IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

No. CL-2016-000249

Rolls Building
Wednesday, 3rd August 2016

Before:

MR. JUSTICE POPPLEWELL

B E T W E E N :

ALFA-BANK — Claimant/Applicant

- and -

REZNIK — Defendant/Respondent

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MR. PATTON (instructed by Herbert Smith Freehills LLP) appeared on behalf of the Claimant/Applicant.

THE DEFENDANT/RESPONDENT did not appear and was not represented.

J U D G M E N T

(Approved)

MR. JUSTICE POPPLEWELL:

1 This is an application by the Claimant ("the Bank"), originally issued on 10 June 2016 for the committal of the defendant, Mr. Reznik, on the grounds that he has failed to comply with the asset disclosure provisions in a worldwide freezing order, which was granted originally by Knowles J at a without notice hearing on 25 April 2015, and was, subsequently, continued by him on 9 May 2016 ("the WFO").

2 I remind myself that the standard of proof to be applied is the criminal standard, such that I must be sure on the evidence before me of the elements of contempt which the Bank is required to prove.

3 The background to the WFO is that Mr. Reznik is a Russian businessman. The Bank advanced lending facilities to a Russian company called CJSC Firma ANTA ("ANTA"), which is within a group of companies which Mr. Reznik is believed to own. In June 2014, Mr. Reznik provided a personal guarantee of ANTA's debt, which was governed by English law and subject to LCIA Arbitration in London. On 5 April 2016, the Bank purported to accelerate the whole of the outstanding debt owed by ANTA and, on 22 April 2016, it served a demand on Mr. Reznik pursuant to the guarantee.

4 The WFO was granted by Knowles J in aid of the claim by the Bank in an LCIA Arbitration, exercising the powers under s.44 of the Arbitration Act 1996. That arbitration was commenced by the Bank on 6 May 2016, pursuant to an undertaking given to Knowles J.

5 The WFO was in standard Commercial Court form. It bore a penal notice at the beginning of the order. Paragraph 4 contained the freezing injunction restraining any dealing with or disposal of Mr. Reznik's assets up to an aggregate value of US$15,462,228.40 and €2,270,846.62.

6 The asset disclosure provisions were in paras.8 and 9 of the WFO. Paragraph 8.1 provided:

> "Unless paragraph 2 applies [the standard provision allowing a claim for the privilege against self-incrimination] the respondent must within 72 hours of service of this order, and to the best of his ability, inform the applicant's solicitors of all his assets worldwide exceeding $10,000, whether in his own name or not and whether solely or jointly owned, giving the value, location and details of all such assets."

Paragraph 9 provided

> "Within five working days after being served with this order, the Respondent must swear and serve on the applicant's solicitors an affidavit setting out the above information."

Paragraph 20 provided

> "The applicant is permitted to serve the arbitration claim form, this order and any other documents in the proceedings out of the jurisdiction on the respondent by internationally-recognised courier and/or by way of personal service at 4-Y Asmani Pera Urloc, Apartment 16, Moscow Russia, or elsewhere where the respondent may be found in Russia."

7 The WFO was personally served on Mr. Reznik on 29 April 2016. I can be sure that that is so on the basis of the evidence before me. In particular Mr. Keillor adopts Ms Fot's affidavit confirming such personal service. Although Ms Fot had not seen Mr. Reznik before, I can be sure that the individual on whom the order was served was Mr. Reznik, because service took place at an apartment at 19 Klimashkina Street, which is the location of the apartment which Mr. Reznik had given as a gift to his son. On the occasion of service, the doorkeeper had informed Ms Fot that apartments 33 and 34 belonged to Mr. Reznik and the service took place at one of those apartments. Before handing over the order, Ms Fot phoned up to one of the apartments and spoke

to a man who confirmed that he was Mr. Ilya Arkadyevich Reznik, and Ms Fot recognised Mr. Reznik from a photograph she had seen of him in the newspapers. That conclusion is consistent with the finding recorded by Knowles J in a recital to his order of 9 May continuing the WFO, that he was satisfied that Mr. Reznik had been served with the WFO, albeit that he was only concerned with the civil rather than criminal standard of proof. The committal application was personally served in the presence not only of Ms Fot, but of a representative of the Bank who was familiar with Mr. Reznik's appearance. Ms Fot was again present when the committal application was re-served, as I shall explain. The affidavit of Miss Semanova strongly supports the conclusion that Mr. Reznik is well aware of the WFO.

