[2023 Gib LR 511]

ATTORNEY-GENERAL v. SERRA and FIVE OTHERS

SUPREME COURT (Dudley, C.J.): June 30th, 2023

2023/GSC/024

Civil Procedure—recovery orders—proceeds of unlawful conduct—recovery order granted in respect of property acquired with proceeds of drug trafficking and placed in names of family members

The Attorney-General sought a recovery order pursuant to s.72 of the Proceeds of Crime Act 2015.

The Attorney-General claimed that certain assets, namely flats nos. 8 and 12 Sunrise Court, certain commercial units and two taxi licences (nos. 65 and 103), had been obtained through unlawful conduct and that the ultimate beneficial owner was the sixth defendant, Clint Serra ("Clint"). It was claimed that Clint was involved in illegal activity, in particular drug trafficking and money laundering. It was claimed that the assets were placed in the names of the first to fifth defendants, who knowingly or unknowingly facilitated an arrangement to conceal the true beneficiary. The first defendant, Margot Serra ("Margot"), was Clint's mother; the second defendant, Stamford Co. Ltd. ("Stamford"), was a company registered in Gibraltar of which Clint's late father, Mario Serra, had been the sole shareholder and director; the third defendant, Sharon Jones ("Sharon"), was Clint's partner; the fourth defendant, Victoria Serra ("Victoria"), was Clint's sister; and the fifth defendant, George Wink ("George"), was Victoria's partner.

The claim was based on the evidence of a police sergeant in the RGP, whose witness statement detailed the evidence obtained as part of a civil recovery investigation. It was said that the RGP received intelligence from La Guardia Civil in Spain suggesting that Clint was the head of an organized crime group which was involved in the commercial trafficking of drugs from Morocco to Spain, and that it was suspected that he had acquired assets in both Spain and Gibraltar with the proceeds of that criminal conduct. It was said that the assets were acquired using third parties who knowingly or unknowingly facilitated the laundering of the proceeds of crime. An EAW had been issued in 2019 in Algeciras in respect of Clint. As part of the RGP investigation triggered by the EAW, a search warrant was executed at a property in Gibraltar associated with Clint where a large number of empty jerry cans were found. These were said to be the type used to refuel vessels involved in the illicit transportation of drugs. It

was not in dispute that the EAW was defective and that by consent the request from the Spanish judicial authorities was dismissed. Clint was apparently subject to court proceedings in Spain in respect of the matter which was the subject of the EAW.

The subjects of the present application had been interviewed by the RGP as part of what was at the time a criminal investigation and they provided no explanations as to the origins of the moneys used to purchase any of the assets.

In respect of Clint's alleged involvement in drug trafficking it was submitted by the defendants that (a) the contents of the EAW could not be relied upon because it was discontinued; (b) the allegation in the EAW that Clint was part of an organized crime group did not have an equivalent offence in Gibraltar; (c) foreign law had to be proven as a matter of fact, and that in the absence of such evidence before the court the claim could not even get off the ground; (d) neither Clint nor any of the other defendants in these proceedings had ever been convicted of a drug trafficking offence and on the evidence before this court they were all persons of good character; (e) in relation to the jerry cans, the containers could not be used for Spanish drug boats, as speculated by the sergeant, because they did not tie up in Gibraltar to refuel, and the items were not even in the same jurisdiction; and (f) to prove criminal conduct on a balance of probabilities, what was required was admissible evidence proving that conduct.

The defendants submitted that the claim was time barred because it amounted to an action to recover a penalty or forfeiture and that therefore the applicable limitation period was two years. The claimant submitted that s.69(1) POCA set out the nature and purpose of a recovery order and that these fell to be contrasted with forfeiture orders. There was no limitation period for civil recovery orders in Gibraltar.

Held, judgment as follows:

(1) There would be a recovery order in respect of flat no. 8 Sunrise Court; taxi licence no. 65; the commercial units; and the profits which had accrued to Stamford in respect of the units as identified in the amended particulars of claim. Pursuant to s.9(1) POCA, the Official Receiver was appointed as trustee to give effect to the recovery order. The claim in respect of taxi licence no. 103 and flat no. 12 Sunrise Court was dismissed (paras. 108–109).

(2) The court found on the balance of probabilities that Clint had been involved in drug trafficking. No substantive explanation had been provided as to why the EAW was discontinued. It would be relevant if the reason was that the predicate criminal proceedings in Spain had been discontinued but that was not the case. That it was discontinued did not of itself negate its contents or the weight which it should be afforded. As regarded the submission touching upon the allegation in the EAW that Clint was part of an organized crime group and that this did not have an equivalent offence in Gibraltar, the EAW also alleged illicit trafficking in narcotic drugs and psychotropic substances. Section 70(2) POCA provided: "Conduct which

occurs in a country or territory other than Gibraltar and is unlawful under the criminal law applying in that country or territory is also unlawful conduct." On a plain reading of POCA s.70(2), the claimant did not have to establish that conduct which was unlawful in Spain was also unlawful in Gibraltar. However, even if that analysis were wrong, the argument failed in any event. What needed to be looked at was the conduct and not its typification as a criminal offence. The conduct alleged against Clint would undoubtedly also be unlawful in Gibraltar and if it had occurred in Gibraltar could have been charged as importation, possession and/or possession with intent to supply cannabis resin. It could also be charged as a conspiracy to commit any of those offences. As regarded proving matters of Spanish law as fact, a statement of principle that foreign law needed to be proved as a matter of fact was accurate. However, the court did not see what if any issue of Spanish law needed to be proved in this jurisdiction. As the matter had not been challenged by the defendants in any pleading and as they chose not to adduce any evidence of Spanish law, there was a presumption of similarity by which the court could assume that Spanish law was the same as Gibraltar law, and therefore that the alleged unlawful conduct which in Gibraltar would amount to the commission of various criminal offences was likewise unlawful in Spain. As regarded the submission that the defendants were all of good character, good character evidence was not admissible in civil trials. In any event, no good character evidence had been adduced. In respect of the jerry cans, no evidence was advanced on behalf of Clint as to why the jerry cans were found in a property associated with him. Any legitimate purpose which they might have had should have been relatively easy to provide. The court accepted the RGP sergeant's evidence that jerry cans were used to refuel high powered drug smuggling vessels. The court accepted the claimant's submission that the jerry cans were evidence in support of Clint's alleged involvement in drug trafficking. The summary of the investigation carried out by the Spanish law enforcement agencies described a thorough and detailed investigation involving surveillance of individuals; telephone surveillance; geo-location of vessels and execution of search warrants which evidenced Clint's involvement in drug trafficking. Moreover, I am fortified in that view by Clint's failure to adduce any evidence in these proceedings which contradicted or undermined the claimant's evidence. The conclusion drawn from that failure was that Clint did not have an answer to the claimant's case that would have withstood scrutiny. His failure to provide an explanation could not of itself wholly or mainly suffice for the claimant to make its case, but it provided support to it (paras. 28–38).

(3) The claim in respect of no. 12 Sunrise Court would be dismissed. The underlease of No. 12 had been acquired by a third party, D, by deed of assignment dated November 30th, 2000. In 2002, D assigned the underlease to Margot. The assignment did not reflect payment of any consideration, but rather recited a declaration of trust dated November 30th, 2000 by which D held the property on trust for Margot. No copy of the declaration of trust had been provided to the RGP but there was reference to it in the

correspondence. Although Margot was the legal owner of the property, she lived elsewhere. The bills for the property were paid from Clint's bank account. There was also evidence to show that he paid for the service charges in respect of the property and that he and Sharon held a Gibtelecom account associated with that address. Interposing D in the transaction without any clear need to do so supported the claimant's contention that the acquisition of no. 12 Sunrise Court involved money laundering. From the statement of the lawyer who acted in respect of the purchase, E, to the police that Clint was clearly the driving force behind the purchase; the fact that Margot, beyond having the property in her name, had no financial nexus with it; and the payment of utilities and service charges by Clint led the court to conclude that Clint was the ultimate beneficial owner of the property. However, the RGP financial investigation was conducted for the period April 29th, 2013 to April 29th, 2019 and this transaction took place some 13 years earlier. The unlawful conduct relied upon and which the court found as a fact Clint was involved in related to activities in 2019, which was some 19 years after the property was acquired. The claimant therefore failed to prove that the funds that would have been used for the acquisition of the property were attributable to the unlawful conduct. It did not suffice that the transaction had all the hallmarks of a money laundering transaction (paras. 56–63).

(4) No. 8 Sunrise Court was assigned to Margot in 2017 in consideration for the sum of £360,000. There was unchallenged evidence that in October 2016, Clint made a single payment to the vendors' lawyers of £7,200 with the payment reference being the address of the property. That sum was reflected in the sale and purchase agreement as having been paid to the vendors' lawyers. Clint was referred to as the client in various conveyancing and other legal documentation associated with the purchase of the property. Evidence as to the provenance of some of the funds showed that £90,000 was transferred from an account in Denmark; £83,900 from a UK account; and £166,035 from an account in Turkey. The beneficiaries of the UK and Turkish accounts had not been ascertained but the evidence in respect of the Danish account was that the moneys were provided by a Danish national with ties to Gibraltar who had previously been convicted of money laundering. The transfers were not consistent with Margot's accounts. There was further evidence which the claimant said linked Clint to no. 8, in that, although the AquaGib and Gibtelecom accounts were registered in Margot's name, payments of bills associated with the flat could be traced to an account held solely in Clint's name. The evidence in support of the propositions that Clint was the ultimate beneficial owner of no. 8 and that its acquisition involved money laundering was overwhelming and on a balance of probabilities without hesitation the court so found. Given the court's finding that Clint was engaged in drug trafficking, the issue which consequently required determination was whether he acquired this asset through that unlawful conduct. What must be established to the requisite standard was not a direct link but rather a causal connection. It was evident from the financial investigation that Clint did not have the legitimate source

of funds with which he could have acquired the property and on balance the court was satisfied that but for his involvement in drug trafficking he could not have acquired the asset which consequently represented property obtained through that unlawful conduct. That conclusion was reinforced by the inference drawn from his failure to provide an explanation (paras. 64–74).

(5) The claim failed in respect of taxi licence no. 103. The licence had been transferred to George in 2017. George had not had sufficient funds to acquire the licence, the investigation had not disclosed any financial link between George or Victoria and the licence, and neither of them had made income tax declarations to indicate receipt of income from this source. There were undoubtedly some very unusual features in the acquisition of this taxi licence which were redolent of money laundering. Provision of the funds for the licence by a third party (who at the time of the RGP statement was on police bail for money laundering); that third party in turn obtaining the moneys from another individual from an account in Turkey; the acquisition of the taxi licence by someone without the financial means to justify its acquisition through his legitimate income and the unwillingness on the part of drivers to provide the police with details of the taxi rental. This led the court to conclude that the taxi licence was acquired for the purposes of processing criminal proceeds so as to disguise their illegal origin. However, the claimant must prove the unlawful conduct by or in return for which the property was obtained. The case as particularized was directed at Clint and his involvement in drug trafficking and money laundering. Beyond the fact that George was Clint's sister's partner, there was no evidential nexus between the licence and Clint. The inferences which might be drawn from Clint or George's failure to provide an explanation was an insufficient basis upon which to make such a finding that Clint was the ultimate beneficial owner of the taxi licence, to do so would amount to speculation (paras. 75–80).

