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IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

[2022] EWHC 1824 (QB)

No. QB-2020-004209

Royal Courts of Justice
Strand
London, WC2A 2LL

Wednesday, 27 April 2022

Before:

HER HONOUR JUDGE WALDEN-SMITH

B E T W E E N :

BASILDON BOROUGH COUNCIL

Claimant/Applicant

- and -

THOMAS ANDERSON & Ors.

Defendants/Respondents

MR W. BEGLAN appeared on behalf of the Claimant/Applicant.

MR W. WEBSTER appeared on behalf of the Third Defendant/Respondent.

J U D G M E N T

(Transcript produced without the aid of documentation)

JUDGE WALDEN-SMITH:

The application to discharge

- 1 This is an applicant pursuant to the provisions of CPR 81.10 made by the third defendant in this action to discharge a committal order that was made against him on 9 February 2022 by Mr Recorder Smith, sitting as a Deputy Judge of the High Court.

The planning background

- 2 This matter has a rather long and tortuous history. It relates to land at Redlands, Hovefields Drive, Wickford in Essex which is registered at the Land Registry under Title No.EX710339. The land falls within the Metropolitan Green Belt and Basildon County Council was the local planning authority for the administrative area in which the land was located.
- 3 There have been no planning consents for the land and there is a long history of attempts to develop the land which have resulted in the local authority seeking and obtaining injunctions going back to 2004 by Mackay J., in 2007 by Butterfield J., and in 2007 by Swift J. There was, it appears from the papers, a sale of the land into various plots in or about 2020 and in November 2020 significant works of development were reported by Essex Police to Essex County Council.
- 4 As a consequence of that work, and the actions of Basildon Borough Council, a number of orders were obtained from this court. A detailed history of this matter has been set out by Foxtton J. in his judgment in this matter. In summary, Garnham J. granted an order prohibiting any development work on the land on 29 November 2020. That appears to have been an order made on an urgent application. A further order was made by Cutts J. on 30 November 2020. That second order was continued by order of Foxtton J. on 9 December 2020 together with a power of arrest which included orders to remove various items from the land. Permission to appeal that order was refused by Floyd L.J. on 14 December 2020.
- 5 The matter was then brought before the court for a committal hearing on 12 February 2021. That order compelled the defendants, including the third defendant, to remove items on the land and for works to be undertaken by 10 April 2021 as a condition of suspending a sentence of custody of four months suspended for a period of twelve months. There was a further order that imposed a custodial sentence of three months, again suspended for a period of twelve months. The sentences of four months and three months custody were ordered to be served consecutively. With respect to the Third Defendant, any custodial part of the sentence would be served in the Young Offenders Institute.
- 6 Mrs Justice Simler noted that there was an automatic right of appeal to the Court of Appeal with respect to the committal, but the appeal against that committal order was dismissed on 16 March 2021 by the Court of Appeal. In the course of that judgment, the following was said:

“The answer to this appeal brought as of right, is a simple one. These orders were an entirely proper response to the Appellants’ calculated disobedience with the court’s orders against a background of serious, wholesale defiance of the planning laws. The breaches of the orders were not disputed and the sentences passed by [the] Judge were the

least that he could reasonable have imposed in the circumstances. His decision to suspend the sentences was more than fair to the Appellants. The timings he gave for compliance were similarly generous. There is nothing of any substance in the grounds of appeal.”

7 It was noted in the Court of Appeal that the defendants claimed being concerned about their obligations at that time to abide by Covid regulations. The court held that they would have had a reasonable excuse for moving off the land in compliance with a court order.

8 Further, it was held:

“I finally reject the submission that the Judge did not take sufficient account of the Appellants’ personal circumstances. The maximum term of imprisonment for a contempt of court is two years, and the breaches in this case are brazen. The level of the sentences shows that the Judge well understood the human factors, in addition to which he suspended them when he might have made them immediate. In any case, as Floyd LJ said, it is unattractive for those who are in plain breach of the civil and criminal law to contend that insufficient consideration has been given to their interests by those taking the necessary steps to return the land to the condition it was in before they entered on it.”

9 The time for compliance with the orders was varied but then there was a further application to commit in light of a failure to comply with the orders. That application came before Ritchie J. on 7 October 2021. On that occasion the sentences were activated with the orders of four months and three months to be served by this defendant consecutively.

