Neutral Citation Number: [2018] EWHC 1717 (Ch) Claim No. HC-2017-002742

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)

Royal Courts of Justice
Rolls Building
Fetter Lane
London EC4A 1NL
Date: 5 July 2018

Before :

THE HONOURABLE MR. JUSTICE MARCUS SMITH

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Between:

ABSOLUTE LIVING DEVELOPMENTS LIMITED
(in liquidation, acting by its liquidator, Louise Mary Brittain)

Claimant

- and -

(1) **DS7 LIMITED**
(2) **ANDREW JOHN CAMILLERI**
(3) **CHARLES ALEXANDER CLUNIE CUNNINGHAM**
(4) **GOZON LIMITED**
(5) **EPG MANLET LIMITED**
(6) **UMI LIMITED**
(in creditors' voluntary liquidation)
(7) **ETRUSCAN MANCHESTER LIMITED**
(8) **PHILIP WRIGHT**
(trading as Pixel Bomb)
(9) **TIMOTHY ACKREL**
(10) **ALAN PIERCE**
(11) **2380 REVERSIONS LIMITED**
(12) **SC UNIVERSAL LIMITED**
(13) **STEPHANIE HARRIET CAMILLERI**
(also known as Stephanie Spencer)

Defendants

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Mr. Hugh Sims, Q.C. and **Mr. Simon Passfield** (instructed by **Mishcon de Reya LLP**) for the **Claimant**
Mr. David Mohyuddin, Q.C. and **Mr. Richard Tetlow** (instructed by **Schofield Sweeney LLP**) for the **Defendants**

Hearing dates: 23 and 24 May 2018

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Approved Judgment

Mr. Justice Marcus Smith:

INTRODUCTION

1. The Claimant, Absolute Living Developments Limited, was a property development company incorporated on 7 November 2013. The Claimant is in liquidation, and acts by its liquidator, Ms. Brittain.

2. On 15 September 2017, before these proceedings were issued on 10 October 2017, the Claimant applied *ex parte*, on 15 September 2017, for proprietary and/or freezing injunctions against various persons who, in due course, became Defendants. That order was granted by Morgan J. on 20 September 2017 (the "*Ex Parte* Freezing Order").

3. On the return date, at an *inter partes* hearing on 9 October 2017, I made a freezing order in similar terms to that granted by Morgan J. (the "*Inter Partes* Freezing Order"). The *Inter Partes* Freezing Order contained a penal notice which stated (so far as is relevant):[1]

> "If you Mr. Andrew John Camilleri…disobey this Order you may be held to be in contempt of court and may be imprisoned, fined or have your assets seized".

4. Mr. Camilleri is the Second Defendant in these proceedings.

5. Mr. Camilleri was personally served with the *Ex Parte* Freezing Order and the *Inter Partes* Freezing Order on 19 January 2018. I am informed[2] that Mr. Camilleri was served at Manchester Crown Court where he was on trial for, and subsequently convicted of, making false representations in an IVA proposal. It was not possible to serve Mr. Camilleri sooner because he is resident in Switzerland and the liquidator was advised by Swiss counsel that it would have been an offence under Swiss law to attempt personal service of the *Ex Parte* Freezing Order in Switzerland. No doubt the same would be true of the *Inter Partes* Freezing Order. In any event, no issue is taken by Mr. Camilleri regarding the question of service of the *Inter Partes* Freezing Order.[3]

6. It is alleged by the Claimant that Mr. Camilleri committed seven breaches of the *Inter Partes* Freezing Order. On 28 February 2018, the Claimant issued an application for the committal of Mr. Camilleri on grounds of these breaches. That application was supported by an affidavit of Mr. Daniel Joseph Davis sworn on 28 February 2018 ("Davis 1").

7. The application to commit came before me on 23 and 24 May 2018, although it is fair to say there were a number of other matters (not material to this Judgment) which also occupied the court on this occasion. Mr. Camilleri had instructed solicitors (Messrs Schofield Sweeney LLP) and was represented by Mr. Mohyuddin, Q.C. and Mr. Tetlow of counsel. Mr. Camilleri was not, himself, present, but I was satisfied (given his representation) that it was appropriate to proceed with the committal application in his absence.

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[1] The penal notice was appropriately bold and capitalised. I have not reproduced the emphasis.
[2] See footnote 6 of the written submissions of the Claimant.
[3] See paragraph 22 of the written submissions of Mr. Camilleri.

8. I reserved my judgment, and this is my determination of the committal application. Prior to handing down this Judgment, I wrote to Mr. Camilleri (through his counsel) indicating that I expected him to attend on the handing down of Judgment. Through his solicitors, Mr. Camilleri indicated that – due to questions of health and on medical advice – he was unable to travel and – with no disrespect to the court – he intended to follow the medical advice he had received.

9. I was invited (by Mr. Camilleri's solicitors) to ask for further medical information, if I considered it appropriate. I have not done so. In the circumstances, I make no criticism of Mr. Camilleri's non-attendance, and this Judgment has been written as if Mr. Camilleri were present and within the jurisdiction of the Court.

