

**Neutral citation number: [2018] EWHC 3632 (Ch)**

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS & PROPERTY COURTS IN LIVERPOOL**  
**INSOLVENCY & COMPANIES LIST (ChD)**

Case No: 82 of 2017

Courtroom No. 27

Liverpool Civil & Family Courts  
35 Vernon Street  
Liverpool  
L2 2BX

Monday 19<sup>th</sup> November 2018

Before:  
HIS HONOUR JUDGE HODGE QC  
Sitting as a Judge of the High Court

IN THE MATTER OF R & B CIVILS LIMITED (In Liquidation)

B E T W E E N:

SILVERBURN FINANCE (UK) LIMITED

Petitioner/Applicant

and

RYAN GUEST

Respondent

**MISS KARINA CHAMPION** (instructed by **Connell Associates Solicitors**) appeared on behalf of the **PETITIONER/APPLICANT**

**MR STEPHEN CHINNERY** (Solicitor Advocate of **Olliers Solicitors Limited**) appeared on behalf of the **RESPONDENT**

**APPROVED JUDGMENT**

(Approved on 27<sup>th</sup> December 2018 without reference to any papers)

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## **JUDGE HODGE QC:**

1. This is my extemporary judgment on the hearing of an application concerning the affairs of a company now in liquidation called R&B Civils Ltd. The present application is by the petitioning creditor which had been seeking an order to wind up R&B Civils Ltd. under petition number 82 of 2017 and the respondent to the committal application is Mr Ryan Guest who was formerly a director of the company now in liquidation.
2. The matter has a long and complicated history. This is the fifth hearing before me of this committal application and the application has been before me on a number of additional occasions on paper to secure disclosure of bank statements from various concerned financial institutions. To relate the history in rather more detail: On 16 February 2017 a winding up petition was presented by the present applicant, Silverburn Finance (UK) Ltd. in relation to R&B Civils Ltd., the petition debt being some £51,290.
3. The petition was originally returnable on 10 April 2017, having been served on 20 February, but at the first hearing the petition had to be adjourned to 8 May 2017 because it had not then been advertised. Advertisement took place on 24 April 2017. The second hearing was before Deputy District Judge Davey on 8 May who adjourned it to 5 June. There was a third hearing on that day before Deputy District Judge Smedley who adjourned the petition to 17 July 2017.
4. Shortly before that adjourned hearing, the company applied (on 14 July 2017) for a validation order in relation to payments out of the company's bank account under section 127 of the Insolvency Act 1986. That application was supported by two witness statements from Mr Guest dated 14 and 16 July 2017, and exhibiting various documents as exhibits RG1 and RG2. In paragraph 11 of his second witness statement, Mr Guest gave an undertaking that he would, within seven days of the debtors' bank account being unfrozen, pay all of the petitioned sums. On the basis of that undertaking, the petitioning creditor (and present applicant) did not oppose the making of a validation order. That was made by District Judge Baldwin on 17 July 2017. That was the fourth hearing of the petition, and the District Judge adjourned it to 7 August 2017.
5. There were two further hearings, before Deputy District Judge Hertzog and District Judge Graham[?] on 7 August and 4 September 2017 respectively. The petition eventually came on for an effective hearing before Deputy District Judge Powell on 9 October 2017 when he made the usual compulsory winding up order in relation to R&B Civils Ltd. The official

receiver was constituted the liquidator of the company and he remains in that role.

