Neutral Citation Number: [2012] EWHC 803 (QB)

Case No: HQ11X01705

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
IN THE MATTER OF A CLAIM FOR A CIVIL RECOVERY ORDER UNDER SECTIONS 266 AND 243 OF THE PROCEEDS OF CRIME ACT 2002

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30/03/2012

Before:

THE HONOURABLE MR JUSTICE MACKAY

Between:

The Serious Organised Crime Agency	**Claimant/ Appellant**
- and -	
Gary John Robb	**Defendant/ Respondent**
-and-	
(i) Patricia Anne Clarke **(ii) Susan Elaine Latchford** **(iii) Roger Llewellyn-Williams** **(iv) Howard and Barbara Hind** **(v) Sandra and Grzegorz Kocinski** **(vi) Bruce Neil-Gourlay** **(vii) Brian Donaldson**	**Third Parties**

Mr Nicholas Cox and Mr Luke Ponte (instructed by **SOCA Legal**) for the **Claimant**
The Defendant did not attend and was not represented

Hearing dates: 7,8, 9 March 2012

Approved Judgment

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

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Mr Justice Mackay:

1. This is a Part 8 claim by the Serious Organised Crime Agency (SOCA) which seeks to recover funds of approximately £1.6m currently frozen in an account designated "NWB Re SOCA v Gary Robb" at the National Westminster Bank City of London Branch, 1 Princes Street, London EC2 on which interest currently accrues.

2. The third parties allege that they have lost sums due to unlawful conduct by the defendant and that they are entitled to recover from the monies in the account. The claim presented to me is for a declaration as to the proprietary rights of the agency in the sums represented by the account. If successful the agency then proposes to address the third parties' respective claims.

3. On 25 August 2005 Collins J made a Criminal Restraint Order on the application of the Crown Prosecution Service in respect of the money then in this account. The money was in the account was detected and intercepted in the course of its passage from a personal sterling account of the defendant at a branch of HSBC in the Turkish Republic of Northern Cyprus (TRNC) ("Account 1"), to its intended destination, another personal account of the defendant at the Bangkok Bank, Pattaya, Thailand, ("Account 5").

4. Since the initial restraining order a number of freezing orders have been made on the application of SOCA and Collins J's order is now replaced by a property freezing order as from 11 December 2010.

5. This is the hearing of SOCA's expedited claim to recover this money which it claims is recoverable property within the meaning of Sections 240 and 241 of the Proceeds of Crime Act 2002 (the Act). These sections and others relevant to this claim are in the following terms.

Applicable law; Part 5 of the Act

6. 1) The general purpose of the Act is to enable SOCA to recover in proceedings property which it thinks is or represents property obtained through unlawful conduct (recoverable property), whether or not any proceedings have been brought for an offence in connection with the property: s 240(1)(a) and s240 (2): s 243.

2) Recoverable property is defined by section 304(1) as "property obtained through unlawful conduct". It includes property which "represents" such property - that is property obtained "in place of" the original property following its disposal (section 305), and profits accruing on such property (section 307). 'Property' includes inter alia money and things in action (section 316(4)). Where property obtained through unlawful conduct (or property which represents such property) is mixed with other property (whether belonging to the defendant or to someone else) such as by increasing the balance on an account, the portion of the mixed property which is attributable to the recoverable property represents the property obtained through unlawful conduct; Section 306.

3) Burden of standard proof: The court must first decide on a balance of probabilities whether any matters alleged to constitute unlawful conduct have occurred: s241 (3). And secondly whether property was obtained through unlawful conduct. The burden of proof of each element lies upon the Claimant.

4) Unlawful conduct is defined by s 241. It can be either: (i) Conduct occurring in any part of the United Kingdom if it is unlawful under the criminal law of that part [s241 (1)]; or (ii) conduct which occurs in a country or territory outside the United Kingdom and is unlawful under the criminal law applied in that country or territory **and** if it occurred in a part of the United Kingdom, it would be unlawful under the criminal law of that part. [s 241 (2)]. In other words if the conduct relied upon occurs outside the United Kingdom, there is a requirement upon SOCA to establish "dual criminality" (see further below).

5) Obtaining property through unlawful conduct: s242 (1). 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: s 241 (2) (b).

6) Orders: If the Court is satisfied that property is recoverable property then subject to any declaration that may be made under section 281 (and other limited exceptions not relevant here) the court must make a civil recovery order in respect of that property: s266.

7) In civil recovery proceedings victims who claim that they have been deprived of their own property by unlawful conduct and that the property sought to be recovered was and remains their property (or represents their property) may obtain a declaration that such property claimed by them is not recoverable property: s 281. The third parties in this case so contend. Previous case management decisions mean that the court will only make a civil recovery order under section 266 only after the claims of the Third Parties to the Property have been determined. But the claimant submits that a form of declaratory relief can and should be made at this stage as regards the respective rights to the Property as between the claimant and Mr Robb: The court has jurisdiction to do so see CPR 40.20.2: *FSA v Rourke* [2002] CP Rep 14 per Neuberger J: even in a case involving fraud *Patten v Burke Publishing* [1991] 1 WLR 541 at 543/4 per Millett J.

