



Neutral Citation Number: [2017] EWHC 1727 (Ch)

Case No: HC-2017-000560

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 6 July 2017

**Before:**

**MRS JUSTICE ROSE**

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**Between:**

**OCS GROUP UK LIMITED**

**Claimant**

**- and -**

**(1) JAGDEEP DADI**

**Defendant/  
Respondent**

~~(2) MANDEEP SANDHU~~

~~(3) SHARON HINXMAN~~

**(4) OMNI SERV LIMITED**

**(5) GINDI AHITAN**

**Defendants**

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**Peter Ratcliffe** (instructed by Berwin Leighton Paisner LLP) for the Claimant

**Angus Gloag** (instructed by Anthony Gold Solicitors) for the Respondent

Hearing date: 6 July 2017  
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**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.

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ROSE J

**Mrs Justice Rose :**

1. This is an application to commit the First Defendant Mr Dadi to prison for contempt of court for breach of two prohibitions imposed on him by the order of Marcus Smith J dated 27 February 2017 ('the Order'). The Order granted the Claimant an interim injunction against Mr Dadi, prohibiting him from disclosing confidential information belonging to the Claimant, his employer, and requiring him to provide information about what disclosures he had hitherto made of that confidential information to third parties. In paragraph 14 of the Order, Marcus Smith J imposed obligations on Mr Dadi to preserve hard copy and electronic documents pending the return date of that injunction. In paragraph 15 of the Order, Mr Dadi was ordered not to disclose to anyone else the existence of the Order and the possibility of proceedings being commenced to any person other than his legal advisers.
2. Mr Dadi accepts that he has committed four breaches of this order, by deleting a substantial number of emails from his email account and by telling the Fifth Defendant and other people about the Order shortly after he was served with the Order by the Claimant.
3. The application for committal was issued by the Claimant on 25 April 2017. The application is supported by two affidavits of Sharon Kennedy who is an assistant solicitor with Berwin Leighton Paisner LLP with conduct of the matter on behalf of the Claimant. Those affidavits are dated 24 April 2017 and 26 May 2017.
4. The background to the dispute is as follows. The Claimant is in the business of providing services to the aviation industry. In particular it formerly provided aircraft cleaning and other services to British Airways at Heathrow airport most recently under a contract which expired on 28 February 2017. The Claimant lost that contract to a competing firm called Omni Serv, the Fourth Defendant, who has taken over the supply of those services to BA with effect from 1 March 2017. The Claimant and Omni Serv are also competing with each other for another valuable contract for providing services at Heathrow.
5. Mr Dadi was employed by OCS until 28 February 2017 when he transferred to the employment of Omni Serv pursuant to the TUPE Regulations. In a claim issued on 27 February 2017 the Claimant seeks declaratory relief, an injunction and damages against the Defendants for breach of contract, breach of fiduciary duty and/or breach of confidence. It is alleged that they have committed breaches of their employment contracts, fiduciary duties and/or duties of confidence by transmitting confidential documents and information to their home email addresses or external storage devices and have made unlawful use of such documents and information and/or transmitted them to third parties.
6. In the Particulars of Claim served on 19 April 2017, the Claimant sets out the basis for its assertion that Mr Dadi sent documents relating to the Claimant's business and affairs to his personal web-based email account in breach of his various duties. This information included information about the logistics and costs of providing aircraft cleaning and other services to BA. It is alleged that Mr Dadi conspired with the Fifth Defendant, Mr Ahitan, to breach his duties to the Claimant. Mr Ahitan used to work for the Claimant but now works for Omni Serv. It is alleged that on one occasion in November 2014 and then on several occasions between April 2016 and February 2017, Mr Dadi transmitted the Claimant's confidential documents to his personal email address.
7. The Order of Marcus Smith J was made on 27 February 2017 following a without notice hearing. At that point the claim was only brought against the three individuals Mr Dadi,

Mr Sandhu and Ms Hinxman and so the interim injunction of Marcus Smith J was made only against them. Mr Sandhu and Ms Hinxman have now dropped out of the proceedings but the Fourth and Fifth Defendants were added to the claim later and injunctive relief was extended to them by order of Proudman J on 9 March 2017 and continued thereafter by order of Snowden J on 15 March 2017.

