



Neutral Citation Number: [2024] EW Misc 18 (CC)

Case No: 27 of 2020

**IN THE COUNTY COURT AT BRISTOL**  
**BUSINESS AND PROPERTY WORK**

Bristol Civil Justice Centre  
2 Redcliff Street, Bristol, BS1 6GR

Date: 21 May 2024

**Before :**

**HHJ PAUL MATTHEWS**

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**Between :**

**TRACY ANN TAYLOR**  
**- and -**  
**(1) OLGA SAVIK**  
**(2) PHILIP RYLE**

**Applicant**

**Respondents**

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**Steven Fennell** (instructed by **Irwin Mitchell**) for the **Applicant**  
**Dale Timson** (instructed by **Direct Access**) for the **First Respondent**  
The **Second Respondent** in person

Hearing dates: 20 May 2024  
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**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this revised version as handed down may be treated as authentic.

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**HHJ Paul Matthews :**

1. This is my judgment on an informal application made on behalf of the first respondent. It is made at the outset of the trial of this Insolvency Act application by the trustee in bankruptcy of the second respondent for orders relating to property in the name of the first respondent alleged by the trustee to have been purchased with money is provided by the second respondent. The trustee's application is based on three separate matters: (1) the doctrine of sham; (2) transaction at an undervalue under section 339 of the 1986 Act; (3) fraud on creditors under section 423 of the 1986 Act. The first respondent's informal application is for an order dismissing the application at the outset in respect of matters (2) and (3).
2. I take the background to this case from an earlier judgment which I gave in this litigation on 5 April 2024, and which is found under neutral citation number [2024] EW Misc 15 (CC):
  - “3. The background to this matter is as follows. Before being adjudicated bankrupt, the second respondent was a dealer in stamps and related products, both on his own account and through companies. In 2012, the first respondent, who was born in the Ukraine, began working for one of the second respondent's companies. The first and second respondent later began a personal relationship and eventually married in the Ukraine. On 3 October 2014 the first respondent became the sole registered proprietor of The Grange. On 10 November 2014, the second respondent was arrested on suspicion of defrauding HMRC. On 17 September 2018, he pleaded guilty to that charge, and on 28 September 2018 he was sentenced to a term of imprisonment of three years and eight months.
  4. On 24 April 2017 a bankruptcy order was made against the second respondent on his own application, dated 23 April 2017. On 8 March 2018 a restraint order was made against the second respondent in proceedings under section 41 of the Proceeds of Crime Act 2002 ('POCA'). However, because the second respondent was made bankrupt before the POCA proceedings, his assets as at 24 April 2017 are not affected by the restraint order, having already vested in the trustees in bankruptcy.”
3. The Insolvency Act application was begun by notice dated 12 January 2022. In that application, the trustee's focus is, as I have said, on a residential property whose title is registered in the name of the first respondent. This is known as The Grange, Parklands Road, Bower Ashton, Bristol, BS3 2JW. However, the same restraint order of 8 March 2018 as is mentioned in the previous paragraph also applied to the first respondent, and to that property. The significance of that becomes apparent from the terms of section 419 of the Proceeds of Crime Act 2002.
4. This relevantly provides:
  - “(1) This section applies if a person who is [made] bankrupt in England and Wales has made a tainted gift (whether directly or indirectly).

(2) No order may be made under section 339, 340 or 423 of the 1986 Act (avoidance of certain transactions) in respect of the making of the gift at any time when—

(a) any property of the recipient of the tainted gift is subject to a restraint order under section 41, 120 or 190, ...

[ ... ]

(3) Any order made under section 339, 340 or 423 of the 1986 Act after an order mentioned in [subsection (2)(a), (b) or (c)] is discharged must take into account any realisation under Part 2, 3 or 4 of this Act of property held by the recipient of the tainted gift.

(4) A person makes a tainted gift for the purposes of this section if he makes a tainted gift within the meaning of Part 2, 3 or 4.

