Neutral Citation Number: [2024] EWHC 1226 (Comm)

Case No: CL-2021-000501

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
KING'S BENCH DIVISION
COMMERCIAL COURT

Tuesday 21 May 2024

Rolls Building
Fetter Lane
London
EC4A 1NL

Before:

MRS JUSTICE COCKERILL DBE

- -

Between:

(1) OCM MARITIME NILE LLC
(a company incorporated under the laws of the Marshall Islands)
(2) OCM MARITIME KAMA LLC
(a company incorporated under the laws of the Marshall Islands)

Claimants

- and -

(1) COURAGE SHIPPING CO.
(a company incorporated under the laws of the Marshall Islands)
(2) AMETHYST VENTURES CO.
(a company incorporated under the laws of the Marshall Islands)
(3) ORYX SHIPPING LTD
(a company incorporated under the laws of the Marshall Islands)
(4) ABDUL JALIL MALLAH

Defendants

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Michael Ryan (instructed by **Reed Smith LLP)** for the **Claimants**
The First, Second and Third Defendants were not present at the hearing
The Fourth Defendant was not represented

Hearing dates: 10,11 April 2024
- -

APPROVED JUDGMENT

This judgment was handed down remotely by the judge and circulated to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be Tuesday 21 May 2024 at 10:30

Mrs Justice Cockerill:

INTRODUCTION

1. Over the course of a hybrid hearing lasting two days I heard the Claimants' contempt application dated 4 November 2022 against the Fourth Defendant ("Mr Mallah"). In accordance with the requirements of CPR 81 that hearing was conducted in public.

2. By their application the Claimants seek to establish that Mr Mallah has been in contempt of court in four respects:

   1) Count 1: breach of an Order of Knowles J of 8 July 2022 (the "Knowles J Order") by failing to serve by the time stipulated an affidavit setting out Mr Mallah's assets worldwide exceeding €5,000 in value;

   2) Count 2: making a witness statement signed with a statement of truth which to Mr Mallah's knowledge contained false statements tending to interfere with the administration of justice;

   3) Count 3: making and swearing an affidavit served in purported compliance with the Knowles J Order which, to Mr Mallah's knowledge, failed to give a complete account of his assets and the details thereof;

   4) Count 4: making and swearing an affidavit which contained statements which Mr Mallah knew were false.

3. If those contempts or any of them are established the Claimants submit that Mr Mallah should be committed to prison and his assets in the jurisdiction confiscated. Given that:

   1) The hearing was a hybrid hearing in the sense that Mr Mallah was not in the jurisdiction, attending instead from a hospital in Syria;

   2) The contempts arise in part out of what are said to be failures by Mr Mallah to provide a full and honest statement of his assets,

   there may be doubts as to whether any such committal or confiscation would have real teeth. However, the contempts alleged are indeed serious, the Claimants are determined that Mr Mallah should be made to answer for them, and Mr Mallah has cared enough about the application to attend and participate remotely in the hearing.

BACKGROUND

4. The story which underpins the application is not a short one. The main proceedings were between the Claimants and the first three Defendants. They concerned the question of whether the Claimants were are entitled to possession of two vessels: M/Vs "Amethyst" and "Courage". These vessels had been chartered to the first and second Defendants, with the third Defendants being the

vessel managers. All three Defendants were said by the Claimants to be owned and controlled Mr Mallah – and that point is recorded in the judgment of Sir Andrew Smith dated 4 March 2022 [2022] EWHC 452 (Comm) as an uncontentious one. Certainly, Mr Mallah was their sole director at the time. The issues in the trial concerned whether, when in June 2021 Mr Mallah was designated by the US Treasury Department's Office of Foreign Assets Control as a "Specially Designated Global Terrorist", Events of Default occurred and the charters were validly terminated, and if so whether at that time he was the owner of the First to Third Defendants. It was a part of the Defendants' case at trial that Mr Mallah was not linked to them at the time of his designation. It was said that a Mr Yousef Darbis had become the sole director, shareholder and UBO, though the Defendants' pleaded case was different to this – a disposal to four persons. Mr Mallah was not a party personally and played no part in the trial.

5. Sir Andrew Smith concluded, after a lengthy expedited trial at which those Defendants were represented, that there were Events of Default as alleged and that Claimants were entitled to the Vessels. As part of that determination he concluded that "*Mr Darbis was and is acting as proxy or nominee for Mr Mallah who has not disposed of his beneficial interests*". finding that this defence was "*a deliberate attempt to mislead the Court*". Sir Andrew made several other findings of misconduct against the First and Third Defendants. The First and Second Defendants appealed against that judgment, but the Court of Appeal dismissed the appeal in a judgment of 29 July 2022 ([2022] EWCA Civ 1091).

6. Hence the Claimants were entitled to costs, having won the trial. The Claimants were indeed awarded indemnity costs. But the First to Third Defendants were not substantial targets for a costs order, and the Claimants therefore sought to join Mr Mallah to proceedings so that he could be made the subject of a third party costs order ("TPCO").

7. On 21 June 2022, after a two day hearing Sir Andrew Smith joined Mr Mallah to the proceedings as the Fourth Defendant, permitted the Claimants to serve Mr Mallah with their claim for a TPCO on Mr Mallah out of the jurisdiction and made a WFO against him; being satisfied of the real risk that Mr Mallah would dissipate his assets to avoid paying a TPCO. The experienced judge did not make a disclosure order at that point because of the potential effect of sanctions and the risk of self-incrimination. Hence the question of a disclosure order was adjourned to the *inter partes* stage.

8. The Claimants say that Mr Mallah was served with the TPCO proceedings and the WFO in June 2022 by delivery to 8, Charilaou Trikoupi, Piraeus, 18536, Greece ("8CTP"), where the Claimants believed Mr Mallah to be resident on the basis that Mr Mallah was repeatedly observed at this address and owned several properties there.

9. On 30 June 2022 a firm called AMZ Law came on the record, purporting to act for Mr Mallah. They served an unsealed application notice alleging that Mr Mallah had not been served and seeking to discharge the WFO. They appeared, having instructed counsel, at the return date for the WFO on the next day. At that hearing Calver J intimated that it would be appropriate to give Mr Mallah a further short period and relisted the hearing for 8 July. However, he permitted the

Claimants to serve Mr Mallah by alternative means via delivery to AMZ and set down a timetable for Mr Mallah's intimated discharge application. That order was duly served on AMZ.

10. At a hearing on 8 July 2022, at which Mr Mallah was (he would say purportedly) represented by AMZ and counsel, he was ordered by Knowles J to give disclosure of all his assets worldwide exceeding €5,000 in value by way of an affidavit. The leading and junior counsel involved plainly considered that they were properly instructed, serving a skeleton on Mr Mallah's behalf.

11. The Knowles Order was served on AMZ by email on 19 July 2022. The fact of that service is not contentious, though its validity is. Mr Mallah was, the Claimants say, personally served with the Knowles J Order on 1 September 2022 at his Greek residential address 8CTP. That service is contentious. Earlier on 1 September AMZ emailed the Claimants' solicitors stating that they were no longer instructed by Mr Mallah.

12. Mr Mallah did not at this stage: (i) acknowledge service within the period specified in the WFO, (ii) serve an application to discharge the WFO under the Calver J Order, (iii) pay the costs order contained in paragraph 5 of the Knowles J Order; (iv) attend any subsequent hearings; (v) make payment under the final TPCO; (vi) serve any affidavit under the Knowles J Order.

13. On 1 September the WFO was continued by Foxton J who was satisfied that Mr Mallah had been effectively served. That order is said to have been served on 14 September 2022.

