Neutral Citation Number: [2023] EWHC 3226 (KB)

Case No: QB-2016-004092

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15 December 2023

Before:

HHJ PARFITT
(sitting as a judge of the High Court)

- -

Between:

(1) THE ALL ENGLAND LAWN TENNIS CLUB (CHAMPIONSHIPS) LIMITED **(2) THE ALL ENGLAND LAWN TENNIS GROUND PLC**	**Claimant**
- and -	
(1) BROKER 4 U LTD **(2) GARY DAVIS**	**Defendants**

- -
- -

Edward Rowntree (instructed by **Armstrong Teasdale Limited**) for the **Claimants**
The Second Defendant in person
Hearing date: 5 December 2023

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

HHJ PARFITT

HHJ Parfitt:

Introduction

1. The Claimants run the Wimbledon Tennis Championship. The Defendants provide event tickets. The Claimants bring a contempt application dated 23 October 2023 against the Second Defendant alleging that the Second Defendant has involved himself in the selling of non-debenture tickets for the Wimbledon Championship women's final of 2023, contrary to an injunction dated 22 August 2016.

2. The Second Defendant appeared in person. At the start of the hearing I asked if he wished to adjourn to enable him to obtain legal representation for which he was entitled to Legal Aid. The Second Defendant wanted to go ahead. The Second Defendant presented his case with courtesy and thoroughness. The Second Defendant did instruct lawyers to write a letter to the Claimants' solicitors in the run up to the hearing and I refer to that letter below.

3. The court heard evidence from Ms Shaw, of the Claimants' solicitors, who provided affidavits dated 23 October 2023 and 30 November 2023 and the Second Defendant, who served a witness statement dated 28 November 2023. The Second Defendant was told of his right to silence and that he did not have to give evidence. The Second Defendant wanted to put his side of the relevant events to the court and gave evidence in the witness box, maintaining the truth of his witness statement and answering questions put by Mr Rowntree for the Claimants.

4. In this judgment I give a narrative introduction, set out the parties' positions, summarise the relevant legal principles, use those principles to identify the determinative issues, and finally discuss and give my conclusions.

Narrative Context

5. The facts contained in this section were either common ground or were not controverted by the Second Defendant's evidence or submissions (to a large extent the Second Defendant would say he does not know much about them). In any event, I am satisfied on the evidence that these are established by the evidence of Ms Shaw and the material referred to in that evidence. This is the context within which the contempt allegations have to be determined.

6. On 22 August 2016 Mrs Justice May made a consent order bringing this claim to an end ("the Injunction"). In the claim it had been alleged that the Defendants were dealing in non-transferrable Wimbledon tickets. The Injunction included a penal notice and, by paragraph 5, prevented the Defendants from "(a) offering or exposing for sale or selling or transferring or in any way whatsoever trading or dealing in any tickets (except for Debenture Holders' tickets) for the annual Wimbledon Lawn Tennis Championships (hereinafter referred to as "Non-Transferable Wimbledon Tickets"); or providing or arranging for the provision by another of Non-Transferrable Wimbledon Tickets; or giving away Non-Transferable Wimbledon Tickets whether as part of a package of products and/or services or otherwise". The Second Defendant signed the Injunction.

7. As is apparent from the wording of the Injunction, there are two types of show court tickets for the Wimbledon Championships: debenture tickets and non-transferrable tickets. The key feature of non-transferrable tickets is that they can only be used by the person to whom they are allocated and such a person's genuine guest. There can be no legitimate market in non-transferable tickets. The Claimants make this clear in their public statements so that, for example, the bundle includes a page from the Claimants' website which states: "Tickets with the word "Debenture" printed on them in place of the price can be legally transferred or sold on…All other tickets are strictly non-transferable and must neither be sold nor advertised or offered for sale…Any such tickets which are transferred, advertised or offered for sale will be void".

8. The Second Defendant, while complaining in passing that he was railroaded into giving his agreement to the Injunction, accepts that it was and remains binding upon him. The Second Defendant's witness statement says: "Knowing that in 2016 we had an issue with Wimbledon and have never sourced nor procured any sort of Wimbledon access ticket ever…I had no intention of ever being involved again in the sale of Wimbledon tickets".

9. The Second Defendant's oral evidence included him saying that he knew about the Injunction and knew the difference between debenture tickets and ballot tickets (the non-transferable tickets are generally allocated through a ballot system).

10. 15 July 2023 was women's final day. Two guests of the Londoner Hotel in Leicester Square tried to attend the match on Centre Court using tickets for seats F33 and F34 in block 103 ("the Hotel Guests"). Those tickets were obtained for the Hotel Guests through the concierge service at the Londoner Hotel. Those tickets were not debenture tickets, were non-transferable tickets, and had been issued to a "James Martin" on 12 February 2023 as a result of them being purchased following success in the public ballot ("the James Martin Tickets"). The bundle includes the sales summary document in relation to that ticket purchase in the name of James Martin.

