Neutral Citation Number: [2019] EWHC 469 (Ch)

Case No: BL-2018-000275

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
CHANCERY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Thursday, 14 February 2019

BEFORE:

MRS JUSTICE FALK

BETWEEN:

ARTEM PODSTRESHNYY

Claimant/Applicant

- and -

(1) PERICLES PROPERTIES LIMITED

Defendant

(2) OLITA SELLERS

Defendant/Respondent

STEPHEN FIDLER (Solicitor) (of Fidler & Co) appeared on behalf of the Second Defendant/Second respondent
SARAH BOUSFIELD (instructed by Devonshires) appeared on behalf of the Claimant/Applicant

---

JUDGMENT

Digital Transcription by Epiq Europe Ltd,
8th Floor, 165 Fleet Street, London, EC4A 2DY
Tel No: 020 7404 1400 Fax No: 020 7404 1424
Web: www.epiqglobal.com/en-gb/ Email: civil@epiqglobal.co.uk
(Official Shorthand Writers to the Court)

1. MRS JUSTICE FALK: This is an application by the claimant, Mr Podstreshnyy, for a committal of Ms Sellers, the second defendant, pursuant to an application made on 14 June 2018. The application was first listed for hearing in December 2018 but was adjourned. I heard the evidence and submissions on 8 February but, due to lack of time, adjourned the hearing to 14 February for the decision and submissions on costs.

Background

2. Ms Sellers ran an estate agency business through the first defendant, Pericles Properties Limited. That company acted as a letting agent for the claimant. The claimant made a proprietary claim against the defendants for rent received by the first defendant and said to be held on trust for the claimant. It seems that the rent had been paid on to Ms Sellers from the company.

3. A freezing injunction was granted by Nugee J on 7 February 2018. That injunction materially provided that neither Ms Sellers nor Pericles Properties were permitted to remove from England and Wales or in any way dispose of, deal with or diminish the value of any of their assets in England and Wales to the value of £100,000 (paragraph 6). Paragraph 9 permitted a disposal of assets in excess of that value. Paragraph 10 provided that the respondents (that is both defendants) "must immediately and to the best of their ability, inform the applicant's solicitors of all of their assets in England and Wales, whether they are in their own name or not and whether solely or jointly owned, giving the value, location and details of all such assets."

4. Paragraph 12 provided that the order did not prohibit the respondents from spending a reasonable sum towards ordinary living expenses or on legal advice, but before spending any money they were required to tell the applicant's legal representatives where the money was to come from.

5. On the return date for the injunction on 21 February 2018, Barling J continued the order, subject to some amendment to paragraph 6. In particular, he repeated the requirement at paragraph 10 of the earlier order to provide information about all of the respondents' assets. Paragraph 2 of Barling J's order states, relevantly, that the freezing order remains in place, including the requirement at paragraph 10 that the respondents

must immediately and to the best of their ability inform the applicant's solicitors of all of their assets in England and Wales, whether they are in their own name or not, whether solely or jointly owned, giving the value, location and details of all the assets.

6. The note of the hearing before Nugee J indicated that the judge considered that Ms Sellers understood that the claimant's monies were held on trust and should have been segregated in client account. The note of the hearing before Barling J referred to a very clear admission by Ms Sellers, who was present at the hearing, that the monies were owed.

7. On 20 April 2018, Master Price gave summary judgment against the first defendant for about £90,000 but granted stays of execution and required the filing of an amended defence and counterclaim by 4 May. At a hearing before Morgan J on 15 June, attended by Ms Sellers and by Ms Seller's legal adviser, a Mr Stockinger, Morgan J was satisfied that there had been breaches of both of the freezing orders and that the first defendant had not filed the amended defence and counterclaim as required by Master Price. The judge accepted an undertaking by Mr Stockinger that Ms Sellers would immediately sign defences and admissions forms, including means statements, which had previously been filed. He made an unless order which provided, among other things, that unless the defendants disclosed all of their assets within the jurisdiction in an affidavit by 4 pm on 22 June, the defences would be struck out.