Applicable Law: relevant authorities

7. (1) The burden is, as set out above, placed on the claimant to prove the facts necessary as required by part 5 of the Act and in particular the unlawfulness of the conduct of the defendant and to do so to the civil standard, namely a balance of probabilities. As Lord Nicholls of Birkenhead said in Re H [1996] AC 563 at 586:

> "When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegations the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court can prove that the allegations established from the balance of probability. Fraud is usually less likely than negligence… Built into the preponderance of probability standard is a generous degree of flexibility in respect of the serious nature of the allegation. Although the result is much the same, this does not mean that where a serious

> allegation is in issue the standard of proof required is higher. It means only that the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred."

In SOCA v Gale and another [2011] 1 WLR 2760 the Supreme Court applied this to proceedings under Part 5 of the Act.

(2) The claimant does not have to show that a specific offence or specific offences have been committed. In Director of Assets Recovery Agency v Green [2005] EWHC 3168 (Admin) Sullivan J accepting that submission by the claimant continued:

> "For the purposes of Section 240 and 241(1)(2) a description of the conduct in relatively general terms should suffice, "importing and supplying controlled drugs", "trafficking women for the purpose of prostitution", "brothel keeping", "money laundering" are all examples of conduct which if it occurs in the United Kingdom is unlawful under criminal law. It is possible that more detail might be required if conduct outside the United Kingdom was being relied upon…"

(3) The court in considering such an application should take what in Director of Assets Recovery Agency v Jackson [2007] EWHC 2553 (QB) King J described as-

> "… a global approach to the issue of proof that the property in issue is recoverable in the meaning of the Act…I do not consider it essential that the court considers each property transaction on an item by item basis in the sense that the claimant has an obligation to show some particular unlawful actions by the defendant at some particular time which enabled the particular transaction".

This approach was followed by Sweeney J in SOCA v Agidi [2011] EWHC 175 QB when he said at 160

> "It is obviously important to stand back from the detail and look at the broad picture provided by the factors as I have found them to be"

(4)The court's assessment and judgment of the facts will often be by way of drawing inferences from primary facts found or established. Simon J in SOCA v Coghlan [2012] EWHC 429 QB described this at 14(5) as -

> "Taking the common sense approach to inferences which may be drawn from the evidence or lack of evidence"

And he went on to say at 16 -

> "...in civil litigation the court proceeds on the basis of evidence placed before it;...Mr Coghlan ought to have been in a position to place any relevant material before the court that he wished. I recognise that the court is disadvantaged by not seeing witnesses and hearing their evidence tested by cross examination; but that has largely been a consequence of the parties' case management decisions at an early stage. In any event in many cases (and in civil law systems, in most cases) the court may have to assess and base its judgment on written evidence"

That is particularly germane to the present case, since I declined to grant an adjournment of this trial requested by the brother of the defendant, principally on the basis that I considered he had had ample opportunity to present his evidence, or fuller evidence than that which he has presented, which he had declined to take.

(5) While the court can and should proceed on the basis of inferences from primary facts it is important to remember the warning in Sweeney v Cote[1907] 1 AC 221 that a conclusion as to wrong doing -

> "...is not to be arrived at by a light conjecture; it must be plainly established. It may, like other conclusions, be established as a matter of inference from proved fact, but the point is not whether you can draw that particular inference, but whether the facts are such that they cannot fairly admit of any other inference being drawn from them"

A Short Chronology of Events

8. Gary Robb was born in South Shields on 6 September 1962. His previous convictions include obtaining services by deception in January 1994 when he was fined, and in the following September for two counts of handling he received concurrent terms of six months' imprisonment.

9. In 1997 he stood trial at Teesside Crown Court on two counts of allowing club premises to be used for the supply of drugs. In the course of the trial he absconded to the Turkish Republic of Northern Cyprus ("TRNC"), an entity not recognised as a country by the UK (or by any country other than Turkey) and with which this country has no arrangements for extradition.

10. He worked as a builder-cum-developer of small scale projects. In February 1999 he formed a limited company Aga Developments Ltd (AGA), incorporated under the laws of the TRNC, and in due course embarked on two large scale and ambitious projects. The smaller of the two, Hz Omer, was to comprise about 65 properties and marketing began in late 2003. The larger was Amaranta Valley which was intended to consist of 250 properties initially, with the potential to grow even larger. Marketing of these began in the spring/early summer of 2004 through Unwins, an English run firm based in the TRNC, acting as agents for AGA.

11. Both sites were aimed principally at UK buyers, who bought off plan, paid a deposit and thereafter agreed to make stage payments as the work on the ground reached

certain defined stages of construction. Most of the Hz Omer houses were built albeit with a high number of complaints as to the conduct of the defendant and his company's performance of its contractual obligations. Only one house has ever been completed at Amaranta, and that was achieved by a buyer who took over the task of construction himself.

12. In December 2004 the defendant went to Thailand for the first time. It is unclear how long he spent there or how many times he went. He made substantial capital investments there in development land and in a company.

