IN THE HIGH COURT OF AUSTRALIA

PERTH REGISTRY No. P 17 of 2019

BETWEEN: **GANESH KALIMUTHU**

First Appellant

MACQUELENE PATRICIA MICHAEL DASS

Second Appellant

and

THE COMMISSIONER OF THE AUSTRALIAN FEDERAL POLICE

Respondent

APPELLANTS' SUBMISSIONS

PART I: CERTIFICATION

1. This submission is in a form suitable for publication on the internet.

PART II: ISSUES

2. This appeal concerns the proper construction of three elements of s330(4)(a) of the *Proceeds of Crime Act 2002* (Cth) (**the Act**).

3. The appellants contend that the WA Court of Appeal (**CA**) erred in its construction and application of the section following the decision of the New South Wales Court of Appeal in *Lordianto v Commissioner of the AFP* [2018] NSWCA 199. An appeal by Lordianto (High Court matter S110 of 2019) is to be heard concurrently with this appeal. The issues, which are at least largely at one with those in *Lordianto* are:

4. The appellants acquired property interests when amounts owed to them were deposited into their bank accounts in a manner that involved the commission of a structuring offence contrary to s142 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (**AML Act**). Are the appellants 'third parties' if they were not involved or complicit in the conduct constituting the offence?

5. The appellants paid Malaysian ringgit to a Malaysian money changer in exchange for his promise to arrange the deposit of specified, commercially equivalent, Australian dollar amounts in the appellants' Australian bank accounts. The appellants received the specified sums but cannot identify the depositors. Does the appellants' inability to prove the

Solicitor for the Appellants
Putt Legal
236 Rokeby Road
SUBIACO WA 6008
Telephone: 08 9221 7682
Fax: 08 6210 1378
Email: jessica@puttlegal.com.au
Ref: Jessica Edis

precise dealings between the money changer, an intermediary and the depositors preclude a finding that the acquisition was for sufficient consideration?

6. A reasonable suspicion may only arise from subjective knowledge of a person. Does s330(4)(a) permit the imputation of any knowledge to a third party before drawing conclusions as to what suspicions should reasonably arise?

PART III: SECTION 78B OF THE *JUDICIARY ACT* 1903

7. The appellants do not consider notice is required under s78B of the *Judiciary Act 1903* (Cth).

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PART IV: CITATIONS

8. *Commissioner of the AFP v Kalimuthu (No 3)* [2017] WASC 108 (primary).

9. *Commissioner of the AFP v Kalimuthu (No 2)* [2018] WASCA 192 (on appeal).

PART V: FACTS

10. The appellants are husband and wife. The appellants are referred to in the judgments below as 'Mr Ganesh' and 'Mrs Ganesh' respectively {Core Appeal Book (**CAB**) 8 [3]}.

11. Mr Ganesh operated a scrap metal business in Penang. He made a very good profit in 2014 by selling a power turbine {CAB 19 [66], 23 [85][86]} {Appellants Further Material
20 (**AFM**) 219}.

12. At about that time Mr Ganesh was interested in migrating to Australia with his family, and he decided to engage Mr Zamri to transfer or remit a total of AU $5 million (from his profits on the turbine) to Australia {CAB 34 [136]}.

13. Mr Zamri lived in the same building as Mr Ganesh {CAB 17 [44]}. Mr Zamri worked in his parents' money change business {CAB 19 [60]}. The parents were also known to Mr Ganesh {CAB 15.35 [36]}.

14. Mr Zamri was able to offer the appellants a foreign exchange rate that was about 2% better[1] than could be obtained via a Bank {CAB 31.60-32.06 [124], 143 [297], 198 [502]}.

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[1] Affidavit of Mr Zamri {AFM 140 [58(c)]}. Mr Ganesh gave similar evidence, shortly after 34:40 minutes into the interview, the recording of which was attachment MS-1 to the affidavit of Federal Agent Michael Sams, (Exhibit 20) (CA green appeal book page 149). In that interview Mr Ganesh described the rate as being 6-7 sen (i.e. RM 0.06 to RM 0.07) better per Australian Dollar than a bank. Mr Ganesh also gave evidence that the rate he paid was between RM 2.88 and RM 2.90 to AUD 1 {AFM 17 [108]}.

