Neutral Citation Number: [2023] EWHC 1216 (Ch)

Case No: HC-2016-000468

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

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 24/05/2023

Before:

THE HONOURABLE MR JUSTICE ROTH

- -

Between:

JOHN CHARLES JONES	**Claimant/ Respondent**
- and -	
RODERIC ALEXANDER INNES HAMILTON (ACTING THROUGH HIS TRUSTEES IN BANKRUPTCY)	**Defendant**
	Applicants

- -
- -

Stefan Ramel (instructed by **Freeths LLP**) for the **Applicants**
Sophie O'Sullivan (instructed by **Janes Solicitors**) for the **Claimant/Respondent**

Hearing dates: 13th,14th,15th,16th,17th and 20th February 2023

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Approved Judgment

This judgment was handed down remotely at 10.30am on 24th May 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives

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MR JUSTICE ROTH

Mr Justice Roth:

INTRODUCTION

1. This is an application for the committal of Mr John Jones for contempt of court, initially brought by Mr Roderic Hamilton, the defendant in the underlying proceedings commenced by Mr Jones. Mr Hamilton was declared bankrupt in October 2019 and the application has been continued by his trustees in bankruptcy, Mr Ed Thomas and Mr Matthew Carter of Mazars LLP. Pursuant to the order of Miles J of 1 March 2022, the trustees are referred to as the Applicants.

2. The committal application has a protracted history. An application to commit Mr Jones for contempt comprising breaches of freezing orders was issued as long ago as July 2019. Pursuant to a consent order made on 30 October 2019, that application was in effect amended by the issue of a full application in proper form on 24 January 2020, setting out 11 broad grounds of contempt, some of them comprising in turn a number of distinct alleged breaches of court orders. Grounds 8-9 comprised the signing of false affidavits and of a false statement of truth in a Part 18 Response in the underlying litigation, and on 23 October 2020 Falk J gave permission pursuant to CPR r. 81.3(5)(b) for those false statements to be relied on and directed further disclosure from Mr Jones. Arising from that disclosure, four further alleged grounds of contempt were set out in an affidavit made on 27 November 2020[1] by Mr Marsden, formerly of Mr Hamilton's solicitors and now a partner in the solicitors to his trustees in bankruptcy.

3. The trial of the committal application was originally due to be heard from 23 March 2020 but was stayed by order of HH Judge Eyre QC (sitting as a judge of the High Court) by reason of Mr Hamilton's bankruptcy. On 1 October 2020, Falk J lifted the stay, on Mr Hamilton's trustees in bankruptcy confirming that they wished to proceed with the application. Although Falk J by her further order of 23 October 2020 directed that the trial be listed for six days to start on the first available date after 14 February 2021, with a pre-trial review on the first available date after 18 January 2021, the trial was in fact listed to take place only from 28 March 2022.

4. At the pre-trial review on 1 March 2022, Miles J directed that there be produced a consolidated document setting out all the grounds of contempt relied on. That was duly done, but on 17 March 2022 the trial was vacated due to the sudden unavailability of Mr Jones' counsel for personal reasons. Granting that adjournment, Trower J directed that it is desirable that the trial be relisted "to be heard as soon as possible." Notwithstanding that direction, this trial only came on for hearing 11 months later and I understand that this was due to the unavailability of counsel. It is profoundly unsatisfactory that proceedings of this nature should be so long delayed.

5. One of the grounds of alleged contempt was the breach of an undertaking given on behalf of Mr Jones in a solicitors' letter, whereas an undertaking in the same terms was given subsequently in a court order. After I pointed out at the outset of the hearing that breach of an undertaking in a solicitors' letter does not found a contempt, the Applicants

[1] Because of the Covid pandemic, that affidavit was unsworn at the time. It was verified by Mr Marsden's fifth affidavit made on 13 December 2022.

applied to amend that ground to allege breach of the undertaking given to the court. I permitted that amendment, for reasons given in a separate judgment.

BACKGROUND

6. The contempt proceedings arise out of highly acrimonious and complex litigation between Mr Hamilton and Mr Jones. This summary is derived from one of the judgments in that litigation, delivered by Mr David Railton QC, sitting as a deputy High Court Judge, on 19 December 2017: [2017] EWHC 3361 (Ch).

7. Mr Hamilton and Mr Jones had been good friends and both were successful in business, Mr Hamilton primarily in equities and Mr Jones primarily in properties. However, Mr Hamilton fell on difficult times in around 2010 and Mr Jones helped him by arranging loans, which involved a complex structure of guarantees and security through companies in which Mr Hamilton held an interest. Some of the financing was for the purpose of investment projects in which both Mr Jones and Mr Hamilton were or became involved and which gave rise to profit-sharing arrangements between them. After the relations between the two broke down, Mr Jones started proceedings against Mr Hamilton in 2016 seeking declarations as to his interest in various companies, an account of profits under an agreement between the two men, and payment of over £2 million to one of the companies in which Mr Jones claimed a majority interest.

8. There were effectively three distinct trials in that action. The first, concerning preliminary issues, was heard over five days by Mr John Baldwin QC (sitting as a Deputy High Court Judge) who by his judgment on 17 May 2017 determined that the shareholding in two companies was held, respectively, by Mr Hamilton as to 80% and by Mr Jones as to 20%, and not the other way round as Mr Jones had contended: [2017] EWHC 1065 (Ch). The judge made very strong criticism of Mr Jones' evidence, to which I shall return. The second, to which I have referred above, was heard over six days by Mr Railton QC, who determined a range of matters, some in favour of Mr Jones and some in favour of Mr Hamilton. Most relevantly, while Mr Jones accepted that he was liable to pay Mr Hamilton €450,000 as 5% of the commission of €9 million earned by Mr Jones on the sale of a property development in Luxembourg known as "Place de l'Etoile", the judge held that Mr Jones was also liable to pay Mr Hamilton 5% of any further profits made by Mr Jones, his nominees or associated companies on the sale of Place de l'Etoile,[2] as to which the judge directed that there should be an inquiry and consequential account. The third trial was the hearing of that inquiry and account, conducted by Master Teverson over five days and resulting in a judgment of 4 April 2019. Master Teverson found that the further profits realised were €24,773,218; held that Mr Jones was therefore liable to pay Mr Hamilton 5% of that total, i.e. €1,238,661 plus interest of €117,317; and made substantial orders of costs against Mr Jones. On 19 July 2019, following an oral hearing, Marcus Smith J dismissed Mr Jones' application for permission to appeal against Master Teverson's order.

9. I was told that the €450,000 ordered by Mr Railton QC was paid, but that save for under £46,000 eventually recovered from the net equity on the sale of Mr Jones' flat in Hove, the monies ordered by Master Teverson have never been paid. According to the Applicants, the amount now owed by Mr Jones pursuant to that order is over £1.85

[2] Formally, the sale of the shares in two subsidiary companies which owned, directly or indirectly, the Place de l'Etoile plots.

million plus the balance of costs to be assessed on an indemnity basis. It was some months after Master Teverson's order that Mr Hamilton was declared bankrupt.

10. In the course of the litigation, a series of freezing, asset preservation and disclosure orders were made against Mr Jones, including the following:

The 2016 Order

11. On 14 June 2016, Mr Edward Bartley Jones QC (sitting as a Deputy High Court Judge) made a without notice freezing order which, inter alia, prohibited Mr Jones:

    i) removing or dissipating any of "his assets" in England and Wales up to £2.5 million; and

    ii) dealing with or diminishing any assets of various specified companies, or taking any steps as director of those companies without first providing written notice to Mr Hamilton's solicitors. The specified companies included Walton Castle Ltd and Walton Castle Events Ltd.

12. By para 4 of the order, the reference to "his assets" in (i) applied to all Mr Jones' assets whether or not they are in his own name and whether they are solely or jointly owned, and further specified:

> "For the purpose of this order the Respondent's assets include any asset in England and Wales which he has the power, directly or indirectly, to dispose of or deal with as if it were his own. The Respondent is to be regarded as having such power if a third party holds or controls the asset in accordance with his direct or indirect instructions."

13. On 22 June 2016 (the return date under that order), at a hearing at which Mr Jones was represented, Arnold J continued those provisions until trial.

14. I shall refer to this as "the 2016 Order".

The 2017 Order

15. On 29 September 2017, at a hearing at which Mr Jones was represented, Newey J varied the 2016 Order to insert:

> a) A prohibition as follows:
>
> "6A. The Respondent must not in any way dispose of, deal with or dimmish the value of, or permit to be disposed of, dealt with or diminished in value, the following asset outside of England and Wales, namely assets of Andromeda Investments S.A., ('**Andromeda**'), received to be received by Andromeda as the Third Tranche payable on 1 October 2017 from Project Minerva Properties S.A.R.L pursuant to an agreement dated 31 March 2016 (the "**Tranche 3 Funds**") up to the value of £2,000,000 (the "**Frozen Funds**").

> For the avoidance of doubt the obligations listed in this paragraph are purely personal to the Respondent, and are not to be enforced against any third party or through the courts of or in any other jurisdictions. The term "assets" herein shall have the same meaning as defined in paragraph 4 above.
>
> 6B.(1) The Respondent shall take such steps as within his power to ensure that the Frozen Funds are retained by Andromeda."

b) A requirement (subject to the usual proviso for self-incrimination) to swear by 11 October 2017 an affidavit setting out all his assets worldwide exceeding £10,000 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".

16. I shall refer to this as "the 2017 Order." Mr Jones by his counsel agreed at the outset of the trial before Mr Railton to the continuation of the freezing injunction in the 2017 Order.

The Undertaking

17. At the outset of the trial before Mr Railton QC on 7 November 2017, Mr Jones by his counsel gave an undertaking to the court not without the prior written consent of Mr Hamilton to distribute or otherwise dissipate the balance of the tranche paid in April 2017 under the 31 March 2016 agreement, that balance being €1,243,882.43. That undertaking was expressed to apply until judgment but was then continued in the order of Mr Railton made on 20 February 2018. I shall refer to this as "the Undertaking".

The WWF Order

18. Following the dismissal of Mr Jones' application for permission to appeal against the order of Master Teverson, on 19 July 2019 Marcus Smith J made a worldwide freezing order (by variation of the previous orders) prohibiting Mr Jones from disposing of, dealing with or diminishing the value of any of his assets wherever they may be up to the value of £2.5 million.

19. That order was made without notice, but continued by Mr Lance Ashworth QC (sitting as a deputy Judge of the High Court) on 26 July 2019 following an inter partes hearing at which Mr Jones appeared in person. Mr Ashworth helpfully incorporated it along with the terms of all the previous orders (as varied) into a consolidated order.

20. I shall refer to this as the "WWF Order".

21. Save for the allegations concerning a dishonest answer in the Part 18 Response and false affidavits of assets, all the allegations of contempt relate to breaches of the 2016 Order, the 2017 Order, the Undertaking or the WWF Order. Indeed, the first and more significant false affidavit of assets relied on was made pursuant to the 2016 Order, so any falsehood in that affidavit constitutes a breach of the 2016 Order.

Other Orders

22. In addition to the orders set out above, a number of further orders were made against Mr Jones that are relevant:

The Pelling Order

23. On 4 July 2019, HH Judge Pelling QC (sitting as Judge of the High Court) ordered that:

a) by 15 July 2019 (subject to the usual proviso against self-incrimination), Mr Jones must swear an affidavit setting out to the best of his ability all his assets worldwide exceeding £10,000 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". The order specified that the reference to "his assets" carried the extended meaning set out in the 2016 Order.

b) by 25 July 2019, Mr Jones must provide:

> "A list, showing the amounts and dates, of all monies paid by him to any accounts (including without limitation any practice account or client account) of Charles Douglas Solicitors LLP since 15 June 2016, with in each case an explanation of the ultimate source of the said funds (not merely limited to the name of the account from which payment was made) and a statement in each case as to whether the payment was for an invoice previously rendered by Charles Douglas Solicitors LLP."

24. Pursuant to the Pelling Order, Mr Jones made an affidavit on 10 July 2019 and a witness statement on 25 July 2019 with which he provided a schedule showing the bank accounts from which payments were made, and sought more time to state the ultimate source of the funds.

The Kramer Order

25. In response to a further application by Mr Hamilton in the light of those documents, on 9 August 2019, HH Judge Kramer (sitting as a Judge of the High Court) ordered that by 21 September 2019 Mr Jones swear a further affidavit setting out to the best of his knowledge and belief:

(a) What happened to each of the assets referred to in his affidavit of assets dated 9 October 2017;

(b) What happened to the £2,000,000 of the "Tranche 3 Funds" as frozen by and defined in clause 6A of the 2017 Order;

(c) What steps he took to ensure that the said £2,000,000 of the Tranche 3 Funds were retained by Andromeda pursuant to clause 6B of the 2017 Order;

(d) What happened to the balance of the €2,031,214;[3]

[3] This is the amount covered by the undertaking given by Mr Jones through his solicitors in their letter to Mr Hamilton's solicitors of 30 March 2017: see para 137 below.

(e) What happened to the €9m commission he was due to receive following the sale of Place de l'Etoile.

26. The order further directed:

> "In stating what happened to the said assets, the Respondent shall in particular set out in relation to each such asset to the best of his knowledge where and by whom the asset, and any asset or money representing or received in return for the same, are held, and the value thereof, and how they got there."

The Anderson Order

27. By a consent order made by Mr Mark Anderson (sitting as a judge of the High Court) on 20 October 2019, Mr Hamilton was to serve a list of questions on Mr Jones on 15 November 2019, which Mr Jones was to answer "with all supporting documentation" by 9 December 2019. There was no requirement that this be attested by a declaration of truth.

28. Mr Jones served his answers to those questions by a document, which was not a witness statement (and to be clear, no witness statement had been ordered), attaching various documents.

The Falk Order

29. In giving directions for the committal hearing on 23 October 2020, Falk J made an extensive order for disclosure from Mr Jones, including production of statements from various bank accounts and statements showing all monies earned by Mr Jones since 26 July 2019 and all fees paid by or on behalf of Mr Jones to Charles Douglas Solicitors, including statements to show the ultimate source of the funds used to pay those fees.

