

# United States

## Powers of international seizure

by Professor Fletcher N Baldwin Jr

On 22 April 1996, the US Supreme Court let stand *US v All Funds in any Accounts Maintained in the Names of Heriberto Castro Meza or Esperanza Rodrigues de Castro*. *All Funds* is the decision of the US Federal Circuit for New York, affirming a lower court decision to proceed with in rem forfeiture of drug money, even though the lower court could not find jurisdiction and venue in New York.

Thus *All Funds* became more than just another seizure of a bank account that was linked to narcotics. The bank accounts in question were located in London, England. No criminal activity occurred in either New York or London. Nevertheless the US Federal Court would find sufficient co-operative activity in England to confer jurisdiction in New York and thereby transfer all funds. *All Funds* directly addresses the issue of whether a US federal court has in rem jurisdiction over property located outside the US. The question is of published first impression in the US.

*All Funds* involved the seizure of millions of dollars, allegedly produced by a series of extensive international drug smuggling and money laundering enterprises, run by the late José Santacruz Londono ('Santacruz') and his associates. The accounts specifically targeted for forfeiture were several bank accounts in London. The accounts were controlled from Cali, Colombia; there were no apparent links to New York.

Nevertheless, in July 1990, the US Department of Justice forwarded a request to the UK Central Authority pursuant to an executive agreement between the US and the UK. US authorities argued that the prosecution of Santacruz was imminent and therefore requested that the accounts in the UK be seized as they would be subject to a corresponding in personam criminal forfeiture proceeding. The Crown Prosecution Service, on the assurance that in personam jurisdiction was forthcoming, obtained an order from the High Court restraining the accounts. A criminal complaint was not filed against Santacruz in the US until October 1990. Santacruz was believed to be in Cali, Columbia but he could not be extradited due to the termination of the US extradition agreement with Columbia in 1991. This set back was not made known to UK courts until 1993.

In July 1993, the US initiated civil forfeiture proceeding in the Federal Court. A warrant commanding the Marshall to attach the accounts was issued. On 8 September 1993 a detective constable in the UK served copies of the US warrant and complaint on the English banks. A motion to dismiss was filed, the argument being that the forfeiture was based upon an in rem proceeding rather than an in personam proceeding accompanied by criminal prosecution.

The High Court in London held that 'although now based on the civil proceedings in New York, the order will remain in force,' giving the proper US court time to establish proper jurisdiction and venue.

The US court still had no factual ground upon which to satisfy the statutory command for actual or constructive control of

property located in a foreign country. It concluded that the March 1990 High Court Opinion gave the US court assurance that a judgment of forfeiture issued by the US court would be enforced in England; this was sufficient to render the UK court the agent of the US court. The US court found that the High Court was acting as the 'agent' of the US when it granted an ex parte restraint order under the Drug Trafficking Offenses Act. The restraint of the accounts and the subservient seizure by British officials resulted in 'constructive control,' thus conferring in rem jurisdiction upon the US court.

On appeal, the US Federal Second Circuit agreed with the lower court that the restraining order, Order 1990, issued pursuant to the request of the US authorities, the 1994 High Court judgment affirming the restraining order, and the general co-operation of the British authorities with respect to the funds constituted 'actual or constructive control' over the funds by the US district court. Although it admitted that the British authorities were not bound to remit the seized funds to the US, the Second Circuit agreed with the Eastern District Court that 'the United Kingdom acted essentially as an agent of the United States for purposes of this forfeiture action.'

Under *All Funds*, the nationwide service of process provisions of 28 USC 1355(d) extend beyond the territorial limits of the US. Under *All Funds*, if a US Federal Court does find, based upon co-operation, actual or constructive control over property located in a foreign country, then there would seem to be no reason why a court in that country could not also have actual or constructive control over property held in the US. *All Funds* as it presently stands, breaks down borders. Breaking down borders is a necessary predicate to resolving the matter of *Fei-Ch'ien* (flying money) laundries. *All Funds* is made palatable by the US Department of Justice's asset sharing program.

Does this suggest that safe haven bank accounts stocked full of illicit funds are about to become a relic of bygone days? Humankind is too devious to allow that to happen. 🚫

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### on the internet

<http://users.deltanet.com/~wcassidy/wlrc/flyingmoney.html>

For an interesting examination of **Fei-Ch'ien** or **'Flying money'**, see the article entitled

**'Fei Ch'ien' or 'Flying Money':**

*A Study of Chinese Underground Banking*

by William Cassidy