14. On 26 September 2022 there was a final hearing of the Claimants TPCO claim. Mr Mallah did not appear, in person or via a legal team. A month later Sir Andrew Smith gave judgment on the TPCO claim. In particular he found (at [16-19]):

> "I accept the OCM companies' argument that Mr Mallah was so closely connected with the proceedings that it does him no injustice to hold that he is bound by my findings and conclusions in the March judgment. As I have said, I cannot accept the contention that he relinquished his interest in and control over the corporate defendants. In particular, for the reasons that I explained in the March judgment, I reject the contention made by the defendants' solicitor in August 2021 (see para 55 of the March judgment) that from 23 June 2021 Mr Yousef Darbis was their sole director and '*was controlling now the companies following the removal of Mr Mallah'*. In so far as Mr Darbis was involved in the conduct of the litigation or otherwise in managing the affairs of the corporate defendants, he was, as I concluded at para 126 of the March judgment, acting as proxy or nominee for Mr Mallah. In my judgment, therefore, Mr Mallah made all significant decisions about how the corporate defendants should conduct the litigation and how they should deal with the vessels. The OCM companies can properly rely on findings in my March judgment against Mr Mallah. I observe that he has had the opportunity to

> make submissions as to why he should not be bound by them, but he has not engaged in the proceedings since he was ordered by Knowles J to disclose his assets. I therefore consider on this basis the claim for costs against Mr Mallah by reference to matters identified as relevant by Coulson LJ. For reasons that I have already given and which I need not elaborate further, I am satisfied that Mr Mallah controlled the defence of the proceedings throughout them. I am also satisfied that Mr Mallah funded the defence of the proceedings...."

15. Having noted that Mr Mallah was also in breach of the order of Knowles J to disclose his assets and to pay costs, he concluded at [28]:

> "I am satisfied that, in all the circumstances, it is just to make an order against Mr Mallah in respect of the costs of the proceedings to 4 March 2022 reflecting the order for costs against the corporate defendants made after the trial. I am also satisfied that, in view of my conclusion that Mr Mallah has acted improperly and with bad faith in relation to the litigation and my reasons for that conclusion, those costs should be assessed on the indemnity basis, and that Mr Mallah should be ordered to pay US$ 1 million on account towards them".

The Contempt Proceedings

16. As noted in that judgment, contrary to the terms of the Knowles J Order, no affidavit was served by Mr Mallah by the due date, 29 July 2022. It is because of this that the Claimants initiated these contempt proceedings by application notice dated 4 November 2022.

17. The Claimants also issued an application for permission to serve the contempt application by alternative means, in particular on AMZ, in accordance with the alternative service order in the Calver J Order. On 8 November that order was granted by Foxton J, who made an order permitting service of the contempt application by alternative means, including by delivery to Mr Mallah at a Greek address (8CTP) and by email to Mr Mallah's account. On 14 November that application was sent by email to Mr Mallah and by email and post to AMZ. On 16 November it was served by delivery to 8CTP.

18. No response was received to the contempt application until shortly before it was listed for a final hearing before Knowles J on 10 February 2023. Mr Mallah then sent correspondence to the Court claiming that he was unaware of these proceedings and had not been served with the Knowles J Order or the contempt application. On the date of the hearing Mr Mallah attended by videolink. In the light of the representations made, Knowles J adjourned the hearing to allow Mr Mallah time to serve evidence and retain lawyers.

19. On 10 March 2023, Mr Mallah's new solicitors PCB Byrne belatedly served Mr Mallah's evidence in answer to the contempt application comprising of his witness statement dated 10 March 2023 together with an exhibit. This exhibit included an affidavit sworn by Mr Mallah dated 10 March 2023 by which Mr Mallah purported to give disclosure of all his assets worldwide exceeding €5,000

in value as required by the Knowles J Order. The witness statement sought to excuse non-compliance with the Knowles J Order by giving an account that Mr Mallah had not been served and had not in fact instructed AMZ. Mr Mallah made various claims , including that (i) he first became aware of the Knowles J Order on 30 January 2023; (ii) he was not in Greece on 1 September 2022 when the Claimants say they effected personal service upon Mr Mallah in Greece; (iii) he had not instructed, or was not aware he had instructed, AMZ in these proceedings and in any event AMZ had not brought the Knowles J Order to his attention; and (iv) he had now given the asset disclosure required by the Knowles J Order.

20. The hearing was then rescheduled to 28 April 2023. However, in the light of the fact that the Claimants subsequently took the view that there were further counts of contempt which they wished to pursue the hearing was ultimately delayed until April 2024 – i.e. this hearing. The minutiae of the timeline of the evolving contempt application runs thus:

    1) On 31 March 2023 the Claimants applied to add new counts of contempt arising from the dishonest statements made by Mr Mallah in his witness statement and affidavit. Affidavits from Mr Weller and Mr Mangos were served in support, together with expert reports on Swedish and Greek law;

    2) On 26 April 2023 Foxton J permitted the Claimants' amendment application and directed that an application for permission pursuant to CPR81.3(5)(b) be adjourned for determination on paper;

    3) I granted that application on 16 June 2023;

    4) On 20 October 2023 a further Weller affidavit (no 8) was served, updating the evidence in support of the contempt application, including evidence from the Greek authorities regarding the purported certificate exhibited by Mr Mallah to his witness statement.

Other Matters

21. Meanwhile on 14 November 2023 PCB Byrne, then on the record for Mr Mallah, terminated their retainer with Mr Mallah. They did not apply to come off the record until shortly before the hearing before me.

22. There has been no response to Counts 2 to 4 or any evidence served in answer to these counts. Mr Mallah has at all times since the hearing before Knowles J on 10 February 2023 had solicitors on the record, PCB Byrne LLP, and had for some of that time instructed leading counsel.

23. On 3 April 2024 Mr Weller for the Claimants served a ninth affidavit providing updates to the information which the Claimants had obtained.

24. On 7 April Mr Mallah sought to adduce a further statement in response, attaching a variety of new documents including medical evidence regarding his brother, evidence regarding his own detention in Denmark and various documents going to proceedings against the Claimants elsewhere.

The Hearing

25. During the course of the hearing, in which Mr Mallah appeared remotely and represented himself, I was called upon to rule first on an application on his part to adjourn the hearing in the light of his lack of legal representation and secondly to admit his late evidence. I refused both of these applications for the reasons set out in the transcripts of those rulings.

26. In support of their case the Claimants called Mr Mangos, Mr Weller and both experts. Mr Mallah was given the opportunity to cross-examine them.

27. Mr Mallah initially indicated that he was unwilling to be cross-examined himself; but ultimately indicated that he would prefer that course to adverse inferences being invited. Accordingly Mr Ryan cross-examined him, carefully limiting his cross-examination to the clear essentials of the case he had to put, in the light of the fact that the connection to Mr Mallah was imperfect, and Mr Mallah was not easily able to call up all of the documentation.

Contempt: procedural requirements

28. Contempt proceedings have a variety of procedural requirements which exist largely to ensure fairness to the subject of those proceedings in the context of an application which can result in a sentence of imprisonment or other draconian orders. I will commence by considering whether these have been complied with in this case.

29. CPR 81.4 sets out the requirements of an application so far as **content** is required. In this case I have carefully been through those requirements. They have been complied with. The application was made in the new form which contains a very clear checklist of those formal parts which equate to a defendant's rights. I was particularly keen, given Mr Mallah's position in terms of legal representation, to ascertain whether he had been advised of his ability to obtain legal aid. It was demonstrated to me that not only did this appear in the application but the fact of such advice being available to Mr Mallah was mentioned in one of Mr Weller's affidavits.

30. CPR 81.5 deals with **service** of the application. A contempt application and evidence in support must generally be served on the defendant personally. However, the court may direct otherwise, including directing alternative service:

> "Where a legal representative for the defendant is on the record in the proceedings in which, or in connection with which, an alleged contempt is committed— (a) the contempt application and evidence in support may be served on the representative for the defendant unless the representative objects in writing within seven days of receipt of the application and evidence in support."

31. As noted above, on 4 November 2022, the Claimants applied to the Court under this provision to approve the service of their contempt application by alternative means in place of personal service. The reasons for this were: (1) Mr Mallah's previous denials that he was served with the WFO which was delivered to 8CTP,

(2) physical intimidation and aggression which they said had ensued after personal service on 1 and 14 September 2022, and (3) AMZ's announcement on 30 August 2022 that they were no longer instructed by Mr Mallah.

32. The alternative service application, the contempt application and supporting evidence ("the Contempt Documents"), were served on Mr Mallah on 4 November 2022 by way of service on AMZ. This was valid service of the application pursuant to the alternative service provisions of the Calver J Order.

33. Having left the appropriate period to allow response by Mr Mallah, Foxton J gave permission for alternative service of the contempt application on 8 November 2022 ("the Alternative Service Order").