[ ... ]”

5. It is accepted by the trustee that this section is engaged in the present case. (Indeed, since the restraint order was made in 2018, it has been engaged from the first moment that this Insolvency Act application was launched.) She says that the second respondent made what amounts to a tainted gift to the first respondent, and that the property which she seeks to realise for the benefit of the second respondent’s creditors is the subject of a restraint order under section 41 of the Proceeds of Crime Act 2002. She further accepts that, accordingly, if the court on her Insolvency Act application were to hold that there had been facts amounting to a transaction at an undervalue with section 339 of the 1986 Act, or a fraud on creditors within section 423 of that Act, the court could not make an order under either section *at this stage*. However, she submits that the court should nevertheless go on with the application, not only in relation to the first, sham question (which is not affected by section 419), but also in relation to the two further, statutory questions (which are). Then, dependent on the facts found and the legal conclusions reached, the court may have to adjourn the making of any order until such time as the restraint order is discharged.
6. In *Aquila Advisory Ltd v Faichney* [2021] 1 WLR 5666, SC, two directors of a company, VTL, in breach of fiduciary duty made secret profits by promoting fraudulent tax avoidance schemes. The two directors were convicted of cheating the public revenue, and the Crown Court made confiscation orders against them. The claimant bought the rights of VTL and sought and obtained a declaration that the secret profits were held on trust for VTL. The CPS appealed, arguing that the directors’ fraud should be attributed to the company, and therefore the confiscation order should apply to the secret profits. The Supreme Court dismissed the appeal.
7. Lord Stephens (with whom all the other judges agreed) said:

“33. The overarching principle of POCA is that neither a confiscation order under Part 2, nor a civil recovery order under Part 5, nor the money laundering provisions in Part 7 interfere with existing third-party property

rights. For example, section 69(3)(a) (under Part 2) which provides that the powers of a receiver in respect of realisable property to which a confiscation order (or a restraint order) applies ‘must be exercised with a view to allowing a person other than the defendant or a recipient of a tainted gift to retain or recover the value of any interest held by him’.”

8. And

“86. ... The scheme of POCA contained in Parts 2 and 5, like the scheme of Drug Trafficking Offences Act 1986, is not to interfere with existing third-party property rights. Rather Parts 2 and 5 contain provisions which can be used to override the property rights of VTL by a confiscation order on conviction in the Crown Court or by civil recovery of the proceeds of unlawful conduct. Furthermore, there is provision for a restraint order to prevent VTL from dealing with its proprietary rights before an application for a confiscation order can be determined. These orders under Part 2 or Part 5 are the vehicles for the vindication of the public interest in upholding the criminal law without needing to distort the operation of ordinary principles as to equitable ownership of property under a constructive trust.”

9. It will be seen that so-called “tainted gifts” fall outside the “non-interference” principle.

10. The Proceeds of Crime Act 2002 also provides, by section 58(5), that

“If a court in which proceedings are pending in respect of any property is satisfied that a restraint order has been applied for or made in respect of the property, the court may either stay the proceedings or allow them to continue on any terms it thinks fit”.

That applies here, where “proceedings are pending in respect of any property”, and “a restraint order has been ... made in respect of the property”. So the court may *stay* these proceedings, or allow them to continue on terms.

11. But the first respondent submits that, in light of section 419(1), the claim made by the trustee cannot succeed in relation to matters (2) and (3), and that therefore the application should be dismissed here and now in relation to them. Yet, the prohibition in section 419(1) is not stated to be absolute. It is not a prohibition on making an order if at the time the proceedings begin there is a restraint order in place. Instead, it is a prohibition on making an order “*at any time when*” there is a restraint order in place. The use of that phrase is significant, because it demonstrates a focus on the particular period during which a restraint order bites. Once any restraint order is discharged, it is no longer “any time when”, the prohibition disappears, and the court is free to make such an order. This suggests that the critical time for considering whether the court is prohibited from making such an order is not the time that the application is originally issued, but instead later on.

12. There is then a question as to how much “later on” is later on. Should the court just carry on with the whole of the existing proceedings, all the way to a decision, and then stop short of actually making the order, with a view to

possibly making it at some unspecified point in the future, when the restraint order has been discharged? Or should the court stop now, before proceeding to decide the questions which would ultimately lead to the order implementing the decision. In the former case, there are the twin dangers of, on the one hand, embarking on a process and making a decision that turns out not to be necessary, and, on the other, making a decision that needs to be revisited in the future because circumstances have materially changed by the time the restraint order has gone.

13. Some assistance is provided by the decision of the Court of Appeal in *Ahmet v Tatum* [2024] EWCA Civ 255. That was a case where there was a question as to whether a confiscation order should be made in respect of property apparently belonging to a person who had been convicted of a criminal offence, but there were civil proceedings on foot in which the claim of a third party to a beneficial interest in the same property was to be decided. The judge at first instance had decided that, given the existence of what he called a complete code in the Proceeds of Crime Act 2002 for such decisions to be made in the Crown Court, civil proceedings to decide the same question of beneficial interest of a third party were an abuse of process. Newey LJ (with whom Coulson and Stuart-Smith LJJ agreed) disagreed.