6. Deputy District Judge Powell was concerned about the apparent breach of the undertaking that had been given by Mr Guest in his second witness statement, and by certain other matters, and he therefore listed the matter for the hearing of a committal application. I have certain concerns about the terms on which the committal application was then being formulated but that is now water under the bridge because of subsequent developments in the case. The committal was listed for hearing for an hour before a District Judge on 5 December 2017. On 28 November 2017, Mr Guest issued an application seeking an adjournment of that hearing for eight weeks. Mr Guest produced third and fourth witness statements dated 20 November and 4 December 2017 and exhibiting further documents as exhibits RG3 and RG4.
7. On 5 December 2017 District Judge Benson heard the committal application and adjourned it to a section 9 Specialist Civil Judge sitting as a Judge at the High Court for one day on 3 April 2018. On 2 April 2018, the day before that hearing, Mr Guest produced his fifth witness statement together with further documents as exhibit RG5. On 3 April 2018 I heard the adjourned committal application in Liverpool and adjourned it to come on before me in Manchester on 20 April 2018. That was the first hearing before me.
8. On 16 April 2018 an application notice was issued on behalf of the respondent seeking a further adjournment of the hearing. On 20 April 2018, at the second hearing before me, I adjourned the committal application to 30 May for half a day. It was then contemplated that there would be a without notice application (to be dealt with on the papers) by the applicant for disclosure of bank statements relating to Mr Guest from Santander and Royal Bank of Scotland. That application was duly made on 24 April, and (without a hearing) I made an order for disclosure on 26 April 2018.
9. Mr Guest made his sixth witness statement on 18 May exhibiting further documents as exhibit RG6. The hearing scheduled for 30 May 2018 was adjourned at the request of the applicant's solicitors and, on 4 June 2018, it was relisted for hearing on 18 June. By the date of that hearing, a revised statement of grounds for committal had been produced (on 12 June) and on 18 June Mr Guest made his seventh witness statement exhibiting further documents as RG7. The third hearing before me took place on 18 June 2018 and the matter was adjourned for a full day to 2 July with the costs being reserved.
10. In advance of that hearing, Mr Guest produced his eighth and ninth witness statements, both dated 26 June 2018 and both exhibiting further documents as exhibit RG8 and RG9; and his

solicitor advocate, Mr Chinnery, made an affidavit on 26 June 2018. A further application was made by the applicant for the disclosure of further bank statements from Santander on 26 June 2018 because the account number that had been provided by the respondent, Mr Guest, was incorrect and had produced a nil return from Santander. I made a further order for disclosure (without a hearing) on 28 June.

11. The hearing listed for 2 July was adjourned at the request of both parties because the Santander bank statements were not likely to be available in time. The email from the applicant's solicitors (Connells), dated 29 June 2018, asserted that the parties were focused on the next hearing being the conclusion of the matter. The hearing originally scheduled for 2 July was relisted on that day for 14 August with a further full day's hearing. The Santander bank statements were filed at court on 30 July and their disclosure gave rise to an amended statement of the grounds for committal from the applicant dated 7 August 2018.
12. There was a request for an adjournment of the 14 August hearing which was supported by a witness statement from Mr Guest (his 10<sup>th</sup>) of 12 August 2018. The matter came on for hearing before me on 14 August when Miss Karina Champion (of counsel) appeared for the applicant (as she has throughout these committal proceedings) although on that occasion, Mr Guest was represented by Mr Jonathan Wright (also of counsel) due to Mr Chinnery's unavailability to act on Mr Guest's behalf.
13. At a hearing which extended into the afternoon of 14 August I granted a further adjournment of the committal application at Mr Guest's request. I addressed a procedural omission in relation to the committal application by giving the applicant permission (pursuant to CPR 32.14, 81.17 and 81.18) to rely upon those grounds of the amended statement of grounds for committal that required the court's permission for them to be pursued by way of committal application. That was because they related to false statements in documents verified by statements of truth.
14. I granted Mr Guest's oral application for an adjournment to allow him to produce further evidence. I required Mr Guest to disclose details of all the bank accounts through which he alleged that the sums totalling £52,423 which had been paid out of the company's bank account on 20 and 21 July 2017 had passed before Mr Guest had allegedly disbursed those sums to creditors of the company. That part of the order had a penal notice attached to it. I gave a timetable for any further application for non-party disclosure against various banks, whose names were to be disclosed by Mr Guest, and I made provision for any application for such non-party disclosure to be dealt with by me on paper.

