Neutral Citation Number: [2021] EWHC 975 (QB)

Case No: QB-2019-002948

**IN THE HIGH COURT OF JUSTICE**
**QUEEN'S BENCH DIVISION**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23 April 2021

**Before** :

**CHARLES MORRISON**
**(Sitting as a Deputy Judge of the High Court)**

- - - - - - - - - - - - - - - - - - - - -

**Between :**

| | |
|---|---|
| **STEVEN SHELLEY** | **Claimant/ Respondent** |
| **- and -** | |
| **THE ESTATE OF MR CHRISTOPHER TREVOR NORMAN** | **Defendant/ Applicant** |
| **STUART GORDON CRANE OF CLUNY** | **Third Party** |

- - - - - - - - - - - - - - - - - - - - -
- - - - - - - - - - - - - - - - - - - - -

**Jamie Riley QC** and **James McWilliams** (instructed by **Edmonds Marshall McMahon**) for the **Applicant**
The **Respondent** in person

Hearing date: 8 March 2021

- - - - - - - - - - - - - - - - - - - - -

# Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

---

*Covid-19 protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 10:30am on 23rd April 2021.*

**Charles Morrison (sitting as a Deputy Judge of the High Court):**

*Introduction*

1. The Defendant (**D**) in this matter has brought before me an application for the committal of the Claimant, Mr Steven Shelley (**Mr Shelley**). It is said that there are fifteen clear grounds of contempt of court and that they are each set out in the grounds of committal in the committal application (the **Committal Application**).

2. It is said that Mr Shelley:

   i) made false statements of truth on,

      a) his Particulars of Claim dated 6 June 2018,

      b) his Reply and Defence to Counterclaim dated 31 May 2019,

      c) his reply dated 16 September 2019 to the D's Request for Further Information, and

      d) his Amended Reply and Defence to Counterclaim dated 20 December 2019;

   ii) breached the terms of the worldwide freezing order and proprietary injunction made by Lambert J on 22 August 2019 and continued pursuant to the order of Lavender J on 3 September 2019 (the **Freezing Order**); and

   iii) falsely swore his first affidavit on 3 September 2019.

3. On the first day of the hearing I gave the D permission to amend its Committal Application and grounds one and two of its grounds of committal to correct a typographical error. Those grounds referred to Mr Shelley's account with Investec but should instead have referred to his account with Metro Bank. I was satisfied that I had the power to do so: see *Naibu Global International Company Plc v Daniel Stewart & Company* [2020] EWHC 2719 (Ch) at [41] to [43] per Bacon J.

4. Whilst Mr Shelley voiced no objection to the amendment, I was in any event satisfied that:

   i) the amendments corrected an error rather than introduce a new substantive ground of committal;

   ii) the correct factual position was set out in the evidence in support of the Committal Application and the correct bank statements exhibited;

   iii) no new factual evidence was required consequent upon the amendments;

   iv) Mr Shelley had been provided with the amended version of the Grounds of Committal in good time and had been given an opportunity to comment on the same; and

   v) there was no obvious prejudice to Mr Shelley.

5. It is important to have in mind that the contempt alleged takes a number of different and distinct forms. Mr Shelley's wrongful conduct is said to fall into a number of different classes of contempt, each of which I will endeavour to explain. They are broadly that Mr Shelley is liable in contempt because he:

   i) failed to comply with the terms of the Freezing Order;

   ii) failed to comply with the terms of the proprietary injunction;

   iii) failed to comply with the disclosure requirements contained in both orders aforementioned;

   iv) made false statements in his court pleadings which he verified as being true, and

   v) gave false evidence to the court by way of affidavit.

6. The failure to comply with matters, which might also fall under the label "disobedience of a court order", comprise grounds one to eight; ground nine alleges the false affidavit; and the remaining grounds 10 - 15 assert false statements of truth in various pleadings.

*The factual background*

7. The evidential background is largely provided by the Affidavit sworn on 19 June 2020 in support of the application by one of the D's solicitors, Mr Fairbrother. It is necessary to recite that background at some length in order to properly understand the context for the application that I am now called upon to consider. I have however reminded myself that I am not concerned to try the facts of the underlying case; nor must I allow any view I form of the conduct of Mr Shelley in the underlying facts to infect my judgment on the discrete grounds of contempt alleged. It is the contempt application that is before the court and it is on conduct relevant to that that Mr Shelley must be judged.

