Case No: HC-2016-000468
Neutral Citation: **[2023] EWHC 2286 (Ch)**

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

Royal Courts of Justice
London
EC4A 1NL

Monday, 24 July 2023

BEFORE:

THE HONOURABLE MR JUSTICE ROTH

BETWEEN:

JOHN CHARLES JONES

Claimant/Respondent

- and -

RODERIC ALEXANDER INNES HAMILTON

Defendant

(ACTING THROUGH HIS TRUSTEES IN BANKRUPTCY)

Applicants

MR S RAMEL (instructed by Freeths LLP) appeared on behalf of the Applicants
MS S O'SULLIVAN (instructed by Janes Solicitors) appeared on behalf of the Claimant/Respondent

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JUDGMENT

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(Official Shorthand Writers to the Court)

Mr Justice Roth:

1. Following a hearing over six days and with further evidence submitted by Mr Jones after the conclusion of the hearing, I found by a reserved judgment issued on 24 May 2023 that Mr Jones was in contempt of court on seven grounds: [2023] EWHC 1216 (Ch). Those grounds formed part of the 15 grounds alleged in the amended committal application. I shall refer to that judgment finding Mr Jones in contempt of court as "the Judgment."

2. Mr Jones today appears before the court on the hearing to determine the sanction for those contempts. The delay between judgment and this hearing was at his request as he was granted permission to adduce a psychiatric report and asked for time to do that. I now have a full and helpful report by Dr Awonogun dated 7 July 2023, which I have, of course, taken into account.

3. Mr Jones has also filed a further witness statement in mitigation dated 17 July 2023. This followed the several affidavits and a series of witness statements which he made during the protracted duration of the committal proceedings, as explained in the Judgment.

4. Mr Jones is represented today, as he was in the committal hearing, by Ms O'Sullivan of counsel who has helpfully drawn the court's attention to the relevant authorities and said everything that could be said on Mr Jones' behalf.

5. The contempts all arise from breaches of various orders of this court. Those orders were made in underlying litigation between Mr Jones and the original applicant, Mr Hamilton, but Mr Hamilton became bankrupt in October 2019 and the committal proceedings have been pursued since then by his trustees in bankruptcy, who therefore became the applicants. The underlying proceedings between Mr Jones and Mr Hamilton resulted in a judgment in April 2019 that Mr Jones was liable to pay Mr Hamilton a very substantial amount of over €1.3 million plus the balance of various costs orders made on an indemnity basis. Interest has been accruing since then and various additional costs orders have been made against Mr Jones.

6. There is now a dispute as to how much of the total amount for which Mr Jones is liable has been discharged, but it is clear that there remains a very substantial judgment debt owed by Mr Jones to the bankrupt estate. Mr Jones, in his recent witness statement, recognises that this is for some £1 million. The applicants say the true figure is higher, for reasons explained in Mr Ramel's skeleton argument for this hearing, but it is not necessary for me to determine that dispute for present purposes.

7. In *JSC BTA Bank v Solodchenko* [2011] EWCA Civ 1241 ("*Solodchenko*"), Jackson LJ said at paragraph 45 that the sentence for a civil contempt:

> "… performs a number of functions. First, it upholds the authority of the court by punishing the contemnor and deterring others. Such punishment has nothing to do with the dignity of the court and everything to do with the public interest that court orders should be obeyed. Secondly, in some instances it provides an incentive for belated compliance because the contemnor may seek a reduction or discharge of sentence if he subsequently purges his contempt by complying with the court order in question."

8. Here, Ms O'Sullivan very properly recognised that there is no potential for compliance with the court orders as such. Mr Jones was ordered to retain funds in specified accounts but, by his repeated actions, those funds were paid away to third parties and, at some points, to Mr Jones himself. Those breaches, which denied Mr Hamilton and then his trustees in bankruptcy the opportunity to enforce the judgment debt some years ago, cannot be undone. It is not Mr Jones' failure to pay the judgment debt which constitutes the contempt: it is the breach of court orders requiring him not to reduce or pay out funds which he held at the time. The further contempts concern his failure to give proper information at the time about his assets which would have assisted efforts to enforce the judgment debt. But I should make clear at the outset that I regard the contempts in grounds 2 to 4 as the most serious, although ground 10, while much less significant in financial terms and a breach which Mr Jones may have purged - the facts surrounding ground 10 and Frog Events are somewhat unclear - is far from insignificant as, in my view, it shows Mr Jones' attitude to court orders made against him.

