



Time Is Time, but Money Is Money

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Introduction

In *United States v. Saccoccia*, the United States Court of Appeals for the First Circuit (First Circuit) [recently](#) refused to vacate a 1993 judgment ordering Stephen Saccoccia—who is serving a 660-year prison sentence for money laundering—to forfeit \$136 million to the government, the amount of money that Saccoccia and others had laundered through bank accounts that Saccoccia controlled. Saccoccia did not ask the court to overturn his convictions or to shorten his prison sentence. He sought only the return of the \$136 million he forfeited as a consequence of his convictions. Saccoccia argued that the Supreme Court’s 2017 decision in *United States v. Honeycutt*—which held that the doctrine of joint-and-several liability does not apply to federal forfeiture actions arising from drug crimes—should be read to retroactively invalidate the forfeiture order in his case. The First Circuit rejected that argument, holding that Saccoccia would not be entitled to relief even if *Honeycutt* applied retroactively.

Background

Saccoccia owned a string of coin, gold, and precious metal businesses that he used in a multimillion dollar money laundering operation conducted for the benefit of Colombian drug traffickers. Eventually, Saccoccia, a few family members, and several employees were [convicted](#) on money laundering and RICO (*Racketeer Influenced and Corrupt Organizations*) conspiracy charges.

RICO convictions permit the government to seek the criminal forfeiture of property constituting or derived from a corrupt enterprise. In some circumstances when the criminally-tainted assets have been dissipated and cannot be reached, a court may order the confiscation of substitute assets instead. In addition, federal forfeiture law allows the government to elect to take a money judgment in lieu of the tainted property. When multiple defendants are convicted of participating in the same RICO offenses, the question becomes from which defendants the government may seek forfeiture. Under federal [criminal law](#), conspirators are liable for any reasonable foreseeable offenses committed by any of their co-conspirators. There is a similar principle in civil [tort law](#), under which wrong-doers who collectively contribute to an injury are said to be jointly and severally liable for damages, that is, each of the wrong-doers is liable for the entire amount of the damages, although the plaintiff can recover that amount only once.

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At one point, a number of federal courts recognized the merger of all of these concepts in the criminal law context and entertained government petitions for joint-and-several money judgments against each co-conspirator for the total value of all property made forfeitable by the criminal conspiracy. In other words, each conspirator could be held liable for a forfeiture judgment based not only on property that he used in or acquired because of the crime, but also based on property obtained or used by his co-conspirators. And so it was with Saccoccia. In 1993, the [district court](#) entered a joint-and-several money judgment against him for over \$136 million in lieu of tainted property and substitute assets. Almost 25 years later, the Supreme Court held in *Honeycutt* that the application of joint-and-several forfeiture liability to defendants convicted of conspiring to violate federal drug laws was “inconsistent with the [drug forfeiture] statute’s text and structure.” Saccoccia then commenced an action in which he claimed that *Honeycutt* retroactively invalidated the forfeiture order in his RICO case. The district court was unconvinced, as was the First Circuit.

Honeycutt

The defendant in *Honeycutt* was a clerk in a store that realized considerable profits from the illicit sale of a chemical used to manufacture methamphetamine. The grand jury [indicted](#) Honeycutt and the store owner on drug conspiracy charges, and the government sought joint-and-several forfeiture judgments against the store owner and Honeycutt for \$269,000, the total profits earned by the store on the sale of the chemical. The store owner plead guilty and agreed to forfeit \$200,000. The district court convicted Honeycutt, but [refused](#) to enter a judgment against him for the remaining \$69,000 balance of criminal profit. The Court of Appeals reversed.

In a unanimous decision, the Supreme Court [reversed](#) the Court of Appeals’ judgment. The Supreme Court pointed out that joint-and-several liability in the criminal context was in tension with the traditional distinction between *in rem* civil forfeiture and *in personam* criminal forfeiture. In civil forfeiture, tainted property is forfeitable without regard to the innocence of its owner, unless otherwise provided by law. In criminal forfeiture, only the guilty owner’s tainted property is forfeitable. Thus, the Supreme Court [explained](#) that, “[b]y adopting an *in personam* aspect to criminal forfeiture, and providing for substitute-asset forfeiture, Congress made it easier for the Government to hold the defendant who acquired the tainted property responsible. Congress did not, however, enact any significant expansion of the scope of property subject to forfeiture.” [Consequently](#), under the drug confiscation statute, forfeiture “is limited to property the defendant himself acquired as the result of the crime.” Because “the Government conceded that ... Honeycutt had no ownership interest in [the] store and did not personally benefit from the [illicit] sales,” the Court held that he could not be subject to forfeiture intended to recover the store’s illicit profits.

Saccoccia v. United States

Saccoccia argued that the holding in *Honeycutt* should be interpreted to extend beyond the drug statutes at issue in that case and to preclude joint-and-several liability for forfeited assets under the RICO statute as well. Saccoccia also argued that *Honeycutt* should be applied retroactively to bar the forfeiture judgment against him. The First Circuit held, however, that it did not need to decide either of those questions because it found “it clear that Saccoccia’s interpretation ... neglects a critical part of *Honeycutt*’s holding: That any bar against joint-and-several co-conspirator liability articulated there applies only to defendants who did not actually possess or control the funds at issue.” Saccoccia, by contrast, “[did] not dispute on appeal that he exercised control over and oversaw distribution of” the sums of money he laundered and did not “allege any facts ... that contradict[ed] the district court’s finding that all of the money at issue passed through a bank account he controlled.” The First Circuit noted that its interpretation of *Honeycutt* is consistent with those of the Second, Third, and Eleventh Circuits.

Congressional Options

Forfeiture can be both a harsh and effective law enforcement tool. From time to time, Congress has considered proposals purporting to make it more fair or more effective or both. *See e.g.*, H.R. 2835 (Representative Sensenbrenner); CRS Report [R43890](#). Congress may elect to codify the *Honeycutt* defense generally. Conversely, Congress may wish to make it clear in legislation that conspiring drug dealers and racketeers should not be shielded from the consequences of joint-and-several liability for crime-tainted property.

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