Neutral Citation Number: [2020] EWHC 1209 (Ch)

Case No: BL-2019-000244

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)

As at Royal Courts of Justice
Rolls Building, 7 Rolls Buildings
Fetter Lane, London EC4A 1NL
But conducted as a remote hearing by video link

Date: 13/05/2020

Before :

MR JUSTICE MANN

- -

Between :

(1) Yuzu Hair and Beauty Ltd	**Claimants**
(2) Yukiko Dennis	
- and -	
Akilan Selvathiraviam	**Defendant**

- -
- -

Mr Rory Brown (instructed by **Edwards Duthie**) for the **Claimants**
Mr Selvathiraviam did not attend

Hearing date: 12th May 2020 (by video link from premises other than the RCJ)

- -

APPROVED JUDGMENT

This judgment was handed down by being made available in print to all those participating by video link, and to the defendant, by email, and by publishing in accordance with the Committal Proceedings Practice Direction

Mr Justice Mann :

Introduction

1. This is the hearing of a committal application bought by the claimants against the defendant (Mr Selvathiraviam) for breaches of the disclosure provisions of a freezing order. Mr Rory Brown appeared for the claimants. The freezing order application were made in the context of a claim brought by the company claimant ("the company" or "Yuzu") against Mr Selvathiraviam for fraudulent activities allegedly carried out by the latter while he was acting as director of a company providing accounting services for the accountant for Yuzu. The allegations against him, if true, are very serious and the level of dishonesty alleged is high. The amount frozen by the freezing order was something over £300,000. It is said that Mr Selvathiraviam has not complied with the disclosure provisions in that order at all and that he has been evasive throughout the considerable time since the orders were made. I am invited to commit him to prison. The second claimant is a director and shareholder of Yuzu who was added as a claimant in the circumstances appearing below.

2. The application also encompasses an application to commit, or fine, for breach of an order to deliver up the defendant's passport However, it was in fact delivered up some time ago (though only in the face of an order by the tipstaff), and Mr Rory Brown, who appeared for the claimant, acknowledged that in practice it added little or nothing to the complaint about non-disclosure. It

would not add to the appropriate penalty if the non-disclosure was found, and it would not merit sanction by itself if the non-disclosure were not found. In the circumstances I shall not dwell on it in this judgment as a sanctionable contempt, but will make other references as appropriate as to what it says about the attitude of the defendant.

3. This judgment also gives the reasons for my refusing an application by the respondent to adjourn the hearing on its first day (yesterday). Because of that this judgment has to go into more of the procedural history of this matter than might otherwise be necessary. It is regrettable that more of this judgment has to be given over the matters germane to that application than to the alleged contempt itself.

The orders and the application

4. This case has been bedevilled by delays and by the fact that at the time the action was commenced and the freezing orders obtained, Yuzu had been dissolved for failing to file its accounts. It has since been restored, but this feature has caused some difficulties which had to be addressed. There have been a large number of hearings, and adjournments at the request of both parties, but more at the request of Mr Selvathiraviam. I shall deal with some of those events in due course.

5. The claim form in this case was issued on 5th February 2019. It followed the first freezing order which was made by Falk J on 30th January 2019. It was in fairly standard form and froze certain specific assets which were known to the claimant – a house, the assets of a certain business and five bank accounts and a car. It contained the following disclosure provision:

> "Provision of information
>
> 9(1) Unless paragraph (2) applies, the Respondent must within 48-hours of service of this order and to the best of his ability inform the Applicant's solicitors of all his assets worldwide exceeding £1,000 in value whether in his own name or not and whether solely or jointly owned, giving the value, location and details of all such assets.
>
> (2) If the provision of any of this information is likely to incriminate the Respondent, he maybe entitled to refuse to provide it, but it is recommended to take legal advice before refusing to provide the information. Wrongful refusal to provide the information is contempt of court and may render the Respondent liable to be imprisoned, fined or have his assets seized.
>
> 10. Within 5 working days after being served with this order, the respondent must wear and serve on the Applicant's solicitors and affidavit setting out the above information."

6. The committal application is based on alleged non-compliance with those provisions.

7. The order also contained various undertakings given to the court by the claimant. Undertaking (4) was the familiar undertaking to serve the documents relating to the application (including the order and the claim form) as soon as practicable, and a method of service was provided:

> "Such service shall be effected by

> (i) emails sent to akilan@agnaccounts.com and info@agnaccounts.com
>
> (ii) Personal service if reasonably practicable on the Respondent's wife resident at the address set out in the next sub-paragraph
>
> (iii) Service by first class post at 33 Church Drive, London NW9 8DN,
>
> and shall be deemed served on the second business day after the documents above have been posted to the address in (iii) above, under CPR 6.14."

8. The judge was apparently satisfied that these methods of alternative service would be appropriate and that personal service of documents which would otherwise require it (the order) was not required. There was evidence before her of the evasiveness of the defendant in terms of his whereabouts and refusal to engage with Yuzu when it raised complaints with him. The order contained a penal notice in proper form.