8. The evidence of Mr Fairbrother explains that Christopher Norman (**Mr Norman**) was a successful businessman who sold his business in 1998 for a substantial sum and then retired to Portugal where he remained from 2001 until his death. From about 2010, he became interested in investing in small and medium sized companies.

9. In or around March 2016, Mr Norman started to display signs of illness. That illness worsened until on 24 May 2016 he was diagnosed with Stage 4 brain cancer. It is said that by that point he had become very unwell and was struggling to communicate clearly. Despite surgery on 12 June 2016, his condition deteriorated rapidly with increasing confusion and difficulty with speech and reading. As at 15 June 2016, his medical records note that he was *"unable to point to objects corresponding with a single spoken word or written word (e.g. "point to the spoon")"*. Mr Norman died at his home in Portugal on 1 September 2016.

10. Mr Shelley is an investment manager. It seems that he and Mr Norman first met in or around the Summer of 2013, and that Mr Norman thereafter became a client of his then employer. Upon leaving that business, Mr Shelley says that he entered into an agreement whereby he would act as a personal investment manager to Mr Norman and manage his investments in return for a fee calculated at 25% of the profits and dividends derived from the investments.

11. The D accepts that Mr Shelley managed Mr Norman's investments and advised him with respect to the same. It says that Mr Shelley received some £87,866.67 out of Mr Norman's bank accounts by a series of payments made only after Mr Norman had ceased to be able to deal with his own online banking due to the effects of his illness. It is alleged that the final two transfers were made by Mr Shelley himself who, using his access to Mr Norman's email account, reset the passwords and gave himself direct access to Mr Norman's bank account.

12. Mr Shelley began these proceedings in which the application is made, on 6 June 2018 in the County Court Business Centre as a claim for £74,300.45 in respect of further sums said to have been due to him for unspecified work allegedly carried out in the last few weeks of Mr Norman's life (the **Proceedings**).

13. It has now come to light says the D, that in 2015 and 2016, Mr Norman made very substantial debt and equity investments in three companies, Provincial Hotels & Inns Limited (**Provincial**), Check4Cancer Limited (**C4C**) and Digby Fine English Limited (**Digby**). In the case of Provincial, that investment took the form of a £2,000,000 loan secured by a charge and also the allotment of shares; in the case of C4C the investment took the form of a £250,000 loan and the acquisition of shares for £193,100; and in the case of Digby, Mr Norman acquired shares for £187,500 (together, the **Investments**).

14. According to Mr Fairbrother's evidence, despite the size and nature of the Investments, the D had no records of the circumstances in which they were made or what had happened to any income derived from them. Companies House filings in respect of Provincial, C4C and Digby however showed that Mr Norman's Investments had purportedly been transferred into a trust referred to as "the White Fence Trust" (the **WFT**). Little was known about the WFT apart from the fact that *"Stuart Gordon Crane of Cluny"* (**Mr Crane**) was the Trustee to the WFT and that he appeared to work at *"Lex Mercatoria"* solicitors. Mr Crane is the Third Party in these proceedings.

15. When Mr Shelley was asked by the D whether he had any involvement with the WFT or could supply any copies of trust documents or correspondence, he replied on 13 July 2017 stating that *"unfortunately I am not in a position to assist you in your enquiries"*. Similarly, when the D's then solicitors asked Mr Crane who the beneficiaries were, he responded *"We are not at liberty to provide any additional information"*.

16. It seems however that in the bundle for the first case management hearing in the Proceedings that Mr Shelley had prepared and handed over on the morning of 1 March 2019, he included a letter dated 29 June 2018 addressed to him from Mr Crane, here described as an accountant at Lex Mercatoria Solicitors based in Geneva, purporting to set out the history of the WFT (**Lex Mercatoria** and the **Lex Mercatoria Letter**).

17. In light of the contents of the Lex Mercatoria Letter, the D's solicitors wrote to Mr Shelley with a number of questions. Mr Shelley's response was that the questions have *"absolutely no relevance to the proceedings"*. The D pressed the point, noting that Mr Shelley had presumably assisted in the transfer of assets, but Mr Shelley's response was to state, amongst other things, that *"you are making very serious and completely unfounded allegations which I take great exception to"*.