10 On 11 and 12 November 2021 the matter came back before HHJ Lewis, sitting as a Deputy High Court Judge. That application, included an application for discharge of the order for committal. The principles set out by the Court of Appeal in *CJ v Flintshire Borough Council* [2010] EWCA Civ 393 were set out by the judge, namely, in an application for early discharge the court needs to consider the following:

- “(i) Can the court conclude, in all the circumstances as they now are, that the contemnor has suffered punishment proportionate to his contempt?
- (ii) Would the interest of the State in upholding the rule of law be significantly prejudiced by early discharge?
- (iii) How genuine is the contemnor's expression of contrition?
- (iv) Has he done all that he reasonably can to demonstrate a resolve and an ability not to commit a further breach if discharged early?
- (v) In particular has he done all that he reasonably can (bearing in mind the difficulties of his so doing while in prison) in order to construct for himself proposed living and other practical arrangements in the event of early discharge in such a way as to minimise the risk of his committing a further breach?

- (vi) Does he make any specific proposal to augment the protection against any further breach of those whom the order which he breached was designed to protect?
- (vii) What is the length of time which he has served in prison, including its relation to (a) the full term imposed upon him and (b) the term which he will otherwise be required to serve prior to release pursuant to s.258(2) of the Criminal Justice Act 2003?
- (viii) Are there any special factors which impinge upon the exercise of the discretion in one way or the other?"

11 Having considered all of those matters, the judge concluded that the only works remaining compromised work to the access road to the site that was on the third defendant's land. That access road, as was said by the judge, had been kept in place to allow the other plots to be cleared and the third defendant had offered an undertaking to the court to ensure that that access road would be cleared within 28 days. It was also said by the third defendant on that occasion that he would do all he could to encourage the other owners to clear their plots and would encourage his twin, the fifth defendant, and his cousin, the sixth defendant, to hand themselves in.

12 The third defendant had explained to the judge in his witness evidence that his detention so far in the Young Offenders Institute had been the worst experience of his life; he referred to it as being awful and frightening, that he had been constantly scared, and that there had been a significant number of cockroaches to the extent that he had to spend the night on the top bunk with his cellmate. He alleged he did not receive sufficient food, that he had limited washing facilities, and that he was expected to share space, including showers, with adult prisoners. The consequences of all that resulted in him feeling hopeless and depressed.

13 Having taken all those matters into account the judge concluded this:

"The third defendant's failure to comply with court orders was extremely serious, repeated, deliberate and flagrant. There is a significant public interest in contemnors serving a proper sentence for such non-compliance with court orders, not only to punish the third defendant himself, but to deter him (and others) from disregarding court orders.

That said, I am satisfied that there is now a solid basis for the third defendant to be released given the fact that the site has been cleared, and he is very close to having served the penal part of his sentence.

I will accept the formal undertaking offered by him ..."

and then he reminded the third defendant that the injunction of Foxton J. remained in force. He ended with these words:

"It hopefully goes without saying that should he breach the injunction again he would be likely to be facing a more significant period of detention."

- 14 Having, therefore, been released in order to purge his contempt by giving the undertaking to have the access road removed within 28 days, the third defendant failed to comply with that undertaking and so the matter came before Potter J. on 21 December 2021. The matter then came before Mr Recorder Smith, sitting as a Deputy High Court Judge, on 11 January, the 8 and 9 February, 7 April and 12 April 2022.

The hearings in 2022

- 15 At the hearing on 8 and 9 February 2022, the judge ordered, first, that the third defendant be sentenced to seven months' custody in a Young Offenders Institution suspended for twelve months.

“That sentence shall be suspended only if and so long as the third defendant complies with the condition of suspension.”

The conditions of suspension included the removal of the hard material making up the access track within the land. The judge said in his judgment that it was common ground that the undertaking was not complied with by 12 December 2021 or at all.