9. The return date under the order of Falk J was 13th February 2019, and on that day the matter came back before Zacaroli J on the application of the claimant to continue the freezing order relief. The defendant, despite having been served in accordance with the order of Falk J, did not attend. The freezing relief was continued by Zacaroli J in the same terms as the order of Falk J save that on this occasional the order ran "until further order of the court". A couple of further bank accounts were identified and made expressly subject to the freezing provision. One of those accounts was at Nationwide building society, and paragraph 6 of the order required Mr Selvathiraviam to provide a letter of instruction to Nationwide to disclose information to the claimant's solicitor:

> "6. The Respondent shall by no later than 4 PM on 18th every 2019 sender signed letter of instruction to his bank Nationwide at Legal Nationwide Building Society, [address provided] (and by the same time provide a copy of the same to the Applicants' solicitors) requiring Nationwide to disclose by letter to the Applicants' solicitor (at the address given at the end of this order) the following details of any and all account held by the Respondent at Nationwide:
>
> (a) Account number
>
> (b) Sort code
>
> (c) Outstanding to the Respondent's credit."

10. Paragraph 7 the date provided for a Master to sign an equivalent letter of instruction if the defendant did not comply with the order and paragraph 6. The defendant did not comply with the requirement of the letter of instruction, so the Master operated that mechanism so that the claimants could get details of the moneys in the account.

11. Paragraphs 9 and 10 forbad to the defendant from leaving the jurisdiction until he had complied with the disclosure provisions of the earlier order and required him to deliver up his passport. This order did not repeat the disclosure obligations in the order of Falk J, but of course those orders retained their effect as was recorded in one of the recitals:

> "AND UPON the court finding that the Respondent has breached the Order of 30 January 2019 in failing to provide information about his assets as required by paragraphs 9 and 10 thereof (which for the avoidance of doubt continue in effect)".

12. Zacaroli J also sought to deal with the consequences of the company having been dissolved prior to the commencement of proceedings and the grant of the first freezing order. He did so, in a reasoned judgement, by ordering that a director/shareholder of the claimant be added as a joint claimant. Pursuant to that order the second claimant was joined to this action. By this time an application to restore the company to the register was under way and the order contained a provision requiring the restoration of the freezing order application once the company was restored to the register so that it could continue to be made in an action brought by the company against the defendant (paragraph 1B). I deal further with the consequences of the dissolution and ultimate restoration of the company (it was restored on 23rd October 2019) below.

13. The order provided for service of documents relating to the return date, Zacaroli J's order in relation to the passport, sealed copy of the application notice, and witness statement and skeleton arguments) to be effected in the same way as provided for by the order of Falk J. That order was ultimately served in accordance with its provisions.

14. Relying on an allegation that the disclosure obligations in the first freezing order were not complied with, and on a further complaint that the passport was not delivered up either, the claimant launched its committal application on 8 March 2019. The application notice reads (so far as relevant to this application as it now is) as follows:

"3. An order dispensing with the requirement for personal service, that the defendant be committed to prison, such further order be made as may seem just for the content set out below and for an order that the costs of this application be paid by the Defendant for the reasons set out in the Fourth Affidavit [of] Kavita Rana filed in support of this application and because:…

c. By 30 January 2019, the Honourable Mrs Justice Falk granted a freezing injunction against the Defendant (the *Freezing Injunction*). By paragraph 9 of the Freezing injunction, the Defendant was required within 48-hours of service to inform the Claimant's solicitors of all his assets worldwide exceeding £1000 in value. By paragraph 10 of the Freezing Injunction, the Defendant was required within 5 working days after service to swear and serve an affidavit setting out such information.

d The Freezing Injunction was duly served on the Defendant in accordance with paragraph 4 to schedule B of the Freezing injunction on 4 February 2019.

e On 13th February 2019, the Honourable Mr Justice Zacaroli made an order continuing the effect of the Freezing Injunction (the *Continuation Order*). By Paragraph 10 of the Continuation Order, the Defendant was required to deliver forthwith to the Claimants' solicitor all passports in his name or names and/or of which he is the bearer.

f The Continuation Order was duly served on the Defendant in accordance with paragraph 2 to Schedule A of the Continuation Order by email and first class post sent on 14th every 2019 and by personal service on his wife on 14 February 2019.

…

h The Defendant acted in breach of the terms of the Freezing Injunction and the Continuation Order by:

1. failing to provide the information in accordance with paragraph 9 of the Freezing Injunction on 6 February 2019 or at all;

2. failing to serve the affidavit in accordance with paragraph 10 of the Freezing Injunction on 11th February 2019 or at all;…

In in the premises, the Defendant is in contempt of court."

15. The omitted text from that account of the document relates to breaches of the passport order. The passport was not delivered up in accordance with the order until the defendant was faced with the imminent prospect of arrest.

16. The application notice was served in the same manner as the preceding orders. It was not personally served.

Subsequent events

17. The application was due to come on on 14th May 2019, but had to be adjourned because of lack of judicial availability. It first came on for an actual hearing on 5th June 2019 before Nugee J. On that occasion the respondent did not attend; a subsequent decision of HHJ Klein found that Mr Selvathiraviam was perfectly aware of the date (see para 41 of his judgment of 20th December 2019). It was relisted to be heard in October 2019 but was then further adjourned at the request of the applicant (with the consent of the respondent) to December 2019. Mr Brown told me that that was so that the restoration of the company to the register could be completed. On 23rd October 2019 the company was restored to the register and liquidators were appointed on 5th December 2019.