THE ALLEGED ACTS OF CONTEMPT OF COURT

10. As is required,[4] the application notice sets out separately and numerically each alleged act of contempt. These are repeated in the draft order that accompanied the application notice. The alleged breaches are as follows:

Breach 1: In breach of paragraph 11 of the *Inter Partes* Freezing Order, Mr. Camilleri did not provide the information required by that paragraph by the deadline of 1:00pm on 22 January 2018

(1) Paragraph 11 of the *Inter Partes* Freezing Order required the Mr. Camilleri to inform the Claimant's solicitors of all of his "assets in England and Wales (save for any asset worth less than £1,000)…giving the value, location and details of all such assets" within 72 hours of service of the order on Mr. Camilleri.

(2) The order was served on Mr. Camilleri at 1:00pm on Friday 19 January 2018. Mr. Camilleri was, therefore, obliged to provide the information required by paragraph 11 of the order by 1:00pm on Monday 22 January 2018.

(3) In breach of paragraph 11 of the order, Mr. Camilleri did not provide any such information by the deadline of 1:00pm on 22 January 2018.

(4) His solicitors wrote to the Claimant's solicitors on 23 January 2018 (i.e. one day after the relevant deadline) and requested an extension of time in which to provide the asset statement required by paragraph 11 of the order.

(5) On 23 January 2018, the Claimant's solicitors wrote to Mr. Camilleri's solicitors and stated that, even though Mr. Camilleri was already in breach of paragraph 11 of the order, the Claimant consented to the extension sought.

(6) On 24 January 2018, Mr. Camilleri's solicitors wrote to the Claimant's solicitors and enclosed a statement of Mr. Camilleri's assets, in purported compliance with paragraph 11 of the order.

Breach 2: In breach of paragraphs 11 and 14 of the *Inter Partes* Freezing Order, Mr. Camilleri failed to disclose, in either his asset statement or affidavit: (i) all bank

[4] CPR 81.10(3)(a).

accounts held with Brown Shipley; or (ii) the account into which a payment was made by the First Defendant

(7) Paragraph 11 of the *Inter Partes* Freezing Order required Mr. Camilleri to inform the Claimant's solicitors of all of his "assets in England and Wales (save for any asset worth less than £1,000)…giving the value, location and details of all such assets".

(8) Paragraph 14 of the order required that "Mr. Camilleri…must swear and serve on the [Claimant's] solicitors an affidavit setting out the information specified in paragraph 11…within 7 days of service of this order".

(9) Mr. Camilleri's affidavit, dated 23 January 2018, stated that: "I have included all of my assets in England and Wales, including those below the required £1,000 value"; and "I have attached to this affidavit a statement of assets (AJC01)".

(10) Exhibit AJC01 included reference to a single bank account held with Brown Shipley & Co Limited ("Brown Shipley") with account number 4100 9400 0001 1591.

(11) In fact, Brown Shipley had previously written to the Claimant's solicitors, on 25 September 2017, confirming that it had frozen five accounts that it held in the name of Mr. Camilleri (with account numbers 76497435, 76558574, 76558582, 76497419, and 76497427). Further, the Claimant's solicitors were aware of a payment from DS7 for the benefit of Mr. Camilleri to a bank account with account number 76108145 and sort code 60-01-68 (possibly held with Brown Shipley).

(12) In breach of paragraphs 11 and 14 of the order, Mr. Camilleri failed to disclose, in either his asset statement or affidavit:

(a) The bank accounts held with Brown Shipley; or

(b) The account into which payment was made by the First Defendant.

Breach 3: In breach of paragraph 14 of the *Inter Partes* Freezing Order, Mr. Camilleri swore an affidavit that was false

(13) Paragraph 11 of the *Inter Partes* Freezing Order required Mr. Camilleri to inform the Claimant's solicitors of all of his "assets in England and Wales (save for any asset worth less than £1,000)…giving the value, location and details of all such assets".

(14) Paragraph 14 of the order required that "Mr. Camilleri…must swear and serve on the [Claimant's] solicitors an affidavit setting out the information specified in paragraph 11…within 7 days of service of this order".

(15) On 26 January 2018, Mr. Camilleri's solicitors wrote to the Claimant's solicitors and enclosed the affidavit of Mr. Camilleri dated 23 January 2018. Mr. Camilleri stated in his sworn evidence that he held a debenture over the Eleventh Defendant dated 20 June 2016.

(16) For the reasons set out at paragraphs 50 to 63 of Davis 1, this debenture is a sham and not an "asset" of Mr. Camilleri. Therefore, the affidavit of Mr Camilleri dated 23 January 2018 is false on account of listing the debenture as an asset.