30. Both Judge Pelling and Judge Kramer ordered Mr Jones to pay the costs of the applications before them.

31. I refer to these further orders both because they feature in what follows and because on a number of occasions in his evidence Mr Jones referred to various documents which he said exist but which he had never produced. On behalf of Mr Jones, Ms O'Sullivan submitted that it would be wrong to draw any adverse inference from Mr Jones' failure to produce those documents as that would reverse the burden of proof which rests on the Applicants. However, over the protracted duration of these proceedings Mr Jones has been repeatedly pressed, and has been subject to successive orders, to produce information and documentation. He is fully able to understand the allegations he is facing and their gravity. While the burden of proof rests firmly on the Applicants, given the opacity of much of Mr Jones' financial and business transactions, when Mr Jones put forward a positive case or explanation he would readily have appreciated the need to produce the relevant documentation. In deciding whether Mr Jones' account of a particular matter is plausible, it is entirely appropriate, in my judgment, and does not reverse the burden of proof, to have regard to whether there was a proper explanation for the failure to produce directly relevant documents.

THE COMMITTAL HEARING

32. The Applicants relied on a series of affidavits by Mr Marsden made over the prolonged period of these committal proceedings. They sought to piece together various financial transactions and payments made by Mr Jones or on account of his companies, reflecting an increased understanding as further information was disclosed. Mr Marsden was cross-examined only very briefly, when he accepted that he had been mistaken in his evidence in saying that Mr Jones had been present at the hearing before Newey J on 29 September 2017.

33. Mr Hamilton's affidavits in support of his applications for freezing orders and also a witness statement on the committal application were in evidence. He was also cross-examined briefly, in particular on an alleged false reply in his bankruptcy questionnaire and secondly on the question whether he had properly disclosed his bankruptcy, which occurred on 23 October 2019, after the application to commit Mr Jones. However, the latter point had been raised at a hearing before HH Judge Eyre QC (sitting as a High Court Judge) as long ago as March 2020 on an application by Mr Jones to strike out the committal application. Judge Eyre dismissed Mr Jones' application and ordered indemnity costs against him. Neither of those two points are now relevant to these committal proceedings and accordingly I need say no more about Mr Hamilton's evidence.

34. There were three affidavits before the Court from Mr Jones. The fullest was made on 30 January 2023, two days before the Applicants' skeleton argument was to be served. I do not think Mr Jones had permission for the late filing of such evidence but, sensibly, given the nature of these proceedings, it was not objected to.

35. Mr Jones was told that he was under no obligation to give evidence: he had the right to remain silent and it was for the Applicants to prove the allegations of contempt. However, Mr Jones volunteered to give evidence and it was clear that he was indeed keen to put forward his answer to the various allegations.

36. Mr Jones' testimony spanned a weekend and in the course of it he found further documents on which he sought to rely. With the agreement of the Applicants, he supplied those documents to his solicitors who provided copies to the Applicants' solicitors. It was further agreed that one of those documents could be introduced in evidence straight away and Mr Ramel for the Applicants cross-examined Mr Jones on it. As regards the other new documents, Mr Jones was allowed to introduce them into evidence by way of an exhibit to a further witness statement produced after he had completed his oral evidence, on the basis that the Applicants would have the right if they wished to have Mr Jones recalled for further cross-examination on that additional evidence. Mr Jones' further witness statement exhibiting those documents was served on 23 February 2023. In the event, Mr Ramel did not seek to cross-examine further and was content to comment on them in his written closing submissions.

37. Mr Jones gave evidence for three and a half days. That must have been a strain but he showed great resilience, and of course he had given evidence in the previous trials so this was not a new experience for him. He was clearly familiar with much of the detail and had strong opinions on the meaning of various documents. He is evidently a very intelligent man and well used to complex business arrangements and dealing in

different jurisdictions. He indeed felt able to state with confidence how certain documents would be interpreted by a Luxembourg court.

38. In the trial before Mr Baldwin QC, Mr Jones also gave extensive evidence and the judge was highly critical of him. The judge said in his judgment, at para 34, in a passage which Mr Ramel emphasised:

> "Mr Jones is an intelligent man who knows what he thinks is best for him and, in my judgment, will say whatever he thinks is best for him. He is not a man who is troubled by saying things which are not true if so to do would be to his disadvantage. Mr Jones is a person content with the truth if that fits in with what suits him but not otherwise. The result of that approach combined with his undoubted intelligence is that Mr Jones gives the impression of having an answer to everything. If I have to rely upon Mr Jones' word for something having happened, I have no confidence in that word unless I can be satisfied from other matters that what he is saying is likely to be true."

39. I have sought to form my own assessment, independent of those observations. I am also very conscious that in committal proceedings the Court applies the criminal standard of proof, not the civil standard which applied in the earlier trial. It is also right to observe that in the trial before Mr Railton QC, several of the bitterly disputed issues were decided in favour of Mr Jones. Nonetheless, I found some of the testimony of Mr Jones wholly implausible and impossible to accept. On other matters, I consider that it may be true or that there is scope for doubt, i.e. that I cannot be satisfied that I am sure that it is not true. I shall comment on particular aspects of his evidence when addressing the particular allegations of contempt.

40. A large number of documents were referred to. Some are bank statements which speak for themselves. There are also a significant number of contractual and related documents. Some of those are contracts with third parties which appear to be wholly at arms' length. But others are contracts with companies controlled by friends of Mr Jones or involve an arrangement between Mr Jones himself and companies in which he was closely involved. The transactions involved in the underlying dispute are replete with complex arrangements for inter-company loans and payments involving connected corporate entities, some of which were ultimately under the same beneficial ownership. I bear in mind the observations of Mr Baldwin QC, set out at para 4 of his judgment:

> "The parties accept that many of the company documents are not reliable and, in some cases, are positively misleading as to their contents. Mr Jones was very frank about it. He admitted that he would produce documents irrespective of the truth of their content if the same were required, for example, for tax purposes. I understood from him that otherwise there could be serious tax implications for both Mr Hamilton and himself which he regarded, I infer, to be a very bad thing. And Mr Wagner, a witness for Mr Jones and a director of Solfado,[4] admitted that

[4] Solfado SA was a Luxembourg company and one of the two companies as to which the relative shareholding was in dispute between Mr Jones and Mr Hamilton.

> corporate documents he prepared for his clients to record, for example, Board Meetings (including attendees thereat) were frequently (probably more often than not) not a true record of what had transpired or who had been present. He considered his conduct in preparing such documents to be a useful convenience and it did not seem to concern him that the documents were misleading, although he said he may change his practice and be a bit more careful in future."

41. Counsel filed full written closing submissions sequentially on 8 and 15 March 2023, which I found very helpful.

THE LAW

42. In their skeleton arguments, counsel for both sides helpfully cited the relevant legal principles governing committal for contempt of court.

43. It is fundamental that the criminal standard of proof applies for a finding of contempt. As recently observed by Cockerill J in *ADM International SARL v Grain House International SA* [2023] EWHC 135 (Comm) at [37], the modern way of expressing that in a criminal case is to direct that the jury "must be satisfied so that they are sure". This is in substance the same as proof beyond reasonable doubt and I respectfully agree with Cockerill J that the modern expression should be adopted for civil contempt cases.

44. It is common ground that to be in contempt a respondent must:

    i) know of the relevant order;

    ii) have acted, or failed to act, in a manner prohibited or required by the order, as the case may be;

    iii) intended to do the act, or to fail to do the act, as the case may be: mere inadvertent conduct will not suffice.

45. However, knowledge by the respondent that the act is a breach is not required. As Rose LJ (as she then was) said in *Varma v Atkinson & Another* [2020] EWCA Civ 1602 at [54]:

> "once knowledge of the order is proved, and once it is proved that the contemnor knew that he was doing or omitting to do certain things, then it is not necessary for the contemnor to know that his actions put him in breach of the order; it is enough that as a matter of fact and law, they do so put him in breach."

46. In *Navigator Equities Ltd v Deripaska* [2021] EWCA Civ 1799, Carr LJ in her judgment (with which Asplin and Snowden LJJ agreed) at [82] set out a series of propositions that apply to civil contempt cases, including the following:

> "iii) Breach of an undertaking given to the court will be a contempt: an undertaking to the court represents a solemn commitment to the court and may be enforced by an order for

> committal. Breach of a court undertaking is always serious, because it undermines the administration of justice;
>
> iv) The meaning and effect of an undertaking are to be construed strictly, as with an injunction. It is appropriate to have regard to the background available to both parties at the time of the undertaking when construing its terms. There is a need to pay regard to the mischief sought to be prevented by the order or undertaking;
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> v) It is generally no defence that the order disobeyed (or the undertaking breached) should not have been made or accepted;
>
> vi) Orders and undertakings must be complied with even if compliance is burdensome, inconvenient and expensive. If there is any obstacle to compliance, the proper course is to apply to have the order or undertaking set aside or varied;
>
> vii) In order to establish contempt, it need not be demonstrated that the contemnor intended to breach an order or undertaking and/or believed that the conduct in question constituted a breach. Rather it must be shown that the contemnor deliberately intended to commit the act or omission in question. Motive is irrelevant;…
>
> ix) For a breach of order or undertaking to be established, it must be shown that the terms of the order or undertaking are clear and unambiguous; that the respondent had proper notice; and that the breach is clear (by reference to the terms of the order or undertaking)."

47. In *Kea Investments Ltd v Watson* [2020] EWHC 2599 (Ch), Nugee LJ stated, at [18]:

> "… in an appropriate case the Court can have regard to the cumulative effect of purported explanations given by the alleged contemnor which together can lead to the conclusion that the evidence is deceitful: see *Ablyazov (CA)* per Rix LJ at [96], [100]. At [96] he said:
>
> > "96. I would end this section of my judgment by saying this. It is noticeable from the facts of this case, both as found by the judge, but also in the nature of the structure of the arguments as they have developed, how time and time again, as some aspect of Mr Ablyazov's conduct has come under question, so the evidence deployed has become remarkable for the way in which it has taken tortuous turnings which have asked the court to suspend its belief in reality in favour of reduplicating unrealities…."""

48. For Mr Jones, Ms O'Sullivan also relied on the so-called 'defence' of impossibility. In *Sectorguard Plc v Dienne Plc* [2009] EWHC 2693 (Ch),

Briggs J (as he then was) accepted that failure to do what is impossible is not a contempt since the contemnor must intend the act or omission in question. As he put it, at [33]:

> "… even a mental element of that modest quality assumes that the alleged contemnor had some choice whether to commit the relevant act or omission. An omission to do that which is in truth impossible involves no choice at all. Failure to comply with an order to do something, where the doing of it is impossible, may therefore be a breach of the order, but not, in my judgment, a contempt of court."

This approach was adopted in *Perkier Foods Ltd v Halo Foods Ltd* [2019] EWHC 3462 (QB), where Chamberlain J said at [14]-[15]:

> "It is for the applicant to prove to the criminal standard that the respondent had the necessary *mens rea*. In a case where the respondent says that compliance was impossible, and there is *some* evidence to that effect, *mens rea* is in issue and it should be for the applicant to prove to the criminal standard that compliance was possible, in the sense that the respondent had a choice about what to do. That result is consistent with the general rule in criminal law.
>
> In the vast majority of cases, it will not be difficult for the applicant to prove that compliance is possible. In general, an injunction will not be granted if it would be impossible to comply with it. Furthermore, as the above cases show, it is not necessary to show that compliance would have been easy or convenient or inexpensive. Court orders must be complied with even if compliance is burdensome, inconvenient and expensive. What has to be proved on a committal application, in a case where the respondent has adduced evidence that compliance would be impossible (and so has discharged the evidential burden), is simply that compliance was possible."

49. Finally, where the contempt concerns an alleged false statement in a pleading verified by a statement of truth, contempt requires:

i) that the statement in question is false;

ii) that the respondent had no honest belief that it was true; and

iii) that the statement would be likely to interfere with the course of justice in some material respect.

Ms O'Sullivan contended that it is further required that the respondent knew that the statement was likely to interfere with the course of justice. That submission derives support from *AXA Insurance UK PLC v Rossiter* [2013] EWHC 3805 (QB) at [9], although there this was common ground. This is the view taken in the White Book at note 81CC.10 but for reasons that will become clear it is not necessary for me to reach a concluded view on this point.

GROUNDS 1-4: THE "TRANCHE 3 FUNDS"

50. These grounds allege breach of provisions of the 2017 Order concerning the Tranche 3 Funds, set out at para 15 above. It was not suggested that Mr Jones was not aware of the Order. Although he was not in court for the hearing before Newey J (he was abroad at the time), he was represented at the hearing and he accepted that the terms of the order were brought to his attention almost immediately afterwards.

51. It is necessary to explain in some detail the background to this order. By a sale and purchase agreement dated 31 March 2016 (the "SPA"), Andromeda Investissement SA ("Andromeda") agreed to sell to Project Minerva Properties SARL ("Project Minerva") all the shares in its subsidiary companies which held the Place de l'Etoile property. Mr Jones was himself a party to the SPA, and through another Luxembourg company, Hebolux SA ("Hebolux"), of which he was the sole beneficial owner, he held a substantial interest in Andromeda. Mr Jones' obligations under the SPA included the procurement, along with Andromeda, that certain steps would be taken: see clause 3.1(g), (k)-(l); and together with Andromeda he gave extensive warranties to the purchaser: clauses 6.3 and 9.3-9.4. Project Minerva was at arms' length from Andromeda and the other parties: it is a private Luxembourg company and Mr Jones said that it was ultimately owned by the Abu Dhabi Investment Authority. After conclusion of the SPA, Project Minerva changed its name to Silver Etoile C2007 SARL ("Silver Etoile").

