Seizure of Property of Russian Oligarch / International Money Laundering / Jurisdiction to Seize Foreign Asset / Excessive Fines

Sending money through a correspondent bank account to pay for the maintenance of a yacht owned by a sanctioned person, using shell companies to conceal his identity, violates the bank fraud, IEEPA, and international money laundering statutes.

Property that would have been maintained but for the bank fraud and IEEPA violations is forfeitable as the proceeds of those violations.

If the maintenance payments on a yacht constitute money laundering offenses, the yacht is subject to forfeiture as property involved in the money laundering offenses.

A district court in the United States has the authority to issue a seizure warrant for property outside of the United States under 18 U.S.C. § 981(b)(3).

Eighth Amendment considerations are premature when a court is determining probable cause for a seizure; but the seizure of a Russian oligarch's yacht would not be disproportional to the crimes Russia is committing in Ukraine in any event.

In the Matter of the Seizure and Search of the Motor Yacht Tango, 2022 WL _____ (D.D.C. Apr. 4, 2022).

D.D.C. * In 2018, the Office of Foreign Assets Control (OFAC) named Viktor Vekselberg, a Russian national, as a person subject to sanctions under the International Emergency Economic Powers Act (IEEPA). Vekselberg, a close associate of Russian President Vladimir Putin, is the Chairman of the Board of a group of asset management companies controlling assets in the energy sector in Russia.

According to the Treasury Department, Vekselberg was designated as a Specially Designated National as part of the sanctions imposed on Russian oligarchs who "profit" from Russia's "malign activity around the globe," including the 2014 invasion of Crimea and the instigation of violence in Eastern Ukraine.

The effect of the sanctions is to bar the sanctioned individual from using the U.S. financial system to conduct any financial transactions.

Following Russia's invasion of Ukraine in February 2022, the FBI applied for a warrant to seize a motor yacht named "Tango" which was located in a marina in the Spanish island of Mallorca. The probable cause affidavit stated

that Vekselberg had conspired to evade the sanctions by concealing his ownership of the yacht. Among other things, he owned the yacht through a shell company formed in the British Virgin Islands and registered it in the Cook Islands in the South Pacific.

To pay for maintenance on the yacht, Vekselberg sent sums of money through correspondent bank accounts in the United States to various entities overseas, always conducting the transactions in the names of shell companies. In granting the application for the seizure warrant, the court found that this constituted probable cause to believe Vekselberg had committed bank fraud (because concealing his role in the transactions deprived the U.S. banks of information they needed to enforce their Know Your Customer policies and to file Suspicious Activity Reports) and violations of IEEPA. It also found probable cause to believe that in sending money through the correspondent accounts in furtherance of the bank fraud and IEEPA violations, Vekselberg had committed an international promotional money laundering offense.

Finally, the court found probable cause to believe that the yacht was subject to forfeiture as the proceeds of the bank fraud and IEEPA violations and as property "involved" in the money laundering offense.

The court also found that it had the authority under 18 U.S.C. § 981(b)(3) to issue a warrant for property located overseas.

Finally, the court held that any objection to the forfeiture of the yacht – valued at $90 million – on Eighth Amendment excessive fines grounds was premature at this stage in the case. But it noted that any such Eighth Amendment challenge would ultimately fail in any event. "Far from being grossly disproportionate to Putin's murder of civilians, destruction of Ukrainian cities, and attack on Ukraine's sovereignty," the court said, "forfeiture of the [yacht] is wholly justified." *SDC*

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Comment: When OFAC names a person as a Specially Designated National, his assets may be frozen simply because he has been sanctioned. If the Department of Justice wants to *seize and forfeit* such assets under the asset forfeiture laws, however, it must prove two things: that a crime was committed, and that the asset is connected to that crime in terms of the asset forfeiture statute applicable to that crime.

In this case, the Government argued, and the court found probable cause to believe, that the Russian oligarch had committed three crimes in violation of U.S.

law: bank fraud, violating IEEPA**,** and international money laundering; and that his yacht was subject to forfeiture as the proceeds of the bank fraud and IEEPA violations and as "property involved" in the money laundering violation.

It also found that it had the authority to issue a seizure warrant for the yacht even though it was not found in the United States.