14. Newey LJ said:

“37. Drawing some threads together, my own view is 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. POCA [*ie* the Proceeds of Crime Act 2002] nowhere states or necessarily implies that it is laying down an exhaustive code for the resolution of such disputes. To the contrary, it empowers a civil Court to stay or to ‘allow ... to continue on any terms it thinks fit’ a claim relating to a property in respect of which a restraint order or an order appointing an enforcement receiver has been applied for or made. As a matter of statutory construction, therefore, it is not apparent that Parliament intended POCA to provide the only ways in which any property questions relevant to confiscation proceedings can be decided. Further, while I would not exclude the possibility of a civil claim asserting an interest in what is alleged to be (or potentially to be) ‘realisable property’ within the meaning of POCA representing an abuse of process in particular circumstances, I do not think such claims are generally to be regarded as abusive. Even where a civil Court considers it desirable that a property issue raised by proceedings before it should be decided by the Crown Court, it should typically, as it seems to me, stay them under section 58(5) or section 59(5) rather than striking them out. Having regard to the potential advantages of having ownership matters relevant to confiscation proceedings determined in the Crown Court, the better course will, as it appears to me, commonly be to grant such a stay. In principle, however, a civil Court should consider what is appropriate on the specific facts.”

15. Here, the Court of Appeal makes clear that there is nothing in itself abusive in seeking to decide property questions relevant to confiscation proceedings in civil proceedings (such as the present are) rather than in the Crown Court under

the relevant provisions of the 2002 Act. But it also suggests that, in cases where the issue *should* be dealt with by the Crown Court, the appropriate course to take is to stay the proceedings in the civil proceedings, rather than to strike them out or dismiss them. The court does not suggest that the civil court should go on to investigate the question and even decide it, but stop short of making an order. In the present case, between the trustee in bankruptcy on the one hand and the property owner (and the bankrupt) on the other, there is no suggestion that the question should preferably be dealt with in the Crown Court. But there is, as the first respondent points out, currently a statutory prohibition in force on making some of the orders sought by the trustee. If the court goes on in these proceedings to decide that there was a transaction at an undervalue, or a fraud on creditors, it simply cannot make the orders sought under section 339 or section 423 of the 1986 Act.

16. What, then, should the court do? The trustee wishes me to go on with the proceedings in relation to matters (2) and (3), and to make relevant findings of fact, but, if the decision is in favour of the trustee, then to *stay* the proceedings until such time as the order can lawfully be made. The trustee says it was right to start the proceedings when it did, and points to problems which may arise in cases where proceedings under sections 339 or 423 are otherwise not commenced until after the relevant limitation periods (by analogy) have run out for such claims. There is also the rule in *Henderson v Henderson* (1843) 3 Hare 100 (by which a party is obliged to bring forward the whole of its case at the same time) to bear in mind. However, the respondents do not wish me to allow the proceedings to go on. Indeed, the first respondent invites me to dismiss the claim in relation to those matters straightaway. She points to the fact that the trustee could have applied for a stay of the proceedings in relation to these matters a long time ago, indeed, right from the beginning, but did not do so.
17. In light of the words used in section 419(1), and the approach taken by the Court of Appeal in *Ahmet v Tatum* [2024] EWCA Civ 255, I do not think I can say that these proceedings, so far as relates to matters (2) and (3), were stillborn from the outset, such that they should be struck out at this stage. But on the other hand I do think that it cannot be right to proceed with the trial of these matters in the sure knowledge that, as things stand, no order can be made of the kind desired by the trustee, and for all I know it may never be possible to do so. That would be a waste of costs and other scarce resources. Although there is an overlap between the subject of the first matter on the one hand, and the second and third on the other, they are not identical. Moreover, it is possible that the answers given on the first matter may mean that the second and third (or at least some parts of them) do not have to be proceeded with. Moreover, the decision may need to be revisited in light of material changes in circumstances.
18. I could stay the whole proceedings pending a decision on the POCA proceedings. But the trustee wishes me to go on. The first respondent wants to go on with the sham part of the claim, and decide that, but not the rest. For costs and other reasons, she wants a decision. In the circumstances, I consider that the most appropriate course for the court to take is to stay matters (2) and (3) pending, first, the outcome of matter (1) (sham), and secondly any further developments in the proceedings under the 2002 Act. That will enable the

relevant courts to make a more targeted decision as to what actually needs to be decided.