15. To receive the money in Australia, the appellants travelled here for the purpose of opening bank accounts: two in Mr Ganesh's name (with CBA and ANZ), a third in Mrs Ganesh's name (with ANZ) {CAB 15.40-62 [38][39]}.

16. Mr Ganesh and Mr Zamri agreed that Mr Zamri would arrange for a good company to send the money to Australia {CAB 17 [45]}.

17. Mr Ganesh relied on Mr Zamri's *advice and expertise, and did not personally enquire or independently investigate any rules or regulations regarding the transfer of funds from Malaysia to Australia* {AFM 13 [74]}.

18. Mr Ganesh paid Mr Zamri Malaysian ringgit on 7 or 8 occasions {CAB 16.5 [40]}.

19. Mr Zamri paid the ringgit to a Malaysian money remitter (Mr Hameed) who arranged for the agreed Australian dollar equivalent to be deposited into the appellants' bank accounts in Australia.

20. Mr Ganesh did not know the nature of Mr Zamri's association with Mr Hameed {CAB 17 [46]}. In cross-examination Mr Zamri said that before any transactions occurred, Mr Ganesh asked him about the person he would be using and asked whether the person was trustworthy. Mr Zamri told Mr Ganesh that the person was trustworthy. Mr Ganesh then agreed to start the transactions {AFM 157.31-158.21, 165.1-35}. Mr Ganesh's evidence was that he trusted Mr Zamri {AFM 14.01 [74], 20.20 [128], 22.15 [141]}.

21. Shortly after Mr Zamri paid Malaysian ringgit to Mr Hameed a large number of deposits were made into the appellants' three Australian bank accounts in amounts under $10,000, giving rise to the potential that the unknown person(s) who had made the deposits had committed an offence contrary to s142 of the AML Act.

22. The deposits into the bank accounts were made in the course of conduct known as 'cuckoo smurfing' as explained in ***Majeed v R*** [2013] VSCA 40 at [7][8]. In summary the appellants Malaysian ringgit were (unknown to them) swapped for Australian dollars that likely had a nefarious, albeit still entirely unknown, origin.

23. At the time of the deposits, the appellants were not aware that the deposits were being made at multiple locations (that being a relevant consideration under s142(3)(e) of the AML Act), nor that deposits were being made in different States {CAB 34 [137], 195-6 [493]-[496], 137 [282]}.

24. The appellants' bank accounts were restrained under s19 of the Act {CAB 56.15 [8]}. The appellants applied for an order under s29(2)(d) of the Act that their property be excluded

from restraint. The parameters of the exclusion application were set out in grounds relied upon by each party under ss31(4) and (6) {CAB 11-12 [11] – [13]}.

PART VI: SUBMISSIONS

25. The principal objects of the Act are found in s5.

26. The substantive provision of relevance is s29, pursuant to which the appellants successfully applied in the primary Court to have their property excluded from restraint.

27. Sections 329 and 330 are definitional and lie at the heart of the scheme of the Act. Section 329 has not been amended since enactment. Apart from inconsequential amendments in 2008[2] and 2015[3], s330 is in the form it was originally enacted.[4]

28. To combat serious crime, ss 329 and 330 (and the Act as a whole) cast a wide net. Section 330(4)(a) is the only provision that protects, in general terms, a bona fide purchaser for value {CAB 172.25 [418]}. The worked example at page 119 of the explanatory memorandum is instructive {CAB 69.32-55 [43], 181 [447]}.

Ground 1 – third party

29. But for *Lordianto*, Murphy & Beech JJA would have held that the appellants were third parties {CAB 186 [461]}.

The relevant property

30. Immediately before considering the meaning of third party, Murphy & Beech JJA sought to identify the relevant property {CAB 153 [344]ff}. At {CAB 154-155 [347][348]} their Honours applied *Lordianto* to hold that each time there was a deposit made the relevant appellant acquired a 'right' or 'power' and therefore an 'interest' in 'property'.

