



HIGH COURT OF AUSTRALIA

12 February 2015

COMMISSIONER OF THE AUSTRALIAN FEDERAL POLICE & ORS v ZHAO & ANOR

[2015] HCA 5

Today the High Court unanimously dismissed an appeal from a decision of the Court of Appeal of the Supreme Court of Victoria, which had stayed proceedings brought by the appellant for the forfeiture of property of the respondents as proceeds of crime, pursuant to s 49 of the *Proceeds of Crime Act 2002* (Cth) ("the Act"), until the determination of a criminal charge against the second respondent.

The second respondent was charged that he aided and abetted another to deal with money or property that was the proceeds of crime and worth \$100,000 or more, contrary to ss 11.2 and 400.4 of the *Criminal Code* (Cth). He has been committed to stand trial for that offence. The first respondent is the second respondent's wife, and has not been charged with any offence, but is registered as the proprietor of a residential property which is a subject of the forfeiture proceedings.

On the application of the appellant, the County Court of Victoria made an order under s 19 of the Act restraining the disposition of certain property owned by the respondents on the basis that it was the proceeds of crime. Later, the appellant applied for forfeiture of this property pursuant to s 49 of the Act. In the proceedings for the restraining order and the forfeiture order, it was alleged that the property sought to be forfeited is the proceeds of the same offence as that for which the second respondent is to be prosecuted in the criminal proceedings, save that in the criminal proceedings the offence is stated with respect to a particular period.

The respondents filed applications commencing proceedings for the exclusion of certain property from the restraining order and from forfeiture. Thereafter, they made an application for a stay of the forfeiture proceedings and the exclusion proceedings until the completion of the criminal proceedings against the second respondent.

The High Court unanimously found that the Court of Appeal was correct to order a stay of the forfeiture proceedings and the exclusion proceedings. The Court held that the issue, offences and circumstances in the forfeiture proceedings and in the criminal proceedings were substantially identical. It was not necessary for the second respondent to say any more than he did on the application for a stay in order to identify the risk of prejudice to him in the criminal proceedings. The Court found that the interests of justice were not served by requiring the second respondent to defend the forfeiture proceedings or pursue the exclusion proceedings before his criminal proceedings were finalised, especially since the appellant would suffer no relevant prejudice from a delay in the continuation of the forfeiture proceedings.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*