15. I gave the parties permission to file and serve any further evidence upon which they wished to rely by no later than 4 o'clock on 17 September, and I directed a further hearing before me in Liverpool for a full day on Monday 1 October 2018. I gave procedural directions to lead up to that hearing, and I ordered Mr Guest to pay the petitioning creditor's costs of the hearing, to be assessed on 1 October 2018. Regrettably, due in part to some mix-up in the way in which the court issued the relevant third-party disclosure order and also over its precise terms, the required disclosure was not available in time for the 1 October 2018 hearing to be maintained.
16. I had made an order for further disclosure by NatWest and RBS on 30 August but that order was not properly drawn up and sealed until about 20 September. On 19 September 2018, Mr Guest made his 11th witness statement exhibiting further documents. At the request of the parties, I vacated the hearing on 1 October by an order that I made on 28 September and the matter was relisted for hearing today. This is, therefore, the fifth hearing of this committal application to come before me.
17. In addition to Mr Guest's 11th witness statement of 19 September, Mr Guest has produced a 12th (and final) witness statement earlier today dated 19 November. Mr Guest appears before me today by Mr Chinnery who has, apart from the brief appearance by Mr Wright, represented Mr Guest throughout as his solicitor advocate. Miss Champion (of counsel) again appears for the applicant. Miss Champion has produced her original skeleton argument for the hearing dated 14 August and an addendum to that skeleton argument dated 18 November 2018. She has also cited to me a decision of Mr Justice Eder on the appropriate approach to the sentencing of committal applications in the case of *Okritie International Investment Management Ltd. v Gersamia* [2015] EWHC 821 (Comm).
18. The grounds of committal presently relied upon are now set out in no less than eight numbered sub-paragraphs of paragraph four of the amended statement of grounds for committal dated 7 August 2018. It is said that the respondent has committed the following contempts of court:
  19. First, in paragraph 11 of his second witness statement (in support of the debtor's application for a validation order) Mr Guest offered an undertaking to the court that he would, within seven days of the debtor's bank account being unfrozen, pay all of the petition sums. The respondent has admitted (at paragraph six of his fifth witness statement dated 2 April 2018) that he breached that undertaking.
  20. Secondly, reference is made to a statement in paragraph 11 of Mr Guest's third witness

statement of 20 November 2017 where he confirmed receiving nothing from the company's bank accounts. He asserted that all the money in the company's bank account had been disbursed to the company's creditors. Those assertions, which were endorsed by Mr Guest with a statement of truth, are said to be entirely false and clearly intended to mislead the court. The respondent has actually admitted (in paragraph nine of his fifth witness statement) that when the company's bank account was unfrozen he paid the entirety of the balance into his own personal bank account.

21. The third ground of contempt relates to the terms of paragraph eight of Mr Guest's fourth witness statement dated 4 December 2017. There he asserted that, on Wednesday 29 November, he had attended the Walkden branch of RBS and asked if it was possible for bank statements to be printed off rather than having to wait for hard copies of them. The assistant had told him that that was not possible but that he could look at the computer screen to take a note of relevant transactions. Mr Guest asserted that he had duly done that, and he produced an Excel sheet from his handwritten notes which he proceeded to exhibit as page six of exhibit RG4. He asserted that all the available monies were paid over to the company's creditors, including sub-contractors, and that not a single penny had been paid to him. It is said that those assertions, endorsed by Mr Guest with a statement of truth, were entirely false and clearly intended to mislead the court. The respondent has admitted (in paragraph nine of his fifth witness statement) that he paid the entirety of the monies in the debtor company's bank account directly into his own personal account. Furthermore, he admits (in paragraphs 14 and 15 of his fifth witness statement) that he did not compile the Excel schedule from a computer screen at the Walkden branch of RBS but from his own personal bank statements.
22. I find that all of those three alleged grounds for contempt are fully made out and have been formally admitted by Mr Guest.
23. The fourth ground of contempt is that in paragraphs 10 and 16 of his fifth witness statement Mr Guest had referred to his own personal bank statements. These had been exhibited as exhibit RG5. Despite significant obstruction from Mr Guest, the applicant has now received copies of the respondent's real personal bank statements directly from Santander for the relevant period. Those documents differ materially from the personal bank statements exhibited at RG5 and demonstrate beyond reasonable doubt that the documents which Mr Guest had exhibited at RG5 had been forged by him for the purpose of deliberately deceiving both the court and the petitioning creditor.