Breach 4: In breach of paragraphs 15 and 18 of the *Inter Partes* Freezing Order, Mr. Camilleri did not file and serve an affidavit or deliver up asset documents by 4:00pm on 9 February 2018

(17) Paragraph 15 of the *Inter Partes* Freezing Order required Mr. Camilleri by 4:00pm on 9 February 2018 to "file and serve an affidavit: (a) setting out: (i) how much of the monies in Schedule D [to the *Inter Partes* Freezing Order] remain in his possession or control; and (ii) what has happened to the monies which are no longer in his possession or control; and (b) exhibiting the relevant bank account statements for the period from 7 November 2013 to date".

(18) Paragraph 18 of the order required Mr. Camilleri by 4pm on 9 February 2018 to "deliver up to [the Claimant's solicitors] all [Asset Documents] which [he has] in [his] power, possession or control".

(19) On 9 February 2018 (i.e. the day of the Court ordered deadline), Mr. Camilleri's solicitors wrote to the Claimant's solicitors (at 3:04pm) and noted that they had "been notified that Mr Camilleri has been taken ill and is not in a position to provide us with the documents for service upon you today". An extension of time was sought.

(20) In breach of paragraphs 15 and 18 of the order, Mr. Camilleri did not file and serve an affidavit or deliver up asset documents by 4pm on 9 February 2018.

(21) On 12 February 2018, the Claimant's solicitors wrote to Mr. Camilleri's solicitors and stated that the Claimant was not prepared to consent to Mr. Camilleri's request for an extension of time in the absence of proper medical evidence as to why Mr. Camilleri was unwell.

(22) The Claimant's solicitors suggested that Mr. Camilleri make an urgent application for a retrospective extension of time to comply with the relevant provisions of the order. No such application was issued issued and, therefore, Mr. Camilleri failed to comply with, and remains in breach of, paragraphs 15 and 18 of the order.

Breach 5: In breach of paragraph 15 of the *Inter Partes* Freezing Order, Mr. Camilleri did not set out what has happened to the monies which are no longer in his possession or control, or exhibit the relevant bank account statements for the period from 7 November 2013 to the date of the Freezing Order

(23) Paragraph 15 of the *Inter Partes* Freezing Order required Mr. Camilleri by 4:00pm on 9 February 2018 to "file and serve an affidavit: (a) setting out: (i) how much of the monies in Schedule D [to the order] remain in his possession or control; and (ii) what has happened to the monies which are no longer in his possession or control; and (b) exhibiting the relevant bank account statements for the period from 7 November 2013 to date".

(24) On 13 February 2018, Mr. Camilleri's solicitors wrote to the Claimant's solicitors and enclosed the affidavit of Mr. Camilleri dated 13 February 2018 in purported compliance with paragraph 15 of the order.

(25) In breach of paragraph 15 of the order, Mr Camilleri did not set out what has happened to the monies which are no longer in his possession or control, or exhibit the relevant bank account statements for the period from 7 November 2013 to the date of the Freezing Order.

Breach 6: In breach of paragraph 18 of the *Inter Partes* Freezing Order, Mr. Camilleri has refused to deliver up all documents which he has in his possession, power or control and which evidence the existence, location or value or details of any of his assets worth more than £1,000

(26) Paragraph 18 of the *Inter Partes* Freezing Order required Mr. Camilleri by 4:00pm on 9 February 2018 to "deliver up to [the Claimant's solicitors] all [Asset Documents] which [he has] in [his] power, possession or control".

(27) On 9 February 2018, Mr. Camilleri's solicitors wrote to the Claimant's solicitors and enclosed three "Annex A" letters addressed to three financial institutions: Nationwide, Brown Shipley and Barclays. These letters authorise those banks to release Mr. Camilleri's banking records to the Claimant's solicitors.

(28) Mr. Camilleri's position appears to be that he has disclosed what he is able to disclose and that the Claimant should liaise with the relevant financial institutions to obtain the relevant documentation.

(29) On 13 February 2018, the Claimant's solicitors wrote to Mr. Camilleri's solicitors and explained in this letter that the provision of certain "Annex A" letters was no substitute for Mr. Camilleri's compliance with paragraph 18 of the order.

(30) In breach of paragraph 18 of the order, Mr. Camilleri has refused to deliver up all documents which he has in his possession, power or control and which evidence the existence, location or value or details of any of his assets worth more than £1,000.

Breach 7: In breach of paragraph 18 of the *Inter Partes* Freezing Order, Mr. Camilleri has refused to deliver up any bank statements in relation to all bank accounts in which he has (or has had) any interest (direct or indirect, legal or beneficial, sole or joint) or copies of those documents.

(31) Paragraph 18 of the *Inter Partes* Freezing Order required Mr. Camilleri by 4:00pm on 9 February 2018 to "deliver up to [the Claimant's solicitors] all [Asset Documents] which [he has] in [his] power, possession or control".

(32) On 9 February 2018, Mr. Camilleri's solicitors wrote to the Claimant's solicitors and enclosed three "Annex A" letters addressed to three financial institutions: Nationwide, Brown Shipley and Barclays. These letters authorise those banks to release Mr. Camilleri's banking records to the Claimant's solicitors.