- 16 The third defendant was, on that occasion, seeking to vary the conditions. The judge set out the basis upon which he refused that application, taking into account the decision of the Supreme Court in *Birch v Birch* [2017] UKSC 53 that the court has no power to vary an undertaking already accepted, but it does have a power to release parties from an undertaking either unconditionally or on condition that a further undertaking on different terms is offered. Effectively, three matters need to be considered, including whether there was a significant change of circumstances, whether the evidence provided was sufficient to establish that the undertaking as given could not be complied with, and whether the release of the undertaking would be just.
- 17 The judge, in suspending the further sentence of imprisonment for failure to comply gave the third defendant a further opportunity to comply with the removal of the hardstanding track by 9 March 2022. A further hearing was due to take place on 10 March 2022, the day after that undertaking ought to have been performed, but that hearing was adjourned on the basis that the third defendant had been subjected to threats.
- 18 On 7 April 2022, at a further hearing to deal with the ongoing contempt, the third defendant said on that occasion he wished to try to remove the road and, as a consequence, the hearing was adjourned on the basis that the third defendant would put forward a written proposal for the removal of the access road. It is not clear to me that it was apparent to the judge at the hearing on 7 April 2022, that by that time the majority of the third defendant's family had already left for Canada. I am told that happened on 31 March 2022, with the third defendant remaining in this country, it is said, in order for him to attend the hearing he was obliged to attend on 7 April 2022 and also because his wife, who was then aged only 17, was understandably very reluctant to leave her own close knit family. The fact that the remainder of his family had left the jurisdiction may have given Recorder Smith concern that the third defendant would be tempted to follow them to Canada.

Subsequent to 7 April 2022

- 19 No proposal was put forward subsequent to 7 April 2022 and the third defendant has now left the jurisdiction. He is only aged 20 himself and he is in Canada with his young wife of

17 and they have joined the third defendant's father and five brothers who, as I have said, apparently left this jurisdiction on 31 March 2022.

- 20 The third defendant now seeks to vary the undertaking and in order to determine whether there should be a variation of the undertaking, this court must also follow the decision of the Supreme Court in *Birch v Birch*.

Application to be heard remotely

- 21 Before considering the application to vary, in accordance with the principles set out in *Birch v Birch*, I need to consider an application that has been made that, despite the third defendant having absented himself from this country, he wishes to be heard remotely by this court in order that he can add to his evidence if he so wishes.
- 22 I am not going to accede to that application. It is quite clear from the reading of various judgments in this case that great concern has been expressed by judges on previous occasions about the veracity of the evidence that is given by this third defendant to the court.
- 23 More fundamentally, this is a case where the defendant has chosen to absent himself from this court. It is said by him that he has been subject to various threats, and threats of considerable violence, whenever he has made attempts to remove this track from the land. However, there is no suggestion that he is subjected to violence, or the threat of violence, generally, or that he will be subjected to violence if he were to attend court.
- 24 The third defendant has chosen to absent himself from this court hearing because (and this is very clear from his own evidence) he is concerned that his failure to comply with the undertaking he gave, to clear the access road, will result in the suspended sentence of seven months custody being activated. He has been given enumerable opportunities to comply with the undertakings he has given to remove that track. That is a matter I will deal with in greater detail when considering whether there should be a variation. With respect to being absent from this court hearing, it is quite plain that he is absent because he does not wish to face the consequences of his failure to comply with the terms of the undertaking he gave and his ongoing breach. His failure to be in court is not because of violence or the threat of violence.
- 25 Having decided to absent himself he, nonetheless, asks to be heard remotely. To accede to such an application would, in my judgment, be entirely undermining of the rule of law and I accept, as has been put forward by counsel on behalf of the claimant, an abuse of the process of this court. An individual cannot at the same time avoid the jurisdiction of the court and also wish to be heard by the court.
- 26 Further, there is no obligation upon the court to hear a contemnor give evidence. That is entirely a discretionary matter: see Lord Bridge in *X Ltd v Morgan (Grampian) Publishers Ltd*. [1991] 1 AC 1, citing Lord Bingham LCJ in *Arab Monetary Fund v Hashim*, an unreported case of 21 March 1997, in which he said:

“... whether in the circumstances of an individual case, the interests of justice are best served by hearing a party in contempt or by refusing to do so, always bearing in mind the paramount importance which the court must attach to prompt and unquestioning observance of court orders.”

In this case there is written evidence, some of it unsigned, which has been put forward on behalf of the third defendant. I have taken the opportunity of reading that evidence in detail. In all the circumstances of this matter it would be an inappropriate exercise of my discretion to additionally listen to the third defendant who, as I have made clear, has voluntarily absented himself from this court in order to seek to avoid the consequences of a failure to comply with a court order over a significant period of time.