8 Accordingly, that personal service, having taken place on 29 April 2016, the time limit for provision of information about his assets expired on 2 May 2016 or, possibly, at the latest on 3 May 2016. The time limit for the provision of the affidavit about his assets expired on 11 May 2016.

9 Mr. Reznik did not provide any of the information about his assets which was required by paragraph 8 of the WFO, nor any affidavit of assets as required by paragraph 9 of the WFO, within the time required. Indeed he still has not done so. Indeed, he has still failed to do so. I find that he was and remains in breach of paragraphs 8 and 9 of the WFO by reason of those failures.

10 As I have explained, on 9 May 2016 the WFO was continued. On 10 June 2016 this committal application was issued. The committal application and the supporting evidence was personally served on Mr. Reznik in a parking lot near Dorogomilovsky market on 22 June 2016. Again, I have no doubt that what happened on that occasion was personal service and I have no doubt that Mr. Reznik is well aware of this committal application.

11 The committal application was, as the papers indicated, due to be heard on 8 July 2016 and came before Blair J on that day. Mr. Reznik did not attend. That may have been because he was subject to a restriction imposed by a Russian court as a result of unrelated litigation which restricted his ability to leave the country, at least until some date in September. Whether or not that was the reason for his personal absence, it is to be noted that he was not represented and had given no indication prior to that hearing of a desire to participate in it in any way.

12 In the light of that position, Blair J adjourned the application, so that Mr. Reznik could be served with a letter explaining that his imprisonment was being sought and so that a videolink facility could be provided for him to attend and participate in the reconvened hearing from Moscow.

13 In accordance with that order, the application and the evidence, together with the letter warning him of the consequences of failing to comply, were served again on Mr. Reznik on 22 July 2016, by leaving them on the table at which he was sitting and informing him that they constituted an application to commit him and that he could be imprisoned for up to two years.

14 That was a little less than 14 days prior to this hearing. That is because, despite the Bank's best efforts, Mr. Reznik appeared to be seeking to evade service and that was the earliest time at which the Bank had been able to effect service. That is not a reason why this hearing should not proceed: Mr. Reznik had previously been served with the same application on 22 June 2016; he had been sent a further copy of the application by email on 19 July 2016; and it is clear from the evidence that he is well aware of this hearing. Insofar as it is necessary, I will order an abridgement of the 14-day period.

15 At the hearing this morning, videolink facilities were in place, as Mr. Reznik was informed they would be. He has not taken advantage of them. He did not attend to give evidence. Nor did any representative attend either at the video link facility in Moscow or in court in London.

16 The first question which I have to address, therefore, is whether this committal application hearing should proceed in the absence of Mr. Reznik or whether there should be a further adjournment. The relevant principles are

those set out by Roth J in ***JSC BTA Bank v. Stepanov*** [2010] EWHC 794 Ch. at para.12, and Briggs J, as he then was, in ***JSC BTA v. Solodchenko*** [2011] EWHC 1613 Ch. at 13.

17 Applying those principles, the first consideration is the reason for Mr. Reznik's absence. As I have identified, he is subject to a restriction imposed by the Russian court and, consequently, his absence from this court room may be explicable for that reason. However, the videolink facility in Moscow has been made available pursuant to the order of Blair J and it is clear that Mr. Reznik has decided not to avail himself of it. That has come as no surprise because the evidence of conversations in Russia involved him making clear that he did not intend to participate in this hearing. He has taken no steps, so far as the Bank is aware and so far as I am aware, to instruct solicitors or counsel within the jurisdiction, who could have represented him at this hearing. He has previously defended Russian proceedings and it is, in my judgment, a proper inference to be drawn that he has the means to instruct representation, should he so desire. Indeed, legal aid might very well be available to him even if he did not have the means. It would have cost him nothing to attend via the videolink even without English representation. The conclusion I draw is that, notwithstanding the travel restriction, I am sure that his absence and non-involvement can properly be said to be deliberate.

18 There is no reason to think that a further adjournment which, in any event, has not been sought by Mr. Reznik, would improve the prospects of his appearing or, otherwise engaging constructively with the present application. His stance throughout these proceedings has been one of defiance, simply ignoring applications and orders and, in the case of this application, refusing to accept service. He has already had ample time to respond to the application and to serve evidence. He has repeatedly been invited to seek English law advice. There is no evidence that he has ever done so or will do so. It is fair to conclude that he has waived any right to legal representation.

19 The effect of the disadvantage to Mr. Reznik in not being able to give his account is not one that carries any weight in the discretion, because his decision not to participate in the proceedings means that he has, effectively, chosen not to give his account of events.