11. The face price of the James Martin Tickets was £255 each. The Hotel Guests said that they were charged £2,200 for each (so a total of £4,400). The Second Defendant's WhatsApp message to the concierge at the Hotel offered the tickets for £1,600 each ("£3,200 the pair"). There is no reliable evidence of any money changing hands.

12. The First Claimant manages the distribution and use of tickets, such as the James Martin Tickets, by an app which the public can install on their mobile phones. The app provides access to a person's Wimbledon account and that account can hold ticket details. The app can be used to display and/or electronically represent the relevant ticket for use on the day. The sales summary for the "James Martin" account, under "shipment mode", stated: "Mobile Ticket via Official Wimbledon App from May to June". The tickets were posted to that account in May 2023.

13. The First Claimant maintains a database which, as relevant, holds the details of those who have applied for tickets in the public ballot and, for those successful, links that account with the relevant tickets. The app and the database work together.

14. Generally, if a person has succeeded in the ballot and purchased two tickets then one of those tickets can be authorised for use by that person's guest. The guest downloads the

app, creates their own Wimbledon account and then the guest ticket can be allocated to the guest's entry on the database and so be accessible to the guest via that app.

15. Ms Shaw's evidence and researches demonstrate, without room for any doubt, that the address given by "James Martin" when setting up the relevant Wimbledon account was fake: the street is in Wales, the stated city is Leeds (which is, of course, in Yorkshire) and the stated postcode is in Aberdeen. Ms Shaw tried the mobile phone number provided but that was not an active number (but of course it might have been when the account was set up). The other method of communication associated with the account was an email address.

16. The email address for the James Martin account is the same as that for "Jim Marks". The Second Defendant says Jim Marks was the source of the James Martin Tickets. The Londoner Hotel, eventually, provided that email address to the Claimants as the one used as part of obtaining the James Martin Tickets for the Hotel Guests.

17. The only serious explanation for the false real-world address on the James Martin account is that the account is fake, created in the hope that the "James Martin" ticket application would be successful in the ballot and so enable off-market ticket sellers to trade in non-debenture tickets. This is what happened with the James Martin Tickets, which supports and confirms this conclusion.

18. In this instance, one of the James Martin Tickets was transferred as a guest ticket to one of the Hotel Guests. The other ticket remained in the James Martin account but the details on that account were changed so that the ticket was in the name of "Yasmine Yasmine". Yasmine was the first name of the other Hotel Guest. The Claimants do not know how that might have happened. The net result was that the app on Yasmine's telephone presented as if she was logged into the James Martin account and so she could appear to have that ticket.

19. In the event, the Claimants identified that the James Martin Tickets had been transferred and prevented the Hotel Guests from using those tickets.

20. The core of the factual issues upon which the findings of contempt depend is the nature and extent of the involvement of the Second Defendant in the process by which the James Martin Tickets came to be available to the Hotel Guests ("the transaction").

Summary of the Parties' Cases

21. The Claimants say that the Second Defendant was fully involved in the transaction and, in the course of his dealings with the Londoner Hotel concierge staff, most clearly demonstrated by screenshots of WhatsApp messages obtained by the Claimants from the Londoner Hotel, offered and/or exposed for sale the James Martin Tickets and transferred or caused the transfer of those tickets to the Hotel Guests and so also provided or arranged for the James Martin Tickets to be used by the Hotel Guests. These were not debenture tickets, and the Second Defendant would have known that, not least because the WhatsApp messages show the Second Defendant describing those tickets as being in block 103 – anyone can look on the Wimbledon Championship website and see that block 103 is not an area where there are any debenture ticket seats.

22. The Second Defendant, at the outset of his oral evidence, told me that his case was set out in his lawyers' letter of 17 November 2023 and in his witness statement.

23. I will summarise the Second Defendant's oral evidence, his closing submissions, the witness statement and his lawyer's letter. In essence they come to the same thing: there is no direct evidence against the Second Defendant and there could not be because he did nothing wrong, merely putting the hotel in touch with a potential source of what the Second Defendant thought were debenture tickets.

24. The Second Defendant's oral evidence was that he facilitated the sourcing of tickets. The Londoner Hotel was an important client, who wanted Wimbledon tickets, but the Second Defendant told them that he did not deal in Wimbledon tickets so put them in touch with Mr Jim Marks. All his dealings were as go-between, but he helped out when the Hotel told him about not getting through to Mr Marks. The WhatsApp conversations are with the Second Defendant but there were telephone calls as well which was why there is no reference to Jim Marks in the WhatsApp chats. The Second Defendant had no idea they were not debenture tickets – the Hotel staff seem to think they were from their emails, but the Second Defendant had no way of knowing. Block 103 meant nothing to the Second Defendant – he has never been inside Wimbledon. His only involvement was being on the phone and wanting his client to be happy.

