

Neutral Citation Number: [2020] EWHC 31 (Ch)

Claim No. BL-2019-BHM-000067

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

Birmingham Civil Justice Centre
33 Bull Street, Birmingham B4 6DS

Before:

DEPUTY HIGH COURT JUDGE LANCE ASHWORTH QC

NORTHAMBER PLC

Claimant

- and -

(1) GENE WORLD LTD (in liquidation)
(2) MR RANJIT SINGH
(3) INTERACTIVE EDUCATION SOLUTIONS LTD
Defendants

Damian Falkowski (direct access) for the **Claimants**
Michelle Caney (instructed by **Jonas Roy Bloom**) for the **2nd Defendant**

Hearing date: 24th – 25th October, 5th November, 2nd, 16th December 2019

JUDGMENT

16th January 2020

Lance Ashworth QC:

Introduction

1. This is judgment on the application by the Claimant, Northamber plc (“**Northamber**”) to commit the 2nd Defendant, Ranjit Singh (“**Mr Singh**”) for contempt arising out of his actions as the sole director of the 1st Defendant, Genee World Ltd, now in liquidation (“**Genee World**”). The 3rd Defendant, Interactive Education Solutions Ltd (“**IES**”) has taken no part in the committal application.
2. Northamber has been represented before by Mr Damian Falkowski and Mr Singh by Ms Michelle Caney. I am grateful to both counsel for their assistance.

Background

3. Northamber is a distributor of information technology equipment. It distributes many different brands of IT equipment through its UK customer base of approximately 2,500 IT equipment resellers. Among its product range is an audio visual (“**AV**”) interactive display product for use in classrooms and boardrooms.
4. Genee World was an importer of AV displays into the UK. It may also have manufactured some of its own AV displays. Mr Singh was the sole director of Genee World and the majority, if not only, shareholder.
5. Northamber and Genee World entered into two agreements, the first being a “Resellers Agreement” from March 2016, under which Genee World appointed Northamber as a distributor of its AV products. There appear to have been issues arising out of that contract, but they are not relevant for the purposes of this application.
6. On 13 July 2017, Northamber entered into a written Exclusivity Agreement with Genee World granting Northamber the exclusive right to supply Genee World its AV displays within the United Kingdom (“**the Exclusivity Agreement**”). The terms and conditions of that contract are set out in full at paragraph 11 of the Particulars of Claim and I do not need to repeat them in full here. However, in brief, the Exclusivity Agreement provided for Northamber to become the 100% exclusive source for all Genee World products in the UK effective from 1st July, 2017 with no sales to be made by Genee World to any reseller or other party in the UK. The only exception to that was for a pre-agreed list of resellers, of which there were four, to whom Genee World was entitled to sell directly (“**the Excluded Accounts**”).
7. The Exclusivity Agreement was to last from 1 July 2017 to 31 December 2018. The agreement provided that it would automatically renew for one year in perpetuity from each January, unless terminated with at least 90 days’ notice from year end. Accordingly, for the agreement to come to an end on 31 December 2018, notice would have to be served by no later than the end of September 2018.
8. There were provisions for targets which Northamber was to aim for in terms of volume of sales, but as has already been held in circumstances set out below these were merely targets and no more than that. There were in addition provisions dealing with staffing, the

pipeline, forecasting, stock at Genee World's bonded warehouse, payments, marketing and service levels in addition to non-compliance and remedies.

9. Clause 9.2 provided:

“Breach of the exclusivity of supply agreement will result in Genee World compensating Northamber with 25% of the lost revenue. Genee World to send annual audited accounts to Northamber and Northamber retains the right to audit Genee World within working hours should it believe the exclusivity has not been upheld.”

10. It is Northamber's case that Genee World did not honour this agreement, but rather continued to supply Genee World products in the UK directly to other resellers.
11. Genee World accepts that it did not honour the agreement, but says that was because Northamber was not placing sufficient sales orders on it, with the result that Genee World was not earning sufficient income in order to be able to meet its liabilities to its creditors. As a result of the lack of income, Genee World supplied various third parties directly, rather than referring the sales to Northamber.
12. There was a meeting on 27 March 2018 at which Northamber raised the fact that Genee World was breaching the Exclusivity Agreement and sought to secure Genee World's performance according to its terms. At that meeting it is said that Mr Singh told Northamber that he would liquidate Genee World and incorporate a new company in its place if Northamber were to proceed against Genee World for breach of the Exclusivity Agreement.
13. Northamber claim that they viewed this as an anticipatory breach of the Exclusivity Agreement. By email dated 27 April 2018, Northamber wrote to Genee World complaining of continuing breaches of the Exclusivity Agreement.
14. By letter dated 25 July 2018, Genee World notified Northamber that it, Genee World, was terminating the Exclusivity Agreement. Two bases for termination were advanced, namely (a) that Northamber had failed to achieve a minimum order quantity of £4 million for the year and (b) that Northamber had failed to maintain 10 days worth of stock of each product line. Northamber did not accept either of the alleged breaches and by letter dated 2 August 2018 made clear that the letter of termination was not accepted, but rather that Northamber were treating the Exclusivity Agreement as still in force and requiring Genee World to comply with its obligations thereunder. The letter went on to allege that Genee World had been acting in breach of the exclusivity provisions and gave notice pursuant to clause 9.2 that Northamber required Genee World to provide all necessary facilities and access so that Northamber could carry out an audit of Genee World. Genee World was asked to confirm by return that it would give such access. The letter sought immediate confirmation that Genee World would desist from dealing directly with any resellers, that Genee World would provide a date and time within the next five days for an audit under clause 9.2, that Genee World would pay all outstanding marketing, funded heads, price protection and other agreed but overdue payments that were due and owing to Northamber within two business days, and that the purported notice of termination was withdrawn with Genee World accepting that the Exclusivity Agreement had not been brought to an end.

15. There was no response forthcoming from Genee World to that letter. That led to Northamber issuing proceedings on 15 August 2018 against Genee World, Mr Singh personally, and IES, a company owned and/or run by Mr Singh's wife. The claim against Genee World was for breach of the Exclusivity Agreement, against Mr Singh it was for procuring/inducing the third defendant (sic) to breach the Exclusivity Agreement and against the third defendant it was for procuring/inducing breach of the Exclusivity Agreement.

The Orders

16. Northamber sought injunctive relief as against Genee World and Mr Singh to prevent further breaches of the Exclusivity Agreement. When the matter first came on, there was not sufficient time for it to be dealt with. However, the matter came back on 10 September 2018 before Mr Justice Garnham in the applications list. I have had put before me the transcript of those proceedings. On that occasion Northamber was represented (as it has been throughout by Mr Falkowski), and Genee World and Mr Singh were represented by Mr Nicholas Cobill of counsel.

17. Garnham J, understandably given that he was sitting in the applications list, was initially reluctant to have that list interrupted by this matter. However, fortunately for the parties, he was able to give them sufficient time on that day. That was, of course, an application for interim relief and he was not deciding on the merits of the action. As Garnham J pointed out in the course of argument, the drafting of the Exclusivity Agreement is "extraordinarily poor".

18. Mr Cobill advanced arguments on the behalf of Genee World that Northamber were themselves in breach of contract, however Garnham J was unpersuaded of this. In the course of his submissions, Mr Cobill accepted that Genee World was in breach of the Exclusivity Agreement, arguing that if it did not breach the Exclusivity Agreement it would be out of business. Garnham J pointed out that being put out of business is not a defence to a claim for breach of contract. Genee World accepted at that hearing that there was at least a serious question to be tried but argued that damages would be an adequate remedy. However, Genee World was unable to persuade the judge that it would be able to meet an award of damages, notwithstanding that Genee World produced to the court management accounts purporting to show that it would be able to do so.

19. The outcome of the hearing was that Garnham J granted an injunction in favour of Northamber, but only against Genee World, no relief being granted against Mr Singh personally. The order as drafted included the standard Penal Notice stating that "any other person who knows of this order and does anything which helps or permits [Genee World] to breach the terms of this order may also be held in contempt of court and may be imprisoned fined or have their assets seized". It also included at paragraph 7 the standard wording under the heading "interpretation of this order", namely "a defendant which is not an individual which is ordered not to do something must not do it itself or by its directors, offices, partners, employees or agents or in any other way."