(6) The court was satisfied that Clint was the beneficial owner of taxi licence no. 65 and that but for his involvement in drug trafficking he could not have acquired it. It therefore represented property obtained through that unlawful conduct. The court was fortified in that conclusion by the failure of Sharon and Victoria to account for their legal ownership of the licence. Taxi licence no. 65 had been transferred to Victoria and Sharon in 2015. Although the licence was registered in the names of Victoria and Sharon, the financial investigation pointed to only Sharon having a financial involvement with the licence. A third party, P, had provided cheques from his personal account to Sharon from November 2015 to February 2016, totalling £104,000. Three other cheques, totalling £82,000, were paid into Stamford's account. According to P's statement to the RGP, the moneys were paid by him for the purposes of acquiring a taxi licence, the Serra family were to run the licence for a few years, and then the licence would be sold and he would get his money back and half of the profit. The court was not satisfied that this was a bona fide loan and drew the inference from

the evidence that this was a mechanism by which P was used to place Clint's illegal funds into the financial system, with some of those funds then used to acquire the taxi licence. There was a self-evident nexus between Clint and Sharon. Clint and Sharon had no legitimate income to justify the acquisition of the taxi licence (paras. 81–90).

(7) Stamford had purchased the commercial units with the benefit of a purported loan of £600,000 made available to Mario by a Gibraltar businessman, X. There was no material to suggest that Stamford traded, held assets or engaged in any business activity from its acquisition by Mario in December 2014 until it opened a bank account in November 2015. The movements of that bank account (apart from the receipt of rent, payment of rates and service charges after the units were acquired in November 2017) also did not provide any evidence in support of the contention that it was undertaking any obvious commercial activity. The unexplained payments by way of cheques and transfer of moneys in and out of the account indicated that the account was used for money laundering purposes. The failure by Stamford to offer any explanation as to its commercial activities strengthened that conclusion. For these reasons and on the balance of probabilities the court found that Stamford was a front or shell company used to facilitate the laundering of the proceeds of crime which Clint derived from drug trafficking. On the balance of probabilities the court was also satisfied that Clint was the ultimate beneficial owner of Stamford. It was clear from the financial investigation that Mario did not have sufficient legitimate income to explain the acquisition of Stamford or the transactions in which it engaged, which although few in number involved relatively large sums not commensurate with his income. As to the acquisition of the units, the court did not accept X's evidence that this was an arms' length bona fide transaction or that there was in fact a loan. Given the court's finding that there was no loan, the funding for the acquisition of the units could conceivably only have been made available (either directly or indirectly) from the proceeds of drug trafficking accumulated by Clint and the court so found. The failure by Stamford, the late Mario and Clint to provide any explanation whatsoever with regard to Stamford activities generally and the acquisition of the units in particular added strength to that conclusion (paras. 91–102).

(8) Section 4(1)(d) of the Limitation Act established a limitation period of six years in respect of "actions to recover any sum recoverable by virtue of any enactment." A civil recovery order was an action to recover a sum pursuant to POCA and fell within s.4(1)(d). The applicable limitation period was therefore six years from the date on which the cause of action accrued. The Part 8 claim form having been issued on October 23rd, 2020, it followed that the key date was October 23rd, 2014. Other than no. 12 Sunrise Court, all of the assets were acquired after October 23rd, 2014. It followed that only the claim in respect of no. 12 Sunrise Court was statute barred and it failed for this further reason (paras. 106–107).

Cases cited:
(1) *D*, *In re*, [2008] UKHL 33; [2009] Fam. Law 192; [2008] 1 W.L.R. 1499; [2008] 4 All E.R. 992; [2008] NI 292, considered.
(2) *Gale* v. *Serious Organised Crime Agency*, [2011] UKSC 49; [2011] 1 W.L.R. 2760; [2012] 2 All E.R. 1; [2012] Costs L.R. 21; [2012] HRLR 5, considered.
(3) *Gonzalez* v. *Gonzalez*, 2005–06 Gib LR 216, considered.
(4) *National Provncl. Bank* v. *Ainsworth*, [1965] A.C. 1175; [1965] 3 W.L.R. 1; [1965] 2 All E.R. 472, considered.
(5) *Olupitan* v. *Director of Assets Recovery Agency*, [2008] EWCA Civ 104; [2008] C.P. Rep. 24, considered.
(6) *R. (Director of Assets Recovery Agency)* v. *Green*, [2005] EWHC 3168 (Admin), considered.

Legislation construed:
Interpretation and General Clauses Act, s.2: The relevant terms of this section are set out at para. 90.

Limitation Act, s.4: The relevant terms of this section are set out at para. 103.

Proceeds of Crime Act 2015, s.69: The relevant terms of this section are set out at para. 5.
s.70: The relevant terms of this section are set out at para. 5.
s.70(2A)(c): The relevant terms of this provision are set out at para. 30.
s.71: The relevant terms of this section are set out at para. 5.
s.72: The relevant terms of this section are set out at para. 6.
s.73: The relevant terms of this section are set out at para. 6.
s.101: The relevant terms of this section are set out at para. 104.
s.136: The relevant terms of this section are set out at para. 7.
s.137: The relevant terms of this section are set out at para. 7.
s.139: The relevant terms of this section are set out at para. 8.

Civil Procedure Rules, r.32.19(1): The relevant terms of this subrule are set out at para. 18.
r.33.2: The relevant terms of this rule are set out at para. 19.

Proceeds of Crime Act 2002 (c.29), s.241(2): The relevant terms of this subsection are set out at para. 30.

C. Rocca, *K.C.*, *Director of Public Prosecutions*, with *J. Lennane* (instructed by the Office of Criminal Prosecution & Litigation) for the claimant;
C. Finch (instructed by Verralls LLP) for the defendants.

1 **DUDLEY, C.J.:** This is the judgment on a Part 8 Claim for a recovery order pursuant to s.72 of the Proceeds of Crime Act 2015 ("POCA") in respect of the following property:

(i) flat 8 Sunrise Court, Catalan Bay, Gibraltar, the legal owner of which is Margot Serra;

(ii) flat 12 Sunrise Court, Catalan Bay, Gibraltar, the legal owner of which is also Margot Serra;

(iii) commercial units 1, 2 and 3, block 1, Watergardens, Gibraltar, the legal owner of these being Stamford Company Ltd. together with certain premiums and rents that have accrued;

(iv) taxi licence no. 65 held in the name of Sharon Jones and Victoria Serra; and

(v) taxi licence no. 103 held in the name of George Wink.

2 By order dated October 28th, 2022, I directed the claimant to particularize its claim. The claim is succinctly set out at para. 2 of the particulars of November 10th, 2022 as follows:

> "In particular, the Claimant claims that the assets mentioned in paragraph 1 of the Claim Form (the 'Assets') and the subject matter of the claim have been purchased through the Proceeds of Crime and that the Ultimate Beneficial Owner ('UBO') is the 6th Defendant, Clint Serra, who is involved in illicit activity, in particular, being involved in drug trafficking and money laundering. The Assets were placed into the names of the 1st–5th Defendants as set out in the Claim Form, who knowingly or unknowingly facilitated an arrangement to hide the true beneficiary. Under Part V of POCA, HMAG is able to recover, inter alia, in civil proceedings, property which is, or represents property obtained through unlawful conduct."

3 The claim is predicated almost entirely upon the evidence of Luis Miguel Garcia White ("GW") who is a police sergeant in the Royal Gibraltar Police ("the RGP"), who has received training as a financial investigator with the National Crime Agency in the United Kingdom. GW's witness statement, which details the evidence obtained as part of a civil recovery investigation instigated by the RGP on September 11th, 2020, runs to 993 paragraphs with the exhibit thereto comprising 241 tabs contained in 8 lever arch files. According to GW, as part of what at the time was a criminal investigation, the subjects of the present application were interviewed by the RGP but they provided no explanations as to the origins of the moneys used to purchase any of the assets. For their part the defendants whilst resisting the claim, have not filed witness statements and do not rely upon any evidence to defend against it.

The defendants

4 I intend no disrespect, but for ease I shall refer to the individual defendants by their first names. Margot Serra ("Margot") is the mother of

Clint Serra ("Clint"). Victoria Serra ("Victoria") is Clint's sister. George Wink ("George") is Victoria's partner. Sharon Jones ("Sharon") is Clint's partner. Stamford Company Ltd. ("Stamford") is a company registered in Gibraltar, incorporated on September 24th, 2014, the sole shareholder and a director of which was the late Mario Serra ("Mario"). Mario was Clint's father. Mario has held the totality of the issued share capital in Stamford of £1000, divided into 1000 ordinary shares of £1 since December 15th, 2014.

The relevant statutory provisions

5 Part V of POCA deals with the civil recovery of the proceeds of unlawful conduct. Section 69 which sets out the general purpose of the Part, provides:

"69.(1) This Part has effect for the purposes of—

(a) enabling the Attorney General to recover, in civil proceedings before the Court, property which is, or represents, property obtained through unlawful conduct,

(b) . . .

(2) The powers conferred by this Part are exercisable in relation to any property (including cash) whether or not any proceedings have been brought for an offence in connection with the property."

What amounts to "unlawful conduct" and the standard of proof to be applied in making the determination is to be found at s.70 which provides:

"70.(1) Conduct occurring in Gibraltar is unlawful conduct if it is unlawful under the criminal law of Gibraltar.

(2) Conduct which occurs in a country or territory other than Gibraltar and is unlawful under the criminal law applying in that country or territory is also unlawful conduct.

. . .

(3) The court must decide on a balance of probabilities whether it is proved—

(a) that any matter alleged to constitute unlawful conduct has occurred, or

(b) that any person intended to use any cash in unlawful conduct."

How property is obtained through unlawful conduct is governed by s.71:

"71.(1) A person obtains property through unlawful conduct (whether his own conduct or another's) if he obtains property by or in return for the conduct.

(2) In deciding whether any property was obtained through unlawful conduct—

(a) it is immaterial whether or not any money, goods or services were provided in order to put the person in question in a position to carry out the conduct,

(b) it is not necessary to show that the conduct was of a particular kind if it is shown that the property was obtained through conduct of one of a number of kinds, each of which would have been unlawful conduct."

6 The present claim is brought pursuant to s.72 and s.73 of POCA which are to be found in Chapter 2 of Part V, under the heading "Civil Recovery—Proceedings for recovery orders." These provide:

"72.(1) Proceedings for a recovery order may be taken by the Attorney General against any person who he thinks holds recoverable property.

(2) The Attorney General must serve the claim form—

(a) on the respondent, and

(b) unless the court dispenses with service, on any other person who the authority thinks holds any associated property which the Attorney General wishes to be subject to a recovery order,

wherever domiciled, resident or present . . ."

"73.(1) 'Associated property' means property of any of the following descriptions (including property held by the respondent) which is not itself the recoverable property—

(a) any interest in the recoverable property,

(b) any other interest in the property in which the recoverable property subsists,

(c) if the recoverable property is a tenancy in common, the tenancy of the other tenant,

(d) if the recoverable property is part of a larger property, but not a separate part, the remainder of that property.

(2) References to property being associated with recoverable property are to be read accordingly . . ."

7 Sections 136 and 137 POCA deal with recoverable property and the tracing of property on the following terms:

"136.(1) Property obtained through unlawful conduct is recoverable property.

(2) If property obtained through unlawful conduct has been disposed of (since it was so obtained), it is recoverable property only if it is held by a person into whose hands it may be followed.

(3) Recoverable property obtained through unlawful conduct may be followed into the hands of a person obtaining it on a disposal by—

(a) the person who through the conduct obtained the property, or

(b) a person into whose hands it may (by virtue of this subsection) be followed."

"137.(1) Where property obtained through unlawful conduct ("the original property") is or has been recoverable, property which represents the original property is also recoverable property.

(2) If a person enters into a transaction by which——

(a) the disposes of recoverable property, whether the original property or property which (by virtue of this Chapter) represents the original property, and

(b) he obtains other property in place of it,

the other property represents the original property.