8. Morgan J also gave permission to serve Ms Sellers personally with the first committal application, which had by then been filed on 14 June. He made comments at the hearing, in Ms Sellers' presence, asking why Ms Sellers was not in prison and saying, "These orders are not made as some sort of polite request that can be ignored. They are the most serious order that can be made, and there is now very well-established precedent for someone who breaks the order being put into prison for up to two years."

9. The defendants failed to comply with the unless order. There was a further hearing before Daniel Alexander QC, sitting as a Deputy High Court judge, on 25 July. Ms Sellers appeared in person. The judge considered an application for relief from sanctions and a last-minute application for an adjournment to obtain legal aid. Both were refused. The defences were struck out and judgment was entered against Ms

Sellers in the sum pleaded within the Particulars of Claim, which was £112,452.40. The stays of execution were removed.

10. The committal application came before Fancourt J on 12 December 2018. Ms Sellers appeared late, as indeed she did this morning. Her previous adviser, Stockinger Advocates and Solicitors, was still on the record but Ms Sellers said she had recently instructed her current advisers, Fidlers, who had told her of the need to make a legal aid application. An adjournment was granted to a date between 6 and 8 February to give Ms Sellers an opportunity to obtain legal representation and for solicitors and counsel to attend. Fancourt J noted that this was an extremely serious application and also expressed considerable regret that the application for legal aid was only made on the day before the hearing. He noted the length of time that had elapsed since Ms Sellers had been served with the committal application in June and that Ms Sellers had done nothing until very late in the day. He made an order for costs thrown away by the adjournment to be paid by Ms Sellers, with the summary assessment to be adjourned to this hearing.

11. I understand that legal aid has now been in place for some weeks. However, Ms Sellers' representative, Mr Fidler, explained to the court that he had to chase repeatedly for instructions, only starting to receive them very shortly before the 8 February hearing.

Adjournment applications

12. At the start of that hearing on 8 February, Mr Fidler requested that the allegations be put directly to Ms Sellers and that following that, there should be a further 14 day adjournment. The reasons given were, first, that this would allow Mr Fidler to go through and take instructions on a short note just received from the claimant's counsel, analysing entries in bank statements exhibited to an affidavit produced by Ms Sellers on 31 January, so that the points made could be replied to. Secondly, Mr Fidler raised issues in relation to Ms Sellers' 13 year old son who lives with her. He said that it might prove relevant to refer to Family Court proceedings, and documents in those proceedings could not be disclosed without leave from the District Judge, which had not been sought.

13. I decided not to grant the adjournment requested, but did grant a short adjournment during the morning which proved sufficient, in my view, to enable Mr Fidler to go through the note provided by the claimant's counsel with Ms Sellers. In reaching the decision not to grant a longer adjournment, I took account of the fact that the note essentially did no more than raise queries on the documentary evidence supplied by Ms Sellers at the end of January. That evidence was also provided far later than it should have been, leaving the claimant's advisers very little time to respond.

14. I will refer to the issues relating to Ms Sellers' son again, but the court was able to proceed without specific reference to the family proceedings which I understand concluded, at least as far as the son was concerned, by 2017. The court did this by focusing on the current position and the situation during 2018. I also took account of the significant length of time that had already elapsed since the freezing orders were made and the comments made by Morgan J in June last year, when Ms Sellers was very clearly put on notice of the possibility of a custodial sentence and therefore the potential need to make arrangements for her son. I took account of the previous adjournment by Fancourt J as well.

15. At the start of the hearing this morning there was another request for an adjournment. This was on a different basis. It related to the fact that Ms Sellers' son's half term is next week and the request was to adjourn for just over a week, essentially for reasons of humanity, to allow the son time to adjust to the position.

16. I did not grant that adjournment for all the reasons that I did not grant the earlier adjournment. Ms Sellers has had so much time to prepare for this. I can only conclude that she has chosen not to prepare for it as she should have done, and just wishes to put matters off further. But that cannot be a route that the court can follow indefinitely. The court has reached the limits of its indulgence.