20. As to the order itself it comprised four paragraphs as follows:

1. *The First Defendant / Respondent immediately and from the date of this Order and until 31 December 2018 be restrained from supplying Genee World Products within the United Kingdom to persons other than the Claimant / Applicant save for the four entities identified in the document appended hereto entitled “Appendix A – Excluded Accounts”.*
 2. *The First Defendant / Respondent within 14 days of the date of this Order do:*
 - (1) *Provide the Claimant / Applicant an audited account of the First Defendant / Respondent’s sales since 12 July 2017 detailing such accounts per reseller per month.*
 3. *The First Defendant / Respondent do forthwith:*
 - (1) *Pass to the Claimant / Applicant any enquiries for orders within the United Kingdom that it has received after 12 July 2017 and which it receives after this Order is made, for Genee World Products save in respect of the four entities identified in the document appended hereto entitled “Appendix A – Excluded Accounts”.*
 4. *The First Defendant / Respondent within 5 days of the date of this Order do:*
 - (1) *Provide to the Claimant / Applicant all necessary facilities and access so that the Claimant may carry out an audit on the First Defendant.*
21. Genee World issued an application dated 2 October, but issued on 9 October 2018, seeking to vary and/or discharge and/or for clarification of the order of Garnham J. That application came on before Mr Charles Bourne QC, sitting as a Deputy Judge of the High Court, on 19 October 2018. There was also before the Deputy Judge an application by Northamber for judgement on admissions and an interim payment. Counsel for Northamber, Mr Falkowski, did not pursue that application on that occasion. Again, I have had put before me the transcript of that hearing.
22. Genee World’s application was described by the Deputy Judge as an application to undo Garnham J’s injunction or at least the bit of it that related to an audit, alternatively to clarify the meaning of the audit and who appointed the auditor. On this occasion, Genee World was represented by Mr Singh as its director. Mr Singh explained to the Deputy Judge that he wanted the guidance of the court as to what was meant in paragraph 4 of the earlier order by the words “an audit”. Mr Singh explained that Genee World needed a considerable amount of notice for an audit to be performed and it did not have a full time IT manager. He also complained that he did not want Northamber to have open access to everything held by Genee World. The Deputy Judge was minded to set out a new timetable for the provision of information and the carrying out of an audit.
23. The Deputy Judge indicated that as to the proper scope of the audit in paragraph 4 of the Garnham J order, he did not believe there was any need for an order defining the scope but that he would be willing to say in his judgment that the proper scope appeared to be as stated in (1) an email of 1 October 2018 to Mr Singh from Mr Henry, the operations

director of Northamber who had control of the litigation on behalf of Northamber and who had been in correspondence with Mr Singh on behalf of Genee World, and (2) a statement dated 15 October provided by Mr Whelan, an accountant retained by Northamber.

24. As to the provision of information what was being proposed by Northamber was electronic disclosure of Sage accounts, followed by the provision of facilities to Northamber to undertake the audit on 48 hours notice. There was significant discussion and debate between the parties and the Deputy Judge, in the course of which Mr Singh asked that Genee World should have until 9 o'clock on Thursday morning, that is to say Thursday, 25 October 2018, to provide the Sage accounting disclosure. The Deputy Judge agreed and further said that Northamber would have to give seven days notice of entry by an auditor.
25. The Deputy Judge made an order varying paragraph 4(1) of the earlier order. His order also included a standard Penal Notice and the paragraph which I have cited above as to the interpretation of the order. The substance of the order is at the paragraph 2 which reads as follows:

Paragraph 4(1) of the Order of Mr Justice Garnham made on 10 September 2018 is varied as follows:

- (1) The First Defendant / Respondent shall by 09:00 on 25 October 2018 provide to the Claimant a copy of the First Defendant's Sage electronic accounting data, or QuickBooks electronic accounting data if that system is used (and for the avoidance of doubt there is a continuing obligation to provide the data forthwith if for any reason it is not provided by the deadline above);*
- (2) (If requested by the Claimant and upon the Claimant giving of not less than seven days' notice) the First Defendant will provide to the Claimant all necessary facilities and access so that the Claimant may carry out an audit on the First Defendant.*
- (3) The Claimant undertakes not to use any information obtained during the course of the audit referred to in paragraph 2(2) above for any purpose other than in relation to the claim for breach of the Exclusivity Agreement of 12 / 13 July 2017 which appeared at pages 55 to 59 of the bundle for the hearing on 19 October 2018.*

Events subsequent to the Order of Deputy Judge Charles Bourne QC

26. According to Mr Singh, Genee World ceased trading on 23 October 2018, although this seems to have been announced to the staff only by email dated 29 October 2018. On 29 October 2018, all the staff of Genee World were made redundant.
27. On about 31 October, G-Tech Innovation Ltd ("G-Tech") began to offer for sale products which had previously been sold by Genee World, its first invoice being dated 6 November 2018. G-Tech had been incorporated in March 2018, at which time the sole director appointed was Mr Luckveer (Lucky) Singh, Mr Singh's nephew and the "IT

consultant” engaged by Genee World as will be referred to further below. On 2 October 2018 (the date of the application to vary or discharge the injunction of Garnham J) Mr Singh had become the sole director of G-Tech.

28. On 12 November 2018, Genee World entered into Creditors Voluntary Liquidation. Mr Nicholas Cussack of Parker Andrews (Mr Singh’s nominee) and Mr Andrew Whelan of WSM Marks Bloom LLP (Northamber’s nominee) were appointed as joint liquidators.

The Committal Application

29. On 10 December 2018 Northamber issued an application notice seeking to commit Mr Singh for contempt of court in failing to comply with the two orders. No application was made in respect of Genee World, it being in liquidation by this stage. The grounds on which the committal application was brought were set out in an 8-page document of the same date (“the Grounds”). There were at that stage six grounds, 4 said to be breaches of the order of Garnham J and 2 said to be breaches of the order of Deputy Judge Charles Bourne QC. I will deal with each of them in turn below. The application was supported by an affidavit sworn on 7 December 2018 by Mr Henry.
30. The committal application came before Murray J on 24 January 2019, who also had before him (1) Northamber’s adjourned application for judgment against Genee World on the admissions made by Mr Cobill at the hearing before Garnham J on 10 September 2018 and (2) an application by Mr Singh to adjourn the committal proceedings. Judgment was granted against Genee World and an interim payment in the sum of £431,860.62 was ordered. I do not understand that any payment has been made to Northamber by the liquidators. Murray J adjourned the committal application as requested and made directions in connection with that application. These included a direction as to when Mr Singh should file and serve his evidence in response to the committal application, namely by 1 April 2019 with Northamber to serve its evidence in reply, if so advised, by 15 April 2019. Of course, under CPR Part 81.28(2) Mr Singh retained the right to give oral evidence at the hearing of the committal application whether or not he had filed or served written evidence.
31. There was a Case and Costs Management Conference before Master Eastman on 26 February 2019 when, among other directions he gave, he ordered that the matter be transferred to the Birmingham District Registry.
32. On 29 August 2019 Mr Singh served his 1st witness statement dated 23 August 2019, attaching a detailed chronology on which he relied. He denied that there was any breach of the order of Garnham J, save in one minor respect. He admitted that there was a breach of the order of Deputy Judge Charles Bourne QC in relation to the delivery up of the Sage electronic accounting data, but not otherwise. In respect of these 2 breaches, in each case his witness statement said that he admitted that he personally was in breach of these orders.
33. That 1st witness statement of Mr Singh was attached to an application of 29 August 2019 by Mr Singh to adjourn the committal application until after the trial, which is going ahead as between Northamber, Mr Singh and IES. It is not clear if Genee World will be taking any part in the trial. That application was resisted by Northamber and was refused by His Honour Judge Cooke on 5 September 2019. In the course of that hearing,

however, Mr Falkowski for Northamber raised the delay by Mr Singh in serving his evidence and whether that might lead to Northamber's response to that putting the hearing of the committal application in jeopardy. But as the Judge on that occasion pointed out, he could not take that into account in circumstances where Northamber had not served any evidence and it was not known what, if any, evidence it might serve.

34. The matter was then listed for hearing before me on 18 and 19 September, after a reading day on 16 September. Unfortunately in terms of timing, Northamber only served its reply evidence on the afternoon of 16 September 2019. This comprised a second affidavit of Mr Henry and approximately 365 pages of exhibited material. On the same day (in ignorance of the second affidavit of Mr Henry), Mr Singh had also served a short witness statement of Satnam Jakhu in respect of the 4 sales which were the subject of ground 1 of the committal application notice.
35. When the matter came before me on 18 September, Mr Falkowski initially sought to press on with the committal application. Ms Caney resisted this on the basis that she had not had time to consider the latest evidence with her client, some of which was material that Mr Singh had not seen before and most of which neither Ms Caney nor her solicitors (who are not the solicitors dealing with the trial of this action) had seen before. Mr Falkowski realistically accepted that if Mr Singh needed time to address these with his legal team, he would have to have that time. Accordingly, I adjourned the matter until 24 October 2019.
36. On 8 October Mr Singh served a further witness statement along with a 2-page witness statement of Mr Ball.
37. On 10 October 2019 Northamber made an application for permission to amend the Grounds for committal substantially. An entirely new ground 7 was sought to be added, alleging interference with evidence that had been ordered to be produced said to amount to a direct interference with the administration of justice and an abuse of the Court's procedure. In fact, this new ground 7 would have required permission to have been granted to commence such committal proceedings under CPR Part 81.13 as being an interference with the due administration of justice in connection with proceedings. No such permission had been sought.
38. Further, particulars were given of how it was said that Mr Singh was liable for breaches of the orders made against Genee World. And in respect of Grounds 1 and 5 very much enlarged particulars were supplied of alleged breaches. As to ground 1, this increased the 4 specific breaches alleged with a value of a few thousand pounds to 64 breaches with a value of in excess of £718,000. In respect of ground 5, it alleged that the document supplied by way of the audited account ordered omitted transactions which covered some 5½ pages with a value of in excess of £5.8 million. Northamber served a 3rd affidavit of Mr Henry exhibiting a further 130 pages of documentation. District Judge Kelly directed that this application should be heard by me at the adjourned hearing on 24 October 2019, but referred the matter to me to see if I felt any further direction should be given. I made a direction that Northamber should serve a witness statement in support of the proposed amendment.
39. On 24 October 2019 at the adjourned hearing Mr Falkowski sought to press his amendment application. It was apparent from Mr Henry's statement, served in response