(3) If a person disposes of recoverable property which represents the original property, the property may be followed into the hands of the person who obtains it (and it continues to represent the original property)."

8 In relation to profits which accrue from "recoverable property" s.139 provides:

"139.(1) This section applies where a person who has recoverable property obtains further property consisting of profits accruing in respect of the recoverable property.

(2) The further property is to be treated as representing the property obtained through unlawful conduct."

9 I shall refer later in the judgment to the relevant provisions of the Limitation Act.

Property obtained through unlawful conduct

10 In *Gale* v. *Serious Organised Crime Agency* (2), the United Kingdom Supreme Court considered the United Kingdom Proceeds of Crime Act 2002 as amended. The Gibraltar statutory provisions are evidently derived from the United Kingdom Act and the following passages from the judgment of Lord Phillips are apposite. He said ([2011] UKSC 49, at para. 2):

> "The fruits of criminal activity can be recovered under Part 5 whether or not anyone has been convicted of the crime or crimes that have produced them."

He gave an overview of what is required in order to recover property under these provisions as follows (*ibid.*, at para. 4):

> "In order to recover property under Part 5 SOCA [Serious Organised Crime Agency] has to prove that it was obtained by unlawful conduct, or that it is property obtained in place of such property. Section 241 defines unlawful conduct as being conduct which is unlawful under the criminal law of the country in which it occurs, whether this is the United Kingdom or elsewhere. The section requires the court to decide 'on a balance of probabilities' whether it is proved that any of the matters alleged to constitute unlawful conduct occurred. Section 242 provides that in deciding whether property was obtained through unlawful conduct it is not necessary to show that the conduct was of a particular kind if it is shown that the property was obtained through conduct of one of a number of kinds, each of which would have been unlawful conduct. Thus it is not necessary to prove that individual items of property were derived from specific offences."

11 In *R. (Director of Assets Recovery Agency)* v. *Green* (6), Sullivan, J. (as he then was) considered as a preliminary issue ([2005] EWHC 3168 (Admin), at para. 1):

> "Whether a claim for civil recovery can be determined on the basis of conduct in relation to property without the identification of any particular unlawful conduct, this first question to include whether the claimant can sustain a case for civil recovery in circumstances where a respondent has no identifiable lawful income to warrant the lifestyle and purchases of that respondent."

He answered it as follows (*ibid.*, at para. 47):

> "1. In civil proceedings for recovery under Part 5 of the Act the Director need not allege the commission of any specific criminal offence but must set out the matters that are alleged to constitute the particular kind or kinds of unlawful conduct by or in return for which the property was obtained.
>
> 2. A claim for civil recovery cannot be sustained solely upon the basis that a respondent has no identifiable lawful income to warrant his lifestyle."

12 In *Olupitan* v. *Director of Assets Recovery Agency* (5), the formulation in *Green* was approved. Carnwath, L.J. said ([2008] EWCA Civ 104, at paras. 16–18):

"16. In my view this is the correct approach, and I would respectfully adopt Sullivan J's analysis and conclusions. However, I would emphasise the word 'solely' in the second declaration. Lack of lawful income to support the respondent's lifestyle may be a very relevant factor in painting the overall picture.

17. The same approach was in effect adopted by this court in *Director of the Assets Recovery Agency v Szepietowski* [2007] EWCA Civ 766. This was an appeal by the Director against a finding by the court below that he did not have 'a good arguable case', justifying an interim recovery order (under s 246). The court allowed the appeal. In the leading judgment, Waller LJ said:

> 'In this case, in considering whether a good arguable case has been established, it will be necessary to examine first whether it is arguable on the evidence that unlawful conduct of the kind asserted by the ARA has taken place i.e. mortgage fraud. Next needs to be considered whether it is arguable that the property sought to be frozen represents property originally obtained through such unlawful conduct, but *not necessarily through specific examples of that conduct*; and finally, if there is some evidence that property was obtained though unlawful conduct, consideration needs to be given to any untruthful explanation or a lack of explanation where opportunity has been given to provide it. An untruthful explanation or a failure to offer an explanation may add strength to the arguability of the case.' (para 28, emphasis added)

18. Concurring, Moore-Bick LJ said that the judge had wrongly confined himself to looking at the consequences of the various mortgage frauds of which the Director had positive evidence, while failing to take account of 'the broader picture' (para 112)."

13 In *Olupitan*, the proposition that the claimant does not have to allege and prove a specific offence was dealt with by Carnwath, L.J. (*ibid.*, at para. 22) as follows:

"I agree with Sullivan J (in *Green*), that the Director need not allege the commission of any specific criminal offence, provided there are set out the matters alleged to constitute 'the particular kind or kinds of unlawful conduct' by or in return for which the property was obtained. This approach in my view follows from the wording of the Act. Use of the term 'unlawful conduct', rather than reference to a criminal offence or offences, is a clear indication that the power is not so restricted. The *Green* approach was in effect endorsed by this court in *Szepietowski*."

Olupitan is also authority for the proposition that to make a recovery order, a direct link with any offence or offences is not required, but rather what is required is a causal connection with criminal conduct of the kinds relied on by a claimant (*per* Carnwath, L.J., *ibid.*, at para. 30).

Standard of proof

14 In *Gale* (2), Lord Phillips made the point ([2011] UKSC 49, at para. 5), that the standard of proof is the balance of probabilities and (*ibid.*, at para. 10) he referred to the judgment of Griffith Williams, J. at first instance without apparent disapproval:

> "10. The judge then addressed the burden and standard of proof. He held:
>
> > '9. The burden of proof is on the claimant and the standard of proof they must satisfy is the balance of probabilities. While the claimant alleged serious criminal conduct, the criminal standard of proof does not apply, although "cogent evidence is generally required to satisfy a civil tribunal that a person has been fraudulent or behaved in some other reprehensible manner. But the question is always whether the tribunal thinks it more probable than not"—see *Secretary of State for the Home Department v Rehman* [2003] 1 AC 153 at para 55, per Lord Hoffmann.'
>
> The judge went on to quote from Lord Carswell's elaboration of this approach, in which the other members of the House concurred, in *In re D (Secretary of State for Northern Ireland intervening)* [2008] UKHL 33, [2008] 1 WLR 1499."

15 Given that the stance taken by the defendants in these proceedings is in effect that the requisite standard of proof has not been met, Lord Carswell's elaboration in *In re D* (1) bears some consideration ([2008] UKHL 33, at paras. 27–28):

> "27. Richards LJ expressed the proposition neatly in *R (N) v Mental Health Review Tribunal (Northern Region)* [2005] EWCA Civ 1605, [2006] QB 468, 497–8, para 62, where he said:
>
> > 'Although there is a single civil *standard* of proof on the balance of probabilities, it is flexible in its *application*. In particular, the more serious the allegation or the more serious the consequences if the allegation is proved, the stronger must be the evidence before a court will find the allegation proved on the balance of probabilities. Thus the flexibility of the standard lies not in any adjustment to the degree of probability required for an allegation to be proved (such that a more serious allegation has to be proved to a higher degree of probability), but in the strength or

> quality of the evidence that will in practice be required for an allegation to be proved on the balance of probabilities.'
>
> In my opinion this paragraph effectively states in concise terms the proper state of the law on this topic. I would add one small qualification, which may be no more than an explanation of what Richards LJ meant about the seriousness of the consequences. That factor is relevant to the likelihood or unlikelihood of the allegation being unfounded, as I explain below.
>
> 28 It is recognized by these statements that a possible source of confusion is the failure to bear in mind with sufficient clarity the fact that in some contexts a court or tribunal has to look at the facts more critically or more anxiously than in others before it can be satisfied to the requisite standard. The standard itself is, however, finite and unvarying. Situations which make such heightened examination necessary may be the inherent unlikelihood of the occurrence taking place (Lord Hoffmann's example of the animal seen in Regent's Park), the seriousness of the allegation to be proved or, in some cases, the consequences which could follow from acceptance of proof of the relevant fact. The seriousness of the allegation requires no elaboration: a tribunal of fact will look closely into the facts grounding an allegation of fraud before accepting that it has been established. The seriousness of consequences is another facet of the same proposition: if it is alleged that a bank manager has committed a minor peculation, that could entail very serious consequences for his career, so making it the less likely that he would risk doing such a thing. These are all matters of ordinary experience, requiring the application of good sense on the part of those who have to decide such issues. They do not require a different standard of proof or a specially cogent standard of evidence, merely appropriately careful consideration by the tribunal before it is satisfied of the matter which has to be established."

Approach to the evidence of GW

16 By order of May 4th, 2021. Mrs. Justice Ramagge-Prescott directed that the witness statement of GW was to stand as his evidence-in-chief and that he was to be made available for cross-examination. At a subsequent hearing before me and notwithstanding that the point had not previously been taken and that no application had been filed, Mr. Finch raised objection to the admissibility of those parts of GW's evidence which contained opinion and hearsay evidence. As regards the limited opinion evidence in the witness statement, Mr. Rocca conceded the point and at the trial of the action I was provided with a redacted copy removing GW's opinion as to the inferences which could be drawn from the evidential material he was placing before the court.

17 As regards the hearsay evidence, in my judgment service of the witness statement was in effect notice of the claimant's intention to rely upon hearsay evidence and the very short answer is that to the extent that objection was taken to any possible procedural failing in not providing notice of intention to rely on hearsay evidence, the point should have been taken at the hearing leading to the order of May 4th, 2021.

18 In any event, as regards documentary evidence exhibited to GW's witness statement CPR r.32.19(1) is apposite. It provides:

> "(1) A party shall be deemed to admit the authenticity of a document disclosed to him under Part 31 (disclosure and inspection of documents) unless he serves notice that he wishes the document to be proved at trial."

Because these are Part 8 proceedings there has not been Part 31 disclosure and inspection of documents but rather the documents have been exhibited to the witness statement of GW, but in my judgment the same principle applies.

19 As regards statements provided to the RGP and exhibited to GW's witness statement, their admissibility is achieved by virtue of CPR r.33.2 (although evidently in this jurisdiction it is to be read as referring to the Civil Evidence 1968 Act):

> "(1) Where a party intends to rely on hearsay evidence at trial and either—
>
> (a) that evidence is to be given by a witness giving oral evidence; or
>
> (b) . . .
>
> that party complies with section 2(1)(a) of the Civil Evidence Act 1995 serving a witness statement on the other parties in accordance with the court's order."

20 In determining whether or not property is recoverable property, what is of crucial importance is the primary evidential material underpinning GW's evidence and the careful examination and apportionment of weight to that evidence. And because it is very largely hearsay evidence, which is a matter which goes to weight, I am mindful of the criteria in s.6(3) of the Civil Evidence Act 1968. In particular, whether or not a statement was made contemporaneously with the facts stated and whether or not the maker of the statement had any incentive to conceal or misrepresent facts.

Identification of third parties

21 I am mindful of the fact that in reviewing the evidence and in making findings of fact this judgment may implicitly or otherwise contain adverse

findings against non-parties or contain findings from which adverse inferences may be drawn against non-parties. In circumstance in which criticism, which may implicitly be levied, has not been put to them in a way that procedurally allows for those individuals or entities to seek to challenge or explain the circumstances, this could compromise their right to private life under s.7 of the Gibraltar Constitution Order. To protect that right I shall anonymize those individuals and law firms which have had dealings with the defendants in relation to the acquisition of the various assets or have otherwise had relevant dealings with them. (To assist in the reading of this judgment, I set out in an appendix the letter/s of identification and a brief description of individuals who have been anonymized.)

