



Neutral Citation Number: [2020] EWHC 765 (Ch)

Case No: BR-2018-001090

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

**IN THE MATTER OF JURAID MOHAMMED ANWER**

**AND IN THE MATTER OF THE INSOLVENCY ACT 1986**

7 Rolls Building  
Fetter Lane  
London EC4 1NL

Date: 30 March 2020

**Before:**

**THE HONOURABLE MR JUSTICE ZACAROLI**

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**Between:**

**MR JURAID MOHAMMED ANWER**  
**- and -**  
**CENTRAL BRIDGING LOANS LIMITED**

**Applicant**

**Respondent**

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**Mr Juraid Mohammed Anwer** (the Applicant) appeared in person  
**Ms Dawn McCambley** (instructed by **Shakespeare Martineau**) for the **Respondent**

Hearing date: 25 March 2020  
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**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

**Mr Justice Zacaroli :**

1. This is an application by the Applicant (“Mr Anwer”) to commit to prison the directors of the Respondent company together with two partners from the firm of Shakespeare Martineau LLP (Mr Kamran Rehman and Michael Mulligan), the solicitors for the Respondent.
2. The hearing of the application was conducted following imposition of self-isolation and social distancing measures by the government as a result of the COVID-19 pandemic. It was accordingly not possible to hold the hearing in a public courtroom. Accordingly, I directed that the hearing take place by way of a recorded telephone conference in private, as this was necessary in order to secure the administration of justice: see Practice Direction 51Y.
3. The application was brought by Application Notice dated 7 October 2019 within existing bankruptcy proceedings which I describe in more detail below. It was originally made to a deputy Insolvency and Companies Court Judge, but adjourned to a High Court Judge on the basis that the Insolvency and Companies Court Judge lacked jurisdiction to deal with it.
4. There are numerous procedural defects in the application. These include failing to apply for the permission of the Court to bring these proceedings, failing to commence the proceedings by a separate claim form, and failing to identify in a claim form precisely the grounds of contempt alleged.
5. The Respondent contends that, in light of these and other procedural defects and in light of the lack of merit in the application, the application should be struck out.
6. As to the first procedural defect mentioned, I was prepared to treat the hearing as an application for permission (it being accepted by Mr Anwer that by reason of the nature of the alleged contempt, the Court’s permission is required). Ms McCambley, who appeared for the Respondent, accepted that if I were to refuse permission then that would be an end of the matter, and there would be no need separately to deal with the Respondent’s strike-out application.
7. Accordingly, I first consider the question whether the Court should give permission to Mr Anwer to commence committal proceedings.
8. In substance, as set out in Mr Anwer’s evidence, there are two main grounds of contempt alleged.
9. The first ground relates to an attendance note of a hearing on 8 December 2017, when District Judge Atkin discharged an injunction obtained by Mr Anwer, without notice, restraining the Respondent from selling Mr and Mrs Anwer’s property, of which the Respondent had taken possession. That attendance note was exhibited to a witness statement of Mr Clifford (one of the Respondent’s directors) dated 31 August 2018.

10. The second ground relates to those parts of Mr Clifford's witness statement dated 31 August 2018 summarising the hearing before District Judge Atkin at which the injunction was dismissed.
11. In order to explain the nature of the contempt alleged, it is necessary first to set out the background in a little detail.
12. In 2015, the Respondent made two short-term bridging loans totalling £2,150,000 to Mr Anwer and his former wife. The Loans were secured against their home by way of second and third legal charges.
13. Mr and Mrs Anwer defaulted on the repayment of the Loans. Possession proceedings were issued in May 2016. A warrant of possession was executed by the Respondent in November 2016 and the Respondent then marketed the Property for sale.
14. On 5 December 2017, Mr Anwer, obtained an urgent without notice interim injunction in the Brentford County Court, restraining the sale of the property. His underlying claim (set out in the witness statement in support of the application for an injunction) was, in essence, that the Respondent had fraudulently delayed selling the property, such that over time the property had reduced substantially in value while the interest payable by him and his former wife under the loans had correspondingly increased. Mr Anwer contends that the Respondent's intention was to make him bankrupt and claim other substantial assets owned by him.
15. On its return date on 8 December 2017, at a hearing at which Mr Anwer was present, the injunction was discharged. In the official transcript of the judgment of that date, District Judge Atkin is recorded as having said (after setting out the background and the parties' arguments):