to my direction, that much of the information which Northamber wished to deploy and rely on in support of the amended Grounds had been in its possession since February, 2019. There was no proper explanation of why the application had not been made a long time before. If I had granted the application in its entirety, it was inevitable that that committal hearing would have to go off again. With some reluctance given the apparent gravity of the new allegations, I refused permission to amend for the reasons given in my judgment of that date, save in respect of the amendments as to how it was said that Mr Singh was liable for contempt in respect of breaches alleged on the part of Genee World, these requiring no further evidence nor threatening the committal hearing. A copy of the Amended Grounds reflecting the limited permission that was granted has been submitted. Regrettably, the application for permission to amend and judgment thereon occupied the Court for over half a day.

40. At the end of the hearing on 25 October 2019, Mr Falkowski had not quite completed his cross-examination of Mr Singh and still had his 2 supporting witness to deal with. Although Mr Singh was offered the opportunity to finish his evidence, he opted not to do so. The matter had to be adjourned until 5 November 2019. On 1 November, 2019 Mr Singh produced a 3rd witness statement seeking to elaborate on his answers to some of the questions that had been put to him by Mr Falkowski and also to seek to retract an admission made that Mr Singh had been the controlling mind of Genee World and is the controlling mind of G-Tech. When he continued his oral evidence, Mr Singh stated that he had put this together himself and had not discussed his evidence with anyone else, he having been in purdah as a result of his evidence being part heard. I would not normally have been inclined to let this evidence in, however, given the nature of the hearing and the potential consequences for Mr Singh, I decided to permit the evidence to be adduced.

Applicable Principles

41. By CPR Part 81, rule 81.4

*(1) If a person –
 (a) required by a judgment or order to do an act does not do it within the time fixed by the judgment or order; or
 b) disobeys a judgment or order not to do an act,
 then, subject to the Debtors Acts 1869 and 1878 and to the provisions of these Rules, the judgment or order may be enforced by an order for committal.*

42. Sub-paragraph (3) makes provision for directors of companies:

“(3) If the person referred to in paragraph (1) is a company or other corporation, the committal order may be made against any director or other officer of that company or corporation.

43. An applicant in contempt proceedings can only rely on the grounds set out in the application notice and the affidavit evidence filed (CPR Part 81.28(1)).
44. The Convention rights of those involved should particularly be borne in mind. The standard of proof, having regard to the possibility that a person may be sent to prison, is that the allegation be proved beyond reasonable doubt (PD81 paragraph 9). However, it is not true that every single aspect of a criminal case has to be proved to the criminal

standard, although of course the elements of the offence must be (*JSC BTA Bank v Ablyazov* [2012] EWCA Civ 1411; [2013] 1 WLR 1331 Rix LJ at [51]).

45. As *Arlidge, Eady & Smith on Contempt* 5th edn at paragraph 12-55 states:

“An order or undertaking will not be enforced by committal if its terms are ambiguous, the rule being analogous to that which governs the interpretation of penal statutes. It is to the terms of the order itself that one must look in order to define the obligations imposed.”

46. As far as the party the subject of the injunction, in this case Genee World, its intentions and beliefs are irrelevant to whether it is guilty of contempt. The law of contempt imposes a quasi-strict liability. *Arlidge, Eady & Smith* at paragraphs 12-94 and 12-95 states:

“What was traditionally required was to demonstrate that the alleged contemnor’s conduct was intentional (in the sense that what he actually did, or omitted to do, was not accidental); and secondly that he knew the facts which rendered it a breach of the relevant order or undertaking. He must normally be shown at least in the case of a mandatory injunction to have been notified of its existence.”

“[T]here is no need to go so far as to show that the respondent realised that his conduct would constitute a breach, or even that he had read the order. This means that liability for civil contempt has been treated as though it were strict; that is to say, not depending upon establishing any specific intention either to breach the terms of the order or to subvert the administration of justice” (emphasis in original).

47. However, this quasi-strict liability does not necessarily mean that directors of corporate respondents to injunctions are also liable when the company is. As to directors, Woolf LJ (as he then was) set out the position as follows in *Attorney General of Tuvalu v Philatelic Distribution Corporation* [1990] 1 WLR 926 (at 936E-F and 938A and D):

“In our view where a company is ordered not to do certain acts or gives an undertaking to like effect and a director of that company is aware of the order or undertaking he is under a duty to take reasonable steps to ensure that the order or undertaking is obeyed, and if he wilfully fails to take those steps and the order or undertaking is breached he can be punished for contempt. We use the word ‘wilful’ to distinguish the situation where the director can reasonably believe some other director or officer is taking those steps.”

“There must however be some culpable conduct on the part of the director before he will be liable to be subject to an order of committal ... mere inactivity is not sufficient. ... If there has been a failure to supervise or investigate or wilful blindness on the part of a director of a company his conduct can be regarded as being wilful.”

48. Further, in *Sectorguard Plc v. Dienne Plc* [2009] EWHC 2693 Briggs J (as he then was), applying *Tuvalu*, said (at [42]):

“an applicant for the committal of a company director who relies upon a breach by the company of an order or an undertaking must disclose in the committal application a case for the establishment of responsibility on the part of that director, either on the grounds of aiding and abetting or wilful failure to take reasonable steps to ensure that the order or undertaking is obeyed” (emphasis added).

49. It is possible for a company to be liable for contempt, even where it has forbidden its employees to act in breach of the order or that it took reasonable steps to achieve compliance, but on the same facts for the directors not to be liable for contempt (*Back Office Ltd v. Percival* [2013] EWHC 1385 (QB)).
50. Accordingly, before a director can be made liable for contempt he must be aware of the terms of the order (which will put him under a duty to take reasonable steps to ensure that the order is obeyed) and either aid or abet the company’s contempt or wilfully fail to take reasonable steps to ensure the company’s compliance with the injunction.
51. The reference by Woolf LJ in the *Attorney General of Tuvalu* case to “*some culpable conduct on the part of the director*” does not, in my judgment, mean that there needs to have been any intention on the part of the director to breach the order, but is to be read in the context of the previous passage cited above, that is to say that he must have acted deliberately in doing what he did or did not do. It will not be culpable conduct on his behalf reasonably to rely on another director or officer to take the steps necessary to ensure that the company complies with the order.
52. In the case of a company with a sole director, who was present at the hearings at which the orders were made, and who represented the company against whom the orders were made on one of those occasions, it is not possible for him to say that he was not aware of the orders made. He will therefore be under a duty to take reasonable steps to ensure that the order is obeyed. In my judgment, if the company fails to obey the order because the director has failed to take reasonable steps to ensure the order is obeyed, a sole officer cannot reasonably believe some other director or officer is taking those steps, and therefore such a failure by the company will necessarily involve a “wilful” failure on the part of the director.

The witnesses

53. The only witness who gave evidence for Northamber was its operations director, Mr Henry. While, in my judgment understandably, he feels that Mr Singh has done all that he can to extract his business from the obligations on Genee World under the Exclusivity Agreement, he did not allow this to impact on his evidence. He gave evidence honestly and was clearly trying to assist the Court.
54. Mr Singh gave evidence for just over a day in total. He did so confidently. The charge levelled at him by Mr Falkowski in closing submissions that he had also made up evidence on the hoof as to an alleged transition period after the Exclusivity Agreement was entered into was not well-founded. It is clear from the transcript that this had been his position in the very first hearing before Garnham J.