Evidence of Clint's involvement in drug trafficking

22 According to GW, the RGP received intelligence from La Guardia Civil in Spain that suggested that Clint was the head of an organized crime group operating in the area of El Campo de Gibraltar, Spain. The intelligence suggested that the organized crime group was involved in large commercial trafficking of cannabis resin from Morocco to Spain, and that it was suspected that it had acquired assets both in Gibraltar and Spain, with the proceeds of that criminal conduct. The intelligence was further to the effect that those assets had been acquired, using third parties who knowingly or unknowingly facilitated the laundering of the proceeds of crime by hiding the true beneficiary of the assets. Whilst the intelligence will have been provided to the RGP by Spanish law enforcement agencies it is evident that they in turn will have obtained it from other sources. Without being able to identify the source of that intelligence, even in a generic way, and thereby determine what weight it ought to be afforded, in my judgment it is material which simply cannot be relied upon. Intelligence is not proof of fact and therefore not admissible evidence. It may serve to initiate or guide a criminal investigation, but it does not have any evidential value before a court.

23 The evidence which can properly be relied upon is the EAW issued on September 10th, 2019 by the Juzgado de Instruccion [Court of Investigation] No. 1 in Algeciras in respect of Clint. In the part dealing with the description of the offences it states:

> "[14 named individuals including A] [B, Clint's nephew] and [CLINT], form part of a criminal organisation for committing crimes against public health with respect to a substance that does NOT cause SERIOUS DAMAGE TO HEALTH (HASHISH), in significant quantities and with the use of a vessel, classified in articles 368 and 369 bis of the Penal Code, a crime sanctioned with a prison sentence of between four years and six months and ten years. [CLINT] (a national of the neighbouring British colony of Gibraltar) is the leader of this criminal group and is aided by his nephew, [B], in the territory

of the aforementioned colony and by [A] in Spanish territory. The rest of the members carry out various duties, which are detailed below. CLINT's status as leader can be seen on page 202 of the separate dossier. [one of the named individuals] received a call from [one of the named individuals], telephone number . . ., and attention should be drawn to the passage 'the boss will arrive tomorrow morning.' CLINT's status as the leader was further confirmed in various passages of the telephone surveillance ordered in these proceedings, and which culminates in the attempted shipment of hashish, and the subsequent actual shipment described on pages 534 to 561 of the separate dossier, where the acting officers saw the aforementioned CLINT begin to give orders, together with [A], to the rest of the aforementioned individuals. In particular, at 17:00 on 27 March 2019, [Band two of the named individuals] remained in the specialist nautical store 'GUSTY,' located at km 15 on Carretera de Chipiona, for approximately 30 minutes in order to launch the vessel which was geolocated via the Ruling on page 194 of the separate dossier, and which is believed to have finally been launched to sea during the night of 29 March. After travelling to Morocco, the vessel is believed to have returned loaded with packets of hashish and navigated by [four of the named individuals], who are believed to have thrown the packets of hashish, which have already been analysed, into the sea, as detailed below. Returning to the attempted launch of 28 March, it is noteworthy that, at 21:45, [two of the named individuals] arrived in a van and left in the same vehicle at 23:40. At 23:55, [B and one of the named individuals] arrived in a motor vehicle and subsequently left the scene. The next day, on 29 March 2019, at 19:24, [two of the named individuals] went to the 'LINAMAR' nautical store, located in La Linea de la Concepcion, and at 20:15, they arrived at Calle [xxx], Palmones (Los Barrios), the location of the geolocated vessel. [CLINT] together with [A], remained there for approximately 10 minutes, both leaving the scene in a motor vehicle in the direction of Malaga, in which province [A] himself resides. A judicially authorised entry and search procedure was carried out at that residence (page 189 of the main dossier) and a total of 7 mobile phones were placed under surveillance, a clear sign of [A's] prominent position in the group under investigation. The geolocated vessel finally left Calle [xxx], Palmones (Los Barrios), the 'headquarters'; where each and every one of the aforementioned individuals was located; towed by tractor and with [four of the named individuals] as the navigators. [B and four of the named individuals] themselves then passed a rake through the sand on the beach to erase the traces of the launch. The geolocated vessel travelled to an unknown location in order to transport the hashish, which was eventually intercepted, and was spotted by the Civil Guard helicopter on the Spanish coast on 31 March 2019. It was

> detected again on 3 April 2019 at 01:00 by the helicopter Argos I of the Customs Surveillance Service at the coordinates 35°-48'N and 04°-34'W, who alerted the patrol boat Aguila IV. At 02:30, the vessel headed south at full speed and its crew members began to throw the packets of hashish into the water. A total of 26 packets were recovered. The last sighting of the geolocated vessel was reported (page 890 of the separate dossier) at 18:26 on 23 May 2019, 'loaded with hashish.' The vessel finally reappeared on the night of 25 May 2019, abandoned in the EASTERN BEACH area of Gibraltar. These events are being investigated by Officers of the ROYAL GIBRALTAR POLICE . . .
>
> Since the launch of 29 March 2019, it has been impossible to locate [CLINT], [B] and [one of the named individuals] in Spanish territory . . .
>
> After the illicit goods were intercepted, [CLINT] left Spain on 10 April, travelling by ferry from Tarifa to Tangiers (Morocco), as can be deduced from the following document provided by the investigating authorities.
>
> . . .
>
> He was transported to the aforementioned port by his nephew, [B], in his Suzuki Vitara with registration plate [Gxxxx]. Since that day, [CLINT] has not been seen in Spain. We are aware that he has taken flights on several occasions from Gibraltar to Morocco and vice versa, avoiding passing through Spanish territory at all times.
>
> . . ."

24 As part of the investigation carried out by the RGP triggered by the EAW, a search warrant was executed at 53 Europa Road, Gibraltar, which is a property associated with Clint where a large number of empty jerry cans were found. It is the case for the claimant that these are of the type used to refuel vessels involved in the illicit transportation of drugs. A photograph of the jerry cans exhibited to GW's witness statement shows some 390 containers.

25 It is not in dispute that the EAW was defective and that by consent the request from the Spanish judicial authorities was dismissed. As part of his submissions, but without any supporting evidence whatsoever, Mr. Finch had previously asserted that Clint was in Spain, that he had not been arrested although he had spoken to a judge. That he had been released without any bail requirements, and was not even required to report at the court. That no charges had been laid against him, and that the investigating group had been disbanded and left the area. That consequently there was no longer any reported genuine interest by the Spanish authorities in

respect of the matters set out in the EAW and consequently it could not be relied upon.

26 Notwithstanding the absence of any evidence adduced in support of that contention advanced on behalf of the defendants, the claimant filed a witness statement of Craig Goldwin and made him available for cross-examination. Craig Goldwin is a police officer with the RGP with responsibility for liaising with Spanish law enforcement agencies. It was his evidence that he had contacted the Spanish Guardia Civil liaison officer in Algeciras who is a senior ranking officer and that he had been informed that Clint was subject to court proceedings in Spain in respect of the matter which was the subject of the EAW. That he had been charged and that he had to report before the Spanish court on the 1st and 15th of every month and that he had been required to surrender his travel documents. Officer Goldwin's understanding was that Clint was awaiting trial in Spain although he confirmed that he had not been provided with any documentation by the Guardia Civil and that he did not follow up any inquiries with the Spanish court.

Discussion and determination of Clint's involvement in drug trafficking

27 Mr. Finch's somewhat broad-brush submissions come to this:

(i) the contents of the EAW cannot be relied upon because it was discontinued;

(ii) the allegation in the EAW that Clint is part of an organized crime group does not have an equivalent offence in Gibraltar;

(iii) that foreign law has to be proven as a matter of fact, and that in the absence of such evidence before the court the claim "can never even get off the ground";

(iv) that neither Clint nor any of the other defendants in these proceedings have ever been convicted of a drug trafficking offence and that on the evidence before this court they are all persons of good character;

(v) in relation to the jerry cans, that although a collection of plastic containers may have been found in one defendant's garden, there is no evidence as to how long they may have been there or any investigation as to why they were there. Without the benefit of any evidence but simply advanced in his skeleton, the assertion that the containers cannot be used for Spanish drug boats, as speculated by GW, because these do not tie up in Gibraltar to refuel, and the items are not even in the same jurisdiction; and,

(vi) that to prove criminal conduct on a balance of probabilities, what is required is admissible evidence proving that conduct. That when as in the present case what is alleged is foreign illegality, what would be expected

would be official transcripts of investigative or judicial proceedings. That there is no admissible evidence of any kind whatsoever of drug trafficking before the court.

28 No substantive explanation has been provided as to why the EAW was discontinued. In my judgment it would be relevant if the reason for this was that the predicate criminal proceedings in Spain had been discontinued. On the evidence before me that is evidently not the case. That it was discontinued does not of itself negate its contents or the weight which it should be afforded.

29 As regards the submission touching upon the allegation in the EAW that Clint is part of an organized crime group and that this does not have an equivalent offence in Gibraltar, it is right to say that "participation in a criminal organisation" is one of the items ticked in that part of the EAW that provides for the identification of the offences as punishable in the issuing member state by a custodial sentence of at least three years. But, "illicit trafficking in narcotic drugs, and psychotropic substances" is also ticked. There is then a cross-reference to an earlier part of the EAW in which the offence is described as:

> "for the crime against public health . . . carried out through a criminal organisation, involving a substance that does not cause serious damage to health, in significant quantities, classified in articles 368 1369 bis of the penal code, a crime sanctioned with a prison sentence of between four years and six months and 10 years."

30 As aforesaid s.70(2) of POCA provides:

> "(2) Conduct which occurs in a country or territory other than Gibraltar and is unlawful under the criminal law applying in that country or territory is also unlawful conduct."

It falls to be contrasted with s.241(2) of the United Kingdom, Proceeds of Crime Act 2002, which provides:

> "(2) Conduct which—
>
> (a) occurs in a country or territory outside the United Kingdom and is unlawful under the criminal law applying in that country or territory, and
>
> (b) if it occurred in a part of the United Kingdom, would be unlawful under the criminal law of that part,
>
> is also unlawful conduct."

To the extent that Mr. Finch relies upon s.70(2A)(c) it is of no avail. It provides:

> "(2A) Conduct which—

(a) occurs in a country or territory outside Gibraltar;

(b) constitutes, or is connected with, the commission of a gross human rights abuse or violation in accordance with section 70A; and

(c) if it occurred in Gibraltar, would be an offence triable under the criminal law on indictment or triable either way,

is also unlawful conduct."

It is evident that paras. (a)–(c) operate cumulatively and relate to s.70A which deals with gross human rights abuse or violations

31 On a plain reading of our s.70(2), the claimant does not have to establish that conduct which is unlawful in Spain is also unlawful in Gibraltar. But if I am wrong in that analysis the argument in any event fails. What needs to be looked at is the conduct and not its typification as a criminal offence. The conduct alleged against Clint would undoubtedly also be unlawful in Gibraltar and if it had happened in Gibraltar could have been charged as importation, possession and/or possession with intent to supply cannabis resin. It could also be charged as a conspiracy to commit any of those offences.

32 As regards proving matters of Spanish law as fact, as far as it goes as a statement of principle that foreign law needs to be proved as a matter of fact, it is accurate. However, I fail to understand what if any issue of Spanish law needs to be proved in this jurisdiction. If what is being said is that the claimant must prove that the alleged unlawful conduct in Spain can in fact be typified as a criminal offence in Spain, in my judgment that is self-evident from the EAW which is issued by Spanish judicial authorities. In any event the matter not having been challenged by the defendants in any pleading and having chosen not to adduce any evidence of Spanish law, there is a presumption of similarity, by which I can assume that Spanish law is the same as Gibraltar law. I can therefore assume that the alleged unlawful conduct which in Gibraltar would amount to the commission of various criminal offences is likewise unlawful in Spain.

