Neutral Citation Number: [2021] EWHC 592 (Ch)

Case No: CR-2018-006183

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

Royal Courts of Justice
Strand
London WC2A 2LL

Date: Thursday, 4th March 2021

Before:

HIS HONOUR JUDGE JOHNS QC
(Sitting as a Judge of the High Court)

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Between:

(1) PAUL ATKINSON & GLYN MUMMERY (as Joint Liquidators of Grosvenor Property Developers Ltd
(2) GROSVENOR PROPERTY DEVELOPERS LIMITED (in liquidation) — **Applicants**

- and -

(1) SANJIV VARMA also known as SANJEEV VERMA
(2) ARJUN KHADKA
(3) GROSVENOR CONSULTANTS FZE
(4) SIDDHANT VARMA also known as SID VARMA
(5) JONATHAN ENGLAND — **Respondents/ Defendants**

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MR. RORY BROWN and MR. ANDREW SHIPLEY (instructed by **Gunnercooke LLP**) for the **Applicants**
MR. ASHLEY PRATT (instructed by **Preiskel & Co**) for the **Respondent**

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APPROVED JUDGMENT

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HIS HONOUR JUDGE JOHNS QC:

1. I heard the trial of the application to commit Mr. Sanjiv Varma to prison for contempt of court last June and gave judgment on 13th July 2020. The allegations of contempt arose out of insolvency proceedings concerning Grosvenor Property Developers Limited ("the Company"). The allegations were made by the Company and its joint liquidators and included breach of an order for disclosure of assets made as part of a freezing order and the making of false written statements about what was done with the Company's money.

2. I found many, though not all, of the allegations of contempt established. The contempts I found were as follows:

   (1) Making a false statement in his affidavit of 16th May 2019 that the funds of approximately £3.1 million paid to a Dubai-registered company, Grosvenor Consultants FZE ("GCFZE") "were paid against sale of jewellery and diamonds to the Company". I found there was no such deal. The Company money was not spent on jewellery and diamonds. This was a serious untruth central to Mr Varma's false story about dealings with the Company's money.

   (2) Failing to inform the liquidators' solicitors of assets within 48 hours in breach of the order of 1st May 2019. I found that his disclosure as to assets, which included only his shareholding in a company, My Casa PBSA Ltd, said to be worth £14,000, was far from true and complete.

   (3) Being responsible for GCFZE's failure to serve an affidavit setting out information as to its assets as required by the order of 1st May 2019. I did not, however find that he knew the order in respect of GCFZE made him personally liable and noted that such may be relevant to sentence.

(4) Failing to send a signed letter of instruction in the period specified by the order of 3rd July 2019. A letter was provided, but late, only following the refusal of permission to appeal and stay by the Court of Appeal on 22nd July 2019. I was satisfied as to breach but not that such was deliberate and again noted that that would be relevant to sentence.

(5) Failing to sign and return authority letters in breach of the order of 1st August 2019. These letters only came late in breach of the order.

(6) Making a false statement in his affidavit of 7th May 2019 that "I have only one asset that may qualify for disclosure". That was the shareholding in My Casa PBSA Ltd. I found Mr. Varma has other assets though he has not disclosed, and the liquidators have so far been unable to discover, them.

(7) Making a false statement in his affidavit of 16th May 2019 that GCFZE used the £3.1 million "to meet its financial obligations and debts. Some of the money was used towards expenses and some of the money was used towards failed and aborted transactions in Dubai UAE". In fact as I found, £2 million of this money went first into a personal account of Mr. Varma, then out to his son, Siddhant Varma, and then to Mr. Varma's company, Grosvenor PBSA Limited which used it in the purchase of 33 Charles Street, London.

(8) Making a false statement in his witness statement of 26th June 2019 that there are silent shareholders in GCFZE. As I found, there are not. Accordingly, this statement masked his sole ownership of that company.

3. The delay in this sentencing hearing is due to an appeal against those findings of contempt. That appeal was pursued to a two-day hearing in the Court of

Appeal. The appeal was dismissed. There has been an attempt to delay it further. A late application to adjourn was made to Falk J on 2nd March on the basis of a positive Covid 19 lateral flow test for Mr Varma. That application was dismissed. A PCR test result was then said to be awaited. I have not been told of any such result.

