



EXCLUSION OF MONIES ADVANCED UNDER LOAN AGREEMENT

Taleb v DPP Asset Confiscation Update

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Taleb v DPP [2014] VSC 285

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On 18 June 2014, Croucher J handed down his decision in *Taleb v Director of Public Prosecutions* [2014] VSC 285.

In that case, Samira Taleb had made a number of loans to a company controlled by her brother-in-law, Ahmad Taleb.

Ahmad Taleb was subsequently charged with serious drug trafficking offences and a restraining order was made over various properties.

On each occasion on which Samira Taleb made a loan to Ahmad Taleb, a handwritten, unsophisticated “loan agreement” was executed between them. The loan agreement recorded that the monies would be repaid “*in due course of completion of the construction of [the properties]. Upon the sales*

of properties being sold ... funds shall be returned”.

A key issue in the case was whether Samira Taleb had an interest in the restrained properties capable of exclusion under section 22 of the *Confiscation Act* 1997, or whether she was merely an unsecured creditor.

Croucher J determined that Samira Taleb did have an interest arising pursuant to a common intention constructive trust, thereby entitling her to exclude the monies advanced from the restraining order.

In reaching that conclusion, Croucher J formed the view that the DPP (or Asset Confiscation Office, which is part of the Department of Justice) effectively stood in the shoes of the borrower in denying the

interest claimed by Samira Taleb, which gave rise to the necessary unconscionability necessitating the declaration of the common intention constructive trust.

The case is of some significance. That is so because the making of advances by family members commonly arises in the context of litigation under proceeds of crime legislation. The case assists applicants for exclusion who made arrangements to be paid, as is commonly the case, from the proceeds of sale of certain property which is subsequently restrained.

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