

Neutral Citation Number: [2023] EWHC 1492 (Ch)

Case No: PT-2022-000936

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY, TRUSTS AND PROBATE LIST (ChD)

Rolls Building
7 Rolls Building
Fetter Lane
London EC4A 1NL

Thursday, 23 May 2023

BEFORE:

MR JUSTICE MICHAEL GREEN

BETWEEN:

SENEL AHMET

Claimant

- and -

(1) DAVID TATUM
(2) THE CROWN PROSECUTION SERVICE

Defendants

MR M WARWICK, KC appeared on behalf of the Claimant
MR M EVANS, KC and **MS A KEIGHLEY** appeared on behalf of the Second Defendant

Ex Tempore JUDGMENT
(Approved)

Digital Transcription by Epiq Europe Ltd,
Unit 1 Blenheim Court, Beaufort Business Park, Bristol, BS32 4NE
Web: www.epiqglobal.com/en-gb/ Email: civil@epiqglobal.co.uk
(Official Shorthand Writers to the Court)

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

MR JUSTICE MICHAEL GREEN:

Introduction

1. This is an application by the second defendant, The Crown Prosecution Service (“CPS”), to strike out the claim on the basis that it constitutes an abuse of the process of this court.
2. The short point is that the CPS says that the claim should be brought in the Crown Court in the context of confiscation proceedings being brought against the first defendant, Mr David Tatum, who has recently been imprisoned for 15 years following his guilty pleas to drugs and conspiracy charges. The claimant, Ms Senel Ahmet, is the partner of the first defendant and she is claiming a beneficial interest in their home at Brindles Farmhouse, Brindles Close, Hutton, Brentwood, CM13 2HR (“the property”). The property is presently registered in the first defendant’s sole name. The claimant still, as I understand it, lives there with their three children.
3. The CPS, which is represented before me today by Mr Martin Evans KC and Ms Anna Keighley, says that this is an abuse of process because Parliament has laid down a comprehensive scheme for the resolution of these issues pursuant to the Proceeds of Crime Act 2002 (“the Act”). It says that by issuing these proceedings in the Property, Trusts and Probate list of the Chancery Division, the claimant is trying to steal a march on the ongoing confiscation proceedings in the Crown Court, and that this is a clear example of proceedings being brought for a collateral purpose and that it amounts to undesirable forum shopping.
4. The claimant, who is represented before me by Mr Mark Warwick KC, says that the CPS is trying to prevent the claimant from having access to the civil courts, and this offends against her basic human rights. Mr Warwick submitted that the claim gives rise to potentially difficult issues of property and trust law which this Division has particular expertise in, as compared to a judge in the Crown Court. Furthermore, he says that the claimant, at the time the claim was issued, which was before the first defendant’s conviction, took the proper course to determine her property rights and that the proceedings cannot therefore be considered an abuse.

5. Despite his well-argued submissions on behalf of his client, I have come to the clear conclusion that, in the circumstances of this case, these proceedings are an abuse of process and I will strike them out. I will endeavour to explain why. I will start with some background facts which can be stated shortly.

Background

6. In or around 2010 the claimant and the first defendant started living together. As I have already said, they had three children between 2002 and 2011. On 21 November 2017 the claimant and the first defendant purchased the property in their joint names. The claimant says that she contributed funds to the purchase from the profit of selling a property in her own name and a previous property that they held in their joint names. The first defendant also contributed together with his mother. The claimant contends that, on purchase, the property was held by them as joint beneficial owners.
7. In 2019 they decided to carry out substantial works to the property, and for such purpose applied for a loan. However, according to the claimant, her poor credit rating at the time meant that it was better that the mortgage was applied for in the first defendant's sole name, so the property was transferred into his sole name. Over £990,000 was borrowed from Virgin Money, secured by a mortgage on the property in September 2020. It appears that the works had already been done, but the money was deposited in a joint account, and, according to the claimant, was used for "general living expenses and presents for family and children". It was also, it appears, used for mortgage repayments.
8. On 15 April 2021 the first defendant was arrested at Heathrow Airport and charged with class A drug offences and money laundering between March 2020 and April 2021. He was remanded in custody. On 4 August 2021 a restraint order was made by HHJ Holt in the Isleworth Crown Court under the Act to prevent dealing with the property and the joint account. The restraint order was made against the claimant and the first defendant. At that date the joint account had some £165,000-odd in it.