4. Mr. Pratt, who appears as counsel for Mr. Varma today – and has given me all the assistance that he possibly could, given the limited instructions he has been able to take and his late involvement – tells me that Mr. Varma continues to feel unwell and was today going to hospital, though unable to say which one. There is no new application to adjourn this hearing. I did, however, consider, as it seemed to me I should, whether I should proceed in the absence of Mr. Varma today. I decided that it was right to proceed in the absence of Mr. Varma and I now give my reasons for that decision.

5. As to the approach to be adopted, I was taken to a helpful passage in *Civil Fraud, Grant and Mumford* at 35-083 which is in these terms:

> "Proceeding in the Absence of the Respondent
>
> It is not uncommon for a respondent not to attend a committal application. The modern approach is for the court, if satisfied that the respondent has been properly served and has decided intentionally to absent himself, to proceed with the hearing. In the family case of *Sanchez v Oboz* Cobb J set out a checklist of considerations for a civil court to consider when deciding whether to proceed in the absence of the respondent:
>
> (1) Whether the respondent has been served with the relevant documents, including the notice of the hearing;
>
> (2) Whether the respondent has had sufficient notice to enable him to prepare for the hearing;
>
> (3) Whether any reason has been advanced for his non-appearance;

> (4) Whether by reference to the nature and circumstances of the respondent's behaviour, he has waived his right to be present (i.e. is it reasonable to conclude that the respondent knew of, or was indifferent to, the consequences of the case proceeding in his absence;
>
> (5) Whether an adjournment would be likely to secure the attendance of the respondent, or at least facilitate his representation;
>
> (6) The extent of the disadvantage to the respondent in not being able to present his account of events;
>
> (7) Whether undue prejudice would be caused to the applicant by any delay;
>
> (8) Whether undue prejudice would be caused to the forensic process if the application were to proceed in the absence of the respondent."

6. Bearing that checklist in mind, the right course was to proceed in Mr Varma's absence. Plainly, he knows of the hearing and has had notice of it for some time. Whether to proceed in his absence would depend largely, as Mr. Pratt, who has been realistic throughout, said, on the medical evidence. Mr Varma says he is too unwell to attend this hearing or even a remote hearing. But the medical evidence goes no distance towards justifying Mr. Varma's non-attendance on that basis. The high point is the lateral flow test which is, as Mr. Varma says in his own witness statement in support of the earlier application to adjourn, the appropriate test for those *without* symptoms. Even that is wholly undermined by the evidence of Mr. Gray, solicitor to the joint liquidators. He attaches an attendance note to his 15th witness statement of a conversation with Mr. Hill, Mr. Varma's consultant, on 2nd March. Mr. Hill explained to Mr. Gray: (1) that Mr. Varma had Coronavirus in January; (2) that a lateral flow test could therefore be expected to show a positive result; and (3) that Mr. Varma asked him to delete that part of his letter which referred to Mr. Varma having had the virus in January.

7. Mr Varma is, I am satisfied, deliberately absenting himself today, waiving his right to be present and that that is part of a pattern. One part of that pattern was Mr. Varma absenting himself from a private examination. That also involved a hospital visit. Insolvency and Company Court Judge Mullen decided on 13th June 2019 that he was not satisfied that Mr. Varma was genuinely unable to attend on that occasion either.

8. There are these further points. One, Mr. Varma does have the benefit of representation. Mr. Pratt has argued on his behalf today and has been able to take instructions, including during the hearing, on sentence. Two, Mr. Varma has had a long time to purge his contempt and to give instructions on sentence including mitigation. This hearing comes over seven months after the committal trial and over three months after the decision of the Court of Appeal. Three, there has already been significant delay in dealing with these contempts and there should not be further delay, in my judgment, particularly as Mr. Varma must be regarded as a flight risk. He has failed to give his whereabouts, and that persists. Mr. Pratt was given, and passed on to the court and the joint liquidators today, a residential address for Mr. Varma at 180 Garratt Lane, London SW18. But Mr. Pratt's investigations indicate that there is no such property. I was told at the trial by his then counsel, I think by way of written submissions, that it was naive to think that if, as I have found, Mr. Varma is still of substantial means he could not arrange to leave the country without his passport.

9. Reflecting Mr Varma's stance, no request was made for a remote hearing. Mr. Varma claims, as I have said, without any supporting medical evidence, to be too unwell to participate in a remote hearing.