55. However, his oral evidence (which was not included in his witness statements) about the alleged inability of Genee World to comply with the order of Deputy Judge Charles Bourne QC to deliver up the Sage accounting documentation, which I deal with in greater detail below, was very unconvincing and led me to conclude that Mr Singh was prone to making things up when backed into a corner. Another example of this was his evidence as to communications with Genee World's bank manager, in which he initially alleged that the bank prevented all monies going in or out of Genee World's bank account, but was then forced to backtrack when shown contemporaneous correspondence which said nothing about monies not being able to be paid into Genee World's bank account. Further, I was left with the firm impression that having been "caught out" by Northamber and subjected to the injunction by Garnham J, Mr Singh set out to find a way round that, which he sought to achieve by putting Genee World into CVL and then carrying on the identical business through G-Tech in what might be seen as a classical phoenix operation.
56. All in all, I found Mr Singh's evidence to be less than persuasive and in certain respects unsatisfactory, but I remind myself that there is no burden on him to prove anything, rather it is for Northamber to prove the alleged contempts beyond reasonable doubt.
57. The other 2 witnesses called to give oral evidence on behalf of Mr Singh were Mr Jakhu and Mr Ball. Mr Jakhu became vague when confronted with contemporaneous documents, in particular as to the dates when G-Tech began to trade, but was clear that after the injunction was made by Garnham J, he was told that no orders were to go through Genee World but rather all had to go through Northamber, otherwise "*we would go to jail*". As to Mr Ball, his evidence, which was limited to one topic, was given clearly and I am content to accept it.

The Grounds alleged

58. In *Sage v. Hewlett Packard Enterprise Company* [2017] EWCA Civ 973, the Court of Appeal endorsed an earlier decision of the Court of Appeal in *Inplayer Ltd. v. Thorogood* [2014] EWCA Civ 1511, which had stressed the need for a judge hearing a committal to confine him or herself to the contempts which are alleged in the application notice, before Henderson LJ went on to say:

"I would also add that it is in my view a salutary discipline for any judge who is delivering or writing a judgment on a committal application to set out each relevant ground of a committal before proceeding to consider whether it is made out on the evidence to the criminal standard of proof."

I intend to adopt that discipline. I also remind myself that this is the hearing of the committal application and, although at times the cross-examination appeared to be directed to matters which will arise on the trial (and indeed appeared to be seeking to get Mr Singh to commit to positions which might cause him difficulty at the trial), I do not need to and do not make any findings as to matters which will arise in the substantive action between the parties. I therefore do not intend to deal with any evidence which went to such issues.

59. In respect of each allegation, I need to consider first whether Genee World was in breach of the relevant paragraph of the injunction and, if so, whether Mr Singh himself is liable for contempt. In this respect it is alleged against him in the amended Grounds that:

“In respect of each of the Grounds of contempt set out herein it is the Claimant’s case that the Second Defendant was the director of the First Defendant and was at all material times the controlling mind of the First Defendant and that the Second Defendant was aware of the 10 September 2018 Order and the 19 October 2018 Order and that

- a. he wilfully acted in breach of the said Orders when failing to do what was required by the Orders; and*
- b. he wilfully acted in breach of the said Orders when doing what was prohibited by the Orders.”*

60. Mr Singh did not seek to suggest that he was not aware of the orders made. He could not have done so, Accordingly, the issue in respect of his liability, if Genee World is found to have been in breach of the orders in the respects alleged in the Grounds, is whether his failures (if any) were wilful or not, the case not being advanced as one of his having aided and abetted Genee World in its breaches.
61. Although, when being cross-examined by Mr Falkowski on 25 October 2019 Mr Singh admitted that he was the controlling mind of both Genee World and G-Tech, in the witness statement dated 1 November 2019 which he prepared before his evidence resumed on 5 November 2019, he sought to retract those admissions and to assert that he had never been the controlling mind of Genee World or G-Tech. He asserted that Mr Jez Warren was in charge of all orders, pricing and marketing from 6 December 2017. Mr Warren was not a *de jure* director of Genee World or G-Tech. It has not been asserted by anyone, including Mr Singh that Mr Warren was either a *de facto* director or a shadow director of either company. This denial that Mr Singh was not the controlling mind of either company was not pursued in closing submissions on his behalf (which gives credence to Mr Singh’s assertion that he prepared the witness statement without the input of any lawyers, as neither Ms Caney nor her instructing solicitors would have sought to make this point). If it had have been, I would have rejected it as he was clearly in my judgment the controlling mind of both companies, which were the corporate vehicles that he used to operate the business that he had built up over many years. He was in charge of the business and both companies, what he said should happen, did happen.

Ground 1 - Supplying

In breach of paragraph 1 of the 10 September 2018 Order, the Second Defendant, who is and was the sole director of the First Defendant at all material times, has caused Genee World Products to be supplied within the United Kingdom to persons other than the Claimant (save for the four entities identified in the document appended to the 10 September 2018 Order). The Second Defendant was at all material times the controlling mind of the First Defendant. The Second Defendant was aware of the terms of the 10 September 2018 Order and the 19 October 2018 Order because he was in Court when those Orders was made. The Second Defendant, as director of the First Defendant, was under a duty to take reasonable steps to ensure that the 10 September 2018 Order was obeyed and that the 19 October 2018 Order was obeyed. The Second Defendant actively participated in the breaches of paragraph 1 of the 10 September 2018 Order; alternatively, they arose as a result of a failure on the part of the Second

Defendant to supervise or investigate, or there was a wilful blindness on the part of the Second Defendant as to whether the Orders were obeyed.

Particulars of breach:

The Second Defendant has caused Genee World Products to be supplied in breach of paragraph 1 of the 10 September 2018 Order as follows:

- i. On or around 31 October 2018 the First Defendant, through the Second Defendant, supplied AV Parts Master Ltd. with Genee World Products.*
- ii. On or around 2 November 2018 the First Defendant, through the Second Defendant, supplied PWD (Printworks Direct Limited) with Genee World Products.*
- iii. On or around 5 November 2018 the First Defendant, through the Second Defendant, supplied ACT Systems (ACT Ltd) with Genee World Products.*
- iv. On or around 5 November 2018 the First Defendant, through the Second Defendant, supplied Forward Products (Forward Products (2013) Ltd.) with Genee World Products.*
- v. The Claimant knows of the incidents stated above, but believes that there will be many other incidents that it does not know of.*

62. As to sub-paragraph v of the Particulars, that must be dismissed in light of the lack of any specificity in the allegation. I accept Ms Caney's submission that this cannot amount to a proper allegation of contempt of court which satisfies CPR Part 81.10(3).
63. As to sub-paragraphs i to iv of the Particulars, the allegation is that in each case there was a sale by Genee World of Genee World Products in breach of the prohibition in paragraph 1 of the order of Garnham J on Genee World from supplying Genee World Products within the United Kingdom to persons other than Northamber save for the four Excluded Accounts.
64. Although complaint was made on behalf of Mr Singh that there was no definition of Genee World Products in the order of Garnham J, Mr Singh asserted in his 2nd witness statement that it could only mean "*any product, whatever it might be, that the First Defendant would have sold or resold to its reseller customer base*". It is my understanding that Northamber accepted this. However, I did not understand there to be any dispute that the products which were supplied to the 4 purchasers identified in the particulars in the Grounds would have fallen within this definition.
65. Notwithstanding this, in my judgment, Northamber has failed to show that any of these sales were made by Genee World, let alone to do so to the criminal standard of proof. Northamber relied upon email correspondence between members of its staff and employees at the 4 purchasers to show that what had happened was that orders which had been placed through Northamber were cancelled and that those purchasers were asked to

place orders directly for those products. I am satisfied beyond reasonable doubt that this is what happened.

66. However, when the replacement orders were placed, they were not orders on Genee World but rather they were placed with G-Tech. All of the exchanges of email correspondence relied upon by Northamber post-dated the cessation of business by Genee World on 23 October 2018 and the making of Genee World's staff redundant (albeit these matters do not appear to have been made known to Northamber). By the time of the conversations relied upon, the staff who had formerly worked for Genee World were working for G-Tech. There is no evidence that the orders were fulfilled by Genee World. To the contrary, the invoices relating to these supplies are all invoices from G-Tech from 6 November 2018. There has been no challenge to the authenticity of these invoices.
67. Even though G-Tech was using the same logo (which it was said was owned by the parent company), the same premises (which were owned by Mr Singh and his wife personally), the same telephone number and the same email address as had been used by Genee World and for which use no payment had been made, there is no basis, in my judgment for saying that these were sales by Genee World. To the contrary, they were deliberately not sales by Genee World, as Mr Singh had caused Genee World to cease to trade and G-Tech to trade in its place, portraying to customers that it was "business as usual" save that the business was now being done by G-Tech and not by Genee World. G-Tech cannot be held to have been acting as agent in some way for Genee World. There is no evidence that there was any agency agreement, which would have undermined the very purpose of ceasing Genee World's business and starting afresh with G-Tech, nor was the case put in that manner. This was, as I indicated above, a classic phoenix situation. That may well be reprehensible and may well leave the liquidators of Genee World with a claim against G-Tech in respect of the goodwill, customer lists etc., that G-Tech must have been using without paying Genee World for having done so (there was a draft agreement produced for the sale of these items to G-Tech, but that was not completed). However, in my judgment this did not amount to a breach of paragraph 1 of the order of Garnham J. These 4 supplies of which complaint is made, were not supplies by Genee World of Genee World Products within the United Kingdom other than to Northamber.
68. In the circumstances, the question of Mr Singh having acted wilfully in breach of the order in this respect does not arise. Had it done so, I would have been satisfied beyond reasonable doubt that his actions in this regard were wilful. I have no doubt that this was a deliberate ploy to be able to continue to run the business which he had set up and run for a number of years and to avoid the strictures of the Exclusivity Agreement by which G-Tech was not bound. However, this was done in a way which was deliberately not to breach the terms of the order of Garnham J.