52. The purchase price under the SPA was €28 million, of which some €2.4 million was to be paid to third parties to discharge outstanding liabilities of Andromeda. The SPA provided by clause 4.2 that the purchase price was to be paid in five tranches. The first two tranches were to be used to discharge Andromeda's liabilities and the third and fourth tranche, amounting to something over €8 million, were to be paid together once specified documentation had been provided. The final tranche was the sum of €17 million that was to be wired on 31 March 2016 to a specified account at Banque Internationale à Luxembourg ("BIL") to be held in escrow. The SPA states that this money will be held in accordance with an "Escrow Agreement", defined as being an agreement between Andromeda, the purchaser and BIL "attached as Appendix 1" to the SPA. No copy of that Escrow Agreement was in evidence, but nothing turns on that.

53. The total fund of this final tranche (i.e. €17 million) is referred to as the "Escrow Monies". The SPA provides at clause 5 for the stages at which these Escrow Monies will be released by reference to three "Escrow Expiry Dates", and this indeed occurred. Somewhat confusingly, the specified releases of Escrow Monies have also been referred to as payment "tranches" (with the aggregate of the third and fourth tranches set out in clause 4.2, amounting to about €8.5 million, being referred to as "Tranche 1"). The relevant escrow releases are as follows:

    i) the sum of €4 million, for which the Escrow Expiry Date was 1 April 2017 (referred to as "Tranche 2");

    ii) the sum of €9 million, for which the Escrow Expiry Date was 1 October 2017 (referred to as "Tranche 3"); and

    iii) the sum of €4 million, for which the Escrow Expiry Date was 31 January 2018 (referred to as "Tranche 4").

54. Clause 5(f), (g) and (i) provided as follows, insofar as relevant:

> "(f) all requests for payments to be made out of the Escrow Monies pursuant to the Escrow Agreement and this Agreement shall only be made in writing in the form of an Escrow Release Letter and signed by each of the Seller and the Purchaser or as otherwise determined in the Escrow Agreement;
>
> (g) all instructions shall be irrevocable once delivered;
>
> …
>
> (i) all payments under this Agreement or the Escrow Agreement to be made:
>
> I. to the Seller, shall be paid by bank transfer to such account as the Seller shall specify in the relevant Escrow Release Letter and failing such specification, the Andromeda Escrow Bank Account;"

55. The "Andromeda Escrow Bank Account" is stated in the SPA to be defined in the Escrow Agreement. However, it is not in dispute that it was an account at ING Luxembourg SA ("ING") in the name of Société de Gestion Internationale SARL ("SGI"). SGI was a firm based in Luxembourg which provided accountancy and fiduciary services, part-owned by Mr Pascal Wagner, who gave evidence for Mr Jones in the trial before Mr Baldwin QC. SGI was managed by Mme Myriam Mathieu. Mr Jones explained the nature of this account held by SGI ("the SGI escrow account") as follows, in his witness statement of 29 October 2020:

> "An instruction would be signed by me, on behalf of Andromeda Investissement SA, and on behalf of/by the beneficiary(ies), in relation to sums that were to be sent to that escrow account. This instruction would be accepted as an irrevocable instruction that the escrow agent, SGI, undertook to execute. This instruction in effect authorized the payment of sums once received in the escrow account to the beneficiary(ies)."

56. The Tranche 3 payment of €9 million was accordingly due to be made two days after the 2017 Order made by Newey J, and the terms of the 2017 Order set out at para 15 above relate to those funds.

57. Mr Jones' evidence was that on 29 September 2017 monies due to Andromeda under the SPA had been frozen by a Luxembourg court order pursuant to litigation instituted by the liquidators of a company called Transefi Sarl. Andromeda and Silver Etoile were informed of that order on 2 October 2017. He said that as a result payment of the Tranche 3 funds of €9 million was suspended by Silver Etoile. A release was then obtained as regards €8.5 million on the basis of €500,000 being paid direct to the liquidators of Transefi in settlement of the liability owed to that company.

58. However, Mr Jones said that prior to that release, on 11 October 2017, two other creditors of Andromeda, Arpent Capital Luxembourg SA and Nicolas Chassard

("Arpent/Chassard") obtained a freezing order over the Tranche 3 funds and in order to obtain a release of those funds they required that the monies be paid to an escrow account of their lawyers, DCL Avocats Sarl ("DCL"). Accordingly, the balance of €8.5 million was paid to that DCL account.

59. No actual orders of the Luxembourg court have been produced but their existence is reflected in some of the other documents. It appears that the €8.5 million was indeed paid to DCL, and that after deducting €4,646,706.47 in satisfaction of the Arpent/Chassard debts, DCL paid out the balance on about 18 October 2017 as follows:

    i) €1,950,000 to the SGI escrow account at ING;

    ii) €1,972,035.53 to Andromeda's own account at BIL.

    Those credits appear on the relevant bank statements for those two accounts.

60. Accordingly, those two sums were more than adequate to provide for the retention of £2 million pursuant to the 2017 Order. The allegations of breach are directed at what happened to those two funds.

Ground 1: Payment to Deltan and Verdoso

61. This ground concerns the €1.95 million paid into the SGI escrow account. That sum was almost entirely paid out to Verdoso Investments SA ("Verdoso") by two payments of, respectively, €1 million and €937,777.78, both made on 20 October 2017. Mr Jones said that those monies were paid to discharge debts of Andromeda to Verdoso and to Deltan Finance Sarl ("Deltan"). He said in evidence that the beneficial owner of both Verdoso and Deltan was a Mr Franck Ullmann-Hamon ("Mr. Ullmann"), who was also a director of Andromeda.

62. The share capital of Andromeda comprised A and B shares. By an agreement dated 31 March 2016, Deltan agreed to sell and assign the 8000 B shares which it owned in Andromeda to Mr Jones' company, Hebolux, for €3 million, to be paid in three equal instalments into the specified bank account of Deltan's parent company, Techno Services SA. The first instalment was paid on the signing of that agreement, and the further two instalments were to be paid on 1 April 2017 and 1 October 2017 on the release of the tranche payments under the SPA. The ownership of the shares would pass only on receipt of the full payment. Mr Jones also produced a side agreement, also dated 31 March 2016, between Mr Jones and Mr Ullmann whereby Mr Ullmann stated that he has obtained the agreement of Deltan to sell its shares on that basis; that he had similarly obtained the agreement of a Ms Klein Wassink that she would sell the B shares which she owned in Andromeda for €350,000; and that the B shares will be transferred by Deltan and Ms Wassink only on payment of the full price. This agreement obliged Mr Jones to appoint SGI as "receiver" ["*séquestre*"] so that payments to be received under the SPA would be made to SGI to be disbursed in accordance with the agreement, and stated that the receipt by Mr Ullmann of letters of instruction to SGI counter-signed by SGI, was a condition of the agreement.[5]

[5] The original of this and most documents quoted is in French; the quotations in the judgment are from the English translations provided.

63. By a document dated 25 March 2016, Mr Jones set up the "escrow" arrangement with SGI with regard to the monies to be received under the SPA. As regards Tranche 1 of €8-9 million, SGI was instructed to pay €1 million to Deltan and €350,000 to Ms Wassink for the share purchases, and €1.13 million to Verdoso, stated to be for the "takeover by John Jones of CCA VISA" in Andromeda's books. As regards Tranche 2 of €4 million, this document instructed SGI to pay €1 million to the account of Deltan's parent company as credit for the purchase of Deltan's B shares and the "balance as instructed by John Jones". As regards the Tranche 3 of €9 million, the instructions were exactly the same. The identified bank account into which the payments to Deltan were to be made was that specified in the sale agreement of 31 March 2016. The document states that it contains "irrevocable instructions" to be executed by SGI.

64. By a document dated 4 May 2016, Mr Jones instructed SGI that of the instalment to be received under the SPA of €9 million on 1 October 2017 (i.e. Tranche 3), €950,000 are to be paid "in absolute priority and before any payment for my personal benefit" to Verdoso "as repayment of the personal loan granted to me by Verdoso and the interest therein." The document identifies the Verdoso bank account into which this payment should be made. This document similarly states that it constitutes "irrevocable instructions".

65. Both these letters of instruction to SGI were countersigned by Mme Mathieu.

66. The payments made by SGI to Deltan, Ms Wassink and Verdoso out of Tranche 1 precede any freezing orders and are therefore irrelevant to these proceedings.

67. However, as regards the two payments totalling almost €1.95 million made on 20 October 2017, those came out of the Tranche 3 funds that were subject to the 2017 Order. The first payment of €1 million is referenced in the ING bank ledger of the SGI escrow account as "*pour compte de Deltan Finance SARL*" and I accept that it discharged the debt under the 31 March 2016 share sale agreement. The second payment of €937,777.78 is referenced as "*remb[oursement] pret John Jones*". That of course corresponds to the 4 May 2016 instruction to SGI that this was to repay a personal loan.

68. Mr Jones said in his affidavit of 20 September 2019 that the payments were made "automatically" by SGI as the escrow agent and stated: "I had no power to prevent these payments." I consider that two questions arise concerning these payments:

    i) Could Mr Jones have prevented the €1.95 million from being paid to the SGI escrow account and instead directed it to be paid to Andromeda's own account; alternatively

    ii) Could he have revoked the 2016 instructions to SGI to pay those monies out to Deltan and Verdoso?

69. As regards Andromeda's obligations towards Project Minerva/Silver Etoile, there was nothing to prevent Andromeda specifying in the Escrow Release Letter pursuant to clause 5(i)(I) of the SPA that all the Tranche 3 money should be paid to Andromeda's own account at BIL. However, Mr Jones explained the position as follows:

> "But had I materially modified the instructions to the buyer in order to thwart the instructions that were residing with SGI and dealt with the monies arriving there from this agreement, then that would be a material variation of this -- of the -- of Andromeda's agreement with its shareholders that I was not allowed to make. I would be basically -- I would be -- if that money or, under this, if that money had not gone to SGI, then the irrevocable instructions to pay Verdoso 950,000 or 937,000, or whatever it was exactly, and Deltan 1 million would not have been executed. So they had every interest in making sure, which is why I didn't get the B shareholder -- the B director's powers until all payments had been finalised."

70. This in turn raises the question of the degree of control which Mr Jones had over Andromeda. Mr Jones placed emphasis on the Articles of Association of Andromeda, which showed that its share capital of €400,00 was divided between 31,259 class A shares and 8,741 class B shares. The directors comprised A directors elected by the class A shareholders and B directors elected by the class B shareholders. Decisions were taken by a majority of the board of directors but Art 11 specified that certain decisions required the approval of a B director. Those included:

a) any change in the share capital or creation or issue of shares;

b) the making or allowing the disposition of the whole or "a substantial part" of the assets of the company;

c) any acquisition of any assets or any equity interests for consideration in excess of €500,000 or the disposal of assets having a value of more than €500,000;

d) any borrowing or loans having a principal amount in excess of €2 million;

e) any transactions "to be entered into between the Company and any of its shareholders, with any entity which is directly or indirectly controlled by any of its shareholders, with any entity directly or indirectly controlling any of its shareholders, as well as with any entity directly or indirectly controlled by an entity directly or indirectly controlling any of its shareholders."

71. Art 12 stated that the Board may delegate the daily management of the Company and the representation of the Company within such management to one or more of its directors.

72. Mr Jones said that he was the CEO of Andromeda and that for the most part he had daily management control and was the point of contact with third parties. However, he said that the delegation to him under Art 12 was circumscribed, with his power of signature on Andromeda's account at BIL limited to €500,000. He said that there would have been a board minute to that effect, but he did not produce one. But he said that

Mr Ullmann was a B director, and that it was only after the B shares were transferred to Hebolux that he acquired effective control of Andromeda. He said that this took place on 15 October 2017, and that it then took a further 15-18 days to appoint him also as a B director in place of Mr Ullmann, so that he acquired actual control on about 5 November 2017.

73. I find those dates a little puzzling since the bank statement shows that the payment of the final €1 million from the SGI escrow account in respect of the share acquisition agreement with Deltan took place only on 20 October 2017. No document recording the appointment of Mr Jones as a B director was produced.

74. Mr Jones' position is not helped by the inconsistent, and mistaken, explanations he has put forward in his attempt to justify what occurred. In his affidavit of 30 January 2023, just two weeks before the hearing, he sought to assert that the SPA required the entirety of the Tranche 3 money to be paid into the SGI escrow account and that it was only because of the intervention of the lawyers to Arpent/ Chassard that he was able to divert some of those monies to Andromeda's BIL account. That is incorrect, as Mr Jones effectively accepted in cross-examination. Further, it appears from another document that two escrow release letters had been sent on 21 August and 21 September 2017, in advance of the Luxembourg freezing or sequestration orders, but Mr Jones failed to produce those letters so it is impossible to know which account was referred to in those instructions.

75. Moreover, as regards control of Andromeda, at the hearing before Newey J which led to the 2017 Order, counsel for Mr Hamilton asserted that Mr Jones held a 53% shareholding in Andromeda and that was repeated in a letter from Trowers & Hamlins LLP, then acting for Mr Hamilton, the day after the hearing when they wrote:

> "Since it was unchallenged in court that your client is CEO and MD of Andromeda, and also that he is the 100% owner of Hebolux, who have 53% controlling interest in Andromeda, it should be very easy for your client to ensure that these funds are retained. In that regard, please confirm what steps have now been taken by your client to ensure that the Frozen Funds, being released tomorrow, will be retained"

Mr Jones' then solicitors, Charles Douglas Solicitors LLP, responded by email but did not contradict this. Instead, they stated:

> "We informed our client yesterday immediately after the hearing and we are instructed that a sum of £2m will be placed in a separate account. These funds will be held under the order made by the court yesterday."

And even when this exchange was quoted in Mr Marsden's first affidavit in the committal proceedings, on 24 January 2020, Mr Jones did not take issue with this in his affidavit in reply three weeks later, where he otherwise went through Mr Marsden's affidavit paragraph by paragraph. Only when this was raised at the hearing of these proceedings did Mr Jones assert that it was incorrect and that Hebolux held 43.43% of the issued share capital (and none of the B shares) in Andromeda. He said by way of

explanation that he should have contested this but had failed to appreciate its importance at the time.

