

INTERNATIONAL FORFEITURE CASE EXAMPLES

Buenos Aires – March 19, 2018

Stefan D. Cassella – Asset Forfeiture Law, LLC
World Bank / StAR

I have a series of PowerPoint slides to illustrate the use of NCB forfeiture in international cases

- The examples come from cases litigated in the United States, but my purpose is not to focus on US law or to suggest that you want to model your practice on US law
- Rather, these are intended to be examples of how NCB forfeiture is used in the international context
- The facts of the cases could have arisen anywhere, and any country with NCB forfeiture authority could have used that authority to recover the property in these cases

I have organized the examples into several categories:

1. Where the crime occurred in another country, but the property is found in your country.
2. Where the crime occurred in your country and the property is there, but the defendant is a fugitive and cannot be prosecuted criminally
3. Where the crime occurred in your country, but the property is in another country
4. Where property is intercepted in your country on its way to another country.
5. Where the crime occurred in one country, was laundered in your country, and is now in the third country.

Again, I am doing this to provide examples of how NCB forfeiture can be used

- There are lots of legal issues involved
- Issues like jurisdiction, and the procedure for getting a forfeiture order issued in one country enforced in another

- I am not ignoring those issues, but am saving them for tomorrow
- I will use some of these same examples, and others, tomorrow to go into the legal issues in detail
- For now, I just want to tell some stories to give you a sense of kinds of cases where NCB forfeiture has been successful in recovering property

Some of these cases involve public corruption and the theft of public funds

- Others involve fraud and trade-based money laundering
- I'm going to begin with the category Cases Where Proceeds of a Foreign Crime are Found in the United States
- And with a case involving cultural property stolen in South America

I. PROCEEDS OF A FOREIGN CRIME ARE FOUND IN THE US

Eighteenth Century Peruvian Oil on Canvas

These are two paintings that showed up in at art gallery in Virginia, in the United States, having been cut from their frames with a razor, and rolled up in a tube

- One is called "Santa Rosa de Lima"
- The other is "Doble Trinidad" or "Sagrada Familia con Espiritu Santo y Dios Padre"
- From the way they were cut and packaged, it was clear that they had been stolen
- But from where and by whom?

Art experts realized that they were from the Cusco school of art in 18th Century Peru, and that they had most likely been stolen from a church

- So, they contacted the FBI and turned over the paintings
- But no one knew who the thief was

That meant that criminal forfeiture was impossible (there would be no prosecution)

— NCB forfeiture was the only remedy

So, the United States commenced a civil forfeiture action against the two paintings in Virginia under the Cultural Property Implementation Act

The person who consigned the paintings to the art gallery made a claim, but he could produce no documentation showing how he acquired them

— So, the paintings were forfeited under US law and returned to Peru

- *United States v. Eighteenth Century Peruvian Oil on Canvas*, 597 F. Supp.2d 618, 623 (E.D. Va. 2009) (religious oil paintings imported from Peru in violation of the Conventional on Cultural Property Implementation Act are subject to forfeiture under 19 U.S.C. § 2609);

Obiang / Equatorial Guinea

The next case was a public corruption case involving money stolen in an African country and used to acquire property in the United States

— Including, most famously, a Gulfstream Jet

The property was acquired by Nguema Obiang, the son of the President of Equatorial Guinea, a small country in West Africa

— Nguema, the son, was a Government employee himself

— On an annual salary of \$100,000, he was able to acquire an amazing assortment of assets

- Vehicles: 8 Ferraris, 7 Rolls Royces, 5 Bentleys, and 2 Lamborghinis
- \$3.2 million in Michael Jackson memorabilia
- a \$30 million mansion in Malibu, California
- and a \$38.5 million Gulfstream Jet

The United States filed an NCB forfeiture action against all of these assets in a US court, alleging that they were

1. the proceeds of foreign public corruption or the theft of foreign Government funds
 2. property involved in money laundering in the United States
- either theory would give rise to the forfeiture of the property under US law

After raising numerous legal issues, Obiang agreed to a settlement

- he agreed to sell the cars and the Malibu mansion, with \$20 million of the proceeds to be donated to a charity for the benefit of the people of his country
 - and another \$10 million forfeited to the US, with the understanding that the US would use it for the benefit of projects to benefit the people of Equatorial Guinea
 - he also had to pay \$1 million in lieu of the Michael Jackson memorabilia (which was no longer in the US)
 - and he had to agree that if the Gulfstream jet were ever found in the US, it would be seized and forfeited
- *United States v. One Gulfstream G-V Jet Aircraft*, 941 F. Supp.2d 1, 10 (D.D.C. 2013) (the U.S. has the right to use forfeiture to enforce its money laundering laws and to prevent its becoming the repository of the proceeds of foreign crimes);

Prevezon

The next example involves the laundering of the proceeds of organized crime and corruption in Russia and the use of the forfeiture laws to recover it when it is found in the United States.