18. The restored application came before HHJ Klein on 16th December 2019. Mr Selvathiraviam made an informal approach to adjourn the hearing on 12th December the grounds of ill health but that was rebuffed on the basis that a formal application was required. Mr Selvathiraviam was sent an extract from

the White Book dealing with the circumstances in which an application for an adjournment on medical grounds would and would not be acceded to. He was therefore made aware of what he had to establish. Despite that no formal application was made before 16th December when the matter came on for hearing. The respondent did not attend. HHJ Klein allowed the claimant to rely on further evidence and adjourned the matter to 20th December 2019. The judge's order of 16th December specifically drew Mr Selvathiraviam's attention to the seriousness of the application. It pointed to his right to get legal aid (with an indication of where contact details for the Legal Aid Agency could be found), drew attention to his right to remain silent and to his right to put in his own evidence, giving directions for service of the latter. The order provided for service by email and by hand to the respondent's property at 33 Church Drive.

19. On 19th December 2020 Mr Selvathiraviam made an application on paper seeking an adjournment on medical grounds and because he had not managed to get legal representation. He merely referred to his "health condition", and attached just a certificate dated the previous day that he was not fit for work because of a "r/rib sprain". The judge refused it the same day. HHJ Klein said he would give reasons the next day, when the committal application would resume. The judge had a full order drawn with reasons, and in those reasons he said that if Mr Selvathiraviam wished to pursue his application for an adjournment to get legal representation

> "he **must** attend the hearing of that application tomorrow morning. Because I have dismissed his application for an adjournment on the ground of ill health, I am likely to dismiss his application for an adjournment on the ground that he wishes

> to obtain legal representation **if he does not attend tomorrow morning**".

The emphasis is Judge Klein's in the order. The order was sent to Mr Selvathiraviam, and it is plain that he got it because he attended the next day.

20. At the resumed hearing on 20th December Mr Selvathiraviam did indeed attend, though he complained he was still in pain. The transcript of what occurred on that day was in evidence before me and it contained the following material points:

> (a) Mr Selvathiraviam confirmed that he knew that he had the right to remain silent.
>
> (b) Mr Selvathiraviam recalled the order of Falk J.
>
> (c) He recalled seeing Zacaroli J's order.
>
> (d) He had tried to get legal assistance in March and had two or three discussions over the phone with a solicitor.
>
> (e) In the week of the hearing he had called a number of solicitors and the Citizens' Advice Bureau. No solicitor could see him at that time because of the proximity of Christmas.
>
> (f) Mr Selvathiraviam professed himself as intending to attend the next hearing.
>
> (g) HHJ Klein elaborately explained the possibility of purging any contempt (which he did not find).

21. Klein J's judgment explained that he refused the adjournment on medical grounds because the medical evidence was simply inadequate, giving reasons why. However he then went on to explain that he would accede to the

application to stand the matter over so that Mr Selvathiraviam could get legal representation, which the latter said he wished to do. The judge's order records that the defendant confirmed that he had read and understood the recitals to the order of 16th December (the material ones of which are recorded above) and further records the following significant points:

> 1. The seriousness of a committal application and the risk of a term of imprisonment."
>
> 2. The respondent was therefore strongly encouraged to attend the next hearing whether or not he had legal representation.
>
> 3. The respondent needed to be aware that the court might proceed to determine the application in his absence and sentencing in his absence if you were found to be in contempt of court.
>
> 4. He had the right to criminal legal aid, with contact details provided.
>
> 5. He was strongly encouraged to seek legal advice.
>
> 6. He had the right to remain silent but the court might draw adverse inferences from that silence.

22. The order went on to point out that he might wish to consider whether he should now comply with the disclosure provisions of the order of Falk J and then ordered that the hearing of the committal application be adjourned ("(part-heard, if the Respondent does not attend and is not represented)") to be heard by the same judge on 4th and 5th February 2020. Paragraph 2 of the order set a timetable for the respondent to file any evidence he wished to rely on. Paragraph 6 provided for service of the order by email to the same email accounts to which previous orders had been authorised to be sent. The

respondent was pay the costs wasted by the adjournment and pay £4,500 on account of those costs.

23. Thus the matter came back on for hearing before HHJ Klein on 4th February 2020. At 10:16 on that day Mr Selvathiraviam sent an email to the court and to the solicitor acting for the claimant saying:

> "Dear All,
>
> on my way to the court NHS emergency service been called for me. I'm currently in hospital. I can't attend the hearing. Can you please reorganise for me please."

24. It was accompanied by a photograph of form "LA4" which is apparently a form filled in by the ambulance service. It is not at all easy to read but it seems to record that he complained of a sudden onset of stabbing pain in the abdomen and perhaps the neck and upper back. The form records the ambulance as having left the scene at 09:44.

25. Faced with that form HHJ Klein adjourned the matter to the next day. Rather than simply making a simple adjournment order, the judge made a much more elaborate order at with a view to having the defendant provide proper medical evidence. The material parts of the order read:

> "AND UPON the Respondent being encouraged to immediately authorise his treating doctor or other medical practitioner to discuss with the Applicants' solicitors the matter set out at paragraph 2 below

> IT IS ORDERED THAT
>
> [application adjourned to next day at 10:30]
>
> 2. The Respondent shall use his best endeavours to obtain and send to the Applicants' solicitors and the court, by 10:30 a.m. on 5 February 2020, a written report, with email being acceptable, from his treating doctor or other medical practitioner, addressing the following matters:
>
> 2.1. The identity of the doctor or other medical practitioner,
>
> 2.2. Their contact with the Respondent,
>
> 2.3. The particulars of the Respondent's medical condition, if any,
>
> 2.4. Whether the doctor or other medical practitioner is of the view that the Respondent with reasonable adjustments can attend the hearing of 5 February 2020 and participate in it,
>
> 2.5. If, that is not appropriate, a reasoned explanation why it is not appropriate,
>
> 2.6. If reasonable adjustments are appropriate, what adjustments are recommended, and
>
> 2.7. If the doctor or other medical practitioner is of the opinion that it is inappropriate for the Respondent to participate even with reasonable adjustments, a reasoned prognosis of when the Respondent will be able to participate in the hearing of the applications, and with what reasonable adjustments if any."