9. Here, Ms O'Sullivan makes a related submission that in so far as Mr Jones' breaches caused prejudice, there is the potential for him to remedy at least some of the prejudice

by now discharging the judgment debt, and that there is a real prospect of his doing so. I do accept that if Mr Jones were to discharge the debt due to the bankrupt estate, that would amount to mitigation and that it is appropriate in passing sentence to seek to give him an incentive to that end. Accordingly, although I think this is a case that falls more in the first of the two categories referred to in *Solodchenko*, there is an element in considering sanction to provide Mr Jones with an incentive to reduce the prejudice caused by his breaches.

10. In *Attorney General v Crosland* [2021] UKSC 15 the Supreme Court endorsed the general guidance as to penalty set out by the Court of Appeal in *Liverpool Victoria Insurance Company Limited v Khan* [2019] EWCA Civ 392 ("*Khan*") as applicable, also in a case of civil contempt. The approach in *Khan* was summarised by the Supreme Court 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 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 a suspension."

11. In addition to those principles, in *Solicitors Regulatory Authority v Khan* [2022] EWHC 45 (Ch) at paragraph 52, Leech J recently enumerated some further points of relevance (I omit authorities cited in the quotation):

> "(1) There are no formal sentencing guidelines for sentence/sanction in committal proceedings.
>
> (2) Sentences / sanctions are fact specific.
>
> (3) The court should bear in mind the desirability of keeping offenders, and in particular first time offenders, out of prison.
>
> (4) Imprisonment is only appropriate where there is "serious contumacious flouting of orders of the court".
>
> (5) The key questions for the court are the extent of the Defendant's culpability, and the harm caused by the contempt.
>
> (6) Committal to prison may serve two distinct purposes: (a) punishment of past contempt and (b) securing compliance.
>
> (7) It is good practice for the court 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.
>
> (8) Committal may be suspended (See CPR Part 81.9(2)). Suspension may be appropriate (a) as a first step with a view to securing compliance with the court's orders … and (b) in view of cogent personal mitigation."

12. In assessing the seriousness of the contempts, the courts now refer to a checklist of factors or criteria, most of which derive from the judgment of Lawrence Collins J in *Crystal Mews v Metterick* [2006] EWHC 3087 (Ch), together with a point added by Popplewell J in *Asia Islamic Trade Finance Fund Ltd v Drum Risk Management Ltd* [2015] EWHC 3748 (Comm). They have subsequently received approval of the Court of Appeal and are quoted in Ms O'Sullivan's skeleton argument for this hearing:

"(a) Whether the claimant has been prejudiced by virtue of the contempt and whether the prejudice is capable of remedy;

(b) the extent to which the contemnor has acted under pressure;

(c) whether the breach of the order was deliberate or unintentional;

(d) the degree of culpability;

(e) whether the contemnor has been placed in breach of the order by reason of the conduct of others;

(f) whether the contemnor appreciates the seriousness of the deliberate breach;

(g) whether the contemnor has co-operated;

(h) whether there has been any acceptance of responsibility, any apology, any remorse or any reasonable excuse put forward."

I shall consider these factors in turn.

(a) Prejudice to the claimant.

13. I consider that grounds 2 to 4 have potentially caused Mr Hamilton and then his estate significant prejudice. Mr Jones seeks to contend that they did not, since the payments out of what have been called the Tranche 3 monies were of money in Andromeda's account whereas Mr Hamilton's claim was against Mr Jones personally and not against Andromeda. However, that ignores the fact that by 15 October 2017 Mr Jones had a substantial and controlling shareholding in Andromeda so that there was potential to enforce the judgment by a charging order against the shares which Mr Jones held in Andromeda through Hebolux, another company which he beneficially owned. Moreover, I note that the payment of €525,000 out of Andromeda's account on 30 October 2017, which was part of ground 2 of the contempt findings, was in satisfaction of a liability not of Andromeda but of one of Mr Jones' other companies; and further, that payments totalling €715,000, which constitute ground 3 of the contempt, were to Mr Jones personally, whether of fees or repayment of loans. If such debts or liability of Andromeda to Mr Jones existed, that might also have been a basis on which enforcement against Andromeda could have been sought or other means

adopted to enforce, given the opacity of Mr Jones' business dealings. This is not the place to determine whether such enforcement could have been effective, but those opportunities were defeated by Mr Jones' total disregard of the court order.

14. In addition, and it is in my judgment a significant addition, if such enforcement had been achieved before October 2019, Mr Hamilton may not have been made bankrupt. He was the original applicant and his bankruptcy clearly caused significant prejudice to him personally.