8. Mr Dadi has decided not to defend the underlying proceedings and a default judgment has recently been entered against him with the injunctive relief continued up to the trial of the action as it continues against Omni Serv and Mr Ahitan.
9. The Order of Marcus Smith J had on the front the penal notice warning the Respondent that disobedience of the order rendered him liable to be imprisoned or fined or have his assets seized. It set a return date of 3 March 2017. The order
  - a. prohibited Mr Dadi from disclosing to any other person or transmitting by any means confidential information as defined in paragraph 6 of the Order.
  - b. The Order also required Mr Dadi by the return date to provide information about which items of Confidential Information he had since 1 May 2016 transmitted to his personal email address or to a third party and if so explaining how and when that information was transmitted, by and to whom it was transmitted.
10. Paragraph 14 of the Order imposes an obligation not to destroy evidence. It provided as follows:

“The Respondents must not, until the Return Date, destroy, delete, damage, dispose of or hide any document (whether hardcopy or electronic) which he ... believes may contain any Confidential Information or evidence its retention or transmission or any box, file, server, laptop, computer, mobile phone or other storage device which he ... believes may contain or be storing any such document.”
11. Paragraph 15 of the Order is a no tipping off obligation. It provided:

“Except for the purpose of obtaining legal advice and representation, the Respondents must not, until the Return Date, directly or indirectly inform anyone of this application, the evidence and other documents served in support of the application or the contents of this Order, or warn anyone that proceedings may be brought by the Applicant for breach of confidence in relation to the Confidential Information.”
12. According to the evidence of Ms Kennedy, Mr Dadi was served with a copy of the unsealed Order by the Claimant’s in-house counsel Kirsty McCormick at the Claimant’s offices in Heathrow at around 3:10 pm on 27 February 2017. There is an affidavit of Kirsty McCormick dated 24 April 2017 in which she describes how she went to a meeting on 27 February 2017 at the Claimant’s offices in Heathrow which Mr Dadi had been asked to attend. She handed Mr Dadi an envelope containing the Order at about 3:10 pm. She asked him to open the envelope which he did. She then explained to Mr Dadi the importance of the Order and that it had personal implications for him. She says that she then drew his attention to the penal notice on the front page of the Order and read it to him. She says that she explained to Mr Dadi that he should take independent legal advice urgently.

13. A sealed copy of the Order was subsequently personally served on Mr Dadi later that evening on 27 February. This later service is confirmed by the witness statement of Cesar Sepulveda a process server who states that Mr Dadi admitted his identity and freely accepted personal service at his home address of the sealed copy of the Order
14. At the return date 3 March 2017 Mr Dadi was represented by Mr Angus Gloag of counsel who appeared on his behalf before me this morning. Marcus Smith J made a further order by consent continuing in force the injunctive relief. During the course of that hearing Mr Gloag made various admissions to Marcus Smith J on behalf of his client. These included that:
  - a. upon being served with the Order at the Claimant's offices, Mr Dadi telephoned Mr Ahitan and told him about the Order, in breach of paragraph 15 of the Order
  - b. Mr Dadi had at around 6 pm on 27 February after being served with the Order and speaking to Mr Ahitan deleted emails from his phone, in breach of paragraph 14 of the Order
  - c. the following day Mr Dadi carried out a mass deletion of about 8,000 emails I assume from his web-based email account with AOL, in breach of paragraph 14 of the Order
  - d. Mr Dadi inform certain unspecified members of his family and friends of the Order, in breach of paragraph 15 of the Order
15. On 7 March 2017 Mr Dadi produced a witness statement in which he confirms the following:
  - a. that he had provided confidential information belonging to the Claimant to Mr Ahitan during the period September 2016 to February 2017 including the working rosters in relation to British Airways and Virgin Airlines
  - b. that he received no incentive financial or otherwise either from Mr Ahitan or Omni Serv. He says "I provided information to Mr Ahitan because I had known him since 1995 and he asked me for it. He had been my manager for 18 years. I trusted Mr Ahitan and did not appreciate the significance of what I did that the time."
  - c. He confirmed that he did inform Mr Ahitan of the existence of the injunction order on 27 February 2017 at about 3 or 4 pm that day.
16. Mr Dadi has made a further witness statement dated 12 May 2017 in response to the first affidavit of Ms Kennedy. He says in the opening paragraphs that he is not experienced in legal matters and this whole episode has arisen because of the trust he had in Mr Ahitan. In relation to the allegations which form the basis of the underlying claim, he says that he was naive in simply complying with Mr Ahitan's request for him to send him documents and that it never crossed his mind that Mr Ahitan would ask him to become involved in illegal activity.
17. As regards the allegations of contempt he says that he accepts that he committed the four breaches of the Order in the manner alleged in Ms Kennedy's first affidavit. He says that when he was served with the initial Order and the evidence that has been relied on, he panicked. He did not read the order carefully and did not immediately seek legal advice although he did so three days later. When he did receive competent legal advice he realised what he had become involved in and the consequences of his actions. From that