26. General details of his health and prognosis were sought by the claimant's solicitor by email over the course of the morning in the course of which Mr Selvathiraviam explained that he had chest, neck and head pain with breathing difficulty. He said his doctors were investigating and he had been asked to stay in hospital. He did not know the timeline as to when he would be out. The solicitor asked speak to the doctor, and Mr Selvathiraviam explained that the doctor was busy and not responding, though the nurse looking after him said they were willing to talk over the phone. In an email timed at 20:06 Mr

Selvathiraviam said that he was "more than happy [to] provide report in few days."

27. Against that background on 5 February 2020 HHJ Klein further adjourned the case to the first available date after 2 March 2020. The order in paragraph 1 records:

> "the Application is not adjourned part-heard unless, at the adjourned hearing, HH Judge Klein is the judge hearing the Application and Mr Selvathiraviam does not attend and is not represented."

28. Other parts of the order clearly reflect the concern of the judge as to the position that everyone had been put in, and probably demonstrate the suspicion of the judge as to the genuineness of Mr Selvathiraviam's complaint. They form an important part of the background to the applications made to me to adjourn this hearing. The relevant parts are as follows:

> "…
>
> AND UPON Mr Selvathiraviam not having obtained a medical report in accordance with paragraph 2 of the order of 4 February 2020
>
> ….
>
> AND UPON the court recording that, if Mr Selvathiraviam does not comply with paragraph 3 and 4 below, then, in any future application, by him, for an adjournment, particularly on the ground of ill-health, that failure to comply may be taken into account by the court as a factor in determining whether or not to grant that application
>
> AND UPON the court recording that, if Mr Selvathiraviam makes an application in the future for an adjournment on the ground of ill-health he ought, unless time does not permit, to provide, in support of that application, a report from a medical practitioner addressing all of the following matters:

1.1. The identity of the author of the report,

1.2. Their contact with Mr Selvathiraviam,

1.3. The details of Mr Selvathiraviam's ill-health or other medical condition,

1.4. Whether the medical practitioner is of the view that Mr Selvathiraviam, with any reasonable adjustments, can attend the hearing and participate in it,

1.5. If, in the medical practitioner's opinion, that is not appropriate, a reasoned explanation why it is not appropriate,

1.6. If reasonable adjustments are appropriate, what the recommended adjustments are, and

1.7. If the medical practitioner is of the opinion that it is inappropriate for Mr Selvathiraviam to attend and participate in the hearing even with reasonable adjustments, a reasoned prognosis of when Mr Selvathiraviam will be able to attend and participate in the hearing of the Application and with what reasonable adjustments if any.

and, if he does not do so, that may be taken into account by the court as a factor in determining whether or not to grant that application .

…

IT IS ORDERED THAT

…

3. Mr Selvathiraviam shall, by no later than 4 PM on 2 March 2020, obtain and send to the Court and to the Applicants' solicitor, a written report from an appropriate medical practitioner, addressing all of the following matters:

[similar details to those identified above the recital.]

4. Mr Selvathiraviam shall also, by no later than 4pm on two March 2020, obtain and send to the court and to the Applicants' solicitor any discharge letter and any discharge notes in respect of his admission to Northwick Park Hospital on 4 February 2020, which may have any relevant personal information redacted."

29. Certificates of service demonstrate the service of those orders at the email addresses at which the documents had been served. I find that Mr Selvathiraviam received those orders.

30. Mr Selvathiraviam did not comply with paragraph 4 of the order of 5 February. The application was fixed to come back before the court on 30th April and 1st May this year. It came before Zacaroli J on the first of those dates. On 29th April 2020 Mr Selvathiraviam made a further application to adjourn in an unissued application notice. Its reasons read as follows:

> "can you please reschedule this hearing from 30th April 2022 next available date after 5 May 2020. As I'm currently suffering with COVID-19 and have to ask to isolate from other household members. I understand that this hearing taking place remotely. Due to the medical condition I'm unable to take part in the hearing. I have attached my medical note for your evidence. Due to the current situation I can't get medical professional to do medical report. I hope you understand the current situation. In my household I have child age of 4, wife with Pregnancy and another person who live with our stage over 60 with pre-medical condition. All of these 3 household members I have mentioned are high risk people under COVID-19. Therefore I have been asked to stay away from them in the house.
>
> My Lord for your reference I have also attached my Hospital admission and discharge letter from the previous change in hearing date. This letter was issued by Northwick Park Hospital on my discharge." [I have corrected some of the accidental mis-spellings.]

31. The application notice was accompanied by an "Isolation note" stating that Mr Selvathiraviam had been told to self-isolate by an NHS website or a health professional because he had symptoms of coronavirus. It is apparent from the face of the form that was not produced as a result of any apparent interview, and evidence filed by the claimants indicates that the form is the result of entering symptoms into a website. it does not in any way amount to medical evidence.

