

SUPREME COURT OF THE UNITED STATES

No. 91-781

UNITED STATES, PETITIONER v. A PARCEL OF LAND,
BUILDINGS, APPURTENANCES AND IMPROVEMENTS,
KNOWN AS 92 BUENA VISTA
AVENUE, RUMSON, NEW JERSEY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT
[February 24, 1993]

JUSTICE KENNEDY, with whom THE CHIEF JUSTICE and
JUSTICE WHITE join, dissenting.

Once this case left the District Court, the appellate courts and all counsel began to grapple with the wrong issue, one that need not be addressed. The right question, I submit, is not whether the donee's ownership meets the statutory test of innocence. 21 U. S. C. §881(a)(6). Instead, the threshold and dispositive inquiry is whether the donee had any ownership rights that required a separate forfeiture, given that her title was defective and subject to the Government's claim from the outset. We must ask whether a wrongdoer holding a forfeitable asset, property in which the United States has an undoubted superior claim, can defeat that claim by a transfer for no value. Under settled principles of property transfers, trusts and commercial transactions, the answer is no. We need not address the donee's position except to acknowledge that she has whatever right the donor had, a right which falls before the Government's superior claim. In this case, forfeiture is determined by the title and ownership of the asset in the hands of the donor, not the donee. The position of respondent as the present holder of the asset and her knowledge, or lack of knowledge, regarding any drug offenses are, under these facts, but abstract inquiries, unnecessary to the resolution of the case.

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We can begin with the state of affairs when the alleged drug dealer held the funds he was later to transfer to respondent. Those moneys were proceeds of unlawful drug transactions and in the dealer's hands were, without question, subject to forfeiture under §881(a)(6). The dealer did not just know of the illegal acts; he performed them. As the case is presented to us, any defense of his based on lack of knowledge is not a possibility. As long as the dealer held the illegal asset, it was subject to forfeiture and to the claim of the United States, which had a superior interest in the property.

Suppose the drug dealer with unlawful proceeds had encountered a swindler who, knowing nothing of the dealer's drug offenses, defrauded him of the forfeitable property. In an action by the Government against the property, it need not seek to forfeit any ownership interest of the swindler. In the *in rem* proceeding the Government would need to establish only the forfeitable character of the property in the hands of the dealer and then trace the property to the swindler who, having no higher or better title to interpose, must yield to the Government's interest. In this context we would not entertain an argument that the swindler could keep the property because he had no knowledge of the illegal drug transaction. The defect in title arose in the hands of the first holder and was not eliminated by the transfer procured through fraud. Thus the only possible "interest of an owner," §881(a)(6), that the swindler could hold was one inferior to the interest of the United States.

Here, of course, the holder is a donee, not a swindler, but the result is the same. As against a claimant with a superior right enforceable against the donor, a donee has no defense save as might exist, say, under a statute of limitations. The case would be different, of course, if the donee had in turn transferred the property to a bona fide purchaser for

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full consideration. The voidable title in the asset at that point would become unassailable in the purchaser, subject to any heightened rules of innocence the Government might lawfully impose under the forfeiture laws. But there is no bona fide purchaser here.

The matter not having been argued before us in these terms, perhaps it is premature to say whether the controlling law for transferring and tracing property rights of the United States under §881 is federal common law, see *Boyle v. United Technologies Corp.*, 487 U. S. 500 (1988); *Clearfield Trust Co. v. United States*, 318 U. S. 363 (1943), or the law of the State governing the transfer under normal conflict-of-law rules, which here appears to be New Jersey. That matter could be explored on remand if the parties thought anything turned upon it, though the result likely would be the same under either source of law because the controlling principles are so well settled.

The controlling principles are established by the law of voidable title, a centuries-old concept now codified in 49 States as part of their adoption of the Uniform Commercial Code. 1 J. White & R. Summers, *Uniform Commercial Code* 1, 186–191 (3d ed. 1988). These principles should control the inquiry into whether property once “subject to forfeiture to the United States,” §881(a), remains so after subsequent transactions. Cf. R. Brown, *Personal Property* §70, pp. 237–238 (2d ed. 1955); *Restatement (Second) of Trusts* §§284, 287, 289, pp. 47–48, 54–56 (1959); *Restatement (Second) of Property* §34.9, p. 338 (1992). The primary rules of voidable title are manageable and few in number. The first is that one who purchases property in good faith and for value from the holder of voidable title obtains good title. The second rule, reciprocal to the first, is that one who acquires property from a holder of voidable title other than by a good faith purchase for value obtains nothing

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beyond what the transferor held. The third rule is that a transferee who acquires property from a good faith purchaser for value or one of his lawful successors obtains good title, even if the transferee did not pay value or act in good faith. See Ames, Purchase for Value Without Notice, 1 Harv. L. Rev. 1 (1887); Uniform Commercial Code §2-403(1) (Official Draft 1978); Uniform Commercial Code §2-403(1) (Official Draft 1957); Uniform Commercial Code §2-403(1) (Official Draft 1952). See also 4 A. Scott & W. Fratcher, Law of Trusts §§284-289, pp. 35-70 (4th ed. 1989); Searey, Purchase for Value Without Notice, 23 Yale L. J. 447 (1914).

