Neutral Citation Number: [2024] EWCA Civ 1480

Case No: CA-2024-001113

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
KING'S BENCH DIVISION
COMMERCIAL COURT
Dame Clare Moulder DBE
[2024] EWHC 1096 (Comm)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 04/12/2024

Before:

LORD JUSTICE MALES
and
LORD JUSTICE PHILLIPS

- -

Between:

SHAHRAAB AHMAD	**Respondent /Claimant**
- and -	
(1) KARIM OUAJJOU **(2) YASMIN AL SAHOUD PEREZ**	**Appellants/ Defendants**

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- -

James Pickering KC (instructed by **Stokoe Partnership**) for the **Appellants**
Stephen Cogley KC (instructed by **RWK Goodman LLP**) for the **Respondent**

Hearing date: 27 November 2024

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Approved Judgment

This judgment was handed down remotely at 10.30am on [date] by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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LORD JUSTICE MALES:

1. This is an appeal against orders made by Dame Clare Moulder DBE committing each of the appellants to prison for nine months for contempt of court. The contempts in question arise primarily out of the sale of a property in Madrid contrary to the terms of worldwide freezing orders made against the appellants. The appellants admitted liability before the committal hearing, so the appeal is against only the sentences imposed. They contend, in short, that the sentences ought to have been suspended and in any event were too long.

2. I have concluded that (with one relatively minor adjustment which makes no difference to the overall sentences) the appeal should be dismissed.

Background

3. These proceedings concern a claim in debt and fraud brought by the respondent claimant for a sum in excess of €25 million, together with a counterclaim brought by the first appellant for an account of sums advanced by him to the respondent for the purpose of investment and for the return of the investment portfolio thereby created, the value of which is unknown.

4. The appellants, Mr Ouajjou and Ms Perez, are a married couple previously resident at the Madrid property but currently resident in Portugal. Worldwide freezing orders were made against each of them in 2022, initially on 18th March 2022 without notice and continued by consent on 30th March 2022. At the time the orders were made the appellants jointly owned the Madrid property.

5. In the usual way the freezing orders contained a prohibition on disposing of or dealing with assets, together with an exception for living expenses and legal fees which allowed each appellant to spend €2,000 a week on ordinary living expenses. The orders stated expressly that the prohibition extended to the Madrid property.

6. There are three contempts alleged by the respondent and found by the judge as follows:

   (1) After the date of the freezing orders Mr Ouajjou transferred his interest in the Madrid property to Ms Perez. The transfer was agreed in April 2022 and was recorded in a notarial deed in June 2022. The judge found that both appellants were aware of the terms of the freezing orders and that in knowingly accepting the transfer of Mr Ouajjou's interest, Ms Perez knowingly assisted Mr Ouajjou's breach of the order made against him. Accordingly both appellants were guilty of this first contempt.

   (2) On 27th October 2022 Ms Perez sold the Madrid property for €3,990,000. That sale was in breach of the freezing order made against her. Only Ms Perez was guilty of this contempt.

   (3) Between 27th October 2022 and 29th November 2023 Ms Perez spent €125,733 on living expenses, on average €2,612 per week. This expenditure exceeded the limit in the order made against her and was therefore a further breach of that order. Again, only Ms Perez was guilty of this contempt.

7. Accordingly the judge had to sentence Mr Ouajjou for the first contempt and Ms Perez for all three contempts.

8. The circumstances in which the Madrid property came first to be transferred to Ms Perez alone and then to be sold to a third party were that in 2021 the appellants were given tax advice concerning separation of their property. The advice was that it would be beneficial for Mr Ouajjou to move to Portugal as soon as possible; that assets and rights not located in Spain should be held in his name; that his interest in the Madrid property should be transferred to Ms Perez; and that the Madrid property should be sold and the price reinvested. It was not suggested that this was other than legitimate tax planning. In particular, it was not suggested that this was a scheme to remove assets out of the reach of creditors. However, once the freezing orders were granted, this scheme could not be implemented without breaching them.

The judgment

9. The judge imposed a sentence of nine months' imprisonment on Mr Ouajjou for the first contempt. She imposed concurrent sentences totalling nine months' imprisonment on Ms Perez, comprising six months for the first contempt, nine months for the second contempt, and three months for the third contempt. She declined to suspend these sentences.

