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IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION



No. KB-2023-002180

Royal Courts of Justice
Strand
London, WC2A 2LL

Tuesday, 20 June 2023

NCN: [2023] EWHC 2332 (KB)

Before:

MASTER DAGNALL

B E T W E E N :

DIRECTOR OF PUBLIC PROSECUTIONS

Claimant

- and -

(1) TOMAS PLEPYS
(2) HSBC BANK PLC

Defendants

MR T RAINSBURY appeared on behalf of the Claimant.

THE DEFENDANTS did not appear and were not represented.

J U D G M E N T

(V i a M i c r o s o f t T e a m s)

MASTER DAGNALL:

- 1 The application before me is brought by the Director of Public Prosecutions by way of a Civil Procedure Rules (“CPR”) Part 8 claim form issued on 28 April 2023 for the registration of a United States of America court order, made by a Judge Alejandro of the United States District Court, and for a recovery order in relation to that United States order; the United States order being dated 29 September 2021.
- 2 The essential claim in terms of fact is that a Mr Nicholas Conte, a United States citizen, was fraudulently deceived into sending the sum of US\$50,000 to an account at HSBC Bank plc in Great Britain in the name of Tomas Services, of which the relevant account holder is the defendant. The US dollars appear to have been converted into Great British pounds in the sum of slightly in excess of £36,000 although only some £15,709.66 remains within the HSBC account.
- 3 The claim is brought by the Director of Public Prosecutions as an enforcement authority under the Proceeds of Crime Act 2002 (“the 2002 Act”), and the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (“the 2005 Order”). The defendants to the claim are Mr Tomas Plepys, the HSBC bank account holder, and HSBC Bank itself which is described as an interested party.
- 4 I am satisfied from the certificates of service which have been provided to me that both Mr Plepys and the bank have been served, and that: although Mr Plepys was served on 15 May 2023, he has not provided any acknowledgement of service within the time period provided

for by the rules; and that HSBC has provided an acknowledgement of service dated 10 May 2023, but in which they indicate that they do not intend to contest the claim.

- 5 The evidence before me – being contained principally in the claim form itself and in a witness statement of Andrew Logan dated 28 April 2023 – establishes that the claim to the United States Court was made by the United States Government through appropriate officers, being a United States attorney and an assistant United States attorney, to forfeit, and have condemned for the use and benefit of the United States of America, the £36,201.60 which had been paid into the HSBC bank account on the basis that they were the proceeds, in effect, of fraud; the relevant fraud being fraudulent misrepresentations with regards to the potential sale of a helicopter, and where the US\$50,000 which became the GB£36,000 had been sought and paid as a purported down payment, but where it turned out that the relevant transaction and potentially the helicopter itself did not exist. The United States Government therefore took the approach, and contended to the United States Court, that the representations which had induced the payments of the monies to the bank account were fraudulent.
- 6 The claim in the United States then proceeded to involve the victim of the asserted fraud, namely Mr Nicholas Conte, who had paid the US\$50,000 which became the £36,000-odd in the HSBC bank account. Mr Conte then made his own application to be entitled to the monies in the HSBC bank account, being an application made within the American proceedings. A settlement agreement was entered into between Mr Conte and the United States Government, the precise terms of which are not before this court but which is recorded in the United States court order of 29 September 2021 as involving the United States Government recognising that Mr Conte owns or should own the transferred monies as being the innocent owner, and where the agreement between those parties was that the

United States Government will seek to obtain those monies, which is the underlying purpose of these proceedings, and then transfer to the victim, Mr Conte, his entitlement, which at first sight would appear to be the entirety of the funds although that is not this court's concern.

- 7 That agreement was reached by consent, but I note that after reciting the history and that agreement within their order, Judge Alejandro recited the following:

“Whereas for the reasons set forth in the Government's motion, the court concludes that it should grant the motion.”

Following which, Judge Alejandro ordered that a final order and consent judgment of forfeiture is granted, being that all right, title and interest in the defendant – that is actually Mr Conte's – £36,201.60 is forfeited to the United States of America and is vested in the United States of America, and the order then provides that the United States Marshall for the relevant district, or their designee, shall dispose of the forfeited currency in accordance with the settlement agreement executed by the Government and Mr Conte.

- 8 There are references to “the defendant”, but it seems that the United States Court have in some ways treated the relevant money itself as being the defendant. There is a defined term: “the defendant currency”. In any event, what it seems to me has happened on the basis of the evidence before me, and where no-one who is a party to this action seems to wish to contest it, is that the United States Court has come to its own conclusion that these monies were fraudulently obtained from Mr Conte, and has directed by what is effectively a procedural mechanism that the United States of America should become entitled to the money, but has also directed that the United States of America as an entity will, on actually recovering the money, itself transfer it to Mr Conte. It is, effectively, those rights and

entitlements which the Director of Public Prosecutions, as an enforcement authority under the 2002 Act and 2005 Order is seeing to enforce and implement in these proceedings.

9 Mr Rainsbury, counsel for the DPP, has taken me first to the 2002 Act and to the concept of an external order which is defined by s.447 of that Act. Section 447(2) defines an external order as an order which:

- (a) “is made by an overseas court where property is found or believed to have been obtained as a result of or in connection with criminal conduct, and
- (b) is for the recovery of specified property or a specified sum of money.”

10 I have noted and borne in mind that criminal conduct for all these purposes is defined by s.447(8) of the 2002 Act as conduct which:

- (a) “constitutes an offence in any part of the United Kingdom, or
- (b) would constitute an offence in any part of the United Kingdom if it occurred there.”