As indicated in the application notice, Mr Selvathiraviam also provided a copy of his discharge summary from the April admission to hospital. It shows that he was discharged on 5 February 2020. This is one of the documents that he ought to have produced in response to the order of 5 February 2020. Mr Brown invites me to infer that Mr Selvathiraviam felt he had to produce something because he realised that, not having produced anything before, the court might take a jaundiced view of his application. That seems to me to be likely. He has not apologised for the late production of this document, or explained why he did not produce it before. The document itself indicates twice that the doctors could find "no cause for the patient symptoms".

32. Zacaroli J conducted a telephone hearing in the afternoon of 29 February and adjourn the application to 11 – 13 May 2020. Paragraph 2 of his order provides that "if it is safe into do so" the defendant should by no later than 4 pm on 7 May 2020 obtain a written report from an appropriate medical practitioner, and send it to court and the applicants' solicitor, addressing the same sort of matters as the report required by the previous order of HHJ Klein , including:

> "2.4. Whether that medical condition, if any, would have prevented Mr Selvathiraviam from attending remotely by videoconference the hearing listed for 30 April and 1 May 2020,
>
> 2.5. Whether the medical practitioner is of the view that Mr Selvathiraviam with or without reasonable adjustments can attend (whether in person or remotely by videoconference) the adjourned hearing of the application and participate in it,
>
> …
>
> 2.8. If the doctor is of the opinion that it is inappropriate for Mr Selvathiraviam to participate even with reasonable adjustments, a reasoned prognosis of when Mr Selvathiraviam will be able to participate in the hearing of the application and with what reasonable adjustments if any."

33. Paragraph 3 provided that Mr Selvathiraviam should file a witness statement no later than 4pm on seven May 2020, verified by a statement of truth, setting out:

> "3.1. if it is not safe for Mr Selvathiraviam to obtain the medical report ordered by paragraph 2 above, the reasons why not;
>
> 3.2. The specific symptoms he had which were causative of his decision to self-isolate and which he considered were preventative of his effective participation in the hearing including when he first began to suffer from those symptoms;
>
> 3.3. The identity of the medical practitioner with whom he spoke before making his decision to self-isolate;
>
> 3.4. The date on which he sought medical advice on his alleged symptoms;
>
> 3.5. The IT facilities which he has available to him or which he can obtain in order to facilitate the hearing of the Application dated 7 March 2019 by video-link, including any personal computers, laptops, web-cameras, microphones, phones or tablets.
>
> 4. In making any subsequent application to adjourn on the grounds of ill-health Mr Selvathiraviam must provide a report in support of that application from a doctor containing the information contained in paragraph 2 above and must send a copy of that application to the court and the Applicants' solicitor (at the same time). Failure to comply with this paragraph will be taken into account by the court in determining any application."

34. An earlier recital records that if Mr Selvathiraviam did not comply with the reporting requirements as set out in paragraphs 2 and 3 of the order, that failure might be taken into account by the court as a factor in determining whether or not to grant the application.

35. The matter then arrived before me for hearing. Mr Selvathiraviam did not provide the report required by paragraph 3 of Zacaroli J's order. In my view that is a serious and significant omission. On 11 May (the reading day for this application) Mr Selvathiraviam made a further application to adjourn the hearing supported by an Isolation note similar to that which he had produced earlier, though with adjusted dates. Other than a statement that he was suffering from COVID symptoms, it gave no other details, referring to his need for self isolation only. I refused that application.

36. Then at 08:02 on 12 May 2020, the date when this application was due to start, Mr Selvathiraviam emailed my clerk and the claimants saying:

> "dear My Lord,
>
> I cannot attend this videoconference hearing due to my health condition worsened. I have called up NHS helpline and they are send me a emergency service (Ambulance) to take me to the hospital for admission.
>
> Can you please adjournment to this hearing to be in the future date."

That is the application for an adjournment with which this judgment deals.

The application for an adjournment

37. Having considered the application for an adjournment with the assistance of Mr Brown, who guided me so through some of the history of this matter in resisting the application, I decided that I would refuse the application. I said I would give reasons later, and these are my reasons.

38. I acknowledge that it is a highly unusual course to refuse an adjournment to a litigant who is, or who claims to be, in or about to be in an ambulance going to hospital. While the court is not unfamiliar with the reluctant litigant who over-eggs medical symptoms, or who is unable to propound sufficiently serious medical symptoms, in order to seek an adjournment, and is capable of dealing with that appropriately, it is much less usual for a reluctant litigant to over-egg or contrive symptoms to the extent of summoning an ambulance, and even where that happens it is usually difficult for the court to penetrate the apparent seriousness of the situation and say that the emergency is unlikely to be genuine. However, I believe that this case provides material which enables the court to arrive at the conclusion that the medical emergency is not genuine.

