

COURT FILE NO.: CV-17-570182

DATE: 2019-06-05

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** GENNETT LUMBER COMPANY, Plaintiff

**AND:**

VINCENT DOGBASTE, ERIC HODGI, DEALIUS DANSO, DORIS SERWAH,  
STELLA DANSO, KWASI AMO-BOADI aka DONALD AM, JOHN DOE,  
JANE DOE AND DOE CORPORATIONS, Defendants

**BEFORE:** Sossin J.

**COUNSEL:** Norman Groot, Counsel for the Plaintiff

Eric Bonsu, a non-party, for himself

**HEARD:** May 31, 2019

**ENDORSEMENT**

**OVERVIEW**

[1] The plaintiff, Gennett Lumber Company (“Gennett”), brings this motion for an Order that cash seized by the Toronto Police Service (“TPS”) from the residence of the defendant, Eric Hodg (“Hodgi”), and his roommate, a non-party, Eric Bonsu (“Bonsu”) on November 10, 2016 totaling approximately \$24,600.00 in Canadian currency and \$385.00 in U.S. currency, be transferred to Gennett in order to satisfy, in part, the judgment issued against the defendants, Hodg and Vincent Dogbaste (“Dogbaste”).

[2] On May 10, 2017, Gennett obtained an Order from Master McAfee that the cash seized by the TPS was to be held by the TPS pending further direction from this Court.

[3] The civil judgment against Hodg and Dogbaste for \$168,442.31 USD was granted by Justice Lederer on October 30, 2017.

[4] The TPS and the Attorney General for Ontario, who are not parties to the litigation but have been served with this motion, take no position with respect to the disposition of the seized cash.

[5] This motion was first heard on February 5, 2019. On that date, Bonsu appeared on his own behalf, and indicated through a friend, that he did not speak English. The motion was adjourned to April 24, 2019, to allow for an opportunity for Gennett to examine Bonsu, and for Bonsu to retain counsel. Gennett agreed to arrange for an Ashanti interpreter to attend Bonsu’s examination.

[6] The examination took place on March 18, 2019. Bonsu attended this examination with counsel and had the assistance of an interpreter.

[7] By the time of the rescheduled hearing of the motion on April 24, 2019, Bonsu no longer was represented by counsel, and sought an adjournment to prepare for the hearing of the motion.

[8] The motion was adjourned to May 31, 2019. At this hearing, Bonsu appeared on his own behalf, and had the assistance of an interpreter, though he filed no responding materials on the motion.

## **BACKGROUND**

[9] The plaintiff, Gennett, was the victim of a credit card fraud scheme perpetrated by the defendants. The background to this civil litigation, and accompanying criminal proceedings, is outlined in *Gennett Lumber Co. v. John Doe a.k.a. Milton Harvey et al.*, 2019 ONSC 1345.

[10] Pursuant to a search warrant obtained in relation to the criminal investigation into this fraud, on November 10, 2016, the TPS conducted a search of the apartment on Islington Avenue shared by Hodgi and Bonsu. Bonsu was found sleeping in one bedroom of the apartment. In the other bedroom, which was locked, the TPS gained entry and found the cash in Canadian and U.S. bills in the closet. Hodgi was not home at the time of the search.

[11] Bonsu, who is not a defendant in this litigation but resided in the same apartment as Hodgi at the time of the seizure, was charged criminally with possession of the proceeds of crime.

[12] Bonsu stated that the cash was not his and he had no knowledge of how it came to be in the apartment. The Crown ultimately withdrew the charges against him. The criminal charges against Hodgi also have been stayed, though he remains subject to the civil judgment against him.

[13] In this proceeding, Bonsu now asserts that the cash is indeed his. He seeks an Order returning these funds.

## **ANALYSIS**

[14] Where an applicant seeks to obtain cash seized pursuant to section 490 (10 and 11) of the *Criminal Code*, R.S.C. 1985, c. C-46, a judge must be satisfied that the applicant is the lawful owner or is lawfully entitled to possess the cash. The level of proof required on such an application is a balance of probabilities; *Cannone, Re*, 2010 ONCJ 219, at para. 3. In this case, the question I must address is whether, on a balance of probabilities, I am satisfied the seized cash is more likely to have been in the possession of Hodgi than Bonsu on November 10, 2016.

[15] Gennett asserts that the cash seized from the residence of Hodgi and Bonsu represents a portion of the proceeds of the fraud perpetrated by Hodgi and his associates. Gennett argues this account is consistent with photos intercepted as part of the TPS investigation into Hodgi showing him posing with co-conspirators with bundles of cash, and the fact he was stopped at a border crossing by the Canada Border Services Agency in possession of a significant quantity of cash.

[16] At his examination, Bonsu gave evidence through a translator, and explained that he originally lied to the police because, based on experience in his home country of Ghana, he feared he would be beaten if he acknowledged the cash was his.

[17] Bonsu stated that he had been keeping the cash in order to purchase a truck at an auction in Ontario, which he intended to export to his family, living in Ghana. He produced no records of the auction, or where or when it was scheduled to take place. He stated that his knowledge of the auction came from a friend with whom he played soccer, and whose name he could not recall.

[18] Bonsu did not provide a satisfactory explanation for how he was able to accumulate more than \$24,000.00 in cash, nor did he provide any witnesses to support his story, though his uncle attended the hearing of the motion and indicated he was willing to vouch for his nephew's account.

[19] Bonsu provided bank records at his examination and at the hearing, though these only showed cash withdrawals, not what was done with the cash. At his examination, Bonsu gave evidence that he also would send approximately \$300.00 in cash to his family in Ghana through friends who were travelling there, though he kept no records of these transactions.

[20] Bonsu also was unable to provide a satisfactory explanation as to why he waited so long to assert his claim over the seized cash.

[21] In light of the strong circumstantial linkage between the seized cash and the fraud committed by Hodgi, the weak linkage between the seized cash and Bonsu, as well as significant gaps and inconsistencies in Bonsu's account of the seized cash, I am satisfied that on a balance of probabilities, the seized cash was under the control of Hodgi on November 10, 2016.

## CONCLUSION

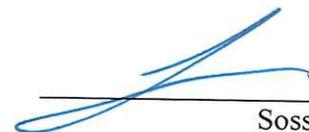
[22] Gennett's motion for possession of cash seized by the Toronto Police Service from the Islington Avenue residence of Hodgi and Bonsu is granted.

[23] The TPS is ordered to transfer the cash held by the TPS in relation to the seizure of approximately \$24,600.00 in Canadian currency and \$385.00 in U.S. currency, to counsel for Gennett, in partial satisfaction of the judgment against Dogbaste and Hodgi.

## COSTS

[24] On this motion, Gennett is not seeking costs from Bonsu. Rather, Gennett argues that Hodgi should be responsible for its costs on this motion.

[25] In the circumstances, Gennett is entitled to its costs from Hodgi on a full indemnity basis, in the amount of \$11,105.00, all inclusive, and payable within 30 days of this judgment.

  
Sossin J.