

33. Practice Direction No 2 of 2006 – Ex Parte restraining orders – Criminal Property Forfeiture Act

1. Practitioners are reminded of the duty of full and frank disclosure to the Court of any matters which might be put in opposition to an application for an ex parte restraining order and of the need for the plaintiff to give the usual undertaking as to damages: see O 92.11.
2. Order 92.02 provides that, with certain exceptions, the rules in Chapter 1 apply to matters brought under the *Criminal Property Forfeiture Act*. Therefore, the form of the order must comply with O 60 (especially O 60.05(2)(d) which requires the recitals to specify the terms of an undertaking by a party) and O 66.10(3)(b) if it is proposed to enforce the order by committal or sequestration for non-compliance.
3. Practitioners are also reminded of the need for a restraining order to be expressed clearly and to precisely indicate to the defendant exactly what it is he or she is restrained from doing. Failure in this respect might result in the order being unenforceable. It is not sufficient that an order merely states that “the following property is restrained...” even if a notice complying with s 47(5) of the Act is also served. To assist practitioners it is recommended that a draft minute of the order in the form set out below be handed to the Judge at the time the order is sought for settling by the Judge in accordance with O 60.03(2).
4. Note that each ground for the making of the order ***must*** be set out in the order: see s 45(1)(b) of the Act, and O 60.05(2)(c) of the Rules. It is not sufficient compliance with the Act or the Rules for the order to refer only to the section of the Act grounding the making of the order.

20 October 2006

DRAFT MINUTE OF ORDER

FORM 60C

Rule 60.08

MINUTES OF ORDER

(Heading as in originating process)

ORDER

JUDGE:

DATE MADE:

ORIGINATING PROCESS: Ex parte application filed (date)

HOW OBTAINED: On hearing of ex parte application by the plaintiff

APPEARANCE: (name) Counsel for the plaintiff

OTHER MATTERS: The plaintiff by its counsel undertakes to abide by any order which this Court may make as to damages, should this Court be of the opinion that the defendant shall have sustained damages, by reason of this Order which the plaintiff ought to pay.

- (1) The Court found that (there are reasonable grounds for suspecting that the property below described is crime-used or crime-derived property (s 43(2)(a) of the *Criminal Property Forfeiture Act 2002*) (or as the case may be: see s 43(2)(a) (b) or (c) or s 44(1)(a) (b) or (c)).

THE COURT ORDERS THAT:

1. Subject to paragraph 2 (or as the case may be) the following property is restrained pursuant to the provisions of the *Criminal Property Forfeiture Act 2002* for a period of three (3) months (or such lesser time as the Judge orders) from the date of this Order:

(Here set out a full description of the property restrained)

2. Pursuant to:
 - a. S 46(1)(b) of the *Criminal Property Forfeiture Act 2002* direct that the following property is not to be moved except

b. S 46(1)(d) of the said Act direct that the following persons have leave to occupy the premises being

c. (any other orders under s 46(1))

3. The parties have liberty to apply.

DATE AUTHENTICATED:

REGISTRAR

TO THE DEFENDANTS: (here insert defendants' names)

TAKE NOTICE THAT:

1. The effect of this Order is that whilst this Order is in force, the property restrained by this Order cannot be dealt with. That means that you must not do or cause or permit to be done, or attempt to do, cause or permit to be done, any of the following in relation to the restrained property:
 - a. sell the property or give it away;
 - b. dispose of the property in any other way;
 - c. move or use the property;
 - d. accept the property as a gift;
 - e. take any profit, benefit or proceeds from the property;
 - f. create, increase or alter any legal or equitable right or obligation in relation to the property;
 - g. effect a change in the effective control of the property.

However, you may make reasonable and necessary use of the property for the ordinary daily requirements of life.

2. This order does not prevent ... (see s 46(1)(b), s 56(3) and s 57) – *insert this if required*).
3. It is an offence for a person to deal with restrained property in any way other than as permitted by this Order or by the *Criminal Property Forfeiture Act 2002* punishable by a fine of up to 1,000 penalty units or the value of the property (whichever is the greater) or imprisonment for five (5) years (or as the case may be).
4. The plaintiff has the right to apply to the Court for an order that all or some of the property is forfeit to the Northern Territory.

5. You must within seven (7) days of service of this Order upon you make a statutory declaration as to the matters set out in s 48(2) of the *Criminal Property Forfeiture Act 2002* and file that declaration with the Registrar's office, Supreme Court of the Northern Territory, State Square, Darwin, NT, 0800.

Section 48(2) of the Criminal Property Forfeiture Act 2002 provides –

- (2) In a statutory declaration under this section, the declarant must -
 - (a) state the name and, if known, the address of any other person of whom the declarant is aware who has, may have or claims to have an interest in the property that is subject to the restraining order; or
 - (b) if the declarant is not aware of any person who has, may have or claims to have an interest in property that is subject to the restraining notice – make a statement to that effect.

If you fail to make and file this statutory declaration you may be charged with an offence against s 48 of the Act. The maximum penalty for that offence is 2,000 penalty units or imprisonment for two (2) years.

6. You have the right to file in the Court an objection to the restraining order within 28 days after the day on which this Order is served upon you or within 28 days of your becoming aware or could reasonably have been expected to have become aware of this Order or within such further time as the Court allows.
7. You (*here include the defendant's name[s]*) ARE ALSO LIABLE TO IMPRISONMENT and to sequestration of the property restrained by this Order pursuant to O 66.05(2) of the Supreme Court Rules if you disobey this Order.