Neutral Citation Number: [2024] EWHC 565 (Ch)

Case No: Claim No: BL-2021-000365

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

The Rolls Building
7 Rolls Buildings
Fetter Lane
London, EC4A 1NL

Date: Wednesday, 6th March 2024

Before:

SIR ANTHONY MANN
(sitting as a Judge of the Chancery Division)

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Between:

NEBAHAT EVYAP ÎSBILEN	**Claimant / Applicant**
- and -	
(1) SELMAN TURK **(2) SG FINANCIAL GROUP LIMITED** **(3) BARTON GROUP HOLDINGS LIMITED** **(4) SENTINEL GLOBAL ASSET MANAGEMENT INC** **(5) SENTINEL GLOBAL PARTNERS LIMITED** **(6) AET GLOBAL DMCC** **(7) FORTEN HOLDINGS LIMITED** **(8) FORTEN LIMITED** **(9) HEYMAN AI LIMITED (IN LIQUIDATION)** **(10) GARY BERNARD LEWIS**	**Defendants / Respondent**

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DAN McCOURT FRITZ KC and **ANDREW GURR** (instructed by **Peters & Peters Solicitors LLP**) appeared for the **Claimant/Applicant.**

JAMES COUNSELL KC and **HELEN PUGH** (instructed by **Janes Solicitors**) appeared for the **First Defendant/Respondent.**

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APPROVED JUDGMENT

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SIR ANTHONY MANN :

1. Yesterday, I delivered a judgment on this committal application in which I found that Mr. Turk had committed serious breaches of an order of this court, an order of Miles J on 4th March 2021, in relation to his disclosure obligations under that order. I adjourned further consideration of sanction to today to enable Mr. Turk to be able to go through what is a complex judgment so that he could be informed of the underlying basis of whatever sanction was to be imposed on him. He had not seen the judgment until 6 p.m. the previous evening; the adjournment also gave him the opportunity to consider what further applications he might wish to make.

2. Both sides have submitted careful skeleton arguments for the purposes of this application, for which I am grateful. They both set out the principles which have emerged from the cases as to how the court should go about sentencing and there is no disagreement between them as to what the cases show. I have considered all their citations, even though I refer to only some of them below.

3. I start by dealing with a couple of points before turning to the actual sentencing exercise. In addition to seeking an opportunity to go through the judgment with his client, Mr. Counsell KC for Mr. Turk also applied to adjourn the application until after the hearing of the trial in this case. He submitted that since harm to the claimant was a relevant matter to take into account in considering the sanction which should flow from the breach, it would be appropriate to wait until after trial when any harm (or more particularly the lack of it, as he would say) would become apparent. For example, it would be pertinent to ascertain

from the trial how much of the withheld information Mrs Isbilen had in fact managed to get from elsewhere.

4. I reject that submission. The present harm is obvious. Mrs. Isbilen was entitled to have the information provided by Mr. Turk and not receiving it from him was harm enough. She was entitled to have the court order obeyed without argument and without having to wait until trial and it would be inappropriate to wait so long when she was entitled to have the information at an interim stage.

5. At the adjourned hearing today Mr. Counsell revisited the matter in the context of sentencing and submitted that it is not known whether and to what extent Mrs. Isbilen has received the information from others since then. Again, even if she has received some of the information since then (and it is apparent from the evidence that she has deployed that she has some of it, in that part of the tracing routes have been revealed) that is no reason for adjourning to see how much else she might have on an absence of harm basis. If she has some information from elsewhere in the meanwhile, then she should not have had to do that. She should have been given it by Mr. Turk under the order.

6. Mr. Counsell next submitted that authority provided that a contemnor should only be punished for a substantive offence on one occasion. There are outstanding allegations of contempt which have been adjourned and the claimant should be put to her election as to whether or not she is going to pursue them. It is true that there are outstanding matters and the appropriate way to deal with them is to consider them if and when the claimant seek to revive them. If Mr. Counsell is right in his main submission and its application to this situation, she will not be allowed to do so and an election is unnecessary. If he

is wrong, then she will be entitled to pursue them and an election would be wrong in principle.