15. The investment in the Black Falcon diamond, which constitutes ground 4 and which Mr Jones eventually admitted was a breach of the court's order, of course similarly depleted Andromeda's funds substantially. It was a speculative investment and, as events have proved, it was wholly unsuccessful. It was made in total disregard of the order of the court. The fact that Andromeda then went into administration in September 2021 is irrelevant. The judgment debt established by Master Teverson's order of 4 April 2019 arose long before then, so there would have been ample opportunity for enforcement in late 2019 and throughout 2020 if Andromeda had retained these funds. And indeed, it seems possible that if its funds had not been depleted in this way, Andromeda might never have become insolvent.

(b) Whether Mr Jones acted under pressure.

16. Ms O'Sullivan sought to submit that he did, relying on the tangled web of agreements and loans in which he was involved. She says at paragraph 40 of her skeleton argument:

> "… Mr Jones' business circumstances were complex, almost always significantly leveraged, and precarious, with near innumerable collateral and side agreements to every substantial deal or transaction. It is submitted that the pressure Mr Jones was under in trying to attain, and retain, financial security for him and his family was material to his actions and decisions over this period."

17. In my judgment, that is not pressure in the sense of pressure not to do what the court had ordered Mr Jones to do or to engage in acts which the court had prohibited. Mr Jones was a free agent, running his own ventures. Of course, he had incurred

various financial obligations. But the simple fact is that he had regard only to arrangements he wished to maintain with others and what he saw as investment opportunities, such as the Black Falcon diamond, in preference to compliance with the court orders against him. That is not pressure in the sense relevant to a sentence for contempt.

(c) Whether the breach was deliberate

18. This is a case of repeated breaches of a number of court orders, including breaches committed only several weeks after the 2017 order of Newey J was made, and breaches committed at a time when, as noted in the Judgment, Mr Jones was regularly speaking to his then solicitors and had ready access to legal advice. He now says that he bitterly regrets not asking them for advice as to what he could and could not do under the court orders. No doubt he does regret this now, but that was his deliberate choice at the time. His conduct is exemplified by the email which his then solicitors sent to Mr Hamilton's then solicitors after Mr Jones had been informed by them of the order of Newey J made on 29 September 2017. Mr Jones' then solicitors wrote:

> "We informed our client yesterday immediately after the hearing, and we are instructed that a sum of £2 m will be placed in a separate account. These funds will be held under the order made by the court yesterday."

19. No doubt Mr Jones' solicitors said that on his instructions. But it was completely untrue. Mr Jones did not place that money in a separate account and his conduct at the time, and indeed, his attempted justification for his actions afterwards, show that he never had any intention of doing anything of the sort. It is clear to me that this statement was not only misleading, but deliberately so, and it demonstrates that Mr Jones knew what he was required to do by the terms of the order.

20. Ms O'Sullivan suggested that Mr Jones was "unreasonably reckless" as to the effect of his actions rather than intending to breach the orders. That may be so regarding some of the breaches: for example the position under ground 8 concerning the Spanish properties is confused, and it may be that grounds 10, 12 and even 15 can be explained on the basis of "unreasonable recklessness." But, for reasons I have just given, I do not accept that grounds 2 to 4 can be characterised as unintentional.

21. I should add that I am not prepared at this stage to consider further evidence regarding the HPPEI loan. I discussed this at paragraphs 95 to 102 of the Judgment. Mr Jones has had ample opportunity to put in evidence over the period of some three years that these committal proceedings have taken and, indeed, he did put in much evidence. The HPPEI transaction was explored in great detail when Mr Jones gave his evidence at the committal hearing. It would be wholly inappropriate to revisit factual findings in the Judgment now, on the basis of yet further material on which Mr Jones cannot be cross-examined.

(d) The degree of culpability

22. I have referred to this already in the context of Mr Jones' intentions when committing the breaches. In *Financial Conduct Authority v McKendrick* [2010] EWCA Civ 524, the Court of Appeal at paragraph 40 said this:

> "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."

23. That is a reference to what Jackson LJ had said in *Solodchenko* at paragraph 51. Having referred to the fact that there had 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."

24. The present case is one where substantial sums were being claimed by Mr Hamilton against Mr Jones in the bitterly contested litigation between them. The freezing and disclosure orders were made in support of those claims, and then of Mr Jones' liability under the judgment order. The repeated disregard of those orders amounts, in my judgment, to a high degree of culpability.

(e) Whether the breach a result of others' conduct

25. The fifth factor on the checklist, that is being placed in breach by the conduct of others, does not arise in this case, as Mr Jones recognises.

