[2024 Gib LR 251]

SERRA and FIVE OTHERS v. ATTORNEY-GENERAL

COURT OF APPEAL (Kay, P., Davis and Fulford, JJ.A.):
April 19th, 2024

2024/GCA/008

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—appeal challenging trial judge's evaluative findings dismissed

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, commercial units 1, 2 and 3 Watergardens and two taxi licences (nos. 65 and 103), had been obtained through unlawful conduct and that the ultimate beneficial owner was the sixth appellant, Clint Serra ("Clint"). It was claimed that Clint was involved in illegal activity, in particular drug trafficking and money laundering, and that the assets were acquired via the proceeds of drug trafficking and placed in the names of the first to fifth appellants who knowingly or unknowingly facilitated an arrangement to conceal the true beneficiary. The first appellant, Margot Serra ("Margot"), was Clint's mother; the second appellant, 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 appellant, Sharon Jones ("Sharon"), was Clint's partner; the fourth appellant, Victoria Serra ("Victoria"), was Clint's sister; and the fifth appellant, George Wink ("George"), was Victoria's partner.

The claim was based on the evidence of a police sergeant in the Royal Gibraltar Police, 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 that 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. A European Arrest Warrant had been issued in 2019 in Spain in respect of Clint, who was accused with others of importing large

quantities of drugs from Morrocco to Spain by boat over a period of time. 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 application had been interviewed by the RGP and provided no explanation as to the origins of the moneys used to purchase any of the assets.

In the Supreme Court the Chief Justice found on the balance of probabilities that Clint had been involved in drug trafficking. The Chief Justice found Clint to be the ultimate beneficial owner of all of the assets except taxi licence no. 103. The Chief Justice also found that 8 Sunrise Court, units 1, 2 and 3 Watergardens and taxi licence no. 65 had been acquired through unlawful conduct (drug trafficking) by Clint. The Chief Justice was not satisfied on the balance of probabilities that 12 Sunrise Court had been so acquired, although it had "all the hallmarks" of money-laundering. The Chief Justice made a civil recovery order pursuant to s.72 of the Proceeds of Crime Act in respect of 8 Sunrise Court, units 1, 2 and 3 Watergardens and taxi licence no. 65 (that decision is reported at 2023 Gib LR 511).

The appellants appealed. It was submitted that there needed to be shown money laundering predicated on prior unlawful conduct, which then produced recoverable property. The Chief Justice should have applied the reasoning adopted with regard to 12 Sunrise Court to his assessment with regard to 8 Sunrise Court, units 1, 2 and 3 Watergardens and taxi licence no. 65. The drug trafficking identified in the EAW related to a period from March 26th, 2019 but the properties which were the subject of this appeal had been obtained well before that date. There was no evidential support for the assumption that because Clint was involved in drug trafficking from March 2019 he must have been so involved before then. The absence of evidence of legitimate income at the relevant times could not of itself be a basis for making a civil recovery order, nor could the absence of explanatory evidence.

The respondent submitted that the Chief Justice had applied the law correctly, had adopted the correct approach and had made a proper evidential evaluation in deciding that the assets were recoverable property for the purposes of the Proceeds of Crime Act. It could not be disputed that there was no legal requirement to show that the property in question derived from a particular criminal offence. Nor could it be disputed that a global approach should be taken to the evidence. There was no valid basis for the argument that the Chief Justice did not properly apply the law to the facts. The appellants wrongly sought to argue that there must be specific

evidence of a direct link between the obtaining of the property and specific unlawful conduct.

Held, dismissing the appeal:

(1) Whether property was obtained through unlawful conduct was determined, for the purposes of the Proceeds of Crime Act, by looking at the totality of the evidence on a global basis. Even if it could not be the sole evidence relied upon, an inference could be drawn from the lack of any evidence or explanation as to a defendant's ability to sustain a particular lifestyle by reference to identifiable lawful sources of income. For a civil recovery order to be made there must, in a case such as the present, be shown to be unlawful conduct antecedent to the obtaining of the property in question and to which the obtaining of the property was causally connected. Accordingly, the actual acquisition of the property in question was not capable, in itself, in this case of constituting the required unlawful conduct (paras. 9–10; para. 14; para. 19).