34. The alternative means of service approved by Foxton J were:

    1) By email to mallah.ship.management@gmail.com ("the MSM email address"). This was identified because documentary evidence demonstrated that Mr Mallah at some point had access to this account:

    2) By delivery to 8CTP. Delivery to this address was understood to be effective to bring the proceedings to Mr Mallah's attention because: (i) Mr Mallah has been observed at this address on numerous occasions; (ii) Mr Mallah owns several properties at this address according to the Greek Land Registry; and (iii) the Claimants maintain that Mr Mallah was personally served with orders outside this address.

35. On 14 November 2022, the Contempt Documents were served by email and post to AMZ and by email to the MSM account. On 16 November 2022, the Contempt Documents were delivered by Greek court bailiffs to 8CTP. On 23 November 2022, the Contempt Documents were sent by registered mail to 8CTP.

36. That service complied with the Alternative Service Order. Mr Mallah was thus validly served with the Contempt Documents.

37. I conclude that the procedural requirements which underpin a valid contempt application have been complied with.

THE LAW

Introduction

38. The law on contempt of court is technical and requires careful consideration in each case, again because of the serious penalties which may result. I will here set out the relevant law so that Mr Mallah understands the structure which underpins the allegations made and the individual counts of contempt which I will go on to consider.

39. To recapitulate. The four counts of contempt alleged are as follows:

    1) Count 1: breach of the Knowles J Order by failing to serve by the time stipulated an affidavit setting out Mr Mallah's assets worldwide exceeding

€5,000 in value. This is said to be a contempt of the type **"Contempt by breach of Court order"**;

2) Count 2: making a witness statement signed with a statement of truth which contained false statements tending to interfere with the administration of justice, to Mr Mallah's knowledge. This is said to be a contempt of the type **"knowingly making a false statement in a document verified by a statement of truth or in an affidavit";**

3) Count 3: making and swearing an affidavit served in purported compliance with the Knowles J Order which, to Mr Mallah's knowledge, failed to give a complete account of his assets and the details thereof. This is said to be a contempt of the type **"Contempt by breach of Court order"** and **"knowingly making a false statement in a document verified by a statement of truth or in an affidavit."**

4) Count 4: making and swearing an affidavit which contained statements which Mr Mallah knew were false. This is said to be a contempt of the type **"knowingly making a false affidavit"**.

40. These matters must be proved to the criminal standard, what is traditionally termed "beyond a reasonable doubt": *Masri v Consolidated Contractors International Co SAL* [2011] EWHC 1024 (Comm) at [144]. This should now be more correctly described as a test of being sure (as opposed to on the balance of probabilities). That reflects the standard applied in the criminal courts and the direction given to juries: *Miah* [2018] EWCA Crim 563.

Contempt by breach of Court order

41. Liability for civil contempt by breach of a Court order is generally considered to be strict in the sense that no intention to breach the order is required. All that is required to be proved is the service of the order and the subsequent doing by the party bound of that which was prohibited (or failure to do that which was ordered): *Director of the Serious Fraud Office v O'Brien* [2014] AC 1246 at [38].

42. An expanded test is set out by Christopher Clarke J in *Masri* at [150]:

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

43. Breaking down the requirements referred to in *Masri*:

1) **Notice of the terms of the order**. For the purposes of the first requirement, it is clear that knowledge of the terms of the order will be satisfied by proof of service: *Cuciurean v Secretary of State for Transport* [2021] EWCA Civ 357 per Warby LJ at [58]. See also *Reynolds v Long* [2018] EWHC 3535 (Ch) at [45] per Rose J;

2) **Acts or omissions involving breach of the order**. Consistent with what is stated above, the courts in recent cases of breach by omission have been satisfied by the fact of the omission and have not specifically required proof by the applicant that the omission was deliberate: see *Reynolds* at [45]-[46] per Rose J; *Atkinson v Varma* [2021] 2 W.L.R 536 at [54]-[55] per Rose LJ; *XL Insurance Company SE v IPORS Underwriting Limited and others* [2021] EWHC 1407 (Comm) at [70];

3) **Knowledge of the facts which make the conduct a breach**. This will be fact-sensitive. It does not, however, require that the respondent know that his or her conduct constitutes a breach of the order: *Cuciurean* at [25]. In *Atkinson*, it was sufficient that the director knew that no affidavit had been provided: [55].

44. At paragraph [37] I have stated what is the generally or majority view as to the test for this species of contempt. In fairness to Mr Mallah however I note that there is some suggestion in *FW Farnsworth Ltd v Lacy* [2013] EWHC 3487 (Ch) at [20] and *Cuadrilla Bowland Ltd and others v Persons Unknown and others* [2020] 4 W.L.R 29 at [25] that the applicant must prove that acts or omissions are deliberate or intentional. Even that line of authority does not require full deliberation or intention. To the extent this higher test exists it seems to require no more than that "*the alleged contemnor do the acts that constitute a breach of the order with deliberation, as opposed to by accident or unconsciously*": per Marcus Smith J in *Cuciurean v Secretary of State for Transport & Anor* [2020] EWHC 2614 (Ch) at [122], as approved in [2021] EWCA Civ 357 at [13].

Knowingly making a false statement in a document verified by a statement of truth or in an affidavit

45. It is provided in CPR r.32.14 that proceedings for contempt of court may be brought against a person if he makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

46. The test for liability for such contempt is set out by Steward J in *AXA Insurance UK plc v Julie Rossiter* [2013] EWHC 3805 (QB) at [9]:

> "It is common ground that for the Claimants for the Claimants to establish each contempt alleged they must prove beyond reasonable doubt in respect of each statement:
>
> a) The falsity of the statement in question;
>
> b) That the statement has, or if persisted in would be likely to have, interfered with the course of justice in some material respects;
>
> c) That at the time it was made, the maker of the statement had no honest belief in the truth of the statement and knew of its likelihood to interfere with the course of justice."

47. Whilst the false statement must have a tendency to interfere with the course of justice in a material way, it does not need actually to have interfered with the course of justice: *Neil v Henderson* [2018] EWHC 90 (Ch) at [72] per Zacaroli J.

Contempt by knowingly making a false affidavit

48. Although CPR r.32.14 does not apply to an allegation of contempt by knowingly swearing a false affidavit, it has "long been the case" that such conduct is also a contempt of court: *Hydropool Hot Tubs Limited v Robertjot & Another* [2011] EWHC 121 (Ch) at [59] per Arnold J; *International Sports Tours Ltd (t/a Inspire Sports) v Shorey* [2015] EWHC 2040 (QB) at [40] per Green J.

49. A contemnor will be liable to committal if it is demonstrated that he knowingly swore an affidavit which he knew to be false: *Haederle (Thomas) v Dierk Thomas* [2016] EWHC 3498 (Ch) at [24] per Nugee J.

50. While swearing a false affidavit is properly categorised as criminal contempt, the court retains an inherent jurisdiction to punish such contempt by the process of committal in civil proceedings including where the contempt is closely linked with other civil contempts relied upon in the committal proceedings: *Hydropool* at [62] per Arnold J; *Attorney-General v Smith* [2008] EWHC 250 (Admin) at [7]-[8] per Latham LJ.

THE INDIVIDUAL COUNTS ALLEGED

51. I will turn to consider the elements of each Count starting with Count 1. For ease of reading and comprehension I will group the Counts by like constituent elements – Counts 1 and 3 first, followed by Counts 2 and 4.

Count 1: breach of the Knowles J Order by failing to serve by the time stipulated an affidavit setting out Mr Mallah's assets worldwide exceeding €5,000 in value

52. The constituent parts are:

    1) Service (knowledge of the terms of the order);

    2) Actions/omissions which involved a breach of the order;

    3) Knowledge of facts which made his conduct a breach.

Service of the Knowles J Order

53. There are two means of service relied upon:

    1) Service on AMZ on 19 July 2022. I have seen the email relied on as effecting service;

    2) Personal service on 1 September 2022. This took place outside 8CTP.

54. Although the focus of the evidence was on the aspect of personal service, I will deal first with service on AMZ for one reason – because Mr Mallah did not put

in full evidence and I was obliged to exclude certain evidence which he did wish to adduce because of lateness, the scope which I had for testing his evidence and that of the other witnesses was very limited. However, the point as to AMZ was a narrow one, I had material on it, and Mr Mallah had the opportunity to make his position clear on it, including in response to specific questions from me. It therefore provides a good basis for testing his credibility as a witness.