76. Nonetheless, I accept the general tenor of Mr Jones' evidence that so long as Deltan retained the B shares and Mr Ullmann was the B director, Mr Jones did not have complete control of Andromeda. While Mr Ullmann and Mr Jones were good friends at the time, I accept that if Mr Jones had proposed that the €1 million due for the share acquisition out of the Tranche 3 payment should not go to the SGI escrow account in accordance with their personal agreement, to be paid out to Deltan or Deltan's order, but instead to Andromeda's own account, and that once in Andromeda's account Mr Jones was bound by the 2017 Order of the English court not to agree to it being paid out, then Mr Ullmann would not have agreed. And I think it is well arguable that for Andromeda to give instructions, either by way of an escrow release letter with Minerva/Silver Etoile under the SPA or to DCL once they held the monies, that were not in accordance with the agreement between Mr Ullmann and Mr Jones would have required Mr Ullmann's approval as a B director, given the amount involved.

77. The further €950,000 was not covered by that agreement and relates to a wholly different transaction about which no details were given. But since the instruction of 4 May 2016 related to a debt to Mr Ullmann's company, albeit not without some misgiving, I think there is sufficient doubt to find that Mr Jones would have needed Mr Ullmann's approval to direct payment of that sum other than to SGI.

78. Turning to the instructions to SGI, Mr Jones clearly was able to give them instructions as to where monies should be paid. The original instructions of 25 March 2016 and 4 May 2016 were both signed by him and they further state expressly that the balance over the directed payments should be "as instructed by John Jones". There are other examples from April 2017 of Mr Jones instructing SGI to make payments out of the SGI escrow account to third parties and indeed to himself (but of no more than €200,000). Mr Ramel stressed that SGI was run by Mr Wagner who was close to Mr Jones and at some point himself a director of Andromeda. I am not impressed by the fact that the instructions were stated to be "irrevocable". Although the "irrevocable" instruction to SGI on 25 March 2016 as regards the €1 million instalment for the B shares due to Deltan stated that this money should be paid to the account of Techno Services SA (Deltan's parent company), in fact that payment was made by SGI to Verdoso. When shown this, Mr Jones accepted that the instruction must have been varied, but he could not say by whom and no revised instruction was in evidence.

79. However, that does not mean that Mr Jones without the consent of Mr Ullmann could have countermanded the instruction to SGI as regards these particular payments. Mr Ullmann was doubtless content that the money due to Deltan should be paid instead to Verdoso since he owned both companies. I see no reason to think that he would have agreed to a fresh instruction to SGI that all or part of the money should not be paid out at all because of an English court order that did not bind him and was personal to Mr Jones.

80. The terms of the 2017 Order state expressly that Mr Jones "shall take such steps as within his power to ensure that the Frozen Funds are retained by Andromeda." In my judgment, that did not require him to seek to countermand on behalf of Andromeda a prior instruction to SGI, which Mr Jones did not have authority to do without the agreement of Mr Ullmann.

81. Accordingly, and notwithstanding the unsatisfactory nature of Mr Jones' evidence, I find that the allegation in Ground 1 is not established.

Ground 2: Payments of "pre-committed debts"

82. This ground relates to the €1.97 million which was paid into Andromeda's own account at BIL. There is no doubt that this was Tranche 3 money and the bank account at BIL was under Andromeda's sole control.

83. On 30 October 2017, €525,000 was paid out to Verdoso. The only payment instruction produced by Mr Jones for this payment was a document dated 30 May 2016, signed by him and Mr Ullmann, instructing SGI to make this payment out of the Tranche 3 monies, and stating that it represented the repayment of a loan granted by Verdoso to ARES Securities SA ("Ares") with interest. Save only that it bears Mr Ullmann's countersignature, that instruction is similar to the form of instruction to SGI of 4 May 2016: see para 64 above.

84. However, manifestly that original instruction was not implemented since the payment was not made by SGI out of the SGI escrow account at ING but by Andromeda directly out of its own account at BIL. Further, the payment was made on 30 October 2017, by which date Mr Jones was in effective control of Andromeda although it may be that Mr Ullmann had not yet formally resigned as a B director.

85. In cross-examination, Mr Jones said that he was the 100% beneficial owner of Ares.

86. When questioned about this payment, Mr Jones' evidence was as follows:

> "Q: … I suggest to you, Mr Jones, that you would have
> appreciated at the time that that payment was a breach
> of Mr Justice Newey's order.
> A: Insofar as I signed it and allowed it to happen and
> facilitated it happening, I believe it would be,
> my Lord.
> Q. Yes. And you knew everything that you needed to know to
> make it a breach of Mr Justice Newey's order. Money
> effectively coming to you, Mr Jones.
> A: Sorry?
> Q. It's money effectively coming to you via ARES.
> A. I can't dispute that."

87. I cannot accept Ms O'Sullivan's argument that Mr Jones "did not have the power to override an agreement signed by a B shareholder, who was also the beneficiary of the transaction" and that Mr Jones can rely on the defence of impossibility. This was apparently the repayment of a loan, pursuant to an agreement of which the terms have not been disclosed. But whatever may have been Ares' contractual obligations to Verdoso, Mr Jones was subject to a court order not to "in any way dispose of [or] deal with" the Frozen Funds and "to take such steps as within his power" to ensure that the

Frozen Funds were retained. That clearly binds him irrespective of any contractual obligation. Mr Jones had not retained a copy of the instruction to BIL to make this payment but he accepted that he probably was a party to that instruction. He said in his oral evidence that he was asked by Mr Ullmann to countersign that instruction and that he probably did so. He said that if he had refused, then Mr Wagner who was also an A director of Andromeda could have countersigned. I have very serious doubts regarding this evidence about Mr Ullmann since by 30 October 2017 Mr Jones held all the B shares in Andromeda. But in any event, in my judgment the fact that someone else may have been able to counter-sign and authorise the transfer, even if correct, cannot justify Mr Jones doing so given the terms of the 2017 Order.

88. In his first affidavit in response to the committal application, made on 14 February 2020, Mr Jones addressed this allegation stating that he did not consider that the requirement of the 2017 Order to "do everything in my power" required him to commit unlawful acts, and continued:

> "If I had prevented payments that have been contractually agreed and committed in advance (18 months before Newey J made a Freezing Order against me) and which are the sole prerogative of the company, purely for the purpose of satisfying my personal obligations, then I understand that this would be a breach of fiduciary duty towards the company, and as such I could have been subject to penal sanction."

89. Not only does Mr Jones' interpretation of company and contract law fail to serve as a legitimate excuse or justification for his conduct, but it would not assist in any event as regards this payment to Verdoso since that did not concern an obligation of Andromeda but of Mr Jones' own company, Ares.

90. As regards the other payments made out of the Tranche 3 money that came into Andromeda's BIL account, many were to Mr Jones personally. Those are the subject of Ground 3, addressed below. There were in addition a substantial number of smaller payments and a payment of €200,006 to Goldschmidt Associates, described as the settlement in part of Andromeda's obligation to that entity. Very sensibly, those payments were not the subject of individual evidence and were addressed by Mr Jones by his general statement quoted above. In his most recent affidavit, sworn on 30 January 2023, Mr Jones offered a similar justification for those payments:

> "As a director and shareholder, to take funds from the company to pay personal obligation [sic] before the third-party debts were paid in full would have been unlawful in Luxembourg, just as it would be in England. It was not within my power to do this."

91. Aside from the fact that Mr Jones is not able to give evidence as to Luxembourg law, this is of course a fundamental mischaracterisation of the legal position. It also represents a later development of Mr Jones' views. I note that in his earlier affidavit sworn on 20 September 2019, in response to the Kramer Order (see para 25 above), Mr Jones said of the 2017 payments out of Andromeda's account:

> "Although I could, theoretically, have refused to make the pre-committed payments I would have been acting unreasonably

> given that Andromeda is not party to the present litigation and it has no interest, nor does its creditors, in non-payment of the obligations. In any event those creditors could have obtained a court order forcing payment which I could not have resisted."

92. In determining whether Mr Jones was in contempt, his subjective view as to whether he was acting in breach of the order is not directly relevant: see para 45 above. Nonetheless, I think it is important to emphasise that Mr Jones was not without access to legal advice at the time when he acted as he did. I have noted above that he was represented at the hearing before Newey J. Indeed, the evidence of Mr Jones' solicitor adduced at that hearing asserted that all of the Tranche 3 monies was committed to pay third parties, so Newey J was aware that this was Mr Jones' position but nonetheless made the order. Moreover, Newey J's order was made on 29 September 2017. The trial before Mr Railton QC in Mr Jones' action against Mr Hamilton commenced less than six weeks later, on 7 November 2017. At that trial, Mr Jones was represented by solicitors and counsel (the same counsel who appeared for him at the hearing before Newey J). Although Mr Jones was abroad at the time of the hearing before Newey J, he acknowledged in his evidence that in the weeks before the trial he was, as one would expect, heavily engaged with his lawyers. Indeed, he said that he was sitting with his solicitor and counsel virtually every other day in preparation for the trial. He had ample opportunity to ask them to explain the import of Newey J's order and they would doubtless have advised him that if there were pre-existing trading debts of Andromeda that he wished to pay, he should apply for a variation of the order. However, Mr Jones accepted that he never sought their advice but continued to authorise these payments out of Andromeda's BIL account. He therefore did so at the very time when he was in regular contact with his English lawyers.

93. I should add that although Ms O'Sullivan in her closing submissions suggested that Mr Jones did not have the power to prevent these payments being made because "non-payment was and would have been refused by the only B shareholder and director at the relevant time, Mr Ullmann", that was not the basis on which Mr Jones said he made these various payments (in contrast with the payments to Deltan and Verdoso). Hebolux had by this point acquired the B shares from Mr Ullmann's company, and in any event, whatever view Mr Ullmann may have held, these payments were made pursuant to fresh instructions given by Mr Jones to BIL. There is no suggestion that Mr Ullmann could have made those payments to third parties independently of Mr Jones.

94. It is necessary to address a further and extraordinary argument which at the hearing was at the forefront of Mr Jones' response to Grounds 2 and 3. He asserted that €831,000 of the €1.97 million paid into Andromeda's BIL account on 18 October 2017, although originating in the Tranche 3 funds, was not in fact Andromeda's money at all and therefore fell outside the terms of the 2017 Order as it was not part of Andromeda's "assets". This argument was first advanced in Mr Jones' affidavit of 30 January 2023 and was the subject of significant cross-examination. It concerns two distinct arrangements: the first concerns HP Private Equity Investors ("HPPEI"), a Luxembourg company previously called Hoche Partners Private Equity Investors SARL; and the second concerns Bouret Holdings and a Mr Rodney King. Like much else about Mr Jones' and Andromeda's business dealings, the nature of these arrangements, involving significant sums of money, remains obscure.

(a) HPPEI

95. The position on the documentation produced by Mr Jones is as follows.

96. By an agreement dated 31 March 2016 ("the Share Sale Agreement"), HPPEI agreed to sell and assign its 2000 A shares in Andromeda to Hebolux for a price of €1,656,000, to be paid in three instalments: €670,000 on the making of the agreement, €500,000 on 1 April 2017, and €486,000 on 1 October 2017. It seems clear that these dates were fixed to correspond to the dates for the release of tranche monies under the SPA.

97. A further agreement, called a "Loan Agreement", dated 10 October 2017 and made between HPPEI as lender and Andromeda as borrower (and signed for Andromeda only by Mr Jones), recites that there was an "Assignment Agreement" of the same date made between HPPEI, Andromeda and Hebolux and that by reason of that Assignment Agreement HPPEI has a debt of €486,000 due to it from Andromeda. Mr Jones has not included the Assignment Agreement in his evidence, but it seems relatively clear that Hebolux did not pay HPPEI the final instalment of €486,000 under the Share Sale Agreement on 1 October 2017 but assigned that debt, with HPPEI's consent, to Andromeda. Mr Jones accepted that this is what happened.

98. The Loan Agreement included the following provisions:

> "2.1. Subject to the terms and conditions set forth herein, the Loan Amount, i.e. the sum of €486.000 – (four hundred and eighty six thousand Euros) is due by the Borrower to the Lender upon and subject to the terms and conditions hereinafter contained.
>
> 2.2. The Loan is due according to the Assignment Agreement.
>
> …
>
> 3.1. Unless repaid earlier in accordance with the terms of this Agreement, the Borrower shall repay the Loan Amount in full at the latest on the fifth Business Day after the Termination Date.
>
> …
>
> The Borrower shall pay each year to the Lender a Fixed Interest equal to 4% per annum of the Loan Amount increased by any Unpaid Interests…"

The "Termination Date" is defined by clause 1.1 as 20 May 2018.

99. Further, by clause 7 the Loan Agreement provides that HPPEI will be granted by Andromeda as security a 30% ownership of "the Asset", defined as a black diamond referred to in the report of the Gemological Institute of America dated August 21, 2009. This has been referred to in these proceedings as the Black Falcon diamond: see paras 112-113 below. Pursuant to clause 6.4(e), Andromeda was to mandate SGI to manage the sale of the Asset, with HPPEI being repaid the loan plus interest out of the proceeds of sale, and HPPEI was further entitled pursuant to clause 4.2 to receive what is

described as "Participative Interest", defined as 1.5% of the margin on the sale of the Asset.

100. Mr Jones contended that as a result of these arrangements, HPPEI treated the €486,000 instalment under the Share Sale Agreement as paid and "made a ledger entry to reflect the credit and extinguish the debt due to it from Andromeda" and thereafter "registered a new loan to Andromeda in its company ledger". On that basis, he said that when the €486,000 came into Andromeda's account some eight days later, on 18 October 2017, they "were no longer Tranche 3 monies" and therefore fell outside the scope of the Freezing Order.

101. Mr Jones persisted in this analysis under cross-examination, asserting that the portion of the monies which was held in Andromeda's account was not Tranche 3 monies but the proceeds of a loan from HPPEI which was "a completely separate transaction". He placed emphasis on the fact that Hebolux had received the shares from HPPEI which he said meant that the payment obligation under the Share Sale Agreement must have been fulfilled: the loan was therefore independent of the obligation to pay for the shares. He said, in answer to a question from me:

> "… at that point in time, when HPPEI agreed that it would take its money from the tranche 3 monies and convert it into a loan and send it to Andromeda as a loan, it lost its identity as a tranche 3 money."