(2) The appeal would be dismissed. It was well established that an appellate court must show an appropriate degree of reticence before interfering with a trial judge's evaluative findings of fact. There was no proper basis for interfering with the Chief Justice's evaluative conclusion on the facts that the three items of property comprised recoverable property for the purposes of Part V of the Proceeds of Crime Act. The Chief Justice, even if he had not explicitly spelled it out, found as a matter of inference that there had been drug trafficking activities on the part of Clint prior to the obtaining of the relevant property in 2017. In this case there was ample material on which the judge could properly infer on the balance of probabilities that the properties in question had been obtained through the prior unlawful conduct (*viz*. drug trafficking) of Clint occurring not just prior to March 26th, 2019 (the starting date of the specific criminality identified in the EAW) but also prior to the obtaining of the properties in question. In so concluding, the Chief Justice had not relied solely on the evidence as to lack of legitimate income to fund the acquisitions nor on the lack of any explanation. The evidence in support of the judge's evaluative conclusions with regard to the three properties could be summarized in this way: (1) there was specific evidence that Clint had been involved in major drug trafficking from at least March 2019; (2) Clint, on the evidence, had a leading role in that drug trafficking; (3) each of the three properties in question had been acquired by Clint as ultimate beneficial owner through the use of nominees in circumstances indicative of money laundering; (4) there was no evidence of legitimate income or other assets available at the relevant times sufficient to fund the acquisitions; and (5) no explanatory evidence of any kind had been adduced by any of the appellants. These points, when taken together as part of the totality of the evidence on a global approach, amply justified the drawing of an inference on the balance of probabilities that Clint had been engaging in drug trafficking prior to the obtaining of these properties and that the obtaining of these properties derived from the proceeds of such drug trafficking. There was no proper

basis for the court to interfere with the Chief Justice's approach or with his evaluation of the evidence. His factual conclusions were properly open to him and were amply justified (paras. 45–50).

Cases cited:
(1) *Assets Recovery Agency Director* v. *Green*, [2005] EWHC 3168 (Admin), considered.
(2) *Assets Recovery Agency Director* v. *Jackson*, [2007] EWHC 2553 (QB), referred to.
(3) *Assets Recovery Agency Director* v. *Szepietowski*, [2007] EWCA Civ 766, considered.
(4) *Gale* v. *Serious Organised Crime Agency*, [2011] UKSC 49; [2011] 1 W.L.R. 2760; [2012] 2 All E.R. 1; [2012] HRLR 5; [2012] 1 Costs L.R. 21, referred to.
(5) *Olupitan* v. *Assets Recovery Agency Director*, [2008] EWCA Civ 104; [2008] C.P. Rep. 24, considered.
(6) *Serious Organised Crime Agency* v. *Kelly*, [2010] EWHC 3565 (QB), referred to.
(7) *Volpi* v. *Volpi*, [2022] EWCA Civ 464; [2022] 4 W.L.R. 48, referred to.

Legislation construed:
Proceeds of Crime Act 2015, s.69: The relevant terms of this section are set out at para. 6.
s.70: The relevant terms of this section are set out at para. 6.
s.71: The relevant terms of this section are set out at para. 6.
s.136: The relevant terms of this section are set out at para. 7.

I. Winter, *K.C.* and *N. Gomez* (instructed by Charles Gomez & Co.) for the appellants;
K. Drago (instructed by the Office of Criminal Prosecutions and Litigation) for the respondent.

1 **DAVIS, J.A.:**

Introduction

By a reserved judgment handed down on June 30th, 2023, Chief Justice Dudley made a civil recovery order pursuant to s.72 of the Proceeds of Crime Act 2015 ("POCA") in respect of certain items of property, three in number (reported at 2023 Gib LR 511). The appellants (defendants in the proceedings) now appeal against that order. The Chief Justice had in fact declined to make such an order in respect of two other items of property; there is no cross-appeal in that regard.

2 It has been accepted on behalf of the appellants that no criticism is made of the judge's legal directions and that no issue as to the meaning or

operation of law arises. The appeal relates, on the appellants' case, solely to the application of the law to the evidence in the case.

3 The appellants were represented on the appeal by Mr. Ian Winter, K.C. and Mr. Nicholas Gomez (neither of whom had appeared below). The respondent (claimant in the proceedings) was represented on the appeal by Mr. Kerrin Drago (who also had not appeared below). I would like to acknowledge the excellent arguments, written and oral, presented by both sides.

The law

4 It is, I think, convenient to set out the applicable law at the outset.

5 The proceedings were initiated by a Part 8 Claim Form issued in the Supreme Court of Gibraltar on October 23rd, 2020. The claim was based on the provisions contained in Part V of POCA, which is concerned with the civil recovery of the proceeds of unlawful conduct. For present purposes, the provisions of particular relevance are these.

6 Section 69 provides, in the relevant respects, as follows:

> "69.(1) This Part has effect for the purposes of—
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> (a) enabling the Attorney General to recover, in civil proceedings before the Court, property which is, or represents, property obtained through unlawful conduct,
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> (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."