24. I am satisfied that that ground has been made out to the criminal standard of proof. I am satisfied that it is clear beyond reasonable doubt that the personal bank statements produced by Mr Guest were false documents, forged by him in a deliberate attempt to deceive the court during the course of, and by way of defence to, these committal proceedings.
25. Ground five turns upon paragraph 10 of Mr Guest's fifth witness statement. There he referred to copies of his personal bank statements taken from his online account between 19 July and 30 December 2017. He says he began disbursing payment out to the company's creditors on 9 August, with the final payment being made on 25 August 2017. He said that he had produced a schedule of those payments, showing payments to the company's creditors totalling £63,251 odd. He also invites the court to note that he continued to inject his own personal monies towards paying the company's creditors, drawing £9,000 from his wedding fund in order to do so.
26. It is asserted, and I am satisfied that it has been proved beyond all reasonable doubt, that the real personal bank statements, obtained directly from Santander, demonstrate the falsity of that paragraph of Mr Guest's fifth witness statement. The real bank statements demonstrate beyond all doubt that Mr Guest did not use the £52,423 he had taken from the company's bank account to pay creditors of the company. On the contrary, the majority of that money was distributed as follows: £5,000 to Suzanne Guest on 20 July; £5,000 to R&B Civils NW on 20 July; £10,000 to R&B Civils NW on 21 July; £15,000 to an account [Vics 2?] on 21 July 2017; and £10,000 to R&B Civils NW on 26 July 2017. I find that those payments and distributions have been demonstrated beyond all reasonable doubt.
27. In his 11th witness statement, Mr Guest alleges that Suzanne Guest, who is his mother, had lent him £15,000 in January 2016 so that he could continue to finance the company. He states that the £5,000 paid to his mother from his personal bank account on 20 July 2017 was a part payment against that loan. The applicant asserts that the bank statements produced by Mr Guest purporting to show those alleged loans by his mother should not be accepted as genuine because of Mr Guest's habit of producing forged bank statements throughout the course of these committal proceedings. The applicant points to the fact that these statements have the curious feature of having all but the last four digits of Mr Guest's sort code and bank account number replaced by the letter X.
28. It is unnecessary for me to reach any concluded judgment on that assertion by the applicant. That is for two reasons. First, it is Mr Guest's own evidence that the alleged loan from his mother was made to him personally. It was, therefore, his debt to discharge, and not the

company's; and he was not entitled to use the company's money for the purpose of repaying a loan made to him personally by his mother. Secondly, and in any event, it was not appropriate for Mr Guest to choose to prefer his mother over other legitimate creditors of the company, particularly in circumstances where he had secured a validation order so as to obtain the release and unfreezing of the company's bank account on the basis of an undertaking to pay the petitioning creditor, making no mention of payment to his own mother.

29. Insofar as the payment of £15,000 to the account Vics 2 on 21 July is concerned, the respondent claims that that sum was paid into his wife's account on 21 July and was subsequently used to pay Proctor Plant Hire. That is addressed at paragraph eight of Mr Guest's 10th witness statement where he says that the money was put into the Vics 2 account due to a disagreement with the other director, who thought that they should keep a large percentage of the company's monies. The suggestion seems to be that Mr Guest and his co-director, Brian Makinson, disagreed about what should be done with that £15,000, Mr Guest maintaining that it should be paid to one of the company's creditors, Proctor Plant Hire, and his co-director maintaining that the new company should simply keep the money.
30. It would appear that that was Mr Guest's justification for not paying the money into the new company's bank account but into that of his wife (as she now is). The applicant notes that Mr Guest has not produced his wife's bank statements to show what happened to the £15,000 after it had been paid into her account. Nor has he produced any witness statement from his wife confirming his version of events. That is said to be surprising given the grave situation in which Mr Guest now finds himself. It is also perhaps surprising since he has produced, as an exhibit to his 11th witness statement, a character reference from his wife. What Miss Champion says is most striking, however, is the absence of any explanation as to why Mr Guest did not simply pay Proctor Plant Hire from his own bank account rather than using his wife's account as a conduit. Even if the court were to accept Mr Guest's highly implausible version of events, it is to be noted that Proctor Plant Hire was not said to be a creditor of the company as at 14 July, when the respondent made his first witness statement in support of the validation order.
31. The email from Proctor Plant Hire on which Mr Guest seeks to rely states that it received £13,250. On any view, Miss Champion says, that leaves £1,750 of the company's money for which Mr Guest and/or his wife have failed to account. It does seem to me that arithmetically that is absolutely correct. In any event, it was not for Mr Guest to prefer one

