



2016 EWHC 2978 (CH)

Case No: CR-2016-002292

**IN THE HIGH COURT OF JUSTICE**  
**CHANCERY DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Tuesday 13<sup>th</sup> September 2016

**Before:**

**MR. JUSTICE NUGEE**  
**(In Private)**

**Between:**

**Brian Johnson & Abigail Jones**  
**- and -**  
**Keir Argent**

**Applicants**

**Respondent**

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**Mr J. Pickering** (instructed by **Howard Kennedy LLP**) for the **Applicants**  
**The respondent was not present and was not represented**

Hearing dates: 13 September 2016  
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**JUDGMENTS**  
**(As approved by the Judge)**

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**Mr. Justice Nugee :**

**Judgment (1)**

- 1 I will say that I have been most helpfully referred, by Mr. Pickering, to the recent judgment of Warren J in *Taylor v Van Dutch Marine Holding Limited & Ors.* [2016] EWCH 2201 (Ch) at para. 54 where he deals with the principles applicable to proceeding with an application for contempt in the absence of the alleged contemnor, and I propose to proceed in his absence.
- 2 In terms of that checklist, I am satisfied that Mr. Argent has been served with the relevant documents, and the notice of this hearing. I am satisfied that he has had sufficient notice to prepare for the hearing, in particular, he was brought before the court on 8<sup>th</sup> August, before Rose J and, although I have not seen any note of that hearing, I have been told that she made clear that there would be a further hearing on 31<sup>st</sup> August, and that, indeed, appears in her judgment, and gave directions for service of evidence by him in answer to the application and he has neither done that, nor has there been any suggestion that he needs more time.
- 3 Number (iii) is whether any reason has been advanced for his non-appearance. Since there has been no communication with the court since 31<sup>st</sup> August or, indeed, as I understand it, since 8<sup>th</sup> August, no reason as such has been advanced, but I accept Mr. Pickering's submission that the inference from all the material is that the reason he has not appeared is because he does not recognise the authority of the court. That is apparent from a number of written communications from him, and also, I am told, at the hearing before Rose J on 8<sup>th</sup> August, he made it clear that he did not recognise the authority of the court, to the extent of being unwilling initially even to stand to address the court.
- 4 I have not understood, and Mr. Pickering has not been able to explain, why he takes the view that this court has no jurisdiction to deal with this matter. Some of the material is of a quite unusual and a difficult to understand nature, but it does not seem to me to be necessary to try and investigate further quite what his objection to the court's power and jurisdiction might be. For present

purposes it is sufficient to say that I am satisfied that the likelihood, indeed, the overwhelming probability is that the reason he is not here today is because of his view, whatever it is based on, that the court has no proper jurisdiction over him.

- 5 So far as (iv) is concerned, which is a question whether it is reasonable to conclude that he was aware of the consequences of the case proceeding in his absence, and had waived the right to be present, again, I take it from the hearing before Rose J, that it was clear that he should attend, and that having been arrested once for non-attendance he could anticipate that he might be arrested again if he did not attend. Warren J made it clear in his order, a copy of which was served on him, that if he did not attend on this occasion the court would consider whether to proceed in his absence.
- 6 (v) is whether an adjournment would be likely to secure his attendance. I think there is no reason to believe that if the matter were adjourned again he would attend voluntarily, but it would be possible to issue a further bench warrant with a view to securing his attendance. Whether that would be likely to secure his attendance would depend upon whether it would be possible to find him. I am told that there is some doubt whether it would, indeed, be possible to find him, but I proceed on the basis that it might well be possible by adjourning to give him the opportunity by being arrested under a bench warrant to be brought before the court.
- 7 (vi) is the extent of the disadvantage to the respondents of not being able to present their account of events. There has been nothing to suggest in this case that Mr. Argent disputes the facts, or wishes to take issue with the facts. The dispute that has been articulated by him, or on his behalf, is as to the jurisdiction of the court, as to the propriety of the administration order having been made in the first place, and a suggestion by solicitors acting or previously acting for him, although not in relation to this application to commit, that the administrators were unduly focused on his beliefs and that that was discriminatory. Those are matters which can be taken into account in considering whether he has committed the events alleged against him, but, as I say, there has been no suggestion by him, or on his behalf, that he wishes to present a different factual account of events.
- 8 (vii) is whether undue prejudice will be caused to the applicant by any delay. Initially, when this application was brought, it was

thought that the continued actions of Mr. Argent were hampering the administration. That, I am told by Mr. Pickering, is no longer the case, nor, indeed, is it really the case that the administration cannot be duly brought to a conclusion without the information which he has been ordered to provide and, on the face of it, has failed to provide. So, it is not a case where undue prejudice can be said to be caused to the applicant if the matter were put off. On the other hand, a further hearing, which is unlikely to be productive of any more dispute of fact or anything else, that can be said on the defendant's behalf, is bound to cause the applicant further costs, costs which ultimately fall either on the creditors or the owners of the company, and which should be avoided if possible.