“That is the factual matrix and in terms of deciding whether to make or to continue the injunction, I am not satisfied that it is appropriate to do so. I do not take the view that it is a frivolous application. I do not take that view, but what I am persuaded of is even if one takes the defendant's case at its highest, damages must be an adequate remedy for him. It cannot be right that he interfere in the sale of the property and causes further debts to be incurred, in terms of the interest which is galloping on, if one describes it, at quite a pace. I am not satisfied that it is appropriate to make an injunction in these circumstances.”
16. The Property was sold for £2.75 million in January 2018. The Respondent claimed that a shortfall was due of some £2 million under the loans. It issued statutory demands dated 8 May 2018 against the Anwers.

17. Mr and Mrs Anwer applied to have those demands set aside. Prior to the Hearing of that application, Mr Anwer issued a claim in the County Court at Central London seeking an order under s140B of the Consumer Credit Act 1974 and claiming the sum of over £2.7 million plus interest as against the Respondent. The basis of his claim was essentially the same as that contained in his witness statement for the injunction application in December 2017, namely that the Respondent had purposefully delayed the sale of the London Property in a fraudulent scheme to maximise the amount of interest accruing under the Loans.
18. In response to the set-aside application, the Respondent served evidence, in the form of Mr Clifford's witness statement dated 31 August 2018. At para 55 of that statement, he said:

“the injunction was improperly and inappropriately obtained. There was no substantive cause of action or defence within the possession claim in support of which an injunction was sought. The application was totally without merit and it was dismissed, and the injunction discharged, at the return hearing...”
19. Mr Anwer says that the following sentences in that paragraph were false: (1) “there was no substantive cause of action or defence”; and (2) “the application was totally without merit”.
20. Mr Clifford also exhibited an attendance note which he described as “a detailed and contemporaneous note of the return hearing prepared by Shakespeare Martineau.” Mr Anwer says that was a false statement, because the attendance note omitted the whole of “the judgment”. In fact, the attendance note contains, in addition to a record of the hearing itself, a non-verbatim record of most of what later appeared in the transcript of the judgment. Mr Anwer's real complaint is that the attendance note does not record anything of the judge's actual decision, other than the following:

“I am not satisfied based on the case that has been presented that it reaches the level to justify an injunction being granted.”
21. In particular, he complains that the attendance note did not record the judge's view that it was not a “frivolous application”. He places particular reliance on this because in the context of the application to set aside the statutory demands, the critical question was whether the debt on which the demands were based was the subject of a good faith dispute on substantial grounds. He contends that District Judge Atkin had already determined in December 2017 that there was such a dispute, and that the Respondent was deliberately misleading the court – by Mr Clifford's witness statement exhibiting the attendance note – because it suppressed the critical part of District Judge Atkin's decision.

22. Mr Anwer himself obtained the transcript of the hearing before District Judge Atkin and exhibited it to a witness statement dated 25 March 2019 in the application to set aside the statutory demands. In that statement he made substantially the same complaint (as he now makes) as to the inaccuracies in the attendance note appended to Mr Clifford's witness statement of 31 August 2018.
23. At the Hearing on 28 March 2019 of the application to set aside the statutory demands, ICC Judge Burton ordered that the applications be adjourned pending the determination of the County Court claim. That claim is still pending and will not be heard before the last quarter of this year at the earliest.
24. In his most recent witness statement, Mr Anwer sought to introduce a further ground of contempt, based on a witness statement of Mr Rehman, of the Respondent's solicitors, filed in respect of this application on 9 December 2019. In that statement, Mr Rehman said:

“Having now seen a copy of the transcript of the Judgement, it is appreciated that the Attendance Notice was not a verbatim note of what was said by District Judge Atkin at the Injunction hearing.”
25. Mr Anwer contends that this is misleading. He submits that the phrase “having now seen” the official transcript could only mean that Mr Rehman had *just* seen it, which was untrue, given that he had been sent it by Mr Anwer in March 2019.
26. Mr Anwer also contends that Mr Rehman was admitting, in this paragraph, that the attendance note was “inaccurate”. I do not accept this. Mr Rehman merely accepted that the note was not “verbatim”. It is not surprising that the attendance note was not verbatim: it would be unusual for a note of a hearing to be verbatim unless done by shorthand transcribers. The fact that it is not verbatim does not mean (necessarily at least) that it is not accurate.
27. Finally, Mr Anwer seeks to expand the persons against whom orders for committal are sought, to include various funders of the Respondent, on the grounds that they are to be treated as shadow directors of the Respondent. No formal application is made to amend the proceedings, the further allegation being contained in Mr Anwer's latest witness statement.
28. The Contempt Application was originally issued by way of an Application Notice dated 7 October 2019, supported by a witness statement and exhibit.
29. The type of contempt alleged is either or both of (1) making or causing to be made a false statement of truth without an honest belief in its truth (within CPR 81.17(1)(a)) and (2) an interference with the due administration of justice (within CPR 81.12). In either case, an application cannot be made without the permission of the court: see CPR 81.12(3) (in the case of interference with the administration of justice) and CPR 81.17(4)(a).

30. The factors that the court should take into account in relation to an application for permission were set out by the Court of Appeal in *Tinkler v Elliott* [2014] EWCA Civ 564, at para 44, by reference to the principles set out in paragraph 23 of the judgment of the judge at first instance in that case (HHJ Pelling QC):

“23. The approach to be adopted on applications for permission has been considered in a number of authorities. The principles that emerge are the following:

i) In order for an allegation of contempt to succeed it must be shown that “in addition to knowing that what you are saying is false, you had to have known that what you are saying was likely to interfere with the course of justice” — see *Edward Nield v Loveday* [2011] EWHC 2324 (Admin);

ii) The burden of proof is on the party alleging the contempt who must prove each element identified above beyond reasonable doubt — see *Edward Nield v Loveday* (ante);

iii) A statement made by someone who effectively does not care whether it is true or false is liable as if that person knew what was being said was false — see *Berry Piling Systems Limited v Sheer Projects Limited* [2013] EWHC 347 (TCC), Paragraph 28 — but carelessness will not be sufficient — see *Berry Piling Systems Limited v Sheer Projects Limited* (ante), Paragraph 30(c);

iv) Permission should not be granted unless a strong prima facie case has been shown against the alleged contemnor- see *Malgar Limited v RE Leach (Engineering) Limited* [1999] EWHC 843 (Ch), *Kirk v Walton* [2008] EWHC 1780 (QB), Cox J at paragraph 29 and *Berry Piling Systems Limited v Sheer Projects Limited* (ante) at Paragraph 30(a);

v) Before permission is given the court should be satisfied that

a) the public interest requires the committal proceedings to be brought;

b) The proposed committal proceedings are proportionate; and

c) The proposed committal proceedings are in accordance with the overriding objective - see *Kirk v Walton* (ante) at paragraph 29;

vi) In assessing proportionality, regard is to be had to the strength of the case against the respondents, the value of the claim in respect of which the allegedly false statement was made, the likely costs that will be incurred by each side in pursuing the contempt proceedings and the amount of court

time likely to be involved in case managing and then hearing the application but bearing in mind the overriding objective — see — *Berry Piling Systems Limited v Sheer Projects Limited* (ante) at Paragraph 30(d);

vii) In assessing whether the public interest requires that permission be granted, regard should be had to the strength of the evidence tending to show that the statement was false and known at the time to be false, the circumstances in which it came to be made, its significance, the use to which it was actually put and the maker's understanding of the likely effect of the statement bearing in mind that the public interest lies in bringing home to the profession and through the profession to witnesses the dangers of knowingly making false statements — see *KJM Superbikes Limited v Hinton* [2008] EWCA Civ 1280, Moore-Bick LJ at Paragraphs 16 and 23; and

viii) In determining a permission application, care should be taken to avoid prejudicing the outcome of the application if permission is to be given by avoiding saying more about the merits of the complaint than is necessary to resolve the permission application — see *KJM Superbikes Limited v Hinton* (ante) at Paragraph 20.”