Applying these rules to a transferee of proceeds from a drug sale, it follows that the transferee must be, or take from, a bona fide purchaser for value to assert an innocent owner defense under §881(a)(6). Bona fide purchasers for value or their lawful successors, having engaged in or benefited from a transaction that the law accepts as capable of creating property rights instead of merely transferring possession, are entitled to test their claim of ownership under §881(a)(6) against what the Government alleges to be its own superior right. The outcome, that one who had defective title can create good title in the new holder by transfer for value, is not to be condemned as some bizarre surprise. This is not alchemy. It is the common law. See *Independent Coal & Coke Co. v. United States*, 274 U. S. 640, 647 (1927); *United States v. Chase National Bank*, 252 U. S. 485, 494 (1920); *Wright-Blodgett Co. v. United States*, 236 U. S. 397, 403 (1915). By contrast, the donee of drug trafficking proceeds has no valid claim to the proceeds, not because she has done anything wrong but because she stands in the shoes of one who has. It is the nature of the donor's interest, which the donee has assumed, that renders the property subject to forfeiture. Cf. *Otis v. Otis*, 167 Mass. 245, 246 (1897) (Holmes, J.) ("A person to

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whose hands a trust fund comes by conveyance from the original trustee is chargeable as a trustee in his turn, if he takes it without consideration, whether he has notice of the trust or not. This has been settled for three hundred years, since the time of uses”).

When the Government seeks forfeiture of an asset in the hands of a donee, its forfeiture claim rests on defects in the title of the asset in the hands of the donor. The transferee has no ownership superior to the transferor's which must be forfeited, so her knowledge of the drug transaction, or lack thereof, is quite irrelevant, as are the arcane questions concerning the textual application of §881(a) to someone in a donee's position. The so-called innocent owner provisions of §881(a)(6) have ample scope in other instances, say where a holder who once had valid ownership in property is alleged to have consented to its use to facilitate a drug transaction. Furthermore, whether respondent's marital rights were present value or an antecedent debt and whether either could provide the necessary consideration for a bona fide purchase are questions that could be explored on remand, were my theory of the case to control.

As my opening premise is so different from the one the plurality adopts, I do not address the difficult, and quite unnecessary, puzzles encountered in its opinion and in the concurring opinion of JUSTICE SCALIA. It is my obligation to say, however, that the plurality's opinion leaves the forfeiture scheme that is the centerpiece of the Nation's drug enforcement laws in quite a mess.

The practical difficulties created by the plurality's interpretation of §881 are immense, and we should not assume Congress intended such results when it enacted §881(a)(6). To start, the plurality's interpretation of §881(a)(6) conflicts with the principal purpose we have identified for forfeiture under the Continuing Criminal Enterprise Act, which is

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“the desire to lessen the economic power of . . . drug enterprises.” *Caplin & Drysdale v. United States*, 491 U. S. 617, 630 (1989). When a criminal transfers drug transaction proceeds to a good faith purchaser for value, one would presume he does so because he considers what he receives from the purchaser to be of equal or greater value than what he gives to the purchaser, or because he is attempting to launder the proceeds by exchanging them for other property of near equal value. In either case, the criminal's economic power is diminished by seizing from him whatever he received in the exchange with the good faith purchaser. On the other hand, when a criminal transfers drug transaction proceeds to another without receiving value in return, he does so, it is safe to assume, either to use his new-found, albeit illegal, wealth to benefit an associate or to shelter the proceeds from forfeiture, to be reacquired once he is clear from law enforcement authorities. In these cases, the criminal's economic power cannot be diminished by seizing what he received in the donative exchange, for he received no tangible value. If the Government is to drain the criminal's economic power, it must be able to pierce donative transfers and recapture the property given in the exchange. It is serious and surprising that the plurality today denies the Government the right to pursue the same ownership claims that under traditional and well-settled principles any other claimant or trust beneficiary or rightful owner could assert against a possessor who took for no value and who has no title or interest greater than that of the transferor.

Another oddity now given to us by the plurality's interpretation is that a gratuitous transferee must forfeit the proceeds of a drug deal if she knew of the drug deal before she received the proceeds but not if she discovered it a moment after. Yet in the latter instance, the donee, having given no value, is in no different position from the donee who had knowledge

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all along, save perhaps that she might have had a brief expectation the gift was clean. By contrast, the good faith purchaser for value who, after an exchange of assets, finds out about his trading partner's illegal conduct has undergone a significant change in circumstances: He has paid fair value for those proceeds in a transaction which, as a practical matter in most cases, he cannot reverse.

The statutory puzzle the plurality and concurrence find so engaging is created because of a false premise, the premise that the possessor of an asset subject to forfeiture does not stand in the position of the transferor but must be charged with some guilty knowledge of her own. Forfeiture proceedings, though, are directed at an asset, and a donee in general has no more than the ownership rights of the donor. By denying this simple principle, the plurality rips out the most effective enforcement provisions in all of the drug forfeiture laws. I would reverse the judgment of the Court of Appeals, and with all due respect, I dissent from the judgment of the Court.