Neutral Citation Number: [2020] EWHC 3085 (Fam)

Case No: FD19F00024 / ZC18P04081

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/11/2020

Before :

THE HONOURABLE MR JUSTICE COBB

- -

Between :

Magali Moutreuil	**Applicant**
- and -	
Peter Andreewitch	**Respondent**
Pier Investments Company Limited	

- -

Moutreuil v Andreewitch (Contempt: Sentence)

- -

James Weale (instructed by **LSGA Solicitors**) for the Applicant
Richard Thomas (instructed by **Janes Solicitors**) for the First Respondent
The Second Respondent was not separately represented.

Hearing dates: 16 November 2020

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Approved Judgment

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THE HONOURABLE MR JUSTICE COBB

This judgment was delivered in public

The Honourable Mr Justice Cobb:

1. On 22 May 2020, and following a contested hearing, I delivered a reasoned judgment in which I set out my findings of fact on the application of the Applicant ('MM') for an order that the court should impose sanctions upon the First Respondent ('PA') for multiple breaches of a freezing injunction which had been ordered on 22 March 2019 (DDJ Hodson). That judgment is publicly available and reported as *Moutreuil v Andreewitch (Contempt: No.2)* [2020] EWHC 1301 (Fam). Subsequently, I conducted a final hearing of the substantive dispute between the parties, at which I considered MM's claim in respect of legal and beneficial ownership of the shares in the Second Respondent company, and her claim under *Schedule 1 Children Act 1989*. That judgment is also publicly available as *Moutreuil v Andreewitch & Another* [2020] EWHC 2068 (Fam). PA sought permission of the Court of Appeal to appeal that decision; on 16 October 2020, permission to appeal was refused. I have further conducted a contested hearing dealing with child arrangements; the judgment in those proceedings has not been published.

2. I have today conducted a further hearing, somewhat later than had been hoped or expected, at which I have considered the sanction for those earlier proven breaches of the freezing injunction; this has been a hearing conducted in public at which PA was personally present. This judgment sets out the sanction I impose, and my reasons. For a complete understanding of this case, this judgment should be read with the judgments just cited.

3. For the purposes of this hearing, I have read further statements filed from MM and from PA. I have received able oral and written submissions from counsel for both the Claimant ('MM') and the First Respondent ('PA').

The findings

4. It is unnecessary for me to rehearse the findings earlier made in the judgment reported at [2020] EWHC 1301 (Fam). I wish simply to highlight just four points:

    i) I found that the terms of the freezing order granted in March 2019 were clear and unambiguous; the order spelled out clearly on its face the consequences of breach ([18] / [28]);

    ii) There had been multiple breaches of the order (MM asserts that there had been 562 withdrawals from the account; although not all of these were proved to be in breach of the order, the vast majority were proven); I added that "I find that he [PA] treated the account as his personal account. It is obvious that he used the funds for his own ends." ([30]);

    iii) I found that PA had little insight into his behaviour ("PA has a firm and unshakeable belief in his own narrative relating to the use of the frozen Pier account, but his narrative is simply implausible. His explanations for his use of the account over the months following the 22 March 2019 order are, in my judgment, contrived and disingenuous") ([29]);

iv) I found that the breaches "… were deliberate, that is to say that I am in fact satisfied that PA made/procured the payments knowing that they were in breach of the freezing order" ([37](ii)).

5. My conclusion was set out at [30] of the earlier judgment:

> "I am satisfied, to the required standard, and applying the guidance of Flaux LJ in the *Pan Petroleum* case … on the evidence which I have read and heard that PA deliberately removed sums from the frozen Pier account after the order of 22 March 2019, at all times intending to use the withdrawn sums for his own benefit".

Powers of Sanction

6. I have wide powers of sanction (*FPR r.37.4* & *r.37.9(1) FPR 2010*) in circumstances in which I find that a respondent has disobeyed an order; the precise form of sanction is within the discretion of the court. I may impose a sentence of up to two years imprisonment (*Contempt of Court Act 1981, s.14(1)*), or a fine of an unlimited amount. If I impose a sentence of imprisonment, it is open to me to order that execution of the committal order can be suspended for such period or on such terms as I consider appropriate (*FPR 37.28 FPR 2010*).

