

Channelling Assets

28 Aug 2013

Rahman Ravelli recently assisted when Channel 4's "Dispatches" programme examined how UK authorities often struggle to seize assets abroad. But, as Aziz Rahman says here, it would take much more than half an hour to show the full picture.

When we were asked, as leading fraud and business crime lawyers, to assist in the making of the Dispatches programme "Britain's Millionaire Criminals" we had no problem in accepting. It is often the case that we are asked for advice from the media when they are looking into the areas of law in which we specialise.

The programme was billed as an examination of how individuals can continue to live the high life abroad, even when some may have been convicted of serious crimes. Dispatches reporters were looking to show that the UK authorities are failing to recover wealth that many of those either convicted or suspected of crime have been ordered to pay back. As an issue, this is something that would be very hard to make into a riveting 30-minute programme if all aspects were to be considered. The programme took a good look at the situation and gave viewers a snapshot of the situation. In short, it told them that some "bad guys" are still living the high life because the authorities cannot get back the wealth that they have accumulated through wrongdoing.

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That is certainly the case. The issue of civil recovery – the seizing or confiscation of someone’s assets – has certainly been a thorny one for the UK government in recent years. Yet the idea that anyone living overseas and facing UK civil recovery proceedings can lie back and feel untouchable is far from the truth. The past decade has shown that the authorities are looking harder than ever at ways of recovering assets from those based abroad. Although they may not make a TV programme fit to pull in millions of viewers, developments in civil recovery have been swift in the past year- which should make anyone facing or fearing civil recovery aware of the need to seek expert legal help immediately. With the law in this field changing rapidly, only lawyers who specialise in this area will be able to make sure anyone has a fighting chance of retaining their assets.

If anyone is in any doubt of the rate at which the law is changing, please consider two dates: April 22 2013 and April 25 2013. On the former, the Dispatches programme was broadcast at 8pm. On the latter, the law regarding overseas assets recovery underwent massive change.

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Prior to April 25 this year, a 2012 ruling from the Supreme Court restricted the UK government's efforts to freeze and recover assets abroad that it believed to be the proceeds of crime. The ruling in Perry and others V Serious and Organised Crime Agency (SOCA) severely limited both SOCA's ability to recover assets from abroad and its powers regarding people outside the UK. The ruling stated clearly that no civil recovery order (CRO) or property freezing order (PFO) made under the Proceeds of Crime Act could be made regarding assets outside the UK. It added that a disclosure order (DO) – which orders a person to answer questions, provide documents or other information - made under POCA could not be made against a person outside the UK's jurisdiction. The Supreme Court told SOCA that the only way it could seek assets overseas was by pursuing criminal proceedings against a person that lead to conviction or by asking authorities abroad to seek the assets through their legal system. Perry, who had been convicted and jailed for pension fraud in Israel, had been challenging SOCA's right to seize worldwide assets belonging to him, his family and associates; none of whom lived in the UK.

The Perry case established that UK authorities had no powers to seize assets from abroad or any authority regarding the people with those assets. But this was clearly not what SOCA (or by implication, the UK government) had wanted to hear. As a result, the Crime and Courts Bill that was being drafted was hastily amended to remove the effect of the Supreme Court Perry ruling. It became law on April 25 – and gave the authorities the powers they wanted regarding overseas assets. A clause in the Crime and Courts Act enables a court to make orders against property wherever it is situated, providing there is a connection with the UK. The Act also allows for an investigation to begin with a person and - as property is identified and more is known about the property - then become an investigation into property. Similarly, an investigation may begin with property and, as information about it emerges, it can become an investigation into a particular person.

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Crucially, these changes are said to have retrospective effect (this is currently being tested), meaning that the legal position may be as it was before the Perry ruling changed the whole face of overseas assets. As I mentioned earlier, this may not have all the ingredients of a gripping TV show. But for those whose overseas assets have come under scrutiny from UK authorities, the implications of the Crime and Courts Act are enormous. While Perry effectively placed those people out of the UK government's jurisdiction, this new Act gives the authorities a far greater reach.

Civil recovery is a device that gives considerable power to organisations such as SOCA (which is now being replaced by the National Crime Agency), the Serious Fraud Office (SFO), Crown Prosecution Service (CPS) and HM Revenue and Customs (HMRC). The Proceeds of Crime Act 2002 gives such organisations the power to issue High Court proceedings against anyone it thinks holds property which is, or represents, property obtained through unlawful conduct. There does not even have to have been a criminal conviction obtained to prove there has been unlawful conduct. Civil recovery action may even be brought against someone who has been acquitted of a crime that is allegedly linked to the assets the authorities want to seize.

The authorities have draconian legislation in place to make sure they are likely to succeed in recovering assets they believe are the proceeds of crime. We are seeking leave to appeal to the European Court of Human Rights (ECHR) in the case of SOCA V Gale, to challenge the universal application of the civil standard of proof (on the balance of probabilities) in civil recovery proceedings. Our clients have been acquitted of criminal charges in Portugal and yet SOCA has still been pursuing them based on the evidence in the unsuccessful prosecutions. Civil recovery is an attractive option to the authorities. They don't have to prove any criminal wrongdoing beyond reasonable doubt, as would have to be done in a criminal court. They have the power to freeze assets without the person having any prior knowledge. And when a case such as Perry stops them in their tracks, the government simply changes the law to get around the problem.

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It's a situation that means anyone facing such action has to gain the best legal advice available. The changing face of civil recovery and the powers it keeps giving the authorities will never make compelling TV viewing. But it is a soap opera in which all characters have to stay fully aware of the plot.

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