Service on AMZ

55. Mr Mallah's position on service of the Knowles J order on 19 July was that AMZ were never his solicitors. In his 10 March Witness Statement, he said this:

> "As I understand it, the Order was originally served on AMZ Solicitors ("AMZ"), who I understand were previously my solicitors of record in these proceedings (this is not something of which I was entirely aware - I am therefore causing investigations to be made as to the basis on which AMZ were instructed). In any event, AMZ did not bring either the Order or the Application (which I understand was later served on them) to my attention."

56. In the letter he addressed to the Court the day before that hearing he said:

> "I was never represented in the claim Cl-2021-000501 neither in the related appeal CA-2022-000558 nor in the dispute between the Claimants and the other defendants, I never availed of the opportunity to submit my defense neither to exercise any my right nor I was heard by any court, and it is a surprising news for me to be served with an application of court contempt ...I do not remember that AMZ law solicitors represented me in any case, and we never concluded a proper attorney client relationship".

57. His evidence at the hearing was that he never hired AMZ personally, and consequently AMZ were not instructed by him.

58. This account would be difficult to believe in any event, because a firm of solicitors would not be likely to appear on the record and instruct barristers without an agreement to retain them. It becomes still more so when one views the correspondence from AMZ in which they make clear that these assertions are "wholly disputed.".

59. It becomes simply impossible to believe this account however, when one views the results of the application for disclosure made against AMZ by the Claimants. That includes a letter of retainer dated 30 June 2022 between Mr Mallah (personally) and AMZ. That letter – of course dated just after Mr Mallah was joined to the proceedings for the purposes of the TPCO - states:

> "Dear Mr Mallah,
>
> IN THE HIGH COURT OF JUSTICE : CLAIM NO. CL-2021-000501...

> Thank you for instructing us to assist you with the above matter.
>
> I write to confirm your kind instructions to act on your behalf in this matter as described above. ...
>
> Please sign and return the enclosed copy of this letter using the stamped address envelope provided.
>
> We look forward to assisting you in this matter.
>
> Yours sincerely
>
> Ashwaq Mizher
>
> AMZ Law
>
> I confirm that I have read and understood this letter and the attached Terms of Business.
>
> Signed"

60. This document appears to be that signed and returned copy. The signature appears to be identical to the signatures Mr Mallah has used at page 7 of his Affidavit and page 5 of his Witness Statement. It is dated 30 June 2022. Similarly, a document headed *"AUTHORITY Claim No CL-2021-000501"* states in terms that Mr Mallah confirms that he has authorised AMZ to act for him. It bears the same signature and the same date.

61. Repeatedly before me, Mr Mallah maintained that AMZ were not his lawyers: "*lawyer for Oryx, Amethyst ... not lawyer for us, and they deal with Oryx company, not with me*" "*I told you many times AMZ not my lawyer, not my lawyer at all" "I insist AMZ is the solicitor of Oryx not me at all*".

62. In order to give Mr Mallah the fullest possible opportunity to explain himself, I asked him again about this letter, reading all the salient passages to him slowly. He continued to deny instructing AMZ. He stated in terms "*I never have contact with this AMZ*" and again stated that AMZ acted for Oryx and not him. I reminded him that there was at this point in time (30 June) no reason for Oryx to be retaining AMZ, and that the letter was clearly addressed to him and appeared to clearly show a personal contract. He suggested "*this is not my signature ... Maybe they fabricated something against us but I am sure that I am not involved with AMZ*".

63. In the light of this evidence and the documentary record – particularly that obtained by compelling AMZ to produce its records, I am sure that the Knowles Order was validly served on AMZ, and that AMZ were retained to act on behalf of Mr Mallah. It also follows that I am sure that Mr Mallah's evidence on this point, emphatic as it was, was wrong and untrue and that he has lied about it, including to me and Knowles J.

64. For present purposes the critical point is that it follows that Mr Mallah was validly served with the Knowles Order. Personal service need not therefore be proved, but in the light of its relevance elsewhere it plainly should be dealt with.

Personal service

65. The 8CTP address had previously been used to effect service upon Mr Mallah, including of the TPCO proceedings and the WFO. Mr Mallah was known to own properties at this address and had repeatedly been observed at this address, as explained in the evidence in support of the WFO application.

66. Evidence of the personal service of Mr Mallah at 8CTP on 1 September 2022 was given by Mr Weller. That evidence was supplemented by an affidavit from Mr Christos Mangos, the CEO of the management company Interunity Management Corporation SA ("Interunity") engaged by the Claimants to provide litigation support and effect personal service in Greece via their Athens office. His affidavit explains: (i) Mr Mallah had been under surveillance by Interunity for some time at 8CTP; (ii) Mr Mallah was identifiable to the Interunity team from his passport and identification card photos; (iii) Mr Mangos arranged the personal service; (iv) Mr Mangos has been informed by the Interunity employee as to how service was effected personally on Mr Mallah, viz. by handing a copy of the Knowles J Order included in a bundle with other documents to Mr Mallah and informing him orally that he was being served with orders of the English High Court, a breach of which could result in contempt; (v) that after such service there was a physical altercation between Mr Mallah's security team and the Interunity team following which Mr Mallah went back inside 8CTP, taking the documents with him.

67. Mr Mangos was cross-examined by Mr Mallah and maintained the points set out in his evidence.

68. Mr Mangos' evidence is corroborated by Interunity's surveillance reports which I have seen. Mr Mallah claimed (and cross examined Mr Mangos) on the basis that he was not personally served with the Knowles J Order (or these contempt proceedings, which he says only came to his attention shortly before the hearing before Knowles J on 10 February 2023).

69. Although I excluded Mr Mallah's late affidavit I had of course read it *de bene esse*. Part of its contents reflected the line which Mr Mallah took in cross-examining Mr Mangos. He maintained that the surveillance evidence was unreliable, that the photo purporting to be Mr Mallah looked nothing like him and that Mr Mangos well knew that he had not served Mr Mallah. Having seen the photograph and Mr Mallah I cannot say that I was persuaded that there was merit in this line of argument.

70. Mr Mallah's case was also that he could not have been served in Greece because he was not there. Mr Mallah's evidence was that he left Greece on 3 July 2022 and did not return: Mr Mallah put forward (1) a purported certificate from the Greek authorities and (2) a copy of a page in what he says is his Syrian passport bearing exit stamps from Greece dated 3 July 2022.

71. The relevant certificate and translation states:

> "It is certified that the foreigner national, Syrian ABDUL JALIL (name) MALLAH (surname) of ABU BAKR and MAHA born 05-011975 at Syria, holder of passport number

> 008-18-L008480, Passport issued by the Syrian Authorities, left via airplane Greece on 03-07-2022, and since then there is no entrance in our country.
>
> "The present certificate is issued for any legal use."

72. The validity of this certificate was challenged by the Claimants. Having read the evidence and heard the arguments I am sure that this is not a valid or authentic document. Doubts would be raised by the very existence of such a certificate. Greece is a member of the Schengen area and has a substantial land border (albeit not with countries within the Schengen area) as well as numerous sea and air ports. It is inherently implausible that the Greek authorities would issue such a document, particularly in unqualified terms, when there are so many ways in which borders can be crossed unobtrusively.

73. But further, the address given in the certificate for the relevant Greek ministry is wrong – an unlikely mistake in an official document. The seal is also blurred. The Claimants' evidence shows that they made inquiries via INTERPOL and the Greek authorities have confirmed that the purported certificate is indeed a fabrication: "*according to our competent authorities the attached certificates are counterfeit*".

74. As for the passport stamps, they are neither here nor there in circumstances where it is apparent that Mr Mallah also has a Greek passport. As part of the disclosure compelled from AMZ, the Claimants have obtained the KYC/AML documents provided to AMZ as part of their instruction by Mr Mallah. This includes a copy of his Greek passport which was certified as a true copy in Greece on 5 July 2022. This demonstrates that Mr Mallah was in Greece on this date, contrary to his claims in his witness statement that he was not in Greece after 3 July. Further and in any event, even with this passport if Mr Mallah did leave Greece by a flight on 3 July, he could easily have returned by the following day when the surveillance evidence records him as being at 8CTP.