Application to vary

- 27 Turning then to the issue as to whether there should be a variation of the undertaking I must follow the Supreme Court in *Birch v Birch*. The first issue is whether there has been a significant change in circumstances. In determining this issue, the court needs to look at that not only in the context of what has happened since the undertaking was first given but also as to what has happened since the hearing before Mr Recorder Smith on 8 February and on 7 April 2022.
- 28 On 7 April 2022, the third defendant obtained the indulgence of the court, telling Mr Recorder Smith that although he had been subjected to threats, he still wished to comply with the terms of the undertaking he had given. The evidence available suggests that significant threats were made against the third defendant on 16 February 2022, i.e. a few weeks before the hearing on 7 April 2022. Knowing about those threats, and saying to the court that he still wished to seek to comply with the undertaking, was a clear indication that, regardless of those serious threats, he still felt able to comply with the terms of the undertaking. To suggest otherwise at this time would be to suggest that the third defendant had deliberately sought to mislead the court (not something he suggests he was doing).
- 29 What is said on behalf of the third defendant is that it is not now possible for him to comply with the undertaking he gave because he fears for his own safety. It is said that is the reason why he left the jurisdiction, sometime after 7 April 2022, and why he is absent from this hearing. The court has been informed that the third defendant's father and brothers left on or about 31 March 2022. The third defendant was still in the jurisdiction on 7 April 2022 as he appeared at the court hearing on that date. It is not clear precisely when he left the jurisdiction.
- 30 The available written statements include a signed one from the third defendant. In that statement he sets out that he has made his best efforts to comply with the terms of the undertaking and that, on 15 February 2022, with his twin brother, he started work on the track but they did not have the right machinery and so they abandoned work until the next day in order for the necessary machinery to be available.
- 31 On the following morning, on 16 February 2022, the vehicles arrived in order to enable the third defendant and his twin brother to dig up the road but, after about an hour working at the site, they heard and saw people coming down the access track from Hovefields Drive. The third defendant says there were at least five of them; they were all wearing balaclavas, so he could not see their faces, but he could see they were carrying knives, baseball bats and other weapons. He said he did not stay to see what else they were carrying, but it looked to him like pick handles and a sledge hammer. He said that, on seeing the knives, he recognised they were in serious danger as those were weapons to be used against people and not simply to smash up machinery. He said the males were shouting and screaming, "What the fuck are you doing? Get off this land" as they approached them and started smashing everything up. The third defendant said that he and his twin brother removed themselves from the site, running or jumping over fences, and then hiding until the police arrived. He

said that one of the drivers of a truck, who had been hired by them to assist, had also run away and he had found that his truck had been damaged. I have seen a number of photographs that have been provided of damage to both the lorry and to a mini-digger.

- 32 There have been a number of statements provided on behalf of the third defendant via Rebecca Ireland, who is one of the Crown Court caseworkers at the firm of solicitors he instructs, who appears to have the greatest dealings with the third defendant in this matter. She says in her statement of 31 March 2022 that she received a telephone call from the third defendant's father on 16 February 2022 when she says he was clearly tearful and distressed and that he reported to her that both the third defendant and his twin brother had been working on the track but had been assaulted. She contacted Essex Police who said that the case had been given a crime number and she reports that PC Alan started the call by saying, "Not a single person disbelieves this" and the police had been called to attend the incident by a couple of callers.
- 33 She says that PC Alan reported that, during the initial 999 call, the police were informed that males in balaclavas had attended with knives and bats, that both the third defendant and his brother had managed to run away and were found hiding in the toilets, and that the case was being dealt with as criminal assault and criminal damage. The officer also said that he had received calls from a male who had been hired to help, who also confirmed that males with baseball bats and knives had arrived on the site and that he had run away.
- 34 She said that the officer said that in his view the third defendant was scared for his life; that the third defendant had been advised not to return to the site, and had been advised to stay elsewhere, and that multiple vehicles had been damaged.
- 35 It does not appear that any statement has been sought or obtained from the police to confirm what is set out in that statement or to give further details of any investigation. The individual dealing with this matter on behalf of the third defendant says that she endeavoured to obtain further evidence from others who were involved, but was told quite clearly that they did not wish to have any further involvement.
- 36 In a further statement from Rebecca Ireland made after the hearing on 7 April 2022, she says that she was at the court on 7 April and that she spoke by telephone to a police officer at Essex police explaining that the third defendant's attempts to remove the road had resulted in them fleeing the site and calling the police and that they had been asked to explore whether there was any protection or assistance that could be given to enable them to comply with the court order and therefore avoid a return to prison. When the officer was told that it would take three to five days to remove the access track, the police officer said that the police were not able to provide police presence for that period of time. He said the longest that the police would offer a presence to prevent a breach of the peace was 30 minutes. She then explained that the work had to be completed to avoid the risk of the third defendant being returned to prison and asked whether there were any other options available. He suggested that he should phone if there were any problems and that he should jump in a car and drive to safety, to which Ms Ireland explained that the access route would be cut-off if it were to happen again.
- 37 It does not appear from that statement that any further steps were taken to find a potential alternative way in which protection could be given for the third defendant to carry out the work on the site nor, indeed, that any attempts were taken to contact the police beyond speaking to the police constable who picked up the phone on that particular occasion.