69. Accordingly, Northamber does not succeed on ground 1.

Ground 2 - access

"In breach of paragraph 4(1) of the 10 September 2018 Order, the Second Defendant, who is and was the sole director of the First Defendant at all material times, failed within 5 days of the 10 September 2018 Order to provide to the Claimant all necessary

facilities and access so that the Claimant could carry out an audit on the First Defendant.

Particulars of breach:

The Second Defendant offered, by email sent on 25 September 2018, and the Claimant accepted that offer, that the Claimant would be provided with access and facilities so that the Claimant could carry out an audit on the First Defendant starting at 10 AM on 3 October 2018. On 1 October 2018 the Second Defendant indicated that he would not be permitting facilities and access so that the Claimant could carry out the audit on the First Defendant and no facilities or access has been provided on any other occasion.”

70. Paragraph 4(1) of the Order of Garnham J as drafted provided that “*within 5 days of the date of*” the order Genee World was to provide to Northamber all necessary facilities and access so that Northamber could carry out an audit on Genee World. 5 days after 10 September was 15 September 2018.
71. It is common ground that Northamber did not, on or before 15 September 2018, ask Genee World to provide any facilities or access to allow Northamber to carry out an audit. From Northamber’s side, this was because it had been expecting that the audit would be carried out by Grant Thornton, Northamber’s own accountants/auditors, but after the order was made, Grant Thornton advised that they were not able to undertake this work. It then took Northamber a couple of weeks to find someone who was able to do it. It was only on 24 September 2018 that Northamber asked for the necessary facilities and access.
72. Miss Caney, on behalf of Mr Singh, submits that Genee World cannot have failed to comply with the order in circumstances where Northamber did not make any attempt to contact Genee World to seek such facilities until 24 September 2018, well after the end of the 5-day period. In the alternative, she submitted that the order is ambiguous as to whether the obligation extended beyond 5 days, relying on the comments of Deputy Judge Charles Bourne QC that it was necessary to vary the terms of the original paragraph 4(1) on the basis that “*the original timetable had fallen by the wayside*”. She submitted that if there are 2 possible constructions of an order, a defendant cannot be committed on the ground of one of those possible meanings, relying on the decision in *Redwing Ltd v. Redwing Forest Products Limited* [1947] 64 R.P.C. 67 at 69 (a submission which I accept). In the yet further alternative, in her oral submissions, Ms Caney said that if the order was clear that Genee World was obliged to offer facilities within the 5 days, Genee World may have been in breach of that, but that was not the manner in which the committal application was framed in the particulars. Accordingly, on any of these bases, it is submitted that Genee World was not in breach as alleged in the Grounds.
73. However, even if Genee World was in breach, Ms Caney relies on Mr Singh having caused the application to vary and/or for clarification of the order as evidence that any failure on Mr Singh’s behalf could not be described as “wilful”.
74. Mr Falkowski submitted that the obligation was on Genee World to offer facilities and the failure to do so is a breach of the order. His submission was that the order created a continuing obligation to offer the facilities which did not expire at the end of the 5 days,

so that the withdrawal on 1 October 2018 by Genee World at Mr Singh's behest from the agreement reached by exchange of emails on 25 September for facilities and access to be granted on 3 October 2018 was a breach of the order by Genee World and was as a result of Mr Singh's wilful failure to ensure the facilities and access were provided.

75. Mr Singh's written evidence was that facilities and access were available to Northamber for the whole of the initial 5-day period, had Northamber asked for them. Mr Falkowski on behalf of Northamber points out that this evidence was on its face inconsistent with Mr Singh's email of 24 September 2018 that Northamber should go to the offices of Genee World's accountant, Mr Talbot, to do the audit and his oral evidence before me that after the order of Deputy Judge Charles Bourne QC Genee World was unable even to afford the £300 to get the Sage data (which I shall address below). While there is some merit in Mr Falkowski's observations, the difficulty for Northamber in this respect is that the particulars alleged in the Grounds do not assert a failure to offer facilities and access within the initial 5-day period. Accordingly, even if I were to reject Mr Singh's evidence, that would not lead to me finding to the criminal standard that the allegation as set out in the Grounds was proven.
76. The real issue, in my judgment, is whether there was any obligation on Genee World as at 1 October 2018 when Mr Singh wrote to say that Genee World would not honour the previous agreement to provide the necessary facilities and access.
77. In my judgment, on the plain reading of paragraph 4(1) of the order of Garnham J, the obligation on Genee World was to provide the facilities and access within 5 days, that is by 15 September 2018. Further, the obligation was to "*provide*" the facilities and access, not to offer them. In my judgment, this means to provide them when requested to do so by Northamber within those 5 days. This makes sense, otherwise Genee World could have satisfied its obligation under the order by making an offer immediately following the conclusion of the hearing before Garnham J, even if Northamber could not accept that offer because they had no one who could do the audit.
78. Nonetheless, the order did not, in my judgment, import a continuing obligation on Genee World after those 5 days had expired. Northamber had given no indication to Garnham J that it could not or might not be able to perform the necessary audit within those 5 days. Had it been intended to import a continuing obligation, the wording used would have been along the lines of that used in the order of Deputy Judge Charles Bourne QC that the facilities were to be provided on a number of days notice. Further, had Northamber or Deputy Judge Charles Bourne QC considered that there had been a continuing obligation his order varying paragraph 4(1) of the Garnham J order would not have been necessary.
79. There are no particulars in the Grounds alleging that Genee World failed to provide facilities and access within 5 days of the order of Garnham J. Accordingly, Northamber has not proved to the criminal standard that Genee World was in breach of the order in the manner alleged in the Grounds.
80. Even if there had been such an allegation included in the particulars, on the evidence which was put before me and notwithstanding the merit in Mr Falkowski's submissions as to Mr Singh's evidence on this topic, I would not have been satisfied beyond reasonable doubt that Genee World had breached the order. While I entertain doubts that the facilities and access really were available to Northamber for the whole of the initial 5-

day period, had Northamber asked for them, I could not conclude to the criminal standard that Mr Singh was not telling the truth in this regard.

81. Even if I were wrong to hold that the plain reading of paragraph 4(1) of the order of Garnham J is as I have set out above, I would have accepted Ms Caney's submission that the order was at the least ambiguous and there were (at least) 2 possible constructions of the order, such that Genee World could not be found in contempt on the ground of one of those possible meanings, namely that there was a continuing obligation to provide facilities and access.
82. Again, in light of my findings above, the question of Mr Singh having acted wilfully in breach of the order in this respect does not arise. Had it done so, I would have been satisfied beyond reasonable doubt that his actions in this regard were wilful as I would have found that the order was clear in creating a continuing obligation and his renegeing on the agreement to grant facilities and access was wilful. This would have been the case even if he was genuinely confused or unclear about the scope of the order as it is the acts of the director in failing to ensure that steps were taken by the company which need to be wilful in the sense of not reasonably believing that some other officer of the company was taking those steps.
83. Accordingly, Northamber does not succeed on ground 2.

Ground 3 - access

“In breach of paragraph 2(2) of the 19 October 2018 Order, the Second Defendant, who is and was the sole director of the First Defendant at all material times, failed to provide to the Claimant all necessary facilities and access so that the Claimant may carry out an audit on the First Defendant, on not less than seven days’ notice being given by the Claimant that all necessary facilities and access would be required for an audit.

Particulars of breach:

The Claimant’s director, Mr John Henry, gave notice by email sent on 1 November 2018 to the Second Defendant, that all necessary facilities and access would be required at 10AM on Tuesday, 13 November 2018 so that the audit will be carried out.

The Second Defendant failed to provide all necessary facilities and access on that date at and at that time, nor have necessary facilities and access been provided at any other time.”

84. This can be disposed of swiftly as Northamber did not pursue this in light of Genee World having gone into liquidation on 12 November 2018. Northamber accepted that upon Genee World entering into liquidation, Mr Singh no longer had the power to provide the necessary facilities and access on 13 November on behalf of Genee World. Accordingly, even if Genee World were in breach, this would have been down to the liquidators and not due to any wilful failure on Mr Singh’s behalf.
85. Accordingly, Northamber does not succeed on ground 3.