25. In his closing submissions, the Second Defendant said he was a person of good character with family responsibilities whose only aim was to protect and maintain the important client relationship with the Londoner Hotel. The sale of these tickets was nothing to do with him, all he did was to act as middleman, putting the hotel's concierge staff in contact with the person who had tickets. So far as the Second Defendant was concerned that was all and he assumed that the tickets would be debenture tickets and had no way of checking otherwise: the sale was between the Londoner Hotel and their supplier and the Londoner Hotel and their guests. It was for them to check. The Claimant's case was all hearsay. There was no 100% evidence that the Second Defendant had sold or offered to sell tickets. The Second Defendant had done nothing wrong.

26. The Second Defendant's witness statement explained how important the Londoner Hotel was and that the Second Defendant dealt with their head concierge, Tom Wardley. When Mr Wardley asked about Wimbledon tickets, the Second Defendant told him that he did not deal in any form of Wimbledon tickets but could recommend someone who held debenture tickets. The Hotel could go through the Second Defendant if they wanted but the Second Defendant would not supply tickets and any payments would not be to the Second Defendant (or his company). The gentlemen the Second Defendant introduced to the concierge team was only known to the Second Defendant as Jim Marks. The concierge team called the Second Defendant on 14 July 2023 about women's final tickets and the Second Defendant asked if they had called Jim Marks but was told that they could not get in touch with him. The Second Defendant got a price for two debenture tickets and then told the Hotel to discuss directly with Mr Marks. At 10.02 the Second Defendant told them that the debenture tickets were secured, and they should contact the number that had been provided. The Second Defendant was told the client had a Wimbledon app. Later the Second Defendant told the Hotel that he had been chased for the app details. The Hotel was waiting for the client to return to the Hotel. On the morning of 15 July 2023, the Second Defendant checked with the Hotel

and that was the last he heard that day. It was the Hotel's duty to check the tickets purchased which should have been two debenture tickets. The Second Defendant had no further dealings on this matter and so all the Second Defendant did was to stand himself in good stead with his client by passing on their details for no financial reward. The Second Defendant has no idea who "James Martin" is. If guilty of anything it would be trying to assist and protect his client to source debenture tickets.

27. The Second Defendant's lawyer's letter dated 17 November 2023 followed their having taken preliminary instructions on the contempt application. Its stated purpose was to invite the Claimants to withdraw their application because there was no evidence that the Second Defendant intended to breach the Injunction. The limit of the Second Defendant's involvement was to tell Mr Jim Marks that the Hotel was looking to source debenture tickets and then confirming some details in the WhatsApp exchanges: the Second Defendant could not speak to whether that was linked to the transactions complained about in the contempt application. In any event, the evidence relied on showed that all concerned thought they were dealing in debenture tickets. The Second Defendant knows nothing about a "James Martin". The hearsay evidence relied upon will never support a contempt application and it was neither appropriate nor proportionate to not have direct evidence. There are prejudicial and vague references to other possible transactions considered illegitimate but nothing to substantiate those or link those to the Second Defendant. Finally, the affidavit describes an on-going investigation into how the name of Yasmine appeared on the retained ticket. That investigation should have been concluded before proceedings were brought, and it is not clear if any attempt has been made to trace the credit card holder for the purchase via Mr Martin's account.

The Law

28. Mr Rowntree referred me to *Masri v Consolidated Contractors* [2011] EWHC 1024 (Comm), Christopher Clarke J at [144] to [157] and I have also reminded myself of the summary in the 2023 White Book at 81.CC16 which is to the same effect:

> A person is guilty of contempt by breach of a court order only if all the following factors are proved to the criminal standard of proof: (a) having received notice of the order (being an unambiguous order) the contemnor did an act prohibited by the order or failed to do an act required by the order within the time set by the order; (b) he intended to do the act or failed to do the act as the case may be; (c) he had knowledge of all the facts which would make the carrying out of the prohibited act or the omission to do the required act a breach of the order (*FW Farnsworth Ltd v Lacy* [2013] EWHC 3487 (Ch), (Proudman J), at para.20). The test under the first factor is one of "notice" and not "actual knowledge" (although actual knowledge may go to sanction): see Warby LJ in *Cuciurean v Secretary of State for Transport* [2021] EWCA Civ 357 at [54]–[62]. Further, the act constituting the breach must be deliberate rather than merely inadvertent, but an intention to commit a breach is not necessary, although intention or lack of intention to flout the court order is relevant to penalty (ibid).

29. The Second Defendant rightly emphasised that the Claimants must prove the relevant features of contempt to a criminal standard: beyond reasonable doubt. In practical terms that means that if there is any reasonable doubt then the accused gets the benefit of it

(*Masri* at [144]. The court must be sure of any fact which is a necessary part of proving the alleged contempt (*Masri* [145] – [149]).

30. The Claimants have to prove that acts contrary to the order have been carried out by the Second Defendant (*Masri* [150(ii)]).