The preferred construction of Murphy & Beech JJA

31. Their Honours 'preferred' the view that the section is referring to a third party to the offence, rather than a third party to the property (or transaction by which property becomes tainted) {CAB 157 [360], 168.12 [407]}.

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[2] By the *Family Law Amendment (De Facto Financial Matters and Other Measures) Act 2008*.
[3] By the *Crimes Legislation Amendment (Powers, Offences and Other Measures) Act 2015.*
[4] Amendments in 2018 **do not** apply to this appeal. Further they are unlikely to alter the outcome of the questions raised by the appeal.

32. Their Honours were correct to prefer that view. A third party is a person who is not in any way complicit in the **commission** of the offence. On that construction any accessory, in the criminal law sense, together with the principal offender, are immediately exposed to forfeiture, even if they satisfy the balance of the sub-section.

Textual support for Murphy & Beech JJA's preferred construction

33. The approach of Murphy & Beech JJA to the meaning of third party correctly adopted and expanded the textual analysis of McColl JA in *Lordianto* {CAB 166-167 [405] – [407]}. That included, but was by no means limited to, the fact that ss329 and 330 are interpretive, not substantive, such that *the apparent temporal element in the structure of s330 loses much, if not most, of its significance* {CAB 167.15 [405]}.

34. Properly understood s330(4)(a) does not prescribe **when** property ceases to be tainted, but **whether** it so ceases.

Purposive support for Murphy & Beech JJA's preferred construction

35. Their Honours noted that on their preferred construction the words third party do very little work {CAB 166 [402]}. Whilst this may seem surprising, it is explained by the presence of the final element in s330(4)(a) concerning knowledge and suspicion. It is the third element that will most often disentitle in order to give effect to the overall policy of the sub-section.

36. Their Honours correctly observed that there is *nothing in the purposes of the … Act which would deny* relief to a person who acquired property for sufficient consideration, without knowledge and in circumstances that would not reasonably arouse suspicion *but who acquired the property in the course of the transaction constituting the offence (or by which the property was tainted), while providing relief to a person acquiring their interest in such circumstances through a subsequent transaction* {CAB 178 [434]}.

Extrinsic support for Murphy & Beech JJA's preferred construction

37. Their Honours found[5] further support for their preferred construction in the *legislative history and other extrinsic material concerning the POC Act, and the consequences of the Commissioner's construction* {CAB 168.17 [407], 168-177 [409]-

[5] Consistently with s15AB of the *Acts Interpretation Act 1901*.

[433]}. The Act constituted a wholesale replacement of the *Proceeds of Crime Act 1987* (Cth). The Act was the product of an ALRC report *Confiscation that Counts* into the 1987 Act. The report is the genesis of the words *third party*. The report did **not** define the term; but used it *to refer to a person not involved in the commission of the relevant offence(s)* {CAB 168.41 [409]}.

38. Additional historical support for their Honours' preferred construction can be found in further extrinsic material to which their Honours did not refer, namely the explanatory memorandum to the *Proceeds of Crime (Consequential Amendments and Transitional Provisions) Bill 2002*. That Bill was introduced together with the Bill that became the Act. The memorandum to the consequential amendments Bill said {page 11} that under the Act *… property ceases to be proceeds if acquired by a person for value and without knowledge that it was proceeds of the offence (eg an innocent third party)*.

39. As in ***R v Lavender*** (2005) 222 CLR 67 at [50] the history of s330(4)(a) is such that there is no basis from which it can be concluded that it was Parliament's intention to introduce a significant disentitling element via the inclusion of the words third party.