(33) Mr Camilleri's position appears to be that he has disclosed what he is able to disclose and that the Claimant should liaise with the relevant financial institutions to obtain the relevant documentation.

(34) In breach of paragraph 18 of the order, Mr Camilleri has refused to deliver up any bank statements in relation to all bank accounts in which he has (or has had) any interest (direct or indirect, legal or beneficial, sole or joint) or copies of those documents.

THE CONTEMPTS BEFORE THE COURT

Introduction

11. Two of these seven breaches – Breaches 3 and 6 – were adjourned by me and they are not considered further by me in this Judgment. It is necessary, briefly, to explain why they were adjourned. A third breach – Breach 5 – comes before me in an attenuated form, and again it is necessary to explain why this is the case.

Breaches 3 and 6

12. Breach 3 concerns an allegation that a statement made by Mr. Camilleri, in the affidavit he swore on 23 January 2018, was false. In argument before me, it became clear that the statement said to be false – that is, whether the debenture over the Eleventh Defendant was a sham or not – was a matter that would traverse issues to be determined at the trial. In those circumstances, it seemed to me inappropriate and potentially unfair to Mr. Camilleri to determine this issue in contempt proceedings in advance of trial.

13. In any event, I would have been disinclined to hear Breach 3 at the hearing, because it seems to me that the allegation of falsity is essentially an unclear one. Breach 3 does not state whether the falsity was innocent, negligent or deliberate. It seems to me that before a judge can determine whether there had been a contempt of court and, if so, what the penalty for that contempt must be, the allegation must be made clearly and that Mr. Camilleri be given a proper chance to respond.

14. In these circumstances, I adjourned Breach 3 to be determined, by the trial judge, after the conclusion of the trial.

15. Similar reasons pertained in relation to my adjournment of Breach 6. One of the issues arising out of Breach 6 is whether the so-called "Annex A" letters constitute compliance with the *Inter Partes* Freezing Order. That is a matter capable of determination now. However, an anterior issue was whether asset documents responsive to paragraph 18 of the order actually exist.[5] This, albeit to a lesser extent than in the case of Breach 3, seemed to me during the course of submissions, to be better adjourned to the conclusion of the trial as it seems to me to potentially encroach on issues being determined at trial.

Breach 5

16. Breach 5 was the subject of a further application by the Claimant. Essentially, as regards aspects of paragraph 15 of the *Inter Partes* Freezing Order, the Claimant sought an unless

[5] See paragraph 28 of Mr. Camilleri's third affidavit dated 14 May 2018.

order repeating this pre-existing requirement,[6] but with a different time-scale for compliance (i.e. a prospective one), and with an additional sanction for (potential future) breach, namely the strike-out of Mr. Camilleri's Defence.

17. I have no doubt that such a course is procedurally inappropriate. It is wrong for the same party (Mr. Camilleri) at one and the same time:

(1) To be in continuing breach of a past order; and

(2) To have a fresh order imposed repeating the prior order and obliging him prospectively and with new sanction to do the same thing he has not done (and continues not to do) in breach of the past order.

18. Accordingly, I required an election from the Claimant, either to continue with the provisions of the *Inter Partes* Freezing Order as they stood or else to abrogate those provisions and replace them with a new order.

19. The course that was adopted was to prospectively rescind the provisions of paragraph 15 of the *Inter Partes* Freezing Order, to the extent they had not been complied with, and insert these provisions in a fresh order, with a penal notice, and in the form of an "unless order", with a prospective date for compliance. Accordingly, I regard Breach 5 as a breach that is in the past, ceasing with the new order I made, and not a continuing breach of the *Inter Partes* Freezing Order.

CONTENTIONS BETWEEN THE PARTIES

20. Mr. Camilleri did not seek to dispute the factual allegations underlying Breaches 1, 2, 4, 5 and 7. These were admitted, as is clear from the written submissions of Mr. Camilleri.[7] However, although Mr. Camilleri did, through his counsel, address me on the question of mitigation, mitigation was not Mr. Camilleri's primary point.

21. Mr. Camilleri's primary point was that the breaches of the *Inter Partes* Committal Order were, for the most part, so *de minimis* that they should not have been brought. Paragraph 10 of Mr. Camilleri's written submissions stated:

> "An application to commit is one of the most serious applications that comes before the Court, the respondent's liberty being at stake. Such an application should not be made unless it is truly needed…"

22. It was contended that the application to commit in respect of Breaches 1,[8] 2[9] and 4[10] should never have been made. As regards the two other breaches before the court:

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[6] See paragraph 20 of the Claimant's written submissions.
[7] See, in relation to Breach 1: paragraphs 23-26; in relation to Breach 2: paragraphs 27-30; in relation to Breach 4: paragraphs 39-46; in relation to Breach 5, paragraphs 47-51; and in relation to Breach 7, paragraphs 56-57.
[8] Paragraph 24 of Mr. Camilleri's written submissions: "It is an allegation that has no prospect of success, is bad on its face and should never have formed part of the Committal Application".
[9] Paragraph 28 of Mr. Camilleri's written submissions: "Again, this is an allegation that should never have been made".
[10] Paragraph 46 of Mr. Camilleri's written submissions: "The allegation should be struck out or otherwise dismissed, it being wholly disproportionate and not being likely to result in the imposition of a sanction".