The court only briefly alludes to the legal arguments that support all of this, but they are fully briefed in the Government's application for the seizure warrant. In short, it argues that when a sanctioned person conducts a financial transaction through a U.S. financial institution in a way that conceals or disguises his identity, he commits a bank fraud violation because he is depriving the bank of the information it needs to determine with whom it is doing business and whether that person is a sanctioned person (as it is required to do under IEEPA, the Bank Secrecy Act, and the regulations requiring banks to implement and enforce Know Your Customer policies), and to determine whether to file Suspicious Activity Reports (which are also required by the BSA). *See In the Matter of the Search of Multiple Email Accounts,* ___ F. Supp.3d ___, 2022 WL 406410 (D.D.C. Feb. 8, 2022).

Conducting or causing others to conduct transactions through U.S. financial institutions on behalf of a sanctioned person is also an IEEPA violation.

Finally, conducting an international transaction into, out of, or through the United States in furtherance of either bank fraud or an IEEPA violation constitutes an international money laundering offense under 18 U.S.C. § 1956(a)(2)(A) as well. *See United States v. Atilla,* 966 F.3d 118 (2d Cir. 2020) (promoting IEEPA violation by sending money through US correspondent accounts).

That satisfies the first requirement for obtaining a seizure warrant: that there was probable cause to believe that a crime was committed. What about the probable cause to believe the property is forfeitable in connection with that crime?

This where this case approaches the cutting edge of forfeiture law. The Government argues, and the court finds, that the yacht was the proceeds of the bank fraud and IEEPA violations because it was "through the execution" of those offenses that "Vekselberg was permitted the use and enjoyment of the *Tango*, and was able to maintain it in good repair." Application for Warrant at ¶ 63.

This, in essence, is an application of the "but for" test: But for the payments made in the names of shell companies – which constituted bank fraud and IEEPA violations – Vekselberg would not have been able to maintain and enjoy the yacht; *ergo*, the yacht is the "proceeds" of the bank fraud and IEEPA violations.

See, e.g., United States v. Sullivan, ___ F. Supp.3d ___, 2021 WL 5769452 (D.D.C. Dec. 6, 2021) (court issues seizure warrant for proceeds of sale of videos of Jan. 6 insurrection that defendant would not have obtained but for his participation in the insurrection, making the money proceeds of § 1512(c)(2) violation); *United States v. Clark,* 2016 WL 361560, *4 (S.D. Fla. Jan. 27, 2016) (in addition to ordering defendant to pay money judgments, court orders forfeiture of specific assets defendant would not have been able to "obtain, maintain or retain" but for the fraud scheme and his obstruction of the investigation).

The money laundering forfeiture theory is also rather bold, though not unprecedented: Because the maintenance payments on the yacht were money laundering offenses, the Government says, the yacht is subject to forfeiture *in its entirety* as the subject matter or *corpus* of the money laundering offense. *See United States v. Miller,* 911 F.3d 229 (4th Cir. 2018) (the subject matter theory is not limited to cases where SUA proceeds are used to purchase real property; it includes cases where defendant uses proceeds to make improvements to the property), affirming 2018 WL 1235001 (E.D. Va. Mar. 8, 2018) (detailed discussion collecting cases); *United States v. Beltramea,* 849 F.3d 753 (8th Cir. 2017) (defendant's real estate development project was involved in his money laundering offenses both because the use of fraud proceeds to pay for improvements was a money laundering offense, and because the development of the project was the object of the entire scheme).

As far as the court's authority to issue a seizure warrant for property located outside of the United States is concerned, the court relied on 18 U.S.C. § 981(b)(3) which provides that "a seizure warrant may be issued . . . by a judicial officer in any district in which a forfeiture action against the property may be filed under [28 U.S.C. § 1355(b)], and may be . . . transmitted to the central authority of any foreign state for service in accordance with any treaty or other international agreement."

The venue statute, § 1355(b)(2), says that forfeiture actions against property located abroad may be filed in the District of Columbia. So, the court in this case had the authority to issue a warrant to seize property in Spain.

The author of this opinion was Magistrate Judge Zia Faruqui, a former forfeiture AUSA. *SDC*