



Neutral Citation Number: [2024] EWHC 1595 (KB)

Case No: KB-2022-003489

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London WC2A 2LL

Date: Monday, 13th May 2024

Before:

MR. JUSTICE SWEETING

Between:

**(1) IGNITE INTERNATIONAL BRANDS
(UK) LIMITED
(2) IGNITE INTERNATIONAL BRANDS
(LUXEMBOURG) S.A.
- and -**

Claimants

**(1) INPERO LIMITED
(2) MARK COOPER**

Defendants

MR. JOSHUA HITCHENS (instructed by **Ignite Legal Department**) for the **Claimants**
MR. MICHAEL UBEROI (instructed by **Janes Solicitors**) for the **Defendants**

Approved Judgment
ON CONTEMPT APPLICATION

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MR. JUSTICE SWEETING :

1. I had been provided with an affidavit from Mr. Cooper, a medical report from Dr. Pilgrim (a psychiatrist) and helpful skeleton arguments from both counsel. Mr. Cooper's affidavit acknowledges the findings of contempt and asks me to take into account, in deciding upon sanctions, his personal circumstances and his health in particular. He seeks to purge his contempt by the provision of the affidavit and the information it contains. I was also given written character references during the course of the hearing.
2. The full background is set out in my judgment, *Ignite International Brands (UK) Ltd and Ignite International Brands (Luxembourg) v Inpero and Mark Cooper* [2024] EWHC 220 (KB).
3. On 25th October 2022 the claimants obtained an order requiring the defendant to:
4. first, deliver up to the first claimants the products listed in the schedule to the order;
5. and secondly, provide the first claimants with full details as to the transfer, disposition or location of any products not delivered up by 28th October 2022. That order was made by Mr. HealyPratt KC.
6. In October and November 2022 the claimants arranged for collections from the defendant's warehouse. According to evidence from the claimants, the manufacturing cost of the products expected to be recovered was £1,752,415. The manufacturing cost value of the stock in fact recovered was £647,263 amounting to a shortfall of £1,105,152. The market value of this stock was over £2.8 million.
7. On 28th October 2022 Mr. Cooper emailed the claimant's solicitors to provide information pursuant to the order made by Mr. Healy-Pratt. The email stated that certain items had been disposed of by agreement because they were not fit for consumption or had been damaged, and that certain products had been sold. An invoice dated 1st August 2022 was attached.
8. On 30th March 2023 the claimants applied to commit Mr. Cooper to prison for non-compliance with the order made by Mr. Healy-Pratt.
9. On this contempt I concluded in my judgment:

“The purpose of the order was to identify what remained in their possession and fell to be returned and to provide details (including documentary material where available) of what had become of the balance of the stock. It was always open to Mr Cooper to produce his own inventory. The email of 28th October fell well short of what was contemplated and required under the court order as Mr Cooper was, on my assessment of his own evidence, well aware. His response to the order of 25th October 2022 was at best partial and, in my view, deliberately evasive; an approach to compliance with court orders which, despite the concessions he was forced to make, he brought with him into the witness box. I am satisfied to the

criminal standard that he is in breach of the order and that the first contempt application is made out.”

10. On 26th April 2023 O'Farrell J issued a freezing order against the defendant. That order also required the defendant to file and serve by 4.30 p.m. on 3rd May 2023 an affidavit setting all his assets exceeding £1,000.
11. On 12th May 2023 Mr. Cooper attended a hearing before Mr. Dexter Dias KC with three hard copies of a draft affidavit. The draft affidavit did not contain the list of assets but stated that the information had been provided on 3rd May 2023, a reference to an email Mr. Cooper stated he had sent on that date.
12. On 12th May 2023 Mr. Dexter Dias made an order which required Mr. Cooper to serve an affidavit setting out the required information. No such affidavit was served.
13. On 2nd June 2023 the claimants brought a contempt application arising out of the failure to comply with the Dias Order. It is not in dispute that Mr. Cooper failed to comply with the relevant part of that order. The question was whether it constituted a technical breach in the light of the earlier email which the claimants disputed having received. I concluded that this was not a technical breach. I found:

“The court was in a position on 12th May to consider whether the earlier order had been effectively complied with or whether an affidavit was required. Mr Cooper was told in terms that he should swear an affidavit and an order was made to that effect. It contained a recital that it was made 'Upon the Defendants having failed to comply with paragraph 10 of the Court's order of 26 April 2023'. It required an affidavit by 19th May. Mr Cooper ignored that order just as he had ignored the earlier order. His assertion that he mistakenly thought he had complied in relation to both orders is unconvincing. The email dated 4th May 2023, addressed to Mr Hughes, contains an obvious error in a field that ought to have been generated automatically if the email was genuine. The list of assets which the email contains is short on detail, not replicated in the body of the affidavit and, the Claimants suggest, may be understated or incomplete. There is no reference at all to any bank account operated by Inpero. The first step however was for Mr Cooper to swear and serve an affidavit in compliance with the order.”