- 9 (viii) is whether undue prejudice would be caused to the forensic process if the application were to proceed in the absence of the respondents. Like Warren J in that case, I do not detect any such prejudice in this case.
- 10 (ix) is the question of the overriding objective and, as in that case, I regard it as fair to proceed in the absence of the defendant who must be taken to have deliberately decided not to attend and has generally failed properly to engage in this application.
- 11 Mr. Pickering did mention a tenth factor, namely, that if the contempts are found proved it might be appropriate to suspend any sentence. That seems to me not a factor of any great weight, even a suspended sentence is a serious matter and, in general, it is obviously right that those against whom contempt proceedings are brought should have the opportunity to appear and say what they wish to say and, indeed, for that purpose to have legal representation. I was told that Rose J made it clear on 8<sup>th</sup> August not only that Mr. Argent could obtain legal representation, but was entitled to legal aid, and explained that to him at some length. There has been no suggestion so far as the claimants are aware that he has availed himself of that opportunity.
- 12 In all the circumstances I do draw the inference the reason for his non-attendance is not because he is unaware of these proceedings, or unaware of the consequences, or that he has things that he wants to say which he has not yet been able to say, but simply because he does not recognise the authority of the court and, consistent with that, will not voluntarily attend the court proceedings.

13 In those circumstances I will proceed to hear the motion to commit.

### **Judgment (2)**

14 I think what I am going to do is express my judgment on each of them as we go through them. Instead of getting a long judgment at the end I think that is a more efficient way to do it.

15 I will say now that I am satisfied to the requisite standard, which is effectively the criminal standard, beyond reasonable doubt, on the basis of Miss Jones' affidavit, that on Monday, 18<sup>th</sup> July, Mr. Argent attended the premises at 32 Writtle Road, without the consent of either applicant or the applicants' employees, and that that was a breach of para. 1.1 of my order of 14<sup>th</sup> July, which I have already held was personally served on the 15<sup>th</sup> July.

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16 Yes. I think, given the requirement for proof beyond reasonable doubt I am certainly satisfied that somebody drilled out the lock, and somebody put up the sign which we see at p.41 in the photographs. But, although I have very strong suspicions that it was indeed either Mr. Argent, or someone acting on his instructions, I am not prepared to find that proved beyond reasonable doubt, so that is that one.

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17 Yes, on the basis of that evidence I am satisfied to the requisite standard that the respondent attended the premises without the consent of the applicants or their employees and I am satisfied that the attendance on the morning of 25<sup>th</sup> July was in breach of para. 1(i) of His Honour Judge Barker's order.

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18 Again, on the basis of that evidence I am satisfied that on Monday, 25<sup>th</sup> July, Mr. Argent did tell the staff of the company that they should leave and work from home. That is a breach of para. 1(iii) of His Honour Judge Barker's order.

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19 I think they should be dealt with separately, but I am satisfied on the basis of the evidence in para. 32 that on 25<sup>th</sup> July Mr. Argent was

verbally abusive to security staff, in particular accused the security guard of trespassing and told him to "get off my fucking property" and that that is a breach of para. 1(iii) of His Honour Judge Barker's order, because it is interfering with the affairs of the company, the purpose of the security staff being to enable the applicants and their staff to attend the premises without interruption from Mr. Argent, and, separately, I am satisfied that Mr. Argent let down the tyres of the security guard's car on the same occasion and that that is also an interference with the affairs of the company in breach of para. 1(iii) of His Honour Judge Barker's order for the same reason.

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- 20 Well, I think I am not persuaded of this one. The form of the order that His Honour Judge Barker made was that Mr. Argent should attend an interview with the joint administrators at a time to be agreed, with a longstop date of 4 pm on Friday, 5<sup>th</sup> August. That does not make it clear what happens if the time is not agreed, nor does it expressly require him to agree a time. The evidence on it – although the evidence does disclose a letter from Miss Jones inviting him to contact a Mr. Johnson urgently to arrange a convenient date and time for this interview - does not deal in any detail with the response or any further steps to try and agree an order. Again, I think it very likely that Mr. Argent was in contumacious breach of that order, deliberately choosing not to engage, but I am not going to find that proved to the requisite criminal standard.

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- 21 Yes. I will say, first, that I am satisfied on the basis of the second affidavit of Miss Jones that Mr. Argent failed to provide the applicants with evidence that he had instructed UBS to transfer any moneys, in breach of para. 4.3 of His Honour Judge Barker's order; and, separately, I am satisfied that he has failed to provide the applicants with any statements relating to the Company's UBS accounts or a witness statement saying that he has no such statements.