13. In February 2005 Unwins' agency was determined and collection of deposits and stage payments was taken over by Talat Kursat, the defendant's lawyer. Investor disquiet began to express itself increasingly from about April 2005, the month in which the first of many inhibition orders (the TRNC equivalent of injunctions) were granted against AGA and/or the defendant. In March an incentive scheme was offered to Hz Omer buyers under which those who paid in full in advance would be guaranteed completion of their home within three months. In April a second incentive scheme offering a 10% reduction for cash purchasers was introduced and offered also to Amaranta buyers.

14. On 25 May 2005 a European Arrest Warrant was issued for the defendant by the Republic of Cyprus.

15. Between April and July very large sums of investor money, says SOCA, were transferred by the defendant's lawyer Talat Kursat into a personal account of the defendant in the TRNC account 1and also in Thailand.

16. On 22 July 2005 the defendant gave written instructions from Thailand to transfer £1.495m from this account 1 to his personal account 5 in Thailand. On 25 July these funds were restrained by Collins J when in the accounts of the Thailand Bank's corresponding bank in London. The defendant says that his funds in the TRNC were frozen in response to this step. He himself appears to have chosen to remain in Thailand.

17. On 21 December the TRNC Council of Ministers issued an edict prohibiting his return to the country. This was lifted on 22 February 2006.

18. In March or April 2006 (the date is not clear) the defendant says he was effectively deported to the TRNC on terms that he collaborate with the efforts of others to achieve the completion of the Amaranta development. He claims he was prevented from doing so.

19. In December 2007 a Protocol was entered into between the AGA Buyers Committee, AGA and the defendant as to steps to be taken to complete the project. It failed to achieve significant results.

20. In January 2009 the TRNC removed the defendant to England for "firearms offences". The defendant claims that was an illegal act as he was a citizen of the TRNC and no deportation treaty existed with the UK. On the 8 July 2010 he pleaded guilty to two counts relating to offences under the Misuse of Drugs Act 1971 and was sentenced to 5 years' imprisonment. Having served that term he was then extradited

to the Republic of Cyprus where he was charged with and pleaded guilty to charges relating to the illegal use of what the Greek part of the island considers to be stolen land; he was sentenced to 10 months' imprisonment, which sentence he currently serves subject to an outstanding appeal against sentence.

The Claimant's and Defendant's Respective Cases Summarised

21. The Claimant's fraud case is advanced on two bases:-

a. the property enterprises in North Cyprus, were at all times intended by the defendant/AGA to be a scheme through which the defendant/AGA and or others sought to deprive individuals of large sums of money on the promise of completion of the construction of properties and associated works which the defendant/AGA and others knew and always intended would never be completed according to contract, or for which excessive payment was demanded, or refunds not paid (the "bad business" basis); or in the alternative;

b. that at a later stage in the enterprise, by early 2005 at the latest, when the defendant began to lose control of the management of these projects, the defendant/AGA decided no longer to operate the property developments legitimately with a view to completion, but instead and fraudulently and dishonestly to "cut losses", gather as much money as possible from potential/ existing customers, and then transfer or cause to be transferred these sums out of the jurisdiction of North Cyprus (at least as regards the defendant) and beyond the reach of potential creditors to Thailand without repaying customers' monies: (the "good business turned bad" basis).

22. The claimant relies upon Mr Robb's historical drugs related criminality, participation in the laundering of those proceeds to the TRNC and of other monies (involving a Mr Gowland), concealment of assets and lying on oath and obfuscation, his (admitted) failure to declare liability for tax, his absconding from justice, and his criminal associations and connections with violence/firearms. The Claimant submits that these are matters which establish a propensity towards fraud and dishonesty on the part of Mr Robb, and so is relevant to the overall assessment of the cogency of the Claimant's evidence of fraud in relation to the property schemes. It is submitted that this material is relevant also to the court's assessment of the credibility and reliability of the defendant's witness evidence.

23. The defendant denies any unlawful (in the sense of criminal) conduct. He asserts, in summary, that:

a) The developments through AGA was a legitimate business. He had title (from the TRNC authorities) or permission to build, develop and market the land he marketed. Incentives were offered to all customers in March because having given a reduction to one customer it was fair to treat them all alike.

b) Changes in plot sizes and specifications were, he says, the result of local authority requirements. Demands for payment for work not done are either denied or attributed to mistakes by employees. He takes issue with, or offers explanations for, the allegations by the witnesses of misconduct such as double-selling, misuse of properties, over charging etc: but where such activities occurred, he blames employees of AGA and his business Partner (Tahir Soycan) for acting without lawful authority.

c) He was not escaping his responsibilities but pursuing alternative development opportunities in Thailand.

d) The cessation of work by AGA was caused by his being arrested in Thailand and by the initiation of a 'black money' investigation (in which he was later cleared of any guilt) by the TRNC authorities who refused him permission to return and froze his assets. He blames the Claimant for initiating this action.

e) He points to the fact that he owned land and plant in the TRNC and planned a large development at Amaranta Valley to rebut suggestions that he was planning to stay away, and his honest intention to complete the work can (he says) also be inferred from his choice to return to the TRNC from Thailand when able to do so in about April 2006 , his subsequent participation in a government initiative and subsequently a 'Protocol' agreed with a committee of Amaranta buyers ("the ABC") December 2007 which were intended to bring about the completion of the projects (which did not involve him in receiving any further money directly from customers).

f) The subsequent failure to progress work under the first initiative and then the Protocol up to January 2009 was the result of misconduct on the part of TRNC officials charged with managing the work and the misappropriation of his plant and stocks. After January 2009 he was unable to progress the work due to his illegal removal from the TRNC to the UK and his subsequent incarceration (in the UK then the Republic of Cyprus).

g) He denies any conspiracy.

h) He points to the limited number of complainants giving evidence compared to large numbers supporting the Protocol;

i) He disputes certain aspects of the evidence concerning the criminal activities and history of himself, his relatives and associates. In general he contends that his property business in the TRNC was legitimately funded.