9. In March 2022 the claimant applied to vary the restraint order, asserting that she had a beneficial interest in the property and she was entitled to 50 per cent of the monies in the joint account. On 5 May 2022 HHJ Wood KC adjourned the application as the claimant did not attend on that occasion.
10. On 19 May 2022 the case was back before the Crown Court for case management and HHJ Holt varied the restraint order to permit the payment of £3,800 per month on the mortgage. The court also made directions as to how to deal with the balance of the claimant's application in relation to the property and the funds in the joint account. That application was listed to be heard in the Crown Court on 19 August 2022.
11. On 26 May 2022 the first defendant's co-defendant in the criminal proceedings, a Mr Darren Gardener, pleaded guilty to the charges against him. A month later he was sentenced to 158 months in prison.
12. On 19 August 2022 the application came on before HHJ Johnson in the Isleworth Crown Court. Even though her written application had sought relief in respect of her alleged beneficial interest in the property and in the joint account, the oral application that was made on the claimant's behalf by counsel was to seek a payment of £23,070 from the joint account, which was said to be the sum that she had paid from her own account in respect of the mortgage between the restraint order being made and the variation on 19 May. HHJ Johnson, however, refused the application. The issue of the beneficial ownership of the property and the joint account was therefore not determined then because it was not pursued by the claimant.
13. Having failed on her application and having consulted specialist property counsel, the claimant decided to change tack and to try to use this court to determine her interests in the property.
14. On 9 November 2022 the Part 8 claim, with particulars of claim unusually attached, was issued. Mr Warwick said that this should have been a Part 7 claim, which is why he drafted the particulars of claim. Nothing turns on that.

15. The first defendant has not acknowledged service and is not defending the claim. There appears to be no real disputed issue between the claimant and the first defendant. It is the inclusion of the CPS as the second defendant that is indicative of the true purpose of these proceedings, although Mr Warwick said that this was because it was clearly interested in the matter, having obtained the restraint order.
16. The CPS acknowledged service and on 7 December 2022 issued this application to strike out supported by the witness statement of Ms Emma Firbank. The matter was first listed before Deputy Master Arkush on 16 February 2023, and the parties filed skeleton arguments and were ready for a contested hearing. But the Deputy Master thought there was insufficient time to deal with it and that it should be heard by a full-time High Court Judge. So it got adjourned to me today.
17. I am grateful to counsel for their concise submissions which were concluded by the short adjournment and enabled me to give judgment today.
18. Between the hearing before Deputy Master Arkush and today there were significant developments in the criminal proceedings. The first defendant pleaded guilty to (1) being concerned in the supply of 5 kg of cocaine, and (2) conspiracy to transfer criminal property, namely £900,000, being the proceeds of an estimated additional 22.5 kg of cocaine. On 4 April 2023 HHJ Edmunds KC sentenced him to 15 years in prison.
19. The CPS then applied for a confiscation order under section 6 of the Act. A timetable for evidence has been set leading to a hearing in the Crown Court listed for 13 October 2023. The claimant has the right to intervene in the confiscation proceedings to protect her beneficial interests. Instead she has chosen to proceed in this court and to continue to insist that she is entitled to do so.

The Proceeds of Crime Act 2002

20. I turn now to look at the Act in more detail. Mr Evans relies particularly on a decision that Lewison J, as he then was, in *Capper v Chaney & Anor* [2010] EWHC 1704 (“*Capper*”), which he says is materially identical to this case as it was in the context of

the Act and the Chancery Division proceedings that were attempted by Mr Capper were struck out. Mr Warwick says *Capper* is clearly distinguishable and was, in any event, decided on the basis that it was a “second bite of the cherry” case. I will come to look at it in more detail in a moment.

