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Case No: BL-2020-001419

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

The Royal Courts of Justice
Strand
London WC2A 2LL

Monday 13 June 2022

BEFORE:

MR JUSTICE ADAM JOHNSON

BETWEEN:

(1) JONATHAN DAVID ROWLAND
(2) DAVID JOHN ROWLAND

Claimants

- and -

KEVIN GERALD STANFORD

Defendant

MR T GRANT QC & MR A McLEOD appeared on behalf of the Claimants

MR K STANFORD appeared in person

JUDGMENT
(APPROVED)

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1. MR JUSTICE ADAM JOHNSON: In light of my decision on liability, I have to deal with the question of sanction. I will adopt in this short Judgment to the extent necessary the abbreviations used in my Judgment on liability and will assume familiarity with it.

Relevant Principles

2. As to the relevant principles, I am grateful to Mr McLeod, junior counsel for the claimants, who has taken me to a number of authorities, namely *Asia Islamic Trade Finance Fund Ltd v Drum Risk Management Ltd & Ors* [2015] EWHC 3748 (Comm), *Lightfoot v Lightfoot* [1989] 1 FLR 414, *Liverpool Victoria Insurance Company Ltd v Khan* [2019] 1 WLR 3833, *Financial Conduct Authority v McKendrick* [2019] 4 WLR 65, *Attorney General v Crosland* [2021] 4 WLR 103, *Crystal Mews Ltd v Metterick* [2006] EWHC 3087 (Ch) and *Aspect Capital Ltd v Christensen* [2010] EWHC 744 (Ch).
3. The overall approach has recently been summarised by the Supreme Court in *Attorney General v Crosland* [2021] 4 WLR 103 [44] as follows:

“1. *The court should adopt an approach analogous to that in criminal cases where the Sentencing Council’s Guidelines require the court to assess the seriousness of the conduct by reference to the offender’s culpability and the harm caused, intended or likely to be caused.*

2. *In light of its determination of seriousness, the court must first consider whether a fine would be a sufficient penalty.*

3. *If the contempt is so serious that only a custodial penalty will suffice, the court must impose the shortest period of imprisonment which properly reflects the seriousness of the contempt.*

4. *Due weight should be given to matters of mitigation, such as genuine remorse, previous positive character and similar matters.*

5. *Due weight should also be given to the impact of committal on persons other than the contemnor, such as children or vulnerable adults in their care.*

6. *There should be a reduction for an early admission of the contempt to be calculated consistently with the approach set out in the Sentencing Council’s Guidelines on Reduction in Sentence for a Guilty Plea.*

7. *Once the appropriate term has been arrived at, consideration should be given to suspending the term of imprisonment. Usually the court will already have taken into account mitigating factors when setting the appropriate term such that there is no powerful factor making suspension appropriate, but a serious effect on others, such as children or vulnerable adults in the contemnor’s care, may justify suspension.”*

4. Those comments derived from observations made by the Court of Appeal in the *Liverpool Victoria Insurance Company* case, which was a case of criminal contempt consisting in the making of false statements of truth by expert witnesses. However, they provide a useful structure in a case involving breach of a court order.
5. I should say that I also have regard to the summary of relevant principles recently set out by Leech J in *Solicitors Regulatory Authority v Khan & Ors* [2022] EWHC 45 (Ch), where Leech J at paragraph 52 summarised the key legal principles in a series of ten propositions. Among the points there set out are the following, also referenced in one way or another by Mr McLeod:

(1) Committal to prison may serve two distinct purposes: (a) punishment of past contempt and (b) securing compliance: see *Lightfoot v Lightfoot* [1989] 1 FLR [414]-[417].

(2) It is good practice, for the court’s sentence to include elements of both purposes (punishment and compliance) to make clear what period of committal is regarded as appropriate for punishment alone, i.e. what period would be regarded as just if the contemnor were promptly to comply with the order in question: see *JSC Bank v Soldochenko (No 2)* [2012] 1 WLR 350.

(3) Imprisonment is only appropriate where there is “*serious, contumacious flouting of orders of the court*”: see *Gulf Azov Shipping Company Ltd v Idisi* [2001] EWCA Civ 21 at [72] (Lord Phillips MR).

(4) The court may impose a fine. If a fine is appropriate punishment it is wrong to impose a custodial sentence because the contemnor could not pay the fine.

(5) Committal may be suspended: see CPR Part 89.9(2).

6. As to the question of the seriousness of the breach or breaches, the following factors derived from the *Crystal Mews* and *Asia Islamic Finance Fund* cases have consistently been applied in assessing the seriousness of the breach or breaches in question:

(1) Whether the claimant has been prejudiced by virtue of the contempt and whether the prejudice is capable of remedy.

(2) The extent to which the contemnor has acted under pressure.

(3) Whether the breach of the order was deliberate or intentional.

