

ASSET CONFISCATION UPDATE – 19 May 2014

Pecuniary Penalty Orders – In the matter of Rizzo [2014] VSC 225



Pecuniary Penalty Orders

On 1 May 2014, King J handed down her decision *In the matter of Rizzo [2014] VSC 225*.

In that case, the DPP applied for a pecuniary penalty order against Mr Rizzo, who had been convicted of a Schedule 2 offence under the *Confiscation Act*. Restraining orders had been made over various property for the purpose of automatic forfeiture but Mr Rizzo had failed to make any application for exclusion within the 60 days of the date of his conviction.

Therefore, any interest which Mr Rizzo had in restrained property was automatically forfeited to the Minister. Because he was the offender, it was not possible to retrieve any of that property after automatic forfeiture had occurred.

Mr Rizzo lost property worth approximately worth \$180,000.

In subsequently calculating the amount of the pecuniary penalty order sought against Mr Rizzo, the DPP had not included any of the \$180,000 which had been automatically forfeited. In other words, there was no overlap between the amount sought by the DPP by way of pecuniary penalty and the amount which had already been automatically forfeited.

It was argued on behalf of Mr Rizzo that the seeking of a pecuniary penalty order, in circumstances where automatic forfeiture had already occurred, amounted to an abusive process. Unsurprisingly, that argument was rejected by King J.

It was also argued on behalf of Mr Rizzo that King J ought not make the pecuniary penalty order because Mr Rizzo had already forfeited a significant amount of property to the State of Victoria in circumstances where, had an exclusion application been made, the

property could have been excluded and, therefore, Mr Rizzo had already suffered a significant detriment.

King J acknowledged that she had a discretion in respect of the quantum of the pecuniary penalty to be ordered but was not satisfied that Mr Rizzo could have obtained an exclusion order had an application been made. On that basis, the argument was rejected and King J ordered Mr Rizzo to pay the full amount of the pecuniary penalty sought by the DPP.

The case once again demonstrates the importance of making applications for exclusion within the required timeframes and to carefully prepare the affidavits in support of them.

Relevantly, under the Confiscation Act an application for exclusion must be filed within 30 days of the service of the restraining order. That time limit can be extended where it is in the interest of justice to do so (and this commonly occurs). However, **no** extension can be granted after automatic forfeiture occurs, which is 60 days after the date of conviction (conviction being the date of the arraignment).

Further information

For further information concerning litigation under the *Confiscation Act* 1997, visit www.confiscation.com.au.

About the author

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