

Federal Court



Cour fédérale

Date: 20141215

Docket: T-1573-13

Citation: 2014 FC 1216

Ottawa, Ontario, December 15, 2014

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

GABRIEL LILLETHUN

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] In 2012, Mr Gabriel Lillethun arrived at Pearson International Airport with \$20,000 USD in cash hidden in his clothing and luggage. He was travelling from Brazil by way of Panama City. At Customs, he declared that he was not importing currency worth \$10,000 or more. An officer of the Canadian Border Services Agency (CBSA) searched Mr Lillethun's belongings and

found numerous bundles of \$100 USD bills. The officer asked Mr Lillethun how many bundles he had. Mr Lillethun said he did not know.

[2] The officer concluded that there were reasonable grounds to suspect that the funds may have been the proceeds of crime and seized them. Mr Lillethun requested a Ministerial review of the seizure and over the course of several months provided many documents to the CBSA, attempting to corroborate his claim that the funds came from sales of electronic equipment and cameras, and were not the proceeds of crime. He said he had failed to declare the funds because he was concerned about the potential tax consequences of disclosing unreported income, and the possible loss of income-based disability benefits for his son.

[3] A CBSA adjudicator reviewed Mr Lillethun's documentation and found that it failed to show a link between the recorded transactions and the funds Mr Lillethun attempted to bring into Canada. The adjudicator gave Mr Lillethun a number of opportunities to provide better evidence of the source of the funds but, in the end, she recommended to a delegate of the Minister of Public Safety and Emergency Preparedness that Mr Lillethun be found to have contravened the obligation to disclose the imported currency and that the funds be held as forfeit (*Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17, ss 12, 29 – see Annex for provisions cited).

[4] The Minister's delegate agreed, and refused to exercise her discretion to return the funds or to impose a fine in lieu of forfeiture.

[5] Mr Lillethun maintains that the Minister's delegate unreasonably confirmed the seizure of his money. In particular, he contends that there was absolutely no evidence that he was engaged in any unlawful conduct or that the funds were connected in any way to crime. Rather, the evidence he provided clearly showed, he says, that he had an active business buying and selling electronic equipment and cameras. He asks me to order the Minister's delegate to reconsider the seizure, or to remit some portion of the seized funds to him.

[6] I see no basis for concluding that the Minister's delegate's decision was unreasonable. The evidence Mr Lillethun provided simply did not connect particular transactions with the funds in question. It showed that he was buying and selling goods, but the source of the \$20,000 he attempted to import was never identified. Therefore, I must dismiss this application for judicial review.

[7] The sole issue is whether the Minister's delegate's decision was unreasonable.

A. *The Minister's Delegate's Decision*

[8] The delegate found that Mr Lillethun had not provided any valid reason for failing to report the currency in his possession. Further, the evidence Mr Lillethun provided, while showing transactions involving the purchase and sale of goods, did not establish a link between those transactions and the seized funds.

[9] In addition, given that Mr Lillethun had concealed the money in various locations, there were additional grounds for believing that the source of the funds was not legitimate.

[10] In the circumstances, the delegate declined to exercise his discretion to return the forfeited funds.

B. *Was the Minister's delegate's decision unreasonable?*

[11] Mr Lillethun submits that the delegate failed to give adequate consideration to the evidence showing that the funds derived from his business of buying and selling equipment.

[12] I disagree.

[13] The burden rested on Mr Lillethun to show that the funds were not the proceeds of crime by establishing a legitimate source of the funds (*Sellathurai v Canada (Minister of Public Safety and Emergency Preparedness)*, 2008 FCA 255, at paras 49-50). This puts Mr Lillethun in an unfortunate situation. While he was able to show that he was involved in buying and selling equipment, his evidence fell short of showing the actual source of the funds he had tried to import.

[14] Accordingly, I cannot conclude that the Minister's delegate's decision was unreasonable on the evidence.

II. Conclusion and Disposition

[15] Mr Lillethun was unable to show that the funds he brought into Canada had a legitimate source. Therefore, I cannot conclude that the decision to order the forfeiture of the funds was unreasonable. Accordingly, I would dismiss this application for judicial review, with costs.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed,
with costs.

“James W. O’Reilly”

Judge

Annex

Proceeds of Crime (Money Laundering) and Terrorist Financing Act, SC 2000, c 17

Loi sur le recyclage des produits de la criminalité et le financement des activités terroristes, LC 2000, c 17

Currency and monetary instruments

Déclaration

12. (1) Every person or entity referred to in subsection (3) shall report to an officer, in accordance with the regulations, the importation or exportation of currency or monetary instruments of a value equal to or greater than the prescribed amount.

12. (1) Les personnes ou entités visées au paragraphe (3) sont tenues de déclarer à l'agent, conformément aux règlements, l'importation ou l'exportation des espèces ou effets d'une valeur égale ou supérieure au montant réglementaire.

If there is a contravention

Cas de contravention

29. (1) If the Minister decides that subsection 12(1) was contravened, the Minister may, subject to the terms and conditions that the Minister may determine,

29. (1) S'il décide qu'il y a eu contravention au paragraphe 12(1), le ministre peut, aux conditions qu'il fixe :

(a) decide that the currency or monetary instruments or, subject to subsection (2), an amount of money equal to their value on the day the Minister of Public Works and Government Services is informed of the decision, be returned, on payment of a penalty in the prescribed amount or without penalty;

(a) soit restituer les espèces ou effets ou, sous réserve du paragraphe (2), la valeur de ceux-ci à la date où le ministre des Travaux publics et des Services gouvernementaux est informé de la décision, sur réception de la pénalité réglementaire ou sans pénalité;

(b) decide that any penalty or portion of any penalty that was paid under subsection 18(2) be remitted; or

(b) soit restituer tout ou partie de la pénalité versée en application du paragraphe 18(2);

(c) subject to any order made under section 33 or 34, confirm that the currency or monetary instruments are forfeited to Her Majesty in right of Canada.

(c) soit confirmer la confiscation des espèces ou effets au profit de Sa Majesté du chef du Canada, sous réserve de toute ordonnance rendue en application des articles 33 ou 34.

The Minister of Public Works and Government Services shall give effect to a decision of the Minister under paragraph (a) or (b) on being informed of it.

Le ministre des Travaux publics et des Services gouvernementaux, dès qu'il en est informé, prend les mesures nécessaires à l'application des alinéas *a)* ou *b)*.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1573-13

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