7. In approaching this task in this case, I have followed the guidance given by Nicklin J in *Oliver v Shaikh* [2020] EWHC 2658 (QB) (at [14]-[21]), wherein he referred to the objects of the sanction being: (1) to punish the historic breach of the court's order by the contemnor; and (2) to secure future compliance with the order. He added at [17](iii):

> "As with any sentence of imprisonment, that sanction should only be imposed where the Court is satisfied that the contemnor's conduct is so serious that no other penalty is appropriate. It is a measure of last resort. A suspended prison sentence, equally, is still a prison sentence. It is not to be regarded as a lesser form of punishment. A sentence of imprisonment must not be imposed because the circumstances of the contemnor mean that he will be unable to pay a fine. A sentence of imprisonment may well be appropriate where there has been a serious and deliberate flouting of the Court's order".

And later at [18]:

> "If a contemnor, even belatedly, demonstrates a genuine insight into the seriousness of his prior conduct and its unlawfulness, then the Court may well be able to conclude that the contemnor has 'learned his lesson' and the risk of future breach is thereby diminished."

8. I note that in the case of *JSC BTA Bank v Solodchenko (No.2)* [2012] 1 WLR 350[1], Jackson LJ said (at [51]):

> "I shall not attempt to catalogue all those first instance decisions. What they show collectively is that any deliberate and substantial breach of the restraint provisions or the disclosure provisions of a freezing order is a serious matter. Such a breach normally attracts an immediate custodial sentence which is measured in months rather than weeks and may well exceed a year."

He added at [55]:

> "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.
>
> (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."

9. In relation to a suspended sentence, Mr Weale took me to the decision of *Aspect Capital Limited v Christensen* [2010] EWHC 744 (Ch) at both [52] and [67]-[69], wherein Lewison J (as he then was) reflected (in the second cited passage) that the authorities up to that point had confirmed that the circumstances in which a civil court may suspend a sentence are more flexible than the circumstances in which a criminal court may do so. I was also taken by counsel to the more recent decision of *Liverpool Victoria Insurance Ltd v Khan* [2019] EWCA Civ 392; [2019] 1 WLR 3833, in which it is said:

> [66] "The court must also give due weight to the impact of committal on persons other than the contemnor"; and "In a

[1] Cited with approval in *Financial Conduct Authority v McKendrick* [2019] 4 WLR 65: "*Breach of a court order is always serious, because it undermines the administration of justice. We therefore agree with the observations of Jackson LJ in* [JSC BTA Bank -v- Solodchenko (No.2) [2012] 1 WLR 350] *… as to the inherent seriousness of a breach of a court order, and as to the likelihood that nothing other than a prison sentence will suffice to punish such a serious contempt of court.*"

> case in which nothing less than an order for committal can be justified, the impact on others may provide a compelling reason to suspend its operation" [my emphasis].
>
> [69] "The court must, finally, consider whether the term of committal can properly be suspended …. We do not think that the court is necessarily precluded from taking into account, at this stage of the process, factors which have already been considered when deciding the appropriate length of the term of committal. Usually, however, the court in deciding the length of the term will already have given full weight to the mitigation, with the result that there is no powerful factor making it appropriate to suspend the term. If the immediate imprisonment of the contemnor will have a serious adverse effect on others, for example where the contemnor is the sole or principal carer of children or of vulnerable adults, that may make it appropriate for the term to be suspended; but even then….an immediate term – greatly shortened to reflect the personal mitigation – may well be necessary."

10. In *Aspect Capital* Lewison J had taken account of the contemnor's good character; Mr Weale suggests that this is of limited value in a case such as this, citing *Templeton Insurance Limited v Thomas and Panesar* [2013] EWCA Civ 35 at [45]:

> "It is not so much that the appellants are first time offenders who are unlikely to offend again. That must be true of many such defendants. Given the seriousness with which the courts view the breach of freezing orders, previous good character provides limited assistance".