75. I accept that Mr Mallah's case on this point (and to the extent there was evidence from him on this, his evidence) should be rejected. The evidence before me very compellingly evidenced personal service. The documentary evidence relied on by Mr Mallah has been thoroughly discredited. To the extent there was a battle of credibility between Mr Mangos and Mr Mallah in terms of the oral evidence, I have tested Mr Mallah's evidence on one key point and found it wanting, and to be dishonest. That aligns with the findings of Sir Andrew Smith in his judgments on the main action and upon the TPCO claim. That conclusion also aligns with recent statements by Mr Mallah that 8CTP is his residential address. The Claimants are currently taking steps to enforce the TPCO against properties owned by Mr Mallah in Greece. Mr Mallah has recently made an appeal in those proceedings. In a Greek court document, he has referred to 8CTP as his residential address.

76. I therefore conclude that Mr Mallah's claims not to have been served personally at 8CTP are false.

77. Accordingly Mr Mallah has been served validly twice – once personally and once by alternative means.

Breach/Knowledge

78. As for breach of the Knowles J Order that order required Mr Mallah to serve an affidavit of his assets by 29 July 2022. It is clear and accepted that he did not comply with this order, as his affidavit was only served on 10 March 2023.

79. It is also said that Mr Mallah's affidavit did not constitute belated compliance with the Knowles J Order because it failed to identify all of Mr Mallah's assets worth over €5,000, as required by the order. This part of the count therefore overlaps entirely with Count 2, which relates to compliance. To be clear (and avoid any tendency to double count) I deal with that part of the evidence in relation to that second Count.

Conclusion: Count 1

80. I conclude that each of the elements in *Masri* is established beyond reasonable doubt for Count 1:

1) **Service**: The Knowles J Order was served on AMZ and personally on Mr Mallah. Mr Mallah therefore has notice of the Knowles J Order and its contents;

2) **Breach**: What is clear is that:

    a) Paragraph 1 of the Knowles J Order required Mr Mallah to serve an affidavit of assets by 29 July 2022;

    b) He did not do so, neither did he communicate a reason/justification for not doing so on or before 29 July 2022

3) **Knowledge of facts amounting to breach**: self-evidently Mr Mallah knows he did not serve an affidavit under the Knowles J Order by 29 July 2022. Its production would necessarily involve him as he would have to have sworn to it.

So far as the 10 March Affidavit is concerned this could not cure the breach because compliance was required under the Knowles J Order by 29 July 2022, which demonstrably did not happen.

81. To the extent that, it is necessary to go further and prove that Mr Mallah has actual knowledge of the terms of the order and has deliberately chosen not to comply with them, I accept the submission that this is demonstrated by the following:

82. Mr Mallah has actual knowledge of the terms of the Knowles J Order: This may be inferred from the following;

1) First, Mr Mallah was personally served with the Knowles J Order in copies in both English and Greek, both of which Mr Mallah understands;

2) Second, Mr Mallah retained the Knowles J Order;

3) Third, Mr Mallah was orally warned at the time of personal service that the documents were orders of the High Court of England and Wales with which he was required to comply. It is highly unlikely that in such circumstances he would not have read the orders;

4) Fourth, Mr Mallah's legal representatives knew from the hearing on 8 July 2022 that the Knowles J Order would be imposed and were served with the order on 19 July 2022, they were reminded by Claimants' solicitors of the consequences of the need to comply with the Knowles J Order on 18 July 2022 and 4 August 2022. It is inconceivable that they did not make Mr Mallah aware of the terms of the same.

83. Mr Mallah chose not to comply with the order. This follows from the actual knowledge of Mr Mallah of the terms of the order and the lack of any explanation as well as the dishonest evidence given regarding the AMZ service.

84. *I conclude that I am sure that Mr Mallah is therefore in breach of paragraph 1 of the Knowles J Order and in contempt of Court.*

Count 3: making and swearing an affidavit of assets which, to Mr Mallah's knowledge, failed to give a complete account of his assets

85. This is again a count which involves proof of the *Masri* elements.

<u>Service</u>

86. So far as concerns service, this is straightforward, because of the overlap with Count 1: service of the Knowles J Order on Mr Mallah has been addressed above. I am therefore sure that Mr Mallah had notice of the Knowles J Order and its contents.

<u>Breach</u>

87. This is the main contentious element of this count. Paragraph 1 of the Knowles J Order required Mr Mallah to serve an affidavit disclosing of all his assets worldwide exceeding €5,000. It is contended that I can be sure that Mr Mallah made false statements in his affidavit and failed to give a complete account of his assets and the details thereof.

88. Mr Mallah's affidavit identifies only the following:

1) That Mr Mallah is the registered legal owner of certain properties in Greece and in Sweden – all of which the Claimants knew about before Mr Mallah filed his affidavit as they were identified as evidence of assets in the *ex parte* WFO application made to Sir Andrew Smith;

2) In respect of these properties, Mr Mallah claims not to be the beneficial owner;

3) Three bank accounts with modest bank balances;

4) Two old cars.

89. I am sure that there was a failure to disclose assets.

90. The first part of this is simple. It is clear and demonstrated that at the very least there was another bank account containing more than €5,000 in Mr Mallah's name in Greece which has not been disclosed. That is an account in Mr Mallah's name at Eurobank SA in Greece that had a balance of €21,061.13 on 31 October 2022.

91. The second aspect relates to an interest in a Swedish company, Bjuv Stenhus AB: in relation to that Mr Mallah is its sole ordinary board member and the company address is Mr Mallah's Malmö home address. He signed the financial accounts in 2022. Investigators hired by the Claimants have advised that they consider that it is likely that the value of this company exceeds €5,000, based on its annual report and profile exhibited to the Swedish Report. Mr Mallah did not disclose any interest in this company. Nor has he dealt with this allegation.

92. I conclude that based on the documents signed by Mr Mallah himself I can be sure that Mr Mallah has an interest in the company, and that while it does not appear to be a particularly substantial company, its value is greater than €5,000. This is another breach of the Knowles Order.

93. The third identified breach is that it is said that Mr Mallah has an interest in a Turkish company Olympus Gemi Yonetim Hizmetleri Dan, used to provided funding to the First and Second Defendants' appeal to the Court of Appeal. So far as this is concerned the Claimants have earlier in this case produced an entry from the Turkish Company Gazette which recorded that the "founder" of Olympus was Mr Mallah's wife, Ms Hourieh Bakir and Sir Andrew Smith found that the transfer in question to AMZ Law came from the account not of this company but that of "Olympos Shipmanagement SA", a company associated with the Defendants.

94. I am not sure that this is a breach and I therefore find two specific proven breaches only.

95. The Claimants also contend that I can be sure of further breach because the modest statement of assets by Mr Mallah is inherently implausible. The point here is that Mr Mallah has been funding litigation both in this jurisdiction and abroad. The fact of litigation as well as the nature of the litigation in question is said to require him to have access to funds substantially in excess of what he has disclosed.

96. The Claimants point to:

1) **English Proceedings**. Mr Mallah has been funding the defence of these English proceedings from their inception, including the costs of the appeal by the First to Third Defendants from the first instance judgment and the costs of defending the TPCO proceedings, which would require significant funds in excess of €5,000 to which he must have access. In October 2022 Sir Andrew Smith noted: "*The defendants' costs at first instance were*

substantial: according to their pre-trial checklist of 7 January 2022, they had incurred £720,000 by way of costs to that date and expected to incur a further £265,000 at trial.";

2) **Foreign Proceedings**. In addition Mr Mallah has been participating in and apparently funding various legal actions in the UAE and Syria relating to the vessels "Amethyst" and "Courage". Such litigation would on its face require significant funds in excess of €5,000;

3) **Bank Guarantee**. As part of the ongoing litigation with Mr Mallah, the Claimants procured an arrest of a related Vessel, "Vigorous" in Syria. A bank guarantee in the sum of US$6 million was procured in order to release Vigorous from arrest. The Claimants contend that this guarantee must have been procured by or on behalf of Mr Mallah, suggesting that he has access to substantial funds.

97. To some extent, with two breaches established a conclusion on this point is academic. However, it does go to the extent of the breaches – and impacts on the question of knowledge. I am naturally cautious about concluding that Mr Mallah has other assets when (i) some at least of the litigation concerns not him personally but companies with which he is associated – which may have other supporters and (ii) there is a litigation funding market which may have an impact on the question of how litigation is funded.