102. This argument, which evidently had come to Mr Jones late in the day (it is nowhere reflected in his earlier affidavits) is disingenuous to the point of absurdity. It is also wholly inconsistent with the contemporary documentation, which shows that the debt for the last instalment of the share purchase, having been assigned to Andromeda, was not discharged but in effect re-financed to a later date against the security of the Black Falcon diamond. I unhesitatingly reject Mr Jones' contention that the amount of this liability falls to be deducted such that this part of the funds paid first to DCL and then by them into Andromeda's account does not constitute Tranche 3 funds.

(b) Bouret / Mr King

103. Mr Jones said that Bouret Holdings Ltd ("Bouret") was a company to which either he personally or Andromeda (I was not clear which) was indebted in the amount of £305,000. He said that he had been unable to locate the relevant contract and that this was possibly part of a larger loan. Of that sum, £230,000 was to be paid from the Tranche 3 monies coming to SGI. He exhibited to his latest affidavit a letter of instruction to SGI dated 19 June 2017, which instructed them to pay a total of £305,000 to the order of a Mr Rodney King on 5 October 2017, of which sum £75,000 was already held by SGI and the remainder was to come from the balance of the Tranche 3 monies to be received by SGI and "attributable to John Jones". That document states that it replaces a previous payment instruction issued to SGI on 15 May 2017. Mr Jones said that he had been unable to locate that earlier instruction but that it would have required payment of that amount to Bouret. He said that Mr King was the beneficial owner of Bouret and had requested that instead the money should be paid to his personal account. Accordingly, as of that date, £230,000 out of the Tranche 3 monies was to be paid by SGI to Mr King. However, as events transpired, DCL transferred only €1.95 million of the Tranche 3 funds to SGI, which was used pay Deltan/Verdoso, and the balance was

transferred by DCL to Andromeda's account in BIL. Mr Jones said that SGI was nonetheless able to discharge the debt to Bouret/Mr King from other funds. Therefore the monies paid by DCL to Andromeda did not have to be used for this purpose but, as I understood Mr Jones' evidence, he considers that €345,000 of that money, being the equivalent of £230,000 at the time, should be regarded as credited against the money used to pay Mr King and therefore does not fall to be counted as part of the Frozen Funds in Andromeda's account.

104. The underlying facts lacked much documentary support: for example, there was no evidence in any of the bank statements disclosed, and despite extensive disclosure orders made during the course of the committal proceedings, showing any payment of €345,000 made to Mr King (or to Bouret). But in any event, this convoluted argument is wholly misconceived and still more fanciful than the argument concerning the HPPEI debt. It may be that the intention had been to pay Bouret or Mr King the equivalent of €345,000 directly from the SGI escrow account out of Tranche 3 monies expected to be received in that account from Silver Etoile, in much the same way as Deltan was paid. But it is evident that this did not happen. And on Mr Jones' own evidence, no part of the €1.97 million paid by DCL to Andromeda, which came from the Tranche 3 monies, was used to pay Mr King, or Bouret, even on a notional or "ledger" basis. The contention is, frankly, hopeless.

105. In my judgment, Mr Jones considered that the order of Newey J should never have been made since he believed it was based on a confusion between the €9 million commission due to him personally for the sale of Place de l'Etoile and the Tranche 3 payment of €9 million as part of the consideration to Andromeda. The latter sum was, in his view, the property of Andromeda which, unlike Mr Jones, had no liability to Mr Hamilton. However, Mr Jones did not seek to discharge or vary the order. Instead, he effectively chose to ignore the order and acted in sustained and contumacious breach of it. The fact that he should now be seeking to excuse his conduct by far-fetched arguments, which he clearly would have been told at the time were unsustainable had he consulted the lawyers who were then advising him, to my mind shows the extent to which he seeks to evade the consequences of the orders made against him.

106. Accordingly, I hold that the entirety of the €1.972 million paid into Andromeda's BIL account by DCL constituted Frozen Funds within the terms of the 2017 Order. I find that the allegations in Ground 2 are made out and that these were serious breaches by Mr Jones. I should add that those breaches also mean that the statement made by Mr Jones' solicitors, expressly on Mr Jones' instructions, in their email to Mr Hamilton's solicitors following the 2017 Order (see para 75 above) was wholly misleading.

Ground 3: Payments to Mr Jones

107. The allegations under this ground essentially mirror those under Ground 2, save that they concern payments out of Andromeda's account not to third parties but to Mr Jones himself. There is no doubt that between 18 October 2017 and 23 February 2018, 15 payments were made out of that account to Mr Jones in the total amount of €2,655,440.78, as itemised in a schedule in Mr Marsden's first affidavit. However, it seems to me more appropriate to limit the scope of this allegation to the period to 14 February 2018. The Frozen Funds under the 2017 Order was directed at the Tranche 3 monies, and on 14 February 2018 the Andromeda account was significantly topped up by the Tranche 4 monies, with a direct transfer into the account by Silver Etoile of

€3,680,440.25. Why this was less than the €4 million specified in the SPA was not explored but that does not matter for present purposes.

108. The position is succinctly summarised in Mr Marsden's first affidavit. Mr Marsden noted that £2 million on 18 October 2017 equated to €2,240,000. Prior to receipt of the €1,972,035 of Tranche 3 monies from DCL, credited to the Andromeda account on 18 October 2017, the account had a balance of €543,750.98. It was on 24 October 2017 that the balance in the account fell below €1,972,035. I therefore consider that the payments made to Mr Jones after 24 October should be regarded as coming out of Tranche 3 monies.

109. On 30 October 2017, Mr Jones caused Andromeda to make a payment to him of €200,001. This was described in the bank statement as the repayment of shareholder loans. A further €50,000 was paid to Mr Jones the same day. Those two payments took the balance in the account to below €872,000. Mr Jones accepted that these were not a pre-committed debts, and further that if all the €1.972 million paid into Andromeda's account constituted Frozen Funds (contrary to his case) then this was a breach of the 2017 Order.

110. I consider that the same applies to the other payments made after 24 October 2017 to Mr Jones, which include a further substantial payment of €300,000 made on 13 February 2018, again described as repayment of shareholder loans; by that stage this reduced the balance in the account to just under €294,000.

111. In view of my rejection of Mr Jones' case regarding the HPPEI and Bouret/King sums, it follows that Ground 3 is made out as regards the eight payments made between 30 October 2017 and 13 February 2018, including the two very substantial payments referred to above. Those payments total €715,424.78. In the light of that, it is neither necessary nor proportionate to reach a view on the initial four payments to Mr Jones, which could be regarded as funded from the credit balance of €543,750 in the account at the time when the Tranche 3 monies were received.

Ground 4: The Black Falcon diamond

112. In his affidavit made on 20 September 2019 pursuant to para 1(c) of the Kramer Order, Mr Jones acknowledged that a portion of the Tranche 3 funds was "invested in an asset now held outside Andromeda". He said that a portion was via payments from his personal account "but accrued to Andromeda's interest" and that the asset is held by Black Falcon Company Inc.

113. In his affidavit of 14 February 2020, Mr Jones admitted that he invested €450,000 of the money frozen in Andromeda's BIL account in a diamond, which has been referred to as the Black Falcon diamond. It is apparently a particularly distinctive black diamond of over 600 carats. In that affidavit, he contended that this was not a breach of the 2017 Order because:

> "The asset remains as a benefit to Andromeda. The funds have not been dispersed and the objective of asset preservation has been respected."

114. However, by his subsequent affidavit of 28 January 2021, Mr Jones admitted that the payments out towards purchase of the diamond were a breach of the order. He there asserted that he was acting in good faith, and that if the money had been left in the account it would have depreciated whereas he was investing it in an asset that would realise a profit. He there said:

> "I understand that everything should be finalised by the end of February [2021] … and the money will be back in Andromeda's account."

115. It seems that Andromeda purchased the diamond from Laser Edge Services BVBA ("Laser Edge") a Belgian company based in Antwerp, as evidenced by a contract dated 9 May 2017, for a price of €1.3 million, plus €250,000 for cutting and polishing, in part payable in instalments. The payments out of Andromeda's BIL account in October-November 2017 appear to be instalments due under this contract.

116. Mr Jones produced, as one of the documents he found during the weekend in the course of his oral evidence, a copy of an "Irrevocable Corporate Purchase Order" for the diamond as between Andromeda and the Royal Enterprises of Abu Dhabi, which Mr Jones said is one of "the constellation of companies" owned by the private office of the ruler of Abu Dhabi and one of his brothers. This document is dated 26 June 2017 and states that the total price is $51 million. It states that the Royal Enterprises "are ready and able to purchase" the diamond; and that the transaction is "According to the agreed by the Buyer and Seller" [sic]. The document does not contain any governing law or jurisdiction clause. But Mr Jones was emphatic that this would be treated as a contractually binding purchase obligation by a Luxembourg court which would regard it as governed by Luxembourg law.

117. However, in the first place Mr Jones said that even if Andromeda had obtained a judgment on this sale of the diamond to the Royal Enterprises, in practice that could not be enforced in Abu Dhabi. Apparently, the member of the Abu Dhabi royal family who was behind the contract has died, and with that the prospect of a sale to Abu Dhabi effectively vanished. Furthermore, it seems that Andromeda will not recover anything from the investment because there are other claims on the diamond. I have referred above to the pledging of 30% of its value to HPPEI under the loan agreement of 10 October 2017. Still more significantly, in his affidavit of 20 September 2019 made pursuant to the Kramer Order, Mr Jones revealed that there is a dispute concerning the diamond brought by the original seller who claimed that it had not been fully paid for the stone by the buyer who sold it to Andromeda (presumably, Laser Edge). Mr Jones said:

> "If the court grant [sic] this request then Andromeda will only receive back the amount it has originally invested, i.e. €450,000 …."

118. With his latest affidavit of 30 January 2023, Mr Jones produced additional documents concerning the diamond including a further agreement between Andromeda and Laser Edge dated 12 January 2020 which revoked the agreement of 9 May 2017 for the purchase of the diamond by Andromeda and provided that all payments previously made by Andromeda "will be considered as a compensation for the losses, costs and interest suffered" by Laser Edge. This agreement additionally provided that if the

diamond is sold for an amount above €3 million, then Laser Edge will reimburse €425,000 [not €450,000] to Andromeda. I note that this agreement was made a month prior to Mr Jones' affidavit quoted at para 113 above.

119. I should add that, contrary to what Mr Jones predicted in his affidavit of 28 January 2021, the money was never returned to Andromeda.

120. I find that Mr Jones had entered into a speculative investment on the part of Andromeda several months before the 2017 Order, and then had no compunction in using the frozen monies to make the payments due under that agreement. The investment had the potential to be very profitable but, as events proved, it carried significant risk. He accepted that he never asked his lawyers, with whom he was closely involved in preparation for the imminent trial before Mr Railton QC, whether he was permitted by the 2017 Order to make such payments. I reject his attempted justification in these proceedings that this was done as a sound way of preserving value for Andromeda. I regard this admitted breach as a serious contempt.

GROUND 5: DISSIPATION OF UK ASSETS

121. On 9 October 2017, pursuant to the 2017 Order, Mr Jones made an affidavit producing a list of his personal assets.

122. The application alleges that Mr Jones breached the 2016 Order by dissipation as regards two of the items on that list. The allegation is now pursued as regards only one item, his personal chattels which he stated to have a value of £200,000.

123. In his further affidavit of assets made on 20 September 2019 pursuant to the Kramer Order, Mr Jones said that this was an estimated value based on their purchase costs and that the assets were still at a property which he owned, Flat 1, Courtenay Lodge in Hove.

124. In around October 2019, a valuer from Gorringes LLP (a Mr Clifford Lansberry) attended the property on behalf of Mr Hamilton and he set out in an email an itemised list of the items saleable at auction. He showed the total value of saleable items at under £7000. On that basis, the Applicants contend that "[t]he only credible, satisfactory explanation is that Mr Jones removed the relevant chattels."

125. I consider that there are two fundamental problems with this allegation. First, Mr Jones' valuation was clearly a broad estimate and it was based on the amount he paid for the various items over a period of time. That is manifestly different from the resale value at a Sussex auction house. Secondly, the Applicants did not have any proper expert valuation of the various items which remained in the property, or even a witness statement from Mr Lansberry explaining the basis on which he valued the individual items listed in his email. For example, Mr Lansberry's list includes two "Persian" carpets, for which his auction value was £600-800 and £800-1200 respectively. Mr Jones said that one cost him £4000 and that the second, silk carpet was Turkish and cost him about £60,000. The question here is not the value but whether they were the same items, in which case this amounts to a different valuation and does not support the allegation that assets were removed. Mr Jones also said that he had included in his valuation two emperor size beds that had cost him £12,500 each. Mr Lansberry said in

his email that he excluded beds from his list since they were not saleable at auction and he thought they had little resale value.

126. The only curious aspect under this head is that Mr Jones was clear that he had a valuable facsimile book, the Vatican's limited-edition publication of the *Processus contra Templarios* which he said had cost him about £12,000. This is not in Mr Lansberry's list or is otherwise mistakenly included in a general reference to "books" which are not saleable at auction. This book seems to have disappeared, but Mr Jones was emphatic that he had not removed it. He suggested that Mrs Margarita Hamilton (Mr Hamilton's ex-wife), who had access to the property, might have done so.

127. It is impossible to resolve that dispute. On the evidence before the Court, I find this allegation of contempt is not established.

GROUND 6: FAILURE TO PROVIDE INFORMATION

128. The 2016 Order contained the usual exception to a freezing order in respect of living expenses and legal fees. As amended by Arnold J, this included provision that the Respondent (i.e. Mr Jones) may spend "a reasonable sum" on legal advice and representation but that:

> "… before spending any money the Respondent must tell the Applicant's legal representatives where the money is to come from."