The Legal Framework

14. The court may pass an immediate custodial sentence of up to two years under section 14(1) of the Contempt of Court Act. Any custodial sentence imposed should be as short as possible, consistent with the circumstances of the case: see *Aquilina v Aquilina* [2004] EWCA Civ 504. If imprisoned, Mr. Cooper would have an automatic entitlement to release after he serves half of this sentence. The court may, however, suspend prison sentences or impose an unlimited fine.

15. *Crystal Mews Limited v Metterick & Others* [2006] EWHC 3087 (Ch) provides useful guidance on the factors which assist in the assessment of the seriousness of the contempt. Those are:

“First, whether the claimant has been prejudiced by virtue of the contempt and whether the prejudice is capable of remedy. Second, the extent to which the contemnor has acted under pressure. Third, whether the breach of the order was deliberate or unintentional. Fourth, the degree of culpability. Fifth, whether the contemnor has been placed in breach of the order by reason of the conduct of others. Sixth, whether the contemnor appreciates the seriousness of the deliberate breach. Seventh, whether the contemnor has co-operated.”

16. In *JSC BTA Bank v Solodchenko* [2010] 1WLR 350 Jackson LJ gave the following guidance:

“56. In the case of continuing breach, out of fairness to the contemnor, the court may see fit to indicate (a) what portion of the sentence should be served in any event as punishment for past breaches and (b) what portion of the sentence the court might consider remitting in the event of prompt and full compliance thereafter. Any such indication would be persuasive, but not binding upon a future court.

57. It should also be noted that what the court is passing is a nominal sentence. The actual time spent in prison will be less, because of remission, possible release on tagging and so forth. The court does not have regard to those factors in determining the proper sentence in any case.”

17. In that case Jackson LJ set out the following principles in relation to contempt involving freezing orders. He said at paragraph 55:

“... I derive the following propositions concerning sentence for civil contempt, when such contempt consists of non-compliance with the disclosure provisions of a freezing order:

(i) Freezing orders are made for good reason and in order to prevent the dissipation or spiting away of assets. Any substantial breach of such an order is a serious matter, which merits condign punishment.

(ii) Condign punishment for such contempt normally means a prison sentence. However, there may be circumstances in which a substantial fine is sufficient: for example, if the contempt has been purged and the relevant assets recovered.

(iii) Where there is a continuing failure to disclose relevant information, the court should consider imposing a long sentence, possibly even the maximum of two years, in order to encourage future co-operation by the contemnor.”

18. In *Templeton Insurance v Thomas* [2013] EWCA Civ 35 the Court of Appeal held:

“... whereas it will always remain appropriate to consider in individual cases whether committal is necessary, and what is the shortest time necessary for such imprisonment, and whether a sentence of imprisonment can be suspended, or dispensed with altogether: nevertheless, it must now be accepted that the attack on the administration of justice which is made when a freezing order is breached usually merits an immediate sentence of imprisonment of some not insubstantial amount.”

19. General guidance as to the approach to penalty was provided by the Court of Appeal in *Liverpool Victoria Insurance Company Limited v Khan* [2019] EWCA Civ 392 and reaffirmed by the Supreme Court in *Attorney General v Crosland* [2021] UKSC 15:

“General guidance as to the approach to penalty is provided in the Court of Appeal decision in *Liverpool Victoria Insurance Co Ltd v Khan* [2019] EWCA Civ 392; [2019] 1 WLR 3833, paras 57 to 71. That was a case of criminal contempt consisting in the making of false statements of truth by expert witnesses. The recommended approach may be summarised 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 of 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."

Aggravating Features - The First Contempt

20. Mr. Cooper was, I found, deliberately evasive in his purported compliance with the order of 25th October 2002. He was well aware of his obligations under the order and chose not to comply with them. Applying the factors in the *Crystal Mews* case I conclude and find that the breach has caused substantial prejudice to the claimants because it has led to the loss of £2.8 million worth of perishable merchandise which is the subject of an entirely unsatisfied judgment. The breach is irrevocable and not capable of remedy. Mr. Cooper's non-compliance with the order was deliberate. His culpability is high because he was in the position of an agent and distributor for the claimants and, hence, in a position of trust in relation to goods which were entrusted to him in the course of the business relationship.
21. The inexorable conclusion must be that he abused that trust in order to sell on or dispose of the goods for his own benefit. He has deliberately ignored court orders and has failed on a continuing basis to provide information. He does not share responsibility with anyone else as he was the sole director and shareholder of Inpero. He does not appear to appreciate the seriousness of his conduct and has shown, in my view, little remorse.