10. The judge began by setting out the guidance provided by the Supreme Court in *Attorney General v Crosland* [2021] UKSC 15, [2021] 4 WLR 103 at [44]:

> '43. We turn therefore to consider what penalty is appropriate. The available penalties for an individual found in contempt of court are a term of imprisonment of up to two years (section 14, Contempt of Court Act 1981) or an unlimited fine. A sentence of imprisonment may be suspended.
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> 44. 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:
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> 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.
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> 2. In light of its determination of seriousness, the court must first consider whether a fine would be a sufficient penalty.
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> 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.
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> 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.
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> 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.
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> 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.'

11. *Crosland* did not involve a breach of a freezing order, but the judge referred to cases where such breaches had been specifically addressed:

> '18. … Applying the approach set out in the authorities and referred to above, the first step is to consider the seriousness of the breach. In this regard, whilst I note that each case is to be assessed on its own facts, the authorities are clear that breach of a court order is always serious because it undermines the administration of justice: Jackson LJ in *JSC BTA Bank v Solodchenko* [2011] EWCA Civ 1241 at [51], cited with approval in *McKendrick v Financial Conduct Authority* [2019] EWCA Civ 524 and by Nugee LJ in *Kea Investments v Watson* [2020] EWHC 2796 (Ch) at [9] – [10]:
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> > "9. The first question, therefore, is the degree of culpability and the degree of harm, those being matters which go to the seriousness of the contempt. The Court of Appeal continue in *FCA v McKendrick* at [40]:
> >
> > > 'Breach of a court order is always serious, because it undermines the administration of justice. We therefore agree with the observations of Jackson LJ in the *Solodchenko* case as to the inherent seriousness of a breach of a court order, and as to the likelihood that nothing other than a prison sentence will suffice to punish such a serious contempt of court.'
> >
> > 10. That is a reference to what Lord Justice Jackson had said in *Solodchenko*. At [51], having referred to there having been many cases involving breaches of freezing orders, he said:

> 'I shall not attempt to catalogue all those first instance decisions. What they show collectively is that any deliberate and substantial breach of the restraint provisions or the disclosure provisions of a freezing order is a serious matter. Such a breach normally attracts an immediate custodial sentence which is measured in months rather than weeks and may well exceed a year'."'

12. Before dealing with the individual contempts, the judge addressed the weight (if any) to be given to the appellants' witness statements in circumstances where they had not attended the hearing (either in person or remotely) and had remained outside the jurisdiction, with no good reason for their absence having been given, so that their evidence had not been tested by cross-examination. She concluded that 'the court cannot be satisfied that the witness statements tendered reflect the true position and approaches them with considerable caution. In particular, the genuineness of the apologies contained in the witness statements and which are relied on by counsel for the defendants as part of their mitigation, are in my view to be given little if any weight in circumstances where the defendants have deliberately absented themselves from this sentencing hearing'.

13. The judge dealt next with the position of Mr Ouajjou. She accepted that, as demonstrated by contemporaneous emails with Mr Ouajjou's Spanish lawyers, the transfer of the Madrid property to his wife had been planned as part of a legitimate tax planning exercise before the present litigation was contemplated. But she rejected as incredible Mr Ouajjou's claim in his evidence that it had not occurred to him at the time that the transfer was in breach of the freezing order. Moreover, although Mr Ouajjou had now admitted and apologised for the breach, he had only made the admission after the respondent was aware from public sources that the Madrid property had been sold and the judge regarded his apology as without real substance in view of his absence from the hearing for no good reason. She rejected also the submission that the transfer of his interest in the property to Ms Perez had caused no harm because it remained subject to the freezing order made against her: this was an overly-narrow view of the breach as the transfer to Ms Perez was always intended to be merely the first step towards the sale of the property.

14. Applying the principles set out in the authorities referred to above, the judge concluded in these circumstances that the contempt was so serious that only a custodial penalty would suffice, and that the lowest sentence which she could pass was a custodial sentence of nine months. She considered that suspension of that sentence was not appropriate given the serious nature of the breach. Further, there was no point in suspending the sentence in order to encourage compliance with the order, a course which is sometimes taken, as the breach was not capable of being remedied. Dealing with other points urged on behalf of the appellants, she said that while clause 12 of the Sentencing Bill, if passed, would impose a duty to pass a suspended sentence in place of short custodial sentences (i.e. 12 months or less), it was not law. There was no other general policy currently in force that, in contempt proceedings, the court is required to impose a suspended sentence in place of a short custodial sentence unless there are exceptional circumstances. Finally, there was no cogent personal mitigation requiring the sentence to be suspended.