- creditor over another, particularly in the circumstances previously related by which he had secured the unfreezing of the company's bank account.
32. Dealing with the various payments to R&B Civils North West, Miss Champion reminds the court that in paragraph nine of his fourth witness statement, dated 4 December 2017, Mr Guest had stated as follows: "I understand from my solicitor's conversation with Connell & Associates on Tuesday 28 November 2017 that one of the issues of particular concern to the petitioning creditor was that I had simply used the monies residing in the company's account to then facilitate my continued trading with the company's usual customers via a different incorporated entity. This is not the case. The company was involved in the business of civil engineering and groundworks whereas I am a quantity surveyor by training and now working on a freelance basis as a QS, and not undertaking any of the type of work that the company used to deal with."
  33. Miss Champion points out that that assertion was wholly untrue. At the time the assertion was made, Mr Guest was in fact the director and secretary of R&B Civils & Groundwork Ltd. which had been incorporated on 1 February 2017. Indeed, Mr Guest was, and remains, a major shareholder in that company, and it is clear from that company's bank statements that he has regularly been taking a wage from it, both before and throughout the course of these committal proceedings. Mr Guest, having finally been forced to admit the existence of this new company, now claims that £25,000 of the original company's money was paid from his personal bank account into the new company's bank account in order to facilitate payment of the original company's creditors. In particular, he claims that the money was used to pay outstanding wages to employees of the original company.
  34. However, it is said to be tolerably clear, when one looks at the new company's bank statements, that the employees whose outstanding wages were allegedly paid by the new company's bank account had actually been employed, and paid, by the new company since at least May 2017; that is to say, long before the original company's bank account had been unfrozen, and long before the debtor company went into liquidation. Indeed, it would appear that several of those employees are actually related to either Mr Guest or his co-director, Mr Makinson.
  35. On this basis, Miss Champion submits that the applicant's misgivings were correct all along. Only a couple of weeks before the petitioning creditor presented its petition to wind up the debtor on 16 February 2017, Mr Guest and his co-director, Mr Makinson, clearly recognised that the writing was on the wall and transferred the original company's business

to a new corporate entity with an almost identical name. When the original company's bank account was finally unfrozen in July 2017, £25,000 of the original company's money was then ploughed into the new company, and the rest was distributed between Mr Guest, his wife and his mother. Not only did Mr Guest fail to make the payment to the petitioning creditor he had undertaken to do, but he also failed to pay either of the other creditors identified in paragraph 24 of his first witness statement, namely VP Groundforce Ltd. and Marriott Civils. Even if the court were to accept that the sums paid to the new company's operatives in July and August 2017 were outstanding wages owed to those operatives by the original company, as opposed to the usual regular wage payments that those operatives had been receiving from the new company since at least May 2017, Miss Champion points out that it can be seen from the letters exhibited to Mr Guest's sixth witness statement that adding together the sums those individuals claim to have received by way of outstanding wages results in a total sum of some £12,824, leaving some £12,175 of the original company's £25,000 unaccounted for.

36. Mr Guest purports to account for some £1,258 of that sum by claiming that it was paid to WCF Fuels, allegedly a creditor of the original company although never mentioned in either of Mr Guest's first two witness statements as being such. Miss Champion points to the fact that there is no documentary evidence of the payment being made on the date that it is said to have occurred (on 11 August 2017). Miss Champion submits that the inescapable inference from the documents is that this is yet another fabricated payment produced by Mr Guest wilfully to deceive the court. It is unnecessary for the court to make any final decision on that point because even on Mr Guest's own case, only some £14,082 of the £25,000 paid into the new company's bank account has been accounted for. That leaves a balance of some £10,917. What can be seen from the new company's bank statements is that the respondent's co-director, Mr Makinson, removed £5,000 from the new company's bank account on the very same day that Mr Guest paid £15,000 of the original company's money into it, namely 21 July 2017. I am satisfied beyond reasonable doubt that that is the case.
37. Ground six of the amended statement of grounds for committal refers to a statement at paragraph 28 of Mr Guest's fifth witness statement purporting to confirm that he had transferred £10,000 to the petitioning creditor's solicitors via three separate payments made on 28 and 29 March 2018. Mr Guest had sought to evidence those payments by further reference to his personal bank statements. The petitioning creditor's solicitors have

throughout maintained that they did not receive £7,500 of that sum from Mr Guest, whether on 29 March 2018 or at all. That latter assertion is, I am satisfied beyond reasonable doubt, entirely corroborated by the first page of Mr Guest's real bank statements, which clearly demonstrate that the only payments made to the petitioning creditor's solicitors were £1,000 on the 28th and £1,500 on 29 March 2018. I am satisfied beyond reasonable doubt that not only did Mr Guest lie in paragraph 28 of his fifth witness statement about the payment of the further £7,500, but that he has also doctored and falsified his own bank statements in a concerted effort to mislead the court into believing that a payment of £7,500 was made to the petitioning creditor's solicitors on 29 March 2018 when clearly it had not. I am entirely satisfied that that sixth ground of committal has been made out beyond reasonable doubt.