18. Mr Shelley filed his Reply and Defence to Counterclaim in the Proceedings on 31 May 2019 (**Mr Shelley's Reply**) in which he claimed, amongst other things, that he was not materially involved with the WFT nor the transfer into it of any related assets.

19. In August of 2019, the solicitors Walker Morris LLP (**Walker Morris**) provided documents to the D which suggested that Mr Norman had been their client (the **WM File**). The D says that the WM File shows that, contrary to Mr Shelley's pleaded case in his Reply that he *"was not materially involved with the White Fence Trust"*, he was, as will be seen, heavily involved in the transfer of Mr Norman's assets to it and was the beneficiary of the WFT.

20. What the WM File did not show was any involvement on the part of Mr Norman. Walker Morris' engagement letter recorded that *"Bill Gore, Jack Terras and Steve Shelley have authority to issue instructions … on your [i.e. Mr Norman's behalf]"* (the **Engagement Letter**). Bill Gore (**Mr Gore**) and Jack Terras, were directors and shareholders of Provincial and C4C. The Engagement Letter was never dated and was not returned to Walker Morris signed until 7 July 2016, when it appears to have been signed with a batch of other documents giving effect to the transfer of the Investments into the WFT. Mr Fairbrother says that there is no evidence that Mr Norman saw it before that day – by which time he was gravely ill – or that he had any involvement with the instruction of Walker Morris. There is not, he says, a single email in the WM File to, from or copied to Mr Norman and there are no attendance notes recording a single conversation with him.

21. The discoveries made by the D, and in particular the WM File, led it to conclude that Mr Norman did not intend to make a gift of the Investments into trust for the benefit of Mr Shelley and that he either did not read and understand any of the relevant documents at all (there being nothing, beside his signature, to suggest that he had any knowledge at all of the various arrangements to transfer the Investments into the WFT) or, to the extent he did not sign the documents, he did not have capacity to do so.

22. In the knowledge of the facts and matters that I have just related, the D re-amended its amended Defence and Counterclaim in order to bring claims against Mr Shelley and Mr Crane in relation to the WFT. In addition, given the lengths to which Mr Shelley had gone to avoid giving information about the WFT, the D applied without notice for a worldwide freezing order and proprietary injunction against Mr Shelley and for a proprietary injunction against Mr Crane on 22 August 2019. While Lambert J was not prepared to grant a proprietary injunction against Mr Crane, she did grant the relief sought against Mr Shelley in the form of the Freezing Order. That Freezing Order was personally served on Mr Shelley on 22 August 2019.

23. Mr Shelley provided his initial asset disclosure pursuant to the Freezing Order on 28 August 2019 under cover of a letter from his then solicitors, Locke Lord LLP (**Locke Lord**). His initial disclosure in support of the proprietary injunction contained in the Freezing Order followed under cover of a letter from Locke Lord on 29 August 2019. These letters were followed by affidavits with respect to the same on 3 and 12 September 2019.

24. Mr Shelley's disclosure revealed only modest assets. The D complains about this given the substantial sums Mr Shelley had been paid by Mr Norman and the fact that he was the purported discretionary beneficiary of the WFT, which had substantial assets. His

disclosure pursuant to the proprietary injunction stated that the only monies he had received from the WFT was £125,000 paid pursuant to the terms of an investment management agreement by which he was appointed as the manager of the investments in the WFT, of which he was a beneficiary.

25. Although Lambert J had not been prepared to grant a without notice order against Mr Crane, the D indicated to him that it intended to seek relief on notice as against him. As a result, disclosure was also received from Mr Crane. Mr Crane's account of the monies paid to Mr Shelley from the WFT differed from that of Mr Shelley.

26. While Mr Shelley had indicated prior to the return date of the Freezing Order on 3 September 2019 that he would consent to its continuation until trial, on the return date itself Mr Shelley swore an Affidavit to which he appended a Deed of Variation purportedly dated 12 August 2019, by which he relinquished any interest he had in the WFT or its assets in an apparent attempt to persuade Lavender J to lift the Freezing Order. Mr Shelley's submission was that, since he no longer had any interest in the WFT, it was no longer necessary to continue the proprietary injunction over his assets. That submission was not it seems accepted by Lavender J and the Freezing Order was continued.