98. However, I do conclude that even without being sure that that any litigation sums were paid by Mr Mallah, the picture which he discloses in his affidavit falls short of full disclosure. It is not credible that someone in Mr Mallah's position has, for example, no other chattels worth more than €5,000 (no watches, gold, jewels, art etc). It is also not credible Mr Mallah could be conducting at least the litigation to which he is personally a party without more funds than have been disclosed. The extent of the breach is uncertain, but I am sure that it is there.

<u>Knowledge of facts amounting to breach</u>

99. The Claimamts say that knowledge of breach follows: having sworn to the affidavit, Mr Mallah must be taken to have knowledge of its contents and that his disclosure did not comply with paragraph 1 of the Knowles J Order. The Claimants say I should conclude that Mr Mallah deliberately made false statements in his affidavit to conceal his true asset holding.

100. On knowledge I consider the point to be rather less straightforward than the Claimants would suggest – at least from the point of view of being sure, as required to prove the count.

101. I am sure that Mr Mallah knew of the existence of the omitted account, and of the values given the Bjuv Senhaus company. That comprises knowledge of facts giving rise to those breaches.

102. I am also sure that Mr Mallah knew that he had not attempted to give a full considered picture of his finances for the purposes of the affidavit. That too is knowledge of facts amounting to a breach.

103. If (contrary to the conclusion at paragraph 41) conscious disobedience is required, I am not sure that Mr Mallah has deliberately chosen not to comply with the terms of the order. The breaches are ones committed by refusing to think hard, by refusing to actively try to comply. For example, in respect of the bank account that contains more than €5,000, Mr Mallah did not actively contradict this, only saying that it was his understanding that this account had been closed. It was apparent that even on his case the position was that having some recollection of something being said about closure, he did not go to check.

104. The facts indeed provide a fairly good illustration of why the test on contempt is more generally seen as requiring less than active disobedience. To require more would let those who chose not to exert themselves to comply escape the court's discipline.

105. *I conclude that I am sure that Mr Mallah is therefore in breach of paragraph 1 of the Knowles J Order and in contempt of Court.*

Count 2: making a witness statement signed with a statement of truth which to Mr Mallah's knowledge contained false statements

106. The relevant elements for this count are (as explained above):

1) Making of false statements. Here there are said to be four categories; statements regarding:

   a) His knowledge of the Knowles J Order;

   b) His presence in Greece;

   c) His instructions of AMZ;

   d) His asset disclosure;

2) Interference with the course of justice (actual or likely to);

3) No honest belief in truth;

4) Knowledge of likelihood to interfere with the course of justice.

False statements

Statements with respect to Mr Mallah's knowledge of the Knowles J Order

107. The first category of false statements alleged to be made by Mr Mallah go to his false allegation that he did not become aware of the Knowles J Order until 30 January 2023. These statements are as follows:

1) Paragraph 6: "*I wish to make clear that I did not disregard the terms of the Order and intended no disrespect to the Court*";

2) Paragraph 7: "*I first became aware of the Order on 30 January 2023, some six months after it was served by alternative method*";

3) Paragraph 7.4: "*I first became aware of the Application when it was served on me by email to abdul.jalil.mallah75@gmail.com...*";

4) Paragraph 10: "*It was therefore not until 6 March 2023 that I was able to take legal advice on the meaning and effect of the Order and to prepare my asset disclosure, thereby remedying my breach of the Order*";

5) Paragraph 11: "*As set out above, I did not become aware of the terms of the Order until 30 January 2023 and it took a further five weeks for me to retain English solicitors. Upon retaining solicitors, I immediately instructed them to remedy my breach of the Order – which I emphasis was not deliberate and for which I apologise – and have now given the required asset disclosure*."

108. I am sure that these statements are untrue for reasons which will be apparent from my conclusions on the earlier count. In summary:

1) Mr Mallah was represented by solicitors and counsel at the hearing on 8 July 2022 at which the Knowles J Order was made. It is inconceivable that solicitors and counsel failed to make Mr Mallah aware of the order and his obligations under it shortly after the hearing;

2) As set out above, once the order was sealed, it was served by email on AMZ. AMZ would have notified Mr Mallah of the sealed order;

3) AMZ have denied Mr Mallah's allegation that they did not inform him about the Knowles J Order and as I have concluded above that denial is clearly supported by contemporaneous evidence;

4) As set out above, Mr Mallah was personally served with the Knowles J Order and was orally informed that the documents he was handed included orders of the English Court and that failure to comply could result in contempt. Further, Mr Mallah retained the documents and took them with him into 8CTP. The Knowles J Order was served in English and in Greek translation: Mr Mallah can read and speak both these languages. He must have read and understood the order upon being served with it.

109. The explanations that Mr Mallah had provided for his lack of awareness of the Knowles J Order until 30 January 2023 are not credible and I have already rejected them. I am therefore sure that Mr Mallah has made false statements.

False Statement with respect to Mr Mallah's presence in Greece at the time of service

110. The second category of false statements made by Mr Mallah go to his contention that he was not in Greece when he was personally served at 8CTP with the Knowles J Order and the Foxton J Order. That is the statement at paragraph 7.2:

> "I further understand it to be said that the Order was served on me personally at 8 Charilaou Trikoupi, Piraeus, Greece on 1 September 2022. I am somewhat confused by this, as I have not been to Greece since 3 July 2022 (being the date on which I departed Greece following a short holiday there). I exhibit at

> pages 9 – 13 of AJM1 a certificate of the Hellenic authorities dated 9 February 2023 and a copy of my passport (referred to in the certificate) bearing Greek immigration stamps, both of which confirm the dates on which I was in Greece."

111. I am sure that this statement is untrue because, as I have already concluded, the evidence demonstrates that Mr Mallah was in fact in Greece at the time he was personally served.

False Statement with respect to the instruction of AMZ

112. The third category of false statements made by Mr Mallah go to his contention that he did not instruct AMZ. Specifically at paragraph 7.1 of Mallah WS1 Mr Mallah says:

> "As I understand it, the Order was originally served on AMZ Solicitors ("AMZ"), who I understand were previously my solicitors of record in these proceedings (this is not something of which I was entirely aware – I am therefore causing investigations to be made as to the basis on which AMZ were instructed). In any event, AMZ did not bring either the Order or the Application (which I understand was later served on them) to my attention."

113. This statement contains two falsehoods:

    1) First, an implicit statement that Mr Mallah did not instruct AMZ as his solicitors in these proceedings;

    2) Second, a representation that AMZ did not bring either the Knowles J Order or the Contempt Application to Mr Mallah's attention.

114. I have already made clear that I regard Mr Mallah's evidence on this point as untrue:

    1) AMZ came on the record on the evening of 30 June 2022, the day before the hearing before Calver J. In an application notice AMZ stated that Mr Mallah had that day instructed them. AMZ thereby warranted authority from Mr Mallah.

    2) That statement is entirely borne out by the documentation, including the retainer letter and authority signed by Mr Mallah

    3) Further support for this conclusion can be found in the AML/KYC documents which AMZ had, including a copy of Mr Mallah's Greek passport and utility bills; and the WhatsApp conversations demonstrating communication between AMZ and Mr Mallah.

False Statements with respect to his assets

115. The first point to deal with is the disclosed properties in Greece and Sweden. The Claimants say that Mr Mallah is wrong when he says that he has divested his beneficial interests in the Greek and Swedish Properties, as follows:

    1) At paragraph 6: "*I hold the Swedish Properties on behalf of my wife, Hourieh Bakir, and I have no beneficial interest in any of them. The properties were originally purchased with my wife's money for her own benefit but were registered in my name for administrative purposes*";

    2) At paragraph 10: "*I have no beneficial interest in any of the Greek Properties, all of which I hold on behalf of others. The beneficial interest in the Greek Properties is held as follows:…*" Mr Mallah then describes at paragraphs 10.1 to 10.4 his alleged divestment of his beneficial interest in all of the Greek Properties.

