

When to distribute

Case management can be tricky when the forfeiture rule may be invoked. Natasha Dzameh reports



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'As a matter of principle, neither the inquest nor the civil proceedings should take precedence over the other, bearing in mind that the question of forfeiture lay at the centre of the civil proceedings but could not be determined by the inquest.'

As a matter of public policy, a person may not seek the assistance of the court in order to claim a benefit from their crime. Profiting from unlawful killing is considered a particularly abhorrent notion. The forfeiture rule is a common law principle recognised in statute, namely s1 of the Forfeiture Act 1982 which provides as follows:

In this Act, the 'forfeiture rule' means the rule of public policy which in certain circumstances precludes a person who has unlawfully killed another from acquiring a benefit in consequence of the killing.

The Forfeiture Act 1982 does not purport to define the forfeiture rule in any greater detail, the scope of the rule and its limits being a matter for judicial determination. The precise effect of the forfeiture rule varies, however, a detailed analysis of that point is beyond the scope of this particular article. The question of the forfeiture rule arose in a recent case (*Gregory v Ziuzina* [2017]) in which the inquest was pending.

Facts

Barry Pring (the deceased) died intestate on 16 February 2008 in Kiev. He had been dining with his wife, the first defendant (Ms Ziuzina, now Julianna Moore), at a restaurant near the Kiev-Chop highway. The deceased had returned to Kiev from London. He and Ms Moore were celebrating their first wedding anniversary. It was asserted that they travelled to the highway with the intention of flagging down a vehicle to take

them back to Kiev. The deceased was struck by a vehicle on the westbound Kiev-Chop highway with the vehicle crushing him against the crash barrier. The deceased suffered significant injuries. The driver of the vehicle failed to stop and the identity of said driver remains unknown. Ms Moore contended that when the accident occurred she was on her way back to the restaurant to collect her gloves.

The deceased had no children but was survived by Ms Moore, his parents (the second and third defendants) and his brother. The statutory rules concerning intestacy at the time of the deceased's death meant that Ms Moore would be entitled to the chattels, £200,000 (plus interest) and one half of the residue. The remaining half would pass to the deceased's parents. Where the net estate is insufficient to meet the needs of creditors, legacies and so on the rule of abatement is relevant.

The second and third defendants asserted that his death was deliberate and premeditated, with Ms Moore being implicated. If correct in that assertion the forfeiture rule would apply to the devolution of the estate. On 17 June 2008 an inquest into the deceased's death was opened and adjourned.

The proceedings began as a result of an application in the Bristol District Probate Registry for a grant *ad colligenda bona* in respect of the deceased's estate. This application was made by the first claimant (a partner of Stephens Scown LLP) and Margaret Francis Lang, who was also a partner but has since retired. Mann J made the order on 20 October 2008. On 21 January 2010 Master Moncaster ordered that the grant be replaced by a similar grant to the

current claimants, with Mr Wilkins also being a partner at Stephens Scown LLP.

By the end of 2011 the realisation of assets had essentially been completed and the claimants made an application on 14 December 2011 for a full grant and directions regarding the distribution. An order dated 3 January 2012 made by Deputy Master Mark provided the deceased's parents with the opportunity to apply to be joined, which they took by way of an application notice dated 15 February 2012. They also sought directions regarding the distribution of the estate. The deceased's father was a protected party and the deceased's brother was put forth as the litigation friend. In the draft order supplied with their application they sought an order postponing distribution. In March 2012 Deputy Master Rhys joined the second and third defendants to the proceedings, granted full letters of administration to the claimants and specified in para 4 of the order as follows:

... no distribution of the Estate of Barry John Pring deceased shall take place until

- (a) such time as the investigation by the Ukrainian police into the Deceased's death has concluded; and
- (b) the conclusion of any inquest into the Deceased's death by the Coroner for Devon; or
- (c) further order of the court.

Caveats impeded the grant of full letters of administration. However these were removed by order of Master Marsh dated 3 September 2013. Further orders dated 26 September 2013 and 2 April 2014 by Master Marsh required the solicitors for the deceased's parents to report to the court and to the parties regarding the progress made in the investigations into the deceased's death.

The senior coroner decided to resume the inquest on 24 January 2017. The record of the inquest recorded a verdict of unlawful killing in such a way that it appeared to incriminate Ms Moore. Her solicitors set out in a letter before claim, in preparation

for judicial review proceedings, a significant number of conduct issues in respect of the inquest. The coroner agreed to the verdict being quashed. On 24 April 2017 Ouseley J quashed the record of inquest and directed a fresh inquest before a different senior coroner. HHJ Matthews was appointed on 6 November 2017

and as at 16 November 2017 he had not received the papers or set a timetable for the inquest, neither of which was surprising.