21. Turning to the Act, it replaced and consolidated the Drug Trafficking Act 1994 and the Criminal Justice Act 1988. Under those Acts, while the Crown Court had jurisdiction to make confiscation orders, the High Court had specific jurisdiction to make restraint orders to preserve assets and to make receivership orders to enforce confiscation orders. The Act removed the High Court’s jurisdiction in such respects and transferred jurisdiction to the Crown Court. The Act provides a third party, such as the claimant, with a full opportunity to put forward any claims to an interest in property that may become subject to a confiscation order. Mr Evans submitted that all such disputes under the Act are to be determined in the Crown Court as that is what Parliament has decreed.
22. If the Crown Court decides to make a confiscation order, it is a personal judgment for a sum of money against a defendant. However, the defendant cannot be ordered to pay more than he can afford, and this is called in the Act “the available amount”. It is defined in section 9 and requires the court to assess the value of his property interests in disputed property (see also sections 82 to 84). A defendant’s realisable property may include the value of any so-called “tainted gifts”, and this issue can only be determined in the Crown Court under the Act.
23. Where there is a confiscation investigation, as there is now in this case, the Crown Court can make orders for disclosure, search and seizure of warrants, and production orders – see sections 345, 352 and 357. A third party such as the claimant may be joined to the confiscation proceedings as a party so as to establish the defendant’s interest in property. That will also bind the third party to the decision.
24. Section 10A of the Act is important and it provides as follows:

“10A Determination of extent of defendant’s interest in property

- (1) Where it appears to a court making a confiscation order that –
- (a) there is property held by the defendant that is likely to be realised or otherwise used to satisfy the order, and
 - (b) A person other than the defendant holds, or may hold, an interest in the property

The court may, if it thinks it appropriate to do so, determine the extent (at the time the confiscation order is made) of the defendant's interest in the property.

(2) The court must not exercise the power conferred by subsection (1) unless it gives to anyone who the court thinks is or may be a person holding an interest in the property a reasonable opportunity to make representations to it.

(3) A determination under this section is conclusive in relation to any question as to the extent of the defendant's interest in the property that arises in connection with –

- (a) the realisation of the property, or the transfer of an interest in the property, with a view to satisfying the confiscation order, or
- (b) any action or proceedings taken for the purposes of any such realisation or transfer.

(4) Subsection (3) –

- (a) is subject to section 51(8B), and
- (b) does not apply in relation to a question that arises in proceedings before the Court of Appeal or the Supreme Court.

(5) In this part, the extent of the defendant's interest in property means the proportion that the value of the defendant's interest in it bears to the value of the property itself."

25. Section 10A therefore enables the Crown Court to determine the extent of the defendant's interest in property.
26. Mr Warwick relied on the use of the word "may" as indicating that the Crown Court is not being given exclusive jurisdiction to determine those property interests, leaving the door open to the High Court to do so. I do not read it that way. It is leaving the Crown

Court to decide whether it wishes to deal with such issues at that stage, that is, as part of the confiscation proceedings, or maybe to leave it to a later stage such as enforcement which may be a more appropriate time to consider those matters.

27. The important point about section 10A is that it requires the involvement of any third party claiming an interest in the property in question. Such a third party can participate in the process and then they will be bound by the court's determination. The court may direct, or a third party may elect, to make representations, but crucially the third party has the opportunity and ability to assert, establish and protect their interests in the relevant property. It is agreed that any such determination by the Crown Court would be to the civil standard of proof, namely the balance of probabilities.
28. The court is required to determine, as between the defendant and any third party, the value of their interests and so, where relevant, the extent of each of their beneficial interests. Any third party joined to the proceedings has a right of appeal to the Court of Appeal (see section 31(4)).
29. At the earlier stage of an application for a restraint order, all parties affected by such an order have a right to apply to vary or discharge it under section 42 of the Act. The claimant availed herself of this right in her applications to the Crown Court last year. She also had the right to appeal to the Court of Appeal if she was dissatisfied with the resulting orders.
30. Once a confiscation order is made there are various methods of enforcement. In relation to disputed property interests, the Crown Court may appoint an enforcement receiver on the application of the CPS under section 50. By section 69 of the Act the power to appoint a receiver must be with a view to realising the defendant's interests in the property to satisfy the confiscation order, but also with a view to the third party retaining or recovering their value in the property. By section 51(8) the court must not confer such powers on the receiver: "unless it gives persons holding interests in the property a reasonable opportunity to make representations to it."
31. So once again, at this latter stage of the process, the third party is given the right to intervene to protect their beneficial interests in property that may be sold by the

receiver. However, if the third party has already made representations at the confiscation order stage as to their beneficial interests, their right to argue the same points may be curtailed by section 51(8B). Again, a right of appeal is preserved.