39. That material arises out of the history set out above. History demonstrates an apparent refusal to engage with this litigation and a tendency to exploit so-called medical conditions to avoid hearings. Mr Selvathiraviam has only attended one hearing in the history of this matter (the hearing on 20 December 2020) and it may be that, having failed in his attempt to get a medical adjournment, his attendance was because he was told by HHJ Klein's previous order that he simply had to attend if he wanted an adjournment. It is not without significance that he only surrendered his passport when he seemed to be faced with the prospect of imminent arrest at the hands of the tipstaff. He has made a series of flimsy applications for an adjournment on medical grounds, unsupported by proper evidence, in circumstances in which he has clearly been told that he needs to provide proper evidence. Even if the present pandemic emergency has

stood in the way of his being able to have a face-to-face interview with a doctor and get a medical report, it is not apparent that he could have not obtained a medical report by other means. He failed to comply with the provisions of HHJ's Klein's order that he provide medical report as to his February hospital admission, and the only document he has ever produced in relation to that shows that doctors could not identify any cause for his alleged symptoms. He failed to comply with paragraph 3 of the order of Zacaroli J, requiring him to describe his own symptoms and the medical advice that he sought, and I am prepared to infer that that is because he sought no medical advice and decided he would not mis-describe his symptoms. Either that, or he simply adopted a cavalier attitude to the order.

40. In all those circumstances, and particularly bearing in mind the elaborate warnings that Mr Selvathiraviam has had as the consequences of not producing proper medical evidence, I am not prepared to attach the credence to his email of 12 May 2020 that I would probably otherwise have done. I do not believe that he has established that he really was sufficiently ill that he could not participate in today's video hearing. I think it much more likely that he has decided to adopt a policy of evasion and that his email this morning, and the summoning of an ambulance (if it indeed happened) is all part of that rather than a genuine medical emergency. I acknowledge that that is a strong conclusion to draw, but it is one that I do draw because of his previous conduct and his failure to comply with previous orders of the court. He has not been candid about his medical condition (if he has one) and in those circumstances he has

no complaint if his mere assertion that an ambulance has been summoned is not taken to be a sufficient ground for adjourning this matter.

41. Mr Brown has drawn my attention to the checklist appearing in Grant on Civil Fraud at paragraph 35 – 083 about proceeding in the absence of a defendant. This checklist derives from *Sanchez v Oboz* [2015] EWHC 235 (Fam) at para 5. It is:

> "(1) Whether the respondent has been served with the relevant documents , including the notice of the hearing;
>
> (2) Whether the respondent has had sufficient notice to enable him to prepare for the hearing;
>
> (3) Whether any reason has been advanced for his non-appearance;
>
> (4) Whether by reference to the nature and circumstances of the respondent's behaviour, he has waived his right to be present (i.e. is it reasonable to conclude that the respondent knew of, was indifferent to, the consequences of the case proceeding in his absence);
>
> (5) Whether an adjournment would be likely to secure the attendance of the respondent, or at least facilitate his representation;
>
> (6) The extent of the disadvantage to the respondent in not being able to present his account of events;
>
> (7) Whether undue prejudice would be caused to the applicant by any delay;
>
> (8) Whether undue prejudice would be caused to the forensic process if the application were to proceed in the absence of the respondent;
>
> (9) The terms of the overriding objective, including the obligation on the court to deal with the case justly, expeditiously and fairly."

42. Taking those points briefly, the answers to the first two are Yes. The respondent has had plenty of notice, and plenty of opportunity to prepare and to get legal assistance. As to 3, the reason has been advanced and rejected. There has been no waiver under 4.

43. So far as 5 is concerned, looking at the background to this matter and the lack of engagement of the defendant and his propensity to seek adjournments of hearings, I doubt whether an adjournment would procure his attendance at the resumed hearing were I to adjourn this one. I think it more likely that he would find another (or the same) reason for not attending.

44. As to 6, there is an obvious disadvantage to the defendant in not attending because he cannot advance his case, but on the other hand it is hard to see what case he has really been prevented from arguing. He has not put in any evidence and has never indicated what defence he would have to the committal proceedings. Nor can one make an intelligent guess as to what it might be (see below as to the strength of the case of the claimants). There could be a degree of prejudice in that he is deprived of the opportunity to mitigate if found liable, or to make representations in relation to sanction, but that prejudice does not exist if there is a separate sentencing hearing (in the event of liability being found), and as will appear I propose to take that course. On the other hand, significant prejudice will be caused to the claimants because they will have to incur further costs if there is a further adjournment, and the defendant has not yet paid the £4,500 on account of costs ordered by HHJ Klein in December.

45. Checkpoint 8 does not arise in this case. Checkpoint 9 does not really arise where I find, as I do, that there is no good reason for the adjournment, but insofar as it does then the overriding objective requires the refusal. It would be to give effect to the antithesis of the overriding objective if a litigant could obtain an adjournment on a spurious basis, and fairness to the claimants requires that their application be at last heard.

46. I do, of course, have to regard to the right of the defendant to a fair trial under Article 6 of the European Convention on Human Rights. The defendant has had the opportunity of a fair trial at this hearing before me, and he has chosen to avoid it by making an inadequate application to adjourn and then not turning up for a reason which I do not accept as a good one. Unusually I do not accept the professed need for an ambulance is sufficient evidence of a medical need for an adjournment because, in the circumstances, the evidence is not sufficiently cogent. I think it is more likely to be a contrivance. There is nothing unfair about going ahead without the defendant.