(1) It was accepted that Breach 5 is, "perhaps, more than a technical contempt but is not such that warrants any punishment".[11]

(2) It was accepted that Breach 7 "amounts to a breach of the [*Inter Partes* Freezing Order], but not one that should attract any real punishment".[12]

23. Accordingly, two issues arise directly between the parties for determination:

(1) First, whether some of the breaches alleged (specifically, Breaches 1, 2 and/or 4) are so trivial or technical that they ought never to have been raised.

(2) Secondly, as regards Breaches 5 and 7, and such of Breaches 1, 2 or 4 as I do not regard as "technical" or "trivial", what the appropriate penalty ought to be.

24. Before considering these issues, it is necessary briefly to ascertain that the technical requirements for this application and for alleging that contempt allegations can be made in relation to the *Inter Partes* Freezing Order. Although Mr. Camilleri did not assert any procedural irregularity, it is necessary that I satisfy myself that matters are procedurally regular.

PROCEDURAL REQUIREMENTS IN RELATION TO THIS APPLICATION

25. The present case is an application for committal for breach of a judgment, order or undertaking to do or abstain from doing an act.[13] Such an application is made under CPR 23 and CPR 81.10.

26. The following requirements must be met in relation to such an application:

(1) The application notice must "set out in full the grounds on which the committal application is made and must identify, separately and numerically, each alleged act of contempt including, if known, the date of each of the alleged acts".[14]

(2) The application notice must contain a prominent notice stating the possible consequences of the court making a committal order.[15]

(3) The written evidence in support of the application must be by way of affidavit.[16]

(4) Unless dispensed with, the committal application must be personally served.[17]

27. These requirements are clearly met in the present case. The application notice properly sets out the grounds on which the committal application is made;[18] the application notice

[11] Paragraph 51 of Mr. Camilleri's written submissions.
[12] Paragraph 57 of Mr. Camilleri's written submissions.
[13] See Section II of CPR 81.
[14] CPR 81.10(3)(a).
[15] CPR PD 81.13.2(4).
[16] CPR 81.10(3)(b).
[17] CPR 81.10(4).
[18] See paragraph 10 above.

contained an appropriate prominent notice; Davis 1 was in proper, affidavit, form;[19] and the committal application was, as has been accepted, properly served.

PROCEDURAL PRE-CONDITIONS IN RELATION TO THE BREACHED ORDER

28. It is not every breach of a judgment, order or undertaking that is capable of founding an application made pursuant to CPR 81.10. There are three requirements that must be satisfied for a breached order to found the basis for an application under CPR 81.10:

(1) Subject to limited exceptions, the order that is said to have been breached must have been endorsed with a penal notice in the requisite form.[20]

(2) The order that is said to have been breached must have been served personally on the defendant.[21]

(3) The relevant order must have been served before the end of the time fixed for the doing of the relevant acts.[22]

29. These requirements are all met in the present case.

ESTABLISHING THE CONTEMPT

30. Assuming these "gateway" requirements are met, the principles in establishing whether there has been a contempt and the importance of punishing that contempt are as follow:

(1) Of critical importance is the order that is said to have been breached. As has been seen, the order generally must bear a penal notice,[23] must have been personally served on the defendant,[24] and must be capable of being complied with (in the sense that the time for compliance is in the future).[25] Additionally, the order must be clear and unambiguous.[26]

(2) The breach of the order must have been deliberate. This includes acting in a manner calculated to frustrate the purpose of the order.[27] A difficult question relates to what "deliberate" means. It is not necessary that the defendant intended to breach the order, in the sense that he or she knew its terms and knew that his or her conduct was in breach of the order. It is sufficient that the defendant knew of the order and that his or her conduct in response was deliberate as opposed to inadvertent.[28] The point was put extremely clearly by Millett J. in *Spectravest Inc v. Aperknit* [1988] FSR 161 at 173:

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[19] See paragraph 6 above.
[20] CPR 81.9(1).
[21] CPR 81.5 and 81.6.
[22] CPR 81.5(1).
[23] See paragraph 28(1) above.
[24] See paragraph 28(2) above.
[25] See paragraph 28(3) above.
[26] See *JSC BTA Bank v. Solodchenko* [2010] EWHC 2404 (Comm) at [15].
[27] See *JSC BTA Bank v. Solodchenko* [2010] EWHC 2404 (Comm) at [18].
[28] Thus there need not be a direct intention to disobey the order. It is sufficient that the order is clear – in the sense that I have described – and that the response was a non-inadvertent response, which is sufficient to be deliberate in terms of conduct. See *Adam Phones Ltd v. Gideon Goldschmidt* [2000] FSR 163; *JSC BTA Bank v. Solodchenko* [2010] EWHC 2404 (Comm) at [18]; *FW Farnsworth v. Lacy* [2013] EWHC 3487 (Ch) at [20].