32. By section 58(5), where there are proceedings in another court, such as this court, in respect of property that is subject to a restraint order: “that court may either stay the proceedings or allow them to continue on any terms it thinks fit.” By subsection 58(6), before exercising any power under subsection 58(5), the court must give the applicant for the restraint order and any receiver that has been appointed the opportunity to be heard. To my mind, that indicates that Parliament was assuming the primacy of the Crown Court proceedings. There may be any number of other pending proceedings concerning relevant property, but account must be taken of the restraint order and the CPS has to be heard. Subsection 58(5) does not give the green light to a claimant, such as the one before me, to start proceedings in this court following the making of a restraint order.
33. It does seem to me, in accordance with Mr Evans’s submissions, that Parliament has provided a complete and exhaustive code for the resolution of disputed property rights in the context of restraint and confiscation orders in criminal proceedings. Third party rights are fully protected by ensuring that, at each stage, the third party is able to argue in support of their alleged beneficial interests in the property concerned.
34. There is, in my judgment, a clear intention of parliament that disputed issues of beneficial interests in property subject to restraint and confiscation orders under the Act are to be determined in the Crown Court. It cannot have imagined that a third party should be able to start parallel proceedings in the Chancery Division to determine those exact same rights so as to be binding on the CPS in the Crown Court proceedings. That would undermine the carefully structured process that fully protects a third party’s rights. If Parliament had thought that the Crown Court was not equipped to determine disputed property rights, it would not have set up such a structure. And I might add, as Mr Evans made clear to me, there are always issues arising in relation to a matrimonial home, which Crown Court judges dealing with these sorts of cases are well able to decide.

The Case Law

35. Before turning to the case law it is important to note that
- (1) The reality is that this is a claim only between the claimant and the CPS. The first defendant does not dispute the claim and there appear to be no issues as between him and the claimant in relation to the property;
 - (2) Following on from that, if the CPS had not been prosecuting the first defendant, and had not obtained a restraint order, this claim would not have been brought; and
 - (3) As the claimant's solicitor said in his witness statement, this was a deliberate tactical decision as they considered: "that her interests are better served by bringing a claim in a civil court rather than leaving the matter to (possibly) arise in a criminal court."
36. Mr Warwick contended in his skeleton argument that the CPS were joined in the interests of transparency because it was anticipated that the CPS would want to challenge the claimant's interest. That does not reflect the substance of the claim, which is to pursue the CPS in a civil court so as to bind it in the confiscation proceedings. Quite how that would work now with the timing of the confiscation proceedings I do not know. But any suggestion this is an ordinary civil dispute between a couple as to their interests in their home is wide of the mark. This is all bound up with the prosecution of the first defendant and the pursuit of restraint and confiscation proceedings which I have already said Parliament has decided should be dealt with in the Crown Court.
37. Turning to the authorities, and first of all *Capper*, which was a case concerned with cash in a safe deposit box which had been seized by the police as it was suspected that this was Mr Chaney's, the accused, and that it was the proceeds of his criminal activities. Mr Capper, the claimant, claimed to own £250,000 of the cash, and he first applied to the Magistrates Court which had power under the Act to release such detained cash to a third party who claimed to own it. Before the cash is forfeited,

Mr Capper had the right to argue that it was his. He did so, but failed before the magistrates. He could have appealed to the Crown Court, but he did not do so. Instead he applied to the Chancery Division, and the Commissioner of Police was made a defendant. The Commissioner applied to strike out the proceedings.

38. The Master who heard it at first instance refused to strike out Mr Capper's claim on the basis that the Act did not exclude the High Court from jurisdiction. However, Lewison J, as he then was, allowed an appeal from the Master and struck the proceedings out. He disagreed with the Master largely on the basis of a line of authority in tax cases, which had not been cited to the Master, dealing with the jurisdiction of the special commissioners for tax, and whether that meant that proceedings started in the High Court would be an abuse if they were in reality within the jurisdiction of the specialist tribunal that Parliament had decided should hear those cases. In particular, he relied on *Autologic Holdings Plc v Inland Revenue Commissioners* [2006] 1 AC 118, per Lord Nicholls ("*Autologic*"). The proceedings in *Autologic* were struck out because it was an abuse of process not to use the tribunal designated to deal with such disputes by Parliament. Lord Nicholls went on to say in paragraph [13] of his speech:

“I question whether in this straightforward type of case the court has any real discretion to exercise. Rather, the conclusion that the proceedings are an abuse follows automatically once the court is satisfied the taxpayer's court claim is an indirect way of seeking to achieve the same result as it would be open to the taxpayer to achieve directly by appealing to the special commissioners. The taxpayer must use the remedies provided by the tax legislation.”