7. There being no other bars I can now proceed to considering the sanction. In doing so, I bear in mind the following guidance from authority. Authoritative guidance was given by the Court of Appeal in *Liverpool Victoria Insurance v Khan* [2019] 1 WLR 3833, at [57]-[71], which guidance was approved and summarised by the Supreme Court in *Attorney General v Crosland* [2021] 4 WLR 103, at [44].

> "The recommended approach may be summarised as follows:
>
> > "1. The court should adopt an approach analogous to that in criminal cases where the sentencing council's guidelines require the court to assess the seriousness of the conduct by reference to the offender's culpability and the harm caused intended or likely to be caused.
> >
> > "2. In light of its determination of seriousness, the court must first consider whether a fine would be a sufficient penalty.
> >
> > "3. If the contempt is so serious that only a custodial penalty will suffice, the court must impose the shortest period of imprisonment which properly reflects the seriousness of the contempt.
> >
> > "4. Due weight should be given to matters of mitigation such as genuine remorse, previous positive character and similar matters.
> >
> > "5. Due weight should also be given to the impact of committal on persons other than the contemnor, such as children or vulnerable adults in their care.
> >
> > "6. There should be a reduction for an early admission of the contempt to be calculated consistently with the approach set out in the sentencing council's guidelines on reduction in sentence for a guilty plea.
> >
> > "7. Once the appropriate term has been arrived at, consideration should be given to suspending the term of imprisonment.

> "Usually the court will already have taken into account mitigating factors when setting the appropriate term such that this is no powerful factor making suspension appropriate but a serious effect on others such as children or vulnerable adults in the contemnor's care may justify suspension."

8. In relation to disclosure orders such as that in the present case, where they are given in support of a proprietary claim, Zacaroli J observed in *Discovery Land Co LLC v Jirehouse* [2019] EWHC 226 (Ch) at 19:

> "Disclosure obligations in aid of a freezing injunction are of the greatest importance to enable a claimant and the court to police the injunction and enforce it against third parties. That is particularly so where the injunction is in aid of a proprietary claim and the claimant is seeking to discover what has happened to money which should have been held for it but has since dissipated."

9. The same point was made in *JSC BTA Bank v Solodchenko* [2012] 1 WLR 350, at paragraph 55. At paragraph 55(3), Jackson J said:

> "(iii) Where there is a continuing failure to disclose relevant information, the court should consider imposing a long sentence, possibly even the maximum of two years, in order to encourage future cooperation by the contemnor."

10. While that was in the context of disclosure orders made ancillary to a personal freezing order, in my view the same guidance should apply to disclosure ancillary to proprietary tracing orders. They are made on the basis that the defendant has important information to give and it is important that the obligation should be enforced.

11. The following has been proposed as a useful checklist by Lawrence Collins J (as he then was) in the case of *Crystal Mews Limited v Metterick* [2006] EWHC 3087 (Ch), together with an additional point added by Popplewell J in *Asia Islamic Trade Finance Limited v Drum Risk Management Limited* [2015] EWHC 3748 (Comm):

> "(a) whether the claimant has been prejudiced by virtue of the contempt and whether the prejudice is capable of remedy;
>
> (b) the extent to which the contemnor has acted under pressure;
>
> (c) whether the breach of the order was deliberate or unintentional;
>
> (d) the degree of culpability;
>
> (e) whether the contemnor has been placed in breach of the order by reason of the conduct of others;
>
> (f) whether the contemnor appreciates the seriousness of the deliberate breach;
>
> (g) whether the contemnor has cooperated;
>
> (h) whether there has been any acceptance of responsibility, any apology, any remorse or any reasonable excuse put forward."

12. The same case pointed out that the object of committal is both to punish conduct in defiance of the court's order as well as having a coercive effect.

13. I was also taken to the determination of Leech J in *SRA v Khan* [2022] EWHC 45 (Ch), at paragraph 52, in which he observed, based on authorities which I omit for the sake of brevity:

> "1. There are no formal sentencing guidelines for sentence/sanction in committal proceedings.
>
> 2. Sentence/sanctions are fact-specific.
>
> 3. The court should bear in mind the desirability of keeping offenders and in particular first time offenders out of prison...
>
> 6. Committal to prison may serve two distinct purposes: (a) punishment of past contempt and (b) securing compliance...
>
> 7. It is good practice for the court's sentence to include elements of both purposes (punishment and compliance) to make clear what period of committal is regarded as appropriate for punishment alone, i.e., what period would be regarded as just if the contemnor were promptly to comply with the order in question...
>
> 8. Committal may be suspended: see CPR rule 81.9(2). Suspension may be appropriate (a) as a first step with a view to

> securing compliance with the court's orders....; (b) in view of cogent personal mitigation...."