Second committal application

17. A second committal application was made on 30 January 2019, also shortly before the first hearing before me. I decided not to proceed with that application for a number of reasons. Apart from being issued relatively late in the day, it had not been personally

served. Several of the grounds relied on breaches of orders made by Morgan J and Daniel Alexander QC to which penal notices had not been attached, and others relied on alleged action that was not clearly covered by the terms of the order in question. However, the evidence provided in support of that application was relied on by the claimant without objection on behalf of Ms Sellers.

Other procedural points

18. There was also a procedural point in relation to the orders the subject of the first contempt application, those of Nugee J and Barling J. CPR 81.6 requires personal service of orders if they are to be the basis of a contempt application. Neither of those orders was in fact served personally. Counsel for the claimant explained that attempts to effect personal service had been made, but the claimant had not been able to serve Ms Sellers personally at any stage, apart from the first contempt application which was served before Morgan J. Up to the date of 8 February hearing, Ms Sellers had not even confirmed where she is currently living.

19. As regards Nugee J's order, Ms Sellers was present at the hearing before Barling J and provided a witness statement in which she accepted that she had received the order on 15 February 2018 by post. Barling J determined that service was effective on that date. The claimant's evidence was that Barling J's order was served by email on Mr Stockinger, the solicitor representing Ms Sellers on a pro bono basis, on 23 February by email. There is no direct evidence as to how Ms Sellers received that order but she undoubtedly did. She was present at the hearings before Master Price and Morgan J, as well as the hearing before Barling J. She heard the specific comments made by Morgan J. A witness statement she provided in June 2018 also has clear references to relevant provisions of the orders.

20. CPR 81.8(2) allows the court to dispense with personal service if the court thinks it just to do so, or to make an order in respect of service by an alternative method or at an alternative place. Retrospective validation can be sought. In addition, under paragraph 16.2 of Practice Direction 81, the court may waive any procedural defect in the commencement or conduct of a committal application if it is satisfied that no injustice has been caused. I have concluded that it is just to dispense with personal service of

the two freezing orders. There is no doubt that Ms Sellers received them and she has not made herself available for personal service.

Breaches of the orders

21. There were seven grounds for committal listed in the June 2018 committal application. The first two relate to failures to provide immediate disclosure of information, in breach of the order of Nugee J (ground one), and in breach of the order of Barling J (ground two). There is specific reference in the grounds to what could be regarded as three assets, which I will refer to as the Cheam properties. These comprise a leasehold flat, a leasehold shop in the same building, and the freehold of the building. In addition to not disclosing the existence of the Cheam properties, which were not included in an unsigned admissions form first served on 26 February 2018, there is also reliance on failure to disclose income from the properties and failure to disclose other assets, in particular bank accounts.

22. Ground three was that Ms Sellers had breached the orders made by Nugee J and Barling J by attempting to sell, or marketing, the Cheam flat and Cheam shop without notifying the claimant of the existence of the properties or the intention or attempts to sell them. Ground four was that the solicitors for the claimant were not informed of sums spent or to be spent on living expenses. Ground five was that there was a failure to pay an interim payment of costs of £5,000 ordered by Barling J. Ground six was an allegation that Ms Sellers had informed a bank that a variation of the freezing order had been made when it had not been. Ground seven was that Ms Sellers had incorporated a company called OOS Estates Limited a few days after the freezing order on 19 February.

23. I decided to proceed with grounds one, two and four only, which relate to paragraphs 10 and 12 of the order of Nugee J, and paragraph 2 of the order of Barling J.

24. Briefly, the reasons for not proceeding with the others are, in relation to ground three, that I was not convinced that the steps taken to market the properties amounted to dealing within the terms of the freezing order. Whilst arguable, I decided to consider it as evidence of aggravation only. The steps taken to market the property have clearly

fallen short of formal steps, such as getting solicitors involved and sending contracts out.

25. In relation to ground five, payment of costs, this is not at all obviously contempt and, in any event, imprisonment for such a matter is not possible: see the proviso to CPR 81.4. Ground six is again not clearly a breach but amounts to potentially relevant evidence. As regards ground seven, the incorporation of the company may be a technical breach, but as I will explain, there is no evidence that the company actually operated or that anything was transferred to it. Ms Sellers' evidence, which I accept, is that she set the company up without obtaining legal advice and that, once she understood she could not operate it without breaching the order, she did nothing with it and has now taken steps to close it.