The Second Contempt

22. This was a breach of a freezing order. There is a clear public interest in breaches of orders of this type being regarded as amongst the most serious. The purpose of such an order is to provide a speedy, interim remedy. Delayed compliance may be as harmful and serious as no compliance at all.

Mitigation

23. Mr. Cooper is 35 years of age. He has no previous criminal convictions or findings of contempt against him.

The Contempts

24. The defendant submits that the first contempt is not a case of total non-compliance because Mr. Cooper did in fact deliver up products although the total cost value was £647,000. He did also supply a certain amount of information with a supportive invoice. He conceded in the course of his evidence at trial that he had not provided

the detail of information required. Notwithstanding the lapse of time since the judgment was handed down, he has not sought to purge his contempt by shining any further light on what became of the vapes and has only provided further information as to his assets recently.

25. As far as the second contempt is concerned, it is said that the circumstances include the fact that he did attempt to comply with the earlier order of O'Farrell J and attended the subsequent hearing with hard copies of an affidavit, although it is accepted that the affidavit did not include the required information. It is suggested that some latitude should be given to him as a litigant in person for his evident confusion about the procedural position. It was submitted that he has purged his contempt in relation to this contempt by providing an affidavit albeit last Friday, at the eleventh hour.

His Mental Health and Personal Circumstances in the period of the Contempt

26. Mr. Cooper has a previous history of significant depression. The psychiatric report from Dr. Pilgrim diagnoses him with a recurrent depressive disorder. He suffered a depressive episode in 2013 and he took an overdose of tablets in 2015. There was also a decline of his mental health in 2020 when he suffered from low mood, sleep and appetite disturbance with suicidal ideation. Sadly, he has tried to commit suicide on more than one occasion.
27. Mr. Cooper's child was born in July 2022 and was just nine weeks old at the time of the order made by Mr. Healy-Pratt. Two days before the deadline for compliance with the order of 19th May 2023, his GP records say that he was struggling with sleep, anxiety and was drinking. He was prescribed sedating anti-depressant medication.
28. The second contempt application was brought on 2nd June 2023. His General Practitioner's records note that on 15th June his mood was low, he was tearful and not sleeping. Towards the end of that month he was prescribed anti-depressants. On 13th July 2023 it was noted that he was under tremendous stress.

His Position as a Litigant in Person

29. Mr. Cooper is a litigant in person in the underlying proceedings. In the course of the litigation in which the contempt applications were made, he was represented by counsel by the time the matter came before me. He gave evidence that he had struggled to keep up with the proceedings when he was acting for himself. He is based in the North East and faces difficulties in dealing with proceedings which were brought in London.

His Present Mental Health and Personal Circumstances

30. Mr. Cooper continues to suffer from poor mental health including his recurrent depressive disorder. The medical evidence suggests that he had a severe episode of depression towards the end of 2023 and has a mild degree of severity at present. It was submitted that imprisonment would lead to an exacerbation of his depressive disorder and an increase in the risk of suicide. Dr. Pilgrim, whilst agreeing that there would be an increase in the severity of symptoms, thought that the suicide risk and any decline in his mental health could be managed appropriately in a custodial setting.

Mr. Cooper also suffers from alcohol dependency and has done so from 2020. He has used alcohol and cocaine as coping mechanisms.

31. He lives with his partner and has five children and three stepchildren. He has shared care of his five children who are with him for half of the week and for every other weekend. He also helps to care for his stepchildren six days a week and one of his own children lives with him full time. Plainly, any sentence would have a significant effect on them.

Sentence

32. There would be no purpose in a coercive order at this stage. It is unlikely that Mr. Cooper could either return any of the stock which is outstanding or provide any information which would lead to the recovery of usable stock. The claimants' loss is therefore complete and quantifiable in the sum I have referred to earlier.
33. The purpose of the sanction in this case is to indicate the court's disapproval of the breach of his orders and to serve the public interest in ensuring that there is a deterrent which encourages compliance and makes the consequences of a failure to comply clear.
34. The custodial threshold has been passed and the breaches are so serious in my view that only a sanction involving immediate custody is sufficient. The powerful personal mitigation succinctly set out by Mr. Uberoi, in particular the impact of such a sentence on others, can only be reflected in the length of sentence. It will be shorter than it would otherwise have been in their absence. I bear in mind that Mr. Cooper will not have experienced the prison environment before.
35. There will be a sentence on each contempt of nine months to run concurrently with each other, so a total sentence of nine months. As I have explained, Mr. Cooper will be entitled to be released when he has served half of that term.
36. That is the sanction of the court.

(Discussion on costs followed)

(This Judgment has been approved by the Judge.)

