



**Supreme Court of New Zealand
Te Kōti Mana Nui**

26 October 2016

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

KARL LESLIE MARWOOD v COMMISSIONER OF POLICE, ERANA KING, KARL LESLIE MARWOOD AND MARGARET ISABEL MARWOOD AS THE TRUSTEES OF THE PERRIN TRUST AND ANZ BANK

(SC 11/2016) [2016] NZSC 139

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest www.courtsofnz.govt.nz.

The Commissioner of Police (the Commissioner) has commenced proceedings under the Criminal Proceeds (Recovery) Act 2009 (CPRA) seeking profit forfeiture orders against Mr Marwood, his partner Ms King and a trust associated with them: the Perrin Trust. The claim is addressed to benefits which are said to have accrued to them as a result of significant criminal activity and is largely based on evidence obtained by police in the course of a search which was unlawful and in breach of s 21 of the New Zealand Bill of Rights Act 1990. The evidence which was obtained by that search had been excluded in a criminal prosecution against Mr Marwood.

In dispute was the jurisdiction of the courts to exclude improperly or unfairly obtained evidence in proceedings under the CPRA and if that jurisdiction existed how it should be applied.

In the High Court Cooper J found there was the jurisdiction to exclude improperly or unfairly obtained evidence in the CPRA proceeding. His Honour then excluded the disputed evidence.

The Court of Appeal found that there was no jurisdiction to exclude the evidence. The Court also indicated that, if it had been of the view that there was jurisdiction to exclude, it would have nevertheless admitted the evidence.

The Supreme Court gave leave to consider the following questions:

Did the Court of Appeal err in holding that the High Court had no jurisdiction (or power) to exclude the challenged evidence obtained by search of the applicant's premises and, if so, should the challenged evidence be excluded in this proceeding?

The majority, consisting of William Young, Glazebrook, Arnold and O'Regan JJ dismissed the appeal. They concluded that there was jurisdiction to exclude evidence in these proceedings by way of remedy for breach of the New Zealand Bill of Rights Act but held that the disputed evidence should nevertheless be admitted.

The majority found that prior to the enactment of the Evidence Act 2006 it would have been open to a judge to exclude evidence which had been obtained in breach of the New Zealand Bill of Rights Act. Such exclusion would have been by way of remedy for that breach. The Evidence Act did not exclude that remedial jurisdiction.

The majority held, however, that the evidence should be admitted. The breach of rights was not particularly serious. The CPRA proceedings involve only a claim for money and, in particular, to the proceeds of criminal conduct. Mr Marwood and Ms King are therefore not at risk of conviction and imprisonment. These factors, along with the prior vindication of Mr Marwood's rights by the exclusion of the disputed evidence in the criminal prosecution, led the majority to conclude that relief by way of exclusion of evidence in the CPRA proceedings was not proportionate to the breach of Mr Marwood's and Ms King's rights.

The Chief Justice concurred. Her Honour agreed with the majority that the jurisdiction existed and that exclusion was inappropriate. In her view, the proper assessment to be made was whether the breach of the New Zealand Bill of Rights Act necessitated exclusion of evidence. This turns not on prior vindication of rights but on assessment of the seriousness of the breach and the extent to which it is proper for the court to be co-opted into countenancing it.

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