31. The Claimants have to prove that the Second Defendant (a) knew the terms of the order and (b) knew of the facts which made that conduct a breach (*Masri* [150]).

32. However, contrary to the suggestion in the Second Defendant's lawyers' letter, it is not necessary for the Second Defendant to know that what was being done was a breach of the order (i.e. "I know this is a breach of an injunction, but I am going to do it anyway") (*Masri* at [155]). Christopher Clarke J (as he was then) makes the forceful point that it would weaken the efficacy of injunctions if this was not the case: "a belief that it was not a breach may have rested on the slenderest of foundations or on convenient advice which was plainly wrong". That this is the law was confirmed by the Court of Appeal in *Varma v Atkinson* [2020] EWCA Civ 1602, Rose LJ at [52] to [54].

33. The Second Defendant's case stressed that the evidence against him was largely hearsay. I do not agree with this – the best evidence against him is his own admitted WhatsApp messages, but in any event, there is no prohibition against relying on hearsay evidence in civil committal proceedings, rather such evidence calls for a "flexible approach" where the evidence should be accepted or rejected with reasons given as appropriate (*McKay v The All England Lawn Tennis Club* [2020] EWCA Civ 695, Henderson LJ at [75]). I have found helpful guidance in *Sandhu UK Scaffolding v Singh* [2017] EWHC 1343 (QB), Spencer J at [55]: "I must be cautious about acting upon hearsay evidence of this kind, particularly where the criminal standard of proof applies. The proper approach in my view, however, is to look at all these allegations together and all the evidence as a whole…".

The Determinative Issues

34. There is no issue in this case about the Second Defendant's knowledge of the Injunction. It is also the case that the nature of the acts alleged against the Second Defendant are not, subject to one important exception, acts that a person could carry out without knowing about it: offering or exposing for sale or selling or transferring or causing the transfer or providing or arranging, are all actions which, if carried out at all, will in the present circumstances have been carried out deliberately and with knowledge that those actions were being done by the person doing them. On the facts of this case, but for one issue, if the Claimants prove beyond a reasonable doubt that the Second Defendant did any of those things then that proof will carry with it proof beyond reasonable doubt that the Second Defendant knew he had done those things. They cannot be done inadvertently.

35. The important exception is the object of the allegation: dealing in non-transferable tickets rather than debenture tickets. Here the position is different. Proving that the impugned transaction involved tickets within the Injunction does not, of itself, prove that the Second Defendant knew that beyond a reasonable doubt.

36. The James Martin Tickets were within the Injunction. The sales summary document and the database printouts prove that those tickets were obtained via the ballot, were not debenture tickets, and were unlawfully placed into the names of the Hotel Guests to enable those Hotel Guests to use them for entry to the women's final.

37. The Second Defendant's case is that he always assumed the relevant tickets were debenture tickets: if this assertion raises, on the evidence, doubt sufficient to mean that the court cannot be sure that the Second Defendant knew that the tickets fell within the Injunction then the committal application fails regardless of the court's findings about what the Second Defendant did.

38. This does not change the overall burden of proof: the Claimants can say, with some force, that proving the Second Defendant dealt in non-transferable tickets, raises a strong inference that he knew that was what he was doing. This then throws an evidential burden on the Second Defendant, if he chooses to present a positive case, to raise sufficient doubt to mean that the Claimants cannot proof their case to the required standard. If the Second Defendant does that then the court, on all the evidence, cannot be sure about each of the elements necessary for the Second Defendant to have acted in contempt of the Injunction.

39. Applying the relevant law to the allegations being made enables me to define the determinative issues as follows:

    i) Did the Second Defendant offer, expose for sale, sell, transfer or cause the transfer or provide or arrange the provision of the James Martin Tickets to the Hotel Guests?

    ii) If the Second Defendant did any of those things, did he do so knowing that the James Martin Tickets were non-transferrable tickets and so subject to the Injunction?

Core Findings of Fact

(1) What the Second Defendant did

40. I agree with Mr Rowntree that the best evidence available about what the Second Defendant did is the WhatsApp exchanges between the Second Defendant and the concierge team at the Londoner Hotel. The Second Defendant accepts that he was a party to those exchanges. The Second Defendant was the only participant in the WhatsApp chat from the supplier side of the transaction.

41. The Second Defendant's WhatsApp naming includes "Gary Tickets" which is a useful indication of what the Second Defendant is generally about (but of course that does not mean he was the source of the tickets on this occasion). I should add that I do not know on the evidence if "Gary Tickets" is what the Second Defendant calls himself or a name given him by those at the Hotel running that particular WhatsApp group. For present purposes I do not think it matters because whether the Second Defendant is telling the hotel, "I'm the ticket guy", or the concierge staff think, "he's the ticket guy" either way the Second Defendant being generally a source of tickets is clear.