Absurd results from construction other than that preferred by Murphy & Beech JJA

40. The forfeiture consequences that flow from the combined effect of the Commissioner's construction and the money laundering offence in s400.9 of the *Criminal Code* (Cth) are significant. They extend beyond cuckoo smurfing. As Murphy and Beech JJA explained {CAB 181 ff [444] – [451]}, the Commissioner's construction which was essentially accepted by the majority in *Lordianto* produces inconsistencies and consequences that are so objectively unlikely to have been intended as to weigh substantially against its acceptance. That reasoning is strengthened by considering the deeming provisions in s400.9(2)(b) or (c) of the Code.[6]

41. The appellants respectfully adopt the submissions on absurdity advanced by *Lordianto* at [19] – [24] of their submissions filed in this Court on 8 May 2019.

42. Further, if taken to its logical conclusion, the Commissioner's temporal construction of third party can never be applied to bank accounts. The latest right or power will always

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[6] The Commissioner can particularise a case (under s31(6)) in reliance only on a civil allegation of a contravention of s400.9(1), which is a *serious offence*. The deeming provisions in s400.9(2) enable a s400.9(1) allegation to be proven without reference to any antecedent or predicate offence: *Lin v R* (2015) 297 FLR 457 and *DPP (Cth) v Ngo* [2012] NSWSC 1521 at [40].

be at least partly derived (see s329) from the latest money laundering offence and thus proceeds of that offence. See in particular {Lordianto CAB 85.10 [81]}.

Ground 2 – sufficient consideration

43. The primary Judge found that the appellants acquired the relevant property for 'sufficient consideration' for the purposes of s330(4)(a) and s338 of the Act, namely, the Malaysian ringgit that they gave to Mr Zamri.

44. The Commissioner did not challenge that the Malaysian ringgit were exchanged for Australian dollars at a commercial rate {CAB 31 [124]}. Therefore, the sufficiency of the consideration (if there was consideration) is not in issue.

45. As Buss P observed {CAB 121.15 [226]}, the phrase 'for sufficient consideration' in s330(4)(a), read with s338, requires, in effect, that 'sufficient consideration' be *exchanged for* the relevant property. This is consistent with the approach adopted by Murphy & Beech JJA {CAB 187.55-188.05 [471] and 188.33 [473]}.

46. On the basis of the facts referred to by Buss P {CAB 121-122 [231]}, and the unchallenged finding made by the primary Judge that *the period of time over which the transactions took place was relatively short, and corresponded with [Mr Ganesh's] receipt of funds from the sale of the turbine…[and] they also corresponded, with some delay, to when he gave funds to Mr Zamri* {CAB 34 [136]}, the Malaysian ringgit banknotes that were provided to Mr Zamri were ***exchanged for*** the deposits that were later made into the appellants' bank accounts.

47. Buss P would have found that the appellants gave consideration for each acquisition {CAB 121-124 [230]-[233]}. His Honour opined {CAB 124.43 [240]}: *the preferable and correct inference in the present case is that, by some means, Mr Zamri or Mr Hameed procured the cuckoo smurfers to make the structured deposits … there was accordingly a nexus (that is, a connection or series of connections) between the Malaysian Ringgit banknotes handed by Mr Ganesh to Mr Zamri and the Australian Dollar banknotes deposited by the cuckoo smurfers* …. However, applying *Lordianto*, Buss P found that the appellants had not given 'sufficient consideration' {CAB 124 [239][240]}.

48. Murphy and Beech JJA found that the appellants had not proved that they had acquired their rights in relation to the increased balance of their accounts after the making of the structured deposits for 'sufficient consideration' because they did not have any connection, including no contractual or agency relationship, with the unknown depositors.

They concluded that the appellants did not prove that they acquired the increased bank balances in exchange for the Malaysian ringgit paid to Mr Zamri {CAB 187-188 [471]-[473]}.

49. The nub of the reasoning adopted by Murphy and Beech JJA {CAB 188.12 [471]} was that the appellants' *lack of connection to the depositors, from whom the property was acquired, is a fatal obstacle to a conclusion that they acquired the property for sufficient consideration*. Neither the statutory text nor context mandates a direct connection between the depositors and the appellants.