(4) The degree of culpability.

(5) Whether the contemnor has been placed in breach of the order by reason of the conduct of others.

(6) Whether the contemnor appreciates the seriousness of the deliberate breach.

(7) Whether the contemnor has cooperated.

(8) Whether there has been any acceptance of responsibility by apology, any remorse or any reasonable excuse put forward.

7. I will now seek to apply those principles.

Application

Seriousness

8. As to seriousness, and approaching the matter generally first of all, it seems to me clear that Mr Stanford's breaches of the order were serious. No part of the order has been complied with. There has been no process of imaging as required under paragraph 1 of the order. It is clear that documents exist which are responsive to paragraph 2 but they have not been produced. No affidavit has been produced as required by paragraph 3. Having been given a further opportunity by the order to make good his possible point on the relevance of the privilege against self-incrimination, Mr Stanford is no further forward over a year after the April 2021 hearing. All of this is despite efforts made by the claimants' solicitors to facilitate compliance with the order, including further opportunities to comply notwithstanding the initial breaches, offered both in June 2021 and in December 2021, before the Committal Application was eventually issued
9. I then turn to the criteria derived from the *Crystal Mews* and *Asia Islamic Finance Fund* decisions.
10. Prejudice or Harm: I accept that the breaches have caused prejudice to the claimants. The purpose of the order was to provide them, and Mr Jonathan Rowland in particular, with information relating to the unlawful use of Mr Jonathan Rowland's personal information. Mr Stanford's non-compliance has deprived the claimants of the benefit of the order almost entirely. They are really no further forward than they were over a year ago, when the order was made.
11. Pressure: I do not see that Mr Stanford has acted under pressure in any relevant sense. There is no evidence to suggest that he has.
12. Nature of the Breach: I have already determined that, by their nature, the breaches were intentional. The breaches have continued for some considerable time, in fact now for over one year. The high watermark of Mr Stanford's case, as I see it, is the provision by Mr Jackman of information via hyperlink in May and June 2021, but that was not compliance in any meaningful sense. Instead, based on Mr Stanford's wholly misguided conception that the order was null and void, it was Mr Stanford's idea of what he was happy to provide, but it is plainly not open to a respondent to a court order who is unhappy with it to offer up some form of substitute performance that he is happy with. That demonstrates an obvious contempt for the court process.

13. Culpability: I regard the degree of culpability as high, both in light of the facts already mentioned and in light of Mr Stanford's apparent position that, as regards him, the order is null and void and has no effect as a consequence of no rebuttal having been made to his 5 May 2021 Statement. A failure to comply with the court's orders has often been referred to as amounting to an attack on the administration of justice. That is obviously so in this case. Mr Stanford's position is absurd as well as intolerable. Nothing more need be said about it. It is entirely apt to describe the stance he has taken in relation to the order as an attack on the administration of justice.
14. Third Parties: There is nothing to suggest that Mr Stanford was placed in breach of the order by the conduct of third parties. Compliance was entirely within his gift but there has been no compliance.
15. Did Mr Stanford appreciate the seriousness of the breach? I have already dealt with this point in my Judgment on liability and concluded that Mr Stanford was aware of the seriousness and likely consequences of his actions.
16. Co-operation: Although both during the hearing of the contempt application and in his letter sent to the court after the conclusion of the hearing, Mr Stanford said it was his intention to purge any contempt should it be proven, this was only a qualified concession because he also said that he had seen no evidence that any contempt was proven, and he maintained the position that that was not possible because the order was of no effect. He would provide assistance only voluntarily. In fact, as the narrative in my Judgment on liability makes clear, although given repeated opportunities to comply with the order before the contempt application was issued, Mr Stanford did not do so. In the circumstances, I do not think it right to give him any material credit for cooperation thus far. In reality, there has been none.
17. Admission: Mr Stanford has made no admission of acting in breach of the order. On the contrary, he appears to persist in the fiction that the order is null and void and has no application to him.

18. Pausing there, I come to the view that overall the seriousness of the breaches I have identified warrants a custodial sentence in the absence of other mitigating factors. I do not consider that a fine would be an adequate response.

