

Case No: CL-2017-000077

Neutral Citation Number: 2022] EWHC 2481 (Comm)

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT (QUEENS BENCH DIVISION)

Rolls Building
7 Rolls Building
Fetter Lane
London EC4A 1NL

Friday, 15 July 2022

BEFORE:

MR JUSTICE ROBIN KNOWLES CBE

BETWEEN:

JALDHI MIDEAST DMCC

Claimant

- and -

(1) AL GHURAIR RESOURCES LLC
(2) ESSA ABDULLAH AHMED AL GHURAIR

Defendants

MR E COLDRICK (instructed by Clyde & Co LLP) appeared on behalf of the Claimant
THE FIRST AND SECOND DEFENDANTS WERE NOT PRESENT AND NOT REPRESENTED

JUDGMENT
(Approved))

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1. MR JUSTICE ROBIN KNOWLES: The claimant in these proceedings seeks the court's decision on alleged contempt by the defendants of the court's order. The matter was first before the court on 14 June 2022 and was adjourned to today. That was in circumstances of some recent contact between the individual representing the claimant, Mr Bothra and the individual who is the second defendant, Mr Essa Al Ghurair.
2. There has been further contact between 14 June 2022 and today. That has been on the day before yesterday I am informed. The details have been provided to me by Mr Emmet Coldrick, counsel for the claimant and will be the subject of affidavit to be sworn promptly after this hearing. In addition, there was contact on 20 June 2022 and that is the subject of a second affidavit of Mr Bothra of 8 July 2022. Those contacts have not resolved the position of compliance or non-compliance with the court's orders.
3. The relevant order was made on 3 December 2019. It takes the form of an order requiring asset disclosure. The underlying position between the parties is that there is an unpaid judgment. It is not the unpaid judgment that is the subject of the contempt proceedings. What is the subject of the contempt proceedings is the question of failure on the part of the defendants to meet their obligations to this court to disclose assets as this court has ordered.
4. In short, the claimant's case is that the first defendant, an LLC, is in contempt of court in failing to comply with the asset disclosure order and Mr Essa Ghurair, second defendant, is responsible for the first defendant's failure and is also liable to be punished for contempt.
5. The defendants being absent today, as they were on 14 June 2022, it is for the court to consider whether to proceed to hear the application in their absence. The court, in the light of its decision on that point, may move to consider the allegation of contempt itself and the question of appropriate penalty.
6. The assets that were to be the subject of the asset disclosure order included all of the bank accounts of the LLC and all of its assets worth over \$10,000 in value.

7. I am entirely satisfied on the evidence that the asset disclosure order was properly served and was served with an appeal notice for which Bryan J gave permission on 3 December 2019. The method of service was the subject of consideration by this court, in particular by Andrew Baker J who gave permission for alternatives to personal service. That permission has been used by the claimant and service has, I am satisfied, been achieved.
8. The same applies to the present application itself issued on 23 September 2021. Alternatives to personal service were permitted by the order of Foxton J on 29 September 2021, the claimant proceeded in accordance with that permission and I am entirely satisfied that service was effective. Indeed, the effectiveness of the service and clarity that the LLC and Mr Ghurair know of the current application is apparent from the details available of the exchanges between Mr Ghurair and Mr Bothra that have occurred just before 14 June 2022 and in the period between 14 June 2022 and today. In addition, proper steps were taken by the claimant to ensure that formal notice was given of today's adjourned hearing to each of the defendants.
9. Under CPR 81.4(2)(o) the claimant was required to state in the application that the court may proceed in the absence of the defendant if the defendant does not attend. The application met that requirement.
10. I have had regard to the principles that engage the court when considering whether to proceed in the absence of a defendant. These have helpfully been summarised with the citation of authority and by Cockerill J in *XL Insurance Company SE v IPORS Underwriting Limited* [2021] EWHC 1407 (Comm) at [43] to [46]. The passages include those drawn from appellate authority.
11. On each of the points required, I declare that I am satisfied and it is wholly in the interests of justice that the matter proceed today. I am clear that the defendants' absence is through choice in circumstances where they were and are fully aware both of the first hearing on 14 June and today. There is no sign at all of any difficulty or inability on their part in being present or represented.

