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Lifespan of Notice of Seizure — Pre and post s 52A of AMLA

BANKING & INSOLVENCY

Lim Hui Jin v CIMB Bank Berhad & Ors

(Court of Appeal Civil Appeal No A-01(IM)(NCVC)-179-05/2017)

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Last month, the Court of Appeal^[1] delivered judgment on the validity of a seizure of property under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (“AMLA”): see [The Edge](#), [Free Malaysia Today](#) and [theSun daily](#).

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Businessman LHJ’s mother was investigated under AMLA. In the course of investigations, LHJ’s CIMB account was frozen pursuant to a freezing order issued on 24 June 2014 under s 44(1). A freezing order allows an enforcement agency to freeze property of a person where the agency has reasonable grounds to suspect a money laundering offence has been or is about to be committed.

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AMLA was amended on 1 September 2014. Among others, the effect was to introduce s 52A. Ten days after s 52A came into force, LHJ’s CIMB account was seized pursuant to a seizure order issued on 11 September 2014 by the Public Prosecutor, pursuant to s 50(1). At the time, the freezing order had not yet expired.

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In May 2016, LHJ brought this action for release of the monies in his account. The thrust of his case was twofold — he was not charged under AMLA within the stipulated time period, and the freezing and seizure orders had both expired.

CONSTRUCTION

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Pre-s 52A	Post-s 52A
<ul style="list-style-type: none"> Prior to the introduction of s 52A, a seizure order did not have an expiry date 	<ul style="list-style-type: none"> Came into effect on 1 September 2014 A seizure order expires

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- Section 56(3) does, however, provide that seized property must, on the expiry of 12 months from the date of seizure, be released unless there is a prosecution or conviction for an offence under AMLA or a terrorism financing offence, or a forfeiture application is made under AMLA

12 months from the date of the seizure order **or freezing order (if there is one) whichever is the earlier**, if the person against whom the order was made has not been charged under AMLA

The Court of Appeal held that as the seizure order was effected post-s 52A, it lapsed in June 2015 — 12 months from the date of the freezing order.

The court also observed that the provisions of AMLA must be read harmoniously. Although the seizure order did not stipulate a validity period, s 52A clearly imposes one. As noted above, s 52A clearly spells out a seizure order expires 12 months from the date of the order, or prior freezing order if there is one, whichever is the earlier, unless the person against whom the order is made is charged.

In the circumstances, the Court of Appeal held the continued seizure of LHJ's CIMB account violated his rights to property enshrined in the Federal Constitution.^[2]

Comment

The far-reaching effect of a seizure order cannot be emphasised enough. As long as it remains in force, dealings with the property seized are prohibited, and any dealing in contravention is deemed null and void: see *Lau Yong Ying v The Bank of Punjab & Ors and other appeals*.^[3]

In the upshot, the judgment upholds a party's right to property and the policy behind the introduction of s 52A. Authorities now have to conduct and complete investigations and prefer a charge under AMLA in a timely manner within the stipulated period of 12 months, or face the consequence of the property frozen or seized being released.

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[1] [http://judgments.my/assets/uploads/\[2018\]-MYCA-233_10338.pdf](http://judgments.my/assets/uploads/[2018]-MYCA-233_10338.pdf)

[2] Federal Constitution, Art 13. See para 24 of the judgment.

[3] [2018] 4 MLJ 88