By s.70 and s.71 it is then provided, in the relevant respects, as follows:

> "70.(1) Conduct occurring in Gibraltar is unlawful conduct if it is unlawful under the criminal law of Gibraltar.
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> (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.
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> . . .
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> (3) The court must decide on a balance of probabilities whether it is proved—
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> (a) that any matter alleged to constitute unlawful conduct has occurred, or
>
> (b) that any person intended to use any cash in unlawful conduct."

"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."

7 Section 72 provides that proceedings for a recovery order may be taken by the Attorney-General against any person who he thinks holds recoverable property. It is thereafter provided by s.136, in the relevant respects, as follows with regard to recoverable property:

"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."

Section 139 extends the reach of the provisions to profits accruing in respect of the recoverable property.

8 The intended scheme and operation of Part V of POCA (which substantially corresponds with the civil recovery provisions of the Proceeds of Crime Act 2002 applicable in England and Wales) is clear enough from the statutory language, and as confirmed by the authorities. Some particular points can, for present purposes, be identified:

(1) The product of criminal activity can be recovered under Part V whether or not anyone has been convicted of the crime or crimes that have produced them.

(2) The burden of proof is on the claimant, the civil standard (balance of probabilities) applying.

(3) It is not necessary to prove that individual items of property derive from specific criminal offences; it suffices 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.

(4) It is not necessary to prove the commission of a specific criminal offence (or offences) at a specific time (or times).

A convenient exposition of the scheme and operation of the analogous civil recovery provisions of the Proceeds of Crime Act 2002 can be found in the judgment of Lord Phillips in the case of *Gale* v. *Serious Organised Crime Agency* (4). Further citation of authority is not necessary, as these principles were not in dispute in this appeal.

9 What *is* critical for the purposes of this appeal is to identify the required evidential approach for the purposes of ascertaining whether or not it is shown that a particular item of property is "recoverable property" for the purposes of POCA.

10 In this regard, two further (linked) principles emerge from the authorities, as Mr. Drago submitted and as I agree.

(1) First, whether property was obtained through unlawful conduct is determined, for the purposes of POCA, by looking at the totality of the evidence on a global basis;

(2) Second, even if it cannot be the sole evidence relied upon, an inference can be drawn from the lack of any evidence or explanation as to a defendant's ability to sustain a particular lifestyle by reference to identifiable lawful sources of income.

11 That a global approach to the evidence is required is really common sense, and in accordance with the usual judicial approach to the appraisal of evidence. It also accords with the statutory scheme, in that there is no requirement to prove that the property in question was obtained through a particular offence or to prove the commission of a specific criminal offence at a specific time. That such an approach is appropriate in this situation is illustrated by decisions such as *Assets Recovery Agency Director* v. *Jackson* (2) ([2007] EWHC 2553 (QB), *per* King, J., see in particular at para. 116) and *Serious Organised Crime Agency* v. *Kelly* (6) ([2010] EWHC 3565 (QB), *per* Maddison, J., see in particular at para. 20).

12 A good worked example, in my opinion, as to the requirement of a global approach to the evidence, and including the entitlement to draw inferences therefrom, can be found in the Court of Appeal decision in the case of *Assets Recovery Agency Director* v. *Szepietowski* (3).

13 In that case, the recoverable property in question was alleged to have been obtained through mortgage fraud. It had been identified that the defendants had over the years, at a time of very limited lawful income, purchased several properties on mortgage in assumed names in circumstances indicative of mortgage fraud. With regard to one particular property (6 Holland Road), owing to the lapse of time no documentation relating to the purchase was available and the source of funds was not identified. The first instance judge refused to draw an inference that 6 Holland Road had been obtained through mortgage fraud. The Court of Appeal held that he had been wrong to do so and, albeit without needing

finally to decide the matter, held that there was a good arguable case on the totality of the evidence that the funds used to acquire 6 Holland Road had been obtained by unlawful conduct. Moore Bick, L.J. said this ([2007] EWCA Civ 766, at para. 112):