50. The only inference from the proven facts was that the deposits totaling circa AUD 2.9 million were made to the appellants' bank accounts by people who had a connection (or a series of connections) to Mr Hameed, and thereby to Mr Zamri and ultimately the appellants, and were therefore made in exchange for the appellants' payment of the Malaysian ringgit. The alternative is that the deposits were wholly unrelated to the provision of Malaysian ringgit by Mr Ganesh to Mr Zamri.

Ground 3 – reasonable suspicion

51. The CA unanimously concluded that the primary judge erred in finding Mr Ganesh had established he acquired the relevant property 'in circumstances that would not arouse a reasonable suspicion, that the property was proceeds of an offence or an instrument of an offence', per s330(4)(a) {CAB 143 [298], 197ff [501][502]}. The CA unanimously concluded Mrs Ganesh had established acquisition of the relevant property in circumstances that would not arouse the relevant reasonable suspicion {CAB 144 [302][303], 198ff [503][504]}. Accordingly, ground 3 affects only Mr Ganesh.

<u>The established law on reasonable suspicion</u>

52. A suspicion must be grounded in *some factual basis:* ***George v Rockett*** (1990) 170 CLR 104 at 115. A suspicion involves a *positive feeling* and *more than a mere idle wondering*: ***Queensland Bacon v Rees*** (1966) 115 CLR 266 at 303.

53. It does not appear controversial that the relevant test is set out by, and the appellants incorporate, the full remarks in ***Director of Public Prosecutions (Vic) v Le*** (2007) 15 VR

352 at [21] – [27].[7] The decision was overturned in this Court; however the test for reasonable suspicion was affirmed.[8] The Court of Appeal of Victoria held at [24] that [t]*he "reasonable suspicion" provision … is concerned with whether the circumstances in which the applicant acquired her interest in the property were such as to arouse* ***in her*** *a reasonable suspicion that the property had been used in connection with the trafficking* (emphasis supplied). At [27] the question was framed *would a reasonable person in [her]* ***position*** *have had a suspicion?* (emphasis added). It was relevant in *Le* that the respondent was a Vietnamese woman, who spoke no English and was ill at the relevant time: at [22].

10 <u>The relevant facts</u>

54. In addition to the matters in Part V above, the following are relevant to Mr Ganesh's *position*:

a. Mr Ganesh had lived all his life in Penang, Malaysia; he had not previously had an Australian bank account; he believed he could remit in this fashion; he gave plausible reasons for using this method {CAB 34 [132][133]}. Mr Ganesh also gave unchallenged evidence he did not *own any assets outside of Malaysia* and had *never been involved in any international financial transactions* {AFM 12 [64]}.

b. Malaysia does not impose cash transaction reporting obligations on money
20 services businesses and in 2014 structuring was not an offence in Malaysia {AFM 202 [2.50], 209 [6.5]}.

c. For the commercial reasons Mr Ganesh explained, most of his business dealings were in cash {CAB 14 [32], 19 [65]} {AFM 8 [24] – [27]}.

55. In addition to the matters in Part V above, the following are relevant *circumstances* of the transactions:

a. The foreign exchange rate obtained, see [14] above, was commercial. It was not too good to be true.

b. Mr Ganesh received all that he was entitled to under his agreement with Mr Zamri and no more.

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[7] Endorsed in *DPP (Vic) v Le* (2007) 232 CLR 652 at [1][127][128]. Discussed in {Lordianto CAB 105 [154]}. See also {CAB 125 [242], 197 [498] (footnote 208)}.
[8] *Director of Public Prosecutions (Vic) v Le* (2007) 232 CLR 562 [1] (Gleeson CJ), [127] - [128] (Kirby & Crennan JJ).

c. Mr Zamri provided Mr Ganesh with some comfort following Mr Ganesh's inquiry. Murphy & Beech JJA observed that the primary judge did not *resolve the conflict* between the evidence of Mr Zamri and Mr Ganesh about the discussion the two had following Mr Ganesh's observation of small deposits {CAB 16.41 [41(113)], 18 [51], 197.40 [500]}. It was not a conflict that called for resolution. In a broad sense Mr Zamri (who was the **only** person that Mr Ganesh dealt with in relation to the subject transactions) corroborated Mr Ganesh's account.