An application notice was issued on behalf of Ms Moore on 31 August 2017 pursuant to which four orders were sought. The first related to a change of name in respect of Ms Moore which was non-contentious except for the precise wording. The second was the substitution of Mr Basil Pring's executors for Mr Basil Pring (the third defendant) who had died on 18 January 2015, again being non-contentious. The final two orders were hotly contested. These were:

- that directions be given in respect of the forfeiture issue with the aim of this occurring prior to the inquest; and
- a direction that the claimants, as administrators, make a written demand that the deceased's brother deliver up to them:
 - a list of the deceased's estate that was or had been in his possession; and
 - all the deceased's property in his possession and control.

The final order was largely focused on two copies of the hard drive of the deceased's computer and hard copies of documents produced from it.

Forfeiture issue

Deputy Master Lloyd was tasked with determining whether it was time for a further order to be made pursuant to para (4)(c) of Deputy Master Rhys' order of March 2012. This was essentially a case management issue but, given the potential consequences, was

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considered to be 'of the utmost seriousness'.

The investigation into the deceased's death, conducted by the Ukrainian police, remained open but was not being actively pursued. The driver of the vehicle was yet to be identified and no one had been charged in connection with the incident. None of the parties asserted that para 4(a) was a sufficient ground for postponing a distribution decision. Paragraph 4(b) was the focus of the parties' attention and legal submissions.

The argument put forth by those acting for Ms Moore was that the deceased's brother formed the view she was responsible for the murder of the deceased upon hearing of his death. She contended that he, along with others, pursued a campaign for her to be prosecuted and imprisoned. Mr McLinden QC, counsel for Ms Moore, divided this into four campaigns outlined below:

- **The family campaign:** interviews to, and dealings with, the press when the inquest resumed portrayed Ms Moore's involvement and guilt as a certainty.
- **The political campaign:** since 2010 the deceased's family enlisted the help of the local MP to encourage the Foreign Office to pressure the Ukrainian authorities to charge Ms Moore. This was said to have included a statement accusing Ms Moore of being responsible for the

deceased's death made by an MP using the guise of Parliamentary privilege.

- **The media campaign:** the deceased's brother fed the media information including material allegedly discovered by a private investigator, the identity of whom Ms Moore

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did not know, and documents passing between lawyers.

- **Mr Phillips' campaign:** Mr Graham Phillips published a book which was subsequently withdrawn from sale, albeit part of the book was made available to the coroner and Mr Phillips gave evidence at the inquest.

Counsel for Ms Moore contended that the inquest would not determine whether Ms Moore was involved in the deceased's death, that not being its function. It was in fact prohibited from so doing. The lack of criminal proceedings meant these campaigns continued to hang over Ms Moore, thus the forfeiture issue should proceed without further delay.

The second and third defendants asserted that they simply sought justice for the deceased. They considered that their attempts to obtain justice could not be considered irrational, unfair or unlawful and if Ms Moore had considered otherwise she should have pursued them by bringing a defamation action. Mr Blohm QC argued that the inquest was the proper forum to call for and examine the evidence, therefore a civil determination of the forfeiture issue should only take place after the conclusion of the inquest.

Towards the end of the hearing there was some debate as to the effect of *Economou v de Freitas* [2016] on possible defamation proceedings and further written submissions

were provided. Nonetheless this point was noted to be of only marginal assistance.

Deputy Master Lloyd considered it inappropriate for him to express any view on the propriety or fairness of the reporting in the media, of the actions engaged in by the deceased's brother and Mr Phillips, as well as the action which may or may not have been open

to Ms Moore. Further, he was not prepared to accept the suggestion that, if the verdict of the inquest were that the deceased was unlawfully killed, that finding indicated Ms Moore must have been implicated in the crime. Instead he contended such involvement must be proved by admissible evidence before the judge determining the forfeiture issue.

Deputy Master Lloyd determined that the relevant question was in fact whether, in light of the appointment of HHJ Matthews to hold a fresh inquest, the civil action should remain on hold until that inquest concluded. Mr McLinden QC contended it should not, Mr Blohm QC argued that it should.

Counsel for Ms Moore asserted that as a matter of principle the civil determination of the forfeiture issue should take precedence over the inquest. He referred to s5(1) of the Coroners and Justice Act 2009 as to the purpose of an investigation into a person's death and s10(2) which establishes that the coroner's determination may not be framed in such a way that it appears to determine questions of criminal liability on the part of a named person or civil liability. Further, r25(4) of the Coroners (Inquests) Rules 2013 provides for the adjournment of the inquest where it appears to the coroner that the deceased's death is likely to have been due to homicide and a person may be charged in relation to the offence.

It was accepted by counsel for Ms Moore that r25(4) did not relate to civil proceedings, however, it was contended that the rationale behind it did, so an analogy should be drawn and the forfeiture inquiry should take place before the inquest. He asserted that the legal protections which exist for an accused in criminal proceedings do not exist in an inquest which could operate unfairly regarding a civil determination of culpability. Counsel for Ms Moore also argued that a coroner's inquest was not a forum which allowed for evidence gathering for pending or future civil or criminal proceedings (*R v Poplar Coroner (ex parte Thomas)* [1993]). He further submitted that considerable time had passed and Ms Moore was entitled to finality.

