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Third parties, criminal proceedings and access to the civil courts

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Good news for those who are not Defendants, but get caught up in Crown Court proceedings. Contrary to the CPS arguments, the CA has now decided that POCA does not provide a complete and exhaustive code for the resolution of disputed property rights which may arise between the CPS and a third party. *Ahmet v Tatum & CPS* [2024] EWCA Civ 255 establishes that the third party may still access the civil courts, even where property is the subject of criminal proceedings.

Introduction

Until 15 March 2024 it was the firm position of the CPS that the case law established a rule barring a third party from seeking to have the ownership of property relevant to confiscation proceedings determined by a civil court. By maintaining that position the CPS obliged such third parties to argue their claims to an interest in property (eg as a beneficiary or a mortgagee) in the Crown Court. By the CA's unanimous decision in Ahmet's case the CPS position has been shown to be wrong. Despite the provisions of the Proceeds of Crime Act 2002 ("POCA") third parties are not barred from using the civil courts to establish their interests in property.

The point is far from a barren one. There are many spouses, partners or relatives of offenders whose perception is that they will receive "rough justice" at the hands of a Crown Court judge, who has handed out a sentence of imprisonment for drug dealing or fraud or something similar. A reason for that perception is a belief that the Judge would like to see the Defendant having assets available to meet a confiscation order. A decision favourable to the third party will reduce such assets. To all such third parties, Ahmet's case may offer comfort.

The Ahmet Case in outline

On 4 August 2021 the CPS obtained a restraint order under POCA”) against Mr T and his partner Ms E. The restraint order included a substantial property (“the Farmhouse”).

On 9 November 2022 Ms A issued proceedings in the Chancery Division, against Mr T and the CPS, seeking declaratory relief as to her interest in the Farmhouse.

On 7 December 2022 the CPS applied in the Chancery Division to have the civil case struck out, on the basis that it was an abuse to use the civil courts where, through POCA, *“Parliament has provided a complete and exhaustive code for the resolution of disputed property rights which may arise between the CPS and a third party”*.

On 3 March 2023 Mr T pleaded guilty to supplying class A drugs and money laundering and was sentenced to 15 years imprisonment. Confiscation proceedings began against him.

On 23 May 2023 Mr Justice Michael Green granted the CPS application, and struck out the civil case. His judgment is reported at [2023] 1 WLR 3076.

On 15 August 2023 Arnold LJ granted permission to appeal *“because of the importance of the issue”*.

On 15 March 2024 the Court of Appeal handed down its reserved judgment. It unanimously rejected the CPS contention that POCA was a complete and exhaustive code for the resolution of disputed property rights between the CPS and a third party, and dismissed the CPS application. In his lead judgment, after an extensive analysis of the case law, Newey LJ explained that “there is no rule barring a third party from seeking to have the ownership of property relevant to confiscation proceedings determined by a civil court, even where the issue is between the third party and the prosecutor”.

In the future, a third party can deploy civil proceedings, and then the particular facts of the individual case will need to be carefully considered, in order to decide whether the third party’s property rights should be determined by the Crown Court or whether the civil court claim should continue.



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