- 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, Paul Manafort
- 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

Finally, I mentioned that his man, Paul Manafort, Donald Trump's campaign manager in 2016, was also at the meeting

- In 2017, he was indicted for money laundering, involving the transfer of \$75 million through accounts in Cyprus and elsewhere in the names of shell

companies formed in numerous countries, including Cyprus and the Grenadines

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 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

- 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

There were a host of legal issues, but the bottom line is that if the US was able to trace the money that was used to buy the apartments in New York back to the theft of the money in Russia,

- the apartments would be forfeitable both as proceeds of Russian bank fraud, and as property traceable to money laundering that occurred in the US
- the money laundering theory was based on the fact that most of these transactions were in dollars, and so passed through banks in the US even though the money was being sent between two banks in two other countries

Notice that it did not matter that the US was not able to show *who* committed the theft in Russia, or *who* laundered the money

- it was only necessary to show that the apartments in New York were traceable to crimes committed by someone
- Prevezon Holdings, the company that was the ultimate purchaser of the property in New York, could have gone to trial and put the Government to its proof
- It also could have asserted an innocent owner defense, claiming that it had no idea when it purchased the apartments that it was using stolen, laundered funds to do so
- But in the end, Prevezon decided to settle the case, paying the US \$5.9 million, which was more than the purchase price of the New York apartments
 - *United States v. Prevezon Holdings, Ltd.*, 251 F.Supp.3d 684 (S.D.N.Y. 2017) (timing and pattern of transactions may serve as circumstantial evidence that the money moving through a complex series of transactions is traceable to the foreign crime);

II. PROCEEDS OF DOMESTIC CRIME BUT DEFENDANT IS A FUGITIVE

My second category consists of cases where the crime was committed in your country, but the defendant cannot be prosecuted because he has fled to another country or is fighting extradition from another country

Camelot Cancer Care

The first involves Maureen Long, a woman who operated a cancer clinic in Tulsa, Oklahoma

- She sold worthless medication to terminally-ill cancer patients (at \$15,000 per treatment)
- Was indicted for fraud
- And fled to Mexico, leaving behind substantial assets, including this residence in Oklahoma

She was resisting extradition from Mexico, so the US filed an NCB forfeiture action against the property that she left behind

- When the property is forfeited and sold, the proceeds will be used to pay restitution to the families of the victims of the fraud
 - *United States v. Real Property Known As 7208 East 65th Pl.*, 185 F. Supp.3d 1288 (N.D. Okla. 2016) (dismissing claim under § 2466 and immediately denying all motions that claimant filed without considering them on the merits);

Syed Zaidi / \$506,069

Another case that's similar involved a doctor in Ohio who ran a pain clinic and was prescribing drugs – like Oxycodone, Morphine, and Hydrocodone – opioids – that were outside the bounds of responsible medical treatment

- When he was indicted, he fled to Pakistan – his native country – leaving behind \$4.8 million in assets, including \$506,000 in a particular bank account
- And 138 pieces of jewelry

The Government filed an NCB forfeiture action to recover the money,

- And just as in the case of Maureen Long, won a judgment when the defendant declined to return to the United States to make a claim
 - *United States v. \$506,069.09 Seized from First Merit Bank*, 2014 WL 7185585, *7 (N.D. Ohio Dec. 16, 2014) (denying defendant fugitive's motion on fugitive

disentitlement doctrine grounds, and denying wife's claims on the merits), aff'd 664 Fed. Appx. 422 (6th Cir. 2016);

III. PROCEEDS OF A DOMESTIC CRIME FOUND IN ANOTHER COUNTRY

Let me turn now to my next category of cases:

- Cases where the crime was committed in your country but the defendant is a fugitive *and* the property subject to forfeiture is now in another country

MegaUpload

The first case is called the MegaUpload case

For those who don't know it, an international cast of characters, including Mr. Kim Schmitz,

- who changed his name to Kim Dotcom to reflect his view of himself as someone who was internet savvy
- set up a file-sharing website on the internet called MegaUpload
- The function of which was to allow users to transfer pirated intellectual property such as motion pictures, television programs, and music anywhere in the world
- In violation of the owners' property rights and national copyright laws

In its heyday, MegaUpload was the largest file-sharing service for pirated property in the world

- Causing losses to copyright holders of more than \$500 million
- And earning \$175 million in income for its perpetrators

Dotcom lives in New Zealand and operated his business from there and other countries,

- but the computer servers that he used to transfer the software – and to transfer the proceeds of his crime -- were located in Virginia in the United States

- so, the United States had a basis for charging Dotcom with at least two criminal offenses: copyright infringement and money laundering
- because the crimes occurred at least in part in the United States

So, he was indicted; but there were two problems:

- he resisted extradition and it was clear he would not be coming to the US to stand trial anytime soon
- and the money that he earned from his illegal business (which the US would like to recover) was located not in the US but in bank accounts in New Zealand and Hong Kong

So, what to do

Well one of the key tools that a prosecutor has to recover criminal proceeds when a criminal conviction is not possible

