



25 July 2012

PRESS SUMMARY

Perry and others (Appellants) v Serious Organised Crime Agency (Respondent)
Perry and others No. 2 (Appellants) v Serious Organised Crime Agency (Respondent)
[2012] UKSC 35

On appeal from [2010] EWCA Civ 907; [2011] EWCA Civ 578

JUSTICES: Lord Phillips (President), Lady Hale, Lord Brown, Lord Judge, Lord Kerr, Lord Clarke, Lord Wilson, Lord Reed, Sir Anthony Hughes

BACKGROUND TO THE APPEALS

On 24 October 2007 Mr Perry, was convicted in Israel of a number of fraud offences in relation to a pension scheme that he had operated in Israel. He was given a substantial prison sentence and paid a fine of approximately £3m.

The Serious Organised Crime Agency (SOCA) is now seeking to deprive Mr Perry, together with members of his family and entities associated with them, of assets obtained in connection with his criminal conduct, wherever in the world those assets may be situated. None of these persons resides in the United Kingdom.

As a preliminary step, aimed at ensuring that its action to recover assets is effective, SOCA obtained a worldwide property freezing order (PFO) against Mr Perry, his wife and Leadenhall Property Limited (‘the PFO appellants’). Before that, it had obtained a disclosure order (DO) under which notices requesting information were given to Mr Perry and his daughters (‘the DO appellants’) by letter addressed to Mr Perry’s house in London.

The PFO appellants challenged the PFO on the basis that a civil recovery order could only be made in respect of property that was within the territorial jurisdiction of the court making it. The DO appellants contended that notices under the DO could not be addressed to persons who were not within the UK.

In the PFO matter, the High Court ruled that the provisions of the Proceeds of Crime Act 2002 (POCA) relied on by SOCA did apply, save as to orders made in Scotland, to property outside the jurisdiction and upheld the scope of the PFO. An appeal from this decision was dismissed by the Court of Appeal on 18 May 2011. Earlier, the Court of Appeal had also upheld the validity of the notices requesting information given to the DO appellants under the DO. Appeals against the PFO and the DO notices were brought to the Supreme Court and were heard together.

JUDGMENT

The Supreme Court allows both appeals: the PFO appeal by a majority (Lord Judge and Lord Clarke dissenting) and the DO appeal unanimously. Lord Phillips (with whom Lady Hale, Lord Brown, Lord Kerr and Lord Wilson agree) gives the main judgment. Lord Reed and Sir Anthony Hughes give shorter concurring judgments. Lord Judge and Lord Clarke give a joint dissenting judgment on the PFO appeal.

REASONS FOR THE JUDGMENT

SOCA's application was pursuant to the powers in Part 5 of POCA for the court to make a civil recovery order in respect of property which is, or represents, property obtained through criminal conduct. The applicable definition of the term 'property' is in section 316(4) which provides that 'property is all property wherever situated'. However, many of the provisions referring to property in POCA plainly apply only to property within the UK and the scope of the term depends on its context. Thus the definition should not have been given the weight it had carried in the courts below [14].

Although there was a presumption under principles of international law that a statute does not have extraterritorial effect, states have departed from this by agreement in the case of confiscating the proceeds of crime. POCA must be read in the light of the Strasbourg Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, which recognises that the courts of state A may seek to seize property in state B which is the proceeds of the criminal conduct of a defendant subject to the criminal jurisdiction of state A [18-29]. Parts 2, 3 and 4 of POCA provide for (a) the imposition of personal obligations in respect of property worldwide; (b) proprietary measures to secure and realise property within the UK and (c) requests to be made to other states to take such measures in respect of property within their territories. This represents a coherent international scheme which accords with the Strasbourg Convention and with principles of international law [31-38].

The purpose of Part 5 of POCA is to enable recovery in civil proceedings in each part of the UK of property which is or represents property obtained through unlawful conduct. The focus is on the property rather than a particular defendant. In their natural meaning, and in the absence of provisions corresponding to those for enforcement abroad in Parts 2, 3 and 4, the provisions of Part 5 apply only to property within the UK [53-56, 136]. The only anomaly with this analysis was the presence of section 286(2) POCA which purported to create a different position in Scotland from that in the rest of the UK. There was no satisfactory explanation for this and it remained an enigma [75-77] (Lord Reed thought it may have reflected a misunderstanding [152]), but it did not alter the overall conclusion that the High Court of England and Wales had no jurisdiction under Part 5 to make a recovery order in relation to property outside England and Wales. Thus the property covered by the PFO must be limited to such property, and the appellants could not be required under it to disclose all their worldwide assets [78-82].

The notices under the DO were given to persons who were, and were known by SOCA to be, outside the jurisdiction of the UK. Compliance with such orders was subject to penal sanction. It was generally contrary to international law for country A to purport to make criminal conduct in country B committed by persons who are not citizens of country A. It was therefore implicit that the power to impose positive obligations to provide information could only be exercised in respect of persons who were within the UK and the DO did not authorise the sending of notices to persons outside the UK [94, 98].

Lord Judge and Lord Clarke, dissenting on the PFO appeal, agreed that POCA was poorly drafted but held that the objective was clearly to deprive criminals of the proceeds of their crimes, whether here or abroad [160]. The expression 'all property wherever situated' should have the same meaning in all sections in which it appeared [164]. Control mechanisms had been created in Part 5 to ensure that orders made could avoid any improper extra-territorial effect or infringement of the principle of sovereignty. Recovery orders took personal effect and, in respect of foreign property, were subject to the local law [167].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

www.supremecourt.gov.uk/decided-cases/index.html