26. In relation to grounds one and two, Ms Sellers breached the orders both personally and as a director of the first defendant. In addition, both the Nugee J and Barling J orders required information to be provided immediately following the order being made. It follows that there was an immediate breach of each of those orders when information was not provided (i.e. there were two separate breaches): see for example *Solicitor General v Jones* [2014] 1 FLR 852 at [20].

Evidence

27. At the hearing on 8 February, grounds one, two and four, the grounds I had decided to proceed with, were admitted by Ms Sellers. So the evidence I then heard became relevant to sentencing only. In addition to affidavits provided in support of the contempt application, reliance was placed by the claimant in particular on a witness statement produced by Ms Sellers in June 2018 and an affidavit she produced on 31 January this year. Ms Sellers also chose to give oral evidence at the hearing on 8 February. The note produced by claimant's counsel analysing entries in the bank statements that had been produced with the 31 January affidavit was used in cross-examination.

Findings

28. Turning to my findings, there has been a clear failure to make disclosure, particularly in relation to the Cheam properties and bank accounts, what the claimant has been spending money on, and sources of funds. I will identify some specific issues.

29. First, the Cheam properties. The claimant found out about their existence from Ms Sellers' ex-husband, Mr Sellers. He is the joint title holder. Ms Sellers had attempted to market the flat and shop. She had attempted to get a second charge put in place in favour of her brother in connection with a loan he had made. She also attempted to argue, and claimed in her June 2018 witness statement, that her brother had a beneficial interest to the value of the loan. The evidence before me included an email from Ms Sellers in July 2018 to Mr Sellers, stating that she would agree to a sale only if Devonshires, who are the claimant's solicitors, did not get the proceeds and her brother was first repaid his loan. I do not accept Ms Seller's oral evidence that she was advised to say this by Mr Stockinger.

30. Ms Sellers also did not disclose income derived from the Cheam shop or flat. Rental income received was largely disclosed in her 31 January affidavit and not before. However, there are also a number of payments into her accounts which were not included in that disclosure but which Ms Sellers accepted in cross-examination were received from lodgers at the flat. She said they were rental deposits rather than income and she had not included them on that basis. However, she has not refunded them, despite the lodgers having left, and still owes the money. So in reality she has treated them as part of her income.

31. Turning to the bank accounts, the most significant issue is with a Nationwide account. Ms Sellers opened an account with Nationwide on 22 February 2018, the day after the Barling J order, with an initial credit of £2,000 in cash. Ms Sellers was present and legally represented before Barling J and clearly knew about the need for immediate disclosure. The existence of the account was not disclosed until correspondence in October 2018, when Mr Stockinger said the account was opened in May. It was not disclosed at the July 2018 hearing when Ms Sellers appeared in person and gave evidence.

32. The account was clearly in existence by the earliest date on which Ms Sellers could have complied with the information provisions in the Barling J order, so this is a very clear breach. Information about the account in the form of statements was only provided on 31 January. Those statements are not complete, although I do accept that Ms Sellers is now trying to obtain the missing ones.

33. Other accounts were disclosed for the first time on 31 January as well. A number of these are debt or credit card accounts, or in one case an account that has been empty at all relevant dates. However, there is an account with Metro Bank opened on 25 July 2018, which has clearly been operated. There is also an HSBC account in Ms Sellers' name. At the July 2018 hearing Ms Sellers said there was an account in her son's name which was empty. She may have been referring to the HSBC account, but in fact it is neither in her son's name nor was it empty. The account is in Ms Sellers' name and is operated by her, although the account details also refer to her son.

34. Significant transactions have gone through the HSBC account, including a withdrawal of £4,500 on 14 February 2018, two days after Ms Sellers became aware that her normal account had been frozen. Ms Sellers explained in oral evidence that she had used this for a half-term holiday with her son. A further £2,500 was withdrawn on 22 February, the day after Ms Sellers attended court before Barling J, and there were additional withdrawals totalling over £4,000 between October 2018 and early January 2019 in her favour. She had no specific explanations for these, apart from living expenses.