Therefore, what his Lordship is saying is: it automatically follows that if the taxpayer is seeking to achieve the same result as he could through the statutory route, that the other proceedings would be an abuse.

39. Lord Nicholls also expressly approved Robert Walker J's judgment in *Glaxo Group Ltd v Inland Revenue Commissioners* [1995] STC 1075, where he said that the test was whether the “proceedings seek relief which is more or less co-extensive with adjudicating on an existing open assessment.”

40. Lewison J held that the issues before the Magistrates Court was essentially the same as was raised in the High Court, namely: who owns the cash. He was particularly unimpressed with the submission that this was a dispute between the two individuals, as Mr Chaney had consented to the release of the cash to Mr Capper, and the Commissioner of Police had been joined to the proceedings. As here, the real objective was to steal a march on the other proceedings.
41. Lewison J also said that this amounted to undesirable forum shopping as Mr Capper had failed before the Magistrates and was basically looking to circumvent that finding by starting proceedings in the High Court. Mr Warwick said that the case was distinguishable because it was really about not allowing Mr Capper a second bite of the cherry, whereas in this case the claimant has not sought to establish her beneficial interests in the property in the Crown Court.
42. However, what Lewison J actually said about this is in paragraph [27] when he said as follows:
- “In addition Mr Capper has already tried and failed to persuade the magistrate that he is the owner of the cash. Either that decision creates an issue estoppel or it does not. If it does, then that is an additional reason why this action is an abuse of process. But if it does not, then Mr Capper may make out his case again when the application for forfeiture is determined. To bring proceedings in the High Court following his failure to persuade the magistrate is, in my judgment, undesirable forum shopping.”
43. What he is saying there is that Mr Capper is entitled to argue the matter again at the forfeiture stage, unless he is estopped. The true ratio of the decision is that this should be decided in the courts Parliament has said should hear it, namely the Magistrates Court.
44. I see no basis for distinguishing *Capper* from this case. Like in *Capper*, the claimant has already tried to establish her beneficial interest in the property and the joint account, albeit she did not pursue the application last August. Parliament has decided that these matters to do with the available property of the first defendant for confiscation should be determined in the Crown Court and the claimant has every opportunity of arguing her case there.

45. Mr Warwick sought to suggest:, (1) that *Capper* was only about disputes as to cash; and (2) that it was a case that the Magistrates had been given exclusive jurisdiction by Parliament. As to the latter point, Lewison J expressly referred to the fact that the Magistrates did not have exclusive jurisdiction, in paragraph [21] of his judgment. The High Court proceedings were still an abuse because the issue was essentially the same in both, and so it is necessary to go down the statutory route.
46. As to the first point on cash, I do not see that this makes any difference. Cash is just as much property as real property and the same principles of jurisdiction and abuse must apply.
47. Mr Evans also relied on Master Kaye’s decision in *Chellapermal v the Financial Conduct Authority* [2019] EWHC 2260 (Ch). In *Chellapermal* Master Kaye applied *Capper* and *Autologic* as part of her reasoning that the proceedings should be struck out as an abuse. Mr Warwick said that this was a completely different case, where again the complainant was having a second bite of the cherry. In fact, it was probably a third bite of the cherry because the claimant had also tried judicial review proceedings, but these had been refused as totally without merit.
48. However, it was the bypassing of the statutory scheme that was the foundation of the findings that the claim was an abuse. At paragraph [78] Master Kaye said:

“Following the decision in *Capper* in which Lewison J referred to the decision of *Autologic Holdings plc* it is plainly an abuse of process to seek to circumvent a statutory scheme laid down by Parliament by issuing proceedings in a different type of tribunal or court.”

I agree.

49. Mr Warwick referred me to *Re Norris* [2002] 1 WLR 188, a decision of the House of Lords under the Drug Trafficking Act 1986. That is important because although the facts have some similarity with the present case, it will be recalled that the scheme under the predecessors to the Act was different in that it was only the High Court that had jurisdiction to appoint any receiver to enforce a confiscation order.

