

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

CIV-2012-404-33

IN THE MATTER OF an application pursuant to the Criminal
Proceeds (Recovery) Act 2009

AND IN THE MATTER OF the Mutual Assistance in Criminal
Matters Act 1992

BETWEEN THE COMMISSIONER OF POLICE
Applicant

AND KIM DOTCOM
First Respondent

AND BRAM VAN DER KOLK
Second Respondent

AND MEGASTUFF LIMITED
Third Respondent

AND MONA DOTCOM
Interested Party

Hearing: 21 March 2012

Counsel: A Toohey and D Boldt for Applicant (by telephone)
R Gapes for Respondents (by telephone)
R N Harris and A Lloyd for Mrs Dotcom (by telephone)

Minute: 21 March 2012

ORDERS AND MINUTE OF POTTER J

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Variation of conditions in order dated 29 February 2012

[1] By consent the conditions to which the interim foreign restraining order made on 1 February 2012 is subject, as set out in the order of 29 February 2012, are varied as follows:

- (a) The Official Assignee will release, to a bank account in the name of the First Respondent or the Interested Party or to the Interested Party's solicitors' trust account (whichever is requested by the Interested Party):
 - (i) the sum of \$20,000 per month for living expenses in satisfaction of the First Respondent's and Interested Party's applications for living expenses pursuant to section 28(1)(a) of the Criminal Proceeds (Recovery) Act 2009. Such sums are to be derived from interest on the NZ\$10,000,000 in New Zealand Government Bonds, being item 3 on page 3 of the order of 29 February 2012. The first monthly payment is to be paid on 23 March 2012, and backdated to 1 March 2012. Thereafter, each monthly payment is to be paid on the 15th of each month;
 - (ii) The funds restrained by the Official Assignee in or from the RaboDirect account number 03-1791-0122323-00 in the name of Kim Dotcom, in the sum held as at 1 February 2012 (\$301,758.70) are to be released from the scope of the order of 29 February 2012 pursuant to s 35(a) of the Criminal Proceeds (Recovery) Act 2009, in maximum instalments of \$40,000 per month, such payment to be made by the Official Assignee. In addition, the Official Assignee will make a one-off payment into that account, from the interest on the Government Bonds referred to above, sufficient to increase to \$301,758.70 the amount available for release under this order.

- (b) The First Respondent and Interested Party may make further applications for any matter other than living expenses. The orders made above may be taken into account if further applications are made;
- (c) The 2011 Mercedes Benz G55AMG vehicle (VIN WDB463Z702X 191902), being item 25 on page 4 of the order of 29 February 2012, will be released to the First Respondent for use on the following conditions:
 - (i) the vehicle continues to be in the custody and control of the Official Assignee and subject to the terms of the interim foreign restraining orders (as amended by these orders);
 - (ii) the First Respondent must first arrange insurance and garaging of the vehicle to the satisfaction of the Official Assignee before the vehicle is released;
 - (iii) the First Respondent must arrange for the maintenance, registration, and any necessary warrants of fitness for the vehicle;
 - (iv) the First Respondent must make the vehicle available for inspection by the Official Assignee at any time;
 - (v) the First Respondent must not take any action that would significantly affect the value of the vehicle, or take steps to dispose of the vehicle; and
 - (vi) these orders do not alter any conditions of the First Respondent's bail.
- (d) The Official Assignee will release to the Second Respondent monthly payments of \$9,166 for living expenses in satisfaction of the Second Respondent's application for living expenses pursuant to section

28(1)(a) of the Criminal Proceeds (Recovery) Act 2009. Such sums are to be derived from funds held by the Official Assignee derived from funds in the Second Respondent's bank account at HSBC, being item 1 on page 3 of the order of 29 February 2012. These funds are to be released to a bank account in the name of the Second Respondent or to the Second Respondent's solicitors' trust account (whichever is requested by the Second Respondent). The first payment is to be made on 23 March 2012, and subsequent payments are to be made on the 15th of each month;

- (e) The First and Second Respondents and the Interested Party may each open and operate new bank accounts in New Zealand. These accounts and any sums held in bank accounts that have been paid pursuant to the conditions ordered by the Court on 29 February 2012 or pursuant to the conditions set out here will be excluded from the operation of the interim foreign restraining order and any subsequent registered foreign restraining order;

[2] Except as varied as above set forth the conditions in paragraph 4 of the order of 29 February 2012 remain in force.

[3] These conditions are made without prejudice to the parties' positions in relation to the Respondents' and the Interested Party's rights to obtain relief in relation to the restraint of their assets, the Applicant's application for registration of foreign restraining orders, dated 20 March 2012 (except in relation to imposing the conditions specified above if the foreign restraining orders are registered) and all questions of costs (except as below at [8]).

[4] If the foreign restraining orders are registered in future then the terms of these orders and the order made on 29 February 2012 shall be conditions of registration and remain in force pending further order of the Court.

Extension of interim foreign restraining order

[5] The Respondents and Interested Party not opposing, the application of the Crown to extend the interim foreign restraining order made on 1 February 2012 until 5 p.m. on 4 April 2012 is granted. The purpose of this extension is to enable the Applicant to obtain final instructions in relation to an undertaking in support of his application for interim restraining orders.

New application

[6] The Commissioner of Police filed on 20 March 2012 a new application for registration of foreign restraining orders (the previous application dated 30 January 2012 having been discontinued). The parties are to file submissions addressing the issue of authorisation by the Attorney-General as follows:

- (a) The Applicant by 26 March 2012;
- (b) The Respondents in reply by 29 March 2012.

[7] I shall then consider whether a hearing is necessary and will address this in the first instance by a telephone conference with counsel.

Costs on discontinuance

[8] By consent there will be an order that the Applicant shall pay the Respondents \$5,000 on account of costs in relation to the discontinuance of the Applicant's application for registration of foreign restraining orders dated 30 January 2012.

Mrs Dotcom's application

[9] Mrs Dotcom has filed an application in relation to the conditions to which the interim foreign restraining order is subject. The Commissioner of Police has filed a notice of opposition. Counsel are to discuss, and if possible resolve, any outstanding

issues. They are to advise the Court of the outcome of these discussions by joint memorandum not later than 30 March 2012. If a hearing may be necessary to determine outstanding issues, counsel should propose timetable orders in the joint memorandum.

Patten, J.