15. Turning to the position of Ms Perez, the judge noted that although there were three breaches to be dealt with, it was necessary to bear in mind the principle of totality so that the overall sentence was just and proportionate to the offending as a whole. She regarded the sale of the Madrid property to a third party as the most serious of the three breaches. Ms Perez's evidence had been that a creditor who held a charge on the property had been seeking to force a sale and that she had been anxious to avoid this as there was a real risk with a forced sale that after payment to the creditor and repayment of a bank mortgage on the property, there would be nothing left. Ms Perez said that she had been advised by Spanish lawyers that because the freezing order had not been registered in Spain, there was nothing in Spanish law to prevent her from selling the property, and she claimed that she had not believed that she was doing anything wrong in doing so.

16. For the same reasons as in relation to Mr Ouajjou, the judge considered that this was a deliberate breach of the freezing order in disposing of a substantial and identified asset which was so serious that the custody threshold was passed. She accepted that Ms Perez had admitted the breach, but said that little mitigation could be derived from this because the sale was a matter of public record and had already been discovered by the respondent's lawyers. Ms Perez had said nothing about it for over a year, so there was no early admission. The evidence of Spanish legal advice did not provide mitigation: it did not say that Ms Perez did not understand the sale to be in breach of the freezing order, only that as a matter of Spanish law she could sell the property. The judge did not accept, given Ms Perez's background and the fact that she had received English legal advice about the freezing order, that she had honestly believed that the sale was not in breach of the freezing order. Nor did she accept that the risk of a forced sale at the instance of the creditor provided mitigation: by disposing of the property, Ms Perez had deprived the respondent of the benefit of the controls of the freezing order and the proceeds had been paid into a bank account which was not in existence at the time of the order and was therefore not within the scope of the appellants' disclosure provided pursuant to the order. The judge gave Ms Perez's apology little credence given its initially somewhat half-hearted terms and her absence from the hearing. However, the judge accepted that Ms Perez was the primary carer for three young children and said that she took into account the impact which a custodial sentence would have on them.

17. In these circumstances, the judge concluded that the lowest possible sentence for a serious and deliberate flouting of the order of the court was a sentence of nine months' imprisonment. She said that she would have imposed a longer sentence if it were not for the impact on the children. She said that she had considered carefully whether to suspend the sentence in view of the children and Ms Perez's role as a mother, but there was no evidence of any particular difficulties over and above the distress and disruption which a custodial sentence would have on any young family, and she had already reduced the overall sentence to take account of this factor.

18. As to the first contempt, the transfer of Mr Ouajjou's interest in the property to Ms Perez, the judge rejected Ms Perez's evidence that it had not occurred to her that this would be a breach of the freezing order: Ms Perez had a background as a lawyer and had been advised by English lawyers as to the effect of the freezing order. As with Mr Ouajjou, the transfer had to be viewed as the first step in the sale of the Madrid property; there was no early admission; and the apology had to be read in the light of the explanation, which the judge did not accept, that the breach was inadvertent, as well as

the failure to attend the hearing. Accordingly the lowest possible sentence was six months' imprisonment.

19. As to the third contempt, the breach of the spending limits, the judge regarded Ms Perez's apology as perfunctory and somewhat negated by the assertion that it would have been better if the order had provided an overall figure for both appellants. She accepted that the overspend was not a huge amount, but the custody threshold was passed. If this breach had stood alone, the judge would have suspended the sentence, but as sentences of immediate custody were to be imposed for the breaches already considered, an immediate custodial sentence of three months to run concurrently would be imposed.

The grounds of appeal

20. There are ten grounds of appeal against the sentences imposed by the judge. I will deal with each of them in turn. Before doing so, however, I would make three general points. The first is that Mr James Pickering KC, who represented both appellants in this court and below, expressly accepted that it was appropriate for the judge to impose custodial sentences, albeit he submitted that they ought to have been suspended. Second, it is clear from her careful judgment that the judge had well in mind the relevant principles for sentencing in such cases. Third, as appears from the cases which she cited, a deliberate and substantial breach of a prohibition on dealing with assets in a freezing order will always be a serious matter which is likely to attract an immediate custodial sentence, and that sentence may well exceed one year. That is important context for consideration of the appellants' submission that their sentences ought to have been suspended and that the terms of nine months imposed by the judge were too long. On the contrary, the true position is that the sentences imposed were relatively lenient for this kind of case, which suggests that the judge did indeed take into account and gave appropriate weight to the matters on which the appellants rely. The submission that a judge who has plainly taken a factor into account has given it insufficient weight is always likely to be a difficult submission for an appellant.

