owing or belonging to or held on behalf of the suspect;

(b) require the person named in the order to declare in writing to the Commission, within 48 hours of service of the order, the nature and source of all moneys and other property so attached;

(c) prohibit the person from transferring, pledging or otherwise disposing of any money or other property so attached except in such manner as may be specified in the order."

I consider that the initial step in determining whether the attachment order should be revoked is to ascertain whether the attachment order was itself properly made. To determine this issue, guidance may be sought from the following extract of the case of **Assets Recovery Agency (Ex-parte) (Jamaica) 2015 UKPC 1-**

“Reasonable grounds for believing a primary fact, such as that the person under investigation has benefitted from his criminal conduct, or has committed a money laundering offence, do not involve proving that he has done such a thing, whether to the criminal or civil standard of proof. The test is concerned not with proof but the existence of grounds (reasons) for believing (thinking) something, and with the reasonableness of those grounds. Debate about the standard of proof required, such as was to some extent conducted in the courts below, is inappropriate because the test does not ask for the primary fact to be proved. It only asks for the applicant to show that it is believed to exist, and that there are objectively reasonable grounds for that belief. Nor is it helpful to attempt to expand on what is meant by reasonable grounds for belief, by substituting for ‘reasonable grounds’ some different expression such as ‘strong grounds’ or ‘good arguable case’. There is no need to improve upon the clear words of the statute, which employs a concept which is very frequently encountered in the law and imposes a well-understood objective standard, of which the judge is the arbiter.

Although, the expression used under section 56 of the POCA is “reasonable ground **to suspect**” and the above extract refers to the expression “reasonable grounds **for believing**”, no doubt the same principle as that enunciated by the Privy Council (UKPC) would apply in determining whether there were reasonable grounds for the respondent to suspect that an offence under the POCA or FIAMLA may have been committed by the applicants.

It is clear from the above extract from the case of **Assets Recovery Agency** (supra) that the respondent does not need to establish that the applicants have committed an offence under the POCA or FIAMLA but that there are grounds for suspecting that such an offence has been committed and that those grounds are reasonable.

In the case of **Manraj D D & Ors v ICAC** [\[2003 SCJ 75\]](#), the Court referred to section 1.6 of the English Police & Criminal Evidence Act 1984 which explains how investigatory

officers should be guided in applying the principle of reasonable suspicion in their day-to-day practice. It is as follows:

“1.6. Whether reasonable grounds for suspicion exist will depend on the circumstances in each case, but there must be some objective basis for it.”

In the present case, taking into consideration the averments of the respondent referred to above, it can hardly be argued that it acted on a mere hunch or instinct which cannot be explained or justified to an objective observer but, rather, that there is a concrete basis for its suspicion related to the applicants, which can be considered and evaluated by an objective third person [See **Manraj** (supra)]. I find that on the basis of the above averments, the reasonableness of the suspicion of the respondent cannot be challenged and that, taking into consideration the circumstances of the case, the respondent was clearly entitled to apply for and obtain the attachment order.

It was incumbent on the applicants to establish that they have good grounds to seek the revocation of the attachment order. The purpose of the order is to prevent the dissipation of assets pending the completion of the enquiry being conducted by the Commission. In the present case, it is clear from the averments of the respondent that an enquiry is ongoing and it is in the process of carrying out an intensive money trail. The investigation is complex with international ramifications involving the analysis of a huge volume of financial documents. Although it cannot be disputed that the attachment order would cause some inconvenience to the applicants, as rightly submitted by the respondent, the public interest element in pursuing the investigation and preserving the value of assets suspected to be proceeds of crime by far outweighs the private interests of the applicants. Further, and more importantly, the applicants have failed to establish that they have good grounds to seek the revocation of the attachment order.

For all the reasons given above, I refuse to grant the prayer sought under paragraph A(ii) of the praecipe. The application is accordingly set aside. With costs.

I certify as to Counsel.

K.D. Gunesh-Balaghee
Judge

20 December 2021

For Applicants : **Mr J. Gujadhur, SA**
Mr N. Ramburn, Senior Counsel

For Respondent : **Ms N. Seetaram, Attorney at Law**
Mr M. Roopchand, of Counsel
Mr T. Naga, of Counsel