Time limit in applications under the Forfeiture Act 1982 (Challen v Challen)

02/06/2020

Private Client analysis: The case concerned an application for relief from forfeiture made by an applicant who had been convicted of murdering her husband, where the conviction was subsequently quashed and a conviction for manslaughter substituted. The court held that the statutory time limit of three months in which to bring an application ran from the date of the manslaughter conviction, not the earlier murder conviction—and that time ran from the date of final sentencing, not the date of plea. The court also reviewed the applicable principles and authorities in considering whether to grant such an application. Written by Leslie Blohm QC, barrister, at St John's Chambers.

Challen v Challen and another [2020] EWHC 1330 (Ch)

What are the practical implications of this case?

Applications on the Forfeiture Act 1982 (FA 1982) are more common than most appreciate. It arises when a person is barred from taking property on the death of another by reason of their unlawful killing of the other, which is the 'Forfeiture Rule'. It applies to acts that amount to manslaughter, suicide pacts, and 'mercy killings'. FA 1982 gives the court discretion to modify or exclude that rule if it considers it to be in the interests of justice, but there are specific limitations and exclusions. Persons convicted of murder cannot apply (FA 1982, s 5) and there is a three-month time limit for applications from the date of conviction (if any) (FA 1982, s 2(3)). That time limit cannot be extended (*Re Land* [2007] 1 All ER 324).

What was the background?

The case was a cause celebre. Sally Challen killed Richard, her husband and partner of 40 years and father of their two sons, by beating him about the head with a hammer. She was convicted of his murder in 2012 and sentenced to life imprisonment. In February 2019 the Court of Appeal quashed her conviction and remitted it for a retrial on the basis that the trial court had not properly considered her case on diminished responsibility, arising in part from the fact that Sally had for many years been the victim of her husband's coercive control, and that that had been a relevant factor in her behaviour. On 5 April 2019 she tendered a plea of not guilty to murder but guilty to manslaughter by reason of her diminished responsibility. The crown did not accept that plea. On 29 May 2019 the crown indicated that the plea was acceptable, and on 7 June 2019 Sally attended court and was sentenced to nine years imprisonment in effect the time she had served.

One consequence of the forfeiture rule was that Richard's estate had passed to their sons. Because it had not passed to Sally it was subject to a very substantial inheritance tax charge. On 6 September 2019 Sally made an application for relief from forfeiture, so that she would be entitled to the estate, and would take it free of inheritance tax. Her sons who were defendants did not oppose the application. HMRC were notified of the application but did not respond.

What did the court decide?

The court first had to decide whether the time-bar in FA 1982 prevented Sally from making the application. Only if time ran from the hearing on the 7 June 2019 would the application be in time (by a day). Judge Matthews considered textbook opinion which suggested that time would run, in the case of a successful appeal against a murder conviction, from the date of original murder conviction. He disagreed and concluded that the relevant conviction was the subsequent manslaughter conviction. Next he considered the precise date when that conviction had occurred, and concluded that, as it required the court to accept the guilty plea that had been tendered, it had not occurred when the crown first indicated that the plea was acceptable. It had occurred when the court had formally accepted the plea on 7 June 2019. Although it was not necessary for the decision, he also held that a 'conviction' had not occurred until the sentencing process had been concluded and doubted the assumption to the contrary of Judge Norris QC (as he then was) in *Re Land*.

On the merits of the application the court held that in these circumstances the interests of justice would be served by a full exclusion of the forfeiture rule. The forfeiture rule was not a punitive rule, but a rule of public policy. Considering the principles set out in *Dunbar v Plant* [1998] Ch 412, the court was required to take all relevant circumstances into account and that was a broad enquiry. It considered Sally's personal responsibility for Richard's death, and considered that her diminished responsibility and Richard's coercive control substantially reduced that blameworthiness, as noted by the sentencing judge's remarks—and that Richard was to a significant degree responsible for the event. He made it clear that the circumstances of this case were extreme and unusual, and that it should not be taken as indicating the court's approach to any unlawful killing arising as a reaction to coercive control—plainly any such application would be highly fact specific. The fiscal consequences of such an order (the recovery of tax) was not a reason for refusing to make the order sought.

All of these cases are personal tragedies, and *Challen* demonstrates first that the circumstances surrounding such cases are infinitely variable, and secondly that even if an application is unopposed, a court will consider those circumstances carefully before making an order under FA 1982.

Case details

- Court: High Court of Justice, Chancery Division, Bristol District Registry
- Judge: Paul Matthews (sitting as a High Court judge)
- Date of judgment: 27 May 2020