33 As regards the submission by Mr. Finch that the defendants are all said by him to be of good character, that submission was not materially developed in his oral submission and there was no reference to any authority as to its relevance. My own research has taken me to *Phipson on Evidence*, 20th ed., para. 18–23, at 556 (2022) which suggests that the law is that good character evidence is not admissible in civil trials:

"There is clear, uncontroverted authority establishing that, even where relevant to some fact in issue, the good character of a party to a civil action may not be adduced."

Be that as it may, there is a fundamental distinction between legal submissions and arguments, on the one hand, and evidence relied upon at a hearing on the other and no evidence of good character has been adduced.

34 In respect of the jerry cans, it was GW's evidence that they match the resources believed to have been used by Clint and his criminal organization to re-fuel vessels involved in the illicit transportation of drugs as specified in the EAW. When cross-examined, GW accepted that during his time with the RGP he had not been actively involved in dealing with drug smugglers; he was unaware whether the jerry cans were new or old; used or unused; he conceded that they have other potential uses and confirmed that there was no evidence of Clint being observed filling them, whilst observing that he would not expect the head of a criminal organization to engage in the filling of the jerry cans.

35 No evidence is advanced on behalf of Clint as to why the jerry cans were found in a property associated with him. Any legitimate purpose which they may have had ought to have been relatively easy to provide. I accept the evidence of GW that jerry cans are used to refuel high powered drug smuggling vessels. It is disingenuous to suggest that the re-fuelling takes place alongside in Gibraltar; it is no secret, and I take judicial notice of the fact, that refuelling of vessels involved in drug trafficking largely takes place at sea. That jerry cans are used for this purpose is also a matter in respect of which I can take judicial notice. In that regard it is instructive that as recently as 2021 the Petroleum (Amendment No. 2) Act was enacted to deal with the increase of persons being found in possession of petrol canisters given the risk of injury or loss of life and the logistical support it provided to the drug trade. I accept the claimant's submission that the jerry cans are evidence in support of Clint's alleged involvement in drug trafficking.

36 The submission at para. 27(vi) above as to the adequacy of the evidence goes to one of the core issues falling for determination. It is apparent that the summary of alleged unlawful conduct set out in the EAW does not amount to findings of fact by a foreign court, it is rather a summary by an investigating judge of alleged criminal conduct and the circumstances surrounding that alleged offending. That is a relevant consideration which impacts upon the weight it is to be afforded. Procedural fairness in the process leading to its drafting is potentially also a relevant consideration. However, no evidence has been advanced questioning the expertise or impartiality of the Spanish court or to suggest any other procedural unfairness. I am cognizant that given that it is set out in an EAW the inference to be drawn is that at that stage Clint had not presented his case to the investigating judge. However, it was always open to Clint to advance evidence in this court challenging the factual matrix set in the EAW and he has chosen not to do so.

37 In my judgment, the summary of the investigation carried out by the Spanish law enforcement agencies describes a thorough and detailed investigation involving surveillance of individuals; telephone surveillance; geo-location of vessels and execution of search warrants which evidences Clint's involvement in drug trafficking. That together with the jerry cans found in a property with which he is associated, when taken together is sufficient to satisfy me that it is more likely than not that Clint is involved in drug trafficking. Moreover, I am fortified in that view by Clint's failure to adduce any evidence in these proceedings which contradicts or undermines the claimant's evidence, the conclusion that I draw from that failure is that Clint did not have an answer to the claimant's case that would have withstood scrutiny. Evidently his failure to provide an explanation cannot of itself wholly or mainly suffice for the claimant to make its case, but it lends support to it.

38 For these reasons and on the balance of probabilities I find as fact Clint's involvement in drug trafficking.

Financial evidence in respect of the individual defendants and related individuals

39 According to GW the scope of the financial investigation included the defendants, Mario, B, Clint's brother and Clint's daughter. It is GW's evidence that its aim was to establish their legitimate income and compare this with their expenditure and the value of assets acquired during the period covered by the money laundering investigation, namely the 6 years from April 29th, 2013 to April 29th, 2019. It is evident that the acquisition of assets absent sufficient legitimate income lends support to the proposition that assets are acquired with proceeds of crime.

40 As part of that financial investigation the RGP, through the use of production orders, obtained documentary evidence including from the Income Tax Office, banks, law firms, the Housing Department, the Department of Social Security, Gibtelecom, Gibelec and AquaGib. Mr. Finch did not challenge any of the factual detail although he took issue with the emphasis or interpretation placed upon it by GW. In the result, nothing turns on the accuracy of the factual content of the evidence of GW in so far as it relates to the income and expenditure of the defendants and Mario. I set out an overview of GW's evidence in respect of the individuals the subject of the investigation.

Clint

41 During the 6 years covered by the investigation, for income tax purposes Clint declared that he was a self-employed taxi driver. The total income declared for the 5-year period 2013–2018 (the 2018/19 income was not available as at the time of the production order the deadline for

submission of tax returns had not elapsed) came to £62,266. This equates to an average yearly assessed income of £12,453.20. My own review of the figures, and attributing the same taxi income for the last year as in the preceding years results in a slightly higher average annual income of £13,044 and a total income during the specified investigation period of some £78,000.

Sharon

42 Sharon had not made declarations to the Income Tax Office during the specified investigation period. From April 29th, 2013 to September 30th, 2013, she received 6 monthly payments from the Department of Social Security in respect of Child Welfare Grant totalling £870. An analysis of her bank account shows that she received a total of £4,033.88 which GW believes to reflect salary from her employment in a supermarket, with those sums appearing in her account on a regular basis as from December 14th, 2018. She also received payments by cheque from C totalling £60,000 which are associated with the purchase of taxi licence no. 65. I shall return to these cheques and to other cheques which it is said she received and which were paid into Stamford's account.

43 Government Housing Department records show that Sharon (together with her and Clint's daughter) is authorized to live in a government flat in Anderson House. During the investigation period the monthly rent of some £65 was paid in cash. However, it is also GW's evidence that although 53 Europa Road (where the jerry cans were found) is owned by Victoria, who for the purposes of utilities is registered as the consumer, the person who is financially linked to this property is Sharon. GW draws the inference that it is Clint and Sharon who have "care and control of 53 Europa Road."

Mario

44 Since August 2010, for the purposes of income tax, the late Mario declared himself as a "Self Employed Pensioner (Taxi Rental)" with his son (Clint's brother) being the person renting the taxi licence. The income declared for the period 2013–2016 was of £5,200 per annum and from 2016–2018, £10,400 per annum. Those 5 years of data reflect an average annual income of £8,160 per annum or £680 per month. In addition, during the specified investigation period Mario received the total sums of £20,552.55 and £4,452.00 by way of old age pension and community care respectively. According to GW, the upshot is that during the specified investigation period, Mario would have been receiving by way of legitimate income, the sum of £10,967.42 per annum. My own review of those figures, and attributing the same taxi rental income for the last year as in the preceding two years results in a slightly higher average annual income of £12,327 and a total legitimate income during the 6-year investigation period of some £74,000.

Margot

45 According to GW's evidence, the Income Tax Department had no records in respect of Margot during the specified investigation period. Through information obtained from the department for employment, GW ascertained that she had not been assessed since 1997/1998, and that she has not been in employment since April 1997. During the specified investigation period she was in receipt of payments of old age pension, totalling £10,273.73, which equates to an average monthly income by way of benefits of £142.69.

46 Consequent upon a production order served on the Housing Department it is GW's evidence that Margot, together with her late husband Mario, and both Clint and Clint's brother were authorized to live in a flat in Varyl Begg Estate. It is GW's evidence that this is a government rental in respect of which a very low rent is payable.

Victoria

47 Victoria has been in employment since 2007. The information provided by the Income Tax Office for the 5-year period 2013–2018 evidences a total income of £201,859. Attributing the same income for the last year as in the preceding years this results in a total legitimate income during the specified investigation period of some £244,000 which equates to an average £40,666 per annum. During the relevant 6-year period she also received £3,952 by way of payments from the department of Social Security by way of Child Welfare Grants.

48 Although Victoria is registered as living in 53 Europa Road, she is also registered with two accounts with AquaGib/Gibelec for the purposes of what appear to be two related addresses in Castle Ramp. GW associates the payments of those utilities with Victoria's bank account.

49 The thrust of GW's analysis of Victoria's accounts is that moneys withdrawn from her account are neither directly or indirectly linked to the acquisition of the assets which are the subject of these proceedings. Rather that they represent expenditure in respect of household and living expenses and financial support towards her children.

George

50 George has been in employment with HM Government of Gibraltar since 1998. The income declared to the Income Tax Office for the 5-year period 2013–2018 totals £228,914 which equates to an average annual income of £45,782.

51 An analysis of his current account with NatWest opened on January 2nd, 2014 over a period of 64 months to April 29th, 2019 shows total credits of £243,363 principally made up by way of £195,426 by way of

salary; £32,033 by way of various loan payments; three cash deposits totalling £6,100 and a cheque for £9,090 which, given its provenance, GW attributes to a possible lottery win. The £243,363 tallies with the account debits for the same period which amount to £242,306.

52 Although George has a Government tenancy in Gavino's Dwellings in respect of which he pays rental of some £33 per month, together with Victoria he is registered as holding a Gibtelecom account associated with one of the properties in Castle Ramp.

B

53 According to GW, the information obtained by the RGP consequent upon the production orders reflects that B was in employment on two different occasions during the specified investigation period. In 2013/2014 the income declared to the Income Tax Office was £297. The subsequent four returns for the years from 2014 to 2018 have all been for £0.

Clint's brother

54 It is GW's evidence that during the period covered by the investigation Clint's brother lived with his parents in the Government flat in Varyl Begg Estate. In respect of the analysis of his accounts GW concludes that there are:

> "no transactions which could reasonably be expected to have contributed to the purchase of any assets, subject to this investigation, and shows that most of his income is accounted for, and subsequently seen being dissipated in other products."

Clint's daughter

55 In very similar vein, her income is very largely derived from her employment and her expenditure almost tallies with her income with her account analysis attributing it to cost of living and household expenditure. As put by GW her "account does not hold any significant data, which . . . assist[s] in the investigation."

Acquisition of the assets, discussion and conclusions

No. 12 Sunrise Court, Catalan Bay ("no. 12")

56 By deed of assignment dated November 30th, 2000, D acquired the underlease of no. 12 for the sum of £110,000.

57 The history behind the acquisition bears some consideration. The first letter in time to be found in the exhibit to GW's witness statement touching upon this transaction, dated October 18th, 2000, is from E, who was the lawyer acting for the purchaser and which is addressed to the vendors'

lawyer. The entitlement to the letter is: "Re: 12 Sunrise Court, Catalan Bay—[Vendor] to Margot Rosalea Virginia Serra." The reply which refers to a telephone conversation between individuals in the respective firms is entitled: "12 Sunrise Court, Catalan Bay—[Vendor] to [D]."

The letter of October 18th, 2000 contrasts with a statement given by the vendor to the RGP, in which he states that D contacted him in relation to the sale.

58 By deed of assignment dated December 19th, 2002, D assigned the underlease to Margot. The assignment does not reflect payment of any consideration, but rather recites a declaration of trust dated November 30th, 2000 by which D held the property on trust for Margot. There is no copy of the declaration of trust in the conveyancing documents made available by E to the RGP, although there is reference to it in correspondence.

