

Follow the money

BY ALLAN NACKAN
For Law Times

Modern-day fraud has become a highly sophisticated world, funds can be moved instantaneously and buried in places that can't be tracked through normal means.

The technological advances that have helped fraudsters move and hide money in real time have been equally helpful for investigators tracking and recovering funds. When high-tech investigative methods are coupled with certain legal remedies, the scope for financial recovery is greatly enhanced.

There is no doubt that the speed with which money can be moved electronically across international borders, through advanced and well-integrated global banking networks, presents a real challenge to fraud investigators.

In a recent case handled by our firm, acting as a court-appointed receiver, we painstakingly traced \$3 million to a Turks and Caicos bank account, only to find that the funds had been moved to another jurisdiction once the fraudster realized we were within range. This is not an uncommon occurrence.

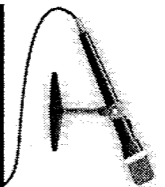
There are a number of additional factors that aid fraudsters' ability to dissipate and hide assets offshore:

- The prevalence and ease of use of electronic banking over the Internet avoids the need to travel to place funds. Historically, a fraudster would have to visit a branch to provide instructions.
- The anonymity of the Internet facilitates the use of false identities to conduct transactions.
- The Internet has become a selling ground for shady financial institutions and trust companies that aid fraudsters in their deception. Many are brazen in advertising their services online.
- Offshore trusts, international corporations and nominee shareholders are used extensively to mask beneficial ownership and hide assets. Bank secrecy laws, which are the cornerstone of many offshore tax havens, preserve client confidentiality. However, especially since Sept. 11, governments are increasingly focused on regulating and attempting to control global money laundering — largely due to its link to organized crime and terrorism.

To that end, a number of statutory and regulatory measures have been put in place in Canada, which are mirrored in many other jurisdictions, to facilitate disclosure and co-operation between jurisdictions. These include FINTRAC (Financial Transactions and Reporting Analysis Centre of Canada) monitoring for wire

transfers over \$10,000, Proceeds of Crime and Anti-Money Laundering legislation, and the Terrorism Financing Act.

To aid the investigative cause, application of Canada's bankruptcy and receivership laws and various common law remedies can significantly enable the recovery of stolen assets.



Speaker's Corner

Court-appointed receivers or interim receivers are increasingly being called upon for their expertise in this area. As "officers of the court," receivers are equipped with broad powers to demand information and co-operation from a wide variety of sources, to seize physical and computerized records, and to seize, preserve, and sometimes even sell property funded by the proceeds of crime.

Traditional law-enforcement officers and investigators have expressed surprise at the scope of powers that are granted to the courts' officer, often on an *ex parte* basis or with very abridged service to the other side. This element of surprise is critical to the success of the investigation.

It is essential to anticipate fraudsters' moves by developing timely intelligence and pinpointing the movement of money before they become aware they are under investigation.

Other extraordinary legal remedies that are used to outplay the fraudsters at their own game, and to enlist the support of local and foreign authorities, include:

- The Norwich Pharmacal order, which can be used to oblige banks to make disclosure of relevant bank records without alerting the account holder of the existence of the order.
- The Mareva injunction, which compels defendants to make full disclosure of their assets, allows for the freezing of worldwide assets, and further restrains defendants from disposing of or moving those assets.
- The Anton Piller order, which, under certain specific circumstances, authorizes entry onto the defendant's premises to search for and secure property and evidence, including computerized evidence.
- Letters rogatory, which allow a court in one country to request a service of process from "the appropriate judicial authorities" in another country.

Successful use of these methods today is well supported by a number of sophisticated high-tech tools and processes. International online databases track and uncover corporate fronts and affiliations, locate assets, bank accounts, and other investigation-related background

information. There are also computer forensics tools and processes that allow for easier identification, collection, preservation, analysis, and court presentation of computer-related evidence.

Systematic approaches to mining the large volumes of electronic information relating to business and financial transactions are also helpful.

An illustration of these tools and processes at work is the case of Mr. D, who defrauded investors of approximately \$100 million. As the interim receiver, A. Farber & Partners Inc. was appointed to investigate the fraud and recover as much of the money as possible.

On assignments of this nature, we work closely with our strategic partner, Intelysis Corp., which specializes in forensic accounting and investigations.

Using bank records seized under the powers granted to us as the interim receiver, the team conducted a detailed analysis of Mr. D's financial, telephone, and e-mail records, which allowed us to identify two key recipients of funds.

One foreign corporation was traced through online research to Costa Rica, where we were able to identify the bank account where \$54 million had been sent to the parent company of an Internet-based bookmaker. A second recipient, also identified as an offshore bookmaker, was traced to Jamaica.

Armed with this information, an injunction was obtained from the Ontario courts, along with letters rogatory, enabling us to obtain the assistance of the Costa Rican courts. Our team then deployed to San Jose, where we developed key contacts within the Costa Rican legal system and were eventually able to accompany the police on raids conducted at the premises of two sports bookies.

Using sophisticated computer forensic techniques on two hard drives that were discovered during this process, we identified key e-mails and Internet usage records that identified the flow of money to accounts in Switzerland. The interim receiver was able to freeze the accounts and legal action for recovery is ongoing.

As fraudulent activities evolve, and fraudsters' technological acumen grows, the ability of investigators to move swiftly is critical to long-term success. As a result, fraud investigation activities will continue to rely heavily on the combination of enabling legislation and advanced technology tools. LIT

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