Ground 4 – Sage/Quicken

“In breach of paragraph 2(1) of the 19 October 2018 Order, the Second Defendant, who is and was the sole director of the First Defendant at all material times, failed to provide by 09:00 on 25 October 2018 to the Claimant a copy of the First Defendant’s Sage electronic accounting data (or QuickBooks electronic accounting data if that system was used).

Particulars of breach:

The Second Defendant has neglected or refused to provide copy of the First Defendant’s electronic accounting data (or QuickBooks electronic accounting data if that system was used).”

86. Paragraph 2(1) of the order of Deputy Judge Charles Bourne QC came about because of the difficulties in obtaining facilities and access under paragraph 4(1) of the order of Garnham J. Mr Singh, representing Genee World on this occasion without the assistance of lawyers, accepted (albeit perhaps reluctantly) that this data should be provided given the confirmation by Northamber that the data would only be used in relation to the claim that Genee World were in breach of the Exclusivity Agreement, which was recorded in paragraph 2(3) of the order of Deputy Judge Charles Bourne QC.
87. As set out above, it was at Mr Singh’s request that Genee World should have until 9 o’clock on Thursday morning, that is to say Thursday, 25 October 2018, to provide the Sage accounting disclosure. This was because Mr Singh said he needed to get in the IT consultant, whom he described as independent, to be able to provide this disclosure.
88. Mr Singh admits that Genee World did not provide this by 9 am on 25 October 2018. He therefore admits that Genee World breached the order. He also admits that he breached the order, that is to say that this failure to provide the Sage accounting disclosure was due to his wilful failure. This was expressed in the order to be a continuing obligation on Genee World. Accordingly, Mr Singh’s failure as its director continued until 12 November 2018 when Genee World entered into CVL.
89. It appears that the Sage accounting data was eventually provided via the liquidator of Genee World in February 2019. Mr Singh’s evidence on this was that he provided it to the liquidator in the middle of January 2019, at which point certain details had been deleted from the Sage system in respect of sales by Genee World to IES (this would have been the subject of the new ground 7, had I given permission). While it was suggested in closing submissions by Ms Caney that this was the second time the information had been provided to the liquidators, she was unable to point to any evidence to support that suggestion despite me granting her 48 hours after closing submissions to do so. I therefore proceed on the basis that this was the first occasion on which the information had been provided to the liquidators.
90. In his oral evidence, Mr Singh sought to minimise this breach by saying that Genee World was unable to pay the IT consultant the fee of £300 to do the necessary to provide the Sage accounting disclosure. This was a new claim by him, which had not appeared in either of his witness statements. He claimed that Genee World’s accounts were frozen. There is evidence that by the middle of October and before the hearing on 19 October 2018 they were, but Mr Singh did not raise this with Deputy Judge Charles Bourne QC as a reason why it would not be possible to provide the Sage accounting disclosure. He was

unable to explain why he had not done so as the issue with the bank accounts was well known to Mr Singh. Upon further questioning, Mr Singh later disclosed that the “independent” IT consultant was in fact his nephew Lucky Singh, who appears to have worked for Genee World, having a Genee World email address and appearing on the list of employees for Genee World and in time for G-Tech. It may be that Lucky also did work for others, but he cannot properly have been described as “independent”. Mr Singh also confirmed that he had not asked Lucky to extract the Sage data, that Lucky had not actually asked for the £300, nor had Mr Singh asked the bank to release the £300 as a critical payment. He also confirmed that he had not asked Mr Talbot to deal with this, notwithstanding that Mr Talbot appears to have had access to the Sage accounting data (although Mr Singh’s evidence on this vacillated depending on what he believed best favoured his interests).

91. In the period immediately prior to the hearing before Deputy Judge Charles Bourne QC, Mr Singh had been in China, having spent £1,500 on his air fare and £500 on hotels. He also paid for Mr Warren to go with him. This was plainly for the purpose of the business which at that stage was still being operated by Genee World, this being before Genee World ceased to trade. While I accept that it has not been shown that this was money from the account of Genee World, it does demonstrate that when Mr Singh deemed something was important for the business, he was able to find means to pay for it. If Lucky really required £300 to do whatever was necessary to produce the Sage accounting data, I have no doubt that Mr Singh could and would have found the money to pay for it.
92. Mr Singh asserted that he had every intention of handing the Sage accounting data over but that there was so much going on and he was under a lot of pressure having to deal with shutting down the Genee World business that he was not able to hand it over when he should have.
93. As indicated above, I found this evidence very unsatisfactory and formed the impression that Mr Singh was making this up as he went along in an attempt to justify the blatant breach of the order of Deputy Judge Charles Bourne QC and his involvement in it.
94. In my judgment, there was no impediment to this information being handed over. Mr Singh’s explanation that it needed an IT consultant to be able to extract information from the Sage system is improbable but even if true, he made no effort to ask anyone to do this. Rather, Mr Singh was concentrating on undertaking the phoenix operation, for which purpose G-Tech was using the very same customer data from the Sage accounting system, which Genee World had been ordered to provide a copy of to Northamber.
95. This was, in my judgment, a cynical manoeuvre by Mr Singh to avoid handing over key information which Genee World had been ordered to provide. I regard this as a serious breach of the order by Genee World, made more serious by the failure to provide the audited account of sales which I shall deal with below. Had the Sage accounting data been supplied, this would have reduced the impact of not having provided the audited account of sales as Northamber would have had a lot more information from the Sage accounting data from which it could have taken at least some steps to check the accuracy of the list of sales provided to them. Mr Singh’s responsibility for this is absolute, in that he decided not to hand that data over and did so for his own purposes and/or the purposes of the business to be taken over by G-Tech.

Ground 5 – audited account

“Paragraph 2(1) of the 10 September 2018 Order required the First Defendant within 14 days of the date of the 10 September 2018 Order to provide the Claimant an audited account of the First Defendant’s sales since 12 July 2017 detailing such accounts per reseller per month.

Particulars of breach:

On 25 September 2018 the Second Defendant, who is and was the sole director of the First Defendant at all material times, emailed a spreadsheet to the Claimant purporting to be the audited account of the First Defendant’s sales since 12 July 2017 detailing such accounts per reseller per month.

This was not an audited account; this was a spreadsheet compiled from information provided by the Second Defendant, but not audited.

On 19 October 2018 the Second Defendant appeared, on behalf of the First Defendant, before Mr Charles Bourne QC sitting as Deputy Judge of the Queen’s Bench Division to discharge the 10 September 2018 Order. The Second Defendant also raised argument as to the scope and meaning of the provisions as to audit.

Notwithstanding the Judgment given in open Court by the Deputy Judge that what was comprised by and meant by an audit was as stated in paragraphs 16 and 17 of the witness statement of Mr Andy Whelan, a chartered account, i.e. :

“16. In my opinion, an audit is an independent examination and verification of the accounts of a company. To carry out such an audit, one would expect to have unrestricted access to all of the accounting records of the company. The starting point would usually be a backup of the company’s electronic accounting data (e.g. Sage, QuickBooks) and the bank statements, but would also involve examination of other underlying records, such as sales and purchase invoices, perhaps on a sample basis, perhaps by way of investigating specific transactions arising from an interrogation of the accounting data.

17. One cannot provide a definitive list in advance of everything that will be required to effect the audit, because the very nature of the audit is that the auditor seeks evidence to satisfy himself, as an independent person to the business, that the accounts are true and accurate, and with no prior detailed knowledge one cannot possibly produce a “detailed scoping document”. Any and all company financial records would be expected to be produced if asked for. The auditor would also expect someone in a position of authority and with sufficient knowledge of the business to be available to answer any questions that the auditor had for them.”

the Second Defendant has not provided to the Claimant any audit which complies with the 10 September 2018 Order, as explained in the Judgment of the Deputy Judge (or at all).”