14. The following further factors are relevant:

(i) the defendant's character and antecedents, for example, *Dew v Mills-Nanyn* [2022] EWHC 1925 (QB).

(ii) the presence and timing of any admissions -- see e.g. *Victoria Insurance Company Limited v Zafar* [2019] EWCA Civ 392.

15. Where there are several instances of contempt, in *Khawaja v Stefanova* [2023] EWCA Civ 1201 at 46 and 49, Snowden J proposed the following structured approach from the Sentencing Council Guideline on Totality (current version issued July 2023).

a) Consider the sentence for each individual offence.

b) Consider whether to structure the relevant offences concurrently or consecutively.

c) Test the overall sentence against the requirement that the total sentence is just and proportionate to the whole of the offending, and.

d) Explain how the sentence is structured so that it can be understood by all concerned.

16. Bearing all those factors in mind and drawing on them variously I approach the sentencing by taking into account the following factors. I put mitigation or clemency on one side for the moment.

(a) I consider that a fine would be totally inappropriate in this case. The breaches are so serious that only a prison sentence is appropriate. In reaching that conclusion I bear in mind the desirability of keeping offenders out of prison.

(b) This conclusion and what follows is supported by Jackson LJ's remarks in *JSC BTA Bank v Solodchenko* and Zacaroli J's remarks about the importance of disclosure in a proprietary tracing case. The claim is likely to have been seriously impeded by a failure to make the required disclosure and I find that to be the case in the present matter. Mrs. Isbilen ought to have been in an early position to consider the pursuit and securing of moneys by the provision of information promptly under the order. That she was not is down to Mr. Turk's failure to comply.

(c) There was no early admission of the contempt. At the hearing the money flows were admitted, but not before. Mr. Counsell's acceptance of the existence of breaches, subject to his construction point, came only during the course of the hearing. They do not count as early admissions. Mr. Turk's witness statement, which accepted shortcomings, only came in formally when Mr. Counsell elected at or towards the end of the claimant's case to put it in. The written opening submissions of Mr. Turk served by Mr. Counsell contained no admissions or apologies, and indeed during the hearing Mr. Counsell foreshadowed the possibility of submitting no case to answer, though in the end he did not pursue that. That conduct is nothing like an admission.

(d) There has been nothing amounting to cooperation by Mr. Turk in relation to any of the breaches, nor has he, until this hearing, accepted responsibility in any meaningful sense. The suggestion that his solicitors did not advise him properly was, if anything, an attempt to divest himself of responsibility. This was his main excuse and I have rejected it.

(e) Nonetheless, I accept and take into account that at the hearing he did in general terms accept his disclosure had shortcomings once, he said, the proper position had been explained to him. I also take into account the expressions of contrition that he has now made in a further witness statement provided for the purposes of this sentencing exercise. He has expressed regret and his present appreciation that court orders have to be obeyed.

(f) While Mr. Turk anticipates cooperation in the future conduct of this litigation, it is significant that even now at the end of submissions on sentencing and his expressions of contrition and apology, he has still not indicated that he will set about the proper exercise of addressing the detailed requirements of the order. This remained the case even when I put the omission to Mr. Counsell. He has indicated through Mr. Counsell that he is willing to answer any questions raised of him but that is nothing like the same thing. The claimant is entitled to have him obey the court's order and is not obliged to help him to that result by a series of questions, particularly when, on the claimant’s case, she would not know what questions to ask.

(g) Mr. Turk's breaches were in no way unintentional. Mr. Counsell's submissions sought to play down my findings as to his level of culpability

and emphasised the extent to which Mr. Turk's failings were possibly attributable more to willful blindness than deliberately flouting of the court's order. I do not accept those submissions fully. Some of his breaches were plainly worse than that. In particular, the AET and SoftCo breaches emphasised by Mr. McCourt Fritz and the largest sum in the Alphabet matter are good examples of that. He was deliberately misleading or withholding in relation to those matters. These breaches are all serious.