point onwards he says he has sought in every possible way to assist the Claimant and to comply with the Order of the court.

18. Mr Dadi says that he throws himself on the mercy of the court and invites the court to take into consideration his conduct after obtaining legal advice and to spare him from a custodial sentence. As regards the four breaches of the order alleged he says that he accepts the breaches but that on taking legal advice he immediately explained the position to the court and thereafter sought in every way to assist the Claimant and provide the Claimant with whatever information they wanted. He gives details of how he says he has cooperated with the Claimant's solicitors by handing over computer hardware and providing them with written authority to enable the Claimant to try to retrieve all documentation on his AOL email account. He then states as follows

"38. After seeking legal advice and understanding the "mess" that I have got myself into, I sought to rectify the error of my ways. I invite this honourable court to allow me credit for this approach. Prison for me would be disastrous. It will make it very difficult for me to find work, it will place an intolerable strain on my marriage. I have 2 children (a daughter of 15 and a son of 12) and imprisonment will bring terrible shame on me and my family within my Sikh community. I have made some terrible mistakes. Consequently, all I can do is plead for the courts mercy and hope that the court will spare me this terrible sanction.

39. Moreover, I live with my mother who is 70 years of age and who is dependent on me. My mother is not a well person, she has diabetes and high blood pressure and suffers from Colitis. She also has problems with her eyes because of the diabetes. She relies on me to take her to Hospital for her regular checkups. I will also have to take her to Moorfields Hospital for the checkups in respect of her eyesight. If I am imprisoned it would be extremely difficult if not impossible for my wife to look after our children and my mother. In short it will be disastrous for my family. Finally, I too am not in the best of health, I am diabetic and suffer from High Blood pressure."

19. He says finally that he is not a criminal he is of good character and he has made a terrible error of judgment. He did not understand the consequences of what he was doing.
20. In her second affidavit, Ms Kennedy states that it seems very unlikely that AOL will be able to retrieve the emails that Mr Dadi deleted from his web-based email accounts. Although Mr Dadi has written to AOL at the Claimant's request to ask for his email account to be preserved, Ms Kennedy has been informed by AOL that once an email is deleted from web-based email accounts by the user it is deleted from the accounts trash folder after about 24 to 48 hours and cannot be recovered unless AOL performs a mail recovery exercise. Even that exercise can only recover emails deleted within the 10 days prior to the exercise being carried out. With regard to emails deleted earlier than that AOL has stated that no record or footprint remains of them and it is as if they never existed. AOL confirmed to Ms Kennedy on 16 March 2017 that they would perform a mail recovery exercise but this will only enable them to recover emails deleted after 6 March. Mr Gloag says, and I accept, that this delay in forensic analysis was not entirely

Mr Dadi's fault since he admitted deleting material at the hearing on 3 March and was prepared to cooperate with the Claimant in the conduct of the forensic recovery analysis as soon as he was asked to do so.