96. Mr Singh admits that this was not strictly complied with in that the document he provided in purported compliance with paragraph 2(1) of Garnham J's order was not supplied until 25 September 2018, one day after the date on which it should have been supplied. Other than this, he denies any breach.
97. What Genee World provided, at Mr Singh's direction, was an Excel spreadsheet listing month by month sales that had been made by Genee World since July 2017. As printed out, it runs to some 89 pages, breaking down sales invoices and credit notes per customer per month. It is possible to identify from that spreadsheet at least some sales said to have been made to the 4 Excluded Account resellers. The spreadsheet did not include details of international sales. Mr Singh's evidence was that this had been produced by Mr Talbot who had extracted the information from the Sage accounting package. While it was suggested at one stage that Mr Singh might have produced this himself, I am not persuaded that this was the case and I proceed on the basis that Mr Singh's evidence as to Mr Talbot having produced this is correct.
98. Northamber say that this was not an audited account, rather it was a spreadsheet compiled from information provided by Mr Singh, but not audited.
99. It is said on behalf of Mr Singh that the order of Garnham J did not define what was meant by "audited account". When the matter came back before Deputy Judge Charles Bourne QC, he said that he did not feel it was necessary to define what an "audit" meant in the context of providing facilities and access to Northamber to allow it to carry out an audit. He was not considering the question of the "audited account" which had been ordered by Garnham J, which is unsurprising given that Mr Singh did not seek clarification in this regard and given that the Deputy Judge ordered provision of the Sage accounting data as a first step towards Northamber being able to carry out its own audit. Nonetheless, it seems clear that had he been asked to, the Deputy Judge would not have felt it necessary to define this either.
100. In my judgment there was no need for a definition of "*audited account of [Genee World's] sales*" in Garnham J's order. An audited account is one which has been independently examined and verified by a third party. It is not simply a list of sales which has been extracted from information in a Sage accounting package without any independent examination or verification. It would need to be checked against documents such as bank statements and sales and purchase invoices. An audit does not require each and every entry to be checked, but can be done on a sampling basis. If the sampling did not throw up any doubts or issues, that would be sufficient. If it did, further examination and verification would be necessary.
101. It follows that what was supplied by Genee World did not amount to an audited account and in my judgment Genee World was in breach of the order of Garnham J.
102. Further, the order of Garnham J was not limited to sales in the United Kingdom other than to the resellers on the Excluded Accounts list. The order was, in my judgment, intended to include all sales to all resellers, wherever situated. This would be necessary to enable Northamber to satisfy itself that all sales had been properly classified by Genee World, which (it is to be remembered) had admitted it had been in breach of the Exclusivity Agreement for many months, if not for the entire period covered by it. Accordingly, on this ground too Genee World was in breach of the order of Garnham J.

However, the particulars relied on in the Grounds do not identify this as a breach of the order.

103. Ms Caney on Mr Singh's behalf submits that even if Genee World was technically in breach of the order, there was no wilful failure by Mr Singh as he was doing his best to understand what Genee World was required to do in order to comply. I understood her submission to be that there was no culpable conduct on Mr Singh's behalf. She relied on correspondence passing between Mr Singh and Mr Talbot, the accountant, and between Mr Singh and Genee World's former solicitor, Aimee O'Toole.
104. In an email dated 20 September 2018 Mr Talbot asked Mr Singh to find out "*what specifically is required in relation to an "audited account". Basically does this work need to be done by a statutory auditor? If so we are unable to do this as I ceased statutory auditing work a few years ago. I suggest that you seek guidance from your lawyer or the court on this specific point*". On the same day Mr Singh emailed Ms O'Toole copying in Mr Talbot stating that he had asked her to check to see what the Court meant by this, to which she replied, copying in Mr Talbot, that she was unable to do any further work on the case because of non-payment by Genee World of her firm's fees, but stating "*In my view the audited accounts provision of the order are (sic) meant to reference accounts prepared by a third party accountant*".
105. The following day Mr Singh emailed Mr Talbot again, saying "*Having spoke (sic) to our lawyer, we just need standard audited accounts and so this work can be done by you and a statutory auditor is not needed*" before going on to instruct him what did not need to be included. It is noticeable that he asked Mr Talbot to let him know the cost of doing this and he would pay him separately (indicating that the freezing of the bank accounts was not an impediment to the finding of money if it was necessary). Additionally in the same email, Mr Singh went on to say that he was "*very conscious that this is a High Court Order and I do not want to go to prison for 2 years if I do not comply.*"
106. Mr Singh did not claim in his written evidence that he had spoken to Ms O'Toole after her email on the question of whether a statutory auditor was needed, rather in his 1st witness statement he explained that it was his interpretation of her advice that Genee World did not need the work to be carried out by a statutory auditor and that as Mr Talbot was not employed by Genee World he qualified as a "*third party accountant*".
107. Nor did Mr Singh comment on Mr Talbot's reply where having said that he was working on it, he made it plain that he felt that it was intentional that the sales that Genee World needed to provide for were all sales. In his oral evidence he said that he believed that it was not necessary for international or the Excluded Accounts sales to be included.
108. As to Mr Singh's responsibility for this, in my judgment this is not a situation where Mr Singh could reasonably have believed some other director or officer was taking the necessary steps to ensure that the order was obeyed, there being no such other officer. In that regard, his failure to ensure that Genee World obeyed the order was wilful.
109. In my judgment, the matters relied on by Mr Singh as to what he understood was required, do not go to whether or not he was in contempt, but rather to mitigation. Accordingly, in my judgment, Northamber have established to the criminal standard the matters particularised in the Grounds, namely that the spreadsheet supplied was not an

audited account of the sales of Genee World from 12 July 2017 and this was due to Mr Singh's wilful failure.

110. While I would have found that the spreadsheet also failed to comply with the order because it excluded international sales, and this was due to Mr Singh's wilful default, that is not a particular relied on in the Grounds. I therefore will not take this into account when it comes to consideration of the appropriate punishment, if any, for the contempt. I would not have found to the criminal standard that it did not include the Excluded Accounts, even if this had been alleged, it being at least arguable that they (or some of them) do in fact appear in the spreadsheets.

Ground 6 - Enquiries

By paragraph 4(1) of the 10 September 2018 Order, it was ordered that the First Defendant forthwith pass to the Claimant any enquiries for orders within the United Kingdom that it has received after 12 July 2017 and which it receives after the 10 September 2018 Order is made, for Genee World Products save in respect of the four entities identified in the document appended to the 10 September 2018 Order.

Particulars of breach

The Claimant is aware that the First and Second Defendants have received since 10 September 2018 enquiries for orders for Genee World Products which have not been passed on.

The matters in paragraph 7 and 8 above are repeated. The Claimant has heard about the matters in paragraph 8 because resellers have contacted the Claimant about these matters, but these are matters that by the Order of Garnham J made on 10 September 2018 should have been passed forthwith to the Claimant.

111. The order was made against Genee World only. Accordingly, if Mr Singh received enquiries for orders after 10 September 2018 in a capacity other than as a director of Genee World, there will have been no obligation on him to have passed them on.
112. The particulars alleged are limited to enquiries received since 10 September 2018. The only specifics given are by reference back to the matters which were the subject of ground 1. However, the complaint there was that these were 4 orders which had been placed through Northamber and were then cancelled. As I have found, they were subsequently placed with G-Tech. They were therefore enquiries which were known to Northamber and when they were made of Genee World, they had been passed on to Northamber. When the 4 purchasers were advised that they needed to cancel the orders and place them directly with G-Tech, they were told this by people who by that time were employees of G-Tech and not of Genee World.
113. In his closing written submissions, Mr Falkowski placed reliance on emails of 24 and 25 October 2018 chasing Genee World's pipeline. By this time, Genee World had ceased to trade and there is no evidence before me that Genee World actually had a pipeline which it was not passing over.

114. Mr Falkowski further relied on an order placed by Askelite for 10 items which he says was not passed on to Northamber. This order was placed on 15 August 2018 and Mr Ball gave evidence that it was cancelled as there was no stock due to financial difficulties. Although Mr Falkowski was able to point to a document, which recorded a despatch date of 17 September 2018 and was able to show stock records which indicated that 62 of the items were available, I am not satisfied to the criminal standard that Mr Ball's evidence on this is incorrect. But even if I had been, given the date on which this order was placed, this would not have been an enquiry for an order which was received after 10 September 2018, nor is it a matter which falls within the 4 orders relied on in ground 1.
115. Mr Falkowski's further submissions as to the volumes of direct sales up to 10 September 2018 compared to Northamber's total sales for the whole of September and for October do support the inference that not all enquiries for orders were being passed to Northamber, but these are not matters which are particularised in the Grounds.
116. In those circumstances, it is not open to Northamber to rely on these matters and were I to take them into account, I would be falling foul of the interdict of the Court of Appeal in *Inplayer Ltd. v. Thorogood*.
117. Accordingly, Northamber does not succeed on ground 6.

Conclusion

118. In my judgment, Northamber has succeeded in establishing Mr Singh is in contempt of court in respect of grounds 4 (which he had admitted) and 5.
119. I will hear further submissions from Counsel when this judgment is handed down as to the appropriate penalty to be imposed for these contempts.

Sentence (after further submissions)

120. This morning I handed down judgment on the C's application to commit Mr Singh for contempt. For the reasons set out in that judgment, which I do not repeat here, I found Mr Singh guilty of 2 contempts, those alleged in grounds 4 and 5 of the Grounds supporting the Application Notice.
121. I now have to deal with the appropriate sentence to impose on Mr Singh for those 2 breaches. I remind myself that it is only for those breaches that I can and do sentence Mr Singh. The matters alleged against him which were not proven cannot be taken into account. However, that is not to say that the matters that I have found as to the background of this matter must be entirely disregarded.
122. As to principles to be applied in sentencing for contempt, I have been referred to *Arlidge, Smith & Eady* on Contempt 5th edn at chapter 14. The principal sanctions are imprisonment, fine and seizure of the contemnor's goods under a writ of sequestration. It is said that sometimes a finding of contempt does not require the imposition of any sanction over and above the "public humiliation" perceived as attaching to the delivery of

a judgment in public identifying the contemnor's reprehensible behaviour. That is not this case.