50. The House of Lords allowed the wife’s appeal which meant that she was able to argue in the High Court that her alleged interest in the property should not be covered by the receivership order. As a person affected by the receivership she had the statutory right in those High Court proceedings to make representations to the court, which she was seeking to avail herself of.
51. *Norris* is therefore readily distinguishable on that basic ground. Parliament assigned those issues to the High Court under the Drug Trafficking Act 1986, and so the wife was entitled to assert her civil rights over the property in those High Court proceedings. The House of Lords was not saying that third parties always have the right to have such claims heard in the High Court. On the contrary, it supports the CPS’s proposition that such rights should be litigated where Parliament has assigned them. Under the Act, that is now the Crown Court.
52. Mr Warwick also referred to the Court of Appeal Criminal Division decision in *R v Forte & Anor* [2020] EWCA Crim 1455, but in my view he has taken paragraph 10 of Edis LJ’s judgment out of context. Edis LJ referred to: “Civil proceedings to determine the extent of her beneficial interest in Hillside Lodge, or her mother’s interest in funds held in a bank account in her name, might arise in many ways.” This was not an encouragement for the third party to start civil proceedings when claiming an interest in a property potentially subject to a confiscation order. Rather, he was contrasting the position where there were completely unrelated civil proceedings not arising as a result of criminal proceedings and the pursuit of remedies under the Act. Importantly, he went on in the next paragraph [11] to make it clear that where there were proceedings under the Act going on, the third party’s alleged interest would be dealt with under section 10A, and there were extensive powers in the Crown Court to determine the issues effectively.
53. Finally, both parties referred to the postscript in the Court of Appeal judgment in *Serious Fraud Office v Lexi Holdings plc* [2009] QB 376, in which the Court of Appeal suggested that in cases of complexity where a relaxation of a restraint order is sought:

“Consideration should be given to adjourning those variation proceedings to enable the issues to be determined in proceedings before a specialist Chancery Circuit judge or High Court judge of

the Chancery Division. Alternatively, those arranging the listing of such cases in the Crown Court should seek to ensure that they are heard by a judge with the relevant experience and expertise.”

54. That does seem to contemplate separate proceedings in the Chancery Division, but importantly it would be a decision of the Crown Court to allow such proceedings to be taken, because the application will of necessity have been made to vary the restraint order. Mr Evans tells me that in practice the CPS is unaware of this route having been followed. In any event, this is not a case of complexity; rather it is one that is well within the expertise of Crown Court judges to deal with.

Conclusion

55. In conclusion, this is not about depriving the claimant of access to the courts or preventing her from fully asserting her claim to a beneficial interest in the property. Nor does it put third parties in the position of the claimant in a difficult position when they want to establish their beneficial interest in relation to property subject to a restraint order.
56. Mr Warwick suggested that at the stage when the claim was issued, when there has been no conviction, the claimant must be entitled to establish her proprietary rights in ordinary civil proceedings. He submitted that it would be a strong thing for me to conclude that any such proceedings must be an abuse if they are started after a restraint order has been made.
57. However, that really is the point. Once a restraint order has been obtained, that brings into play the scheme and process devised by Parliament for dealing with disputed interests in a defendant’s property. The only reason for this claim was because of the restraint order. So the issue is whether the claimant is obliged to follow the procedure prescribed by Parliament for the resolution of such matters in the context of the Act. Section 10A does use the word “may”, but the authorities are clear, particularly *Capper* in applying *Autologic*, that it is an abuse to seek to try the same issue in a different jurisdiction to that which Parliament has decided should hear those matters.

58. The claimant will be able to fully argue her case in the Crown Court, and the fact that she has already failed in one application does not mean that she cannot argue for her beneficial interests in the property when the issue is live under the confiscation order application. Similarly, at the time she issued this claim she could have applied to vary the restraint order if she wished to do something with her equity in the property. Furthermore, she can even wait until the enforcement stage when there may be a very real risk of the property being sold, and then seek to prove her beneficial interest. In other words, she is not in any way prejudiced by not being able to pursue this claim in the Chancery Division, and she is able to protect her interests fully in the proceedings under the Act in the Crown Court.
59. Accordingly, I will therefore strike out the claim.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Unit 1 Blenheim Court, Beaufort Business Park, Bristol BS32 4NE

Email: civil@epiqglobal.co.uk

This transcript has been approved by the Judge