Ground 1 – Non-attendance: The judge gave undue weight to the fact that the appellants did not attend the hearing

21. Mr Pickering submitted that there was no direction for the appellants to attend the hearing and, as they had admitted the contempts, the hearing was only concerned with sentencing and mitigation. In those circumstances, the judge was wrong to criticise the appellants (who live overseas and have small children) for not attending and was wrong to discount the weight to be given to their evidence.

22. I would reject this submission. The judge had to decide how much weight should be given to the evidence given by the appellants in their witness statements. She was entitled to take account of the fact that the respondent had requested that the appellants should attend for cross examination and that they had made plain that they were not prepared to do so. While there was no order for their attendance (cf. CPR 81.7), their absence was obviously deliberate (there was no suggestion that they could not have attended if they had wished to do so) and meant that their evidence was untested. In some respects that evidence was implausible and cried out for cross examination, for example Mr Ouajjou's claim that it had not occurred to him that the transfer to Ms Perez was in breach of the freezing order against him and Ms Perez's claim that she had not

believed that the sale of the Madrid property was a breach of the freezing order against her.

23. In these circumstances I consider that the judge was entitled to give little or no weight to the appellants' evidence where it was not supported by contemporaneous documents. She was entitled also to conclude, for the detailed reasons which she gave, that the transfer of Mr Ouajjou's interest in the Madrid property to Ms Perez was a deliberate breach of the freezing orders by both appellants and that its sale to a third party by Ms Perez was likewise a deliberate breach of the freezing order against her. That was a legitimate basis for the judge's assessment of the appellants' culpability.

Ground 2 – Admissions, Cooperation and Apologies: The judge gave insufficient weight to the fact that the appellants (a) admitted the contempts, (b) themselves brought the contempts to the attention of the court (and to the respondent), (c) fully cooperated with the contempt process, and (d) sincerely and unreservedly apologised for the contempts

24. Mr Pickering pointed out that the appellants informed their solicitors of the transfer and sale of the Madrid property on 20th November 2023; that the solicitors immediately disclosed this to the court and to the respondent; that Ms Perez set out what had happened in a witness statement and provided an explanation of what had happened to the proceeds of sale (most of which had been used to discharge debts and legal fees, with a balance from which the appellants were drawing their living expenses); and that all of this had happened before the respondent issued any application to commit the appellants for contempt of court.

25. All of this is true, but it is not the whole story. In fact the appellants kept the transfer and sale of the Madrid property secret for over a year and only disclosed it in November 2023. They have never explained why they decided to tell their solicitors about it at this time, which is another obvious point for cross examination, but the fact is that the information about the sale was available from public sources and shortly before the appellants told their solicitors about it, the respondent's solicitors had discovered it for themselves. It is a reasonable inference that the appellants only made the disclosure, not because of a sudden pang of conscience, but because they were concerned that the information was about to come out anyway. As there could be no doubt about the sale, there was nothing to be gained by denying the breaches of the freezing orders.

26. In these circumstances the credit to be gained from an early admission of guilt was greatly reduced. It was a reasonable inference that the disclosure had in effect been forced upon the appellants, their admission of breach one month before the hearing could not be regarded as 'early', and their apologies had to be viewed in the context of the initial secrecy and the fact that they had only been made once disclosure of the truth was likely and the appellants were not prepared to come to court to apologise in person. It was true that there had been some cooperation in providing an account of what had happened, but I see no reason to doubt the judge's statement that she did take this into account in arriving at the appropriate sentences.

Ground 3 – Lack of material prejudice/Inability to purge: The judge gave insufficient weight to the lack of prejudice caused to the respondent (and the appellants' resultant inability to purge the contempt)

27. Mr Pickering submitted that the transfer of Mr Ouajjou's interest in the Madrid property to Ms Perez and its sale to a third party in breach of the freezing orders caused no prejudice to the respondent: if the property had not been sold voluntarily, the appellants' creditor would have been able to force a sale through court proceedings in Spain and the likelihood is that a lower price would have been achieved on a court-enforced sale. As there is no challenge to the appellants' evidence that the creditor did indeed have a charge on the property which he was likely to enforce, if necessary through court proceedings, there is some force in this submission.