27. Mr Fairbrother's evidence explains that the D had a number of concerns as to Mr Shelley's compliance with the Freezing Order. These prompted the D to make a series of applications for *Norwich Pharmacal* and *Bankers Trust* relief in respect of financial institutions believed to hold accounts belonging to, amongst others, Mr Shelley (the **Norwich Pharmacal Applications**). The evidence gathered as a result revealed, so far as the D was concerned, significant breaches by Mr Shelley of the Freezing Order.

*Committal proceedings - the Permission Application*

28. The Committal Application now before me includes at grounds 10 to 15, grounds for which the permission of the Court was required. That permission was sought by an appropriate application however prior to the first hearing on 30 July 2020, Mr Shelley provided his consent to the grant of permission and agreement to directions to take this matter to trial. The permission application was considered by Stewart J and the consent order was approved by the court on 28 July 2020.

*Mr Shelley unrepresented*

29. The Grounds of Contempt were described in a table which particularised each ground and served upon Mr Shelley. In respect of each ground, Mr Shelley set out his response (the **Response**) in the table, by in each case indicating an admission of the contempt alleged. In the final column in the table Mr Shelley gives his explanation as to why he acted as is alleged in each ground of contempt and offers further matters for the court to take into account.

30. Before me, the D's case was put by Mr Riley QC however Mr Shelley was unrepresented. At various stages of the hearing, I made it clear to Mr Shelley that it was in his best interests to have legal representation. The fact that he had admitted the allegations was irrelevant to this decision. I explained to him the availability of Legal Aid. I repeated the strong advice that I gave to Mr Shelley at the commencement of the hearing and at the end of each day. On the first day I had asked him if he wanted to

carry on with the hearing without legal assistance, knowing the possible, indeed likely serious consequences: he said that he did.

31. On a number of occasions as well as clearly explaining the privilege against self-incrimination (which I did each day), I asked Mr Shelley to consider whether he wanted to give evidence in order to persuade me to take a different view of any or all of the grounds of contempt. On each occasion Mr Shelley was resolute: he did not want to give evidence. I warned him that an adverse inference might be drawn by me from his silence. But Mr Shelley was firm. He did want to continue; he knew he could seek legal assistance, but he confirmed that he wanted to carry on without it; he did not want to resile from his admissions which he stood by; he did not want to give evidence in order to suggest that what was being said by Mr Riley was incorrect; and that all he wanted to do was to have the opportunity to address me on facts and matters which might persuade the court to take a more lenient view as to penalty than might otherwise be the case. At all events, I was satisfied that Mr Shelley's position was freely arrived at, in the knowledge of all relevant matters that had been carefully explained to him. It was made abundantly clear to me such that I was in no doubt at all, that Mr Shelley simply wanted to get on with the hearing.

32. It is perhaps to state the obvious that in contempt of court hearings the court will always be uneasy where a respondent is not represented by an able advocate, properly instructed. A respondent must always be given reasonable opportunity to have the benefit of that advice and representation. If however a respondent has had every opportunity to seek such advice and has had the position clearly explained at the hearing, but nevertheless freely decides not to engage solicitors or counsel, then the court must also have regard to the interests of the applicant (and the public interest) in having the matter decided. That is the position I find myself in so far as this application is concerned.

33. In reaching these conclusions I have had regard to the judgment of Bean LJ in *James v James* [2018] EWCA Civ 1982, where at [36] and following, he said this:

> *"Turning to the hearing of 11 July, the judge was clearly right to advise the appellant to obtain legal representation but it is unrealistic, in my view, to have supposed that she could successfully do this from prison in one-and-a-half days. The obligation under paragraph 15.6 of Practice Direction 81 appended to CPR 81 is an obligation on the court to have regard to the need for the contemnor to be made aware of the possible availability of criminal legal aid and how to contact the Legal Aid Agency, and to the need to give an unrepresented contemnor the opportunity to obtain legal advice."*

*In Haringey London Borough Council v Brown [2017] 1 WLR 542, at [46] McCombe LJ said:*

> *"46. At least until some improvement is made to the drafting of the legislation...it seems to me that it is important that all involved in committal proceedings in the County Courts should be aware of the route to be taken in applying for legal aid in such proceedings. For my part, I would encourage the LAA, the*