35. In total the claimant calculates that, based on the bank statements produced, in excess of £60,000 has been withdrawn from Ms Sellers' accounts over the period of the freezing orders. In the context of the scale of the claimant's claim, this is obviously significant. There are also a number of relatively substantial receipts into the accounts which have not been properly explained. Ms Sellers was asked about a number of them in cross-examination, but the answers were generally vague or were in terms that she could not remember.

36. Credits to the Nationwide account included four amounts of £6,500 received between March and June 2018. Ms Sellers admitted during cross-examination that this was rent

to which a landlord of a property in the same building as the claimant's property was entitled. She accepted that she had used the funds for her personal use and to meet expenses for her business.

37. Ms Sellers' current level of business activity is unclear. Her oral evidence was that she had continued to try to operate her business. She also benefits from working tax credits, which I understand are only available to a person in work. There was no up-to-date accounting information for the first defendant, and it is unclear what income she has derived from it.

38. Ms Sellers is in receipt of a number of benefits. Her 31 January affidavit maintained that disclosure of the bank accounts at that time complied with the obligation to disclose benefits and the bank accounts into which they were paid. I would just mention a specific issue that arose at the hearing in relation to housing benefit. Ms Sellers gave oral evidence that she was receiving between £400 and £500 twice a month in housing benefit, but accepted that very little of this had been paid to her current landlord in rent.

39. As regards OOS Estates Limited, Ms Sellers accepted that she had set this company up to trade following the imposition of the first freezing order. However, she said that she had panicked and set it up while panicking, but that once she obtained advice she appreciated that she could not operate it and it never traded. As already indicated I accept that.

40. As regards the allegation that Ms Sellers informed a bank that there had been a variation in the freezing order, there are two aspects to this. The claimant relies first on an email his solicitors received from Lloyds Bank in March 2018 saying that the customer (i.e. Ms Sellers) had been in contact "to make us aware that there is a variation in place to allow a living allowance". In fact, there has never been a variation to the freezing order. Ms Sellers gave evidence that she had asked Mr Stockinger on a number of occasions to obtain a variation but she did not indicate in giving that evidence that she ever understood that a variation had actually been obtained. When asked about the Lloyds email, her response in cross-examination was that the bank had perhaps misunderstood what she had said. But she was also aware of a letter from the

claimant's solicitors shortly after the Lloyds email, expressing concern that Lloyds had been told that there was a variation. She took no steps to correct any misunderstanding.

41. The second aspect to this variation issue is that Ms Sellers sent a letter to Nationwide after the existence of that account was disclosed and it had been frozen. This letter was adapted from a Citizen's Advice Bureau template that she had been given, either by the CAB or by the local council, and it requested the release of her benefits. Her explanation was that she had been advised by someone at the council or possibly the CAB to use the form.

42. Paragraph 12 of the Nugee J order does permit Ms Sellers to spend money on living expenses, which is not a standard provision in a proprietary injunction, but it requires her first to tell the claimant's solicitors where the money is to come from. The claimant's position is that Ms Sellers has never engaged with the solicitors on that subject.

43. The claimant also relies on instances of Ms Sellers misleading the court. Some have been touched on. As to others, the claimant says in particular that the witness statement produced in June 2018 included attempts to misrepresent and devalue assets, and conflicted with admission forms produced in February which were signed after the hearing before Morgan J and which themselves contained inaccuracies, despite being confirmed to be true before Master Price.

44. In oral evidence Ms Sellers attempted to put blame on her previous solicitor, Mr Stockinger. When asked why she had not produced bank statements earlier, she said he had threatened to stop representing her if she contacted Devonshires direct. She claimed that she had bank statements available some months ago but did not know how to put them together to send them to solicitors. But this conflicted with other oral evidence that she had been endeavouring to get bank statements in the last week, and I do not accept it.

45. Overall, I am prepared to accept that there may have been some level of poor advice by Ms Sellers' previous adviser. It does seem that Ms Sellers has only started to

appreciate the true seriousness of her position since she has been advised by Mr Fidler. She also appeared in person in July 2018 and gave evidence, apparently without appreciating that she had a right not to incriminate herself. Her first apology to the court was before me, and she did then apologise. I am also prepared to accept that, to an extent, she may have panicked after she received the freezing orders rather than reacting rationally.