42. It is also relevant that the transaction took place: the Hotel Guests wanted tickets; the Hotel staff took steps to obtain those tickets; a price was offered and agreed; and the James Martin Tickets were made available to the Hotel Guests for the purpose of attending the women's final on 15 July 2023. The fact that they may never have paid for them (the evidence from the Hotel emails is inconsistent) or that the Hotel may never have paid the supplier (whoever it might have been) is neither here nor there for this purpose.

43. Likewise, although this was not identified during the hearing, the uncertainty on the evidence about the extent to which the Hotel Guests were able to use the tickets is irrelevant. In reading through the bundle, I noted that the Claimants' evidence included a narrative where the Hotel Guests are stopped on entry (email to the Hotel of 11 August 2023) and the Hotel Guests are identified following a seat-check (Ms Shaw's affidavit at [24] to [26]). For present purposes, it does not matter what happened to the Hotel Guests after they had access to the James Martin Tickets, only how the Hotel Guests got access to those tickets.

44. I do bear in mind that in the seat-check version, Yasmine apparently said that she tried to use the ticket to access the debenture suite and this is consistent with the Second Defendant's general assertion that all involved assumed the James Martin Tickets were debenture seats.

45. A final general point is that the WhatsApp messages are the only artefact type evidence in this case which evidence the real time progress of the transaction. The other evidence, including the various emails from employees of the Londoner Hotel and the reported conversations with the Hotel Guests, is narrative after the event. The Hotel emails suffer from the problems inherent in any narrative reconstruction: the author of the text has purposes which influence the narrative being given. The Hotel concierge staff are clearly trying to minimise their own involvement in the acquisition of unlawful tickets for their guests. The WhatsApp messages are not narratives in this sense: their predominant purpose is to further a transaction between one side who wants tickets and another side who has tickets.

46. Finally, before setting out the relevant content of the WhatsApp messages, it is clear that there are more WhatsApp messages than what the Claimants have been sent by the Londoner Hotel. This is no criticism of the Second Defendant or the Claimants. There is no obligation on the Second Defendant to give disclosure (should his own WhatsApp have a more complete record) and the Claimants are not bound to try and get more evidence out of the Hotel before making their application.

47. I bear in mind, as the Second Defendant asks me to do regarding unevidenced telephone calls, that there were other communications. I have only set out those messages which I am confident refer to the transaction. There are other messages which could refer to this or could refer to something else. I have left those out of account but have considered if there is a realistic prospect (as opposed to a fanciful one) that such messages might assist the Second Defendant – the process is easier than it might be otherwise since often messages contain within them the text to which they are a response.

48. The WhatsApp messages start at page 80 of the bundle. I have typed them as written and I understand "gal" to refer to the Second Defendant:

i) At 08.10 on Friday 14 July the Second Defendant adds to an existing thread (which I do not have) but in which the Second Defendant appears to have written "ladies final" a new message which said: "Morning all ladies final 103 @ £3,200 the pair"

ii) At 10.02 the Hotel responded "confirmed"

iii) At 10.13 the Second Defendant said: "All confirmed awaiting ticket distribution"

iv) At 11.28 the Hotel said: "Guest has Wimbledon App fyi gal"

v) At 12.52 the Second Defendant in response said "please may I have"

vi) At 12.58 and 12.59 the Hotel sent messages to the Second Defendant, "Just waiting for email" and "for tomorrow finals tickets"

vii) At 15.25 the Second Defendant said "Great please get me when you can the other details of the lead name they go all go over later this evening [handshake emoji]"

viii) At 15.39 the Hotel provided the email for Yasmine (underneath the Second Defendant's 08.10 message)

ix) At 20.00 the Second Defendant appears to send two messages, the first of which might be a partial copy of the email message (it repeats the 103 and the Yasmine email) and the second of which said "Please confirm full name"

x) At 20.01 the Hotel said "one of the boys will send asap gal"

xi) At 20.34 and 20.49 the Second Defendant sent in response "Please"; "Chaps I need this please" and "They are waiting to send"

xii) I suspect there is then a gap because a new employee is added to the chat participants but there is then nothing further in the copied messages for Friday.

xiii) On the morning of Saturday 15 July 2023 the Second Defendant messaged at 08.38 "Good Morning all I'm about to go out for day just checking all is in place and clients have there details for the Ladies Final this afternoon"

xiv) At 08.44 possibly two different Hotel employees said "it's all sorted :)" [thumbs up] and "thanks again!"

xv) Finally, at 08.44 the Second Defendant sent [a big tick] and [a handshake emoji].

49. On the basis of this material I reject the Second Defendant's assertion that he did nothing more than put the Hotel in contact with a third party, "Jim Marks", and/or that all the Second Defendant did was act as a middleman just helping a client, in the sense of not carrying out any activity that was relevant to the transaction beyond putting two parties in touch with each other.