The Claimant in reply:-

a) Points to the inconsistency between the defendant's own claims to his central importance to the management of the projects and his voluntary

absence from them at a crucial time (in particular straight after the offer of incentives) as confirming and evidencing his dishonest intentions;

b) Asserts that problems on the sites had already begun to be caused by the defendant's own voluntary absences in Thailand;

c) Challenges the matters relied upon by the defendant as negating any inference of dishonest intention arguing that in practice he had little choice but to return to the TRNC, that he did so on conditions as to delivering the projects but that there was still no effective progress, and that the argument from 'weight of numbers' is of no merit;

d) Refers to inconsistencies in and lack of evidence to support the defendant's account of his business model, titles and entitlement to the monies (including the Property) transferred to Thailand.;

Gary Robb – His Reliability as a Witness and Propensity to Behave Dishonestly

24. It is accepted by the defendant that he never made any declaration of his income for tax purposes between 1989 and 2005. His response is that he thought his employers were making appropriate deductions from his earnings at the time. This explanation is wholly incredible. There is no evidence that he was ever in a contract of employment at any stage of this period. On his own account he earned many hundred thousands of pounds during this time. Other evidence shows he was operating a substantial business empire on a cash basis. He told SOCA that on arrival in the TRNC he continued to receive £5-10,000 per week in cash from his interests in England for about a year, and over £500,000 by way of capital.

25. His early business dealings in the North East of England are complex. There are two statements from Trevor Ward dated 18 July 1995 and 2 March 1996, of 22 and 9 pages length respectively, made under Section 9 of the Criminal Justice Act 1967. These were taken by Cleveland Police with a view to their use in the then pending prosecution of the defendant and his brother Jimmy in relation to the running of club premises.

26. Mr Ward started as an employee of the defendant but became a manager and a trusted director of certain of his companies. He describes how the defendant built an empire of five public houses in the early nineties and how he and another man deceived the brewers to whom these were originally tied by false accounting to disguise the fact that these outlets were selling beer supplied by the defendant himself and not the brewery. In all cases the properties were held by front companies and, though effectively owned and controlled by the defendant, he contrived at all times to distance himself from them. He financed his activities by means of cash which he kept in the client account of his solicitor Mr Cowie.

27. Mr Ward's evidence was that the defendant was able to sell the companies profitably and retain the proceeds, albeit he was adjudicated bankrupt for non payment of the mortgages on the properties by the brewer. He was declared bankrupt in June 1993 and automatically discharged in 1996. The defendant relies on his automatic discharge as evidence in his favour. In fact it is plain that his trustee in bankruptcy considered

that a private examination of the defendant would be a "waste of money insofar as it is highly unlikely that he will tell the truth under oath"

28. While still an undischarged bankrupt he then acquired a number of so called "rave clubs" at which drugs were supplied on an organised basis to customers by the sellers organised by the defendant's brother. Again these businesses were held in the name of, usually, shelf companies with directors who did not include the defendant; but at all times he was and acted as the true owner and manager of the premises. He acquired three clubs The After Dark, The Blue Monkey and The Fiesta Club. The original Blue Monkey appears to have been burnt down in an arson attack but The Fiesta Club, which became the Colosseum, generated substantial income for the defendant who was still trading as an un-discharged bankrupt. He controlled the club through a series of companies of which front men were the ostensible directors. He continued to use his solicitor's client account as his means of finance. All transactions were in cash. The defendant was in overall control of the clubs and his brother Jimmy was in charge of the selling of drugs from them.

29. In due course the defendant and his brother stood trial at the Crown Court for allowing one of those premises to be used for the supply of drugs. Both absconded during the course of their trial. The defendant fled to the TRNC, which has no extradition treaty with the UK. His case is that he did so because his counsel advised him he could not get a fair trial, the prosecution not having given him the disclosure that he was entitled to, together with the fact that he was being threatened, though he gave no further details of this.

30. His brother Jimmy was returned from Spain, whither he had fled, was tried and convicted of various drug charges and sentenced to 12 years imprisonment. Mr Ward's evidence was used at his trial, but between his trial and appeal Mr Ward made a retraction statement. Before the appeal was heard Cleveland Police placed him in their protective witness programme and he made a further statement which withdrew his retraction statement. Jimmy Robb's appeal was unsuccessful. The defendant relies on Ward's original retraction as indicating his unreliability as a witness. In my judgment the retraction of the whole of a lengthy and detailed statement, as opposed to an acceptance that the witness was wrong or untruthful in particular parts of his evidence, is usually an indicator of nothing more than the fact that the witness has been put under pressure by or on behalf of those whom he implicated in crime

31. The defendant in his defence has given different accounts of his activities during this period of his life. I first consider the various accounts he gave as to his relationship to the club known as the Colosseum.