116. The Claimants say that these statements are demonstrably false for the following reasons:

    1) The Claimants have obtained expert evidence of both Swedish and Greek law which demonstrates that such divestment is not possible under either law:

    2) Mr Mallah's statements are contrary to the previous statements made about these properties on Mr Mallah's behalf in these proceedings and the evidence previously adduced on behalf of Mr Mallah in this respect. Those statements and evidence were to the effect that Mr Mallah was indeed the beneficial owner of these properties;

    3) Mr Mallah has displayed a propensity for making false statements about the purported divestment of his beneficial interests in property, which Sir Andrew Smith has found to be a deliberate attempt to mislead the court.

117. Although Mr Mallah challenged the expert evidence, he did not do so on the basis of any legal argument. I conclude that the Claimants' expert evidence is compelling and accurate and that I am sure that Mr Mallah's evidence on the disclosed properties was false.

118. The Claimants also adduced evidence that the values of the Swedish Properties declared by Mr Mallah are also false as they are inflated.

119. The Claimants say that the statement "*I understand that paragraph 1 of the Order [sic] requires me, to the best of my ability, to swear an affidavit setting out all my assets worldwide exceeding €5,000 in value, whether in my own name or not and whether solely or jointly owned, giving the value, location and details of all such assets. I do so below.*" is false because Mr Mallah has failed to disclose all his assets exceeding €5,000 in value. I have dealt with this evidence above and have concluded that that statement is indeed false.

<u>No honest belief in truth of statements:</u>

120. As to this requirement I am sure that certain of the false statements were made by Mr Mallah deliberately and without honest belief in their truth. Specifically:

1) Knowles J Order. For the reasons set out above, Mr Mallah must have been aware of the Knowles J Order at or shortly after the hearing on 8 July 2022 or upon or shortly after being personally served. He cannot have forgotten about this fact at the time he made and signed his witness statement;

2) Presence in Greece. Mr Mallah must have been aware that his statement not to have been in Greece when served was false. That conclusion is demonstrated by the fact that he produced a fabricated FDP Certificate in support of this assertion and has not disclosed the entirety of his Greek and Syrian passports;

3) Instruction of AMZ. Mr Mallah's claim that he was not represented in these proceedings is demonstrably false, and must have been known by him to be false.

121. So far as asset disclosure is concerned, I am not satisfied that Mr Mallah plainly knew the full extent of his assets when he made his affidavit and signed his witness statement and made a decision to conceal the full extent of his assets. This is essentially the conclusion I reached above on Count 3. As for the disclosed properties, I conclude that I cannot be sure that Mr Mallah knew that the kinds of structures to which he alludes are not permitted under the relevant local laws.

Interference with the course of justice

122. I am sure that this requirement is met. The false statements were put forward by Mr Mallah in order to persuade this Court to dismiss the Contempt Application by justifying his conduct and secure his acquittal of contempt.

123. The Court was being asked to rely upon a false case designed to mislead it into acquitting Mr Mallah on a false basis, which constitutes an attempted interference with the course of justice. Further, the statements have in fact interfered with the course of justice: this contempt application should have been determined by Knowles J in February 2023; Mr Mallah's last minute request to Knowles J for an adjournment to put in new evidence and secure legal counsel has substantially delayed these proceedings and greatly increased costs in circumstances where the evidence that Mr Mallah has adduced is demonstrably false and should never have been adduced in these proceedings.

Knowledge of likelihood to interfere with the course of justice.

124. I accept and am sure that Mr Mallah was aware of the likelihood of his statements (if accepted) to interfere with the course of justice.

125. At the time his statement was made, he was represented by PCB Byrne, who no doubt advised him of the purpose of the statement and his witness statement records at the end of paragraph 12 "*For these reasons, I respectfully ask the Court to refuse the [Contempt] Application*". On his own words, Mr Mallah was aware of the purpose of his witness statement and consequently he must have intended, at the time he made his witness statement, to mislead the court through the false statements he was putting forward.

Conclusion

126. I conclude that each of the elements for this species of contempt are established, and each is established beyond a reasonable doubt.

127. *It follows that Count 2 is established. However, it is not established to the full extent contended for.*

Count 4: making and swearing an affidavit which contained statements which Mr Mallah knew were false

128. This can be shortly dealt with, as it follows to a considerable extent from the points already considered in detail. This of course is a criminal contempt, as I have explained above, and its hallmark is **knowingly** swearing an false affidavit or an affidavit containing statements **known** to be false.

129. This count as particularised in the application focusses on the false statements in the asset disclosure affidavits. The statements relied upon are those as to the Greek and Swedish assets, the incomplete statement as to bank accounts and the failure to disclose all assets over €5,000.

130. While I entirely understand why the Claimants submit that it is not credible that Mr Mallah made any of these false statements in error and that the only logical conclusion is that Mr Mallah knowingly swore an affidavit which he knew at the time of swearing to be false, I have not been prepared to accept those submissions to the requisite standard for the reasons given at paragraph 103 above. I am not sure that Mr Mallah, at the time of swearing his affidavit, knew these facts to be false.

131. *I therefore conclude that Count 4 is not established.*

SANCTION

The Law

132. The law on sanction is not in issue. If the Court finds the respondent in contempt, CPR r.81.9(1) provides that it may: "*...impose a period of imprisonment (an order of committal), a fine, confiscation of assets or other punishment permitted under the law*." The maximum period of imprisonment which may be imposed is two years.

133. The object of a penalty for contempt "*is to punish conduct in defiance of the court's order as well as serving a coercive function by holding out the threat of future punishment as a means of securing the protection which the injunction is primarily there to achieve*.": *Asia Islamic Trade Finance Fund Ltd v Drum Risk Management Ltd* [2015] EWHC 3748 (Comm) per Popplewell J at [7(1)].

134. The general approach to penalty for contempt is set out in *Attorney General v Crosland* [2021] 4 W.L.R. 103 (SC) at [44]. Specific guidance in the context of freezing orders was set out by Jackson LJ in *JSC BTA Bank v Solodchenko (No 2)* [2012] 1 WLR 350 at [51] and [55]:

> "any deliberate and substantial breach of the restraint provisions or the disclosure provisions of a freezing order is a serious matter. Such a breach normally attracts an immediate custodial sentence which is measured in months rather than weeks and may well exceed a year….
>
> I derive the following propositions concerning sentence for civil contempt, when such contempt consists of non-compliance with the disclosure provisions of a freezing order:
>
> (i) Freezing orders are made for good reason and in order to prevent the dissipation or spiriting away of assets. Any substantial breach of such an order is a serious matter, which merits condign punishment.
>
> (ii) Condign punishment for such contempt normally means a prison sentence. However, there may be circumstances in which a substantial fine is sufficient: for example, if the contempt has been purged and the relevant assets recovered.
>
> (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 co-operation by the contemnor."

135. As I noted in *XL Insurance v IPORS Underwriting* [2021] EWHC 1407 [89], [95] there are no formal sentencing guidelines for contempt, but it has become conventional to apply an approach similar to that set out by the Sentencing Council's Guidelines considering culpability and harm and relevant aggravating and mitigating factors.

136. Factors increasing culpability and/or harm may include: the degree of prejudice to the applicant; whether the breach of the order was deliberate or unintentional; the degree of culpability; the contemnor's cooperation; whether there has been any acceptance of responsibility, apology or reasonable excuse put forward: *Asia Islamic Trade Finance Fund* at [7(6)].

137. Those which tend to lessen culpability set out by Popplewell J at [7(6)] of *Asia Islamic Trade Finance* and by the Court of Appeal at [65]-[66] of *Liverpool Victoria Insurance Co Ltd v Khan* [2019] EWCA Civ 392:

> "An early admission of the conduct constituting the contempt of court, before proceedings are commenced, will provide important mitigation, especially if it is volunteered before any allegation is made. So too will cooperation with any investigation into contempt of court committed by others involved in the same proceedings or in other fraudulent claims. Where the court is satisfied that the contemnor has shown genuine remorse for his or her conduct, that will provide mitigation. Serious ill health may be a factor properly taken into account. Previous positive good character, an unblemished professional record and the fact that an expert

> witness has brought professional and financial ruin upon himself or herself are also matters which can be taken into account in the contemnor's favour. …The court must also give due weight to the impact of committal on persons other than the contemnor. In particular, where the contemnor is the sole or principal carer of children or vulnerable adults, the court must ensure it is fully informed as to the consequences for those persons of the imprisonment of their carer."