Mr Rainsbury says to me that the underlying conduct in this case, being in terms of apparent fraudulent deception inducing money to be paid into a United Kingdom bank account may even, for these purposes, have actually occurred in the United Kingdom, but if it did not it seems to me in any event it would have been criminal conduct had it occurred within the United Kingdom.

11 It seems to me that Mr Rainsbury is correct in the light of what I have said so far to say that the United States court order of 29 September 2021 is “an external order” for the purposes of the 2002 Act and the definition in s.447(2). It is made by the United States court which is “an overseas court.” does seem to me that that order, in the light of the recitals I have quoted

and its terms, was made where property was found or believed to have been obtained as a result of or in connection with criminal conduct, and where the obtaining of money by fraudulent misrepresentations is a crime in this country, and in my understanding and on application of the usual presumptions of law across jurisdictions (i.e. that foreign law is to the same effect as England & Wales law) is also a crime in the United States. It is also an order for the recovery of specified property, being the £36,201.60 of which the money is in the HSBC bank account, being the £15,709.66 and the accrued interest forms part.

12 Mr Rainsbury then took me to s.444, which provides:

“(1) Her Majesty may by Order in Council—

...

(b) make provision for the realisation of property for the purpose of giving effect to an external order.”

13 Mr Rainsbury has also taken me to s.446 of the 2002 Act, which provides that rules of court may be made as is necessary or expedient to give effect to such an Order in Council. He has then taken me to the 2005 Order which is such an Order in Council, and to Art.142 which provides the Secretary of State may forward an external order to a relevant enforcement authority, which has happened in this case; and to Art.143, which (i) provides that the proceedings for a recovery order pursuant to the registration of an external order may be taken by the enforcement authority in the High Court against any person who the authority thinks holds recoverable property – Mr Rainsbury contends that these are such proceedings which, as long as the external order is registered, seems to me to be the case – and (ii) contains provisions for a need for the enforcement authority to serve the claim form on the respondent and any other person whom the authority thinks holds any associated property – and it seems to me that the only relevant persons within those categories are the defendant and the bank as interested party, and such service has taken place. Article 143 contains

various other provisions, which appear to me are satisfied by reason of the existence and contents of the claim form in this case.

14 Mr Rainsbury next takes me to Art.177, which in sub-article (1) provides that the court must decide to give effect to an external order which falls within the meaning of s.447(2) of the Act, which I have already held that the United States order does, by registering it and making a recovery order of its terms so any property or sum of money which is specified in it is recoverable property. Recoverable property is defined by Art.202 as being property or a sum of money which is specified within an external order, although the article goes on to say that accordingly the property must have been found to have been obtained as a result of or in connection with criminal conduct or must have been believed to have been so obtained, and with certain further provisions that the property which has been specified as being disposed of by the external order can only remain as recoverable property if it is held by a person into whose hand it may be followed, which includes a person who, through their conduct, has obtained the property.

15 In some ways the definitions are somewhat circular, but it seems to me that, for the reasons which I have already given, this is property which is both specified in the relevant external order and has been found to be obtained as a result of or in connection with criminal conduct or to be believed to have been so obtained.

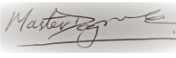
16 It therefore seems to me that the money in the bank account is “recoverable property”, and therefore under Art.177 the court must decide to give effect to this external order by registering it and making a recovery order. Sub-article (3) provides the recovery order must vest the recoverable property in the trustee for civil recovery, the relevant trustee who has signed the relevant documentation being one Christine Bartlett as the proposed trustee. There are various exceptions in Art.177 to the court making a recovery order contained in

sub-article (4) and elsewhere. Having considered the various exceptions, it does not seem to me, on the evidence before me, that any of them would be made out, even if anyone was contending that such was the case.

- 17 It therefore seems to me that applying the 2005 Order in Council, that I must register the United States order as an external order and make a recovery order. I do note that in Art.200 it is provided that the enforcement authority should not start proceedings for a recovery order unless they reasonably believe the aggregate value of the recoverable property is over £10,000. That is clearly the case here in light of the figures which I have already referred to.
- 18 Mr Rainsbury has further taken me to procedural provisions for applying for a recovery order contained in the Civil Recovery Proceedings Practice Direction made under the provisions of the Civil Procedure Rules, and I have taken into account fully para.4 of that Practice Direction as to what must be contained in the claim form and the relevant evidence, and I am satisfied that those various requirements have been met.
- 19 It therefore seems to me that in all the circumstances I should do, in effect, what the Director of Public Prosecutions asks, and where the interested party has formally indicated they do not seek to oppose, and I am satisfied that the defendant, who is the bank account holder, has been properly served but has not produced any acknowledgement of service within the time period provided for by the rules.
- 20 I will therefore make an order which formally registers the external order. I will then make a recovery order in relation to the money in the bank account, provide that it will vest in the trustee, namely Christine Bartlett, and make the usual consequential orders providing that

transfers will take place and giving the trustee the usual powers and providing the trustee shall be discharged upon full dispersal of the scheduled property. I am somewhat unclear as to what I am asked to do about costs, and I will deal with that in a moment.

- 21 I therefore, in effect, make the order which is sought by the DPP, although it seems to me that the order ought to contain a formal registration because that is what is required by the legislative provisions which I have mentioned in this judgment.

Approved  20.10.2023

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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