11. I take into account that it has always been MM's case that it is not her wish to see PA imprisoned, and I accept that (as Nicklin J has recently said in *Oliver v Shaikh*, and as Sir Michael Burton repeated in *Super-Max Offshore Holdings Ltd v Malhotra* [2020] EWHC 1130, at [6](i), a custodial sentence is a last resort.

Sanction in this case

12. In imposing a sanction for breaches of this freezing order, I take into account that the breaches in the present case were (as I have referred above: [4](iv)), deliberate and repeated acts; PA continued to use the frozen bank account over an extended period of time as if it was his own, until the account was materially depleted. The consequences were serious for MM and the children, whose proprietary interests the injunction order had been in part designed to protect. I have of course subsequently found ([2020] EWHC 2068 (Fam)) that the funds in the account actually belonged to MM. The repeated pillage of the account deprived the family of the funds which had been earmarked for, among other things, much-needed family therapy.

13. I take into account that, until today, PA had at no time admitted his wrongdoing, nor had he accepted responsibility for his breach, or expressed any remorse. He contested the contempt application, and, in so doing, put forward explanations for his

conduct which I have already described as "contrived and disingenuous". That all said, and for the avoidance of doubt, I should make clear that I have not taken into account in considering the appropriate sentence the alleged further breaches of the final order, arising from the ownership proceedings, which I made in September 2020.

14. Mr Thomas has today offered mitigation on behalf of his client. He, rightly in my judgment, concedes that this was an "extremely serious" breach of a court order. He observes that while PA used the account freely, the withdrawals were made for essentially routine household purposes, and to meet day-to-day expenses; they were not to fund separate secret investments nor to fund an extravagant lifestyle. While I make no finding about his ability to fund such purposes otherwise in the relevant period (I note that he had access to other funds) such is the way of things in this family, that even now, in spite of the highly contentious litigation, MM has taken it on herself voluntarily to support PA and their older son financially to meet their daily living costs.

15. My attention was drawn to PA's most recent witness statement, in which PA says this:

> "I would like to take the opportunity to apologise to the Court for the actions that have led to me being found to be in contempt. Since May, I have carefully reflected on the reasons given in the judgment and I accept that I should not have taken the money out of the account and I should have waited until the dispute had been determined, as that is what the Court had intended when making the freezing order. I am sorry."

Mr Weale has perfectly reasonably doubted the sincerity of this apology, given the history of this case and my findings about PA's conduct in this committal application, and in the substantive dispute. However, I myself am prepared to accept the submission of Mr Thomas that the apology is offered and meant sincerely. PA has indicated that he will "do everything [he] can" to repay the money taken; while I make no finding that PA cannot currently repay the money, I fully expect that he should repay the sum taken, when he is in a financial position to do so.

16. In considering the appropriate penalty, I have attached little weight to the 'good character' submission for the reason set out by the Court of Appeal in *Templeton* (at [10] above). However, I do have regard to the fact that PA currently cares for his older son who is still of school age; he also has regular contact with his other minor children who live with their mother. I am keen to promote family relationships not compromise them further; all of these children have suffered and are suffering the consequences of extreme parental conflict over the last two years, which has left them all (to a greater or lesser extent) scarred. I am very keen that PA should engage forthwith in family therapy – which, as I made clear in my welfare judgment, I regard as extremely important for this family – and I do not want this to be stalled or frustrated by the fact that PA is in prison.

17. For the proven, and I may add flagrant, breach of the freezing order – that is to say, the deliberate removal of sums from the frozen Pier account after the order of 22 March 2019, at all times intending to use the withdrawn sums for his own benefit – I

have taken the view that only a sentence of imprisonment is appropriate. The term of imprisonment will be 6 months. For the reasons set out in the foregoing paragraph ([16] above), and as I am anxious to bring the disputes between these parties to an end, by ensuring PA's compliance with the extant final orders, I propose to suspend this sentence for a period of 12 months. PA must realise that any further non-compliance with orders which carry penal notice will have serious and immediate consequences.

18. I propose to order that PA shall pay MM's costs of this application on an indemnity basis (see *Super-Max Offshore Holdings* above at [15]); these costs shall be the subject of a detailed assessment, including a publicly funded assessment of PA's costs, if not agreed.

19. That is my judgment.