123. While imprisonment has always been a sanction in cases of contempt, it is said that it should now be regarded as a matter of last resort in civil contempt cases.

124. I have also been referred to the guidance given by Lawrence Collins J (as he then was) in the case of *Crystalmews Ltd. v. Metterick* [2006] EWHC 3087 (Ch), to the judgment of Lewison J (as he then was) in *Aspect Capital v. Christensen* [2010] EWHC 744 (Ch) and the judgment of Popplewell J (as he then was) in *Asia Islamic Trade Finance Fund v. Drum Risk Management Ltd.* [2015] EWHC 3748 (Comm), in particular at paragraph [7]. Ms Caney on behalf of Mr Singh is right to make the point that other cases do not assist in terms of trying to compare the facts of one case with the facts of another. Each case turns on its own facts.

125. In the *Aspect Capital* case at paragraph [47], Lewison J cited a passage from Mann J in *Heidelberg Graphic Equipment Ltd. v. Hogan* [2004] EWHC 3090 (Ch), which is worth quoting in full:

“Freezing orders and search and seizure orders are orders which are not uncommon these days. Where disclosure obligations are provided in orders, they are provided for a good reason. They are provided so that orders can be policed and/or so the claimants can be put in possession of information which they need. Where search and seizure orders are made, they are made because the interests of the claimant and of justice require it. The court can and should expect these orders to be obeyed without question by those upon whom they are served, and those who do not comply with those orders can expect little mercy from the court and can expect serious sanctions to be imposed upon them if they do not. The system simply will not work if people think that they can ignore court orders and destroy evidence, or remove materials from the scene to which claimants are entitled. Those who do so can expect terms of imprisonment ...”

126. With this in mind, I gratefully adopt, without repeating in full, the principles set out by Popplewell J in the *Asia Islamic* case at paragraph [7]. In paragraph 7(3), the learned Judge said:

“A breach of a freezing order, and of the disclosure provisions which attach to a freezing order is an attack on the administration of justice which usually merits an immediate sentence of imprisonment of a not insubstantial amount”

127. In this case, Mr Falkowski for Northamber has pressed upon me that the breach found by me in particular in respect of the non-provision of the Sage accounting data is analogous to a breach of a freezing order and at least as serious. He says that the purpose of this was to require Genee World to comply with its contractual obligations i.e. it was in support of an established right, as opposed to the situation in a freezing order case where the right is yet to be established. It is, he submitted, an attack on the administration of justice. It should therefore merit an immediate sentence of imprisonment of a not insubstantial amount.

128. In my judgment there is some merit in Mr Falkowski's analogy, but I do not think the analogy should be taken too far. This was not a freezing order and I need to look at the particular breaches found and decide what the effect of the breach has been in the context of this case.
129. In respect of both matters in which I have found Mr Singh to be in contempt, I remind myself that the party in direct default of the order was in each case the first defendant, Genee World, and that Mr Singh's liability arises from the fact of his having been a director of the company. The relevance of that to this case is that his liability ceased when the company entered into liquidation on 13th November 2018, he no longer being in control of the company thereafter. Accordingly, in respect of ground 4, he was in breach from 24th October to 13th November a period of 3 weeks and in respect of ground 5, the failure to provide the audited account of sales, he was in breach from 25th September to 13th November a period of 7 weeks. Further, as regards ground 4, Northamber did eventually receive the information from the liquidators of the company in the middle of February 2019.
130. These breaches were therefore relatively short lived and are not ongoing. Accordingly, it is not necessary to fashion a punishment which includes a coercive element to ensure future compliance by Mr Singh.
131. The consequences of these breaches is that Northamber were deprived of information to which they were entitled under the Exclusivity Agreement for a short additional period, as the information should have been provided if Genee World complied with its contractual obligations and the order was enforcing that right. There is no doubt that Northamber and in particular Mr Henry, its director, have been put to a great deal of inconvenience and cost, which it would not have been put to if the order had been complied with. However, there is no specific prejudice caused, that is to say that Northamber cannot point to a particular loss and say that as a result of Mr Singh's actions, Northamber have been deprived of some financial benefit which they would otherwise have secured.
132. In my judgment, in this case of more importance to the court as regards the seriousness of the contempts is the flouting of its orders and the undermining of the administration of justice.
133. I have found that the breach in respect of the Sage accounting data was deliberate and cynical. Mr Singh made the decision not to hand a copy of that data over, while retaining the original for the purpose of setting up the phoenix company and transferring over to it the business. There is no doubt in my mind that this withholding of the Sage accounting data was deliberate and I have rejected his "excuses" for having done this. While I accept that he would have been under some pressure, facing financial difficulties as a result of bank accounts having been frozen, this was not sufficient to stop him from transferring the business to a new company and carrying on "business as usual". I find a high degree of culpability on his behalf.
134. On the other hand, Mr Singh admitted this breach in his 1st witness statement and he deserves to be given full credit for that. I do not think, however, that he has shown much in the way of remorse.

135. As to the breach in respect of the audited account of sales under ground 5, it is clear that he did seek some guidance from his lawyers as to what was necessary in terms of the audit of this account. The lawyers told him it had to be prepared by an independent third party and, in my judgment, it was, it having been prepared by Mr Talbot. The lawyers did not say to him that it needed to be examined and verified by that third party. As pointed out in paragraph [105] of my judgment, Mr Singh when seeking assistance from Mr Talbot in connection with this audited account stated that he was very conscious it was a “*High Court Order and I do not want to go to prison for 2 years if I do not comply*”. I remind myself not to take into account the finding I would have made as to the failure to include international sales in the spreadsheet for the reasons set out in paragraph [110] of my judgment.
136. Accordingly, I conclude that the breach in this respect was not cynical or deliberate, but rather Mr Singh thought that what he was doing was sufficient to comply with the terms of the order.
137. I should make it clear that the admission which Mr Singh made in respect of this breach was very limited, being only as to having delivered the list one day late. He did not admit the breach as found and therefore I do not give him credit for this.
138. I also take into account, however, that Mr Singh was facing 6 grounds for his committal and only 2 have been proved. The additional grounds would have increased the stress placed on Mr Singh by these proceedings, which I accept would not have been insignificant but is no greater than stress placed on most litigants.
139. I have had impressed upon me matters of personal mitigation. He is aged 51, of good character and no previous convictions. I do not find that the fact that he has had a previous failed company amounts to a matter affecting Mr Singh’s character, particularly in the absence of any details of the reasons for that failure.
140. Mr Singh was a teacher, before setting up the business in 2005. He has been married for almost 30 years and has a grown up son and daughter. I am told that this has taken a considerable toll on Mr Singh and his family and I do not doubt that. However, he is the author of his own misfortune in that respect.
141. I have been provided with a copy of a letter of 10 July 2019 from Dr Mohamad, a consultant psychiatrist, to Mr Singh’s GP which sets out the results of a consultation attended by Mr Singh. I do not intend to set out the details of that report, save to say that Mr Singh was prescribed medication to assist with depression and anxiety. He is still taking that medication. I take the full contents of that report into account without setting out any further the details.
142. Mr Singh has had this matter hanging over him for a long time, the committal application having been issued in December, 2018. He has known that some punishment was going to be imposed in respect of ground 4 as he admitted that. I take that into account, although it does not weigh heavily with me.
143. It is said, drawing an analogy with the *Aspect* case, that the conduct of the defence of the substantive proceedings would be difficult if Mr Singh were to be sent to prison. I accept that would produce some logistical difficulties, however, the next step is a Case

and Costs Management Conference some time off and therefore while this would be some inconvenience, it is not a matter which would tip the balance one way or the other.

144. In these circumstances, I therefore come back to the question of whether committal to prison is necessary, that is to say does this matter pass the custody threshold, namely that it is so serious it cannot be dealt with by way of a non-custodial punishment.
145. While it is certainly possible that others would hold that it does pass the custody threshold, in my judgment, by a very narrow margin it does not quite do so. In light of the matters set out above, in particular the relatively short period over which they were committed and the lack of any ongoing breaches, and notwithstanding the cynical approach shown by Mr Singh in respect of the provision of the Sage accounting data, and taking into account Mr Singh's personal mitigation, the breaches can, on this occasion, be punished sufficiently by the imposition of a substantial fine.
146. I have been provided with a 4th witness statement of Mr Singh dated yesterday 15th January, 2020. Although there are a number of unanswered issues which it raises, Mr Singh's own evidence is that he has £140,000 of equity in his 2 properties. It has not been suggested that there is any impediment to his releasing some of this equity. Accordingly, I impose a fine on him of £25,000 in respect of the breach in ground 4 with no separate penalty for the breach in ground 5. That will be payable within 56 days.