129. The Applicants allege that Mr Jones committed 18 breaches of this provision in that he made 18 payments to his then solicitors, totalling £622,000, but failed to state where that money came from.

130. On 28 June 2016, Mr Jones' then solicitors wrote to Mr Hamilton's solicitors stating that all legal fees for the matter would be paid from Mr Jones' account with BIL, specifying the account number. Mr Jones' first affidavit of assets made on 9 October 2017 stated that there was €40,000 in that account.

131. This allegation is based on the facts that the €40,000 was used up by 23 October 2017 to pay two legal bills and that thereafter, between 24 October 2017 and 3 May 2019, Mr Jones made 18 payments to his solicitors in the total amount of £622,000 without informing Mr Hamilton's solicitors of the source of those monies.

132. On 4 July 2019, by para 4 of the Pelling Order, the obligation was effectively restated, in amplified form:

> "Mr Jones shall provide Mr Hamilton's solicitors by 4pm on 25 July 2019 the following information:
>
> A list, showing the amounts and dates, of all monies paid by him to any account (including without limitation any practice account or client account) of Charles Douglas Solicitors LLP since 15 June 2016, with in each case an explanation of the ultimate source of the said funds (not merely limited to the name of the account from which payment was made) and a statement in each

> case as to whether the payment was for an invoice previously rendered by Charles Douglas Solicitors LLP."

133. Following that order, on 25 July 2019 Mr Jones served a witness statement exhibiting a schedule showing for each such payment the ultimate source of those funds. The Applicants do not suggest that the information in that schedule was insufficient according to the terms of the 2016 Order. Their allegation is that the failure to provide this information at the time the payments were actually made was in breach of the 2016 Order.

134. Mr Jones said that he had not understood the order in that way and that he believed he was complying by specifying the bank account. That may be somewhat surprising, and I note that in his closing submissions Mr Ramel states:

> "Given that Mr J is an intelligent man and an experienced businessman, the notion that he thought it was sufficient for his solicitors simply to identify a bank account (rather than the actual source of funds) is simply not credible."

135. However, it is to my mind no less surprising that there was no follow-up by Mr Hamilton's then solicitors at the time. It would have been obvious to them that €40,000 was wholly insufficient to cover Mr Jones' continuing legal costs but it appears that this matter was not raised until Mr Hamilton took out a further application in May 2019.

136. While I consider that Mr Jones was in breach of the 2016 Order in this regard, in the circumstances I am prepared to accept his explanation and that there was some ambiguity in the terms of the order. Being an experienced businessman does not in itself equip one to interpret court orders. Accordingly, I do not regard this breach as constituting a contempt.

GROUND 7: THE UNDERTAKING RE TRANCHE 2 MONIES

137. By letter dated 30 March 2017, Mr Jones' then solicitors communicated an undertaking by him not without the permission of the court until trial of the remaining issues to distribute or otherwise dissipate the €2,031,214 balance of the April 2017 Tranche 2 monies. That referred to the balance of the €4 million paid out on 1 April 2017 under the SPA.

138. As noted above, although breach of this was alleged in the committal application, that allegation was amended to substitute the undertaking given to the court at the start of the trial before Mr Railton QC on 7 November 2017 ("the Undertaking"). That was given orally by Mr Jones' counsel in his presence, and it was subsequently set out in an order sealed on 6 December 2017. The terms of the Undertaking are as follows:

> "AND UPON the First Claimant Respondent by counsel undertaking that until judgment herein, he shall not, without the permission of the court, distribute or otherwise dissipate the balance of the tranche paid in April 2017 under the contract between Andromeda Investissement SA, Project Minerva Properties SARL and others, *the balance being €1,243,882.43*." [emphasis added]

139. While Mr Jones had come to the hearing prepared to resist the allegation of breach of the solicitors' undertaking, when the undertaking to the court was substituted, he protested that this document was never served on him and so should not bind him. That contention is untenable: he was well aware of the Undertaking and accepted that it was given on his instructions. Ms O'Sullivan very properly does not rely on that argument on behalf of Mr Jones in her closing submissions.

140. Further, the Undertaking was restated by Mr Jones' counsel on the handing down of the judgment by Mr Railton QC and incorporated in the order sealed on 20 February 2018. It was there given in the same terms and to last until 28 days after the hearing and judgment on the account. Accordingly, Mr Jones was wrong when he said in his first affidavit in these committal proceedings that the undertaking lapsed in January 2018 after Mr Railton gave judgment. He acknowledged this error in his third affidavit of 30 January 2023 (although he curiously there said that he had previously thought that the Undertaking lapsed in January 2019). The judgment on the account was given by Master Teverson on 4 April 2019. Unlike the freezing order, the Undertaking was not continued in the order made by Master Teverson following his judgment. The Undertaking therefore expired on 2 May 2019 (as Mr Jones expressly acknowledged in his third affidavit).

141. The sum of €1,243,882.43 specified in the Undertaking appears to reflect the witness statement by Mr Desai, a partner in Mr Jones' then solicitors, of 28 September 2017, served for the hearing before Newey J. Mr Desai stated that the actual payment received for Tranche 2 was €3,908,380.05 (presumably the deduction from €4 million relates to various bank charges). He said that Andromeda was committed to paying a part of Tranche 2 to third parties "leaving a balance of €2,031,214" which then formed the subject of the solicitors' undertaking. And he continued:

> "The sum of €1,243,882 remains in place under the undertaking provided from the second tranche, as the Defendant agreed to payments from the €2,031,214, namely a payment to another company, Hebolux, which it then used to pay sums due to Walton Castle Ltd, and a payment to the Defendant in respect of the costs the Claimant was ordered to pay the Defendant in respect of the trial of the preliminary issues in March 2017."

142. The bank statements show that the sum of €3,908,380.05 was credited to the SGI escrow account as received from Project Minerva on 6 April 2017. However, the source of the figure as at 28 September 2017 which was then governed by the Undertaking is unclear. As at 27 September 2017, the balance in that account had gone down to €369.28. That was after two payments to Andromeda's own BIL account of, respectively, €450,000 on 13 July and €715,000 on 27 September 2017. But the balance in the BIL account on 28 September 2017 (reflecting that credit) was €715,883.68. Therefore the aggregate of the SGI escrow account and the Andromeda BIL account was far short of the sum covered by the Undertaking.

143. Mr Jones' explanation when asked about this was that he had access to the required funds by virtue of loan facilities. One was the balance of a loan facility with Verdoso against the security of properties he owned in Palma de Mallorca. He said that he had spoken to Mr Ullmann, whom he had known for a long time and trusted, and that Mr

Ullmann had promised that if the money was required, he would make it available. I clarified his evidence as follows:

> "MR JUSTICE ROTH: So this was – it was a verbal promise from someone you – a wealthy man whom you knew very well and relied on?
>
> A: Absolutely, my Lord."

144. In his affidavit of 30 January 2023, Mr Jones also referred to a loan facility with a Mr Ben Fisher and he exhibited a loan contract between him and Mr Fisher dated 20 December 2018 which stated that it recorded the terms of an existing loan of €240,000 and a facility for a further loan of €495,000, all at 0% interest, for repayment after three months or a further nine months (i.e. one year altogether) if Mr Jones granted security against his two Spanish properties and his further 31% interest in an investment project in nine islands in the Anambas archipelago in Indonesia.

145. As noted above, the balance in Andromeda's BIL account on 17 October 2017, the day before it was credited with the Tranche 3 monies, was €543,750.98. So even considering only the €715,000 representing Tranche 2 monies paid by SGI over to Andromeda in September 2017, a significant part of that sum had been disbursed before the date of the Undertaking. That included three payments made out to Mr Jones in the total amount of €105,000 and a payment of €40,000 to his son, Mr Adam Jones between 2 and 17 October 2017. On 18 October 2017, Mr Jones received a further €200,000 from Andromeda. Although by 7 November 2017, the date of the Undertaking, the balance in Andromeda's BIL account had gone up to €694,008.81, that of course followed the credit to the account of over €1.972 million of Tranche 3 monies.

146. I consider that on any sensible reading of the Undertaking, Mr Jones was undertaking to the court (a) that the sum of €1,243,882.43 was held as the balance from the Tranche 2 monies and (b) that no part of that sum would be distributed or dissipated. On the evidence before the Court, (a) was not correct. I reject Mr Jones' evidence regarding the facility from Mr Ullmann/Verdoso, because that was not previously asserted in any of the various affidavits he has made in these proceedings. But in any event, the potential for Andromeda or Mr Jones (it was unclear which) to borrow money to replenish a fund cannot satisfy the obligation pursuant to the Undertaking not to distribute the fund in the first place. As regards the loan agreement with Mr Fisher, this cannot assist for the additional reason that the facility to borrow further money was not agreed until over a year after the date of the Undertaking.

147. Much of the Applicants' evidence was prepared to show breach of the solicitors' undertaking given on 30 March 2017. The reality is that by 7 November 2017, and contrary to the statement in the Undertaking, the money was no longer there.

148. However, I was not addressed on the consequences of giving an undertaking to preserve what is stated to be a specified sum when that sum was in fact no longer held at the time when the undertaking was given. Moreover, that is not the contempt alleged. The contempt alleged is that Mr Jones dissipated the Tranche 2 monies in breach of his Undertaking not to so, which took effect on 7 November 2017.

149. Mr Jones' position is wholly unmeritorious but I consider that a strict approach has to be taken to allegations of contempt. Accordingly, for reasons that do Mr Jones no credit, I find that this alleged ground of contempt is not established.

GROUND 8: FALSE AFFIDAVITS OF ASSETS

150. Mr Jones made two affidavits pursuant to orders to disclose his assets worldwide exceeding £10,000 in value: the first on 9 October 2017 pursuant to the 2017 Order; the second on 10 July 2019 pursuant to the Pelling Order. The Applicants allege that certain significant assets were omitted by Mr Jones from those affidavits.

(a) Loans to Hebolux / Andromeda

151. It is alleged that Mr Jones failed to disclose a £3 million loan he had made to his company, Hebolux, and various loans to Andromeda, which therefore constituted debts of those companies in his favour.

152. In his affidavit of 20 September 2019 made pursuant to para 1(e) of the Kramer Order, Mr Jones stated that out of the €9 million commission which he received personally on the sale of Place de l'Etoile he had made a loan to Hebolux of €3 million which it used to purchase the shares in Andromeda from Deltan. He also disclosed making further loans to Andromeda out of his commission in a total of €2.8 million to fund further purchases of Andromeda shares. In his oral evidence Mr Jones confirmed that this was correct.

153. I think the allegation regarding a £3 million loan should clearly be read as concerning the €3 million loan.

154. In his first affidavit of 14 February 2020 made in response to this allegation, Mr Jones stated:

> "62. Hebolux has negative equity and therefore my loans are not assets as there is no prospect of recovery.
>
> 63. The same applies to Andromeda."

In support, Mr Jones exhibited the filed, abbreviated accounts of those two companies for the year 2018. His oral evidence was to the same effect, asserting that the companies had negative asset value which meant that the loans were worthless.

155. It was put to Mr Jones that in his list of assets he did include a loan to Ares Securities SA which he also showed as having negative asset value. But I do not think that assists: if Mr Jones is right, it was unnecessary to include that loan, but inconsistency is not a ground of contempt.

156. However, the position seems to me different as regards the loans to Andromeda. In the schedule to his witness statement setting out the source of monies used to pay his then solicitors (see para 133 above), Mr Jones set out a series of payments he had received from Andromeda that he described as "Andromeda Fees/Loan Repayments". Notably, for the month October 2017, he listed five such payments in the total amount of €85,000. He received a further €100,000 which he described the same way, in December 2017; and a further €110,000 in early 2018. He described the money as

coming from the sale of Plot E, which is a reference to a sale of part of the Place de l'Etoile that fell outside the SPA.

157. Moreover, Andromeda's BIL bank account statements include an entry for 23 February 2018 of a payment to Mr Jones of €1.25 million stated to be "Part Reimbursement of Shareholder Loans". There is a corresponding credit entry bearing the same description in Mr Jones' personal BIL account. That is the loan relied on as an alleged omission from Mr Jones' first affidavit of assets (again mistakenly referred to as a £1.25 million loan).

158. When giving his evidence, Mr Jones accepted that he was getting a regular flow of funds from Andromeda, at least at the time of his first affidavit of assets. He said that these payments may be his director's fees due from Andromeda, and that one cannot describe receipt of one's salary as an asset. He said that if some of the payments may be loan repayments rather than fees, and he was not sure, then it may be that there was a negative position on his director's loan account, in which case he said, "that would result in it being worthless".

159. By his further witness statement served after the hearing, he asserted that he had no undeclared loans in respect of either Hebolux or Andromeda, exhibiting Andromeda's filed accounts for the years 2016 and 2017. Those accounts do not show any liability to Mr Jones, and in fact show that Andromeda had made substantial loans to him in 2017.

160. However, the entries in Andromeda's BIL account statements against the series of payments made to Mr Jones describe them as "Reimbursement Mr John Charles Jones" or, sometimes, as "Part Reimbursement of Shareholder Loans, Mr John Charles Jones." As to that, Mr Jones says in his post-hearing witness statement:

> "I have no demonstrable explanation as to why the transfers on the BIL statements are labelled as 'shareholder loan reimbursements', a label I mistakenly relayed into my own witness statements and affidavits. The only practical reason I can see is that the transfers were all based on template in which only the amount to be transferred was modified along with the automatically modified date. The bank would have no reason to question the transfer. However, as can be seen in these records, the company's accountants did make the correct entries in the company's account ledgers."

Although Mr Jones there referred to Andromeda's accountants, it is unclear who they were: the accounts he has exhibited are not signed off by any accountants. Moreover, it is pertinent to recall Mr Jones' evidence in the trial before Mr Baldwin QC regarding the reliability of company documents: para 40 above.