10. I turn, then, to sentence. The various contempts which I have outlined are obviously linked. I consider I should arrive at a single sentence for all of them. I was referred to a useful summary of sentencing considerations found in *Civil Fraud, Grant and Mumford* at 35-100 and 35-101 as follows:

> "35-100 The leading decision on sentencing for contempt involving the breach of a freezing order is *JSC BTA Bank v. Solodchenko (No. 2)* where Jackson LJ set out a series of propositions of general application:
>
> (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.
>
> (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.
>
> 35-101 More broadly, the court will take into account the following key factors when considering what sentence to pass on a contemnor:
>
> (1) whether the claimant has been prejudiced by virtue of the contempt and whether the prejudice is capable of remedy;
>
> (2) the extent to which the contemnor has acted under pressure;
>
> (3) whether the breach of the order was deliberate or unintentional;
>
> (4) the degree of culpability;

> (5) whether the contemnor has been placed in breach of the order by reason of the conduct of others;
>
> (6) whether the contemnor appreciates the seriousness of the deliberate breach;
>
> (7) whether a contemnor has co-operated;
>
> (8) whether there has been any acceptance of responsibility, any apology, any remorse or any reasonable excuse put forward."

11. It is clear to me with those considerations in mind that only a custodial sentence is appropriate. A fine would not properly reflect the seriousness of this case. It would not be a sufficient penalty. Mr Pratt for Mr Varma realistically accepted it was likely a term of imprisonment would be imposed.

12. Court orders are meant to be obeyed and when they are not the rule of law is undermined. Here, there are multiple contempts. They are serious. I said this in my judgment on the topic of interference with justice:

    "164. … In inventing the jewellery deal, the silent shareholders in GCFZE, and the non-disclosure agreement with them, as well as failing to disclose his own assets and what became of the £3.1m paid by the Company, Mr Varma has made it more difficult for the liquidators to obtain judgment for and recovery of sums paid to him. Indeed, as that can have been his only object in making the false statements, he not merely knew of the likelihood that they would interfere with the course of justice, he intended that result."

13. The contempts are not the fault of anyone but Mr. Varma. Most are deliberate. They have never been admitted, still less any remorse shown. On the contrary, the allegations of contempt were fought hard at a trial before me, including by Mr Varma relying on false documentation and praying in aid

non-existent documents. Even following my decision, the contempts were not accepted but were instead challenged on appeal.

14. The contempts numbered (2) and (3) continue unremedied in that the liquidators are still in the dark about Mr. Varma's assets and those of GCFZE. The sums involved, and this of course is relevant to harm or prejudice, are very significant. As to liability there is a judgment against Mr. Varma in a total sum exceeding £5 million. As to assets, I noted as part of my judgment that it was a consequence of his breaches of orders that it was impossible to have any certainty about the extent of the failure to inform the liquidators about his assets. But Mr. Pratt's instructions are that the money "is out there" to pay the judgment.

15. As to the length of a custodial sentence, given all that, I have decided that the starting point should be the maximum of two years. I would underline three points in that regard.

16. First, as the Court of Appeal have said recently in *FCA v. McKendrick* [2019] EWCA Civ 524 at para.41:

> "However, because the maximum term is comparatively short, we do not think that the maximum can be reserved for the very worst sort of contempt which can be imagined. Rather, there will be a comparatively broad range of conduct which can fairly be regarded as falling within the most serious category and as therefore justifying a sentence at or near the maximum."

Here, whilst some allegations of contempt were not made out and two were not deliberate (at least at the time - the continuing failure to disclose the assets of GCFZE is deliberate), this remains a very serious case.

17. Second, two of the key contempts are continuing, namely Mr. Varma's failure to disclose his assets and those of GCFZE. Footnote 189 to paragraph 35-100 in *Civil Fraud* is in point where attention is drawn to *Lightfoot v. Lightfoot* where Lord Donaldson MR urged courts to consider:

"... imposing a 2-year sentence when the contemnor was in continuing and wilful breach of court orders. Whilst there might be cases in which such a sentence would be disproportionately severe, any wilful defiance of the court and its orders is necessarily a very serious offence and if the contemnor is aggrieved he has a remedy in his own hands – he can seek his immediate release by ceasing his defiance, complying with the order and thereby purging his contempt."

Mr. Varma continues not to co-operate, including by not providing an address.

18. Third, the contempts are aggravated by Mr. Varma relying on false documentation and praying in aid non-existent documents before me in an attempt to avoid findings of contempt.