32. In his police interview under caution on 4 February 1996 he denied he had any involvement in the management of the club or any control over its running. He said that a Mr Dalton, whom Ward had named as a front man, owned it and that all the defendant did was to "collect his rents and what have you". He did however accept that he had had what he called financial accounts with the solicitor Ian Cowie for about ten years.

33. In his bankruptcy proceedings he answered questions in a statement which was made on 9 February 1994 and which was subject to Section 5 of the Perjury Act 1911. He said he lived "on and off" at an address in Spain owned by him and his parents, that

he worked as door staff or general handyman on a casual basis with an average take home pay of £150 per week. His assets he described as "nothing". In a hand written addendum statement he said that he had gone to Spain in July 1992 leaving a Mr Winter to take over the pubs that he had owned and he had lost all the money he had put into them. He made no mention of any interest in rave clubs or any such ventures.

34. When later he was removed from the TRNC to England, on 22 July 2010 he pleaded guilty at Teesside Crown Court to 2 counts under section 8(B) of the Misuse of Drugs Act 1971, for which he received concurrent sentences of 5 years' imprisonment. By his plea he necessarily accepted, despite his basis of plea, that between July 1994 and February 1996 he was concerned in the management of those premises and allowed them to be used for the supply of drugs.

35. The defendant also appears to have been the owner of another club operating under various names at various times but best described as Rick's Bar. Mr Colin Thomas, a man with a criminal record for dishonesty, was interviewed by police under caution on 13 November 1997. He was in due course convicted on two counts of doing a series of acts tending and intended to pervert the course of justice and imprisoned for two years. These matters related to assisting the defendant in money laundering.

36. In his interview under caution, which took place after the defendant had absconded from his own trial, Mr Thomas said that he had brought Rick's Bar at Amble with the defendant's money for £30,000 and it was put into his, Mr Thomas's, name on behalf of the defendant. However in his own bankruptcy proceedings in a statement dated 30 October 2000 Mr Thomas denied this. He said that he first acquired the property in February 1996 that he was the beneficial owner and Mr Robb had never had any interest whatsoever in the property. On 28 August 2000 the defendant made a statement in Mr Thomas's bankruptcy proceedings supporting this assertion and saying "I do not [have] nor have I ever had a beneficial interest in the property known as Ricks Bar…Mr Colin Thomas does not [hold] and never has held this property or any other property in trust for me".

37. However, by the time he came to make his disclosure statement in these current proceedings on 9 September 2010 the defendant gave a different account of his ownership of these clubs. He said that while he was "away", meaning a fugitive in the TRNC, a man called Mallin "used to run the Colosseum for me. The club was still operational and another club "I had in Shields" so "the takings were sent to me from the clubs off the door". He told the investigators that he received £5-10,000 per week for a period of about a year as a result of this. He said that he had sold the Colosseum to Mr Dalton for a consideration worth £1m. As to Rick's Bar he accepted that this was his property and was in the name of Mr Thomas, for licensing reasons as he put it.

38. The claimant says that his equivocal evidence on ownership of these clubs indicates the propensity of the defendant to give whatever account of a particular transaction he considers suits him at any particular time. I agree with this submission. I would always look for corroborating evidence and would be slow to accept his unsupported evidence.

39. There is also the question of his conduct within these proceedings. His first set of solicitors spent three days in 2008 in the TRNC taking his instructions and also took

advice from leading counsel. By 6 July 2011 he applied to the Master for an exclusion order to enable him access to the frozen funds to instruct lawyers. The Master dismissed his application on the basis that his evidence in support of the application was "utterly inadequate".

40. The application was restored before Eady J. In a new statement of assets he said he had no assets in the TRNC and the £1.75m he had invested in land and a business in Thailand had been expropriated. No dates or details were given and no documents produced to corroborate these claims. In the event there was no opposition from the claimant to an exclusion of £50,000.

41. The defendant's new solicitors attended on him in prison between 13 and 16 December. On 20 December Mr Tracy the claimant's witness served a substantial witness statement purporting to answer and undermine the defendant's evidence in some detail, including inter alia evidence that the defendant appeared to have an interest in eight Thai companies none of which he had disclosed.

42. The upshot was that the defendant filed his Defence on the last day allowed and his unsigned witness statement five days out of time, but he abandoned his application for a further exclusion order on the grounds that he could not get access to the relevant papers. In my judgment this shows him to be attempting to manipulate the litigation process, and was part of the reason why I denied the request made by his brother at the start of the hearing to adjourn this hearing for him to be represented.

43. I must also consider the involvement of Mr Alan John Gowland with the defendant. He was introduced to the defendant by Mr Barry Christopher who had been involved in the defendant's businesses in the North East before he absconded to the TRNC.