#### Strong prima facie case?

31. In my judgment, Mr Anwer falls very far short of establishing a strong prima facie case against the alleged contemnors.
32. So far as the preparation of the attendance note itself is concerned, it was drafted by the Respondent's solicitors for the benefit of the Respondent alone. It was not sent at the time to anyone else and there were no other court proceedings in contemplation for which the note might have been needed. The part of the judgment in which District Judge Atkin expressed her conclusions was (as is revealed by the official transcript) extremely brief. Although it may well be that the District Judge had in mind the first stage of the three-part *American Cyanamid* test for the grant of injunctions (that is, whether there was a serious issue to be tried), it is not clear that her comment that she did not regard the *application* as frivolous was intended to be a conclusion that there was in fact a serious issue to be tried in respect of the underlying *claim*. In reality, since she had concluded that damages were in any event an adequate remedy, she did not need to reach a considered view on whether there was a serious issue to be tried, and it is not clear to me that she did so.
33. In any event, while it is true that the single sentence summary in the attendance note omits any reference to the “frivolous” comment, I do not believe it rendered the attendance note inaccurate. The essential point was that the application did not reach the level which justified an injunction, which is what the attendance note conveyed. At the time, the statutory demands had not been issued, and thus no application to set them aside was in

contemplation. In those circumstances, the distinction between (1) the injunction having been refused and (2) the injunction having been refused but the District Judge having been prepared to accept that there was a serious issue to be tried (even assuming that was her intention), was not an important one at the time. Although Mr Anwer raises a number of questions which he says need answering in relation to the actual preparation of the attendance note, for the above reasons I consider it is fanciful to suggest that there was anything in it that was false, let alone knowingly false.

34. Mr Anwer's other complaint in relation to the attendance note relates to it being exhibited to Mr Clifford's witness statement dated 31 August 2018. His contention that Mr Clifford's evidence was false because it referred to the attendance note as "detailed and contemporaneous" is simply wrong. As I have already noted, the attendance note did not omit the judgment altogether. The fact that it summarised further what was already a very shortly stated decision to refuse the injunction does not prevent it being either detailed or contemporaneous.
35. Mr Anwer suggested that the attendance note might have been tampered with, in other words that it had originally referred to the judge's conclusion that there was a serious issue to be tried, but that was deleted when it came to be exhibited to Mr Clifford's witness statement. This is pure speculation. Mr Anwer says that he wishes the case to continue so that he can put many unanswered questions to the Respondent in this regard. That is not the test, however, for allowing committal proceedings to be brought. A case based on pure speculation falls very far short of the requirement to establish a strong prima facie case.
36. If the attendance note was not tampered with, then Mr Anwer contends that it was deliberately misleading of Mr Clifford to exhibit the attendance note in August 2018 when he knew it to be false. The one thing that can be said in Mr Anwer's favour in this regard is that Mr Clifford's witness statement was drafted in the context of the applications to set aside the statutory demand. As such, the central question was whether the debt was disputed in good faith and on substantial grounds. While this provides a reason why the Respondent might have wanted to suppress the fact (if it were the case) that a previous judge had concluded that the debt was disputed, in my judgment it remains merely speculation that Mr Clifford, or any of the other directors of the Respondent, or any of the named people working for the Respondent's solicitors, deliberately sought to suppress that fact.
37. First, for the reasons I have already given, I do not think that District Judge Atkin had (by referring to the application not being frivolous) expressed a considered view that there was a serious issue to be tried in relation to the underlying claim.
38. Second, even if she had done so, that was of marginal, if any, relevance to the question raised by the application to set aside the statutory demands, partly because although the legal tests are similar, there are important differences (in the bankruptcy context, it is necessary to show that the debt is disputed in good faith and on substantial grounds), but mostly because the evidence before