59 The explanation proffered by "E" to the RGP, is to be found in an email dated October 25th, 2019:

> ". . . It appears the transaction started in a perfectly conventional manner with [D] scheduled to buy from [the vendors] at £110,000. [The vendors] was represented by [the vendors' lawyers] and I represented [D]. The purchase by [D] was agreed subject to contract in October 2000. Contracts were exchanged on the 13th November providing for completion on the 17 November 2000. There must have been some doubt in [D's] mind about his ability to pay the balance for he agreed to pay a deposit of £60,000 on exchange. I see from the papers that was sufficient to discharge [the vendors'] mortgage. On the 17th [D] defaulted and was served with a notice. We were having problems contacting him but when we did on or about the 22nd November it appears he gave us a cheque in the sum of £15,569 and told us he had paid the balance required to complete direct to [the vendors]. The cheque was forwarded to [the vendors' lawyers] who announced on the 23rd that their Client had not in fact received the balance of £34,431. We were about to send a letter on the 29th November when we received confirmation that the balance had been paid direct [the vendors].
>
> The Title was registered in the normal way and on the face of it [D] was the owner. At some stage between the end of November and late January 2001 [D] must have requested that there be prepared a Deed of Declaration of Trust in favour of Mrs Margot Serra. A Deed was prepared declaring Mrs Serra to be the beneficial owner. The Deed was dated the 30th November 2000 which clearly suggested that the money for the purchase by [D] had been supplied by a third party or following completion he had made arrangements to be recompensed by Serra who had decided to buy it.

> The second bundle of correspondence relates to acquisition of consents to enable the property to be put into the name of Mrs Serra as can be seen from the Sixth and Ninth Schedules to the Underlease (copied). Clearly the driving force behind the purchase would appear to have been Clint Serra. There are no copy ledger cards available but I have retained some dog-eared notes within the envelope which do not assist.
>
> The papers are available for collection."

60 A file note of a meeting between GW, another police officer and D, dated September 24th, 2020, provides a somewhat different explanation. The relevant paragraphs read:

> "[D] stated he bought 12 Sunrise Court with the proceeds of tobacco from which he benefitted during the 90's. Payment was made for this property through his lawyers, however [D] stated he could not recall the details as it was twenty years ago.
>
> [D] stated that he was arrested in Morocco and sentenced to a year in prison for a crime he did not commit. During his sentence Clint SERRA was the only person to help [D's] wife and children.
>
> Upon [D's] release from the Moroccan prison and return to Gibraltar, he was in a lot of debt and could no longer afford to keep his assets one of those being 12 Sunrise Court. SERRA had always had a keen interest in the flat in Catalan Bay, and the area itself. [D] having been indebted to SERRA for his generous support towards his family decided to gift 12 Sunrise Court to SERRA.
>
> [D] admitted he was in a different world and stated he has come a long way since . . . and has left the criminality in the past."

61 Although Margot is the legal owner of the property, as aforesaid she lives in a government flat in Varyl Begg Estate. Although in respect of no. 12 Clint is not registered as a consumer with Gibelec or AquaGib the bills are paid by direct debit from his bank account. The evidence produced by GW also shows that he pays for the service charges in respect of the property and that together with Sharon they hold a Gibtelecom account associated with that address.

62 I struggle with D's exposition of the circumstances which he says led to his gifting no. 12 to Clint, notwithstanding any support D may in fact have received from him whilst in prison. The letter from E to the vendors' lawyer dated November 30th, 2000 palpably evidences the fact that from the very beginning of the transaction the person intended to acquire legal ownership of the property was Margot. That D never had a beneficial interest in the property is also supported by the recital in the assignment of December 19th, 2002 in favour of Margot which makes reference to the

declaration of trust. Interposing D in the transaction without any clear need to do so, supports the claimant's contention that the acquisition of no. 12 involved money laundering. Moreover, given E's statement to the police that "[c]learly the driving force behind the purchase would appear to have been Clint Serra"; the fact that Margot, beyond having the property in her name, has no financial nexus with it; and the payment of utilities and service charges by Clint on balance lead me to conclude that Clint is the ultimate beneficial owner of the property.

63 However, GW's financial investigation was conducted for the period April 29th, 2013 to April 29th, 2019 and this transaction took place some 13 years earlier. The unlawful conduct relied upon, and which I have found as fact Clint to have been involved in, relates to activities in 2019, that is some 19 years after the property was acquired. It is for the claimant to prove that the funds that will have been used for the acquisition of the property are attributable to the unlawful conduct and in this regard they fail. That the transaction has all the hallmarks of a money laundering transaction does not suffice.

No. 8 Sunrise Court, Catalan Bay ("no. 8")

64 No. 8 was assigned to Margot on February 2nd, 2017 in consideration of the sum of £360,000. E, who at this point was practising with FF, acted for the purchaser.

65 It is GW's unchallenged evidence that on October 14th, 2016 Clint, from his bank account, made a single payment to the vendors' lawyers in the sum of £7,200 with the payment reference being the address of the property. That sum is then reflected in the sale and purchase agreement dated December 23rd, 2016 as having been paid to the vendors' lawyers.

66 FF assisted the RGP and supplied them with the conveyancing and other legal documentation relating to this transaction which are exhibited to GW's witness statement. Chronologically the first emails to be found in the material provided, are two internal emails dated November 16th, 2016 by which E confirms that he is instructed by Clint in respect of the purchase of no. 8. Thereafter, letters from the vendors' lawyers to E/FF are entitled: "8 Sunrise Court, Catalan Bay, Gibraltar—[the vendors] to Mr Serra" Subsequent communications between E and the vendors lawyers repeatedly make reference to Clint albeit in communications between E and the management company's lawyers, E refers to Margot as his client.

67 Significantly, an internal FF email dated December 22nd, 2016 giving instructions to transfer £28,800 to the vendors lawyers for the purposes of "exchange of contracts," reflects Clint as the client, with a client number attributed to him. Albeit in contradistinction, a file note by E dated January 23rd, 2017, states: "Spoke to Clint Serra at 12:15 pm today who has confirmed the funds provided on the 20th January from his mother's own

resources." There is however a subsequent internal FF email, dated January 24th, 2017, with the subject as "Clint Serra" and his client number which states: "Can you please let me know how much money we now hold for the above client I have the following . . ." The total reflected in that email amounts to £320,735. It is also instructive that FF's invoice for the conveyance, dated February 6th, 2017 (which incorrectly refers to the property as "9 Sunrise Court") is addressed to Clint.

68 The evidence as to the provenance of some of the funds also bears consideration. GW's evidence is that FF received into their client account the following sums:

December 16th, 2016: £90,000 from an account in Denmark;

December 28th, 2016: £83,900 from an account in the United Kingdom;

January 20th, 2017: £166,035.00 from an account in Turkey.

69 According to GW, as regards the transfers from the United Kingdom and Turkey, notwithstanding inquiries by the RGP, the beneficiaries of those accounts have not been ascertained. However, it is his evidence that from the financial investigation conducted in respect of Margot, it is clear that the movements in her accounts are not consistent with these international transfers and that there are no transfers which would fit the profile of these payments.

70 In relation to the Danish transfer, it is GW's evidence that the moneys were provided by G who is a Danish national with ties to Gibraltar and who has previously been convicted of money laundering in this jurisdiction. At para. 851 of his witness statement, GW says:

> "During the course of the investigation, [G] was interviewed under caution whereby he assisted the Police and he explained his involvement in the purchase of this property. During this interview, he stated that he became involved in this transaction on the request of [H] and that he did not know whom the monies were being lent to. However, due to his close friendship with [H], he was willing to participate in the transactions. To date, [G] has not been able to provide a type of loan agreement, which would substantiate this claim or indeed the terms in which this loan was made."

71 As regards H, it is GW's evidence that he is a local business person with a successful retail shop in Gibraltar. H provided a short statement to the RGP, which is exhibited to GW's witness statement, it reads:

> ". . . In December 2016, I was approached by a person that I knew to be Clint SERRA, somewhere outside in Ocean Village. I have always known Clint Serra as only 'Serra,' up until that date where he approached me and introduced himself. Clint Serra is a man aged 30

> to 35 years old, who I have heard was involved in Tobacco smuggling. I do not know any other member of the Serra family.
>
> In this meeting, Clint Serra asked if I could provide a cheque for him to buy his mother a house in Catalan Bay, and that he would return the money as cash. I do not recall the amount he was asking for, but I stressed to Clint Serra that I would not be able to assist in this.
>
> Clint Serra then asked if I knew anybody who would be able to assist in this, and I said that maybe [G] would be able to. Clint Serra also informed me that he would give me some money for making any deal between him and [G]. I have known [G] for 30 to 35 years, in a business capacity, meeting weekly with him for various matters.
>
> Over the next few days, I spoke to [G], and informed him what Clint Serra had asked. From there I do not know if [G] and Clint Serra ever got in contact, nor do I know if any money was given, or repaid. I was not involved in any form of repayment between Clint Serra and [G] to the best of my knowledge. I was also never given any money from Clint SERRA for speaking to [G] on his behalf."

72 There is further evidence which the claimant says links Clint to no. 8, in that although the AquaGib and Gibtelecom accounts are registered in Margot's name, payments of bills associated with the flat can be traced to an account held solely in Clint's name.

73 In my judgment the evidence in support of the propositions that Clint is the ultimate beneficial owner of no. 8 and that its acquisition involved money laundering is overwhelming and on a balance of probabilities without hesitation I so find. To possibly state the obvious, I am so satisfied by virtue of the following:

(a) the payment by Clint to the vendors' lawyer of £7,200;

(b) the emails between the lawyers referring to the purchaser as "Mr Serra";

(c) FF treating Clint as the client, attributing him a client number and raising the invoice against him;

(d) Margot's modest means which cannot justify the purchase;

(e) the very unusual features in the funding of the transaction, involving transfers from three jurisdictions which are not consistent with movements in Margot's account;

(f) Clint approaching H;

(g) the involvement in the funding of an individual with previous convictions for money laundering;

(h) the payment of utilities by Clint; and

(i) the absence of any explanation by either Clint or Margot.

74 Given my finding that Clint was engaged in drug trafficking, the issue which consequently requires determination is whether he acquired this asset through that unlawful conduct. I remind myself, that what must be established to the requisite standard is not a direct link but rather a causal connection. It is evident from the financial investigation that Clint does not have the legitimate source of funds with which he could have acquired the property and on balance I am satisfied that but for his involvement in drug trafficking he could not have acquired the asset which consequently represents property obtained through that unlawful conduct. That conclusion is reinforced by the inference I draw from his failure to provide an explanation.

Taxi licence no. 103

75 Taxi licence no. 103 was transferred to George in 2017. A statement provided by the transferor to the RGP is to the effect that his family had held the licence for many years. That he had worked the taxi for 5 years and thereafter rented it. That he was put in contact with George by the Taxi Association. That he agreed the transfer of the licence for £125,000 but required that payment be made by bank transfer or cheque, as he was aware that other people had experienced problems with cash transactions. A few weeks after meeting George, the transferor signed over the licence with the Traffic Commission and was paid by bank transfer by a firm of lawyers, FF. At para. 903 of his witness statement, GW states:

> "Enquiries have been made with Casco FX who are the providers of the payment made to [the transferor] through [JJ]. The results of this enquiry reveal that the payment to the law firm was made through an account held in the name of [K]. This person is currently on Police Bail for Money Laundering offences. Furthermore, the payment itself was traced to a separate party who credited [K's] account. The person responsible for providing the monies, which were eventually used for the purchase of this Taxi Licence, was '[xxxx].' The senders bank account being held in Istanbul, Turkey."

76 According to GW, the drivers who are known to operate on this licence have been approached in order to ascertain the amount of rent they pay, but they have refused to assist the RGP.