"To establish contempt of court, it is sufficient to prove that the defendant's conduct was intentional and that he knew of all the facts which made it a breach of the order. It is not necessary to prove that he appreciated that it did breach the order."

(3) Deliberate breach of an order, in the sense described, is very significant. It is clearly in the public interest that court orders be obeyed.[29]

(4) The standard of proof, in relation to the allegation, is to the criminal standard, that is beyond all reasonable doubt.[30]

STRIKE OUT AS AN ABUSE OF PROCESS

31. It is possible to strike out an application to commit. CPR PD 16.1 provides:

"On application by the respondent or on its own initiative, the court may strike out a committal application if it appears to the court:

(1) that the application and the evidence served in support of it disclose no reasonable ground for alleging that the respondent is guilty of a contempt of court;

(2) that the application is an abuse of the court's process or, if made in existing proceedings, is otherwise likely to obstruct the just disposal of those proceedings;

(3) there has been a failure to comply with a rule, practice direction or court order."

32. It is the second of these grounds that I am concerned with in this case. It was not contended that CPR PD 16.1(1) or (3) were engaged.

33. In *Sectorguard plc v. Dienne plc* [2009] EWHC 2693 (Ch), Briggs J. stated:

"44. It is now well established, in the light of the new culture introduced by the CPR, and in particular with the requirements of proportionality referred to in CPR 1.1(2) as part of the overriding objective, that it is an abuse of process to pursue litigation where the value to the litigant of a successful outcome is so small as to make the exercise pointless, viewed against the expenditure of court time and the parties' time and money engaged by the undertaking…

45. The concept that the disproportionate pursuit of pointless litigation is an abuse takes on added force in connection with committal applications. Such proceedings are a typical form of satellite litigation, and not infrequently give rise to a risk of the application of the parties' and the court's time and resources otherwise than for the fair, expeditious and economic determination of the underlying dispute, and therefore contrary to the overriding objective as set out in CPR 1.1. The court's case management powers are to be exercised so as to give effect to the overriding objective and, by CPR 1.4(2)(h) the court is required to consider whether the likely benefit of taking a particular step justifies the cost of taking it…

46. It has long been recognised that the pursuit of committal proceedings which leads merely to the establishment of a purely technical contempt, rather than something of sufficient

[29] *JSC BTA Bank v. Solodchenko (No. 2)* [2011] EWCA Civ 1241 at [45].
[30] *JSC BTA Bank v. Solodchenko* [2010] EWHC 2404 (Comm) at [17]; *FW Farnsworth v. Lacy* [2013] EWHC 3487 (Ch) at [3].

> gravity to justify the imposition of a serious penalty, may lead the applicant having to pay the respondent's costs…
>
> 47. Committal proceedings are an appropriate way, albeit as a last resort, of seeking to obtain compliance by the party with the court's order (including undertakings contained in orders), and they are also an appropriate means of bringing to the court's attention serious, rather than technical, still less involuntary, breaches of them. In my judgment the court should, in the exercise of its case management powers, be astute to detect cases in which contempt proceedings are not being pursued for those legitimate ends. Indications that contempt proceedings are not so being pursued include applications not directed at the obtaining of compliance with the order in question, and applications which, on the face of the documentary evidence, have no real prospect of success. Committal proceedings of that type are properly to be regarded as an abuse of process, and the court should lose no time in putting an end to them, so that the parties may concentrate their time and resources on the resolution of the underlying dispute between them."

34. These comments were endorsed by Hamblen J. in *Public Joint Stock Company Vseukrainskyi Aktsionernyi Bank v. Maksimov* [2014] EWHC 4370 (Comm) at [22], as I do now.

35. In the present case, it is not suggested that the breach of the *Inter Partes* Freezing Order cannot be made out: it is not, as I have noted, contended that the breaches fall within CPR PD 16.1(1) (no reasonable ground for alleging contempt). Rather, it is said that the nature of the breaches is such that the use of the contempt jurisdiction is abusive.

36. When considering whether an allegation of contempt, which is accepted as factually well-founded, should nevertheless be struck out as an abuse of process, it is necessary to bear in mind the following:

(1) The contempt jurisdiction exists generally only in relation to orders that have a penal notice and that have been personally served on the defendant. The public interest in seeing such orders obeyed is, inevitably, a strong one. Since a court can be presumed not to make unnecessary orders, where an order of the court remains uncomplied with, it seems to me extremely difficult to say that contempt proceedings in relation to such a contempt can ever be said to be an abuse of process.

(2) Where the defendant – albeit in past breach of the order – has now complied with the order or has taken steps to regularise his breach (for instance, by seeking an extension of time for compliance, and apologising for the past non-compliance), that is a factor suggesting that contempt proceedings may not be necessary.