138. It is also (because of the length of sentence and the possibility of suspension) often useful to have regard to the Guideline which applies to the imposition of suspended sentences in criminal cases: the Sentencing Council's Definitive Guideline on the Imposition of Community and Custodial Sentences. Factors indicating that it would not be appropriate to suspend a sentence include that an appropriate punishment can only be achieved by immediate custody and a history of poor compliance with court orders. Factors pointing the other way include strong personal mitigation and where immediate imprisonment will have a significant harmful impact upon others.

139. Where multiple counts are involved, it may be necessary to consider how sentences for the various counts work together. In this context reference to the Sentencing Council's Definitive Guideline on Totality (July 2023) is appropriate.

140. The cases show that in the case of a continuing breach:

    1) The court may well consider imposing a long sentence, possibly even a maximum of two years, in order to encourage future cooperation by the contemnors;

    2) The court may see fit to indicate (a) what portion of the sentence should be served in any event as punishment for past breaches; and (b) what portion of a sentence the court might consider remitting in the event of prompt and full compliance thereafter.

141. I also note that it is generally considered appropriate to allow an unrepresented defendant a chance to reflect on the court's conclusion on contempt and make submissions, including as to mitigation, on sanction. In this case, with Mr Mallah being not only a litigant in person, but a foreign national whose first language is not English – and as he has pointed out, with no legal qualifications - the most effective and fairest course appeared to be to permit the Claimants to make their submissions on sanction at the hearing, and to produce a draft judgment with provisional conclusions in sanction, affording Mr Mallah a chance to make submissions in writing as to my provisional conclusions. In the event (and perhaps predictably) Mr Mallah's submissions were not so confined. I have however carefully read them and insofar as they go to sanction they are reflected in the section which follows.

Application to the facts

142. The Claimants urge me to conclude that there can be no doubt of the seriousness of Mr Mallah's breaches in that those breaches are deliberate and contumacious.

143. I agree that there is ample evidence of serious breaches, and that a number of those breaches are deliberate and contumacious as set out above. They are also, in some respects, continuing breaches.

144. I have concluded that Mr Mallah was aware of the terms of the Knowles J Order and has quite deliberately lied to the Court and that those lies have been intended to and in fact effected an interference with the course of justice.

145. Mr Mallah's breach is also undoubtedly substantial. Mr Mallah knowingly failed to file his affidavit of assets within the deadline stipulated in the Knowles J Order. He also made multiple false statements in his witness statement and affidavit. In relation to some of these, false documents were put forward in order to persuade this Court to dismiss the contempt application. His breach has been continuing since 29 July 2022. It causes prejudice to the Claimants by depriving them of the ability to police the WFO made in their favour in June 2022 and to recover the substantial sums due to them under the TPCO. It thereby undermines not only the Knowles J Order but also the WFO.

146. Mr Mallah has advanced no justification and can have no justification for the knowing breaches which I have found. In fact he continues to maintain that there are not breaches – adamantly sticking to the line he took in his oral submissions. There is therefore no question of acceptance, regret or offer to purge the contempts so far as possible. As for the breaches where I have not been sure that they were knowing, they still reflect a failure to engage with a Court Order which is subject to a penal notice.

147. So far as mitigation or lowering of culpability or harm is concerned, the most that can be said is that Mr Mallah has explained that he has had a very difficult time personally with his brother being extremely ill (a matter which has re-emphasised in his submissions on sanction). That has caused him huge worry and distress. In addition he has suffered to difficulty and further distress of being at some point detained in Denmark himself.

148. In the light of these various factors, and despite what Mr Mallah has said about these mitigating factors, I do conclude that this is a case for a custodial sentence. The best way to approach sentence, particularly given the considerable overlap in the factual bases of the counts of contempt, is to make one of the offences a lead offence and sentence the rest concurrently, producing a single custodial term. I have in mind here the approach outlined in the Sentencing Council Guideline on Totality.

149. I regard Count 2 is the most serious contempt because it involves lying to the court in a number of respects and (as part of one of those respects) fabrication of evidence. Taken alone I would have sentenced Mr Mallah on this count alone to 12 months imprisonment. Allowing for totality (the two other counts which require to be reflected in the sentence imposed), and the fact that Count 3 is one which reflects a number of serious continuing breaches of the Knowles Order, that figure must be considerably increased.

150. Having regard to the seriousness of the offence and totality and taking into account the relevant Guidelines and the aggravating and mitigating features

which I have identified, **the sentence which I impose on Count 2 is one of 18 months imprisonment. The sentence which I impose on each of the two other Counts is 9 months, concurrent with the sentence on Count 2**.

151. As Mr Mallah has not attended in person, a warrant for his arrest will be issued. When he is apprehended, subject to any application under CPR 81.10, he will be committed to prison for a period of 18 months. He will be released no later than half way through his sentence: in 9 months; and will serve the remainder on licence in the community. In that event he must keep to the terms of the licence and commit no further offence or he will be liable to be recalled and serve the rest of the sentence in custody.

152. I have referred to CPR 81.10 which contains the rules for applying to discharge a committal order. In this connection and bearing in mind what has been said inter alia in *Solodchencko* at [56], I have considered whether I should indicate what portion of this sentence might be likely to be remitted if Mr Mallah were to belatedly engage with the Knowles Order, and provide the full asset disclosure which he has to date failed to give.

153. I do not feel myself to be in a position to indicate how much of the sentence should be regarded as punitive and how much as coercive. However, if Mr Mallah were to do those things he would then be in a position to apply to the Court to purge his contempt and reduce his sentence and the Court hearing that application might well conclude that some reduction in the overall sentence was appropriate.

Confiscation of assets

154. The Claimants also seek confiscation of any and all assets within the jurisdiction which are or may be identified as being owned by Mr Mallah pursuant to CPR r.81.9(1).

155. Confiscation is "*temporary and is a form of coercion rather than a form of punishment*": Mumford on Civil Fraud (1st edn) at 35-109. The authorities note that it may be particularly appropriate in respect of foreign corporate defendants but there is no reason why it cannot be applied to the assets of an individual.

156. It is not necessary to point to any particular property which may presently be available for confiscation within the jurisdiction: *Trafigura Ltd v Emirates General Petroleum Corp* [2010] EWHC 3007 (Comm) at [15]-[17]; *Touton Far East Pte Ltd v Shri Lal Mahal Ltd* [2017] EWHC 621 at [21].

157. The Claimants submit, and I agree, that confiscation is an appropriate remedy in the present case. There is a risk that an order for committal alone will not be of sufficient coercive force, in view of the fact that Mr Mallah appears to be outside the jurisdiction.

CONCLUSION

158. Accordingly, I find and declare that Mr Mallah is in contempt of court in relation to Counts 1 to 3 inclusive. I commit Mr Mallah to prison for a period of 18 months; composed of:

   1) 18 months imprisonment on Count 2;

   2) 9 months imprisonment on Count 1, to run concurrently with the sentence on Count 2;

   3) 9 months imprisonment on Count 3, to run concurrently with the sentence on Count 2.

159. I also impose a confiscation order in respect of any and all assets within the jurisdiction which are or may be identified as being owned by Mr Mallah.

160. Mr Mallah has the right to appeal to the Court of Appeal (Civil Division) without permission. The time limit for appealing is 21 days from the date when this judgment is handed down.

APPENDIX: ACTS OF CONTEMPT

Count 1:

The Fourth Defendant wilfully breached the terms of the order of Knowles J dated 8 July 2022 ("the Knowles J Order") by failing to serve by the time stipulated by that Order an affidavit setting out his assets worldwide exceeding €5,000 in value.

Count 2:

On 10 March 2023 the Fourth Defendant made a witness statement and signed it with a statement of truth purporting to explain the reasons for non-compliance with the Knowles J Order. This statement contained statements which were false, which the Fourth Defendant knew (both that such statements were made and that such statements were false) at the time he signed the statement of truth. Further the false statements identified above (both cumulatively and individually) have interfered with, or if persisted in, would be likely to interfere with, the course of justice, principally by attempting to procure the acquittal of the Fourth Defendant on contempt on a false basis and thereby mislead the Court, as the Fourth Defendant well knew at the time he made the witness statement.

Count 3:

On 10 March 2023 the Fourth Defendant made and swore an affidavit which was served in purported compliance with the Knowles J Order which, to his knowledge, failed to give a complete account of his assets and the details thereof worldwide exceeding €5,000 in value.