77 The transfer of the licence was made in 2017 and therefore within the period covered by the financial investigation. In the financial years before 2017, George did not have sufficient funds to acquire the licence and his income was used to cover his household and day-to-day expenditure. Although he obtained three loans which he obtained during that period which totalled some £32,000 these moneys were used up by way of small payments and are not associated with the acquisition of the taxi licence.

Moreover, according to GW the investigation did not disclose any financial link between George or Victoria and the licence itself and neither of them have made income tax declarations to indicate or suggest a receipt of income from this source.

78 There are undoubtedly some very unusual features in the acquisition of this taxi licence which are redolent of money laundering. Provision of the funds for the taxi licence by a third party (who at the time of GW's witness statement was on police bail for money laundering); that third party in turn obtaining the moneys from another individual from an account in Turkey; the acquisition of the taxi licence by someone without the financial means to justify its acquisition through his legitimate income and the unwillingness on the part of drivers to provide the police with details of the taxi rental. The foregoing, inexorably leads me on balance to conclude that the taxi licence was acquired for the purposes of processing criminal proceeds so as to disguise their illegal origin.

79 That said, the weakness with the claim in so far as it relates to this asset, is that the claimant must prove the unlawful conduct by or in return for which the property was obtained. The case as particularized, is directed at Clint and his involvement in drug trafficking and money laundering. Beyond the fact that George is Clint's sister's partner, there is no evidential nexus between the licence and Clint. It is trite that in making a determination the court can draw conclusions from the evidence, but it is not to engage in speculation or guesswork. In my judgment the inferences which may be drawn from Clint or George's failure to provide an explanation is an insufficient basis upon which to make such a finding that Clint is the ultimate beneficial owner of the taxi licence, to do so would amount to speculation.

80 For these reasons as regards taxi licence no. 103, the claim fails. However, it may be that in view of my finding that its acquisition was for the purposes of processing criminal proceeds (whosoever's proceeds they may be) that the Transport Commission may, pursuant to s.20 of the Transport Act wish to consider whether the licence should be revoked. To that end I shall be directing the Registrar to provide a copy of this judgment to the Secretary to the Transport Commission.

Taxi licence no. 65

81 Taxi licence no. 65 was transferred to Victoria and Sharon in 2015. The licence itself was acquired from N who is now deceased. According to GW, contact was made with N's niece who provided a statement to the RGP stating that to the best of her knowledge, the full amount for the transfer of this licence was never received.

82 It is GW's evidence that, although the licence itself is registered in the name of Sharon and Victoria, the financial investigation of both leads him

to the conclusion that only Sharon has had a financial involvement with this licence. Also, GW's evidence that the financial investigation into Victoria shows that she did not have the means to acquire this asset; that there are no transfers or transactions made by her associated with this asset and that she has not declared any income from this source for tax purposes. In contrast, according to GW there are several transactions involving Sharon which are linked to the acquisition of this taxi licence albeit not involving moneys accumulated by her.

83 At least some of the moneys used to acquire this taxi licence can be traced to P, who self describes as Chief Executive Officer and Company Director. On February 7th, 2020, P provided a witness statement to the RGP. From that statement it can be gleaned that P provided cheques from his personal account to Sharon. In respect of at least three of these cheques the payee information was not filled in by P and he could not recall why he left it blank. The cheques, which total £186,000, were issued on the following dates, for the following amounts:

November 5th, 2015	£20,000
November 10th, 2015	£40,000
November 19th, 2015	£60,000
January 5th, 2016	£22,000
February 19th, 2016	£44,000

Of these, the November 19th, 2015 and the February 19th, 2016 cheques which total £104,000 were paid into Sharon's account. According to GW's financial investigation, the three other cheques totalling £82,000 were, between November 19th, 2015 and February 17th, 2016, paid into Stamford's account. I shall return to the relevance of the payments into Stamford's account in due course.

84 According to P's statement to the RGP, the moneys were paid by him for the purposes of acquiring a taxi licence. That the intention was that the Serra family were to run the taxi licence for a few years, maybe 3–5 years, and then the licence would be sold, he would get his money back and they would split the profit 50/50. According to P, he met the person selling the taxi licence in Irish Town, at a meeting which had been arranged by the Serra family. Clint may have attended the meeting but P was not sure. P also said that there was a clause in the agreement that the Serra family had to pay him a monthly sum after the second or third year. That he did not require security for his investment because he had known Clint and Sharon since school days; that they had been friends throughout this time and that he had no reason to distrust "that they would make good on the written agreement." According to GW, P was asked to provide a copy of the agreement but he stated that he did not have a copy. It is instructive that, notwithstanding that the total sum paid over to Sharon and Stamford amounted to £186,000, in his statement to the RGP P's recollection was

that the total amount that he paid to Sharon for the purchase of the taxi licence "was in the region of £160,000 which was slightly cheaper than the market price at the time." Although as I understand it P was notified of this claim, he has not sought to intervene in these proceedings to seek to exclude from any recovery order his purported interest in the taxi licence or the moneys he says he loaned.

85 Of the £104,000 received by Sharon from P, £85,523 was transferred to the owner of the taxi licence. In his witness statement, GW reasonably suggests, that given the value which could be attributed to a taxi licence, the balance may have been either paid in cash or simply not paid.

86 I have evidently not had the benefit of P giving evidence before me and being cross-examined, but on the basis of his statement to the RGP I struggle with the explanation he provides. It makes little commercial sense for anyone, let alone a CEO and businessman, to provide an unsecured loan of £186,000 to a couple on the strength that he has known them from their schooldays. Particularly when on his version of events he was investing all the capital in the enterprise, whilst the "Serra family" was to derive the benefit from the rental or other use of the taxi licence for the first two or three years and he would only obtain a return from the use of the taxi licence thereafter and only 50% of the profits of any subsequent transfer of the licence. At the very least if in fact he had an interest in the taxi licence he could have been expected to have secured his investment by having it jointly in his name. Moreover, there is no explanation as to why what appears to be a single transaction, namely the acquisition of a taxi licence, involved his advancing moneys over a period of some four months by way of cheques in which in at least some of these the payee was left blank. There is also no explanation as to why he advanced £26,000 more than what he says was required to purchase the taxi licence. He does not say whether or not he in fact started to receive his monthly sum after the second or third year and significantly he failed to provide the police with a copy of the agreement because he did not have one.

87 In my judgment, on balance the evidence contained in P's statement to the police is not believable. P may well have known or believed that some or all of the money that he paid by way of the five cheques was intended to be used to acquire a taxi licence. But on the evidence I am not satisfied that this was a bona fide loan and the inference which I draw from evidence is that this was a mechanism by which P was used to place Clint's illegal funds into the financial system, with some of those funds then used to acquire the taxi licence.

88 I say Clint, because there is a self-evident nexus between him and Sharon. Victoria has no financial link to the licence and did not have the financial means to justify the purchase. Clint and Sharon also had no legitimate income to justify the acquisition of the taxi licence. However,

on balance I am satisfied that Clint is the beneficial owner of taxi licence no. 65 and that but for his involvement in drug trafficking he could not have acquired it. Consequently, it represents property obtained through that unlawful conduct. I am fortified in that conclusion by the failure by Sharon and Victoria to account for their legal ownership of the licence.

89 In respect of both taxi licences, Mr. Finch submits (albeit not developed in any meaningful way) that taxi licences are not "property" for the purposes of Part V of POCA.

90 The Director properly relies upon the definition of property in the Interpretation and General Clauses Act, it provides:

> "'property' includes money, goods, things in action, land and every description of property, whether real or personal; also obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incidental to property as above defined . . ."

He submits that a taxi licence comes within the concept of "things in action" or "interest" and relies upon *National Provincial Bank Ltd.* v. *Ainsworth* (4), where Lord Wilberforce said ([1965] A.C. at 1247):

> "Before a right or an interest can be admitted into the category of property, or of a right affecting property, it must be definable, identifiable by third parties, capable in its nature of assumption by third parties, and have some degree of permanence or stability."

All those are attributes which in my judgment are present in a taxi licence. Indeed, on the evidence before me in this case it is apparent that they are assets which are traded. Moreover, in *Gonzalez* v. *Gonzalez* (3), although the point was not specifically considered, the Court of Appeal in the context of an appeal touching upon financial provision following divorce, treated a taxi licence as a family asset. Kennedy, J.A. (as he then was) said (2005–06 Gib LR 216, at para. 1):

> "The appellant, who is 58 years of age, is and has been for about 30 years, a taxi driver in Gibraltar. In order to work as a taxi driver, he has to hold a taxi licence, which is a tradable asset with a significant value."

Mr. Finch's submission is without merit, for the purposes of POCA a taxi licence is property.

Units 1, 2 & 3, block 1 Watergardens ("units 1–3")

91 By two deeds of assignment both dated November 16th, 2017, one in respect of units 1 and 2 and the other in respect of unit 3, the three units were assigned to Stamford for a total consideration of £600,000. It is regrettable that as part of the investigation the conveyancing files and

details of any bank transfers between the client account of the lawyers acting for the parties was not obtained.

Stamford

92 To consider whether units 1–3 are recoverable property it is first necessary to consider the evidence in respect of Stamford.

93 As aforesaid, Stamford was incorporated on September 24th, 2014, the sole shareholder and director was Mario. It appears from the information obtained from Companies House that it was acquired in December 2014 as a shelf company from a company management business.

94 According to GW, the only bank account known to be held by Stamford in Gibraltar was not opened until November 11th, 2015, with the account remaining active throughout the investigation period. It is GW's evidence that the total account credits and debits during that period were £154,665.07 and £148,005.56 respectively. The account credits can essentially be broken down into four, namely:

(i) A one-off payment on December 22nd, 2015 of £58,970.21 by way of a sterling remittance order from an unknown source;

(ii) £81,999.40 being the total of three cheques from P, paid in between November 19th, 2015 and February 17th, 2016;

(iii) £5,000 transfer from Mario; and

(iv) £8,695.46 from Dejuan Ltd. which can be attributed to rental payments in respect of units 1–3.

95 Staying with the £58,970.21, although not associated with the acquisition of any of the assets in respect of which relief is sought, it is nonetheless instructive that shortly before, on December 4th, 2015, the near identical sum of £59,050 was transferred to a Spanish national. Thereafter, between December 23rd, 2015 and March 8th, 2016 Stamford made four international transfers to an account held in Spain in the name of Mario in the total sum of £81,150. That sum is very close to the total sum received from P by way of cheques. No payments were made by Stamford towards the acquisition of the taxi licence. Similarly, although there are payments made from the account towards rates and service charges in respect of units 1–3 it is striking that there are no payments whatsoever which can be associated with the actual acquisition of units 1–3.

96 According to GW, as the investigation progressed it was ascertained that Stamford purchased the units with the benefit of a loan of £600,000 which was made available to the late Mario by X. On the basis of the evidence before me and absent any evidence in the form of bank transfers or any such other evidence establishing any such facility, it is possibly best described as a purported loan.

