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Introduction

Thank you very much for inviting me once again to the Symposium

Those who attended the Workshop on New Threats in Money Laundering just before lunch heard me say that I had a case to talk about that illustrated the use of shell corporations to launder the proceeds of Russian organized crime

- And that I would talk about it after lunch in the plenary session
- And so I will

This is the Prevezon case

- It involved the theft of $230 million from the Russian treasury
- The laundering of that money through numerous shell companies and bank accounts in Eastern Europe
- And eventually in the investment of a portion of the money in real estate in New York

The case has gained some notoriety for several reasons

- This was the case in which the lawyer for one of the victims who uncovered the crime, Sergei Magnitsky, was arrested and found murdered in his jail cell

The case has also been much in the news more recently because Prevezon Holdings, the Russian company that ended up with the laundered funds,

— And that purchased the apartments in New York

— Was represented by this woman, Natalia Veselnitskaya, who at the same time was meeting with Donald Trump, Jr, the President's son, Jared Kushner, the President's son-in-law, and other members of the Trump Campaign, including the campaign chairman

— As well as with this man, Ike Kaveladze, a US-based employee of a Russian real estate company with a long history of creating shell companies and using them to acquire US assets.

Kaveladze was implicated in 2000 in an investigation into the methods Russians and other foreign nationals used to launder large amounts of money through US financial institutions.

— The report revealed that as the head of a company called International Business Creations, Kaveladze had opened 236 bank accounts in the United States for shell corporations formed in Delaware on behalf of mostly Russian brokers

— And that $1.4 billion was subsequently wire-transferred into the 236 accounts

All of which may be a coincidence

— But it is surely of interest to this man, Robert Mueller, the Special Counsel investigating ties between Russia and the Trump Campaign during the 2016 election.

Anyway, that's why this money laundering case is particularly interesting

— The question is, how was it done

The Prevezon Scheme

According to the complaint filed in a civil forfeiture action in New York to recover the apartments, the scheme worked like this:

— a Russian company (the victim) owned three businesses

— a Russian criminal organization stole the identities of the three companies by stealing corporate documents

— the criminals then orchestrated a series of sham lawsuits against the stolen companies, obtained default judgments against them,

— and used those judgments to apply for tax refunds, claiming that the losses so reduced the companies' profits as to negate their tax liability.

— The result was that the Russian treasury sent $230 million in false tax refunds to the three businesses, which were now controlled by the criminals.

That's how they stole the money

— Now, how did they launder it

The money laundering scheme

Here's how: this is a diagram that only a forensic accountant could love

— It comes from the civil forfeiture complaint and details how the money moved from the Russia bank to the New York property in just over 60 days

— The judge in the case called this "a Byzantine web of conduit accounts"

— I don't know if anyone in ancient Byzantium ever used this many bank accounts to conduct business, but I agree that it is complex

— Let me simplify it for you

The $230 started out in three accounts at the two Russian banks

— It then moved through the accounts of no fewer than 14 shell companies at nine different Russian banks,

— Was deposited it in the correspondent account of yet another Russian bank for the benefit of four more shell companies,

— and ultimately was placed in the accounts of two Moldovan shell corporations with accounts at Banca di Economii in Moldova

— all within a period of 60 days.

Finally, part of the money, commingled with other funds, was transferred from the Moldovan companies to three entities:

- a New Zealand shell company and a British Virgin Islands shell company that had accounts at an Estonian bank,

- and another BVI company with an account at a Lithuanian bank

- finally $1.9 million was transferred from the Moldovan and Lithuanian banks to the Swiss bank account of Prevezon Holdings,

- which used a portion of it to acquire the parcels of property in Manhattan.

The Legal Issues

First, Prevezon, the owner of the real estate and the claimant in the civil forfeiture action argued that there was no US jurisdiction because all of this consisted of transactions between foreign banks.

- But the court held that because the transactions were made in US dollars and passed through correspondent bank accounts in the US, they occurred in the United States

- The use of US-based correspondent accounts, the court said, was not trivial:

- the foreign transactions "could not have been completed without the services of these US correspondent banks;"

- accordingly, the use of the correspondent banks was sufficient to support the jurisdiction of the US court, whether the parties conducting the transaction knew they were using US banks to do so or not.

Second, Claimant said, even so, where is the violation of US law?

There were two answers:

- moving stolen money through the United States – i.e. through the correspondent account of a US bank – is a violation of the Stolen Property Act a/k/a Interstate Transportation of Stolen property (18 U.S.C. § 2314)

- and it is also a money laundering offense if there is evidence the money was being moved for the purpose of concealing or disguising is source, nature, location, ownership or control

- The use of shell corporations to funnel the proceeds of the fraud scheme "to other fictitious business accounts and then eventually to [the defendant property]" was all the evidence the Government needed of concealment

- Such evidence, the court said, "is perhaps the only way to prove money laundering" in particularly complex financial cases where criminals "use shell companies that regularly flush their accounts."

For there to be a money laundering offense, there must be a predicate crime

- in this case, there were two

- the ITSP offense that occurred when the money moved through US correspondent accounts is a predicate crime

- and so was the defrauding of the foreign banks in violation of foreign law

Prevezon said the victim of the scheme was the Russian treasury, not a bank.

- The court held, however, that part of the scheme to steal the identities of the Russian businesses involved making misrepresentations to a foreign bank.

- Thus, while the principal victim of the scheme may have been the Russian treasury, and while the bank itself may not have suffered a loss, deceiving the bank was part of the scheme, which meant that the proceeds of the scheme could properly be characterized as the proceeds of bank fraud.

The US, of course, did not have custody of any of the perpetrators of this scheme, and still may not know who they were

- The remedy in that situation is to file a civil forfeiture action against the proceeds of the crime

- In that case, the Government must show that a crime was committed and that the property is traceable to that crime

- But it does not have to show *who committed* the crime nor obtain a criminal conviction against that person

Finally, Claimant argued that the Government could not satisfy the tracing requirements to establish that the money being laundering was traceable to the

Russian fraud, or that the defendant property in New York was traceable to the money laundering.

- But the court had several responses.

First, the Government may rely on circumstantial evidence to show that the money moving through a complex series of transactions was in fact traceable to the initial fraud.

- Such evidence could include the "suspicious timing of the transactions" and the "strikingly similar patterns of activity" occurring more or less at the same time in multiple bank accounts.

Second, the Government is entitled to rely on accounting principles – such as "first in, first out" -- to trace money through a series of bank accounts.

Third, to the extent that there was untainted money commingled with the criminal proceeds along the way, such commingled funds had become "tainted" when they were used to facilitate the earlier steps in the money laundering scheme,

- and thus constituted forfeitable funds when they were used to purchase the defendant property.

So, in the end, the court held that the Government could forfeit the New York property as property derived from the original theft, *or* as property involved in a money laundering offense.