50. On the contrary, I am sure that the Second Defendant's role involved much of the substantial contact with the Hotel necessary to both agree and complete the transaction. In particular, there can be no doubt that the Second Defendant made the offer to the Hotel. The message of 08.10 could not be clearer in this respect. There is also no doubt that the Second Defendant gave the confirmation on the supplier side ("confirmed" at 10.13) and sought the details of the relevant guests to facilitate the transfer of the tickets (messages of 15.25; 20.00; 20.49)

51. It is fanciful to suggest otherwise than the Second Defendant was the Hotel's main point of contact to facilitate the transaction. Indeed, during his cross-examination of Ms Shaw, the Second Defendant put it to Ms Shaw that all he had done was "organise on behalf of the client".

52. Later, the Second Defendant sought to resile from that, but "organise", in the sense of "putting together" or "arranging", is a reasonably accurate description of the minimum of what the Second Defendant was doing.

53. It is wrong to say that this was on behalf of the Hotel (that is who the Second Defendant intended to mean by "client"). The Second Defendant's position in the WhatsApp exchanges was plainly (and only) on the supplier side of the transaction. This is not to say that it was not intended by the Second Defendant to be for the benefit of the Hotel nor that the Second Defendant might not have involved himself as he did without the motivation to further his relationship with a good client. But the position of the Second Defendant within the transaction structure was clearly on the supplier side.

54. There is no doubt that the James Martin Tickets were not debenture tickets and that they were ballot tickets (as described by the Second Defendant) or non-transferrable Wimbledon tickets (as described by the Claimants). In short, whatever label is used, they were tickets falling within the Injunction.

55. On the basis of the WhatsApp message offering the James Martin Tickets at a price of £3,200 the pair, I am sure that the Second Defendant offered and exposed for sale tickets which were the subject of the Injunction.

56. It matters not whether the Second Defendant was acting on his own behalf in making that offer or whether he was acting as the agent of a third party or whether he was acting together with the third party with a view to both of them making money out of the transaction or if the Second Defendant's only interest was to further his relationship with the Londoner Hotel. Whichever way you look at it, the Second Defendant said to the Hotel "ladies final 103 @ £3,200 the pair": this was both an offer and exposing tickets for sale.

57. Keeping that finding in mind, I am also sure that the Second Defendant caused the transfer of the James Martin Tickets. This was done by the Second Defendant communicating the offer, dealing with the process leading up to the "confirmed" exchange at 10.13, then obtaining the information needed for the transfer of the tickets to the Hotel Guests (messages of 15.25, 20.00. 20.34 and 20.49). These interactions were an important and significant part of bringing about the transfer which involved someone (who for this purpose might have been the Second Defendant or might have been a third party) making use of the information sought by the Second Defendant. The

Second Defendant's involvement to that extent, regardless of who might have done the actual transfer, caused the transfer of the James Martin Tickets in a manner that was a breach of the Injunction.

58. Causation is often an elusive concept within the law but for present purposes I ask myself, bearing in mind the criminal nature of the process and that the court must be sure that the Injunction has been breached and that any real doubt will mean that the Claimants cannot succeed on this issue, whether as a matter of fact and degree the conduct proven against the Second Defendant caused the transfer. In my judgment it did: what was required was a communication of offer and acceptance and a passing of information which would enable the Hotel Guests to access the tickets on their mobile phones. The Second Defendant's conduct brought those things about even if there were others involved.

59. It follows from those findings that I am also sure that the Second Defendant provided and arranged for the provision of the James Martin tickets: again his involvement in the making and operation of the transaction allows for no other conclusion.

60. For what it is worth, the conclusion of Mr Charles Oak, director of the Londoner Hotel, who reported his investigation to the Claimants' solicitors by email dated 26 July 2023 was to much the same effect: the ticket broker, who was the Second Defendant, responded with a price for the tickets, the Hotel Guest confirmed, the concierge confirmed the transaction with the Second Defendant, the Second Defendant asked for and received the relevant details and then the Second Defendant confirmed that "Jim Marks" had transferred the tickets. This is what the WhatsApp messages demonstrate: the Second Defendant acting as the ticket broker for the transaction.

61. In his closing submissions, Mr Rowntree did not press the allegations of "sold" and "transferred". I can understand why. There is some uncertainty on the evidence that the Second Defendant "sold" or "transferred" the James Martin Tickets. This is because I cannot be certain that there is not a third party who did have the James Martin Tickets and took the final steps to make the purported transfer. The particular reason why I have sufficient doubt in this respect is how the Second Defendant worded the message at 20.49 "they are waiting to send". This could be that the tickets are waiting to be sent or it could be that some third parties are waiting for the information so that those third parties are going to send the tickets. It could also be that this "they" is just a smoke screen. But there is some doubt about it and that doubt is enough to mean I do not find that the Second Defendant sold or transferred, even though he was directly involved in and brought about the transaction by his conduct.

62. I suspect, also, that this is a situation where the existence of the other restrictions on the Second Defendant in the Injunction and the allegations of contempt in relation to those restrictions meant there was less forensic focus on the allegations of "sale" and "transfer". If that had been the sole focus of the alleged contempt, then the outcome may well have been different but on the evidence and case as presented, there is just about sufficient doubt.