> "In my view the judge was wrong to regard the Director's case as merely speculative. He appears to have taken that view because he confined himself to looking at the consequences of the various mortgage frauds, of which the Director had positive evidence in the shape of the receiver's report, and the rental income derived from the properties purchased by the respondents by means of those frauds, while failing to take account of the broader picture. In addition to the evidence that strongly suggested that Mr. and Mrs. Szepietowski had been involved in several mortgage frauds, there was the evidence that their legitimate income fell far short of what was required to pay for the property, that in addition they were enjoying an extravagant lifestyle, that Mr. Szepietowski had lied to his accountant about the source of at least part of the funds and that neither of them had explained satisfactorily where the money needed to finance the purchase had come from. All Mr. Szepietowski had said about that was that it had been obtained from the sale of a previous (unidentified) property. In my view the evidence, taken as a whole, is sufficient to support a strong inference that the funds used to buy 6 Holland Road had been obtained by unlawful conduct of some kind, probably, though not necessarily, one or more other mortgage frauds committed by Mr. and Mrs. Szepietowski. That was sufficient in my view to give rise to a good arguable case that the funds used to finance the purchase had been obtained by unlawful conduct. Whether it would be sufficient for the Director to plead her case in those terms and whether the evidence currently before the court will be sufficient on its own to establish her case at trial are not matters which arise on the present application. I am satisfied, therefore, that the evidence is sufficient to establish a good arguable case that 6 Holland Road is recoverable property within the meaning of section 301(1) of the Act."

14 That decision conveniently leads into, and supports, the further principle that an inference can be drawn from a defendant's lifestyle in the absence of any sufficient identified lawful income.

15 Here too there are a number of authorities illustrating, and confirming, the entitlement to draw such an inference.

16 The point was made, for example, in *Assets Recovery Agency Director* v. *Green* (1). There, Sullivan, J. stressed that no particular criminal offence need be identified. But he also said ([2005] EWHC 3168 (Admin), at para. 47) with regards to evidence of lack of income that a claim for civil

recovery "cannot be sustained *solely* upon the basis that a respondent has no identifiable lawful income to warrant his lifestyle." [Emphasis added.]

17 Subsequent cases have not departed from, even if they have to some extent modified, this qualification. Nevertheless, they all emphasize that such an inference indeed is capable of being drawn, albeit it has to be put into the context of the totality of the evidence; and the court must look at the whole picture which emerges. Further, as it has been said, the absence of any evidence to explain the lifestyle, or the giving of an explanation which is shown to be untruthful, "may provide the answer" (*Gale* v. *Serious Organised Crime Agency* (4) ([2009] EWHC 1015 (QB), at para. 14, *per* Griffiths Williams)) "and may be very relevant in painting the overall picture" (*Kelly* (6) ([2010] EWHC 3565 (QB), at para. 20)).

18 The required approach is encapsulated by the observations and approach of Carnwath, L.J. in the decision of the Court of Appeal in *Olupitan* v. *Assets Recovery Agency Director* (5). There, after confirming ([2008] EWCA Civ 104, at para. 16) that lack of lawful income to support the respondent's lifestyle may be a "very relevant factor" in painting the overall picture, he appraised the evidence in that case. A property had been acquired in 1998, well before the criminal conduct of which specific evidence had been provided which was from the year 2000 onwards. It was submitted that therefore there had not been shown any causal link with unlawful conduct. Carnwath, L.J. said this ([2008] EWCA Civ 104, at paras. 29–30):

> "29. This property was bought in 1998 with money provided solely by Mr Olupitan. [Counsel] submits that this was well before the only criminal conduct of which specific evidence was provided. There was no basis for attributing it to criminal conduct of any kind. The judge was only able to hold otherwise by in effect reversing the burden of proof, and requiring Mr Olupitan to disprove the inferences drawn from his unexplained expenditure. He also relies on the admission by Miss Croft, who gave evidence for the Director, that there was no allegation that Mr Olupitan had laundered the proceeds of another person's criminal conduct
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> 30. . . . The judge was not required to find a direct link with any offence or offences, but rather a causal connection with criminal conduct of the kinds relied on by the Director. Apart from mortgage fraud, these were conspiracy to defraud and money laundering. As to the first he was entitled to find that that Mr Olupitan had been involved in the 2000 conspiracy to defraud 'longer and more deeply' than the prosecution had conceded. He inferred this principally from his regular telephone links with the principal conspirator during the period of the conspiracy, and the large, unexplained sums paid between April and October 2000 into his account and that of Ms

> Makinde (para 40). It is true that Wellington Drive had been acquired two years before. But, in the absence of any other explanation or hint of a legal source, he was entitled to infer, on the balance of probabilities, that the substantial funds passing through his account in that period had a similar criminal explanation."

19 There is one further point that needs to be identified for the purposes of the present arguments. That is, as Mr. Winter correctly submitted, that for a civil recovery order to be made there must, in a case of the present kind, be shown to be unlawful conduct antecedent to the obtaining of the property in question and to which the obtaining of the property is causally connected. That is so on the wording of s.71(1) of POCA and is also reflected in the various cases cited above. Accordingly, the actual acquisition of the very property in question is not capable in itself, in this case, of constituting the required unlawful conduct.