> *Courts Service, the judiciary, the professions and the voluntary organisations (that assist litigants) to co-operate in ensuring at an early stage in committal proceedings that all concerned are aware of the authority to which legal aid applications in such cases are to be made and what the entitlements are. It may be that, as Mr Bridge submitted here, consideration should be given to the promulgation of standard directions on the subject, either on the application notice itself and/or in any preliminary order regulating the procedure in an individual case."*

*I would echo that. It would surely not be rocket science for a court centre such as Central London County Court to have a standard handout to be given to contemnors in Ms James' position, not simply saying: "You have a right to legal aid" but giving practical assistance about how and to whom an urgent application should be made.*

*Returning to the present case: as the judge observed, it is right that the appellant's partner, Mr Jay, was present and not in custody. It may be that he had a better opportunity than the appellant herself to make contact with solicitors but I do not think the fact that he might have had such an opportunity, or might have taken it up had he been more co-operative, is a valid answer to the point about the need for legal representation. As I have already emphasised, the obligation under PD 81 paragraph 15.6 is an obligation placed on the court, not on the contemnor's partner or family.*

*We now come to the hearing on the afternoon of the 13 July. Mr Mahmood complains, and I have already said that I have sympathy with this point, that it was unrealistic to suppose that the appellant could successfully obtain legal representation in one and-a-half days while in custody. Ms Meacher submits however, that the period from 11 to 13 July should not be viewed in isolation. The appellant had been aware, at least from 25 June, of the need for legal representation. She reminded us of the covering letter from the claimant's solicitors, served with the application notice advising her to seek representation.*

*I agree with Ms Meacher's description of the appellant's conduct as being an example of burying her head in the sand. Indeed, that is only part of the story. Her unco-operative and, it might be said, devious behaviour, in first telling the judge at the hearing of 11 July that she had the relevant documents in a plastic bag and then refusing or failing to hand over any documents at all, was deplorable. She emerges from this litigation so far with no credit at all. Nevertheless, I do consider that the judge was wrong to proceed to impose a sentence of immediate custody on an unrepresented appellant on 13 July.*

*I do not consider that this appellant should have been the subject of an order for committal, as opposed to the issue of a bench warrant if she failed to attend court, until she had had a proper opportunity to have a solicitor or barrister make representations on her behalf to the court, or alternatively until she had expressly been given that opportunity with one adjournment and then deliberately failed to take reasonable steps to obtain legal representation.*"

34. What I draw from these passages is that the right to legal aid must be explained to the respondent; that a real (that is to say reasonable) as distinct from a theoretical opportunity must be afforded to respondents to seek advice and that it matters not how uncooperative the respondent has been hitherto; in appropriate cases an adjournment will be necessary; but that if, having been given a proper opportunity to obtain advice, a respondent chooses not to have it, the application must proceed. For the reasons that I have given, in my judgment this was a proper case in which the application could proceed.

*Legal Principles*

35. It is important to have in mind when dealing with contempt allegations that if a ground is to be established it must be by the application of the criminal standard of proof. In *Re L-W (Children)* [2010] EWCA Civ 1253, Munby LJ, having reviewed two relevant authorities, and in the context of a mandatory injunction, observed at [34] that,

> "*The burden of proof lies throughout on the applicant: it is for the applicant to establish that it was within the power of the defendant to do what the order required, not for the defendant to establish that it was not within his power to do it. The standard of proof is the criminal standard, so that before finding the defendant guilty of contempt the judge must be sure (a) that the defendant has not done what he was required to do and (b) that it was within the power of the defendant to do it. If the judge finds the defendant guilty the judgment must set out plainly and clearly (a) the judge's finding of what it is that the defendant has failed to do and (b) the judge's finding that he had the ability to do it*."

36. This is guidance that in my judgment I must follow, mutatis mutandis. Certainly when approaching the grounds of contempt, I will apply the usual criminal standard of proof and I will only find them established if on the evidence I have, I am sure.