12. I turn then to the question of whether the alleged contempt is made out or not. It must of course be proved to the criminal standard so that I am sure, as was summarised by Christopher Clarke J in *Masri v Consolidated Contractors International Company SAL & Ors* [2011] EWHC 1024 (Comm) [150]:

“In order to establish that someone is in contempt it is necessary to show (i) that he knew of the terms of the order; (ii) that he acted (or failed to act) in a manner which involved a breach of the order; and (iii) that he knew of the facts which made his conduct a breach.”

13. I have considered each of those requirements separately and individually in respect of first, the LLC and second, Mr Ghurair. On the evidence before the court, it is entirely clear so that I am sure that each of the elements is made out against the LLC and Mr Ghurair individually.
14. The application notice sets out particular contempts alleged against the LLC, the first of which is the failure to provide any accounts or balance sheet. There is a complete absence of response to that requirement, as there is in relation to the second and third grounds that have been formulated in the application notice and which concentrate on bank accounts and assets exceeding \$10,000 in value.
15. It is moreover clear to me so that I am sure that the non-compliance in the present case is wilful. As submitted by the claimant, this is not a case where some albeit inadequate attempt has been made to comply with the court’s order. There has been a choice to ignore it.
16. There is before the court clear evidence of the position of authority held by Mr Ghurair so as to engage the principles stated by the Court of Appeal in *AG for Tuvalu v Philatelic Distribution Corporation Ltd* [1990] 1 WLR 926:

“Where a company is ordered not to do certain acts and a director of that company is aware of the order, he is under a duty to take reasonable steps to ensure that the order or undertaking is obeyed and if he wilfully fails to take those steps and the order or undertaking is breached he can be punished for contempt.”

The reference there to a company being ordered not to do "certain acts" applies of course equally where the company is ordered to do certain acts. The evidence satisfies me that Mr Ghurair is wilfully failing to take reasonable steps to ensure that the court's order against the LLC is complied with.

17. In these circumstances and with regret the court must find that there is contempt of this court's order. I will move to the question of sentence or sanction for that.
18. I wish to emphasise that the court's order remains and compliance with it continues to be the obligation of the LLC and it continues to be the obligation of Mr Ghurair to take reasonable steps to ensure that the order is obeyed.
19. When I reference regret, it is that Mr Ghurair and the LLC should have allowed matters to reach this point when they have now both continuing obligations as important as they ever were but also have to face the sentence or sanction of this court for not complying.
20. In circumstances where the asset disclosure was required by a particular date, as I have mentioned the obligation nonetheless continues but when, as is still to be hoped, the court's order is complied with, the compliance should address the position both at the time when it should have been achieved but also as at the date of the compliance actually being achieved, that is the date of the provision of the information.
21. So far as sentence or sanction is concerned, I emphasise that the court is today not dealing with any penalty or otherwise for non-payment of debt, even of the judgment debt, that underlines these proceedings. What the court is dealing with is the fact that the order of the court for asset disclosure has not been complied with and that is a matter that goes not just to commerce but to the rule of law.
22. As regards punishment for contempt, the relevant principles are helpfully stated by Popplewell J in *Asia Islamic Trade Finance Fund Ltd v Drum Risk Management Ltd* [2015] EWHC 3748 (Comm) [7]:

"I was referred to a number of relevant authorities, including
Crystal Mews Limited v Metterick & Others [2006] EWHC 3087

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

- (h) In contempt cases the object of the penalty is to punish conduct in defiance of the court's order as well as serving a coercive function by holding out the threat of future punishment as a means of securing the protection which the injunction is primarily there to achieve.
- (ii) In all cases it is necessary to consider (a) whether committal to prison is necessary; (b) what is the shortest time necessary for such imprisonment; (c) whether a sentence of imprisonment can be suspended; and (d) that the maximum sentence which can be imposed on any one occasion is two years.
- (iii) A breach of a freezing order, and of the disclosure provisions which attach to a freezing order is an attack on the administration of justice which usually merits an immediate sentence of imprisonment of a not insubstantial amount.
- (iv) Where there is a continuing breach the court should consider imposing a long sentence, possibly even a maximum of two years, in order to encourage future cooperation by the contemnors.
- (v) In the case of a continuing breach, the court may see fit to indicate (a) what portion of the sentence should be served in any event as punishment for past breaches; and (b) what portion of a sentence the court might consider remitting in the event of prompt and full compliance thereafter. Any such indication would be persuasive but not binding upon a future court. If it does so, the court will keep in mind that the shorter the punitive element of the sentence, the greater the incentive for the contemnor to comply by disclosing the information required. On the other hand, there is also a public interest in requiring contemnors to serve a proper sentence for past non-compliance with court orders, even if those contemnors are in continuing breach. The punitive element of the sentence both punishes the contemnors and deters others from disregarding court orders.