10 The approach of the WA CA

56. Save for the failure to refer to Mr Ganesh's *position*, and the issue at [63] below, the appellants accept the correctness of the principles enunciated by Murphy and Beech JJA at {CAB 197 [498], 197-198 [501]}. Buss P expressed himself in a like manner {CAB 139ff [288]-[291]}.

57. At {CAB 198.31-39 [502]} Murphy and Beech JJA framed the issue as whether Mr Ganesh had established *that he acquired the property … in circumstances that would not arouse a reasonable suspicion that the deposits were the proceeds of an offence, involving an **attempt** to avoid the reporting of the deposit of large sums of cash into accounts* (emphasis added). Their Honours' use of the word *attempt* must refer to the *sole or dominant purpose*
20 of the depositor/s; being an essential element of the structuring offence: see [59] – [62] below. That was an appropriate way to frame the inquiry.

58. The central error in Murphy & Beech JJA's reasoning on reasonable suspicion was answering that question in the negative. Their reasoning {CAB 197-198 [499] – [502]} also failed to consider the factual matters referred to at [54] and [55] above.

Suspicion about the commission of a structuring offence, and its elements

59. It is necessary to consider the definitions in s329. The only relevant suspicion for the purposes of s330(4)(a) was suspicion that the property acquired by Mr Ganesh was either:

a. *derived or realised, whether directly or indirectly, from the **commission** of*
30 *the offence*;[9] or

[9] Section 329(1) – definition of 'proceeds of an offence'.

b. *used in, or in connection with, the **commission** of an offence*,[10] (emphasis added),

where the **only** relevant offence was s142 of the AML Act.

60. Section 330(4)(a) raises the question of whether a reasonable person would suspect that property was either derived, realised or used in *the **commission** of the offence*.

61. The words *commission of the offence* in the definitions must direct attention to the physical and fault elements of the offence or offences. Therefore, the focus of the inquiry is whether the circumstances in which the property was acquired are such that a reasonable person in the third party's position would not suspect each of the physical and fault elements of the particular offence exists and/or that there is no relevant connection between those elements and the property.

62. The elements of an offence contrary to s142(1) of the AML Act certainly include:

a. (a physical element) a person is, or causes another person to become, a party to 2 or more 'non-reportable transactions'

b. (a fault element) having regard to: (i) the manner and form in which the transactions were conducted; and (ii) any explanation made by the person as to the manner or form in which the transactions were conducted, it would be reasonable to conclude that the person conducted, or caused the transactions to be conducted, in that manner or form **for the sole or dominant purpose** of ensuring, or attempting to ensure, that the money… involved in the transactions was transferred in a manner and form that would not give rise to a *threshold transaction* (as defined) that would have been required to have been reported under section 43.[11]

63. Murphy & Beech JJA implicitly (and correctly) accepted {CAB 198.12 [501]} *that Mr Ganesh did not, subjectively, know … **the reason** for structuring the deposits into small amounts, relative to the amounts he gave to Mr Zamri…* (emphasis added). The *reason* can only be read as a reference to the depositor's reason, ie their *sole or dominant purpose*, a central element to the commission of the structuring offence. Their Honours erred in concluding (in the same passage) that this fact did not address the objective inquiry. Properly

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[10] Section 329(2) – definition of 'instrument of an offence'.

[11] Alternative formulations, of no present moment, were discussed in *Commissioner of the Australian Federal Police v Fitzroy All Pty Ltd* (2015) 299 FLR 439 at [27]-[33].

understood the inquiry is not purely objective; it looks to the third party's knowledge and position.

