

IRWIN MITCHELL (Appellants) v REVENUE & CUSTOMS PROSECUTIONS OFFICE (Respondent) & ABDULLAH ALLAD (Interested Party) (2008)

[2008] EWCA Crim 1741

CA (Crim Div) ([Toulson LJ](#), [Jack J](#), [Recorder of Hull](#)) 30/7/2008

CRIMINAL PROCEDURE - LEGAL PROFESSION

CLIENT ACCOUNTS : CONTEMPT OF COURT : RESTRAINT ORDERS : SOLICITOR AND CLIENT COSTS : VARIATION : SOLICITORS' ENTITLEMENT TO UTILISE FUNDS IN ACCOUNT OF CLIENT SUBJECT TO RESTRAINT ORDER : s.41 PROCEEDS OF CRIME ACT 2002

No variation to a restraint order imposed on a defendant under the Proceeds of Crime Act 2002 s.41 was necessary to enable solicitors instructed by the defendant to transfer funds from his client account to its office account in satisfaction of its legal fees as no contempt of court would thereby be committed.

The appellant firm of solicitors (M) appealed against a decision of the judge dismissing its application to vary a restraint order imposed upon the interested party (X) so that it might transfer funds from its client account in satisfaction of X's fees. M had been instructed by X in connection with a Revenue and Customs investigation which he was facing. X paid M £5,000 on account of legal costs and the funds were paid into M's client account. The respondent RCPO subsequently obtained a restraint order against X under the [Proceeds of Crime Act 2002 s.41](#) which prevented him from disposing of or diminishing the value of his assets whether in his own name or not. By that time, M's professional fees for work done for X under its retainer exceeded the £5,000. M informed the RCPO that it intended to issue a bill which would transfer the money from X's client account to its office account. The RCPO objected, contending that such a step was prohibited by the restraint order. M applied to the Crown Court for a variation of the order. The judge dismissed the application, having ruled that M could not apply the funds in payment of its fees without a variation of the restraint order, and that the court had no power under the Act to make such a variation. The judge found that X's interest in the money in the client account was a beneficial interest and therefore constituted realisable property capable of being restrained by the restraint order. M contended that once its proper fees reached £5,000, X no longer had any beneficial interest in the fund. It submitted that it would be absurd to regard him as beneficially entitled to £5,000 or any part of it when the work which it had done entitled it to that amount and the fund had been created for the sole purpose of its payment in those circumstances.

HELD: The purpose of a restraint order was to preserve the value and accessibility of assets held by the defendant which might be available to him for satisfying a confiscation order which might be made against him at the end of criminal proceedings. Its purpose was not to prevent third parties from enforcing civil rights against a defendant if those rights would be unaffected by any order which might be made against the defendant at the end of the proceedings. The money in M's client account could not be used to satisfy any confiscation order which might in the future



be made against X. In the circumstances, M was entitled to take the course proposed without committing any contempt of court. It had rightly notified the RCPO in advance, in case there was any challenge to the size or propriety of its bill, but no variation to the restraint order was required in order to enable it to utilise the fund in payment of its fees.

Appeal allowed

Counsel:

For the appellant: Kennedy Talbot

For the respondent: Jonathan Hall

LTL 31/7/2008 (Unreported elsewhere)

Document No. AC0118136

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