37. The general approach of the court when faced with a committal for contempt application was considered by Christopher Clarke J (as he then was) in the case of *Masri v Consolidated Contractors International Company SAL* [2011] EWHC 1024 (Comm). At [144] and following, the learned judge said this:

> "*Onus and standard of proof*
>
> *The onus of proving the acts of contempt of which he complains rests on the judgment creditor. He must satisfy the court so that it is sure that the judgement creditors are in contempt in the respects alleged i.e. to the criminal standard. The judgment debtors are to have the benefit of any reasonable doubt.*
>
> *Inferences*
>
> *In reaching its conclusions it is open to the court to draw inferences from primary facts which it finds established by evidence. A court may not, however, infer the existence of some*

*fact which constitutes an essential element of the case unless the inference is compelling i.e. such that no reasonable man would fail to draw it: Kwan Ping Bong v R [1979] AC 609.*

*Circumstantial evidence*

*Where the evidence relied on is entirely circumstantial the court must be satisfied that the facts are inconsistent with any conclusion other than that the contempt in question has been committed: Hodge's Case [1838] 2 Lewin 227; and that there are "no other co-existing circumstances which would weaken or destroy the inference" of guilt: Teper v The Queen [1952] AC 480, 489. See also R v Blom [1939] AD 188, 202 (Bloemfontein Court of Appeal); Martin v Osborne [1936] 55 CLR 367, 375. It is not, however, necessary for the court to be sure on every item of evidence which it takes into account in concluding that a contempt has been established. It must, however, be sure of any intermediate fact which is either an essential element of, or a necessary step on the way towards, such a conclusion: Shepherd v The Queen 170 CLR 573 (High Court of Australia).*

*Adverse inferences*

*Mr James Lewis QC on behalf of the judgment debtors accepted that, although (i) an application for contempt is criminal in character, (ii) an alleged contemnor may claim a right to silence, and (iii) the provisions of sections 34 and 39 of the Criminal Justice Act 2003 do not apply, it was open to the Court to draw adverse inferences against the judgment debtors to the extent that it would be open it to do so in comparable circumstances in a criminal case. Thus it may be legitimate to take into account against the judgement debtors the fact (if it be such) that, when charged with contempt, as they have been in these proceedings, they have given no evidence or explanation of something of which they would have had knowledge and of which they could be expected to give evidence if it was true.*

*Mr Lewis submitted that the court should adopt by analogy the approach summarised in Archbold 4 – 398 in relation to an accused's failure to testify namely that (i) an inference from failure to give evidence cannot on its own prove guilt; (ii) the court must be satisfied that the judgment creditor has established a case sufficiently compelling to call for an answer before drawing any inference from silence and if it concluded that the silence could only sensibly be attributed to the defendant's having no answer, or none that could stand up to cross examination, the court could then draw an adverse inference*."

38. Unlike the position faced by Christopher Clarke J, before me, Mr Shelley has admitted each ground of contempt alleged.

39. Continuing at [150] the learned judge said this:

> *"In order to establish that someone is in contempt it is necessary to show that (i) that he knew of the terms of the order; (ii) that he acted (or failed to act) in a manner which involved a breach of the order; and (iii) that he knew of the facts which made his conduct a breach: Marketmaker Technology (Beijing) Co Ltd v Obair Group International Corporation & Ors [2009] EWHC 1445 (QB). There can be no doubt in the present case but that the judgment debtors have at all times been fully aware of the orders of this court. It is not and could not sensibly be suggested that the conduct of which complaint is made was casual or accidental or unintentional. However, the question arises whether it is, also, necessary to show that they acted knowing that what they were doing was a breach of, and intending to breach, any of the orders.*

*In Stancomb v Trowbridge Urban District Council [1910] 2 Ch 190 Warrington J, on an application for leave to issue a writ of sequestration which, under the then rules required "wilful disobedience" to an order, said:*

> *In my judgment, if a person or a corporation is restrained by injunction from doing a particular act, that person or corporation commits a breach of the injunction, and is liable for process for contempt, if he or she does the act, and it is no answer to say that the act was not contumacious in the sense that, in doing it, there was no direct intention to disobey the order. I think the expression "wilfully" in Order XLII R.31, is intended to exclude only such casual or accidental and unintentional acts as are referred to in Fairclough v Manchester Ship Canal Co.*

*In Adam Phones Ltd v Gideon Goldschmidt and others [2000] CP Rep 23 Jacob J (as he then was) described two opposing lines of authority constituted by:*