46. However, this only goes so far. There is an alternative potential explanation to poor legal advice, which is that Ms Sellers has not chosen to listen to advice. It is quite clear that Ms Sellers is not an unsophisticated person. She has worked in the property business for some 16 years on her own admission, and is clearly familiar with property transactions and their financial effect. Whilst English is not her first language, it was evident from her performance in the witness box that she is proficient in English in oral and written form. I have no doubt that Ms Sellers fully appreciated what the terms of the freezing orders were. I do not, for example, accept her evidence that Mr Stockinger asked her to focus on other things rather than the provision of bank statements and that he assured her that she should have her living expenses. That is inconsistent with her own evidence that she continued to ask him to get a variation of the orders. Mr Sellers was present before Barling J, where he expressed concern about the ongoing breach of the information requirement and stated that nothing in the witness statement she had provided for that hearing complied with it. The freezing orders have been in place for a significant period and Ms Sellers has had a great deal of time to get over any initial shock and address the issues properly, if she wished to do so.

47. In my view, Ms Sellers took the view that she should carry on with her life with as little impact from the orders as possible. She was prepared not to disclose assets and to find ways of meeting her expenses in breach of the orders. While she wanted her adviser to get a change to the orders, she was clearly aware that no change was made and she preferred to breach them rather than be prepared to engage with their terms and comply with the information provisions. Complying with those provisions would, among other things, have the unfortunate effect, from her perspective, of disclosing additional bank accounts and other assets. She was also prepared to take other steps to seek to frustrate the orders, in particular her attempts to give her brother an interest in the Cheam properties and to prevent any sale proceeds going to Devonshires.

48. Ms Sellers was prepared to spend not only rent deposits from lodgers, but also funds to which another landlord was entitled and in which that landlord must have had a proprietary interest. This is the same behaviour as the subject matter of the claim by the claimant. Ms Sellers was well aware that she was not entitled to those funds. Whatever shock she suffered from the freezing orders did not prevent her taking calculated steps, for example, to open and use accounts with providers who were not aware of the freezing orders and to attempt to sell the Cheam properties in a way that would deprive the claimant of a share of the proceeds.

49. At the hearing before Morgan J at which Ms Sellers was present, he made his views clear, as I have already mentioned. Ms Sellers must have heard this and she should have readily understood it as a clear explanation of the seriousness of the situation, if indeed her adviser had not already impressed that on her. She also made a very late application for legal aid, causing an adjournment of the December hearing, and was then very late in providing instructions to Mr Fidler, despite legal aid then being in place. She clearly knew much earlier about the availability of legal aid given the application she made in July for an adjournment.

50. Overall, I accept that the level of disclosure is such that the claimant is still unclear what assets Ms Sellers has within the jurisdiction and her sources of income, including amounts she may have received in cash that were not paid into any accounts, and about the nature of her expenditure, particularly in relation to large withdrawals. There is also a lack of up-to-date information about the first defendant.

Significance of court orders

51. The importance of abiding by court orders cannot be underestimated. There is a strong public interest in ensuring that court orders are obeyed. This is so even where steps have been taken to rectify any prejudice. In this case, some steps have now been taken to move towards full disclosure and an apology has been provided, but very significant funds have left Ms Sellers' accounts, potentially to the significant prejudice of the claimant and frustrating the purpose of the freezing orders.

52. Other serious aspects include material non-disclosure for a significant period and attempts to sell the Cheam properties in a way that would prevent the claimant benefitting from the sales, or would at least significantly restrict the recovery. Those steps were calculated.

Mitigation

53. In mitigation, Mr Fidler submitted that Ms Sellers had been poorly advised. She had been naïve and foolish, hoping she could simply ride out the storm and the matter would be sorted out somehow. She should have been advised to obtain legal aid earlier. Now she was properly advised, she had apologised to the court. He also said that Ms Sellers had provided a copy (not an original) of signed transfer forms in relation to the Cheam properties to Devonshires so that their sales, which Ms Sellers had planned in any event before the freezing orders were proposed, could proceed with that firm being instructed to act for both Mr and Ms Sellers.