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- 22 He is in breach of para. 4.4 of His Honour Judge Barker's order. Those required him to do that, respectively, by 4 pm on Thursday

28<sup>th</sup> July and 4 pm on Friday, 29<sup>th</sup> July. The evidence for that is straight forward.

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- 23 I am also invited to infer that he did not, in fact, instruct UBS to transfer any moneys, and that is an inference which I am prepared to draw. All the evidence suggests that he has deliberately ignored every aspect of the orders and, in circumstances where it would have been simple for him to provide evidence that he has given instructions, his failure to provide evidence that he has given instructions is, in my view, powerful evidence that he did not give such instructions, so I will, therefore, also find that he has failed to give instructions to UBS by Tuesday, 26<sup>th</sup> July as required by para. 4.1 of the order of His Honour Judge Barker.

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- 24 The next three are failure to give instructions to GSFS Gold Globals by 27<sup>th</sup> July, as required by para. 5.1, failure to provide evidence of such instructions by 28<sup>th</sup> July, as required by para. 5.3; and failure to provide a witness statement as required by para. 5.4. I am satisfied, on the evidence of Miss Jones' second affidavit, that he failed to provide evidence of instructions, or a witness statement, and I am, for similar reasons as with UBS, prepared to infer that he failed to provide instructions to GSFS Gold Globals. So I will hold him to have been in breach of those three paragraphs of the order.

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- 25 Yes. I am satisfied on the basis of Miss Jones' second affidavit, that Mr. Argent has failed either to return the gold, cash and other items that were taken from the safe at the company's premises, or serve a witness statement on the applicants indicating that they were not in his possession, and is therefore in breach of para. 6 of His Honour Judge Barker's order which required him to do one or the other by 29<sup>th</sup> July 2016.

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- 26 Yes, I am satisfied on the basis of Miss Jones' evidence that Mr. Argent failed to provide the applicants with a witness statements giving details of all other accounts held by any bank, building society, or other institution for the benefit of the company, or confirmed that there were no such accounts, and that that was in

breach of para. 7 of His Honour Judge Barker's order, which required him to do that by 29<sup>th</sup> July.

- 27 I should say that where I have said I am satisfied, in each case that is to the requisite standard, that being beyond reasonable doubt.

### **Judgment (3)**

- 28 I will impose a custodial sentence for reasons I have already given. I am quite satisfied that these are repeated, deliberate and contumacious breaches of orders, committed not because of any compelling necessity or mitigating factors but because Mr. Argent has steadfastly refused to accept that the court orders are orders which need to be obeyed, and that the court has jurisdiction over him.
- 29 The court cannot allow people to choose whether to comply with orders or not. It is an essential part of the administration of justice that where a court makes an order the respondent to the order complies with it, and deliberate and repeated breaches of orders of this type will almost inevitably lead to significant punishment.
- 30 In these circumstances, it does seem to me that a custodial sentence is the only sentence which sufficiently marks the court's disapproval of the way in which Mr. Argent has entirely failed even to attempt to comply with any aspect of the orders. I will, however, suspend the immediate operation of the sentence for a short period. The purpose of that being to give Mr. Argent one final opportunity to comply, albeit belatedly, with the mandatory aspects of the order of His Honour Judge Barker, where very clear requirements which were not onerous to comply with were imposed on him, and where he has made no attempt either to comply or to excuse his non-compliance.
- 31 As Mr. Justice Warren did in the *Taylor* case, I will suspend it for a period of one month. If, at the end of that month, no action has been taken by Mr. Argent to apply to the court to remit the sentence, then the custodial sentence will come into immediate effect and he will be liable to be arrested and committed to prison. If, during that period, he applies to court for remission, and if he has demonstrated by his actions that he is willing to comply and has complied with the orders, albeit out of time, then, no doubt, the court will listen much more sympathetically to an application to remit the custodial sentence.



- 32 The sentence that I will pass will be a single period for each breach concurrently, and will be a period of nine months.
- 33 The practical effect of my order, therefore, will be that Mr. Argent will be at liberty for one month, that is until 13<sup>th</sup> October 2016, during which period he is at liberty to apply for remission of the nine months' sentence, but if he makes no such application he will be liable to arrest and committal from the expiry of that period, and will be committed to prison to serve such part of that sentence as is to be served under the provisions applicable to sentences of that length.

#### **Judgment (4)**

- 34 I think there is absolutely no reason why the administrators should bear the costs of this application, and I will order Mr. Argent to pay the costs of the application on an indemnity basis – to be assessed if not agreed.
- 35 I will make an order for payment of £30,000 on account of costs to be paid within 28 days.
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