(f) Whether the contemnor appreciation the seriousness of the deliberate breach

26. I accept that Mr Jones may now do so, but I think that is only after my judgment finding against him. He contested the committal hearing, denying most of the breaches, with the notable exception of ground 4, concerning the Black Falcon diamond, and ground 10 which he said was an oversight. But even as regards the diamond, he insisted that he was acting in good faith, an assertion that I firmly rejected. And even now, Mr Jones has sought to belittle the prejudice caused by grounds 2 to 4 by saying they concerned only Andromeda's funds against which Mr Hamilton had no claim.

(g) Cooperation

27. The number of occasions on which the applicants have had to apply to the court for disclosure orders, and then return for further details following the purported compliance with those orders, shows their difficulties in this matter. This is not a case where the contemnor provided full disclosure of his assets and source of funds early on. The position is almost exactly the opposite. Only ground 12 and ground 15 are, it appears, cases where the contempt has been purged.

(h) Acceptance of responsibility or remorse

28. I accept that Mr Jones' expression of regret and apologies, now that he faces the prospect of a prison sentence, are genuine. But, for the most part, they come very late. Even the glaring breach regarding the Black Falcon diamond was contested as not constituting a breach as late as February 2020: see the Judgment at paragraph 113. Only grounds 10 and 15 were admitted in a timely fashion, although in response to ground 15, Mr Jones suggested it was an error, an explanation I have rejected: see the Judgment at paragraph 222.

29. I now turn to the question of Mr Jones seeking at this stage to reduce the prejudice caused by his breaches through discharging the judgment debt. In his witness statement of 17 July, Mr Jones says that through a new company, Andromeda Capital Investments UK Ltd, he is involved in brokerage of fuel trading and that that company, his company, is due to be paid commission on transactions. In the witness statement he identifies two transactions involving a South African supplier of refined products, Drakensberg Energy Pty Ltd, and exhibits various documents concerning those transactions.

30. Mr Jones has been continually involved in various projects and it is notable that none has enabled him to make payments towards discharge of the judgment debt. Given the history of documentation produced by Mr Jones, as referred to in the Judgment, any such documents have to be viewed with considerable caution. But if these contracts have indeed been placed, and if commission is earned and the judgment debt paid, that would enable Mr Jones to apply to have the sentence reduced.

31. The other element relied on is at paragraph 32 of his witness statement where Mr Jones says:

> "I have now been formally appointed to the position of Chief Operating Officer of an Omani oil trading company, Al Salam Oil & Gas Management SPC, with a remit to develop their crude oil sales into secondary markets. My remuneration is on a success-only basis but is very generous, and is supplemented by a 16% economic interest in the profits made. I am waiting for final documents to be sent to me in respect of these appointments and will provide them in advance of the sanction hearing, should I obtain them in time."

32. It is very surprising that no documents at all could be exhibited to that witness statement in support of this "formal appointment" with "generous terms of remuneration"; but today, at court, there has been handed up on behalf of Mr Jones two letters from the Al Salam Oil & Gas company offering him the position of COO and setting out financial terms reflecting what he said in his witness statement. Those two letters are dated 8 July and 16 July, respectively. It is unclear why neither could have been exhibited to a witness statement of 17 July. Of course, there is no opportunity

now for the applicants to investigate this matter, but I am prepared to accept that Mr Jones indeed may now have such employment.

33. Moreover, in oral submissions made today, Mr Jones' counsel told the court that the Al Salam Oil & Gas company is on the verge of concluding an arrangement for investment of $45 million, which Mr Jones had arranged, in order to participate in a refinery project in Morocco. I was told that if this investment occurs, which Ms O'Sullivan said, on instructions, is imminent, then the Al Salam company has promised to give Mr Jones a personal loan of, as I understood, $2 million to enable him to discharge the judgment debt.

34. It is extraordinary that no documentation whatever has been produced, even at this hearing, supporting this factual development. On Mr Jones' behalf, Ms O'Sullivan said that if he had any documents he would have produced them. The lack of even an email in support suggests that this is nothing like as certain as Mr Jones has suggested. But I accept that if that money was received and then paid to discharge the judgment debt, that would be in the interests of the applicants.

35. In that regard, if, contrary to what Ms O'Sullivan urges, the court imposes an immediate custodial sentence, she asks that I should stay its effect by 14 days to enable Mr Jones to complete the transaction so as to receive the loan; and she submits that such a short stay will cause no prejudice to the applicants. That I can accept, and I note that Mr Jones has agreed to surrender his passport for that period.