44. On four dates in 2005 (21 April, 6 June, 24 June and 23 August) substantial amounts were paid from Mr Gowland's UK bank account into the defendants accounts in Thailand. The first payment was for £51,000 and the other three for £50,000 exactly. In each case within days of the transfer there are corresponding deposits in Mr Gowland's bank in England in the form of cash. Therefore throughout this period an aggregate of £201,000 was transferred to the defendant's account and in the same period £203,680 was deposited in cash into Mr Gowland's account.

45. The claimant submits that this is a clear example of money laundering being carried out by agreement between the defendant and Mr Gowland from which it can be seen that Mr Gowland in effect earned a profit or "fee" of some £2,680 for his services.

46. Mr Gowland made a witness statement to the police on 31 January 2006. He said that he and his wife wanted to buy a property abroad and had the funds with which to do so. They were introduced to the defendant by Mr Christopher and travelled to Cyprus, were shown a property and told that a deposit of £50,000 would be required. He paid the deposit but then decided not to go ahead with the purchase, notifying the defendant accordingly. He claimed that approximately 2-3 days later a white male with a Scottish accent attended his home address and handed him a brown paper bag, saying the contents were from the defendant. It contained £50,000 in Scottish £20 notes. The man did not ask for a receipt and left.

47. Mr Gowland went on to say that he and his wife transferred £50,000 on a total of four separate occasions but on none of them did they proceed to purchase the property, changing their mind on all four occasions. In each case the amount of the deposit was returned as he put it "in the circumstances as I have mentioned previously by the Scottish male".

48. The claimants submit that this account, which is repeated by the defendant in his defence to this claim, is plainly incredible. In the first place the sum of £50,000 is wholly out of line with all other deposits that can be seen in proposed purchases of other properties in this development, which were in the region of a quarter of that amount. Secondly it is highly unlikely that Mr Gowland would have brought properties and changed his mind not once but on four separate occasions. Thirdly it is to be noticed that on two of these occasions namely 6 June and 23 June the arrival of the Scottish male with his brown paper bag occurred on the same day as the transfer of the funds to Thailand which leaves little time for re-consideration by the Gowlands of their proposed purchase, communication of that fact to the defendant, and whatever action was needed by the defendant to instruct the Scottish male to gather the cash and take to the Gowlands. It is also bizarre that no receipt was ever asked for, considering the sums involved in what were alleged to be arms' length transactions.

49. My conclusion therefore is that this was indeed nothing more or less than a money laundering exercise undertaken by the defendant with the co-operation of Mr Gowland as has been suggested and that the defendant's attempt to answer it is to his knowledge false.

50. On the balance of probability I reach the conclusion that the defendant is indeed a man with a propensity to use dishonest means for gain, and someone whose evidence must be treated with caution unless corroborated from other sources.

Transfers of funds to Thailand

51. While Unwins were still acting as the agents they transferred a total of £1.675m into account 2, an AGA account with Limassol Turkish Co-operative Bank; the claimant has demonstrated that £1.384m was from Amaranta buyers and the balance from (mainly save for £30,000 from buyers at a third site - Karmi) Hz Omer buyers.

52. On 21 October 2004 the defendant opened account 1, a personal account, and £1.8m was transferred into it from account 2. On 24 May 2005 a further £125,000 was paid in, probably from buyers paying sums in directly.

53. Talat Kursat, the defendant's lawyer, took over the collection of payments from Unwins (though the defendant collected some directly himself). He operated three accounts of relevance. Account 8 was a UK account with HSBC into which customer payments were received. Account 7 was at the same bank and was called "Talat Kursat & Co clients account". Account 10 was a sterling account in the TRNC into which customer payments from 8 and 7 were transferred. He also had what has been called a "ghost account" EFEKTIV YATAN 892 1009609 775 058688852 NOLU CEK TALAT KuRSATTR YT.

54. Debbie Kocak, as insurance when she became worried about her own position, took a DVD copy of all the AGA accounting documents, probably some time in 2006, and

later gave it to the claimant. This includes a ledger which shows payments to and from account 10 up to September 2005 including the period between 1 April and 22 July 2005 and shows, I am satisfied, four transfers from that account into the defendant's account 1 totalling £775,000 and one of £337,436 on 11 March 2005 from the "ghost" Talat Kursat account, plus the £125,000 additional credits already referred to and other credits between 11 March and 22 July totalling £239, 018. All these transfers I am satisfied represented customer payments from the UK paid on the footing that they would be applied toward the completion of the plots. Therefore in addition to the £1.8m paid in October 2004 a further £1.476m was paid in, of which over £1m came from Kursat accounts and the balance from another source which must as a matter of reasonable and probable inference also represent investor money.

55. Between the same dates the defendant procured the transfer of a total of £1,119,757 to Thailand, either by Kursat from his account 10, or by Gowland, or from his own account 1.

56. This means that the defendant's instruction of 22 July to transfer a further £1.495m from account 1 to Thailand, had the restraining order not been obtained, would have resulted in his removing a total of £2,693,757 of customer money (excluding the Gowland payments) from where it could be applied for the purposes for which it had been paid to AGA, and to a place where he could treat it as his own.