38. Ground seven refers to paragraph two of my order of 20 April 2018, which required the disclosure by Mr Guest of details of all personal bank accounts held by him between 14 July 2017 and 3 April 2018, such details to include the name of the bank, the account numbers and the sort codes, by 9.30am on Tuesday, 24 April 2018. That paragraph of my order was endorsed with a penal notice which stated the consequences of providing information which was inaccurate or false.
39. The purpose of that paragraph was to ensure that Mr Guest provided the applicant with accurate details of all of his personal bank accounts during the relevant period so as to enable the applicant to apply for a third-party disclosure order requiring the relevant banks to disclose true copies of Mr Guest's personal bank statements, which could then be compared with, and contrasted to, those appended to his fifth witness statement.
40. On 24 April 2018 the respondent, through his solicitor, provided details of two bank accounts. One was a Santander account with number 76867022. I made an order for the disclosure of copies of all bank statements pertaining to that account. I also required the production of bank statements relating to a second disclosed account from RBS. In the event it transpired that that RBS account was not the respondent's personal bank account at all but a bank account of the original company from which Mr Guest had taken all of that company's money.
41. Santander confirmed that the account number provided for the Santander account was invalid on their systems. I am satisfied that, notwithstanding the penal notice attached to paragraph two of my order, Mr Guest failed to provide accurate information about his personal bank accounts such as would allow his real bank statements to be obtained and compared with the documents he had exhibited to his fifth witness statement. I am satisfied

beyond reasonable doubt that this failure was deliberate, and constituted yet another flagrant breach by Mr Guest of one of my orders.

42. Finally, in paragraph eight of his eighth witness statement dated 26 June 2018, the respondent confirmed that the account number should have been 76867021 and that he had previously given the wrong account number as 76867022. He says that he thinks that that occurred because his previous debit card ended 7022 and he therefore he mistook that number for his account number. He apologises sincerely for that mistake and the delay that has caused to these proceedings.
43. In the light of that admission, I am satisfied beyond reasonable doubt that the document which Mr Guest had exhibited to his seventh witness statement, and which purported to be a bank statement with an account number purportedly ending 7022, cannot be genuine and must have been forged by Mr Guest in much the same way as the bank statements appended to his fifth witness statement have undoubtedly been forged. Again, I am satisfied that that contempt has been made out to the criminal standard beyond reasonable doubt.
44. Miss Champion submits, in summary, that Mr Guest has lied throughout the course of these proceedings, wilfully obstructing the court from discovering the real destination of the monies she says he plundered from the original company's bank account when it was unfrozen in July 2017. At the hearing on 14 August 2018, Mr Guest had pleaded for one last opportunity to prove to the court that, despite his attempts to cover his tracks, he had done the right thing and used the monies to pay off the original company's creditors. The reality, however, is, much as was always suspected: that he did nothing of the sort. £15,000 was paid to his wife, £5,000 to his mother, and £25,000 to a new company which he and his fellow co-director had set up to carry on the business of the original company when it became clear that the latter's days were numbered. The balance of £7,423 is unaccounted for and must therefore have been kept for the benefit of Mr Guest.
45. Miss Champion submits, and I accept, that each and every one of the contempts set out in the amended statement of grounds for committal has been made out. Miss Champion submits that Mr Guest's position is in no way ameliorated by the notion that he did do the right thing, even if he did it in the wrong way. On the contrary, it is said that Mr Guest clearly set out to defraud the petitioning creditor by persuading it to consent to his application for a validation order on the strength of his personal undertaking. He then plundered the original company's bank account at the first opportunity, distributing the money between himself, his family, and his new business, and not paying a penny of it to

the petitioning creditor. Worse still, throughout the course of these committal proceedings he has repeatedly lied to the court about what he did with the money, fabricating documents at every juncture in a concerted effort to prevent the court from ascertaining the truth.