[AT THIS POINT THE JUDGE ASKED THE RESPONDENT TO STAND]

36. Mr Jones, you have been found to have committed several contempts of this court, several of them extremely serious. You are a very intelligent man, and from a difficult start in your life you achieved, by your own efforts, significant financial success. You justifiably were proud of those projects which succeeded. But you will know that that cannot begin to justify or explain your disregarding of a number of court orders made against you.

37. The expression "contempt of court" is a legal term with a particular meaning. But in your case, the ordinary word "contempt" in my view expresses the attitude you had towards some of the orders made against you and the way you chose to disregard them. I have taken into account all that has been said on your behalf, including the fact that you have never been convicted of an offence before, but it is clear to me that this is a case where nothing short of an immediate custodial sentence would be appropriate to mark the seriousness of what you have done.

38. You were personally responsible for your actions. I do not think this is a case where there is mitigation to justify suspending the sentence, as was urged by your counsel.

39. I have read and taken into consideration the psychiatrist's report which is of assistance to you, and I recognise the support you provide to your grown-up son, Adam, although fortunately he maintains also good relations with his mother. I take into account also your age, your health and that going to prison may bring your career of embarking on investment and financial projects to an end. I recognise also that it is likely to lead to the termination of the new position to which you may just have been appointed as the COO of the Al Salam Oil & Gas company in Oman.

40. I will not pass sentence for each of the various contempts individually, but I will deal with them together. Obviously, and as set out in the Judgment, some are more serious than others. And I should emphasise that I am sentencing you only for the contempts which I found proved against you. I disregard the other alleged grounds.

41. The sentence which I shall impose will be the shortest that I consider appropriate to reflect the totality of your breaches of the court orders that have been proved against you. And it is a shorter sentence than it would have been, if not for some of the matters that I have just mentioned.

42. I have been urged by your counsel to stay the effect of the sentence for just 14 days on the basis that you are about to complete a highly valuable new transaction on behalf of the company in Oman, and that if that is completed this company will provide you with a personal loan of $2 million that will enable you to discharge the judgment debt. That was not referred to in your witness statement of 17 July. It emerged only in oral

submissions by your counsel this morning and, as I have just stressed, it is completely devoid of any documentation at all. Ms O'Sullivan explained that it arose only over the last few days and that you had not yet had any documents.

43. I have to tell you that after all I have learned about you, I regard this new information with considerable scepticism. But you have agreed to surrender your passport. And if it will put you in a position in the next two weeks to make a very large payment to the applicants, Mr Hamilton's trustees in bankruptcy, that will mitigate the effect of your breaches of the various court orders.

44. If this loan does not materialise, there remains the possibility for you to use the funds to be received under the two contracts arranged by your company, Andromeda Capital Investments UK Ltd, which you describe in your witness statement. But those contracts are not a reason to stay any sentence of imprisonment.

45. Pursuant to Act of Parliament, you will serve one half of the sentence which I shall pass in prison and then you will be released on licence.

46. The sentence which I will impose is 12 months' imprisonment, of which 3 months are intended to be an incentive to remedy the effect of the payments out of Andromeda's account by discharging the judgment debt to Mr Hamilton's estate. The remaining 9 months are by way of punishment for what you have done. I am prepared, as asked by your counsel, to stay that sentence for 14 days on terms that you provide your residential address and surrender your passport to the applicants' solicitors by close of business today.

47. Therefore, if a payment of £1 million is made by 7 August, that sentence will be reduced by three months, to nine months' imprisonment. If that £1 million is not paid in full by that date, then the full term of 12 months will take effect. You will still have the opportunity to mitigate the contempts by paying off the judgment debt while in prison and then apply to reduce the total term accordingly.

COSTS

48. I turn to the question of costs. The applicants have applied for their costs. They seek costs on the standard basis. They clearly are entitled to costs of what has been a very protracted committal proceedings and the costs of today, when they were entitled to attend.

49. I do not think they should have all their costs because there were 15 grounds alleged in the committal application and only 7 were found proved. However, pursuant to CPR Rule 44.2 in deciding what order to make about costs, the court has a broad discretion, including having regard to the conduct of all the parties. As regards some of the grounds of contempt alleged that were not established, Mr Jones' conduct was thoroughly reprehensible. I have regard in particular to ground 6 concerning the undertaking that is discussed in the Judgment.

50. Taking all these matters into account, I think in this case the applicants should recover 80 per cent of their costs. They seek costs on the standard basis and therefore that will be the order, those costs to be subject to detailed assessment if not agreed.

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

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