



# E-alert: Tracing Stolen Monies – Causation or Attribution?

By Angela O'Neill, Senior Associate

The recent decision of the Supreme Court of Queensland in *Goomboorian Transport Pty Ltd & Ors v Hanson & Ors* [2018] QSC 135 resolves complex arguments regarding the equitable process of tracing the proceeds of monies improperly received to the proceeds of an insurance policy.

## The Facts

The Plaintiffs together comprise a large business enterprise involved in logging, road haulage, harvesting and farming. Although there are 10 plaintiffs with different interests in the proceedings, for the purpose of this article, we will refer to them collectively as the Plaintiffs.

Ms Norma Hanson (**Norma**) was an employee of one of the Plaintiffs, Goomboorian Transport Pty Ltd from 2002 until her death in September 2014.

In her time with her employer, Norma worked in various roles but ultimately as office manager from 2007 until September 2014. In that role, Norma was accorded a great deal of trust and responsibility. In particular, Norma was given the capacity to conduct transactions on a number of the Plaintiffs' bank accounts.

The directors of the corporate Plaintiffs relied heavily on Norma in relation to all financial aspects of the business.

Shortly before Norma's death, irregularities in the Plaintiffs' finances began to emerge. An investigation conducted after Norma's death indicated that Norma had stolen between \$2,447,306.42 and \$2,802,537.68 from the Plaintiff (which the Court found to be \$2,524,073.60).

Whilst Norma used a large part of the stolen monies to fund her gambling habit, some monies were used for her own benefit and the benefit of her parents, the Second and Third Defendants. Relevantly, some life insurance premiums for a policy maintained by Norma since 2006 had been paid out of the stolen monies. In particular, the Court found that the final premium was paid from the stolen monies.

Following Norma's death, her parents received the proceeds of that life insurance policy of about \$1,427,000.00.

## The Legal Arguments

In relation to the proceeds of Norma's life insurance policy, the Plaintiff's argued:

- any money which Norma stole from the Plaintiffs was to be regarded as held on trust for the Plaintiffs;
- the final life insurance premium was paid from the stolen monies by which Norma obtained insurance cover for the month in which she died (that is, by paying the final premium, Norma acquired insurance coverage for that month, such that the entire proceeds from that month of insurance were the result of the single insurance premium paid from the stolen monies);
- therefore, the stolen monies were converted into the entire proceeds of Norma's life insurance policy and those proceeds became the Plaintiffs' property in equity;
- alternatively, the Plaintiffs sought 4/95ths of the entire proceeds of the insurance policy because 4 of the 95

insurance premiums were paid from the stolen monies.

The Defendants argued:

- Norma's coverage under the insurance policy was dependent upon the payment of all 95 insurance premiums since Norma took out the policy in 2006;
- that at most, the Plaintiffs were entitled to a proportion of the insurance proceeds either by:
  - the number of insurance premiums paid from the stolen monies as against the total number of insurance premiums paid; or
  - the total sum of the insurance premiums paid from stolen monies as against the total sum of insurance premiums paid.

The parties' differing arguments were significant in terms of the question of causation – what events caused Norma to be insured at the time of her death? Was it that Norma had consistently paid all 95 insurance premiums since taking out the policy in 2006? Or was it that, because she had the benefit of the stolen monies, she was able to sustain the direct debit payment insurance premiums rather than voluntarily cancelling the policy or the insurer cancelling the policy due to non-payment? Or was it that Norma paid the final insurance premium?

## The Outcome

The Court approached the issues based on “attribution” rather than “causation”. That is, whether the proceeds of the insurance policy were *attributable* to the payment of all of the insurance premiums or the final premium only.

After examining the terms of the insurance policy and case authorities, the Court found that payment of the insurance proceeds was *attributable* to the final insurance premium paid from the stolen monies. The Court noted in particular:

- the policy involved no aspect of investment and had no surrender value;
- there was no statement that “*the benefits payable were in consideration of the first premium and all other premiums payable*”;
- the insurance premium amounts were re-evaluated on an annual basis;
- the wording of the policy indicated that monthly premiums were paid in advance in consideration for insurance coverage for that month.

Accordingly, the Court declared that Norma's parents held the whole of the insurance proceeds on trust for the benefit of the Plaintiffs because the insurance premium for the month in which Norma died had been paid from the stolen monies.

Norma's parents had used the insurance proceeds including to pay down their home loan and to pay substantial amounts to their respective superannuation funds. It is expected that there will be further proceedings to ascertain the Plaintiffs' entitlements in relation to any assets acquired by Norma's parents using the insurance proceeds.

## The Lessons

Directors of companies or owners of businesses should conduct regular reviews of their financial affairs, especially where employees are authorised to deal with monies, to identify any irregularities and take appropriate steps.

If a staff member has dealt with funds inappropriately, there are a number of avenues to consider for the possible recoupment of misappropriated funds.

At Broadley Rees Hogan, our experienced dispute resolution team and employment law team can guide you through these complex legal challenges – from staff disciplinary matters to investigating and pursuing avenues for recovery of funds.

**Should you wish to discuss any matters arising out of this article, please contact the author:**

Angela O'Neill, Senior Associate  
D +61 7 3223 9130  
F +61 7 3221 5518  
M +61 409 488 165  
E [angela.oneill@brhlawyers.com.au](mailto:angela.oneill@brhlawyers.com.au)

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