47. Those are my reasons for my decision not to adjourn the committal application.

The application for committal

48. The material complaints in this matter are a failure to comply with the disclosure obligations imposed in the order of Falk J. In order for the claimants to succeed in establishing a case justifying committal I must be satisfied of the following:

> (a) That the order has been properly served before the time fixed for the doing of the act in question (CPR 81.5). That requires either personal service (CPR 81.6) or that personal service be dispensed with (CPR 81.8).
>
> (b) That the order had a proper penal notice endorsed on it (CPR 81.9).
>
> (c) That the application notice for committal sets out in full the grounds relied on and identifies, separately and numerically, each alleged act of contempt including, if known the date of each of the alleged acts; and that it is supported by one or more affidavits containing all the evidence relied on bracket CPR 81.10).
>
> (d) That the application notice has been served personally or that personal service should be dispensed with (CPR 81.10 (4) and (5)).
>
> (e) That any breaches have been established to the criminal standard.

49. I shall take those points in turn.

50. I find that the order of Falk J was served in good time before the expiry of the time required for disclosing the relevant material. The obligation to disclose ran from 48 hours from the date of service, so timing is not a problem. Service was specifically provided for in the order (see above) and there is evidence before me to prove service in the manner provided for. In my view the order of the judge was one which dispensed with personal service; insofar as it was not that I am satisfied that in the circumstances personal service should be dispensed with because of the difficulties in affecting it. There is no doubt that the defendant knew what his obligations were, or at least that he received the order. He confirmed the latter fact to HHJ Klein and has never sought to assert otherwise.

51. The order did indeed have a penal notice endorsed upon it. It is supported by affidavits, including further affidavit evidence admitted by HHJ Klein. They aver and prove the simple facts that the order was made and no disclosure was given.

52. The committal application itself seeks an order that personal service be dispensed with. There has never been a ruling on that application. Therefore it falls to me to deal with it. I am satisfied that personal service should be dispensed with. The case for dispensing with personal service and allowing a different form of service is as strong for the application notice as it was for the original freezing order (and subsequent orders). There is evidence from a process server that the application notice was served on the defendant's wife and there are certificates of service demonstrating service at the defendant's apparent address (33 Church Street) and by sending to the two email accounts referred to in the order of Falk J. It has become apparent over the course of the hearings that the application has come to the attention of the defendant. The previous evasiveness of the defendant justifies serving him in an alternative fashion. That fashion is the same as was adopted in relation to the previous orders (a technique which commended itself to Mostyn J in *Al-Baker v Al-Baker* [2015] EWHC 3229 Fam) In all the circumstances I dispense with personal service and determine that the application shall be treated as properly served, as having been served in the same fashion as the orders on which it was based. There is absolutely no prejudice to the defendant in this course. He has for some considerable time known what the application is about. His technique has been

to avoid a hearing of it rather than complain that was never properly served and/or that he did not know enough about it.

53. I have set out above the terms of the committal application. I am satisfied it complies with the requirement to set out each alleged act of contempt.

54. I turn therefore to the question of whether the relevant requirements of the order have been established. The obligation under the order was to provide details of assets within 48 hours of service of the order and then to provide a confirmatory affidavit within five working days after service of the order. The evidence demonstrates that the order was served by email and by service on the defendant's wife on 31st January 2019. It was also served by post by letter sent on 31st January; technically that will be treated as having been served two business days later. That time difference is immaterial for the purposes of this application. The fourth affidavit of Kavita Rana of the claimants' solicitors, sworn on 7 March 2019, calculates the dates by which the information in the affidavit ought to have been provided as being six February and 11 February respectively. I am not sure how that calculation is done; the period seem to me to be a little long based on the apparent dates of service. However, that does not matter. She states clearly that the defendant did not provide the information or the affidavit by those dates "or at all". Thus he had not provided information by the date of the affidavit. That is a breach of the order. The evidence shows that that state of affairs has persisted. Her fifth affidavit provides details of other limited assets which the Claimants themselves have discovered for themselves. They are assets which (along with any other relevant assets) the defendant

should have disclosed under his obligations but did not do so. His breach continues to this day.

55. The proposition that he has been in breach has never been challenged by the defendant. There is no material for suggesting that somehow the information was provided. I am sure, and satisfied beyond reasonable doubt, that the obligations to disclose provided in the order of Falk J and relied on in the committal application were (a) imposed, (b) known to defendant at the time, (c) not complied with and (d) that that non-compliance was deliberate. I am also satisfied beyond reasonable doubt that they have never been complied with since the expiry of the original time period and that no attempt to comply has apparently been made.

56. I therefore determine that the defendant is guilty of the breaches of the order relied on in the committal application so far as disclosure of information about assets is concerned.

The effect of the dissolution of the claimant company

57. Before going further there is one further point which needs to be dealt with. As the narrative above shows, at the time the action, the application for a freezing order and indeed the committal application were launched, the claimant company was in the position of having been dissolved for failing to file accounts. Falk J was alive to that point but allowed the application to proceed

on the footing that, since proceedings by a dissolved company could be stayed, and did not have to be struck out, then by the same token she could proceed to make the order (see paragraphs 6 and 7 of her judgment). When the matter came before Zacaroli J on 13th February he decided that the proper way of proceeding would be to join the second claimant as director and shareholder (and not merely to substitute them as claimant) relying on the decision of Briggs J in *HMRC v Eglinton* [2007] BCC 78). See his judgment at paragraphs 5 to 11. Leaving the company as a claimant was intended to preserve the company's opportunity to argue that the order of Falk J was validly granted, though he did not seek to suggest that it was not.