54. Ms Sellers' oral evidence was that this should produce sufficient funds to repay the claimant, based on her estimate of the sale prices. Mr Fidler indicated that she would be prepared to give undertakings relating to the sales. Whilst signing the transfer forms shows a willingness to co-operate, I am not persuaded that the claimant would in fact be repaid from the proceeds. Not only are sale prices apparently not established, but there are existing mortgages and it is clear from Ms Sellers' oral evidence that Ms Sellers has material additional debts, not all of which have been referred to in this decision (she gave evidence, for example, about her car being removed by bailiffs).

55. Although the claimant's claim is proprietary, there is no indication that the claim would enable tracing to the Cheam properties, which have been held for some time. The position is simply too unclear to be confident that any or any appreciable recovery will be possible from the sale proceeds.

56. The most significant issue raised in mitigation was the position of Ms Sellers' 13 year old son, who lives with her. She also has a 15 year old son who lives with both boys' father, Ms Sellers' ex-husband. Mr Sellers had provided evidence that he was able to care for the younger son if Ms Sellers was in custody, and that he had a room available.

Ms Sellers' evidence was that this would be very unsettling for her son. She referred to Mr Sellers' living some distance from her son's school, and concerns about his schooling, friendships and out of school activities being disrupted. She also said that on a previous occasion in 2016 he had tried to run away from his father.

57. Whilst these matters took up a lot of time at the hearing on 8 February, I was informed just before the start of the hearing this morning that arrangements have now been made which would enable a friend of Ms Sellers to move in to the flat Ms Sellers lives in to stay with her son for up to three weeks, which would allow time for Ms Sellers' mother to fly into the UK to look after him. I will therefore not comment further on these matters, because I am assured on behalf of both parties that there are arrangements in place in relation to care of Ms Sellers' son. Nevertheless, there remains an issue in relation to any separation of mother and son, and I have taken careful account of that.

58. I was referred before the hearing today, and I will refer to it briefly, to a criminal case, *R v Petherick* [2012] EWCA Crim 2214, about the principle that a defendant who has sole care of a young child is a relevant factor in sentencing. The Vice-President confirmed that the Article 8 right to family life is engaged in respect of dependent children, and the court must determine whether any interference with that right is proportionate. I have taken account of this. I also note the comment at paragraph 21 of that decision that, among other considerations, there should not be an unjustified disparity between defendants convicted of similar crimes by reference to such matters as this.

59. I do accept that immediate custody would have an inevitable unsettling effect on Ms Sellers' younger son, and I have taken careful account of that. However, the weight I am able to place on the significance of Ms Sellers' evidence about the impact on her son is affected by other aspects, including in particular the confirmation that arrangements have been put in place to look after her son, so that the disruption discussed at last week's hearing will not in fact occur. My understanding was that most of the concerns that Ms Sellers expressed on behalf of her son related to his location. However, as I said, I have no doubt that the separation of mother and son is still, even if the son does not have to move, a very serious matter and I have taken account of that.

60. As already explained, Ms Sellers has admitted the grounds of contempt that I have proceeded with, so I move to sentencing.

Sentencing

61. A sentence for contempt performs more than one function. Importantly, it upholds the authority of the court by punishing the contemnor, in this case Ms Sellers, and deterring others. The purpose of this is the significant public interest in ensuring that court orders are obeyed. It would send out a very dangerous message if serious acts of contempt were ignored. Another function of a sentence for contempt is that, where relevant, it can provide an incentive for belated compliance.

62. Of the sanctions available, imprisonment is always the last resort and should be and is reserved for a case where it is necessary. Any sentence should also be for the shortest time required. But the courts have repeatedly recognised that breaches of freezing orders are particularly serious. I will not read them out, but I refer in particular to paragraphs 51 and 55 of *JSC BTA Bank v Solodchenko* [2011] EWCA Civ 1241.

