

Asset Forfeiture

Extraterritoriality Of Part 5 POCA

SOCA v Perry [2011] EWCA 578; Times, June 10, 2011

18th May, 2011

1. This was an appeal from the decision of Mitting J in the Administrative Court (see [2010] EWHC 1711 (Admin) [2010] 1 WLR 2761) which raised the following question:-

"Does a court in England and Wales have the power under Part 5 of the Proceeds of Crime Act 2002 ("POCA") to make a recovery order in favour of the trustee for civil recovery in respect of recoverable property outside this jurisdiction, whether moveable or immovable?" (para.1).

2. The appellant had been convicted in Israel of offences arising out of a pension scheme that he had set up, having fraudulently obtained £110 million. SOCA became aware that the appellant had funds held in two bank accounts in London that were in his name or the name of family members. By using the provisions at sections 245A-G POCA (inserted by the Serious Organised Crime and Police Act 2005) SOCA obtained a worldwide property freezing order, and property located in America, England and France was identified in addition to property in Israel.
3. Such an order could only be made by a court in this jurisdiction in respect of property outside of the jurisdiction of England and Wales if a civil recovery order could be made in respect of that property under Part 5 (section 240) of POCA. This power would only exist if the property concerned was "property obtained through unlawful conduct" within the meaning of section 304 POCA.
4. The appellant sought to argue that a civil recovery order could not be made by a court in this jurisdiction in relation to property situated outside England and Wales and that, consequently, any property outside England and Wales ought to be excluded from the freezing order.
5. The Court found that by virtue of section 266(2) POCA the recovery order vested the recoverable property in the trustee for civil recovery. Where the property was in

England and Wales then a number of things would follow as a result of the provisions of POCA: the trustee would obtain legal and equitable title to the property.

6. However, where the property was abroad then the Court stated that, without a court order in the relevant country, it was unlikely that the trustee would obtain title to the property by virtue of the recovery order alone. In those circumstances, the Court found that the court did have power to make a civil recovery order in the case of property outside of the jurisdiction, but that this order would provide the trustee with a personal right to enforce the right against the person who was the subject of the order and such other rights, if any, to which the trustee became entitled according to the law of the country in which the property was located.
7. The principal difference when considering recoverable property abroad as compared to that in this jurisdiction was that abroad the trustee was unlikely to enjoy the very full rights that he would enjoy under English law where he automatically becomes the legal and equitable owner (paras. 3 and 156).
8. The Court further held that the effect of Part 5 POCA was to vest in the trustee for civil recovery property wherever situated and whether owned by foreigners or not and wherever the unlawful act took place. There was nothing to suggest that Part 5 was limited to prevent the making of a recovery order in favour of the trustee for civil recovery in respect of recoverable property outside the jurisdiction, whether moveable or immovable. in that sense Part 5 was extraterritorial (para. 158).
9. Finally, the Court held that section 316(4) defined property as "property wherever situated" and those words should be given their natural meaning and they indicated that the Parliamentary intention was that Part 5 should have extraterritorial effect (paras. 160 and 172).

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Chambers of Michael Hubbard Q.C. and Karim Khail Q.C.

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