28. However, I would not accept that it provides significant mitigation. It remains the case that the transfer to Ms Perez and the sale to a third party were deliberate and substantial breaches of the freezing orders, carried out secretly and not disclosed for over a year; and that the proceeds of sale were paid into an account at a bank which was not referred to in the appellants' disclosure and to which notice of the freezing orders had not been given. That is very different from what the appellants ought to have done, which was to make full disclosure of their proposed course of action to the English court with an application to vary the freezing orders so that a controlled sale could take place. I agree that, if such an application had been made with appropriate evidence, it is likely to have been granted, subject to proper safeguards, but as the appellants chose instead to go ahead regardless and without safeguards in breach of the freezing orders and only disclosed what they had done when it was likely to be found out anyway, it is not an attractive submission that in the end little or no harm may have been done.

Ground 4 – Prison overcrowding: The judge gave insufficient weight to the issue of prison overcrowding and government policy in respect of the same

29. Mr Pickering submitted that the judge failed to have appropriate regard to the current overcrowding of a prisons, in accordance with (a) the decisions of the High Court in *Tonstate Group Ltd v Wojakovki* [2023] EWHC 3447 (Ch) and *Advantage Insurance Co Ltd v Harris* [2024] EWHC 626 (KB) and (b) the provisions of the Sentencing Bill which was before Parliament at the time of the hearing before her and which envisaged a duty to suspend any prison sentence of 12 months or less in the absence of exceptional circumstances.

30. This is a somewhat ironic submission in a case where it is obvious that the appellants have no intention of coming to this country to serve any prison sentence, and therefore will never suffer from the effects of prison overcrowding. Regardless of the irony, however, I would reject the submission. I accept that the cases cited, *Tonstate* and *Advantage Insurance*, and in the criminal context *R v Ali* [2023] EWCA Crim 232, suggest that current prison overcrowding is a factor to be taken into account. It is likely to mean that prison is a more severe punishment than would otherwise be the case and therefore may (I emphasise 'may') justify a modest reduction in the term or, in some cases, suspension rather than immediate custody. However, prison overcrowding is not a valid reason not to pass a sentence of immediate custody if that is the appropriate sentence for the contempt in question.

31. In the present case the judge expressly took prison overcrowding into account but decided nevertheless that suspension was not appropriate. She was entitled so to conclude.

32. As to the Sentencing Bill, the judge was right to say that this was of no relevance – just as a draft guideline from the Sentencing Council is of no relevance until the draft becomes definitive.

Ground 5 - Impact on the appellants' children: The judge gave insufficient weight to the impact on and consequences for the appellants' children

33. Mr Pickering submitted that the judge gave insufficient weight to the impact of an immediate prison sentence on the appellant's young children in circumstances where both parents were being sentenced. I would reject this submission. As the Supreme Court explained in *Crosland*, a serious effect on children in the contemnor's care *may* justify suspension, but it will not necessarily do so. I would commend also the more extended treatment of this issue by Lord Justice Hughes in the criminal case of ***R v Petherick*** [2012] EWCA Crim 2214 at [15] to [25], which makes clear that the interests of dependent children is a factor relevant to sentencing, but that this has to be balanced against other factors such as the need to punish serious crime, the interests of victims, the need for appropriate deterrence, and the requirement to avoid unjustified disparity between different defendants; that the interests of innocent children can sometimes tip the scales so that a custodial sentence which would otherwise be proportionate should be suspended; and that where custody cannot be avoided, the effect on children may (but also may not) afford grounds for reducing the length of sentence. As Lord Justice Hughes concluded:

> '24. … It [the effect on children] is a factor which is infinitely variable in nature and must be trusted to the judgment of experienced judges.'

34. In the present case the judge expressly took into account the effect of immediate custody on the appellants' children. She noted that there was no evidence to suggest any particular difficulties over and above the distress and disruption which a custodial sentence would have on any young family. For example, there was no evidence that they could not be looked after by other close family members during the relatively short time during which a custodial sentence would be served before release on licence. So far as Mr Ouajjou was concerned, he was not the primary carer and his own evidence was that he spent substantial periods away from the family home in any event. The judge therefore made no reduction in his case. In Ms Perez's case, as I have already noted, the judge expressly stated that the sentence would have been longer if it had not been for its impact on the children.

35. There is no flaw in this approach. In accordance with the approach explained in *Petherick*, I would trust the judgment of this experienced judge.

Ground 6 - Unprincipled rejection of Mr Ouajjou's explanation: The judge rejected Mr Ouajjou's explanation for his admitted contempt for no principled or other good reason

36. Mr Pickering submitted that Mr Ouajjou had explained the tax advice which she had been given and had produced contemporaneous documents which supported this evidence. He had explained also that when signing the transfer to his wife of his interest in the Madrid property, he had considered this to be little more than an administrative act and not a breach of the freezing order against him.

