CENTRE DE DROIT
BANCAIRE ET FINANCIER

Claim in civil enforcement

Form A is not enough

Par Romain Dupuis le 30 September 2024

In a recent decision, the Swiss Federal Supreme Court ruled on the question of whether the person identified in form A as the beneficial owner of assets deposited in a bank account can claim ownership of these assets in enforcement proceedings on this basis alone (decision 5A_208/2023 of July 10, 2024).

This ruling arose from taxation proceedings against B and C, in which the Geneva Cantonal Tax Administration (AFC-GE) requested – and obtained – the sequestration of three bank accounts held by the latter, and then had the sequestrations validated by way of prosecution.

The AFC-GE then obtains the final release of the oppositions filed by B and C, so that – by notice dated November 7, 2018 – the Office des poursuites informs them of the conversion of the receiverships into final seizure.

It was at this point that the three children of the defendants, A, E and F, intervened in the proceedings, each claiming the balance of one of the three sequestered bank accounts (art. 106 al. 2 LP). In substance, each of the children was designated as the beneficial owner of one of the three accounts in the A forms drawn up when the accounts were opened. The three children consider that the indication of their names in these forms establishes their ownership of the assets deposited in the accounts.

The AFC-GE disagreed with this interpretation and consequently opened an action to contest the claim (art. 108 LP) against each of the three children. The proceedings which led to the judgment under review are those concerning A.

At cantonal level, both the Court of First Instance and the Civil Division of the Court of Justice ruled in favor of the AFC-GE and rejected A's claim.

A then lodged an appeal with the Swiss Federal Supreme Court, arguing that her status as beneficial owner under form A constituted sufficient proof of ownership of the funds deposited in the account.

The question before the Federal Court is therefore whether identification as a beneficial owner (in the sense used in Form A) confers the status of owner of the assets in question, or whether the alleged ownership must be based on concrete elements and reflect legal reality.

After a few reminders about the scope of the action for recovery – an action under debt collection law with an impact on substantive legal relationships – the Federal Court reiterates that the third-party claimant must establish his right by providing full proof of ownership.

According to the established case law of the Swiss Federal Supreme Court (cf. e.g. ATF 132 III 609), the content of a Form A has no private-law effect. While it may constitute a *clue*, it cannot in itself serve as *proof* of the legal ownership of the assets in the account.

In other words, it is *possible*, depending on the circumstances, that the person identified as the beneficial owner in Form A is actually the owner of the funds deposited in the account, but this is not *necessarily* the case.

In all cases, ownership must be established by full proof. Such proof has not been provided in this case.

On the contrary, the facts as presented by the cantonal authorities show that A never had any control over the account, the existence of which she was until recently unaware. Although her parents had apparently intended, when the account was opened, to give her the assets in the account when she turned 25, such a gift never actually took place. In fact, there was no concrete evidence to support the theory of a gift or advancement in inheritance, so that the parents – holders of the account in question – had to be considered the true owners of the assets in question.

Insofar as the only argument put forward by the third-party claimant before the Federal Court was the indication of his name on form A, the result of this ruling comes as no surprise. The Federal Court has already repeatedly ruled that such a form has no private-law effect, since identifying the beneficial owner is a public-interest task that the bank undertakes solely as part of its obligations to combat money laundering.

In the context of enforcement proceedings, this means that it is – logically – not possible to exempt bank assets from seizure solely on the basis of the indication of a beneficial owner different from the account holder on Form A. Notwithstanding such an indication, it is the legal reality that is decisive.