97 X, who is a very well established Gibraltar businessman, provided the RGP a prepared statement, it reads:

> "My name is [X] and I make this statement at the request of the police in connection with an investigation being conducted by them.
>
> On or before the 1st August 2017 I instructed my solicitor [Y] of [ZZ] to prepare a loan agreement on an urgent basis given that I had agreed to advance £600,000 to Mario Stalin Serra as part of a legitimate commercial transaction. Instructions were given to [Y] over the telephone and, as usual, I trusted him to protect my position.
>
> The purpose of the said advance was to allow Mr Serra to purchase shares in Stamford Company Limited. It was my understanding that Stamford Company Limited was purchasing the former Gatsby's restaurant situated at Watergardens and known as Unit Nos. 1 and 2, Block 1, Watergardens, Gibraltar.
>
> There was a degree of urgency in making the advance directly to Mr. Serra. I had no trouble with this given that I knew Mr Serra's father well and trusted the arrangement. Moreover, I was aware that the loan advance was less than the market value of the premises and I was therefore comfortable that my position was adequately secured. I also retained a right to take further security if needed in accordance with the terms of the loan agreement. This was not the first time that I have provided a private loan, so I was comfortable with my commercial position.
>
> Once the loan had been advanced, and as months progressed, I was aware that the loan was not being repaid—on inquiry I found that this was due to the current tenant De Juan not honouring his own obligations as tenant with Mr Serra. Again, given my security and my relationship with Mr Serra's father, I remained confident that my loan was safe. Things changed when I received a phone call from the RGP sometime in October 2019—this caused me great distress and concern, following on from which I instructed [Y] to protect my position further under the terms of the loan agreement.
>
> [Y's] advice was to create two additional security instruments (being a mortgage and debenture) which would give rise to foreclosure and possession of the premises in my capacity as mortgagee as and when required.
>
> Since the preparation of the security documents, I have been unable to enforce my security given the Restraint Order which currently exists over the premises."

98 A copy of an executed loan agreement dated August 1st, 2017 between X and Mario, is exhibited to GW's witness statement. Some aspects bear some consideration:

(i) although the agreement is between X and Mario, the prepared statement suggests that the loan was to be made to "Mr Serra" as opposed to "Mr Serra's father";

(ii) it provides for drawdown of the facility in one tranche on the date of the agreement or during the week ending August 4th, 2017. The degree of urgency to which X alludes, is in the absence of an explanation, difficult to reconcile with the execution of the assignments on November 16th, 2017;

(iii) it provides for an interest free period of 5 months and thereafter interest at a rate of 1% per month with that interest being paid at a monthly rate of £6000 over 60 calendar months. No capital is payable until the repayment date of January 25th, 2023. This notwithstanding that contrary to the suggestion in X's statement, it makes no provision for security; and

(iv) significantly, the Schedule, which sets out the purpose for which the loan is to be applied, provides that it is exclusively for the purpose of assisting Mario, with his purchase of the entire share capital of Stamford. Mario was already the director and sole shareholder of Stamford.

99 There is a further aspect to this transaction that merits attention. By an indenture of sublease dated December 13th, 2017 between Stamford and Dejuan Ltd., Stamford sub leased the units to Dejuan Ltd. for a term of 10 years at an initial rent for the first 3 years of £2,800 exclusive of rates and service charges. The schedule dealing with rent review provides for an increased rent of £3,222 per month and £3,622.50 per month following the first and second rent review dates respectively. Self-evidently the monthly rental income is substantially less that the interest payable on the purported loan.

100 Whilst recognizing that absence of evidence is not evidence of absence, there is no material to suggest that Stamford traded, held assets or engaged in any business activity from its acquisition by Mario in December 2014 until it opened a bank account in November 2015. Indeed, the movements of that bank account (apart from the receipt of rent; payment of rates and service charges after units 1–3 were acquired in November 2017) also do not provide any evidence in support of the contention that it was undertaking any obvious commercial activity. What the unexplained payments by way of cheques and transfer of moneys in and out of the account indicate is that the account was used for money laundering purposes. The failure by Stamford to offer any explanation as to its commercial activities strengthens that conclusion. For these reasons and on the balance of probabilities I find as fact that Stamford was a front or shell company used to facilitate the laundering of money.

101 On the balance of probabilities, I am also satisfied that Clint is the ultimate beneficial owner of Stamford. It is clear from the financial investigation that Mario did not have sufficient legitimate income to explain the acquisition of Stamford or the transaction in which it engaged, which although few in number involved relatively large sums not commensurate with his income. There is also the link between the cheques given by P to Clint and Sharon which were paid into Stamford and an aspect of X's statement which although contradicting the terms of the purported loan, suggested that the counterparty was "Mr Serra" as opposed to "Mr Serra's father." Both of these matters provide support to the contention that Clint is the ultimate beneficial owner of Stamford. In my judgment Stamford is but a front company used to launder the proceeds of crime which Clint derives from drug trafficking.

102 Turning to the acquisition of units 1–3, the first issue which falls for consideration is the weight which X's prepared statement to the RGP is to be afforded. This against the backdrop that X, although aware of these proceedings, has not sought to intervene to exclude from any recovery order the moneys he says he loaned. Of course, I have not had the benefit of his giving evidence but in view of the matters I have identified at para. 98 above, I do not accept his evidence that this was an arms-length bona fide transaction or that there was in fact a loan. Given my finding that there was no loan, the funding for the acquisition of units 1–3 could conceivably only have been made available (either directly or indirectly) from the proceeds of drug trafficking accumulated by Clint and I so find. The failure by Stamford, the late Mario and Clint to provide any explanation whatsoever with regards to Stamford activities generally and the acquisition of units 1–3 specifically, adds strength to that conclusion.

Limitation

103 The basis upon which Mr. Finch submits that the claims are time barred are set out at para. 10 of his written submissions of January 19th, 2023:

> "On the issue of limitation, it is submitted that a recovery order cannot be made unless the court first finds that the property is recoverable. Thus it must be liable to forfeiture, as the section reflects when dealing with cash. It has to pass from the ownership of the current legal owners into the ownership of the A.G. which must involve a taking. The A.G is dealing in semantics in order to avoid a serious omission by the legislature in failing to make provision for civil POCA claims. The words 'penalty or forfeiture' are wide enough to include recovery actions, but a property recovery order is not covered reference to a 'sum' under any enactment because none of the itemised property claimed is a 'sum.' It is submitted that to recover property from any citizen by way of a civil recovery order can properly be

generically described as a penalty or forfeiture. Otherwise, there is no limitation, not even the 6 years claimed by the A.G. because no other headings apply. See A, G's bundle Tab 6, (Tab7)."

The submission although somewhat opaque, is better understood by reference to the statutory provisions which are engaged. Section 4 of the Limitation Act 1960 provides:

"4.(1) Subject to sections 10A and 10B, the following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued, that is to say—

(a) actions founded on simple contract or on tort;

(b) actions to enforce a recognizance;

(c) actions to enforce an award, where the submission is not by an instrument under seal;

(d) actions to recover any sum recoverable by virtue of any enactment, other than a penalty or forfeiture or sum by way of penalty or forfeiture:

. . .

(5) An action to recover any penalty or forfeiture, or sum by way of penalty or forfeiture, recoverable by virtue of any enactment shall not be brought after the expiration of two years from the date on which the cause of action accrued . . ."

As I understand it, Mr. Finch's submission is to the effect that proceedings for a recovery order pursuant to s.72 of POCA amount to an action to recover a penalty or forfeiture and that therefore the applicable limitation period is one of 2 years.

104 For his part, the Director relies upon s.69(1) POCA as setting out the nature and purpose of a recovery order and submits that these fall to be contrasted with forfeiture orders which are governed by a different chapter of Part V of POCA and also by provisions in the Criminal Procedure and Evidence Act. In particular he relies upon s.101(1) POCA to highlight that there is a material distinction between forfeiture and recovery orders. It provides:

"101.(1) This section applies if the Attorney General seeks a recovery order—

(a) in respect of both property which is or represents property obtained through unlawful conduct and related property, or

(b) in respect of property which is or represents property obtained through unlawful conduct where such an order, or an order

under section 87, has previously been made in respect of related property.

(2) For the purposes of this section—

(a) the original property means the property obtained through unlawful conduct,

(b) the original property, and any items of property which represent the original property, are to be treated as related to each other.

. . .

(7) If—

(a) recoverable property is forfeited in pursuance of a forfeiture notice under section 123, and

(b) the Attorney General subsequently seeks a recovery order in respect of related property,

the forfeiture notice is to be treated for the purposes of this section as if it were a recovery order obtained by the Attorney General in respect of the forfeited property.

(8) If—

(a) an order is made under section 130 for the forfeiture of recoverable property, and

(b) the Attorney General subsequently seeks a recovery order in respect of related property,

the order under section 130 is to be treated for the purposes of this section as if it were a recovery order obtained by the Attorney General in respect of the forfeited property."

Premised upon those provisions, it is submitted, and I accept, that the fact that the legislature has identified the circumstances in which a forfeiture is to be treated "as if it were" a recovery order, makes clear that they are two wholly distinct remedies.

105 The Director further submits that the position in Gibraltar in relation to civil recovery orders and limitation periods falls to be contrasted with that which pertains in the United Kingdom. Thus, whilst in the United Kingdom s.288 of their Proceeds of Crimes Act amended their Limitation Act 1980 by establishing a limitation period of 12 years from the date on which the cause of action accrued, no equivalent provision is to be found in our legislation. In the absence of any such provision the Director submits that there is no limitation period.

106 It is a submission that I do not accept. The Director properly brought to the court's attention s.70B of POCA which provides for a 20-year

limitation period for civil recovery orders from the date on which the conduct constituting the commission of gross human rights abuse or violation occurs. Given that extended period for the most serious of unlawful conduct, it would be irrational if there were to be no limitation period in respect of ordinary unlawful conduct. In my judgment the very short answer is to be found on a plain reading of s.4 of the Limitation Act. Section 4(1)(d) establishes a limitation period of six years in respect of "actions to recover any sum recoverable by virtue of any enactment," with penalties and forfeitures carved out. A civil recovery order is an action to recover a sum pursuant to POCA and in my judgment falls squarely within para. (d).

107 The applicable limitation period is therefore of six years from the date in which the cause of action accrued. No reliance is placed upon s.32 of the Limitation Act which allows for the postponement of a limitation where a right of action is concealed by fraud, and as I understood the submissions, it is not in issue that as regards each asset the date in which the cause of action accrued was the date of its acquisition. The Part 8 claim form having been issued on October 23rd, 2020 it follows that the key date is October 23rd, 2014. Other than no. 12 Sunrise Court, all the assets were acquired after October 23rd, 2014. It follows that only the claim in respect of no. 12 is statute barred and for this further reason it also fails.

Decision

108 There will be a recovery order in respect of:

(i) flat 8 Sunrise Court, Catalan Bay, Gibraltar;

(ii) taxi licence no. 65;

(iii) commercial units 1, 2 and 3, block 1, Watergardens, Gibraltar; and

(iv) the profits which have accrued to Stamford in respect of units 1–3 as identified in the amended particulars of claim.

And, pursuant to s.91(1) POCA, the Official Receiver is appointed as trustee to give effect to the recovery order.

109 The claim in respect of the following assets is dismissed:

(i) taxi licence no. 103; and

(ii) flat 12 Sunrise Court.

110 I shall hear the parties as to costs.

Judgment accordingly.

Appendix–Anonymized *dramatis personae*

A The person described in the EAW as assisting Clint in Spain and a senior figure in the organization.

B Clint's nephew, also identified in the EAW and a subject of the financial investigation.

D The person who acquired legal ownership of no. 12 Sunrise Court in November 2000.

E The lawyer acting in respect of the purchases of no. 12 and no. 8 Sunrise Court.

FF The law firm from which E was practising when no. 8 Sunrise Court was purchased.

G Danish national with previous convictions for money laundering involved in the purchase of no. 12 Sunrise Court.

H Local businessman involved in the purchase of no. 12 Sunrise Court.

JJ Law firm which paid the consideration to the transferor of taxi licence no. 103.

K Individual on police bail for money laundering involved in money transfers in relation to taxi licence no. 103.

N Transferor of taxi licence no. 65.

P CEO and company director who provided Sharon/Stamford with cheques totalling £186,000.

X Gibraltar businessman who purportedly advanced £600,000 to acquire units 1–3, block 1 Watergardens.

Y Lawyer acting for X.

ZZ Firm of lawyers from which Y practises.