20 The alleged contempt in this case is undoubtedly a serious one and, most importantly, it is in accordance with the public interest that the hearing of this committal application should proceed within a reasonable time, because the purpose of a committal is only in part to punish. One of the major purposes of committal is to encourage compliance with the order which has been breached, in order to give effect to the purpose for which that order was originally made. The WFO was made, in this case, in order to protect the Bank's position against concealment and dissipation of assets and, as is well

known, the asset disclosure aspect of the order is an important part of the protection which is afforded by any such order; without it the Bank are seriously prejudiced in being able to police the order and to enable it to be an effective protection.

21 For all those reasons, I conclude that it is right that I should proceed to deal with the application today.

22 Moving, therefore, to the substance of the application, it will be apparent from what I have already said that, for the reasons I have already given, I find the contempts proved. In particular, I am sure that the WFO with a penal notice was personally served, that Mr Reznik was aware of and understood the terms of paragraphs 8 and 9 of the WFO, was aware that he was failing to comply with them; and intended such non-compliance. I will formally declare that the Bank has proved to the criminal standard that Mr. Ilya Arkhajavic Reznik is in contempt in two respects, firstly, by failing to provide any information about his assets worldwide exceeding $10,000, whether within 72 hours of service of the WFO or at all, and, secondly, by failing to provide an affidavit setting out that information, whether within five working days of service of the WFO or at all.

23 The next question is whether I should now proceed to sentence. One option would be to adjourn before proceeding to sentence. That is a course which is sometimes appropriate in order to afford the contemnor an opportunity to

purge his contempt, or to explain his position, or to adduce evidence of mitigating facts, all of which the court might want to take into account in determining the appropriate sentence. However, in this case, it is apparent from the whole history of the proceedings that Mr. Reznik has no intention of complying with the relevant obligation in the WFO and has no intention of engaging with the court. His past behaviour suggests that he has no intention of engaging with this process from where he is in Moscow. The present application has already been adjourned once to no avail, and any continuing delay will, as I have explained, prejudice the Bank.

24 In those circumstances, I have concluded that an immediate custodial sentence is the one thing which is most likely to bring Mr. Reznik to a realisation of the seriousness with which this court takes the matter, and to provide the best prospect of belated engagement and compliance with the order.

25 The principles which are applicable to sentencing in relation to a failure to comply with asset disclosure provisions in a worldwide freezing order have been identified in a number of authorities, the effect of which I sought to summarise in my judgment in *Asia Islamic Trade Finance Fund Ltd v. Drum Risk Management Ltd* [2015] EWHC 3748 Com. at para.7:

"I was referred to a number of relevant authorities, including *Crystal Mews Limited v Metterick & Others [2006] EWHC 3087 (Ch)* at paras.8 and 13, *Trafigura Pte Ltd v Emirates General Petroleum Corporation* [2010] EWHC 3007 (Comm), *JSC BTA Bank v Solodchenko* [2011] EWHC 2908 (Ch), *JSC BTA Bank v Solodchenko (No 2)* [2012] 1 WLR 350 at paras.52 to 57 and 66 to 67, *Templeton Insurance Limited v Thomas & Panesar* [2013] EWCA (Civ) 35 at para.42, *JSC VTB Bank v Skurikhin* [2014] EWHC 4613 (Comm) and *ADM Rice Inc v Corporacion Comercializadora de Granos Basicos SA* [2015] EWHC 2448 (QB). From those authorities I derive the following principles which are applicable to the present case:

(1) In contempt cases the object of the penalty is to punish conduct in defiance of the court's order as well as serving a coercive function by holding out the threat of future punishment as a means of securing the protection which the injunction is primarily there to achieve.

(2) In all cases it is necessary to consider (a) whether committal to prison is necessary; (b) what is the shortest time necessary for such imprisonment; (c) whether a sentence of imprisonment can be suspended; and (d) that the maximum sentence which can be imposed on any one occasion is two years.

(3) A breach of a freezing order, and of the disclosure provisions which attach to a freezing order is an attack on the administration of justice which usually merits an immediate sentence of imprisonment of a not insubstantial amount.

(4) Where there is a continuing breach the court should consider imposing a long sentence, possibly even a maximum of two years, in order to encourage future cooperation by the contemnors.