17. Mr. Counsell pressed on me the fact that Mr. Turk has shown a consistent and proper regard for court orders and instanced a number of occasions where Mr. Turk cooperated with orders and turned up at hearings. These included his agreeing to be cross-examined, accompanied by the provision of 400 pages of documents, limited admissions of shortcomings at the return date, and cooperation with the court on the return date for the search order. He also referred to his willingness to provide bank statements voluntarily in February 2023, a point which might have been more forceful if he had not previously opposed (unsuccessfully) a prior application for the signing of mandates.

18. If one were balancing these things, it would be appropriate to put in the other side of the balance the fact that Mr. Turk applied to strike out the claim and that application was dismissed as being totally without merit. In truth, all these matters raised by Mr Counsell are of little weight in considering sentencing. I accept that Mr. Turk has no prior history of criminal convictions or the flouting of court orders.

19. All of these matters lead me to consider this case as one which requires a custodial sentence before I turn to consider personal matters which affect Mr.

Turk or his family. He has produced a witness statement which speaks to the serious adverse effects of this litigation and application on his personal and business life. He has lost his business and an application to start a banking business has stalled. He separated from his wife in 2021 and they have divorced, although reconciliation may apparently now be attempted. Although she has gone to live in Turkey, he is closely involved every day with his children, communicating daily by FaceTime. They will be very upset by his imprisonment if he is imprisoned and when they learn of it. There will therefore be a serious effect on his family.

20. His health has also been affected as he now has what is described as an adjustment disorder with symptoms of mixed anxiety and low mood. Perhaps even more significantly, it is said that there will be a serious adverse effect on the health and wellbeing of his mother with whom he lives and with whom he is close. She suffers from a variety of serious health problems, including muscular sclerosis with all sorts of complications, which I will not read into this judgment. She requires daily and personal care which at the moment is provided by her husband (a hospital consultant), who has given the details of her illness, and Mr. Turk. For religious reasons, she feels her personal care cannot be provided by those outside of her family. If Mr. Turk were imprisoned, there would be an immediate problem with the provision of her care.

21. I have considered these more personal matters and in particular the position of the mother with care, but consider that they are not sufficiently strong to prevent the imposition of a custodial sentence at all. The breaches are too serious. Mr. Counsell urges on me that they justify suspending the sentence. If that were done, he said, Mr. Turk would be the subject of a prison sentence which, while

not served, would nevertheless subject him to the disadvantages that the existence of a sentence might bring. He cited to me various cases where the courts have suspended custodial sentences because of things such as caring obligations. He did not, however, suggest that it would be suspended on any particular conditions.

22. Having considered the matter carefully, I do not consider that those personal factors justify the suspension of the custodial sentence that I would otherwise pass. The mother's situation has given me most pause for thought, but her son's conduct is too serious for that to weigh conclusively against the imposition of an unsuspended custodial sentence. I have, however, taken it into account in considering the length of the term of the imprisonment to be imposed.

23. Mr. Turk did not suggest that he could somehow remedy his non-compliance in relation to the grounds that were in issue in these proceedings and the sentence in this case is going to be punitive only. According to the sentencing guidelines, I should start by considering each contempt that was found by me and assess what sentence should be imposed in respect of that ground. I confess I do not find that a particularly useful exercise in the present case because taking each one separately ignores a very important piece of context, which is Mr. Turk's general conduct across all the grounds in failing to comply, born of a decision not to fulfil the requirements of the order. However, it is a way of feeding in individual levels of gravity of each ground so I will consider each of them briefly. In the light of the way that I choose to approach the matter, I will not be as precise in each case as I would be if I had to impose actual terms in respect of each separately.

24. Ground 2, Alphabet. For these purposes, I ignore the technical breach. The other two breaches are serious and would attract a sentence of at least nine months taken together by themselves.

25. Ground 3, AET. This is a case of deliberate misleading. It would attract at least a nine to 12 month sentence by itself in the absence of a wider pattern of conduct.

26. Ground 4, SGP. I would find that these breaches would attract a three-month sentence.

27. Ground 8, Sphera. The breach that I have found is much less serious than the breach contended for and would attract a more modest sentence of three months.