the court was wholly different. As Ms McCambley pointed out, the Respondent had at most had only three days to respond to the evidence presented by Mr Anwer in the injunction application, whereas it had considerably more time to respond to the applications to set aside the statutory demands. Moreover, even if District Judge Atkin had concluded that there was a serious issue to be tried, as I have pointed out above, that was unlikely to have been a considered view given her decision to refuse the injunction on the grounds that damages were an adequate remedy. For these reasons, the Insolvency and Companies Court Judge was required to consider the matter afresh, on the basis of the evidence then before him or her, and any conclusion reached by District Judge Atkin on the basis of the evidence before her in December 2017 would have been of little if any relevance.

39. Third, although Mr Anwer suggests that there was deliberate deception in exhibiting the attendance note rather than the official transcript, the official transcript (which was obtained by Mr Anwer, and not the Respondent) was only sent to the Respondent on 25 March 2019. The attendance note was therefore the only record of the hearing which was available to the Respondent as at August 2018. I do not accept (as Mr Anwer suggested) that the Respondent's conduct was deliberately deceitful as from 25 March 2019 when they had a copy of the transcript. By that time (by definition, since Mr Anwer produced the transcript by way of an exhibit to his witness statement) the Court had the full transcript available, so there was thereafter no point in amending the attendance note to give a fuller picture of the District Judge's decision.
40. The remaining grounds of contempt relating to Mr Clifford's witness statement of 31 August 2018 concern the sentence "there was no substantive cause of action or defence" and the sentence "the application was totally without merit".
41. It is first important to note that Mr Clifford was not suggesting that these were the conclusions of District Judge Atkin. Although framed as statements of fact, they are in reality statements of his (i.e. Mr Clifford's) view as to the lack of merit in Mr Anwer's case. It is not suggested that Mr Clifford did not genuinely hold that view.
42. So far as the second statement is concerned, it is part of a sentence which goes on to say that the application was dismissed. That is of course true. It follows that the application was without merit (otherwise it would not have been dismissed). Whether it was "totally" without merit might be debatable, because that is a value judgment. But even assuming that a court was subsequently to decide that the application was not "totally" without merit (for the purposes, for example, of considering whether it could support the making of a civil restraint order) that would not in my judgment make Mr Clifford's statement false, let alone knowingly false.

