

Date: 20080310

Docket: A-248-07

Citation: 2008 FCA 95

**CORAM: DESJARDINS J.A.
NOËL J.A.
TRUDEL J.A.**

BETWEEN:

MEHMET DAG, CENNET YAS DAG

Appellants

and

**THE MINISTER OF PUBLIC SAFETY
AND EMERGENCY PREPAREDNESS**

Respondent

Heard at Montréal, Quebec, on March 10, 2008.

Judgment delivered from the Bench at Montréal, Quebec, on March 10, 2008.

REASONS FOR JUDGMENT OF THE COURT BY:

NOËL J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Montréal, Quebec, on March 10, 2008)

NOËL J.A.

[1] This is an appeal from the judgment of Blais J. of the Federal Court (2007 FC 427) dismissing the appellants' application for judicial review of the seizure of \$125,275 CAN at the Dorval International Airport, Montréal, Quebec by Canadian Customs agents.

[2] The appellants allege that Blais J. committed a number of reviewable errors in confirming the Respondent Minister's decision forfeiting the currencies seized in favour of Her Majesty.

[3] We are satisfied that Blais J. committed no error which would merit our intervention.

[4] With respect to the standard of review, there was a debate in the past about whether the standard applicable to the Minister's decision was patent unreasonableness or reasonableness *simpliciter*. Given the recent pronouncement of the Supreme Court in *Dunsmuir v. New Brunswick*, 2008 SCC 9, which collapsed those two standards into one, and given the existence of the strong privative clause which appears in section 24 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17 (the Act), we are satisfied that the applicable standard in reviewing the Minister's decision under section 29 of the Act is reasonableness.

[5] With respect to the substantive issue which was before Blais J., we are of the view, applying this standard, that he committed no error when he held that the record allowed the Minister to conclude in the present case that there were "reasonable grounds to suspect" that the currency was "proceeds from crime within the meaning of subsection 462.3(1) of the *Criminal Code* or funds for use in the financing of terrorist activities".

[6] The appellants also allege that Blais J. erred in conducting a fresh examination of the evidence. With respect, we find no error in the manner in which Blais J. conducted his analysis. He supported the conclusion reached by the Minister on the basis of the specific points noted by the Minister's officer in his report as well as on the basis of other elements in the record which pointed in the same direction, something which he was entitled to do.

[7] With respect to the allegation that the appellants' right to procedural fairness was breached, both by reason of the failure of the Minister to provide him with the recommendations of his officer and the insufficiency of the reasons, we note that the appellants were fully informed of the Minister's case against them and were given ample opportunity to respond (*Ahani v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 72, at para. 26). We stress in this regard that the appellants have yet to provide any explanation for the fact that the bulk of the currency was concealed in a pair of stockings wrapped around Ms. Yas Dagg's waist.

[8] We are also satisfied that these alleged breaches would have had no consequence on the Minister's decision given counsel's candid admission that no new evidence would have been adduced. In our respectful view, the "new spin" which she would have given to the evidence, as she described it before us, would not have changed the outcome.

[9] The appeal will be dismissed with costs.

"Marc Noël"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-248-07

**APPEAL FROM A JUDGMENT OF THE HONOURABLE MR. JUSTICE BLAIS ON
APRIL 20, 2007, NO. DOCKET T-437-06.**

STYLE OF CAUSE: MEHMET DAG ET AL. v. THE
MINISTER OF PUBLIC SAFETY
AND EMERGENCY
PREPAREDNESS

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: March 10, 2008

REASONS FOR JUDGMENT OF THE COURT BY: DESJARDINS J.A.
NOËL J.A.
TRUDEL J.A.

DELIVERED FROM THE BENCH BY: NOËL J.A.

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Mr. Marc Ribeiro

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