161. Mr Jones said that Andromeda was put into administration on 3 September 2021. The Court has been given no information about the administration process in Luxembourg, there is no documentation in evidence concerning that administration and no statements, as might be expected on an administration, about the company's debts or liabilities. Given the series of substantial payments from Andromeda to Mr Jones, the complete lack of documentation concerning what he says were loans to him and the general opacity regarding his dealings with Hebolux and Andromeda, I have the gravest

suspicion regarding these transactions. However, I am not able to conclude to the criminal standard that the €1.25 million on 23 February 2018 was a repayment by Andromeda of loans from Mr Jones to the company, such that those debts should have been included in his affidavit of assets on 9 October 2017.

(b) Rector Jaume

162. In his oral evidence, Mr Jones said that he owned two properties in Palma de Mallorca, on which security would be given for the loan facility from Verdoso that he relied in terms of the Undertaking (see para 143 above). One of those two properties is Rector Jaume Valles 5A ("Rector Jaume"), in El Molinar which Mr Jones said was on the outskirts of Palma. His personal BIL bank statements show that on 17 March 2017 he made a transfer of €1.3 million out of his account stated to be for "Acquisition Immeuble Carrer Jaume Valles N 5, Palma de Mallorca". Mr Jones said in evidence that he paid cash for the acquisition of Rector Jaume. That property was not disclosed in his first affidavit of assets. Mr Jones did disclose it in his second affidavit of assets, stating that it is owned by a wholly owned subsidiary of Holding Palma Investments 2017 SL, in which he holds 99% of the shares. He there said that it was worth about €1.05 million.

163. Mr Jones' second affidavit also stated that, through another subsidiary of Holding Palma Investments 2017 SL, he owned another property in Mallorca, Placa Pescateria 2-4, which he told the Court was in the centre of Palma.

164. Mr Jones' affidavit of assets of 9 October 2017 does disclose his shareholding in Holding Palma Investments 2017 SL but states that it has "Zero net asset value".

165. When asked about this, Mr Jones first said that this was because the Spanish properties were fully pledged as security for the loan he received from Verdoso. That was also stated in his second affidavit in which, as noted above, he disclosed his ownership of these properties, where he said that the properties were fully charged. Mr Jones did not produce any documents showing a charge over the properties and when it was pointed out to him that the loan from Verdoso to which he was referring was made only in March 2018, Mr Jones accepted that this cannot explain the valuation of the Spanish company in October 2017.

166. In his post-hearing witness statement of 23 February 2023, Mr Jones refers to a loan from Andromeda to him of over €2 million "transferred to me in 2018 to purchase the Palma properties". Even if that is true (and he had in fact purchased Rector Jaume already in March 2017), that does not affect his ownership value of the property since there is no suggestion that it was subject to a charge to Andromeda.

167. Moreover, I note that in December 2018, many months after the alleged Verdoso loan, Mr Jones was offering security over both the Spanish properties in the loan contract which he signed with Mr Fisher, obviously on the basis that he had a valuable interest in those properties which could be pledged in that way.

168. Although he first sought to equivocate in cross-examination by referring to loans between the Spanish company and himself, Mr Jones finally accepted, in response to a question from me, that he should have included the value of this asset in the schedule to his first affidavit.

169. Mr Jones of course knew that the Spanish company which he listed was the owner of two properties in Mallorca. I consider that it is inconceivable that he did not also know that those properties had significant value, and that to state that the shares through which he held those properties had zero value while also omitting any reference to ownership of Rector Jaume was false and misleading. I regard this as a serious breach, whereby Mr Jones deliberately suppressed information about a substantial asset worth over €1 million.

170. I should add that no allegation was made regarding Mr Jones' interest in the Indonesian islands project.

(c) GFC Diagnostics

171. Ground 8 further alleges omission from the affidavits of assets of 3,121 ordinary shares in GFC Diagnostics Ltd ("GFC").

172. Under paras 8 and 9 of the 2016 Order, Mr Jones was prohibited from disposing of or dealing with, or permitting to be disposed of or dealt with, any of the assets of various identified companies. One of those companies is Walton Castle Ltd. It is alleged in Ground 11 that he transferred shares owned by Walton Castle Ltd to himself, failed to disclose them and then dissipated them. Those were the shares in GFC. I shall therefore address this part of Ground 8 and Ground 11 together.

173. Mr Jones said that he had acquired those shares over the period 2013-2017, in several stages, at a total cost of about £400,000-£450,000. However, he said that the shares had no value. His oral evidence was that GFC was now dormant. Pressed on the question of its value at the material time, i.e. in October 2017 when he made his first affidavit of assets, he said:

> "The shares in GFC were always worthless because the company was −− is −− was −− sorry, is a company that was involved in high−risk research into a rapid test for hospital superbugs and any money in the company was −− was 100% at risk and, therefore, until it had any intellectual property rights , which it never had, or any commercial outlet for its research, it was −− which it never had, it was worthless. It was literally worthless."

And he added that GFC was set up by a childhood friend whose endeavour he decided to support by injecting capital into his new venture.

174. The Applicants pointed out that what appears to be the final part of this investment in GFC was made by a payment of €56,961 on 21 July 2017, only a few months before he made his affidavit of assets. However, I do not think that advances matters. It may seem surprising that Mr Jones should make such a substantial investment on a highly speculative basis, but venture capital funding can be very speculative. It would doubtless have been prudent to include this shareholding on the basis that it had potential value. But I have no basis on which to be satisfied that the GFC shares were actually worth more than £10,000 in October 2017 or, indeed, in July 2019. I therefore reject this allegation under Ground 8. In that regard, it makes no difference whether the shares were held by Hebolux, as Mr Jones contended, or directly by him. If they had value and were held by Hebolux, then his statement of the value of his shareholding in Hebolux would

have had to reflect that.

175. The position regarding Walton Castle Ltd is curious. The annual return of GFC dated 31 May 2016 shows that 2705 of the issued share capital was held by Walton Castle Ltd. No shares are stated to be held by either Mr Jones or Hebolux. That position had not changed since 2013. However, the return for the period to 31 May 2017 shows an increase in the issued share capital, that no shares were held by Walton Castle Ltd but that Mr Jones now held 3121 shares and Hebolux held 2524 shares.

176. Mr Jones' position was that Walton Castle Ltd was never supposed to own any shares in GFC. He said that the shares were issued to that company in error, and that when he found out about the error and pointed it out, the shares were transferred to Hebolux. He also said that no shares should have been shown in his own name: they were all to be held by Hebolux, so that a further error was made in 2017.

177. I do not consider that this was ever properly explained, but that observation applies to a number of transactions in which Mr Jones and his companies were involved. In this particular case, if the shares were issued to Walton Castle Ltd and then transferred in 2017 to Hebolux and/or Mr Jones, that may formally constitute a breach of the 2016 Order even if this was done to correct an error. But as the order was to preserve assets available for the potential liability to Mr Jones, and as Hebolux was also owned by Mr Jones, I do not regard this as a significant breach, in particular as I have found that it is not established that these shares had any real value. I therefore make no finding of contempt in that regard.

GROUND 9: PART 18 RESPONSE

178. This allegation is different in character since it relates not to a Court order but to a statement on behalf of Mr Jones' in the underlying proceedings against Mr Hamilton.

179. I noted at para 7 above that the litigation concerned conflicting claims to relative shareholdings in two companies. These were Solfado SA and Ministros Properties Ltd ("MPL"). Mr Jones claimed that he owned 80% of the shares in those companies with Mr Hamilton owning the remaining 20%. Mr Hamilton's case was the exact opposite. The claims, which sought declarations and an account of profits, were brought by Mr Jones and Mercantil Mistros MM SA, a Costa Rican company which had become a subsidiary of MPL.

180. MPL is a company incorporated in Guernsey in 2013. The incorporation was handled by local solicitors, Collas Crill. It was common ground in the proceedings that the instructions to Collas Crill, given on about 13 June 2013, were to the effect that 80% of the shareholding be held by Mr Hamilton and 20% by Mr Jones. However, when MPL was incorporated on 1 July 2013, 80% of the shares were allotted to Mr Jones and 20% to Mr Hamilton. It appears that Collas Crill subsequently realised that they may have made a mistake since they wrote on 10 November 2015 to Mr Hamilton and Mr Jones saying that a review of the corporate file showed that the shareholding may not be in accordance with the intention of the parties prior to incorporation. However, they also noted that the Memorandum of Incorporation apparently signed by both parties and the Minutes of a Board meeting of 1 July 2013 recorded the position as 80:20 Jones: Hamilton.

181. By his Defence and Counterclaim, served on 23 June 2016, Mr Hamilton denied signing the Memorandum of Incorporation which was contrary to the instructions given to the lawyers. He pleaded at para 16 as follows:

> "In fact [Mr Jones] forged the signature of [Mr Hamilton] on the Memorandum of Incorporation which purported to attribute shares in MPL 80% for [Mr Jones] and 20% for [Mr Hamilton]. The said forgery appears to have been performed by transposing a copy of what appears to be a genuine signature of [Mr Hamilton] onto the Memorandum of Incorporation."

182. Mr Hamilton served an extensive Part 18 Request, which the Claimants answered on 19 April 2016. The relevant question and answer are as follows:

> "Request
>
> (ii) By whom, when, where and how the memorandum of incorporation was signed.
>
> Response
>
> (ii) The memorandum has been signed by [Mr Jones] and [Mr Hamilton] signed the Memorandum of Incorporation in Valbonne on 1 July."

183. The Response to the Part 18 Request was signed by Mr Desai, the partner in Mr Jones' solicitors, above a statement of truth declaring that the Claimants believe that the facts set out in the responses are true.

184. The allegation under Ground 9 is that Mr Jones signed a false statement of truth on the Part 18 Response. Presumably, that is intended to mean that he authorised his solicitor to sign on his behalf. The particulars of the allegation state:

> "By a Part 18 Response dated 16 April 2016 the Claimant stated that a Memorandum of Incorporation was signed by the Defendant and him in each other's presence, and that this reflected their intentions at the time. Paragraph 26 of the Judgment of HHJ Baldwin in which he noted that by trial "*Mr Jones now concedes that what he said by means of justification for his position is completely untrue*."

185. The genesis of Ground 9 accordingly appears to be paras 26-27 of the judgment of Mr Baldwin QC:

> "26. Mr Jones' response to Collas Crill's letter expressing concern about the state of the register with respect to MPL is an email of 9 December 2015 and is of some interest. Mr Jones stated that 'I confirm that **I do not under any circumstances** accept that the shareholding of [MPL] be modified in the registers of the company to reflect any change from the current position…' (*emphasis in the original*) He went on to give a

> justification for his stance in these terms '1. The Memorandum of Incorporation was signed, in original and in my presence, by Mr Hamilton of his own accord. There is no dispute possible of this fact and this reflects the intent of the parties at this point in time...' The reason I comment that this response is interesting is that Mr Jones now concedes that what he said by means of justification for his position is completely untrue.
>
> 27. This letter of Mr Jones was not the only occasion that he asserted the signature of Mr Hamilton on the share register of MPL was genuine. In solicitors' correspondence before action Mr Jones asserted that the Memorandum of Incorporation was 'discussed, approved and signed by [Mr Hamilton]' and in a response to a Part 18 Request Mr Jones asserted that Mr Hamilton signed the document on 1 July in Valbonne. Mr Jones' position only changed when it was revealed to him that forensic expert handwriting evidence showed that Mr Hamilton's signature on the share register was not a genuine original. He also subsequently accepted that he did not know where Mr Hamilton was on 1 July, i.e. that the reference to him having signed the document in Valbonne was mere conjecture (by coincidence, Mr Hamilton was in Valbonne on that day)."

186. After reviewing the evidence, Mr Baldwin proceeded to reject Mr Jones' account regarding the Memorandum of Incorporation of MPL and found that Mr Jones did not send it to Mr Hamilton for signature in the way that he claimed in his evidence: i.e. attached to an email sent from Nice airport, with Mr Hamilton returning a signed copy moments later.

187. There are two problems with this Ground of alleged contempt. First, the terms of the Response to the Part 18 Request. It does not state that Mr Hamilton signed the document in Mr Jones' presence: that was said by Mr Jones in his letter to Collas Crill. While that was a deliberate lie and does Mr Jones no credit, it was not attested by a statement of truth and cannot found contempt. Nor does the Part 18 Response contain a statement that this reflected the parties' intentions at the time, although of course that was the whole basis of Mr Jones' case. Although the Request had asked "how" Mr Hamilton was alleged to have signed the document, the Response omitted any answer to that question.

188. Secondly, and more fundamentally, Mr Jones' case at trial was not that Mr Hamilton signed in his presence but, as I have observed above, that he sent the document with an email to Mr Hamilton who returned it by email with his signature attached. Indeed, in his pleaded Reply and Defence to Counterclaim, served after the Response to the Part 18 Request, Mr Jones accepted that Mr Hamilton's signature may well be an electronic one.

189. In his written closing submissions, Mr Ramel focused on the fact that Mr Jones asserted that Mr Hamilton had "signed" the Memorandum of Incorporation when the judge found after trial that he had not: the judge held that Mr Hamilton's electronic signature had been inserted by Mr Jones without Mr Hamilton's authority. That was an important finding in the civil trial but Mr Jones does not accept it. He continued to assert in his evidence on the committal application that he had sent the document with an email when he was at Nice airport, which Mr Hamilton had returned with his electronic signature attached. He

said that Mr Hamilton often used his electronic signature on documents. Mr Jones only qualified his Part 18 response by saying that he was not sure that Mr Hamilton was in Valbonne but had made that assumption since at the time Mr Hamilton often stayed in his villa there.

190. Given the findings of Mr Baldwin after a full trial on this point, I naturally doubt Mr Jones' account. But that was a civil trial, determined on the balance of probabilities. The Applicants sensibly did not seek to introduce all the relevant evidence again on this hearing. The standard of proof for the present application is the criminal standard and I cannot simply transpose a finding on the balance of probabilities which Mr Jones asserts is wrong. Accordingly, this ground of contempt has not been established.

191. I should only add that if I had been satisfied to the criminal standard that Mr Jones' account of the signature by Mr Hamilton was untrue, I would have found that he had intended to interfere with the course of justice. This was a matter which went to the heart of the case which he had brought before the Court to obtain a declaration of the shareholding in his favour.