63. Both parties relied on *Templeton Insurance v Thomas* [2013] EWCA Civ 35. In that case, immediate custodial sentences had been passed of four and nine months respectively on two individuals who had committed serious breaches of orders and had not apologised but had also not personally benefitted, and where the claimant had not actually established loss. Although the sentences passed incorporated a one-third reduction for personal mitigation relating to health and family circumstances, the Court of Appeal was prepared to suspend them, commenting that suspension was not only for the purpose of encouraging or rewarding the purging or remedying of contempt: see paragraph 49. In that case, Rix LJ referred to his earlier decision in *JSC BTA Bank v Ablyazov* [2012] EWCA Civ 1411, where he noted that the courts had emphasised how vital freezing and ancillary disclosure orders, and the proper sanctioning of them, are to the fair conduct of modern litigation (see paragraph 184).

64. In this case, there is no doubt that the breaches are serious and deliberate. They have continued for some time. Some of the actions taken have been of a calculated nature, with the specific intention of depriving the claimant of the money to which he is

entitled. The significant funds extracted from the bank accounts that should have been protected by the freezing order have undoubtedly prejudiced the claimant.

65. There has, however, been very belated but significant increased disclosure, an admission and an apology, together with a statement of willingness to co-operate. In addition, Ms Sellers has attended court on each occasion since the first freezing order was imposed, albeit late on more than one occasion, rather than failing to attend. I am also prepared to place some weight on the apparent absence of effective legal advice until very recently. Finally, and importantly, her personal circumstances in relation to her son are relevant.

66. Taking all the circumstances into account, I have concluded that a custodial sentence is required. Mr Fidler did not dispute this although, as I will discuss in a moment, he argued that it should be suspended. Taking account of the mitigating factors, I have concluded that the appropriate sentence is a total of nine months' in prison. This comprises sentences of the following duration in relation to each ground, with those sentences all running concurrently: nine months in relation to ground one, nine months in relation to ground two and six months in relation to ground four.

67. I am not going to make any specific comments about possible remission for future compliance, because the factual position is simply too unclear to make any recommendation about the level of possible remission.

68. Turning to the question of suspension. Although Mr Fidler accepted that the threshold for a custodial sentence was passed, he submitted that there were mitigating factors justifying suspension. Relying on the full disclosure and the willingness to co-operate, he suggested that suspension could be on terms that regular ongoing disclosure was made, for example, monthly bank statements, until the debt was paid. I have very carefully considered this but have concluded that, despite the existence of mitigating factors, including the position of Ms Sellers' son, suspension cannot be justified. I do not think that the mitigating factors are sufficiently strong to depart from the very strong guidance from the Court of Appeal that an immediate custodial sentence is normally required for breaches of freezing orders (*Solodchenko* at [51])

(**After further submissions**)

Costs

69. I am ordering costs from the hearing before Fancourt J in the agreed amount of £11,300, to be paid within 14 days.

70. The agreed costs of the hearings before me on 8 February and today are £18,708. The only dispute relates to time and/or ability to enforce.

71. The claimant's counsel has requested that there should be an order for payment in full with no qualifiers to that. Mr Fidler has said that, at least by analogy with criminal cases, the court needs to investigate whether the legally aided defendant is able to pay, and in doing that must take account, among other things, of previous cost orders. He notes, as recorded in my judgment, the unknown factor of the sale price of the two properties. I would agree that that is an unknown factor, but there is also a more general unknown factor about the extent of Ms Seller's resources.

72. Neither party was able to refer me to any provision that restricts my power to order costs appropriately. There was a reference to section 26 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("LASPO"), but that does not apply to these matters because this contempt application is treated as criminal for LASPO purposes. In the circumstances, I have decided not to accept Mr Fidler's submission and to order that those costs should be paid as well within 14 days.

73. I have hopefully already indicated that the court's indulgence has been tested to the limit in this matter. I have a great deal of concern that, if the question of costs were left and there was required to be a further trip to the court for leave to enforce, that would just incur further, completely unjustified, expense and be used by Ms Sellers as a further stalling mechanism.

74. It is quite clear from the evidence that Ms Sellers has other significant creditors. I do not see why the claimant should not be able to list the full amounts owed to him as amounts due, and take action to enforce them if needed.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

165 Fleet Street, London EC4A 2DY
Tel No: 020 7404 1400
Email: civil@epiqglobal.co.uk