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

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

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

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

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

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

(g) whether the contemnor has cooperated;

to which I would add:

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

23. I have had regard here, as with the stage of dealing with the question of whether there was contempt itself, to the other authorities that have been drawn to my attention by Mr Coldrick and for which I am grateful.

24. The court will pass sentence or impose sanction in circumstances where it will remain open to the LLC and Mr Ghurair to approach the court and to ask the court to purge the contempt or to return to the question of sentence or sanction in light of any compliance with the court's order for asset disclosure albeit late compliance. The court will consider such an application on the part of the LLC or Mr Ghurair on its merits at any point in time that it is made. I wish there to be no misunderstanding given the clarity in the present case of awareness of obligation that already exists, but it is very much in the interests of the LLC and Mr Ghurair to approach the court soon, very soon if either or both wishes to invite the court to return to the matter in the way that I have indicated.

25. The sentence or sanctions that I impose in the present case will apply but the court can return to them. I wish also to make clear that whilst the order for asset disclosure continues so does the contempt. It is therefore a position that both the LLC and Mr Ghurair are exposed to further sentence or sanction for contempt as further time passes. In light of the sentence or sanction that I am about to impose in relation to the LLC, that may be particularly important but it is relevant to both.
26. The court's sentence in relation to the LLC. I am invited to consider the issue of a writ of sequestration of the LLC's assets but in circumstances where there is no evidence of assets within this jurisdiction, although that is not a bar to my making an order for sequestration, in the exercise of my discretion, I will not take that step at this point in this case. I will however impose at this point a fine of £100,000. In addition, both the LLC and Mr Ghurair, if I look across to him for a moment, will be jointly and severally liable for the costs of these contempt proceedings on the indemnity basis.
27. The question of sequestration is not over. Should it be the case that the LLC continue not to comply the court no doubt will look at the matter in the context of whether there is any evidence of assets within this jurisdiction that make that a more practical remedy is after all available.
28. So far as Mr Ghurair is concerned, the court imposes a sentence of imprisonment of 12 months. I have been asked to consider and I do in any event, as is my duty, the question of whether that sentence should be suspended or not. There is no material in the present case that would cause me to suspend that sentence. That is a different matter, I emphasise, to whether the sentence is adjusted, reduced or suspended in the context of an approach by Mr Ghurair, especially in good time, asking the court to accept late compliance and asking the court to purge his contempt.
29. I have taken into consideration what was described by the claimant through Mr Coldrick as the arguable mitigation in the case. That was the term used to refer to the wish of Mr Ghurair that the judgment debt be paid and the difficulty he has in achieving that without cooperation as he says from one or more other people. I do not regard that as arguable mitigation, with respect, and indeed it focuses on the question of payment of the judgment debt. I see nothing that has stopped Mr Ghurair from

himself causing the LLC through himself to provide details of asset disclosure. It was always and still is open to him to say that there is a limit to what he knows but he has not said anything at all.

30. What I have said about the description of that aspect of arguable mitigation by the claimant through Mr Coldrick is not at all to criticise the claimant or its advisers because I know it is put before the court in the spirit of full, frank and fair presentation and particularly in circumstances where the defendants are not present or represented. That quality of approach has been apparent throughout from Mr Coldrick and from Clyde & Co Solicitors that instruct him and the court is grateful for that.
31. I therefore impose the fine I have mentioned, impose the sentence of immediate imprisonment that I have mentioned and I will also as I have said impose joint and several liability on the indemnity basis for costs. I will hear Mr Coldrick on the amount of those costs.

(After further submissions)

32. My order today does not apply to A and B. I am happy, however, today to summarily assess here and now the costs on A and B and I will do that. Together they are about £18,000 odd. I will summarily assess those on the standard basis at £15,000 in total.

(After further submissions)

33. I have looked at part C costs on your schedule and I am satisfied that those costs should all be allowed on the indemnity basis.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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This transcript has been approved by the Judge