(2) What the Second Defendant thought

63. I am sure that the Second Defendant knew that he was offering, exposing for sale, causing the transfer, providing and arranging for the provision of the James Martin Tickets. In this respect his motivation is not relevant: e.g. I was not selling the tickets but only trying to help my customer. But, in any event, the Second Defendant needed to do the things that have been proven against him so that he could assist his client – finding difficult to source tickets for guests of the Londoner Hotel was no doubt the essence of that relationship and was of general commercial benefit to the Second Defendant.

64. However, the Second Defendant says that he always thought these were debenture tickets. Since the James Martin Tickets were not debenture tickets, this raises whether the Second Defendant was not in contempt because he thought, wrongly, he was dealing in debenture tickets.

65. I have not been addressed on whether recklessness might be sufficient for the purposes of civil contempt: since the Injunction allows dealings in debenture tickets, is it sufficient for the Claimants to prove that the Second Defendant was reckless as to the nature of the tickets he was dealing in and/or choose not to ask? (if that is different). As this has not been argued, I have made assumptions in favour of the Second Defendant but my view would be that recklessness, if proven to the beyond reasonable doubt standard, would be sufficient (if not then the problem identified by Christopher Clarke J would arise of flimsy or "fig-leaf" deniability).

66. However, I will assume that it is necessary for the Claimants to prove beyond reasonable doubt that the Second Defendant knew that he was dealing in non-debenture tickets.

67. The Second Defendant's case is that he always thought he was dealing with debenture tickets. However, he provides no evidence of facts which would make that conclusion realistic or potentially substantial. At most, the Second Defendant's evidence presents an assumption that the tickets were debenture tickets.

68. It is striking that on many occasions when the tickets or potential tickets are referred to in the Second Defendant's witness statement they are described as debentures but in the WhatsApp messages nobody refers to debenture tickets (e.g. we only want debenture tickets or I can offer you debenture tickets and so on). Reading the witness statement, I am reminded of the initial emails to the Claimants' solicitors from the Hotel's concierge service which also make many references to "debenture" tickets. Making many references to "debenture tickets" after the balloon has gone up, does not make it any more likely that those involved thought they were dealing in debenture tickets at the time. A key indicator would be some fact which would support that conclusion or some communication of that intention in the WhatsApp exchanges. The Second Defendant's likely answer to this point would be there were telephone communications as well but there is no evidence of any communications during which there was discussion about debenture tickets and the lack of any mention of debenture in the brief WhatsApp exchanges remains telling in the context.

69. I am sure that, contrary to his assertions to the court, the Second Defendant did know that the transaction concerned non-debenture tickets and so tickets caught by the Injunction. This is for the following reasons:

i) The distinction is a binary one: tickets are either debenture tickets or they fall within the Injunction. It is not a generally a difficult distinction.

ii) The Second Defendant was well alive to the distinction: it is set out in the Injunction and the Second Defendant confirmed as much in his evidence. The Second Defendant's business is selling tickets. The Second Defendant is a knowing participant in the ticketing world, even if, as he says, he made the decision to keep away from Wimbledon tickets after the 2016 experience and the Injunction.

iii) The Second Defendant's witness statement asserted that since 2016, the way he has dealt with the existence of the Injunction was to ignore Wimbledon tickets altogether. It is to be expected then that if he was to change that policy for the sake of his client relationship with the Londoner Hotel that he would be particularly careful to ensure that the proposed transaction concerned debenture tickets. A person who intended not to breach this Injunction would likely take steps to satisfy themselves that this transaction only involved debenture tickets.

iv) In fact, the transaction did not concern debenture tickets: the James Martin Tickets were ballot tickets and were non-transferable. Of itself, that creates the basis for a reasonable inference that this was known – people are more likely to know what was happening than what was not happening. At the most basic level this is a fact that existed and could be known. Nothing of the kind can be said about the possibility that these tickets were debenture tickets: they were not, never were and could not be debenture tickets. The Second Defendant's position depends on showing (in the sense of raising a real doubt) that he believed something which was not true regarding the James Martin Tickets. It could never be true: non-transferable tickets cannot become debenture tickets.

v) The Second Defendant says nothing in his evidence about what he knew regarding the source of the tickets beyond referring to "Jim Marks" and not having any idea who "James Martin" was. However, the risk of non-transferrable tickets being available would have been known to the Second Defendant (both as a person involved in the ticket trade and as a person who was subject to the Injunction). As a generality the tickets being non-transferrable was relatively likely rather than relatively unlikely. To put the same point a different way, it would not have been a surprise to the Second Defendant if non-transferrable tickets were available in the run up to Wimbledon finals' weekend. It was the likelihood of this general risk that presumably informed his decision not to have anything to do with Wimbledon tickets since 2016, as he said in his witness statement.

