

Off IN THE SUPREME COURT OF THE
NORTHERN TERRITORY OF AUSTRALIA

File No 82 of 2008 (20817720)

IN THE MATTER of the *Criminal Property
Forfeiture Act* and

IN THE MATTER of LLOYD GREEN

BETWEEN:

DIRECTOR OF PUBLIC PROSECUTIONS
Applicant

AND:

LLOYD GREEN
Respondent

REFERENCE TO THE FULL COURT PURSUANT TO S 21(1) OF THE SUPREME
COURT ACT

I, TREVOR JOHN RILEY, a Judge of the Supreme Court of the Northern Territory, hereby
refer to the Full Court the questions as appear hereunder:

1. On 10 July 2008 the respondent was dealt with in the Supreme Court in relation to a
number of offences under the *Misuse of Drugs Act*. He was convicted of unlawfully
cultivating 18 cannabis plants, possessing 4.161 kg of cannabis plant material and of
supplying cannabis plant material to an unknown person. In addition to being
convicted on each count, he was sentenced to a total effective period of
imprisonment of two years commencing on 10 July 2008. The sentence was

suspended upon him entering into a home detention order for a period of nine months.

2. The offences occurred in a shed on a rural property situated at Block 375 Stuart Highway (Block 375). At all relevant times the respondent was the owner of a leasehold interest in Block 375 and it was pursuant to this interest that he was in occupation of the shed which was used in committing the subject offences.

3. The owner of the freehold interest in Block 375 was not involved in the offending and the applicant accepted that the offending occurred without the knowledge of the owner. By operation of s 82 of the *Criminal Property Forfeiture Act* crime used property is not available for forfeiture if the respondent does not own or have effective control of the property. The applicant concluded that no grounds existed upon which it could seek the restraint and ultimate forfeiture of the land at Block 375 on the ground that the land is crime used property. The applicant, therefore, sought a crime used property substitution declaration against the respondent pursuant to the provisions of s 81(2) of the *Criminal Property Forfeiture Act*. The property sought to be substituted consisted of two residential properties associated with the respondent being Unit 3, 75 Driver Ave, Palmerston, (the Palmerston unit) which is owned by the respondent and 212 McGorrie Rd, Marrakai, (the Marrakai land) which is also owned by the respondent jointly with his de facto wife.

4. On 30 June 2008 Mildren J granted a restraining order pursuant to s 81(2) of the Act over the Palmerston unit and the Marrakai land.
5. According to the unchallenged expert evidence led on behalf of the applicant, at the relevant time the freehold value of Block 375 was \$1.5 million, the Palmerston unit had a value of \$205,000 and the Marrakai land a value of \$105,000. In reasons for judgment delivered on 21 May 2009 I accepted those valuations for the purposes of the proceedings.
6. The matter came on for hearing before me on various dates in March and April 2009. Thereafter, written submissions were provided and, on 21 May 2009, I published reasons for judgment (copy attached) in which I ruled as follows:
 - (a) the property situated at Block 375 Stuart Highway was crime used property within the meaning of s 11 of the Act;
 - (b) the crime used property was, for the purposes of the Act, the land itself not some legal interest in the land;
 - (c) the respondent did not own or have effective control of the property situated at Block 375 and that property was not available for forfeiture by operation of s 82 of the Act; and
 - (d) the Court may therefore declare property of equivalent value owned or effectively controlled by the respondent be substituted for the crime used property pursuant to s 81 of the Act.

7. The matter came back before the Court on 17 July 2009 when the applicant sought orders as follows:

1. Pursuant to section 81(2)(a) of the *Criminal Property Forfeiture Act* (the Act), the Court declares that parcel of land being section 3253 Hundred of Bagot from Plan LTO 87/104 Title Volume 679, Folio 331 (Block 375), the registered proprietor of which is Durham Properties Pty Ltd co-trustees for the Durham Provident Fund, is crime-used property within the meaning of section 11 of the Act and pursuant to section 81(2)(b) is not amenable to forfeiture for reason the respondent does not own or have effective control of the said property pursuant to section 82(a) of the Act.
2. Pursuant to section 81(2) of the Act, the Court declares that property of equivalent value owned or effectively controlled by the respondent, namely that property specified in paragraphs 1(i) and (ii) of the Order of Mildren J dated 7 July 2008 (the Restraining Order), namely that parcel of land known as Unit 3/75 Driver Avenue, Driver in the Northern Territory being Lot 1402, Town of Palmerston, from Plan UP 85/072 Title Volume 638, Folio 483, the registered proprietor of which is Lloyd Green, and that parcel of land known as 212 McGorrie Road, Marrakai in the Northern Territory being NT Portion from Plan LT 097/119, Title Volume 636, Folio 029, the registered proprietors of which are Lloyd Green and Annette Hodgson-Taylor, is to be substituted for the crime-used property referred to in Order 1 hereto.

3. Pursuant to section 81(4)(c) and by reference to section 85(1) of the Act, the assessed value of the crime-used property is one million five hundred thousand dollars (\$1.5 million).
 4. Pursuant to section 81(4)(c) of the Act, Lloyd Green is ordered to pay the Territory the amount of one million five hundred thousand dollars.
 5. Pursuant to section 101 of the Act, the properties subject to the restraining order and specified in Order 2 hereto are forfeit to the Territory.
 6. Each party is to bear its own costs of the proceedings.
8. The parties to the application have requested that, pursuant to s 21(1) of the *Supreme Court Act*, I refer various issues to the Full Court. As it is plain that the matter would proceed on appeal whatever decision was made at first instance and in light of the need to obtain an early determination as to the correct operation of the legislation, I agreed to do so. As part of the same process I take the opportunity to refer my earlier rulings to the Full Court to determine whether they are correct.

Questions:

1. In the circumstances was I correct in the reasons for judgment delivered on 21 May 2009?
2. For the purposes of the *Criminal Property Forfeiture Act* can the respondent have "ownership" and/or "effective of control" of property which is jointly owned with an "innocent party"?

3. For the purposes of the *Criminal Property Forfeiture Act* what right of objection is available to an "innocent party" in relation to:
 - (a) the making of an interim restraining order for the purpose of substitution proceedings;
 - (b) the making of a substitution order in relation to property jointly owned with a respondent to such proceedings.
4. Can a forfeiture order be made in relation to substituted property where the property is jointly owned with an innocent party?
5. What, if any, capacity is available under the legislation for amelioration of unfair consequences of a forfeiture order in relation to substituted property regarding:
 - (a) an interest in such property held by an innocent party;
 - (b) an interest of a respondent where the respondent can prove that the substituted property was acquired through lawful means;
 - (c) an interest of a respondent where the value of the property sought to be forfeited is out of proportion with the offending giving rise to the application?