(3) Whether that factor is determinative depends upon the seriousness of the breach. Seriousness has two aspects to it:

(a) *Deliberation.* In [47] of *Sectorguard*, Briggs J. classified breaches of order into *(i)* serious, *(ii) technical* or *(iii)* involuntary. "Technical" breaches are breaches where the defendant's conduct was intentional and where he knew of all the facts which made that conduct a breach of the order, but where the defendant did not appreciate that his conduct did breach the order. "Involuntary" breaches are those cases where even this element of

deliberation is absent. "Serious" or "contumelious" breaches are those going beyond the technical, generally because the defendant has deliberately breached the order.

(b) *The importance of the order in question.* Some orders are more important than others. Although, of course, all orders of the court must and should be obeyed, breach of some orders can have more serious consequences than breaches of other orders. In *JSC BTA Bank v. Solodchenko (No. 2)* [2011] EWCA Civ 1241 at [55], Jackson L.J. emphasised the fact that any substantial breach of a freezing order was a serious matter.

(4) The number of breaches of an order are a relevant factor. As I have noted, CPR 81.10(3)(a) requires each act of contempt to be separately enumerated. That, however, does not mean that where there are a series of breaches, the court should not take this fact into account when considering whether the contempt application is an abuse of process.

STRIKING OUT THE ALLEGED BREACHES

37. As I have noted, Mr. Camilleri appears to accept that Breach 5 (failure to state what happened to the monies) and Breach 7 (failure to deliver up documents) are not breaches that should never have been raised. In other words, although it is said that these breaches should attract no punishment, it is not contended that they should be struck out.

38. I consider this concession to be rightly made. The allegations are sufficiently serious to justify the making of an application for committal. Both breaches are of the *Inter Partes* Freezing Order, and the substance of Breach 5 at least remains unresolved.[31] Mr. Camilleri's responses to these breaches – in both his third witness statement and in the written submissions made on his behalf – are short on both explanation for the breaches and apology.

39. As was explained by the Court of Appeal in *JSC BTA Bank v. Solodchenko (No. 2)* [2011] EWCA Civ 1241 at [55], compliance with the provisions of freezing orders is important:

"From this review of authority, I derive the following propositions concerning sentence for civil contempt, when such contempt consists of non-compliance with the disclosure provisions of a freezing order:

(i) Freezing orders are made for good reason and in order to prevent the dissipation or spiriting away of assets. Any substantial breach of such an order is a serious matter, which merits condign punishment.

(ii) Condign punishment for such contempt normally means a prison sentence. However, there may be circumstances in which a substantial fine is sufficient: for example, if the contempt has been purged and the relevant assets recovered.

[31] For the reasons given above, I have prospectively rescinded the relevant paragraph of the *Inter Partes* Freezing Order (paragraph 15) and made a separate order. This is obviously relevant to the question of punishment, but I consider that I can, properly, have regard to the fact that the substance of Breach 5 was, as at the date of the hearing before me, unresolved.

(iii) Where there is a continuing failure to disclose relevant information, the court should consider imposing a long sentence, possibly even the maximum of two years, in order to encourage future co-operation by the contemnor."

40. I am not, of course, considering punishment at the moment, but am concerned whether these breaches are to be persisted with or struck out. It seems to me absolutely clear that they are properly made and should not be struck out.

41. I turn to the allegations where Mr. Camilleri contends that the application to commit should never have been made: Breaches 1, 2 and 4:

(1) *Breach 1.* I accept Mr. Camilleri's submission as regards Breach 1. The *Inter Partes* Freezing Order imposed a tight timetable on Mr. Camilleri for the provision of the information required by paragraph 11 of the order. Effectively, Mr. Camilleri had one working day – Friday afternoon and Monday morning – to comply. His failure to do so may have been because the time frame was too tight, and this is supported by his request for an extension of time to the Claimant's solicitors and their granting of that extension. The order was complied with (or purportedly complied with) within this extended time. It seems to me, in such circumstances, that it lies ill in the mouth of the Claimant to allege contempt when Mr. Camilleri took such steps as he could to regularise the position and the Claimant (quite rightly) acceded in those steps. I find Breach 1 to be an abuse of the process of the Court, and I strike it out. I should make clear that I do so, having considered and taken account of the fact that Breach 1 is one of several breaches of the *Inter Partes* Freezing Order. Had Breach 1 been the only breach alleged, the position would have been *a fortiori*.

(2) *Breaches 2 and 4.* Breaches 2 and 4 are altogether more substantial. Breaches 2 and 4, like Breaches 5 and 7, involve failures to comply fully with the information provisions of the *Inter Partes* Freezing Order. Again, Mr. Camilleri's responses in his affidavit and in the written submissions made on his behalf are curiously muted. Essentially, in response to Breach 2, he says that he thought that his "client code" with Brown Shipley was his account number and that, in any event, the Claimant has not been prejudiced because it had the relevant account numbers anyway. In response to Breach 4, Mr. Camilleri says the affidavit he had to provide was provided late because he was ill. He sought – but could not agree with the Claimant's solicitors – an extension, because he did not provide evidence of his illness. He did not apply to the court for an extension. It cannot plausibly be said that Breaches 2 and 4 are an abuse of the process of the court, and I decline to strike them out.