57. Given the circumstances prevailing at this time in my judgment this was plainly a course of action which the defendant set in train dishonestly and in order to defraud his customers, having abandoned such intention as he had to give them what they had contracted to receive. That is the likely explanation of his actions in my judgment. The circumstances to which I refer are these.

a) The defendant failed to complete any Amaranta Valley property;

b) The defendant failed to make good on a single incentive scheme offer or to offer any good explanation why;

c) The explanation given by the defendant as to why schemes were offered is not credible and is inconsistent with his history as a businessman; the incentive schemes were offered:-

i) at a time of rising discontent among customers about plot changes and planning problems and just months before the complete failure of Amaranta Valley;

ii) when the defendant was travelling 'frequently' to Thailand and absent from the TRNC but

iii) whilst (as he contends) he "ran the place single handedly" was "the driving force" of the company and the schemes and his presence on site was necessary to prevent corruption; and

iv) no effective management control had been established in his absence.

v) when there is direct evidence of Deborah Kocak that the defendant had stated after his Kimlik card was cancelled that he 'did not care' what was happening in TRNC and would not be returning.

d) The use of a personal account for the collection of incentive funds;

e) The increasing incidence of legal actions in 2005 as evidence of discontent, loss of control and also an incentive to abandon his responsibilities.

f) Removal of funds when it must be inferred that AGA would most need them:

i) the Talat Kursat client account ledger shows a systematic dissipation of AGA incoming funds, on the defendant's instruction.

ii) his inability adequately to explain that dissipation consistently with a bona fide business model for Amaranta.

iii) his apparent admission that he left the (relatively small) sum of around £600,000 in the TRNC after the various transfers to Thailand had taken place, which would seem inadequate to meet the various commitments he/AGA had undertaken by then;

iv) The defendant subsequently attempted to raise funds from either loans, the "unfreezing" of the restrained monies, or directly from the participants in the protocol in a purported attempt to finish the properties, which must show that the lack of money left in the TRNC at that point was a contributory factor to the complete failure of the business.

Unlawful Conduct and Duel Criminality

58. The actions of the defendant from February 2005 can compendiously be described as fraudulent and more particularly in terms of the law of England and Wales offences of obtaining property/money transfers by deception under Sections 15 and 15A of the Theft Act 1968, conspiracy to defraud, a common law offence; and fraudulent trading under Section 458 of the Companies Act 1985, then in force but since repealed.

59. As a matter of probability I consider that it can be said on the evidence that all the transfers of money after the relevant date from which the dishonesty began and the defendant ceased to intend to honour his obligations were made either from or to a bank account in England. The terms of the Criminal Justice Act 1993 Section 4 are such that there is an obtaining of property in England and Wales if the property is either despatched from or received at a place in England and Wales. Therefore the unlawful conduct occurred in a part of the United Kingdom and falls within Section 241(1) and questions of dual criminality under sub Section (2) do not apply.

60. If that analysis is wrong the expert evidence of Emine Colak obtained by the claimant is that there would be equivalent offences in the TRNC under the Criminal Code chapter 154 Sections 297, 298 and 300. The defendant's expert agrees with her exposition of the relevant sections of the code but expresses the opinion that failures to comply with contractual obligations, which he considers on the facts is what happened here, would not be unlawful under the criminal code. Ms Colak responds that if dishonesty is present that will render the conduct criminal. Ms Colak's view is to be preferred, particularly as the defendant's expert Mr Aygun accepted that he had not seen all of the relevant documents relating to the defendant or his companies activities.

61. If, in view of the questionable status of the TRNC, the applicable law for the purposes of the duel criminality requirement under the Proceeds of Crime Act 2002 in Northern Cyprus was the criminal code of the Republic of Cyprus, so far as the equivalent offences to the English Section 15 and 15A offences are concerned there is no distinction between the systems of law in either half of the island. The same criminal code applies at the relevant time. Dual criminality if it needed to be proved is therefore proved.

62. As to conspiracy to defraud, both the TRNC criminal code and the Republic of Cyprus Penal Code renders this a criminal offence in terms not materially different from the English common law offence, unsurprisingly in view of their common law origins.

63. As to fraudulent trading the equivalent provision in the TRNC would be Section 312 of the criminal code and in the Republic of Cyprus Section 373 of the Companies Law CAP113.

64. Therefore if it were necessary for the claimant to show dual criminality within the meaning of Section 241(2) the evidence produced in my judgment satisfies that requirement.

Bad Business or Business Turned Bad?

65. The primary case of SOCA is that all his actions in relation to these proposed developments were always intended by the defendant to be a vehicle by which he could deprive customer investors of their money by promising to complete properties he knew would never be completed.

66. Up to the end of the year 2004 there is every reason to be suspicious about these projects. There is no evidence of a coherent business plan. The defendant (whose company AGA was his alter ego, on his own case) was on many occasions in breach of contract. These changes included making unilateral changes to the size and positioning of plots after the contract was agreed, delays in starting construction, demands for inflated and or unwarranted payments, double selling of properties where the original contract had been cancelled and the property re-sold but the original purchaser was not refunded, and false representations to customers that a stage of the work had been completed when it had not. It is also a feature of the operation from the start that monies belonging to AGA and monies belonging to the defendant were intermingled indiscriminately.