37. There is nothing in this ground of appeal. As already explained, the judge did accept that Mr Ouajjou had received legitimate tax advice, but regarded as implausible his claim that it did not occur to him that the transfer was a breach of the freezing order. She was entitled to do so for the reasons already discussed under ground one.

Ground 7 - Failure to differentiate the position of Mr Ouajjou from Ms Perez: In sentencing Mr Ouajjou, the judge failed to sufficiently differentiate between the positions of Mr Ouajjou and Ms Perez

Ground 8 – Inconsistent / Non-commensurate sentences: In sentencing Mr Ouajjou, the judge imposed sentences which were not commensurate and / or were internally inconsistent

38. Mr Pickering addressed these two grounds together. He submitted that because Mr Ouajjou was guilty of only the first contempt, he ought to have received a lesser sentence than Ms Perez. The fact that he had not, and indeed that he had received a sentence of nine months while the sentence on Ms Perez for the same contempt was only six months, demonstrated that something had gone wrong. Either the judge had failed to distinguish between the different positions of the two appellants or she had in effect sentenced Mr Ouajjou for the sale of the Madrid property to a third party, when that was not one of the contempts alleged against him.

39. In my judgment this submission misunderstands the judge's approach. There was a material difference between the position of the two appellants as a result of the impact on their children of an immediate custodial sentence. The judge did not regard it as appropriate to reduce Mr Ouajjou's sentence as a result of this factor, for the reasons already explained, but she did reduce the sentence on Ms Perez. Thus the sentence on Ms Perez would otherwise have been higher, but she had mitigation to reduce the sentence which Mr Ouajjou did not. Accordingly the judge did differentiate between the two appellants and there is no inconsistency in the sentences which she imposed.

40. I would not accept that the judge sentenced Mr Ouajjou for the sale of the Madrid property, a contempt with which he was not charged. She had to and did consider what was the appropriate sentence for the transfer of Mr Ouajjou's interest in the property to his wife, but in doing so she was entitled to take into account the context for that transfer, which was that it was always intended to be the first step towards the sale of the property.

Ground 9 - Excessive sentences: The sentences were in each case excessive (including in particular the immediate custodial sentence for Ms Perez for slightly exceeding the weekly spending limit)

41. Mr Pickering submitted that the sentences imposed were harsh. He said that this was demonstrated by the sentence imposed on Ms Perez for the third contempt, in circumstances where the overspend was modest (€162 per week), had been admitted by Ms Perez who had produced a full account of her expenditure, and where Ms Perez had provided an assurance, with which she had complied, that it would not be repeated.

42. I do not accept this. The judge had to deal with what she found to be serious and deliberate breaches of prohibitions in the freezing orders which expressly referred to the Madrid property. In such circumstances the overall sentences imposed cannot be regarded as harsh. If anything, they were relatively lenient.

43. The judge explained that if the third contempt, relating to living expenses, had stood alone she would have imposed a suspended sentence. However, it was not possible to impose a suspended sentence for this contempt while also imposing sentences of immediate custody for the other contempts. We are concerned with the overall sentences imposed and there is nothing wrong with these.

44. Although it will make no difference to the overall sentence, I would make clear that in my view, if the living expenses contempt had stood alone, the custody threshold would not have been passed. This was in reality a married couple, living together, and no doubt sharing to some extent in their living expenses, some of which would by their nature have been likely to arise on a monthly rather than a weekly basis. Their combined spending was within the overall combined limit of €4,000 and Ms Perez's overspend was limited. It has not been suggested that the overspend was spent on anything other than ordinary living expenses.

45. I would give effect to this view by quashing the sentence of three months for the overspend on living expenses and (in view of the prison sentences rightly imposed on Ms Perez for the first two contempts) would impose no separate penalty for this contempt.

Ground 10 - Failure to suspend: Taking into account all matters, the judge was wrong to impose an immediate custodial sentence (as opposed to suspending the same)

46. So far as I can see, this final ground of appeal adds nothing to those which I have already considered. To the extent that it represents the view which it is said the judge should have taken as a result of standing back and considering the case overall, I disagree for the reasons already given. The judge gave compelling reasons for the sentences which she imposed in her impressive *extempore* judgment.

Conclusion

47. Save that I would quash the sentence of three months' imprisonment imposed on Ms Perez for the third contempt, I would dismiss the appeal.

LORD JUSTICE PHILLIPS:

48. I agree.