The approach in *Lordianto*

64. Murphy & Beech JJA cited with approval {CAB 197 [498]} the analysis in *Lordianto* {Lordianto CAB 105 [155] – [161]} of the applicable criminal law. There was no warrant for that approach: s315 of the Act. In any event the majority in *Lordianto* quoted Brennan J's acceptance in *He Kaw Teh v The Queen* of this passage in *R v Turnbull*: *it is also necessary at common law for the prosecution to prove that he knew that he was doing the criminal act which is charged against him, that is, that* ***he knew that all the facts constituting the ingredients*** *necessary to make the act criminal were involved in what he was doing* (emphasis added). The *Lordianto* majority went on to quote a similar passage from *Ostrowski v Palmer*. A central fact *constituting an ingredient* of structuring is the *sole or dominant purpose* of the depositor.

Conclusion on suspicion

65. It was necessary for Mr Ganesh to establish that he had no level of knowledge about the obligation placed on Australian banks to report the deposit of large sums of cash. To reasonably suspect that property is proceeds of a structuring offence a person would need to know, or at least suspect, that there is a requirement upon banks to report large cash deposits. The person might not know (or suspect) that the threshold was $10,000. But unless the person has some level of awareness (suspicion or higher) that some transactions (at least in some countries) are reported by banks to the government and some are not; a person could not suspect that property was proceeds of a structuring offence.

66. The only evidence about Mr Ganesh's state of mind, and by which he discharged the onus, was that referred to at [17] above. There is no basis to conclude Mr Ganesh knew or suspected facts that would enable a reasonable person in his *position* to form a suspicion about the depositor's purpose. The primary judge was correct to conclude accordingly {CAB 33.42-49 [129]}.

67. A reasonable person in Mr Ganesh's position (see [54] above), knowing what he knew (including the matters at [55] above), could not have formed the 'reasonable suspicion' that the depositor/s (or others) were acting with the sole or dominant purpose of avoiding reporting requirements.

68. It was because (and only because) Mr Ganesh paid Malaysian ringgit to Mr Zamri that the deposits were made in Australia. Someone in his position would not have had cause to stop and consider if the deposits came from criminal activity.

69. Mr Ganesh agreed the deposit pattern was *unusual* {AFM 111.30-38}. An unusual feature does not amount to a suspicion. It was clearly sufficient to (and did) put him on inquiry with Mr Zamri. However, as the Full Federal Court held in ***Correa v Whittingham*** (2013) 278 FLR 310 at [163], it is *undoubtedly correct* that being put on inquiry is less than holding a suspicion.

10 Alternative approach to ground 3

70. If this Court holds that the appellants are third parties who gave sufficient consideration and accepts the submission made by *Lordianto* in their submissions filed on 8 May 2019 at [43] that ignorance of the criminal law will suffice to discharge the onus, the primary judge's findings {CAB 33ff [129]-[138]} and orders ought be restored.

PART VII: ORDERS SOUGHT

71. The appeal is allowed.

72. The orders of the Court of Appeal dated 30 October 2018 are set aside and in lieu thereof order that the appeal to the Court of Appeal is dismissed.

20 **73.** Paragraph 2 of the orders made on 19 April 2017 {CAB 38} be varied to provide for payment by the Official Trustee to Edis Law Pty Ltd's trust account, BSB 036-051, Account 514911, at Westpac Bank, Subiaco.

74. Pursuant to s 323(1)(a)(ii) of the *Proceeds of Crime Act 2002* the respondent pay all the appellants' costs of each of the primary proceeding, the appeal to the Court of Appeal, the special leave application and this appeal, such costs to be taxed on an indemnity basis if not agreed.

75. The matter be remitted to the primary judge for an assessment of damages pursuant to the undertaking offered by the respondent in the primary Court on 16 October 2014.

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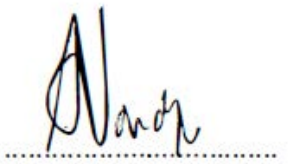
PART VIII: ESTIMATE OF TIME

76. The appellants estimate it will take 2 hours to present oral argument.

Dated: 10 May 2019



10 Sam Vandongen SC
Francis Burt Chambers
T: 08 9220 0444
svandongen@francisburt.com.au

Edward Greaves
Francis Burt Chambers
T: 08 9220 0592
ewg@egreaves.com.au

Counsel for the appellants