67. However, breach of contract, even on a repeated basis, is different from fraud, certainly from fraud from the outset. For present purposes there is some evidence that the defendant had access to funds, professional advice from an architect and local lawyers, bona fide selling agents in the form of Unwins and the ability to construct houses with appropriate equipment and knowledge of where to hire appropriately skilled labour. He has also produced documents in Turkish which the claimant has not had translated which I think it only fair to assume show that he had bought land on which the Amaranta development was to take place. To infer fraud from the start I would have to be able to exclude commercial incompetence, corner cutting and even the use of deceit on an opportunistic and ad hoc basis as the explanations for what went wrong during this period. I find myself unable to do so, on the evidence currently before me, and I am therefore not satisfied that this was a business which was fraudulent from the outset.

68. By the beginning of the year 2005 the picture is very different. The turning point, I consider, was the defendant's first visit to Thailand at the end of 2004, when I am satisfied he probably formed the idea of starting fresh business enterprises and property developments in Thailand with money abstracted from AGA. By the beginning of February, the month in which Unwins retainer was cancelled, a significant event in this affair as I find, the scheme was in place, albeit some work on the ground continued on a diminishing and cosmetic basis over the next few months. By the beginning of February, I am satisfied on balance of probabilities, the defendant had formed the intention to extract with the help of Talat Kursat and others as much cash from the business as he could, and that the incentive schemes, often the hallmark of fraud in such circumstances were introduced to that end. It became his intention to remove himself and as much customer money as he could to make a fresh start in the east. For the whole of the period from 1 February 2005 until the attempted transfer of the 22 July 2005 he was acting dishonestly and fraudulently, and was conspiring with others principally Kursat to achieve that end.

Recoverable Property

69. As stated above this is defined as "property obtained through unlawful conduct" and includes property which represents or is obtained in place of the original property (section 305) and profits accruing on such property (section 307). Property includes money and things in action.

70. Before 21 October 2004 account 2 was the recipient of investor payments channelled through Unwins at a time when I am not satisfied that the business was operated on a fraudulent basis. Those funds were then transferred to the defendant's account 1. Subsequently from the time that the business became fraudulent Talat Kursat transferred property obtained through unlawful conduct, namely the running of the by now bad business, into the same account where the two sources of funds became mingled; there were also withdrawals from the account.

71. All credits in account 1 were held by the defendant personally and had the common feature that they represented money investors had paid, as they believed, to AGA in expectation that it would be spent solely and exclusively on completion of their contracts. It therefore follows, as I find, that the attempt to remove £1.495m on 22 July 2005 was itself unlawful conduct in that it was a fraudulent step in the conspiracy to defraud investors by appropriating the credit in that account, representing as it did

their aggregated payments, and putting it to a use which as the defendant knew was inconsistent with the purpose for which the payments were made. This was achieved by the defendant acting in a conspiracy to defraud investors with Talat Kursat and probably other employees at AGA in the TRNC.

72. I accept the submission that the legislative purpose of the act is to recover property which either is or represents unlawful conduct and that a global or broad view of facts under the act is appropriate. The claimant is not required to identify any one of the particular number of kinds of unlawful conduct through which the property was claimed. By parity of reasoning a precise tracing of assets is often if not always impossible and therefore inappropriate in complex cases of this nature.

73. Counsel for the claimant have rightly drawn my attention to what was said by Carnwath LJ in Olupitan v Director of Assets Recovery Agency [2008] EWCA Civ 104 at Para 38, where he considered an imaginary example of a case where stolen money was spent buying a house in conjunction with money which was not tainted by association with criminal conduct. There, he opined, the recovery order could only bite on the portion of the mixed property (now represented by the house) attributable to the unlawful element of the purchase money for the house. That clear and simple case is, of course, very different from the problem that I am considering in this litigation.

74. I have also been directed to the leading case of Re Hallett [1880] 13 Ch D 696 which sets out the rules applicable where a trustee mixes his own funds and trust funds. In such cases the beneficiaries of the trust are entitled to a charge over the whole of the assets purchased with the mixed fund. The trustee is presumed to have spent his own funds first in the acquisition before having recourse to trust monies.

75. This approach if adopted by analogy to the present case could lead to an exercise to apportion the funds in London frozen by this courts order between the money transferred from account 2 to account 1 namely £1.8m (plus additional credits of £175,913.50 as the evidence shows) or representing payments made before the business became "bad". The debits from account 1 up to 22 July 2005 and the credits into that account from Talat Kursat. All of this as counsel calculates at paragraph 192 of his closing submissions leads to a portion of funds within account 1 of 85.27% as being attributable to unlawful conduct and therefore recoverable.

76. I am not persuaded that such an approach is either necessary or desirable on the facts of this case. The unlawful conduct of this defendant (viewed broadly) embraced both the collection of the funds within account 1 from the sources I have described above and the conspiracy to remove them from the jurisdiction, all of which was unlawful conduct namely a conspiracy to defraud the investors in the business of AGA, no more and no less.

77. In my judgment therefore the appropriate declaration to make in this case is that the recoverable property in this action within the meaning of Section 304 of the act is the sum currently standing to the credit of NWB account 3924426 reference SOCA v Gary Robb. I will hear counsel as necessary on the form of the order appropriate in this case.