46. In all the circumstances, Miss Champion submits that the court cannot feasibly countenance any form of punishment other than an immediate, and substantial, sentence of imprisonment for the respondent. In the course of her oral submissions, Miss Champion submits that if, as an alternative, the court were minded to impose a suspended sentence of imprisonment, that period of committal should be of sufficient and significant duration to ensure that Mr Guest has it brought home to him how seriously the court views his misconduct in this matter.
47. Miss Champion points out that it is clear from his conduct throughout these committal proceedings that it has not always been apparent to Mr Guest how serious his situation is, and how grave his conduct has been. Miss Champion submits that it is important to ensure that the length of any suspended sentence will afford sufficient deterrence to ensure compliance with the terms of any suspended term of imprisonment.
48. Miss Champion points to the prolific, repeated, and contumacious conduct on the part of Mr Guest which, she says, justifies a sentence of imprisonment for the maximum term of two years. She points out that the most troubling aspect of this case is the way in which the initial contempt, consisting of the breach of the undertaking to the court, has virtually disappeared under a mountain of other contempts, which were committed in order to cover up Mr Guest's original breach of the undertaking. All of that, Miss Champion submits, justifies the imposition of the maximum sentence possible.
49. In his submissions, Mr Chinnery indicated that Mr Guest did not in any way dispute the contempts alleged in the amended schedule of the grounds of the committal. I find that all of those contempts are proved. In summary, I find, for the reasons I have already given, that Mr Guest breached the term of the undertaking that he gave at paragraph six of his fifth witness statement. He has made false statements in witness statements, verified by statements of truth, in the respects identified in the amended statement of grounds for committal. In the course of these committal proceedings, Mr Guest has fabricated bank statements in order to put forward a false position to the court. He has sought to cover up his misconduct by failing to provide full and proper details of the relevant bank accounts, even when required to do so by the terms of a court order endorsed with a penal notice. All of that is extremely serious.
50. Mr Guest has produced three character references - from his mother, his wife and his former

co-director, Mr Brian Makinson - as exhibits to his 11th witness statement. In her letter, Mrs Suzanne Guest seeks to present the good character of her son, Ryan. She refers to him representing county and international teams at rugby and as always having been hard-working, reliable and honest. She refers to the sad loss of Mr Guest's father earlier this year from cancer and the way in which Mr Guest has provided support to his mother and her family since then. She says that she is aware that her son has done wrong, but she wishes to express that she has spoken with him at length and he has expressed to her many times that he is extremely sorry for his actions. She expresses the hope that the letter will give the court an idea of her son's good character, and that the court will give him a second chance to prove that this was an unusual occurrence.

51. In her letter, Mr Guest's now wife describes Mr Guest as her best friend and partner for six years. She describes him as being of good moral character, honest, loyal, and extremely considerate. He is also said to be a supportive person, with great empathy for others. He is also the main provider for the family, and if anything happened to him, the family would lose everything they have. At the time of writing the letter (13 September 2018) Mrs Guest said she was then six months pregnant and expecting a first child in January 2019. She expresses the wish for her husband to be there when their first child arrives.
52. In his letter, Mr Makinson says that the business failed due to non-payment from Vizor[?]Construction Ltd. Leading up to that, Mr Guest had taken the strain and burden of paying the company's operatives several times out of his own money. The two are said to have made all decisions jointly, but it was Mr Guest who took the stress and pressure of the court cases and procedures as Mr Makinson could not do so.
53. In his 12th witness statement, produced only this morning, Mr Guest gives an update on the position with regard to his wife's pregnancy. Their daughter, Anya-Rose, was born on 26 October 2018, 11 weeks premature. She weighed just three pounds. She is still receiving 24-hour care in the neonatal intensive care unit at Warrington Hospital. Mr Guest asks the court to be lenient in the sentence it passes upon him as a consequence of his contempts of court, for which he is said to be very sorry.
54. Mr Chinnery gave me an update and said that the present position is that their daughter remains in a serious condition in hospital. In a letter written yesterday, before the latest development overnight, Mrs Guest says that she is spending every minute by her daughter's side. She says that she knows Mr Guest needs to be punished, but she begs the court to let her husband stay with them during this difficult time. She says that she is not sure it is an

experience that she could go through without him.