43. The same is true of the statement in the first sentence, that there was no “substantive” cause of action or defence. Save to the extent that a court had already conclusively determined in some context that there was a substantive cause of action or defence, this is again a value judgment. It is the sort of statement that regularly appears in a witness statement in support of a claim for summary judgment or to strike out a statement of case. Often the court ultimately disagrees, because it does not strike out the statement of case, or grant summary judgment, but that does not make it an untrue statement of fact, let alone a knowingly untrue statement of fact.
44. Finally, as to the alleged false statement in Mr Rehman’s witness statement of 9 December 2019, Mr Anwer’s contention is groundless. First, I disagree that the statement - as a matter of construction – is objectively to be construed as meaning that the transcript had only recently been obtained. Mr Anwer knew (to Mr Rehman’s knowledge) that the transcript had been provided to the Respondent in March 2019. The reasonable reader of the witness statement, knowing that context, would read the sentence as I think it is naturally to be read, namely that “now” meant “in contrast to the time at which the attendance note was prepared.” Second, even if the words could mean “having seen the transcript for the first time in December 2019”, it is absurd to suggest that Mr Rehman used this form of words in an attempt to mislead the court. Since he was aware that Mr Anwer knew that the Respondent had been sent the transcript in March 2019, he (Mr Rehman) would know that any attempt to mislead the court would have been immediately obvious to Mr Anwer and so bound to fail.
45. For the above reasons, I conclude that the application for permission falls at the first hurdle. There is no strong *prima facie* case in respect of the grounds of contempt alleged. Indeed, with respect to Mr Anwer, who I am sure strongly believes that he is the victim of a sustained fraud against him, in my judgment the allegation that these matters amount to a contempt of court so as to justify an application for committal to prison is totally without merit.
46. Mr Anwer identified the central question as being whether he had shown on the balance of probabilities that there were a “sufficient number of unanswered questions” as to the Respondent’s conduct, to permit his application to go forward to a full hearing. That is not, however, the correct test; he is required to establish a strong *prima facie* case, in relation to each of the statements identified as grounds of contempt, that each contemnor knew the statements were false and that they would be likely to interfere with the administration of justice (see White Book, at paragraph 81.18.2). This is an important condition to be satisfied before allowing committal proceedings of this nature to be brought by private citizens.
47. He cited *Liverpool Victoria Insurance Company Ltd v Zafar* [2019] EWCA Civ 392 for the proposition that “...the deliberate or reckless making of a false statement in a document verified by a statement of truth will usually be so inherently serious that nothing other than an order for committal to prison will be sufficient.” That is true, but it does not address the necessary condition in this case, namely a strong *prima facie* case that the statements relied on were

indeed deliberately or recklessly false. This case gets nowhere near satisfying that condition.

48. I say nothing about the wider allegations of fraud that are made by Mr Anwer. These formed only the background to this application, and I am not in a position to make any comment, let alone reach a conclusion, in respect of them either way.
49. For the same reasons as above I refuse to permit the application to be amended to allege contempt against the various (at this stage, unidentified) funders of the Respondent. Given that there is no merit in the allegations of contempt against those currently accused, there can be no merit in the same allegations as against the funders even if (which is highly unlikely) it could be established that by funding the Respondent they were sufficiently complicit in any of the statements relied upon to render them personally liable.
50. In these circumstances, I need not deal with the remainder of the matters which need to be considered before the court will grant permission to bring contempt proceedings.

Directions in relation to an application for an Extended Civil Restraint Order

51. Separately, the Respondent has issued an application for an extended civil restraint order against Mr Anwer. I was not taken to any of the evidence in support of this application, since it is only before the Court on this occasion for the purposes of giving directions.
52. Mr Anwer objects to the application as a whole and asks for it to be struck out. I am not prepared to do that in the absence of an application by him and without having been taken at all to the substance of the application.
53. Mr Anwer also objects to the matter being listed for directions at the same time as the hearing of his committal application. He says that the Respondent should not be permitted to queue jump in this way. The directions sought are limited to providing a timetable for evidence and for listing of the application. They are the sort of matters that should be capable of being resolved by agreement. Mr Anwer received the application and draft order well in advance of the hearing, but did not engage with the Respondent in relation to the directions. It was appropriate, in my view, for the application to have been listed for directions at the same time as Mr Anwer's application.
54. At the hearing, Mr Anwer disagreed with the time suggested for provision of evidence by him. The draft directions allowed him 21 days to provide a witness statement in opposition. Ms McCambley indicated that the Respondent was not wedded to that time period (but noted that since Mr Anwer had not engaged at all, there had been no opportunity to discuss any alternative period with him). The application requires consideration of a number of prior applications made by Mr Anwer, in order to determine whether they were totally without merit. In light of that, and taking into account the difficult current working environment, I will allow Mr Anwer a period of six weeks to provide his evidence. The directions thereafter will be

as contained in the draft order provided by the Respondent (adjusted to take account of the six weeks provided for Mr Anwer's initial evidence). Insofar as any costs have been incurred in relation to the civil restraint order application at this hearing, I direct that they be costs in that application.

55. I am grateful to both Ms McCambley and Mr Anwer for the clarity of their submissions, made in the more challenging circumstances of a lengthy telephone hearing with a relatively large electronic bundle of documents.