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INTRODUCTION

Our topic is financial intelligence units and asset recovery.

My focus is on the latter part of that

- It is on the importance of civil or non-conviction-based forfeiture in the recovery of assets
- and particularly in international cases where the perpetrator of the offense cannot be brought to justice
- but the assets can be found and recovered.

Earlier this week I spoke about the *Prevezon* case, in which a portion of \$230 million stolen in Russia was used to purchase apartments in New York

- in that case, civil forfeiture was the only way to recover the property
- the perpetrators of the theft and the laundering of the money through foreign bank accounts were either unknown or beyond the reach of law enforcement in the US
- but there was a violation of US law and the proceeds of the crime were in New York
- so bringing a civil forfeiture action against that property was the only way to recover it

The case I want to talk about now makes the same point involving an entirely different set of facts

- it involves the use of the US financial system to send money to North Korea to fund their nuclear weapons and ballistic missile program in violation of international sanctions
- and the use of civil forfeiture to intercept and recover the money that was being sent for that purpose

Dandong Zhicheng

The case is *United States v. All Wire Transactions Involving Dandong Zhicheng Metallic Material Co.*, 2017 WL 3233062 (D.D.C. May 22, 2017)

- a civil forfeiture action that was filed in Washington, DC earlier this year

The complaint alleges that that a Chinese company called Dandong Zhicheng Metallic Material Co. and four related companies were acting as “front companies” for North Korea

- that they were using various tactics to disguise the use of US dollars obtained through the US financial system to purchase coal from North Korea in violation of international sanctions, with 95 percent of the money going to fund North Korea’s weapons program

Specifically, the complaint alleged that the Chinese company had received over \$700 million through the US financial system for this purpose over a period of years

- And that money has passed through eight correspondent accounts at US financial institutions in New York
- with each of eight correspondent banks processing the transfer of at least \$20 million to Dandong

The forfeiture theory

Now any money being sent to North Korea in violation of the sanctions is subject to forfeiture under US law under several theories

- a recently-enacted statute, 18 U.S.C. § 981(a)(1)(I) makes any property involved in a violation of the North Korea Sanctions and Policy Enhancement Act of 2016 subject to forfeiture
 - Any property, real or personal, that is involved in a violation or attempted violation, or which constitutes or is derived from proceeds traceable to a prohibition imposed pursuant to section 104(a) of the North Korea Sanctions and Policy Enhancement Act of 2016.
- It is also forfeitable as the proceeds of a violation of the International Emergency Economic Powers Act (IEEPP) under § 981(a)(1)(C)
- As the proceeds of bank fraud (in the sense that the banks were not advised of the true nature of Dandong Zhicheng’s business and that wiring money on its behalf would violation the North Korea sanctions), also under § 981(a)(1)(C)
- And as property involved in money laundering, 18 U.S.C. § 1956(a)(2)(A) and 981(a)(1)(A)

The problem, of course, is that the \$700 million that had been sent to China through these correspondent accounts in the past was already gone

- What could the US do to stop the flow of this money in the future?

Damming warrant

The answer is that the Government applied to the court for what is called a “damming warrant”

- That is, a warrant that permits the Government not to seize money already in a bank account that was involved in a crime that occurred in the past
- But a warrant that acts as a net to catch new money as it flows through a particular bank account on a date sometime in the future

In this case, the Government had probable cause to believe that these eight correspondent bank accounts at US banks in New York had been used in the past to send money to the Chinese companies in violation of US law

- And that the illegal activity was ongoing (\$52 million in the last 7 months)

And accordingly, that there was probable cause to believe that additional money, also forfeitable under US law, would be moving through those same accounts in the near future

- So the court issued eight warrants, authorize the Government to freeze any money moving through those eight accounts to Dandong Metallic for a period of 14 days

At the end of that time, the Government had captured \$1.9 million in its net, and filed its civil forfeiture action against that money

- The case is currently pending in the trial court.

The action, as I said, is a civil action against the money, not a criminal action against and person or entity

- Anyone with an interest in the money may file a claim contesting its forfeiture,
- But if no one files a claim, or if the US establishes by a balance of the probabilities that the money was being sent to North Korea in violation of the sanctions
- It will be forfeited to the United States.

The Importance of Civil Forfeiture

This is one of the reasons that civil forfeiture is such a critical law enforcement tool

- There are times when the wrongdoer is dead, a fugitive, a foreign national beyond the jurisdiction of the domestic courts or otherwise not subject to criminal prosecution
- Yet the Government can lay hands on the money or other property involved in the crime
- And needs a tool to recover it.

The *Prevezon* case and *Dandong Zhicheng* are just the two most recent examples

— Here are some others:

- *United States v. One Gulfstream G-V Jet Aircraft*, 941 F. Supp. 2d 1 (D.D.C. 2013) (aircraft purchased with proceeds of public corruption by leader of West African country);
- *United States v. A 10th Century Cambodian Sandstone Sculpture*, 2013 WL 1290515 (S.D.N.Y. Mar. 28, 2013) (cultural property stolen during civil war in Cambodia);
- *United States v. \$671,160.00 in U.S. Currency*, 730 F.3d 1051 (9th Cir. 2013) (money seized from fugitive Canadian drug dealer);
- *United States v. All Assets Listed in Attachment A (MegaUpload, Ltd.)*, 89 F. Supp.3d 813 (E.D. Va. 2015) (funds derived from theft of U.S. intellectual property on internet website managed from New Zealand);
- *United States v. All Assets Held in Account Number 80020796*, 83 F. Supp.3d 360 (D.D.C. 2015) (\$2 billion stolen from Nigeria by Gen. Abacha, laundered through U.S. banks, and deposited in Jersey, France and the UK);
- *United States v. All Assets Held at Bank Julius Baer & Co.*, 2015 WL 4450899 (D.D.C. July 20, 2015) (action to recover more than \$250 million deposited into over 20 bank accounts located in Guernsey, Antigua, Switzerland, Lithuania and Lichtenstein by former Ukrainian Prime Minister Pavel Lazerenko); 2017 WL 65554 (D.D.C. Jan. 6, 2017) (same);
- *In re 650 Fifth Ave. and Related Properties*, 830 F.3d 66 (2nd Cir. 2016) (civil forfeiture action against a building and related properties owned by front for the Government of Iran, and financed in violation of IEEPA);
- *United States v. Two General Electric Aircraft Engines*, 2016 WL 6495397 (D.D.C. Nov. 2, 2016) (civil forfeiture action against two aircraft engines being shipped to Iran in violation of US law and were intended to be delivered to a terrorist organization: the Islamic Revolutionary Guard Corps-Qods Force);
- *United States v. \$70,990,605*, 2017 WL 573499 (D.D.C. Feb. 13, 2017) (action to recover funds in Afghan banks traceable to \$70 million in fraud proceeds paid to contractor to provide transportation for military supplies in Afghanistan); *United States v. Sum of \$70,990,605*, 4 F. Supp.3d 189 (D.D.C. 2014) (same);

Many countries – particularly the English common law countries – now have civil or non-conviction based forfeiture systems

- the European Union has been considering the implementation of similar systems for some time

My hope is that these examples will serve to illustrate the critical role that this tool plays in cases of great importance to all of us.