21. Mr Dadi has filed a further witness statement dated 28 June 2017. He repeats in this statement that imprisonment would be disastrous for his family and would seriously damage his prospects of finding work as well as having a calamitous effect on his health and reputation. He says that he is truly sorry for his breaches and describes himself as having unwittingly become involved in a dispute between two large commercial organisations fighting over profit.
22. Exhibited to this witness statement are two letters from Mr Dadi's GP Dr N Asghar dated 4 June 2017.
  - a. In relation to Mr Dadi's mother Dr Asghar confirms that she has a number of long-term medical problems including heart disease, colitis and hypertension. She also has age-related macular degeneration which is treated with intravitreal injection. She has osteoarthritis of the left knee joint, spine, neck and hip joints and requires regular follow-ups for chronic disease management. The doctor records that Mrs Dadi's sons always help her with day-to-day management of living activities and her hospital attendances.
  - b. In relation to Mr Dadi Dr Asghar confirms that he suffers from stress at work and anxiety including insomnia. He is being treated for hypertension and type II diabetes and suffers from asthma.
23. Mr Dadi has also provided a character reference dated 21 May 2017 from Michael Sullivan. Mr Sullivan says that he has known Mr Dadi since March 2001 when he married Mr Dadi's cousin and Mr Dadi has become a close friend. He describes him as a naturally honest person who works tirelessly to support his wife, two young children and elderly mother. Mr Sullivan says Mr Dadi's integrity and ethics are unquestionable.
24. As far as the sanction for contempt is concerned, the court may impose an immediate custodial sentence limited to a two-year maximum: see section 14(1) of the Contempt of Court Act 1981. A person committed to prison for contempt of court is entitled to unconditional release after serving half of the sentence: see section 258 of the Criminal Justice Act 2003. A committal order is appropriate where there is serious, contumacious flouting of the orders of the court. The court may impose a custodial sentence the execution of which may be suspended if this is an appropriate way of attempting to secure compliance. Alternatively to imprisonment, the court may impose a fine of unlimited amount or order sequestration of assets.
25. The Claimant has referred me to a number of authorities on sentencing for contempt. The first is *Crystal Mews Ltd v Metterick and others* [2006] EWHC 3087 (Ch). In that case Lawrence Collins J was sentencing two contemnors who had withdrawn and dissipated funds in breach of a freezing order made against them. The Judge set out the principles which the court applies when considering the sentence for contempt. The object of the penalty for contempt is both to punish conduct in defiance of the court order and also to hold out the threat of future punishment as a means of securing the protection which the injunction is primarily there to confer. The factors that the court should take into account were, the judge held, first whether the Claimant has been prejudiced by virtue of the contempt and whether the prejudice is capable of remedy; secondly, the extent to which the contemnor has acted under pressure; thirdly whether the breach of the order was deliberate or unintentional; fourth the degree of culpability; fifth whether the contemnor

has been placed in breach of the order by reason of the conduct of others; sixth whether the contemnor appreciates the seriousness of a deliberate breach and seventh whether the contemnor has cooperated.

26. Those factors were approved by Lewison J (as he then was) in *Aspect Capital Ltd v Hugh Christensen* [2010] EWHC 744 (Ch). In that case the judge was sentencing the respondent for contempts of a similar nature to the charges against Mr Dadi namely his frustration of a search and seizure order by the deletion of documents on his computer. Mr Christensen in that case had also made a number of sworn statements in which he had told deliberate and obfuscating lies. In his judgment, after referring to the valuable guidance given in *Crystal Mews* Lewison J added to that list of factors some additional factors; namely first, whether the contemnor has admitted his contempt at an early stage; secondly whether he has made a sincere apology for his contempt and has been frank with the court in admitting his contempt, and finally his character and relevant antecedents. In that case, where the contempts were significantly more serious than those in the present case, he sentenced Mr Christensen to a term of imprisonment for three months suspended for a period of 18 months.
27. Mr Ratcliffe also referred me to the statement of Mann J in *Heidleberg Graphic Equipment Ltd and anor v Hogan and ors* [2004] EWHC 3090 (Ch). There the Judge stressed that those who do not comply with the orders of the court can expect little mercy and can expect serious sanctions to be imposed on them. The system will not work if people think that they can ignore court orders and destroy evidence. Those who do so can expect terms of imprisonment. A further principle upon which Mr Ratcliffe relies is that the sentence for a civil contempt should not be manifestly out of line with the sentence for a criminal offence based on the same facts. Mr Ratcliffe points out that for an offence of perverting the course of justice, para 28.13 of Archbold 2017 states that an immediate custodial sentence should be imposed in all but exceptional cases for disposal of potential evidence. Para 28-25 of Archbold states that for the offence of concealing evidence, 4 months to 18 months are appropriate.