(5) In the case of a continuing breach, the court may see fit to indicate (a) what portion of the sentence should be served in any event as punishment for past breaches; and (b) what portion of a sentence the court might consider remitting in the event of prompt and full compliance thereafter. Any such indication would be persuasive but not binding upon a future court. If it does so, the court will keep in mind that the shorter the punitive element of the sentence, the greater the incentive for the contemnor to comply by disclosing the information required. On the other hand, there is also a public interest in requiring contemnors to serve a proper sentence for past non-compliance with court orders, even if those contemnors are in continuing breach. The punitive

element of the sentence both punishes the contemnors and deters others from disregarding court orders.

(6) The factors which may make the contempt more or less serious include those identified by Lawrence Collins J as he then was, at para.13 of the *Crystal Mews* case, namely:

(a) whether the claimant has been prejudiced by virtue of the contempt and whether the prejudice is capable of remedy;

(b) the extent to which the contemnor has acted under pressure;

(c) whether the breach of the order was deliberate or unintentional;

(d) the degree of culpability;

(e) whether the contemnor has been placed in breach of the order by reason of the conduct of others;

(f) whether the contemnor appreciates the seriousness of the deliberate breach;

(g) whether the contemnor has co-operated;

to which I would add:

(h) whether there has been any acceptance of responsibility, any apology, any remorse or any reasonable excuse put forward.

26 Applying those factors and, in particular, the factors identified in sub-para.6 of para.7 of that judgment, I conclude, first, in relation to prejudice to the claimant, that the Bank has been significantly prejudiced for the reasons which I have explained. The lack of disclosure is one which I conclude has been calculated to enable Mr. Reznik to move his assets with impunity and the protection which the WFO is intended to afford the Bank depends to a considerable extent, upon the Bank being able to notify third parties, which it is prejudiced from doing by the failure to comply with the asset disclosure aspect of the WFO.

27 As to whether the breach of the order was deliberate or unintentional, I conclude that Mr. Reznik's non-compliance has been deliberate and wilful. There is no reason to think that Mr. Reznik's non-compliance is the result of him acting under pressure. The WFO was personally served on him, together with a Russian translation. It prominently bore the standard penal notice, it was accompanied by a letter from the Bank's solicitors in both English and Russian marked "urgent", which drew his attention to the effect of the WFO, including the penal notice, and what could happen if he breached the WFO, and the obligations imposed on him by paragraphs 8 and 9 of the WFO. It suggested that he seek legal advice and it notified him of the return date of the hearing. The Bank's solicitors have written to Mr. Reznik on three further

occasions, on 4, 11 and 16 May 2016 drawing his attention to the importance of compliance with the WFO and the consequences of his failure to do so.

28 The application notice for the committal prominently displayed the warning required by PD81 13.2(4). That reinforces the consequences of a finding of contempt. The letter served in accordance with the order of Blair J emphasised the desire of the English court that Mr. Reznik should comply with the WFO. When effecting service, Mr. Khretinin orally emphasised the importance of obtaining English legal advice and the consequences of non-compliance. Despite all those matters, Mr. Reznik has simply decided to ignore the WFO and the current application. He failed to take any part at the return date on 9 May 2016; he failed to answer any of the Bank's solicitor's letters; he ignored the original committal application due to be heard on 8 July 2016; and he has ignored the current hearing. He has not sought at any stage to engage with the process, to advance evidence or to be legally represented. I have no doubt that all of this conduct is a deliberate and wilful disobedience to the order of the court.

29 The degree of culpability involved, therefore, I regard as a high one. The order which he has breached is a very important aspect of the WFO and he has deliberately ignored it. There is no reason to think that anyone else has been involved. The responsibility is his and his alone. He must have appreciated the seriousness with which this court took his breach. The letters from the

Bank's solicitors, the penal notice and the other matters that I have referred to must have brought that home to him. He has not cooperated in any way. He has not shown any apology or remorse. He has not put forward any explanation or excuse for failing to comply with the order.

30 I conclude, therefore, that, in order to punish the contempts and in order to encourage compliance now with the WFO, I should impose a sentence of 18 months' imprisonment in respect of each of the two contempts which I have found, which are to run concurrently with each other.

31 I should say finally, so that Mr. Reznik is aware of this when he reads this judgment, that I do not propose now to identify what element of that sentence would have to be served, in any event, for past breaches, should there now be full and prompt compliance with paragraphs 8 and 9 of the WFO. However, I would urge Mr. Reznik now to comply fully and promptly with those provisions so as to remedy his contempt. I should make clear that, if there were such full and prompt compliance, he will be entitled to seek to discharge or reduce the sentence of imprisonment which I have imposed and, should there be now full and prompt compliance, I would expect that a very significant proportion of that sentence would be remitted, although ultimately that will be a matter to be decided if those circumstances arise.