Background facts

20 The evidence in support of the claim was primarily comprised in a very lengthy statement (with appended bundles) of Sergeant Luis White, a trained financial investigator serving with the Royal Gibraltar Police ("RGP"). His report set out the product of the detailed financial investigation conducted by the RGP relating to the defendants (and others) spanning the period April 29th, 2013 to April 29th, 2019. That investigation included material obtained from production orders granted in respect of various banks and public bodies. He was cross-examined before the judge. Although various points were taken below as to the admissibility of aspects of his evidence, nothing turns on those points now.

21 None of the defendants themselves provided any evidence, whether written or oral, before the judge.

22 The proceedings were in fact the culmination of that detailed civil investigation by the RGP, which followed intelligence received from the Guardia Civil in Spain. The primary focus of the investigation was the sixth defendant, Clint Serra (who may, without disrespect, be styled "Clint"). The other five defendants are all connected with Clint. The first defendant, Margot Serra ("Margot"), is his mother. The second defendant, Stamford Co. Ltd. ("Stamford"), is a Gibraltar company incorporated on September 24th, 2014, of which the sole shareholder and director was the late Mario Serra ("Mario"), father of Clint. The third defendant, Sharon James ("Sharon"), is the partner of Clint. The fourth defendant, Victoria Serra ("Victoria"), is the sister of Clint and the fifth defendant, George Wink ("George"), is the partner of Victoria.

23 There was in evidence before the judge a very lengthy European Arrest Warrant ("EAW") issued on September 10th, 2019 by the Court of Investigation in Algeçiras, Spain in respect of Clint. That included a very

detailed description of the alleged offences, which Chief Justice Dudley set out in full in the judgment now under appeal (2023 Gib LR 511, at para. 23). It is not necessary here to repeat that detailed description. Suffice it to say that Clint was accused, with a number of others, of importing over a period of time very large quantities of hashish by boat from Morocco to Spain. Clint was, with copious detail provided, identified as a leader of the criminal group. There was an amount of telephone and direct surveillance evidence relating both to his own involvement from March 2019 in shipments and to the identified movements of a vessel connected to him travelling clandestinely from that time between Spain and Morocco. In one instance, the identified vessel was detected on April 3rd, 2019 where crew members were then observed to throw packets of hashish (26 being recovered) into the water. After a further journey or journeys, the vessel in question was eventually found abandoned in the Eastern Beach area of Gibraltar on May 25th, 2019.

24 The EAW itself has been discontinued in Gibraltar, although it is not disputed that for present purposes it provides relevant evidence. Although counsel then instructed below asserted, on instructions, that Clint had not even been arrested in Spain, subsequent evidence filed on behalf of the claimant indicated that the Spanish Guardia Civil had informed the RGP that Clint had been charged and was required pending trial to report twice monthly to the Spanish court.

25 It was not disputed on this appeal that the EAW evidences unlawful conduct on the part of Clint (and others) for the purposes of POCA. It might be added in this respect that evidence had also been adduced of the subsequent discovery (on execution by the RGP of a search warrant at 53 Europa Road, Gibraltar, where Sharon resided) of a very large number of empty jerry cans. The evidence was that these were of a type commonly used to refuel vessels typically involved in the illicit importation by sea of drugs.

26 Chief Justice Dudley found as a fact on the balance of probabilities that Clint had been involved in drug trafficking. He said this (*ibid.*, at para. 37):

> "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."

27 I turn, then, to the assets alleged by the claimant in the proceedings to constitute recoverable property. These were:

(1) Flat 8, Sunrise Court, Catalan Bay, Gibraltar. That property was held in the name of Margot.

(2) Flat 12, Sunrise Court, Catalan Bay. That property was also held in the name of Margot.

(3) Commercial units 1, 2 and 3, Watergardens, Gibraltar (and certain related profits and receipts therefrom). The legal owner of those was Stamford (of which, as stated above, Mario was sole director and shareholder).

(4) Taxi licence no. 65. That was held in the name of Sharon and Victoria.

(5) Taxi licence no. 103. That was held in the name of George.

28 It was the case of the claimant that the ultimate beneficial owner of all these assets was Clint. It was further the case of the claimant that all such assets had been acquired via the proceeds generated by Clint's drug trafficking activities and should be the subject of a civil recovery order. In the result, having evaluated the evidence, the judge found on the balance of probabilities that Clint was the ultimate beneficial owner of all these assets save for taxi licence no. 103. He further found on the balance of probabilities that flat 8, Sunrise Court, commercial units 1, 2 and 3, Watergardens and taxi licence no. 65 had been acquired through unlawful conduct (*viz.* drug trafficking) on the part of Clint. However, he was not satisfied, on the balance of probabilities, that 12 Sunrise Court had been so acquired, albeit the acquisition "has all the hallmarks" of money-laundering (*ibid.*, at para. 63). As to taxi licence no. 103, the judge found that the features of its acquisition were "redolent of money laundering" (*ibid.*, at para. 78) but it was not proved that Clint was the ultimate beneficial owner.