### **Sentence**

28. I have borne in mind when considering the appropriate sentence that imprisonment is always a punishment of last resort and I have considered whether a sentence other than one of imprisonment might be sufficient. I have also been careful to impose the minimum term for each allegation commensurate with the seriousness of the contempt.
29. I have however come to the conclusion that a short sentence of imprisonment of six weeks must be imposed on Mr Dadi to mark the court's strong disapproval of his conduct and to act as a deterrence both in respect of his further compliance with the orders of the court and as a warning to others who might be tempted to flout the court's orders in this manner.
30. In the present case I take into account the following factors. First, the contempts were deliberate and contumacious breaches of paragraphs 14 and 15 of the Order. If there had been a single breach, such as the immediate deleting of emails, I might have been able to accept Mr Dadi's assertion that his conduct was the result of panic immediately upon receipt of the Order. But that evidence is undermined by the fact that he carried out much more extensive deletions of emails the following day.
31. Similarly he must have realised that the prohibition on warning any other person of the existence of the order and of the commencement of proceedings must have been directed

specifically at Mr Ahitan and yet it was Mr Ahitan who Mr Dadi immediately informed about the Order.

32. Mr Dadi has no one to blame but himself for his breaches. I accept Mr Ratcliffe's submission that Mr Dadi must have realised that he was doing precisely what the order prohibited him from doing.
33. It appears from the evidence of Ms Kennedy that the breaches have had a significant effect to the prejudice of the Claimant because it appears unlikely that these emails will now be recovered from Mr Dadi's email account. The evidence about the manner in which Mr Dadi transferred large amounts of the confidential information in January 2017 and tried to cover his electronic tracks by encryption and double deletion of material shows that Mr Dadi is a sophisticated user of this kind of technology. He must have realised and intended when he deleted these emails that it would frustrate the ability of the Claimant to work out what had happened and hence frustrate the court's ability to determine the underlying dispute not only between him and OCS but between OCS and the other parties to the proceedings. It has also put the Claimant to consider cost in forensic examination of computers and USB sticks to try and salvage the information that should have been left intact.
34. However Mr Dadi is entitled to considerable credit for his early admission of the breaches immediately he received legal advice. He has not compounded his initial breaches by giving false evidence about them to the court. As Mr Gloag submitted on Mr Dadi's behalf this morning, the Claimant only became aware of the existence of the breaches because Mr Gloag was instructed by Mr Dadi to make a clean breast of this at the return date hearing and informed the court and the Claimant that he had committed these breaches. These were then rapidly confirmed in Mr Dadi's witness statement.
35. I also take into account that although there was more than one occasion on which Mr Dadi breached the orders these were not breaches committed over a long period of time but were all committed within 48 hours of the order being served upon him and before he obtained legal advice.
36. I must give Mr Dadi considerable credit for his cooperation with the Claimant as regards trying to retrieve the information he has deleted. The Claimant elected this morning not to challenge the truthfulness of Mr Dadi's statement so I am sentencing him on the basis that he has fully cooperated with trying to retrieve the information but that that cooperation has not, unfortunately, enabled the Claimant to remedy what has happened.
37. Mr Dadi has apologised for his conduct and I accept that Mr Dadi's remorse for his conduct is sincere and heartfelt and I do not regard it as qualified as the Claimant has suggested.
38. I also take into account Mr Dadi's previous good character and I accept his evidence as to the difficulties that a prison sentence would bring for him personally and on his family. I take those into account and I am not going to impose a prison sentence that will be long enough to cause serious difficulties with the care of his mother or the rest of his family.
39. In my judgment it is appropriate to impose the same sentence for each of the four acts of contempt but to direct that the sentences shall run concurrently. The appropriate sentence for each act of contempt is six weeks' imprisonment so that the total sentence of imprisonment imposed is six weeks.
40. I will now hear submissions as to any consequential matters that arise.