Mitigation

19. Moving on to mitigation, as far as I am aware, Mr Stanford has no prior criminal record.
20. As to other mitigating factors, I have had a concern about the state of Mr Stanford's mental health. That has been in light of his overall behaviour in response to the order, which has been odd in the extreme. In the end, however, as will be apparent from my Judgment on liability, I have formed the view that, whatever stresses may be affecting him, Mr Stanford was certainly aware of the likely consequences of his actions, i.e. that they might lead to a finding of contempt against him. Mr Stanford has not himself claimed to have any relevant psychological or medical condition, although I gave him the opportunity at the hearing this morning to address that point. No member of his family or any other party has come forward to say that he has any relevant condition. I have no medical evidence. It seems to me, therefore, that this is a matter of no significant weight in the overall analysis.
21. That said, I will make some allowance for the fact that Mr Stanford has undoubtedly been under stress for a considerable period of time, given the background to his dispute with the claimants and other ongoing disputes, including, as I understand it, with Coutts Bank and with his trustee in bankruptcy. His dispute with the claimants, of course, involved the loss of his personal fortune and led to his bankruptcy. I make these points not by way of excuse but by way of possible explanation in the sense that such stresses over a long period are likely to have impaired Mr Stanford's judgment. A period of imprisonment is likely to be hard for him. I also note Mr Stanford's indication that he is married and is the father of young twins.
22. On the other hand as to character, as Mr Grant QC has explained in his submissions, Mr Stanford deliberately misled Forsters in December 2017 when they originally asked

about his access to material from the Archive, and he has on previous occasions knowingly breached his obligations under the CPR and other orders made by the court.

Overall Conclusions and Sentence

23. I come then to my overall conclusions and sentence. I have carefully considered whether a fine would be an adequate remedy but, as already noted, given the seriousness of the breaches and the aggravating factors I have identified, I do not think it would. I consider Mr Stanford's conduct overall amounts to a serious, contumacious flouting of orders of the court and merits a custodial sentence. I propose to impose the following sentences in respect of the individual breaches of the order identified in my earlier Judgment, to run concurrently:

(1) A period of eight months' imprisonment for breach of paragraph 1 of the order.

(2) A period of eight months' imprisonment for breach of paragraph 2 of the order.

(3) A period of eight months' imprisonment for breach of paragraph 3 of the order.

24. In the case of each act of contempt, a period of four months of the overall sentence is intended to reflect punishment for the breaches to date and a further period of four months is intended to seek to secure compliance with the order in the future. Those sentences seem to me to represent the shortest period of imprisonment I can sensibly impose, having regard to the seriousness of the contempts I have identified. I propose also to give Mr Stanford express permission to apply to purge his contempt if he wishes to do so. If he complies with the order in full, he will thus be able to seek an order for release and discharge. The judge dealing with any such application will take into account the indication I have given as to that part of the sentence for each breach which is referable to future conduct.

25. I have considered whether the sentences should be suspended. On this point Mr Stanford indicated that he is married and he and his wife are the parents to young twins. I do not consider that that warrants suspension. I accept that Mr Stanford's absence will impose an additional burden on his wife but that is not unusual and I do

not see that there are any special factors here which weigh against the imposition of an immediate custodial sentence in light of the factors I have identified.

26. Mr Stanford has also referenced the fact that he is involved in other proceedings, which I have already mentioned, against his trustees in bankruptcy and against Coutts. I do not, however, consider that his imprisonment will have a material impact on his ability to give instructions and to conduct those proceedings to the extent necessary during the period of his imprisonment.
27. I will make an order reflecting these findings and will also issue a warrant of committal. I remind Mr Stanford that he is entitled to appeal against the findings of contempt I have made and against sentence as of right and without permission.

(After further submissions)

28. I have to assess the costs of the application dealt with today and at the hearing last week. The first question is whether costs should be awarded to the claimants and, if so, on what basis. As to that, there is no doubt at all that the claimants are the successful party in relation to their application and so, applying the usual approach, it seems to me they are entitled to recover their costs of the application.
29. As regards the basis on which costs should be awarded, I have been reminded by Mr McLeod, junior counsel for the claimants, that in the ordinary course, costs following a successful contempt application should be assessed on the indemnity basis. I see no reason in the circumstances of this case to depart from that ordinary course and so I will order costs on the indemnity basis.
30. As to the amount of costs, I have available two costs schedules. The first, as amended, deals with pre-issue costs, which gives a total amount of £16,746.50. The second, as amended, deals with post-issue costs including the costs of the hearing last week and the hearing today at which I have given judgment. The total there sought to be recovered is £146,235. The claimants seek an order for summary assessment of their costs and therefore immediate payment in the full amount of both costs schedules. I

have invited comments from Mr Stanford on the costs schedules but he has no comments to make.

31. It seems to me, standing back from the detail, that some reduction is justified on the basis of the overall proportionality of the figures sought. Taken together, one arrives at a figure in excess of £160,000, which is a substantial amount for effectively a hearing of a day-and-a-half or thereabouts of overall court time. What I propose to do, therefore, in light of that fact, is summarily to assess the claimants' costs as 80 per cent of the overall costs claimed in their two costs schedules. I look to Mr McLeod, junior counsel for the claimants, to calculate the precise figures, which can then be reflected in the court's order.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Unit 1 Blenheim Court, Beaufort Business Park, Bristol BS32 4NE

Email: civil@epiqglobal.co.uk

This transcript has been approved by the Judge