- 38 There is a further statement before me from Ms Ireland. In that statement she sets out that she became aware that the third defendant's parents and brothers and travelled to Canada after his twin brother's wedding and that the third defendant himself was remaining in the jurisdiction in order to be at the hearing on 7 April 2022. But then, on 11 April 2022, she received a text message from the third defendant saying, "I can't take the road up. I'm too scared. I've thought about it for the past few days. I just can't risk it for me and Shannon." The court was thereafter notified of the situation.
- 39 Ms Ireland also says that she received information from the third defendant's father who said that, after the court hearing, he had received a call from a withheld number saying, "Your little boy was in court today wanting to lift up our road. You saw what happened last time and you know what will happen next time. Last time he and his brother were lucky to get away with their lives. Next time he won't get away so light."
- 40 The third defendant had endeavoured to obtain assistance from friends for the removal of the access road and for them to loan him machinery, but no one was willing to assist. The third defendant had, therefore, travelled to Canada, on a date after 7 April 2022, as he was frightened he would be sent to prison for his ongoing failure to comply the undertaking he had given to the court. Further, he said, "I'm not coming back until I feel safe and until I feel safe that I won't be sent to prison", making it clear, therefore, that his absence is from the court and the jurisdiction is because of his fear that his non-compliance with the undertaking would result in a further custodial sentence. Through his representatives, the third defendant has said that once the people on site are arrested and their plots cleared then he would feel safer to return to the site and commence work on the removal of the road.
- 41 I have also had the benefit of seeing a medical letter which has been provided by a Dr Andrey Vishnyakov, who is in Ontario. He says that the third defendant has symptoms consistent with a major depressive disorder, and that he has been prescribed mirtazapine. That letter is not admissible evidence. It does not comply with the provisions of Part 35 of the Civil Procedure Rules and is the sort of medical letter that has been deprecated on many occasions as it does no more than set out that which a doctor is able to say, relaying the narrative told to them. It may be a correct account of the third defendant's condition, but it is not necessarily anything more than a repetition of what has been said by the third defendant and, in the circumstances, it is not something that this court can place any reliance upon.
- 42 Finally, I have received two unsigned statements from the parents of the third defendant's wife. Those unsigned statements both purport to be the statements of both Miles and Tammy Cash and they set out the difficulties that they have had with their daughter leaving with her husband to Canada and the difficulties, it is said, about how the third defendant had been endeavouring to undertake the work. It is said that the 7 April 2022 was an incredibly difficult and emotional day for them all. It was very apparent to them that the third defendant was extremely fearful of the risk to his safety if he tried to recommence work on the access track, but he was also terrified of the alternative consequence of being returned to prison. Against the advice of all members of his family that were present that day, the third defendant confirmed to the court that he would comply with the court order and clear away the road.
- 43 As the statements were not signed, it is not clear to me whether that is the purported evidence of Tammy Cash, the third defendant's mother-in-law, or Miles Cash, his father-in-law. It is also not clear to me which members of the family were present at the hearing on 7 April 2022, as many of the family had already left for Canada and, as Ms Ireland says, there

were not as many family members present at that court hearing as was normally the case. In any event, if that evidence is properly the evidence of Tammy Cash and Miles Cash, it goes no further than saying that the third defendant was more fearful of carrying out the work in accordance with the court order and was, therefore, leaving the jurisdiction in order to avoid the inevitable punishment of the court for failure to comply with the undertaking that he had given.