GROUND 10: FROG EVENTS LTD

192. As noted above, pursuant to paras 8 and 9 of the 2016 Order, Mr Jones was prohibited from permitting to be diminished any of the assets, or taking any steps as director without first providing notice in writing of the proposed step to Mr Hamilton's solicitors, of a number of specified companies. One of those companies was Walton Castle Events Ltd ("WCEL"). This ground alleges that on 30 January 2017 he signed an addendum to a contract between WCEL and Frog Events Ltd increasing the monthly payment out by WCEL from £5,000 to £5,500.

193. Mr Marsden's first affidavit stated that following solicitors' letters to Mr Jones' solicitors in May and June 2017, they apologised and stated that this money would be reimbursed. However, Mr Marsden says that this was not done.

194. Mr Jones' account is rather different. In his affidavit of 14 February 2020 he said that the addendum was signed in error and that as soon as he became aware of the mistake the addendum was cancelled. He said that the Applicants suffered no prejudice, which he explained at the hearing was because the increased amount was never paid by WCEL.

195. Relative to the many other allegations of contempt raised against Mr Jones, Ground 10 may appear of little significance as the financial amount involved is small. Nonetheless, it is a clear breach of the 2016 Order, as Mr Jones accepted. Although he said that the addendum was "cancelled", that would doubtless have required at least a written communication and agreement from Frog Events Ltd. Given that Mr Jones admits having signed the addendum and that he was in breach, I think it would be for him to produce evidence of its cancellation. Alternatively, he could have sought confirmation from Frog Events Ltd as to what happened. There was no such evidence and Mr Jones said no more in response to this allegation in his subsequent affidavits and witness statements. When asked about it at the hearing, Mr Jones was unable to give a date when the addendum was cancelled, saying only that this was "as soon as I became aware [of it]." Moreover, Mr Jones then said that he had no signature powers on the WCEL account. Even if true, that of course does not mean that no money was paid out pursuant to the contract addendum. Indeed, Mr Jones' evidence at the hearing (that no money was ever paid out) was

inconsistent with the letter from his solicitors in 2017 (that the money would be returned).

196. It would have been disproportionate in the context of the many grounds of this committal application for the Applicants to explore this matter in greater detail, and Mr Ramel did not do so. Neither the correspondence nor the bank statements of WCEL appear to be in evidence. Nonetheless, I do not accept as true Mr Jones' evidence that he somehow signed the contractual addendum by oversight, having forgotten the terms of the 2016 Order and I consider that the vagaries of his explanation make what subsequently happened regarding this addendum wholly unclear. In assessing that evidence, I also have regard to the cumulative effect of the various explanations he has given for different aspects of his conduct: see *Kea Investments*, para 47 above. I consider that for Mr Jones to have signed a formal contractual document on behalf of WCEL, increasing the payment it would make to a third party, six months after a Court order which prohibited him from doing so and shortly before his case came on for

197. trial, shows a cavalier disregard of the order. I find this contempt established.

GROUND 12: USE OF EARNINGS IN BREACH OF THE WORLD-WIDE FREEZING ORDER

198. The WWF Order incorporated the exception for living expenses provided in the 2016 Order which had stated (as amended):

> "The Respondent may spend £5,300 a month on ordinary living expenses and £7,300 a month on his travel and accommodation business expenses, to be met from his account with Barclays Bank sort code 20 12 75 account 20486876, including honouring the following standing orders or direct debits:"

There followed a schedule of various monthly payments which Mr Jones was permitted to make, covering such matters as mortgage payments, household insurance, utility bills, etc. The 2016 Order had specified that:

> "… before spending any money the Respondent must tell the Applicant's legal representative where the money is to come from."

The Pelling Order, which preceded the WWF Order, had made clear that this referred not simply to the bank account but to the ultimate source of the funds.

199. The Ashworth Order of 26 July 2019 incorporated this further provision:

> "The Respondent do have liberty to apply to alter the account from which his ordinary living expenses and his travel, accommodation and business expenses are paid on 5 days' notice in writing, by application notice, supported by a witness statement setting out the status of the Barclays Bank account referred to … above, and identifying which alternative account/accounts is/are to be used to pay the said expenses."

200. Pursuant to the Falk Order, Mr Jones disclosed by his witness statement of 29 October

2020 information about all his various bank accounts and a schedule setting out all fees received since July 2019. That showed that since 21 August 2019 (i.e. after the WWF Order), Mr Jones had received total fees/income of €52,574.88 and what he termed "Loans & Other" of €55,645.81. Most of these receipts went into Mr Jones' account with Banco Sabadell in Spain but a few went to his BIL account in Luxembourg. Notably, they included fees of some €44,000 from Continental Developments received between August 2019 and March 2020. That money accordingly came within the scope of the WWF Order.

201. Mr Marsden provided with his third affidavit a schedule of payments out of the Sabadell account, each of which the Applicants allege constitutes a breach of the WWF Order as expenditure was restricted to the Barclays account and further required that Mr Hamiltion's solicitors be notified of the source of the funds.

202. Most of those payments were small amounts, it would appear by way of Mr Jones' living expenses in Mallorca. But there were some larger payments out of the Sabadell account: on 23 March 2020 he paid over €2,000 to Charter HCP and €3,000 to a Mr Timothy Hartley, and on 29 July 2020 he paid over €1,000 to his son, Mr Adam Jones.

203. Mr Jones relied on an agreement he reached with the Official Receiver on 1 April 2020 to vary the WWF Order and provide that his expenses (in the same total amounts of £5,300 plus £7,300 a month) could be paid "from any of his accounts worldwide". A form of consent order to that effect was drawn up and signed on behalf of the Official Receiver but never sealed, apparently because the Official Receiver was not on the record, whereas Mr Hamilton's former solicitors remained on the record despite his bankruptcy. Mr Jones said that the intention of this agreement was "for it to effectively be backdated to the date of the Freezing Order it was amending".

204. Mr Jones also claimed that he was entitled to spend £12,600 per month in addition to his legal fees. In fact, the order specifically segregated this total as between up £5,300 per month on living expenses and £7,300 on travel, accommodation and business expenses.

205. Moreover, Mr Jones never notified Mr Hamilton's solicitors of the source of the expenditure. In response to that, Mr Jones said, in his affidavit

> "I acknowledge … that I ought to have notified the Applicant (be that Mr Hamilton himself, the Official Receiver, The Trustees or Freeths, depending on the date of the payment) of the ultimate source of the funds. I misunderstood the terms of the Freezing Order and had thought that this notification only applied to my Barclays account in the UK or my legal fees."

206. I can accept that Mr Jones considered that the Official Receiver could agree a variation in the order given Mr Hamilton's bankruptcy and that although the terms did not comply with the requirements for a permitted variation set out in the Ashworth Order, Mr Jones believed that a fresh Court order was not required. As regards backdating, he explained in re-examination:

> "My intent was to – my intent was to regularise any— the small payments I'd made from my Sabadell account so that

> they were included in [the] variation. That was my intent at that point."

207. I cannot accept Ms O'Sullivan's submission that these were inadvertent breaches which therefore do not amount to contempt. She relied on *Absolute Living Developments Ltd v DS7 Ltd* [2018] EWHC 1717 (Ch) at [30] and *HMRC v Malde* [2019] EWHC 3254 (Ch) at [49]. However, the first of those cases simply restates the principle that if the act relied on was done intentionally and the defendant knew all the facts that made it a breach of the order, the fact that he did not appreciate that it was a breach of the order is not a valid answer: see paras 45-46 above. *Malde* does consider the question of direct intention to frustrate the order, but that is in the context of sanction, not the prior question whether the conduct constituted a contempt. Nonetheless, I am prepared to accept that, to the extent that the payments were for expenses within the permitted thresholds, these payments were not serious breaches.

208. However, I find it wholly incredible that Mr Jones would ever have considered that the requirement to give notice of the source of funds used to make payments would not apply to another account if that were substituted for the Barclays account, except as regards his legal fees. It would make no sense whatever to confine that obligation to payments from only one of Mr Jones' accounts. Moreover, since the large payment of £40,000 by Mr Jones to his solicitors on 18 March 2020 was made from his BIL account and in significant part funded out of the €34,253.50 which he received by way of fees from Continental Developments that same day, even on his own interpretation of the order he should have informed the Applicants' lawyers of the source of that payment towards his legal fees.

209. I consider that Mr Jones' failure to notify the source of the funding of his payments out of his Sabadell account was part of a pattern of conduct by Mr Jones to conceal the source of his funds, notwithstanding the far-reaching orders made against him. Although this is a similar breach to that alleged under Ground 6 above, it relates to the period after the Pelling Order, and indeed after his witness statement of 25 July 2019 in which he had given details of the source of payments to his solicitors from his BIL account up to 3 May 2019. It is inconceivable that Mr Jones believed that he was no longer under an obligation to do so thereafter, when the relevant provision was part of the WWF Order.

210. Therefore, I find that to this extent Ground 12 is made out and that the breach was contumacious. I note, however, that he finally provided a statement of the source of the monies which had come into his Sabadell account since 21 August 2019 with his witness statement of 29 October 2020, as referred to above, and supplemented this for the period to 17 January 2021 with his email of 19 January 2021.

GROUNDS 13-14: PAYMENTS OUT OF UK ACCOUNTS

211. These allegations, added to the original application as a result of disclosure by Mr Jones of bank statements pursuant to court orders, essentially allege further dealing with UK monies frozen under the 2016 Order.

212. The 2016 Order was personally served on Mr Jones at his home in Hove on the evening of 15 June 2016.

213. The Applicants had relied on a payment by Mr Jones of £15,000 out of his Barclays

Premier bank account no 20486876 on 16 June 2016. However, Mr Jones said in evidence that this was a payment to his solicitors. On that basis, as I understand it, that particular allegation is not pursued and I note that Mr Jones in fact transferred almost £39,000 into that Barclays account from his BIL account (which was then outside the scope of the freezing order) that same day.

214. However, the Applicants do rely on the fact that on 24 July 2017 the entire balance of £9,403.03 held in that Barclays Premier account was transferred into a Barclays Everyday Saver account no 33746542. A further transfer of £5,403 was made from his Barclays Premier to his Barclays Everyday Saver account on 6 September 2018. They contend (a) that these transfers were in breach of the 2016 Order and (b) that Mr Jones failed to disclose the existence of the Everyday Saver account in his affidavits of assets or to produce any statements of that account. Further, under Ground 14, the Applicants contend that numerous payments were made out of the Barclays accounts in breach of the 2016 Order.

215. As regards (a), Mr Jones said that the Everyday Saver account was opened by Barclays without instructions from him, and that this was done by the bank in response to the freezing order without informing him. He said that he never received statements of that account and that it was in effect operated by Barclays.

216. The Applicants invite me to reject that evidence as incredible. However, I do not think that it is necessary to reach a view upon it. Insofar as there were transfers as between Mr Jones' two Barclays accounts, I do not consider that to be a breach of the 2016 Order.

217. As regards (b), insofar as the total held in the Barclays Everyday Saver account was below £10,000 as at the date when Mr Jones made his affidavits of assets (i.e. 9 October 2017 and 10 July 2019), he was not obliged to disclose it. It seems that there were regular transfers from the Everyday Saver account to top up the Premier account, out of which Mr Jones made payment for his living and travel expenses up to around June 2019 when both accounts were effectively empty.

218. The payments out of the Barclays Premier account to third parties are potentially more relevant. Mr Jones' said that those were payments of living and travel expenses and of his legal fees as permitted by the various orders.

219. Perhaps because of the time taken up with the other allegations, there was little exploration of this matter at the committal hearing. Mr Jones was asked about a series of substantial payments in late 2016 shown on the Barclays ledger print-outs (there were no proper account statements) as made to "Fraud Prevent GIA". It is those payments which appear to take the monthly outgoings above the spending limits set out in the Court orders. Mr Jones said that he had no idea what these represented, and that he had made inquiries of Barclays but not received a response. In any event, the burden is not on him and even a cursory examination of the print-outs shows that there were also a series of credits with the same reference. It does appear that this was some kind of internal account management control by Barclays.

220. Accordingly, without much more detailed scrutiny, I do not think that any conclusions can be reached on these allegations. Altogether, it must be recognised that in view of the extensive duration of these proceedings, expenditure at the rate of £12,600 per month, and legal fees in addition, will consume substantial funds.

GROUND 15: FAILURE TO NOTIFY THE SOURE OF FUNDS USED FOR EXPENDITURE

221. Finally, it is alleged that Mr Jones almost continuously failed to comply with the requirement in the 2016 Order that before making payments out of his UK accounts he must notify Mr Hamilton's legal representatives and state the source of the funds. This allegation applies to virtually all the payments made and Mr Marsden understandably said in his third affidavit: "The breaches in this category are too numerous to list"; but he proceeded to give some examples. There is some overlap between this ground and Ground 12, but Ground 12 is directed at Mr Jones' overseas account at Sabadell, whereas this Ground includes the earlier period when Mr Jones was paying his living and travel expenses from his Barclays account and I regard it as targeted at the expenses defrayed from that account.

222. By his affidavit of 28 January 2021, Mr Jones admitted this breach while stating that all the payments were legitimate payments permitted under the terms of the freezing injunction. He apologised to the Court, said that this was a genuine error and said that he has corrected it further to legal advice.

223. I do not accept that this was an error on the part of Mr Jones. He was advised by solicitors and counsel when the 2016 Order and 2017 Order were made and, as an intelligent man, would have understood what was required of him. I find that the breaches did constitute a contempt. However, I note that although the Pelling Order of 4 July 2019 reinforced the 2016 Order by specifying that Mr Jones must set out the ultimate source of funds used to pay his legal expenses, no equivalent reinforcement was included as regards the source of funds used to pay his permitted living and travel expenses.

CONCLUSION

224. For the reasons set out above, I found that Mr Jones is in contempt of court on Grounds 2-4, 8 (as regards Rector Jaume), 10, 12 and 15. The appropriate sanction will be determined following a further hearing.