Mr Blohm QC referred to *Hoyle v Rogers* [2014], noting that the facts found by, and evidence adduced before, the coroner are admissible in civil proceedings and although the verdict would not name a party as criminally liable the inquest may explore facts which affect civil and criminal liability. The inquest investigation could go beyond that which was strictly required for the purpose of a verdict and may be legitimately contained in a verdict. Mr Blohm QC distinguished *R v Poplar Coroner* on the basis that there was no proper ground for holding an inquest at all in that case. He noted that the second and third defendants accepted that Ms Moore was facing one of the most serious allegations which could be made, therefore it must be determined on the fullest evidence available and the inquest should take precedence.

Mr Blohm QC criticised Ms Moore's lack of attendance at the previous inquest and her failure to provide a witness statement at that inquest. It was asserted on behalf of Ms Moore that she was only provided with a few days' notice of the hearing, despite not being resident in the UK. Mr Blohm QC noted that even if the civil proceedings occurred first it would not result in a situation whereby an inquest was no longer required. Consequently, given that the coroner would investigate the deceased's death in any event, it was a far better use of court resources for the inquest

investigation to precede the civil action. Mr McLinden QC noted that, there having been one inquest already, the second and third defendants had already acquired some benefit and it was unlikely anything new would result from the second inquest.

Deputy Master Lloyd considered the question as to forfeiture and Ms Moore's involvement so serious that it required a High Court judge rather than a Master. In light of the existing list and the fact that the case would probably last at least five days, it was unlikely to be heard prior to the last quarter of 2018. Although counsel for Ms Moore had floated the possibility of applying for an expedited hearing, Deputy Master Lloyd confirmed that he did not immediately see anything which would justify the parties jumping the queue and placing themselves ahead of the other litigants.

It was held that, as a matter of principle, neither the inquest nor the civil proceedings should take precedence over the other, bearing in mind that the question lay at the centre of the civil proceedings but could not be determined by the inquest. Deputy Master Lloyd took as his starting point the fact that over five years had passed since the order of Deputy Master Rhys. He doubted if anyone had envisaged that this issue would remain unresolved for so long and felt it was right to consider whether a different order was justified.

Deputy Master Lloyd took the view that delivery of points of claim by those asserting the forfeiture rule applied should be the first step. The administrators confirmed they intended to remain neutral, therefore it was for the second and third defendants to decide whether they wished to assert that the forfeiture rule applied, and Ms Moore would be deprived. If the second and third defendants decided not to assert that the forfeiture rule should apply, the estate would be distributed on the basis that it did not, and the inquest would take its own course. He stated that the coroner may have his own view on the order of events. It would be open to the coroner to adjourn the inquest pending the conclusion of the civil action. If

the coroner considered the inquest should take place first but could not be concluded before the likely trial date, then the matter could be referred back to the court for consideration as to the timetable.

Consequently, the court determined that the brake should

come off the determination of the forfeiture issue. Deputy Master Lloyd stated that allowing otherwise would prolong the delay in resolution of the issue, with there being no real benefit to the parties, or the administration of justice, secured by doing so.

Estate property

The deceased's computer came into the possession of his brother, and subsequently the police, before the administrators were appointed. Following their appointment, it was provided to the administrators. Counsel for Ms Moore contended that the administrators had a duty to get in the property of the deceased and that they should secure any property of the deceased which had been retained by his brother. This largely concerned two copies of the hard drive of the deceased's computer and hard-copy documents produced from them. It was asserted that the administrators should also get in the property of the deceased to stop further use by the deceased's brother in pursuing the campaign against Ms Moore. Consequently, counsel sought an order that the administrators write a letter of demand. The administrators did not consider it a useful or sensible use of estate money to try to compel the deceased's brother to return this material. The second and third defendants agreed with the administrators' perspective.

Deputy Master Lloyd confirmed that it is pre-eminently a matter for the administrators whether to expend

estate funds attempting to secure such items. It was debatable whether the copies of the hard drive were in fact estate property but, regardless, there was no evidence that the items had tangible value or that the estate was disadvantaged by not having possession of them. The information

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had already been made use of in the public domain thus it seemed unlikely that any order by the court would prevent repetition of publicity involving Ms Moore. Further, Ms Moore's application in this regard was not assisted by her having obtained and retained possession of chattels which did have a tangible value and should have been returned to the administrators.

This part of the application failed.

Conclusion for practitioners

While it is unlikely that the court will deal with many cases of this nature, ie application of the forfeiture rule where an inquest is pending, the Deputy Master was quite clear that as a matter of principle neither the civil proceedings nor the inquest take precedence. The court will instead start from the usual position with case management decisions, namely the overriding objective.

Further, the court is unlikely to interfere in the decision of executors as to whether they should pursue recovery of estate assets where there is no pending claim against them. ■

Economou v de Freitas
[2016] EWHC 1853 (QB)
Gregory & anor v Ziuzina & ors
(2017) unreported, EWHC,
Deputy Master Lloyd, 5 December
Hoyle v Rogers & anor
[2014] EWCA Civ 257
R v Poplar Coroner (ex parte Thomas)
[1993] QB 610