58. Had the company not been restored to the register there might have been an interesting argument to be had as to whether the order of Falk J was in fact regularly granted, and that if it was not then it should not be able to stand as the basis of a committal application. That point has never been argued in this litigation. It must be remembered that it is the order of Falk J, which preceded the joinder of the second claimant, which is the basis of the committal application based on non-disclosure. The order of Zacaroli J did reflect continuation of the obligations under Falk J's order but did not itself impose a fresh disclosure obligation in the same terms. If the Falk J order were to go then so would the basis of the committal application.

59. However, it is unnecessary to consider that because, in my view, the problem is fixed retrospectively by the provisions of section 1032 of the Companies Act 2006. That provision reads:

> "1032 Effect of court order for restoration to the register
>
> (1) The general effect of an order by the court for restoration to the register is that the company is deemed to have continued in existence as if it had not been dissolved or struck off the register."

60. Subsection (3) reads:

> "(3) the court may give such directions and make such provision as seems just for placing the company and all other persons in the same position (as nearly as may be) as if the company had not been dissolved or struck off the register."

61. I consider that in this case the provisions of section 1032 have a straight application precisely in accordance with the its terms. If the company is deemed to have continued in existence then it is deemed to have been a properly constituted claimant at the time of the application to Falk J. That seems to me to be a short answer the point. If it is necessary for me to make any express consequential directions to that effect in my order following on this hearing then I can make those under subsection (3), but it is not clear to me at the moment that I need to do so.

62. It is still necessary to consider what the effect of the order should be taken to have been in the period when it was ostensibly operating in favour of a non-existent company. As at the time the order was made and served, and as at the time the obligation to comply arose, the claimant company did not exist. However, in my view that does not affect enforceability of order as such even before the restoration. The order at the time was an order of the High Court which, as a matter of jurisdiction, had power to make it. It stood as an order of

the court, imposing the obligations that it imposed, unless and until it was effectively challenged by a relevant person and set aside by the court – see Gee on Commercial Injunctions 6th Edn at para 20-008 and eg *Grafton Isaacs v Robertson* [1985] AC 97.

63. The order of Falk J has not been subject of an appeal, nor has it been set aside by this or any other court. As such it stands as an order of this court and its provisions must be obeyed. It may or may not be that it could have been challenged after it was made, but until it was successfully challenged it stood. It had real effect in the period between its being made and the restoration, so a breach of it was a real breach. The order cannot now be challenged as being inappropriately made in favour of a dissolved company because of the effects of section 1032. There is no hardship or prejudice to the defendant in this. He had his opportunity to challenge it when the order was made, or at any time prior to the restoration of the company, but he chose not to engage with the application at all.

64. In the circumstances this factor does not operate in the defendant's favour in resisting the committal application.

The next steps

65. Were it not for the fact that Mr Brown submitted to me that the proportionate and better approach would be to adjourn this matter for the determination of the

sanction against Mr Selvathiraviam, I confess that I would have been minded to proceed to the sentencing step now. For my part I did not think the reasons for postponing that step were particularly compelling in the face of a defendant who has shown a propensity to evade these proceedings at every available opportunity. The events surrounding the passport order tend to demonstrate that it is only at the very last minute, when faced with the apparent prospect of arrest, that the defendant engages. I have serious doubts as to whether there is much point, in terms of his engagement, in postponing the sentencing hearing.

66. However, in the light of Mr Brown's position, which does indeed have something to be said for it, I am prepared to adjourn the sentencing phase. As Mr Brown said to me, his clients (effectively now the liquidators of the company) have no huge interest in having Mr Selvathiraviam go to prison. They want their information. It would seem, therefore, that they are prepared to give a last opportunity to Mr Selvathiraviam to comply though Mr Brown did not formally adopt that position. I shall therefore now adjourn this application for 28 days, to 2nd June 2020, to a hearing at which the appropriate sanction to be imposed on Mr Selvathiraviam can be considered.

67. Mr Selvathiraviam should be under no illusions as to the seriousness of his position. He will, of course, have the opportunity to explain himself and seek to mount a plea in mitigation. However, as matters appear to me at the moment, his breaches were flagrant, deliberate and long-standing. He was given a clear steer by HHJ Klein towards purging his contempt providing the information, but he has declined to take it and has simply continued, right to the present date,

to comply with the order in the face of numerous hearings when it ought to be obvious to him what he ought to be doing. In those circumstances Mr Selvathiraviam should understand that there is a serious prospect that he will be the subject of a substantial prison sentence. As I have said, he will have an opportunity to seek to argue against that, but it is right that he should understand the seriousness of his position as it stands at the moment. He should understand that he will be expected to attend the adjourned hearing, and that if he does not do so he runs the serious risk of being the subject of an immediately imposed prision sentence and/or arrest under a bench warrant.

Conclusion

68. I therefore find the breaches of the order of Falk J relating to disclosure of information and the filing of an affidavit, as relied on in the committal application notice, to be established. I find the breaches to be deliberate, flagrant and continuing and I stand this matter over until 3rd June 2020 at 10:30am (or at such other time as shall be nominated by the court) at the Royal Courts of Justice, Strand, London WC2A 2LL. Although the hearing which I have just conducted was conducted over a video link (the defendant was given an opportunity to participate and did not indicate that a video hearing caused him any problems, and he did not respond to an offer of equipment made by the claimants) at the moment, because of the possibility of a sentence of imprisonment is real, it is appropriate to have the next hearing in court premises. That is subject to any further direction of the court as to the manner of conducting the next hearing.