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 Rodríguez 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 restraint order under the Drug Trafficking Offenses Act, 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.'

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/wlr/c/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