- 44 Taking into account all that evidence, as I do, and applying the principles of *Birch v Birch* but without repeating all the matters that have already been dealt with in detail by Mr Recorder Smith, the evidence does not, in my view, amount to anything that is a further change in circumstances which would support a variation of the order or a discharge of that order.
- 45 As is set out by Lord Wilson in *Birch v Birch*, it is inconsistent with the admitted existence of a discretionary jurisdiction to say that it can never be exercised unless a particular fact, such as a significant change of circumstances, is established. If a discretionary jurisdiction is shackled in that way, the result is instead that the jurisdiction does not even exist unless the fact is established. For all practical purposes, however, unless there has been a significant change of circumstances since the undertaking was given, grounds for release are hard to foresee.
- 46 Mr Recorder Smith went through all the matters put before him on 7 April 2022. In determining whether there was a significant change in circumstances, Recorder Smith held that even if he were to accept that matters were as presented by the third defendant in his evidence, there had not been a significant change of circumstances. Effectively, what the third defendant was saying is that he had hoped that others would be agreeable to the removal of the access road and sympathetic to his position and that, although he anticipated some resistance, he thought he would be able to persuade others not to restore their plots.
- 47 The third defendant was fully aware of the coordinated and flagrant breaches of planning control by others when he gave the undertaking to remove the access road and it could not have come as any surprise to him that others would oppose the removal of the access road, possibly in the most aggressive ways.
- 48 In the evidence before me today, the third defendant is putting forward evidence that was available to him on 7 April 2022, which he chose not to. Instead he affirmed that he would be complying with the terms of the undertaking he had already given.
- 49 While the evidence that is now before me, with respect to what happened on 16 February 2022, suggests that there was an extreme level of violence that was potentially to be meted out to the third defendant if he continued with his obligation to comply with his undertaking contained in the court order, those were matters that he was obliged to work around either by seeking further assistance of others or by seeking assistance of the police in a more constructive and proactive way, rather than simply phoning the police on one occasion. Alternatively, the third defendant needed to work through a proposal as to how to fulfil his undertaking, which is what he said he would do at the hearing on 7 April 2022. He did not take those steps. Instead, he decided to flee the jurisdiction. Effectively what the third defendant has done is to give priority to a group of men who threaten, and potentially use, violence to prevent the fulfilment of a court order, rather than abiding by his undertaking or the court order. That is an affront to the rule of law.

- 50 There are, of course, ways around dealing with such situations. The third defendant, as a member of the travellers' community, may not be entirely comfortable with these ways but, nonetheless, these are not unusual circumstances for the court to have to deal with and in many occasions such orders, either by way of injunctive relief or by parties giving undertakings to the court, are properly fulfilled.
- 51 In this case, it is the third defendant's decision to act in a way to avoid the jurisdiction of the court, rather than to fulfil his obligations to the court, which puts him in the position he is in now. He could, and ought, to have given all the evidence available in the course of the hearing on 7 April 2022 and ought to have worked on a way to fulfil his obligations. The circumstances of this matter are really unchanged from when the matter came before Mr Recorder Smith, which is when there was the first application to vary the terms of undertaking. I cannot conclude, on the basis of the fact that the threats have moved up to potential use of violence, that there has been a significant change in circumstances.
- 52 Further, I am not satisfied that the evidence that has been put forward to the court, which is unsatisfactory in many respects for the reasons I have already explained, prevented the third defendant from complying with the undertaking. He should, as I have said, have dealt with the matter in light of the threats that were being faced and found ways, possibly in collaboration with the police or in collaboration with the local authority, and in those ways found the opportunities to fulfil the obligations that he made.
- 53 Finally, dealing with whether the release of the undertaking would be just, in my judgment it quite plainly would not be. As I have already said, it is an affront to the rule of law to say that a group of men who will use violence to fulfil their objectives should hold sway over an order properly made in the court and undertakings given to the court to complete certain actions.
- 54 It cannot be said that this case has not been thoroughly explored or examined by the courts. That is why I went through the history of the various hearings that there have been. This defendant has been given every opportunity to deal with matters appropriately. Ultimately, he took the decision that he did not wish to be subjected to the consequences of his non-compliance and, therefore, fled this jurisdiction.
- 55 It was set out clearly by HHJ Lewis when he granted the order for the third defendant to leave custody on his further application that he understood fully what he needed to do and that he understood fully the consequences of a failure to comply with the undertaking. It would be entirely wrong for this court to go behind the various determinations that have been made over the past twelve months at this stage to vary the undertaking that was given.
- 56 Consequently, I do not allow the application to vary. There is not a significant change in circumstances. The behaviour of others cannot, as I have said, undermine the court order and the machinery of this court cannot be frustrated by those third parties.
- 57 In the circumstances, therefore, it seems to me that the next step this court needs to determine is whether the application to commit should be dealt with in the absence of the third defendant.
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CERTIFICATE

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This transcript has been approved by the Judge.