19. As to reduction for mitigation, there are three matters which seem to me to increase the impact of a custodial sentence in this case. At least the first two are related. The first is Mr. Varma's health. It has been common ground that he does have underlying health conditions. It appears he suffers with diabetes and apnoea. The second is the current pandemic. The impact of a custodial sentence may well be heavier as a result of the pandemic, in the form of tighter restrictions on prisoners and increased risk, or at least fear of increased risk, of transmission. This factor is reflected in sentencing guidelines which I draw the attention of counsel to. The third is this. Whilst it is the product of his own

misconduct, it must be acknowledged that this custodial sentence comes on top of a restriction on Mr Varma's liberty resulting from the orders depriving him of his passport. I note that such was taken account of as a factor in *Otkritie v Gersamia* [2015] EWHC 821 (Comm), to which I was taken.

20. It is also true, as Mr. Pratt said, that there are no previous convictions or findings of contempt.

21. All those matters should together be reflected, in my judgment, in a reduction of three months. I make no reduction for an apology. Whilst Mr. Pratt did pass along some words described as an apology from his client, it was plain that Mr. Varma did not, by that, acknowledge any wrongdoing. In truth, there was no apology at all. The period of the custodial sentence will therefore be 21 months.

22. It is often appropriate to distinguish between the punitive and deterrent element on the one hand and the coercive element on the other. In my judgment, that should be done here. I want to make plain that there is a significant coercive element as I am keen that the order as to disclosure of assets is complied with. The investors deserve their money back. Coercion is the joint liquidators' reason for the committal application. I am told, as I have said, that the money "is out there". There is the possibility, then, of contempt being purged, in particular by proper information being given as to assets, or money being paid over, so that there are funds which can go to satisfy creditors. The coercive element, which may therefore be remitted in that event, should, in my judgment, be nine months. That would still leave, as this case requires, a substantial punitive and deterrent element of twelve months.

23. The seriousness of the contempts and the limits to mitigation mean that it would not be appropriate to suspend the sentence. A suspended sentence was not argued for by Mr Pratt.

24. I should say that there was, from Mr. Pratt, a suggestion of a risk of deportation for Mr. Varma if the sentence was more than twelve months. However, that suggestion seemed to lack the necessary factual basis in that, throughout the proceedings, Mr. Varma has, as I understand it, said he is resident in Dubai, not this country, anyway. Further, no statutory or other material was put before the court as to the risk of deportation. And finally, a sentence of less than twelve months would, it will be plain from what I have said already, be too low. If there is some risk of deportation then such might possibly support an application to remit if the continuing contempts are purged. It will be noted that the split, as it were, between the punitive/deterrent element and the coercive element is persuasive or for guidance only.

25. It follows from all that I have said that I sentence Mr Varma to immediate imprisonment for a period of 21 months. Mr. Varma will, of course, be entitled to release after serving half of his term by reason of section 258 of the Criminal Justice Act 2003.

26. I turn to the other question before me today, being the costs of the application to commit. The application to commit has been successful. Whilst not all contempts were made out, many serious contempts have been established and key contempts continue. The costs of trial could have been avoided by Mr. Varma accepting that he was in contempt of court. He should, given all that, pay the costs and, indeed, that was not resisted by Mr. Pratt.

27. Given the conduct examined in the application, those costs should be assessed on the indemnity basis. The conduct which I have already outlined when dealing with sentence goes well beyond that which is reasonable. I note the indemnity basis of assessment was adopted by the Court of Appeal. Further, there is no reason, in my judgment, for excluding the sentencing hearing today from that indemnity basis of assessment. It has been part and parcel of dealing with the application and the nature of it has reflected the same conduct.

28. These costs, which I award to the joint liquidators, should include the costs of the applications before Fancourt J which were reserved to me as the judge hearing the committal application. Those were for an application to adjourn and an application designed to facilitate a remote trial. A remote trial was facilitated and that application was justified. The basis for Mr Varma's adjournment application was not made out, so those costs should be the joint liquidators'.

29. As is normal, there should be a payment on account of those costs which will be subject to detailed assessment. There was no resistance to a payment on account or the level sought, being £268,000 odd, which represents 75% of the incurred costs. I will make an order for that payment on account.

30. Finally, I do not understand there to be any restriction on enforcement of the costs order despite Mr. Varma having had the benefit of public funding, this being criminal rather than civil legal aid. But counsel were unable to confirm that understanding during the hearing. I ask them to check that understanding and make any submissions on it as necessary when submitting the draft order from today for my approval.

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