42. Accordingly, it is necessary to consider the appropriate punishment for Breaches 2, 4, 5 and 7.

PUNISHMENT

43. The purpose of the contempt jurisdiction is that it is in the public interest that court orders should be obeyed.[32] That object may be broken down into:

[32] *JSC BTA Bank v. Solodchenko (No. 2)* [2011] EWCA Civ 1241 at [45].

(1) Punishment, i.e. to punish conduct that is in defiance of an order.[33]

(2) Coercion or incentivisation, i.e. to provide the defendant with an incentive to comply (albeit belatedly) with the order.[34]

44. Breaches 2, 4, 5 and 7 are admitted. As regards Breaches 2, 4 and 7, the provisions of the *Inter Partes* Freezing Order have – belatedly – been complied with. As regards Breach 5, for the reasons I have given, a fresh order with a new time for compliance has been made. Mr. Camilleri is no longer in breach of the *Inter Partes* Freezing Order so far as Breach 5 is concerned, and this breach therefore falls to be treated like Breaches 2, 4 and 7.

45. My sentence for these breaches is, therefore, only punishment for past breaches and contains no element intended to encourage future compliance with the *Inter Partes* Freezing Order.

46. Failure to comply strictly with a freezing order is serious: such orders are drawn most carefully, and strict compliance is important. Nevertheless, I recognise that this case does not involve a wholesale flouting by Mr. Camilleri of the *Inter Partes* Freezing Order, but rather a series of derogations from what the order required, each derogation being a material one.

47. I bear in mind that imprisonment is always a punishment of last resort. This is a case where the *Inter Partes* Freezing Order has – in the end – been complied with. It is not a case where there is an on-going breach of a freezing order. Had this been the case, then I consider that some form of imprisonment would have been difficult to avoid. As it is, I consider a substantial fine to be the more appropriate penalty. I have reached this conclusion because:

(1) As I have said, there is no on-going breach of the *Inter Partes* Freezing Order.

(2) The breaches, whilst serious, fall short of being contumelious, although they are more than technical.

(3) It does not appear that the breaches of the order prejudiced the Claimant. I should stress that it is not for the Claimant to show prejudice when making a committal application. In many cases, a court can, quite appropriately, infer prejudice where a freezing order is breached. In this case, because of the information held by the Claimant independently of Mr. Camilleri, and because Mr. Camilleri's breaches are more in the form of defective and late compliance rather non-compliance, I do not consider that it would be right to infer prejudice to the Claimant in this case.

(4) Whilst the evidence is scant, there is some evidence regarding Mr. Camilleri's health. It is not a major factor, in my mind, but it is an indicator away from a custodial sentence.

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[33] *Crystalmews Limited v. Metterick* [2006] EWHC 3087 (Ch) at [8]; *JSC BTA Bank v. Solodchenko* [2010] EWHC 2404 (Comm) at [16]; *JSC BTA Bank v. Solodchenko (No. 2)* [2011] EWCA Civ 1241 at [45].
[34] *JSC BTA Bank v. Solodchenko* [2010] EWHC 2404 (Comm) at [16]; *Crystalmews Limited v. Metterick* [2006] EWHC 3087 (Ch) at [8]; *FW Farnsworth v. Lacy* [2013] EWHC 3487 (Ch) at [21]; *JSC BTA Bank v. Solodchenko (No. 2)* [2011] EWCA Civ 1241 at [45].

48. I note that Mr. Camilleri has a prior conviction in relation to making false representations in an IVA Proposal. I do not consider that it is appropriate to take that into account in punishing for Breaches 2, 4, 5 and 7, and I have not done so.

49. In these circumstances, it is unnecessary for me to consider whether the practice of stating the sentence in respect of each contempt found to be established precludes a court from looking at multiple, related, breaches in the round. It was Mr. Camilleri's contention that I could only look at the individual breaches, and pass an individual sentence in relation to each, without considering the fact that the seriousness of Mr. Camilleri's conduct was increased by the fact that there were multiple breaches.

50. It is unnecessary for me to consider this point because this is not the practice in relation to fines, where a single fine is imposed for multiple breaches. Nevertheless, it seems to me that Mr. Camilleri's contention cannot be right, even in relation to custodial sentences. The fact that sentences can be either concurrent or consecutive is an obvious indicator that a judge must have regard to all of the breaches before him or her. Moreover, I entirely fail to see why the principle of totality, applicable in the criminal justice system, is not equally applicable here. The principle of totality obliges a court, when sentencing for more than a single offence, to pass a total sentence which reflects all the offending behaviour before it and is just and proportionate. That is so whether the sentences are structured as concurrent or consecutive: it is for this reason that concurrent sentences will ordinarily be longer than a single sentence for a single offence.

51. As it is, I order that for Breaches 2, 4, 5 and 7, Mr. Camilleri pay, by 4:00pm on Tuesday 31 July 2018, the sum of £100,000.