- read: when the bad guy is a fugitive fighting extradition
- is to file a civil forfeiture action against the money
- so that's what the US Department of Justice did
- it filed a civil forfeiture action against the money in the New Zealand and Hong Kong banks
- \$60 million in Hong Kong, and \$15 million in New Zealand and asked those countries to restrain the money, which they did
- This raised a host of legal issues that I will talk about tomorrow

GE Aircraft Engines

Another case involving a crime committed in the US with the property being in another country involved the illegal export of two aircraft engines that were manufactured in the US and were being shipped to Iran in violation of US law

- Investigation revealed that they were to be delivered to a terrorist organization: the Islamic Revolutionary Guard Corps-Qods Force

The engines were discovered in Turkey – that is, after they left the US but before they arrived in Iran

- When the Government requested their return, the shipper transferred them to China
- A court then ordered the shipper to return them to the US, post a \$6 million bond, or pay \$15,000 per day until it did so

The vehicle for doing this was an NCB forfeiture action that the US filed against the engines

- *United States v. Two General Electric Aircraft Engines*, 2016 WL 6495397 (D.D.C. Nov. 2, 2016) (court orders claimant-owner of aircraft engines being shipped to terrorist organization in Iran to repatriate the engines or post a \$6 million bond);

IV. PROCEEDS FOUND IN THE US INTERCEPTED ON THEIR WAY OUT

The next category are cases where the property representing criminal proceeds is intercepted in your country on its way somewhere else

North Korea Sanctions Case

The case 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

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

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

- The problem, however, 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

- Anyone with an interest in the money could have filed a claim contesting its forfeiture,
- But no one did so

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

V. PROCEEDS OF FOREIGN CRIMES THAT PASS THROUGH YOUR COUNTRY

Finally, I want to show you a few important cases in which the crime was committed in one country, the property is now found in a different country, but the money passed through the US on its way from one country to the other, in violation of US money laundering laws

Old Mutual of Bermuda

The first case involves two corrupt Mexican officials

- Jorge Juan Torres, the Secretary for Finance in Saltillo in the State of Coahuila, Mexico
- And Hector Javier Villarreal, the Undersecretary of Program and Budget in Saltillo, and later the Secretary for Finance himself
- Torres is currently a fugitive, while Villarreal has been indicted and arrested in Texas

With only the modest salaries of public officials, they were able to transfer – in just 4 days -- \$2.5 million from Mexico to a JPMorganChase bank account in Texas

- And a day later, to move the money from Texas to an investment account on the island of Bermuda

Because the money passed through the US bank account, the US was able to charge both defendants with money laundering in violation of US law

- And because one of the defendants is a fugitive, it filed an NCB forfeiture action against the money in the Bermuda account
- If the US obtains a judgment and Bermuda is able to enforce it, the US will recover the money and return it to Mexico
 - *United States v. All Funds on Deposit at Old Mutual of Bermuda, Ltd.*, 2014 WL 1689939 (S.D. Tex. May 1, 2014) (claimant whose attorney is aware of the criminal indictment is presumed to be aware as well);
 - *United States v. All Funds on Deposit at Old Mutual of Bermuda, Ltd.*, 2014 WL 4101212 (S.D. Tex. June 5, 2014) (Report and Recommendation), adopted by the district court 2014 WL 4101215 (S.D. Tex. Aug. 18, 2014) (claimant's frequent travel to the U.S. prior to his indictment was sufficient to show, for purposes of the fugitive disentitlement doctrine, that his decision to remain in Mexico was motivated by a desire to avoid facing the criminal charges);

Abacha

The last case is another public corruption case

- The case is that of Gen. Sani Abacha, the late military ruler of Nigeria who looted \$4 billion from his country's treasury, laundered it through financial institutions in the United States, and placed it in bank accounts around the world in the names of nominee companies that his family controlled
- \$287 million of that money was traced to bank accounts in Jersey in the Channel Islands

Taking the view that the United States does not want its financial institutions used to launder money for kleptocrats in developing countries,

- And that the US has an obligation to attempt to recover that money and return it to the people of the country from which it was stolen
- The U.S. Department of Justice filed an NCB forfeiture action against the \$287 million in the Jersey bank in the district court in Washington DC, alleging that it was property involved in a violation of US money laundering laws

I am going to save the details of that case and the legal issues that were involved for tomorrow

— For now, I'll just tell you that the US was able to get a default forfeiture judgment against the money from a court in the US

- *United States v. All Assets Held in Account Number 80020796*, 83 F. Supp.3d 360 (D.D.C. 2015) (default judgment issued in Washington, DC, against funds in Doraville account in Jersey);

— Asked Jersey to enforce that order

— And that the court in Jersey agreed to do so, allowing the money to be recovered for the benefit of the people of Nigeria

Other cases

All of these cases illustrate the same point:

— it is not always possible to convict the person who has committed a crime and thus to recover the property as part of the sentence in his criminal case

— Defendants die, they become fugitives, they are beyond the reach of the courts in the country where the property is found, or they are simply unknown

— But there is another way to recover the money in those cases: NCB forfeiture

— Here are some other examples:

- *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. 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);

- *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. \$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);

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