vi) The James Martin account was not genuine. Its purpose was to enable ballot tickets to be accessible to the unlawful market in non-transferrable tickets. It was essentially a dishonest account set up to mislead the First Claimant into providing tickets that could be unlawfully sold on.

vii) There is an absolute connection between "James Martin" and "Jim Marks". They use the same email address (and common initials and similar names).

viii) The Second Defendant provides no evidence about Jim Marks (who he alleges he knows) and no evidence about the basis on which Jim Marks might have been able to access debenture tickets, e.g. that Jim Marks was a debenture holder or Jim Marks had purchased debenture tickets from "x" or that Jim Marks had shown the Second Defendant debenture tickets and so on. There is no evidence from which the Second Defendant would have formed an actual belief that the James Martin Tickets were debenture tickets. The court is merely asked to accept the Second Defendant's conclusive assertions in this respect as being sufficient to raise a reasonable doubt.

ix) The Second Defendant's knowledge that the James Martin Tickets were for block 103 was itself sufficient information to establish that the tickets were not debenture seats. No doubt the Second Defendant provided this information on the WhatsApp because it was important to the Hotel Guests to know what they would be getting for their money. It is highly likely that the Second Defendant gave that information because he knew it was relevant and so was aware in general terms where those seats were. There is only a hair's breadth between that knowledge and knowing that block 103 contains ballot seats and not debenture seats (it would be apparent from the Claimants' website for example).

x) There is no reference in the WhatsApp messages by which the transaction proceeded to the tickets being debenture tickets. Given the significance of the distinction this is telling: these are all knowing parties (demonstrated by the enthusiasm with which "debenture" is referred to after they are discovered) and so, if the intention was to deal in debenture tickets that would have been an important matter to state clearly – in the circumstances an important attribute of the proposed transaction – but if it was known that these were not debenture tickets then the type of ticket would neither be mentioned nor asked about.

xi) I also bear in mind the partial and incomplete emails sent by the Hotel's concierge team to the Claimants' solicitors when they started to investigate the transaction. Despite the WhatsApp messages, the impression given in those first emails was that the concierge staff only dealt with Jim Marks and then only over the telephone. This was not the case. The emails are just what might be expected to be written if the concierge staff were seeking to cover up their understanding of the real transaction involving their familiar supplier, the Second Defendant. Eventually, the Hotel's director told the Claimants the Second Defendant's name as the ticket broker for this transaction.

xii) I had the benefit of watching the Second Defendant be cross-examined. The overall impression, for what it is worth, was of a person who believed he could talk and charm his way out of the problem rather than a person who had not knowingly done it in the first place.

70. The outcome of all that evidence, starting with the WhatsApp messages and making proper inferences from the overall context within which this transaction took place, bearing in mind the Second Defendant's evidence, is that I am sure that the Second

Defendant knew the James Martin Tickets were non-transferable Wimbledon Tickets and not debenture tickets.

71. I recognise that this conclusion is based on inference from the relevant web of evidence which surrounds the Second Defendant's involvement in this transaction. That process is entirely usual when the court is making findings of dishonesty and breaches of injunction orders (e.g. in a committal context *JSC BTA Bank v Mukhtar Ablyazov* [2012] EWCA Civ 1411, Rix LJ at [52])

72. What is essential is that the court is sure that there are no other circumstances or explanation which arise from the circumstantial evidence and which would exonerate the defendant. There are no such circumstances in the present case. Indeed, the Defendant provides no explanation for why he considered the James Martin Tickets were debenture tickets and in all the circumstances set out above, inference of guilty knowledge is compelling.

73. I add that I would have found, if asked to, as an alternative and for the same reasons that the Second Defendant, even if he did not know that he was dealing with non-transferrable tickets was, at best, reckless as to whether he was dealing with non-transferable tickets and/or shut his eyes to the obvious.

Conclusion

74. The Claimants have proven beyond reasonable doubt that the Second Defendant on 14 and 15 July 2023 and contrary to the Injunction dated 22 August 2016 offered and exposed for sale, caused to be transferred, provided and arranged for the provision of non-transferable Wimbledon Tickets, namely two tickets for block 103 for centre court on 15 July 2023, knowing that those tickets were non-transferable Wimbledon Tickets within the meaning of the Injunction.

75. I will arrange for this judgment to be circulated to the parties and handed down at a hearing expected to be at 10.30 am on 15 December 2023, at which it is my intention to consider the appropriate response of the court in respect of the contempt found (see CPR 81.9) and any issues about costs. The Second Defendant (or any legal representative instructed on his behalf) is entitled to address the court prior to such sentencing (which may include a term of imprisonment, which might be suspended, or a fine or both).

76. If an unsuspended committal order should follow, the Second Defendant is entitled to appeal this judgment without permission being required to the Court of Appeal (Civil Division) and he has 21 days to make such an appeal starting from the date on which this judgment is handed down (which is likely to be 15 December 2023). If an order other than immediate committal is made, then permission to appeal is required.