29 In reaching his conclusions, the judge carefully and clearly marshalled the evidence, commendably so in view of the very lengthy and, with respect, rather diffuse principal statement. One aspect of that evidence, very fully detailed by Sergeant White, related to the identified (lawful) financial position of the various defendants. The position in summary, as found by the judge, was this.

30 So far as Clint was concerned, he had declared himself for income tax purposes to be a self-employed taxi driver. The judge found his total lawful income to be some £70,000 in the six-year investigation period from 2013 to 2019. Sharon had made no income tax returns in that period. The late Mario had received, through taxi rental receipts, old age pension and community care payments, a total legitimate income of some £74,000 in the six-year investigation period. Margot had filed no income tax returns but was assessed as having received old age pension payments totalling £10,273 in the six-year investigation period. She had throughout lived with her husband Mario in a government-owned flat at a very low rental. Victoria had been in employment throughout; she was found to have received legitimate income of some £244,000 in the six-year investigation period, together with some modest child welfare grants. George had declared income from his employment totalling nearly £229,000 in a five-year period between 2013 and 2018.

31 So far as concerns the acquisition of the assets which were made the subject of a civil recovery order, the position in summary was this.

(i) *8 Sunrise Court*

32 The lease of this property was assigned to Margot on February 2nd, 2017. The stated consideration was £360,000. The unchallenged evidence was that on October 14th, 2016 Clint had paid, out of his own bank account, the sum of £7,200 to the vendors' lawyers. Contemporary correspondence showed that the lawyers acting in the purchase regarded themselves as instructed by Clint. A significant amount of the total purchase price derived from three payments into the purchasing solicitors' client account: £90,000 from an account in Denmark on December 16th, 2016; £83,000 from an account in the UK on December 28th, 2016; and £166,035 from an account in Turkey on January 20th, 2017. Individuals identified as G and H for the purposes of the judgment were said to be in some way involved. At all events, the judge's findings with regard to this property were expressed as follows (2023 Gib LR 511, at paras. 73–74):

> "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:
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> (a) the payment by Clint to the vendors' lawyer of £7,200;
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> (b) the emails between the lawyers referring to the purchaser as 'Mr. Serra';
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> (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."

(ii) ***Commercial units 1, 2 and 3 Watergardens***

33 These units were assigned to Stamford by two deeds of assignment, both dated November 16th, 2017, for a total consideration of £600,000. The full conveyancing files unfortunately were not available. However, the evidence with regard to Stamford was that various sums had during 2015 and 2016 been paid into the one identified bank account of Stamford and in that time significant sums were also paid out from Stamford's account to an account in Spain in the name of Mario. There were some indications, revealed in the course of the investigation, that the actual purchase ostensibly may have been funded by a loan emanating from a Gibraltar businessman identified by the judge as X. A rather extraordinary statement was provided to the RGP by X. In addition, an extraordinary purported loan agreement, dated August 1st, 2017 and made between X and Mario, was obtained. Amongst a number of very curious features, the loan agreement made no provision for any security and it also stated that the purpose of the loan was to assist Mario in purchasing the share capital in Stamford, when Mario was already sole director and shareholder of Stamford. There was also no evidence of any commercial trading by Stamford. Further, the units were then let out to a company called Dejuan Ltd. on December 13th, 2017 on a 10-year lease for a monthly rent significantly below the interest purportedly payable under the loan agreement.

34 It is not necessary to say more for present purposes. The judge's finding of fact was that Stamford was a front or shell company used to facilitate the laundering of money and Clint was the ultimate beneficial owner. It was further found that Stamford as a front company was used to launder the proceeds of crime which Clint himself had derived from drug trafficking. The judge further found that there had in truth been no loan by X. His conclusion was that the funding for the acquisition of units 1, 2 and 3 could only have derived from the proceeds of drug trafficking accumulated by Clint. The judge added (2023 Gib LR 511, at para. 102) that: "the failure by Stamford, the late Mario and Clint to provide any explanation . . . adds strength to that conclusion."

(iii) ***Taxi licence no. 65***

35 Taxi licences can have significant value in Gibraltar. So far as taxi licence no. 65 was concerned, this was transferred to Victoria and Sharon in 2015. It appeared from the investigation that cheques totalling £186,000 were variously provided by an individual (identified in the judgment as P) in 2015 and early 2016 and variously paid into Sharon's account or Stamford's account. In respect of at least three of the cheques the payee's information had not even been filled in by P. P was to say to the RGP that he had loaned the money to Clint and Sharon, without any security. He provided no copy of any loan agreement.