55. Because Mr Chinnery indicated that Mr Guest does not dispute the contempts alleged in the amended schedule, it was unnecessary for him to give evidence before me. Mr Chinnery emphasised Mr Guest's previous good character. He has no previous convictions and no findings of contempt against him. Mr Chinnery points out that the assessed costs to date amount to some £4,931 and, so far, Mr Guest has paid the petitioning creditor's solicitors some £6,700. Mr Guest is said to be sincerely sorry for the inconvenience and outrage that he has caused the court by his conduct.
56. I indicated at the outset of this hearing that one option that I was considering was to commit Mr Guest to prison, but to suspend the service of that term of imprisonment to see whether Mr Guest was ready, willing and able to pay over to the liquidator (for the benefit of the company's creditors in general) the sum of money which he had received from the company's bank account when, as a result of his section 127 application, it was unfrozen, together with interest at the applicable rate of 8% per annum from 21 July 2017. It seemed to me, without in any way seeking to minimise the seriousness with which the court views the way in which Mr Guest has behaved - not simply initially in failing to honour his undertaking, but, more recently, in seeking to escape the consequences of that breach by covering up the full extent of his conduct by insisting that monies had not passed into his bank account when they had, and insisting that they had all been used to pay company creditors when it is clear on the figures that that is not the case and, in any event, monies should have gone to creditors rateably in the liquidation and not at the whim of Mr Guest - that this is a serious state of affairs for which the appropriate disposal is a substantial period of imprisonment.
57. However, although I am satisfied that he has been dragged to this position and that has not owned up willingly and of his own volition, Mr Guest has, belatedly - although it has been dragged out of him - disclosed what has happened with the company's money and, more importantly, has recognised that it needs to be repaid to the liquidator for the benefit of the company's creditors. The whole object of section 127 of the Insolvency Act is to ensure that, once a winding up petition has been presented and has been adverted, and has become known to the company's bank, the monies within that bank account are preserved so that they can be distributed rateably to creditors in accordance with the scheme of the insolvency legislation, rather than being paid over to creditors or otherwise dealt with at the whim of the company's directors. It is not open to the directors of a company to set up a phoenix

business and transfer the operatives to that company and then use the original company's monies for the purpose of paying those operatives at the expense of the original company's creditors who provided credit to the original company in good faith. So, the court does take a very serious view; but it seems to me that it is equally important that the position is restored to that which it should have been before Mr Guest's conduct in seeking the validation order which initiated the whole of this sad process.

58. I am satisfied that the contempts have been proved to the criminal standard (and the contrary is not contended for by Mr Chinnery on Mr Guest's behalf). I am satisfied that Mr Guest's conduct does merit serious condemnation by the court. The court therefore would commit Mr Guest to prison for a period of 18 months which (in terms of days) is 547 days; but the court suspends the operation of that sentence of imprisonment for a period of two years on terms that Mr Guest makes repayment to the liquidator of the company of the full amount of £52,423, which he took from the company's bank account, together with interest at the rate of 8% per annum from 21 July 2017.
59. It is proposed that that payment be effected by 12 equal instalments, starting on 26 January 2019. It was originally envisaged that that would result in a payment of £4,900 per month, starting on 26 January 2019 and continuing for 12 months, but there will need to be provision for interest on the monies over that period of payment. In rough terms, there is likely to be a further £3,000 or so which means that the figure will come up closer to £5,200 per month.
60. Provided those payments are honoured, then the period of imprisonment will not take effect; but Mr Guest must be under no illusions that if he does not maintain those payments then the period of imprisonment will be activated, and he will find himself inside. That will not be of any use to either Mr Guest's wife or his young baby daughter.
61. So, for those reasons I find the contempts proved beyond reasonable doubt and I commit Mr Guest to prison for a period, in terms of days, of 547 days; but such term of imprisonment will be suspended for two years on condition that Mr Guest makes the payments to the liquidator of the company by way of the monthly instalments I have indicated, commencing on 26 January 2019.

**End of Judgment**

Transcript from a recording by Ubiquis  
291-299 Borough High Street, London SE1 1JG  
Tel: 020 7269 0370  
legal@ubiquis.com