28. Ground 9, SoftCo. This is a serious breach which again involves serious misleading and would attract at least a nine to 12 month sentence if it were the only charge, absent a wider pattern of conduct.

29. If those sentences were to be served consecutively, they would amount to an aggregate which is well in excess of the two-year maximum to which contempt sentences are limited, but that would in any event be the wrong approach. Mr. McCourt Fritz accepted that if one were sentencing individually, it would be appropriate to have them run concurrently because they are all part of the same overall conduct.

30. The way in which I propose to proceed is to treat the contempts as part of an overall pattern of disobedience and to take them all together and impose a "standing back" overall sentence. The pattern of conduct is a serious one which reflects a disregard for an important court order. I modify the sentence I might

otherwise have passed by taking into account at this stage the hardship on the mother and therefore on Mr. Turk, to whom she is close, by reducing that potential sentence. I sentence Mr. Turk to 12 months' imprisonment for the counts that have been proved against him. Were it necessary to rationalise that on a count by count basis, I would sentence him to that period on grounds 3 and 9, to be served concurrently, taking into account their position in a pattern of conduct, with other lesser sentences also to be served concurrently. If it were not for the position of Mr. Turk's mother, the sentence would be significantly longer – as much as 18 months.

31. Having arrived at that sentence, I have taken into account the apparent preference of government that short-term sentences should be suspended and the well-known overcrowded state of the prison estate. Those factors do not induce me to suspend the sentence.

32. Last, having arrived at that sentence, I have to consider Mr. Counsell's application that the sentence be suspended pending an appeal. I shall not suspend the sentence pending the appeal. It is not the practice of this court, as I understand it, to do so absent special circumstances. Although there are instances of that having been done, I do not regard there being any special circumstances which justify a suspension in this case.

33. Mr. Counsell has foreshadowed an appeal without specifying on what grounds, but I do not criticise him for that. If there is to be an appeal -- and it is not necessarily clear that there will be one -- the proper course is to appeal and in the light of the actual grounds, for the Court of Appeal to consider whether bail should be granted pending an appeal. It is common ground that that is an option

which is open to the Court of Appeal. Subject to that, Mr. Turk will serve his sentence.

34. As I am obliged to do, I point out to Mr. Turk that he is entitled to appeal as of right and without seeking permission and the time for appealing is 21 days from today.

(After further legal argument)

SIR ANTHONY MANN: I am invited to make an order for costs. Mr. Gurr submits that he should have his costs on the indemnity basis and have all of them. He seeks his costs on the indemnity basis because that is the normal order where there are successful committal proceedings. Mr. Counsell does not resist an order for costs, but says that it should not be on the indemnity basis because this case is not a bad one. There has not been bad conduct in the conduct of the proceedings or anything like the sort of factors which apply in a more normal case.

35. I consider that Mr. Gurr succeeds on this part of the application. This was a committal application. If it is necessary to find that it is based on particularly bad conduct, it was based on particularly bad conduct which I have identified in my main judgment. In any event, as I understand it, and in my experience, indemnity costs are the norm in these sorts of proceedings, no doubt for the reason that I have just pronounced. I shall therefore order that the costs be paid on the indemnity basis.

36. However, there is another tweak which Mr. Counsell seeks to introduce. He points to the areas of the application which I have not determined or which have

gone against the claimant. There are three of those, as Mr. Gurr correctly points out. The first are a series of limited claims which did not survive the directions application in relation to this matter. The second are three counts which were stayed during the course of the hearing. Mr. McCourt Fritz did not seek to pursue those beyond his opening in order to keep the hearing within bounds as it was then developing. The third is ground 1, the Bethlehem matter, on which the claimant failed. I consider that there should be a small deduction in respect of matters in which I was not ultimately invited to pronounce or I pronounced against the claimant. It is not the case that losing on one thing will necessarily deprive a claimant of the full order for costs to which she would otherwise be entitled. That is well-laid down in authority. However, I think the matters which she did not pursue are sufficiently significant to justify a small deduction from the 100% of costs which the claimant would otherwise receive. I bear in mind, however, that the vast bulk of the claim was taken through to judgment and that the really big issue in the case, which was the understanding by Mr. Turk of the order, runs across all the cases. I consider that the reduction that I should make should be no more than 7.5% and I shall so order.

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