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Welcome to this newsletter which aims to provide you with interesting news and useful information on money laundering and related topics.

HOUSE OF LORDS DECIDES CONFISCATION CASES

The House of Lords pronounced on three important confiscation cases this month.

To summarise in a sentence the outcome of these cases one could say - establish the facts and apply the words of the statutes and the long established principles of English law to those facts. If you like, it is 'back to basics'.

However there may now be a fresh emphasis on the role of the forensic accountant in establishing the relevant facts of each case.

R v MAY

In the first case, R v May, the Lords had to consider the confiscation order to be made following a conviction for VAT 'carousel' fraud. As normally happens in such frauds, a number of limited companies had been set up. This particular fraudulent conspiracy involved four phases of activity in which different individual members of the conspiracy played different roles.

Mr May only took part in the third and fourth phases, but was found to be a driving force in those phases. The 'benefit' found by the Crown Court judge to have been obtained via the bogus companies in relation to those two phases was £3,264,277. Mr May's 'available amount' was found to be £3.8 million and so a confiscation order was made against Mr May for the 'benefit' figure of £3,264,277, with six years imprisonment in default.

However Mr May was by no means the only person involved in these phases of the conspiracy. In total 16 people were charged with the conspiracy.

Mr May argued that the benefit should have been apportioned between the conspirators.

The House of Lords held that as various conspirators had obtained joint control of the benefit of the conspiracy via their joint control of the bogus companies, each of those conspirators was jointly liable for the whole of that benefit. Any attempt

by the courts to apportion the liability between the parties jointly liable would be contrary to principle and unauthorised by statute. Mr May's appeal failed.

The case confirms the principle that when defendants obtain joint control of property they each, in law, obtain the whole of the amount jointly obtained. Each person's 'benefit' for confiscation purposes is therefore the whole of the amount jointly obtained.

In its judgment the House of Lords set out the broad principles to be followed in confiscation cases and commented on a number of earlier decisions in lower courts.

CROWN PROSECUTION SERVICE v JENNINGS

The second case, CPS v Jennings, concerned exactly what is involved in 'obtaining'.

Mr Jennings had been an employee of a company which had engaged in an 'advance fee fraud'. Another defendant was the sole director and controlling shareholder of the company.

The prosecution considered Mr Jennings to be a prime mover in the fraud along with the director of the company. Mr Jennings received a salary from the company but held no shares in it.

The Crown contended that Mr Jennings had 'obtained' the whole of the amount generated by the fraud, amounting to £584,637. Mr Jennings argued that he had obtained only his salary and certain other payments amounting to no more than £50,000.

The Court of Appeal had said that in order to 'obtain' an asset, "All that is required is that the defendant's acts should have contributed, to a non-trivial (that is, not de minimis) extent, to the getting of the property".

In his role as an employee Mr Jennings had therefore 'obtained' the entire benefit of the fraud.

The House of Lords did not endorse the approach of the Court of Appeal on this point, finding it unhelpful and not entirely accurate.

Rather the House of Lords found, "A person's acts may contribute significantly to property (as defined in the Act) being obtained without his obtaining it. But under section 71(4) a person benefits from an offence if he obtains property as a result of or in connection with its commission, and his benefit is the value of the property so obtained, which must be read as meaning "obtained by him"."

This is, in my view at least, a significant shift in the legal position in relation to the meaning of "obtain" in confiscation cases.

R v GREEN

The third case was R v Green. This concerned a drug trafficking conspiracy and,

again, centred on the amount properly to be regarded as having been 'obtained' by the defendant.

It was contended on behalf of Mr Green that the appropriate measure of benefit is the total value of the property actually received by the particular defendant the court is considering. In particular, sums retained by Mr Green's co-defendants ought, it was argued, to be deducted from the 'benefit' attributable to Mr Green.

The prosecution argued, on the other hand, that Mr Green had 'obtained' the whole amount obtained from the conspiracy, without any deduction for sums retained by Mr Green's co-defendants.

The House of Lords noted the decision of the judge in the Crown Court on the relevant facts, and that, "Whether the proceeds of sale received by [the appellant's associates] in the present case were initially received on their own personal behalf or on behalf of the conspirators as a whole was a matter for the judge to decide on the evidence before him. In fact, there was evidence on which he could find that the appellant was the ringleader and controller of the conspiracy and in those circumstances he was entitled to infer that the others were acting in accordance with his instructions, receiving proceeds of sale on behalf of the conspirators as a whole before retaining for themselves such amounts as had been agreed with the appellant."

Since the sums received by the other conspirators were received on behalf of the conspirators as a whole they did form part of the benefit obtained by Mr Green. Accordingly his appeal failed.

INDIANA JONES AND THE NUMBSKULLS ON THE BEACH

Blackpool trading standards officers have dealt with an outbreak of counterfeit DVD sales - apparently prompted by the runaway success of the latest blockbuster, Indiana Jones and the Kingdom of the Crystal Skull.

Within a few days of the release of the film in cinemas pirate DVDs were for sale on Blackpool beach - until the trading standards officers arrived!

If you require any assistance or have any queries concerning issues related to forensic accountancy, proceeds of crime or money laundering contact d.winch@AccountingEvidence.com or visit our website www.AccountingEvidence.com.

Kind regards

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