36 After reviewing all the available evidence, the judge (having correctly concluded that such a licence was "property" for the purposes of Part V of POCA) found that there was no true loan and that what occurred was a mechanism by which P was used to "place Clint's illegal funds" into the financial system. The judge found ("fortified," as he said, by the absence of any explanation from Sharon and Victoria) that Clint was the ultimate beneficial owner of the licence. He further found that it represented property obtained through Clint's unlawful conduct in the form of his involvement in drug trafficking.

(iv) ***Other properties***

37 As I have mentioned, the judge declined to make civil recovery orders with regards to 12 Sunrise Court and taxi licence no. 103. I can deal with those relatively shortly as there is no cross-appeal.

38 As to 12 Sunrise Court, that had been acquired on November 13th, 2000 in the name of an individual styled D by the judge. The stated price was £110,000. On December 19th, 2002, D then assigned the lease in the property to Margot, purportedly pursuant to a declaration of trust dated November 30th, 2000 (no copy has been produced) in favour of Margot. The bills for the property were thereafter paid by Clint. The judge concluded on the evidence that Clint was the ultimate beneficial owner and

that the transaction "has all the hallmarks of a money laundering transaction." However, that did not suffice. The transaction occurred some 19 years before the activities identified in the EAW and also well outside the period of investigation by the RGP and, as the judge assessed matters, it had overall not been proved that the funds used to acquire that property were attributable to unlawful conduct on the part of Clint. In any event that particular claim, as the judge went on to hold, was barred by reason of limitation.

39 As to taxi licence no. 103, that had been transferred into the name of George in 2017, for a price said to be £125,000. The overall circumstances (which I need not set out) were such as to cause the judge to conclude that the licence was "acquired for the purpose of processing criminal proceeds so as to disguise their illegal origin." However, as indicated above, the evidence was also such that, in the judge's assessment, there was an insufficient basis for making a finding that Clint was the ultimate beneficial owner of that licence.

The appeal

40 On the appeal, Mr. Winter made clear that he advanced no criticism of the judge's approach in law: the appeal related to the application of the law to the evidence in the case. His fundamental proposition was that there needed to be shown money laundering predicated on prior unlawful conduct, which then produced recoverable property.

41 In this respect, it is clear that the Chief Justice (as had the claimant) in essence had approached matters in just this way: the judge concluding that the relevant unlawful conduct in this case that produced the recoverable property was Clint's involvement in drug trafficking. That plainly is consistent both with the judge's overall approach in evaluating as recoverable property 8 Sunrise Court, units 1–3 Watergardens and taxi licence no. 65, and also with the way in which the judge had rejected the claim relating to 12 Sunrise Court.

42 Mr. Winter went on to submit, however, that the judge should have applied the actual reasoning adopted with regard to 12 Sunrise Court to his assessment with regards to 8 Sunrise Court, units 1–3 Watergardens and taxi licence no. 65. He submitted, in particular, that the drug trafficking identified in the EAW related to a period from March 26th, 2019. But the properties which are the subject of this appeal had been obtained well before that date; and it was submitted that it was an "assumption entirely unsupported evidentially" that because Clint was involved in drug trafficking from March 2019 he must have been so involved before then. He further submitted that the absence of evidence of legitimate income at the relevant times could not of itself be a basis for making a civil recovery order, nor could the absence of explanatory evidence. That, in summary,

was the nub of his argument. He in terms accepted, I add, that his appeal was either right with regard to all three items of property or wrong with regard to all three items of property. He did not seek to distinguish between them.

43 Mr. Drago wholly rejected this line of argument. He submitted that the Chief Justice had applied the law correctly, had adopted the correct approach, and had made a proper evidential evaluation in deciding that these assets were recoverable property for the purposes of POCA. He submitted that it could not be disputed that there was no legal requirement to show that the property in question derived from a particular criminal offence. Nor could it be disputed that a global approach to the evidence was requisite. That being so, there was no valid basis, he said, for the argument that the Chief Justice did not properly apply the law to the facts. To the contrary, he submitted, the appellants' argument in effect, albeit *sub silentio*, sought to resurrect the long-exploded argument that there must be specific evidence of a direct link between the obtaining of the property and specific unlawful conduct: an argument not available under the legislation or under the authorities.

Disposition

44 Having considered the matter, I am in no doubt that, notwithstanding all Mr. Winter's efforts, this appeal must fail.

45 One initial problem for the appellants is that, in essence, the challenge raised is as to evaluative findings of fact. The judge, reviewing the totality of the evidence on the requisite global approach, had concluded as a fact that each property in question had been obtained through Clint's unlawful conduct (*viz*. drug trafficking), that is, by or in return for that conduct. That was an evaluative conclusion founded on the judge's primary findings of fact. It is well established, and at the highest level of authority, that an appellate court is required to show an appropriate degree of reticence before interfering with such evaluative conclusions by a trial judge. Extensive citation of authority to support that proposition is not needed for present purposes. The legal position is succinctly summarized by Lewison, L.J. in *Volpi* v. *Volpi* (7) ([2022] EWCA Civ 464, at paras. 2–3). The principles that are there stated include the point that, absent compelling reason to the contrary, it is to be assumed that the trial judge has taken the whole of the evidence into consideration; and also that the mere fact that a judge does not mention a specific piece of evidence does not mean that he has overlooked it. Further, a judgment on the facts is not appropriately the subject of narrow textual analysis, nor is it material that reasons might have been better expressed.

46 That being so, there is, in my opinion, no proper basis for interfering with the judge's evaluative conclusion on the facts that the three items of

property comprised recoverable property for the purposes of Part V of POCA.

47 Mr. Winter latched on to the use of words "that unlawful conduct" (2023 Gib LR 511, at para. 74) with regard to 8 Sunrise Court. That, he said, can only refer back to the unlawful conduct specified in para. 23 (and para. 37) (*ibid.*) which related, he said, to Clint's drug trafficking activities from March 26th, 2019 as outlined in the EAW. And that, he said, is not consistent with a finding of drug trafficking activities prior to that date and prior to the obtaining of the property in question in 2017. But self-evidently, as I see it, the judge—even if he had not explicitly spelled it out—was making a finding, as a matter of inference, that there had been drug trafficking activities on the part of Clint prior to the obtaining of the relevant property in 2017. Paragraph 74 (*ibid.*) would make no sense otherwise, and to pounce on the words "that unlawful conduct" in the way counsel did not only involves a very narrow and artificial textual analysis, deprecated in such a context by Lewison, L.J., but also in truth involves a departure from the substance of the judge's findings, also a point of a kind deprecated by Lewison, L.J. Moreover, even on a narrow textual analysis of the judgment, this point is not available at all with regard to the judge's evaluative conclusions with regard to units 1–3 Watergardens and licence no. 65 (see *ibid.*, at paras. 88 and 101–102 of the judgment). Nor does such a point fit with the actual way in which the judge rejected the claim as to 12 Sunrise Court.

48 In substance, and whilst I acknowledge that each case ultimately depends on its own facts, the position here corresponds with that identified by Carnwath, L.J. in the case of *Olupitan* (5) ([2008] EWCA Civ 104, at para. 30). It also corresponds with the approach taken, on the facts, by the Court of Appeal in the case of *Szepietowski* (3). In the present case, there was in my opinion ample material on which the judge could properly infer on the balance of probabilities that the properties in question had been obtained through the prior unlawful conduct (*viz*. drug trafficking) of Clint: occurring not just prior to March 26th, 2019—the starting date of the specific criminality identified in the EAW itself—but also prior to the obtaining of the properties in question. In so concluding, moreover, the judge palpably had not relied "solely" on the evidence as to lack of legitimate income to fund the acquisitions nor on the lack of any explanation.

49 Overall, on the facts, the evidence in support of the judge's evaluative conclusions with regard to these three properties can perhaps, for present purposes, be summarized in this way:

(1) There was specific evidence that Clint had been involved in major drug trafficking from at least March 2019.

(2) Clint, on the evidence, had a leading role in that drug trafficking.

(3) Each of the three properties in question had, as found, been acquired by Clint as ultimate beneficial owner through the use of nominees in circumstances indicative of money laundering.

(4) There was no evidence of legitimate income or other assets available at the relevant times sufficient to fund the acquisition of each such property.

(5) No explanatory evidence of any kind had been adduced from any of the defendants.

50 These points, when taken together as part of the totality of the evidence on a global approach, amply justified the drawing of an inference on the balance of probabilities that Clint had been engaging in drug trafficking prior to the obtaining of these properties, and that the obtaining of these properties derived from the proceeds of such drug trafficking. There is, in my judgment, absolutely no proper basis for the appellate court interfering with the approach of the judge or with his evaluation of the evidence. His factual conclusions were properly open to him and were amply justified.

Conclusion

51 In all the circumstances, I would for my part dismiss this appeal.

52 **FULFORD, J.A.:** I agree.

53 **KAY, P.:** I also agree.

Appeal dismissed.