*a) Heaton's Transport (St Helen's) Ltd v Transport and General Workers Union [1973] AC 15, 108-110; Mileage Conference Group of the Tyre Manufacturers Conferences Agreement [1966] 1 WLR 1137; Spectravest Inc v Aperknit Ltd [1988] FSR 161 (Millett J) on the one hand and*

*b) Irtelli v Squatriti [1993] QB 83, on the other.*

*The former cases hold that there is contempt if an act intentionally done amounts to a breach of the order. In the latter case the Court of Appeal assumed that it was necessary to show contumaciousness. In that case, where committal to prison was sought, the defendants had done that which was a breach of the order (the creation of a further charge) but had produced some not particularly convincing evidence that they did not understand the order to preclude it and, since that evidence was not challenged, the court concluded that there was no knowing breach of the order.*

*Jacob J said that, free from authority he would have sided with Irtelli but felt bound to follow the earlier cases, of which Heaton's was a decision of the House of Lords, particularly when Arlidge, Eady and Smith on Contempt of Court described Irtelli as a "doubtful case" and when the House of Lords in DG of Fair Trading v Pioneer Concrete [1995] 1 AC 456 had approved of what Warrington J had said in Stancomb v Trowbridge and said that it should be followed in that case.*

*In Bird v Hadkinson [2000] CP Rep 21 Neuberger J also declined to follow Irtelli. In that case he had first to determine whether or not an obligation to give information about what had happened to various funds required that the information be accurate. He held that "at least on the face of it" an inaccurate answer did not comply with the terms of the order but said that if an inaccurate answer was given in good faith and after all reasonable enquiries it would either be a contempt of a most technical nature or there may be no contempt at all. As to the clash of authorities, he regarded himself as bound not to follow Irtelli having regard to Pioneer Concrete, in which the previous authorities were reviewed (and in which Lord Wilberforce observed that "liability for contempt does not require any direct intention on the part of the employer to disobey the order"). He observed that in Irtelli the previous line of authority had not been cited, that the case had been decided without opposition; and that what had been cited was Pioneer in the Court of Appeal, which the House subsequently reversed.*

*I regard myself as similarly bound. I do so with less reluctance than Jacob J. In my judgment the power of the court to ensure obedience to its orders for the benefit of those in whose favour they are made would be inappropriately curtailed if, in addition to having to show that a defendant had breached the order, it was also necessary to establish, and to the criminal standard, that he had done so in the belief that what he did was a breach of the order – particularly when a belief that it was not a breach may have rested on the slenderest of foundations or on convenient advice which was plainly wrong.*"

40. Thus in order to establish that a respondent is in contempt of court through disobedience of a court order, I agree with Mr Riley QC that it is necessary to establish the following matters to the standard to which I have referred:

i) that the respondent knew the terms of the relevant order;

ii) that he acted (or failed to act) in a manner which involved a breach of the order; and

iii) that he knew of the facts which made his conduct a breach.

41. In my respectful opinion, Christopher Clarke J was right to hold that there is contempt if an act intentionally done amounts to a breach of the order and I treat that to be the law for reasons that he gives. It is not necessary to establish that the respondent intended to breach the order, although that will potentially be relevant when it comes to assessing sentence.

42. Turning now to contempt of court by making a false statement of truth, I must have regard to the Civil Procedure Rules, and in particular, to CPR r. 32.14. I have also found it helpful to be reminded of the approach taken by of Green J in *International*

*Sports Tours Limited v Shorey* [2015] EWHC 2040 (QB) (see [39] and following) in regard to swearing a false affidavit, and also the position arrived at in *AXA Insurance v Rossiter* [2013] EWHC 3805 (QB), where before Stewart J at **[**9**],**

> *"It [was] common ground that for the Claimants to establish each contempt alleged they must prove beyond reasonable doubt in respect of each statement:*
>
> *i) the falsity of the statement in question*
>
> *ii) that the statement has, or if persisted in would be likely to have, interfered with the course of justice in some material respects;*
>
> iii) *that at the time it was made, the maker of the statement had no honest belief in the truth of the statement and knew of its likelihood to interfere with the course of justice.*"

The result is that I agree with Mr Riley QC that in order to make out a case that a respondent is in contempt of court by making a false statement of truth or swearing a false affidavit it must be established:

a) that the document verified by the statement of truth or the affidavit contained a statement that was false;

b) that the respondent knew that the statement was false at the time he made it; and

c) the respondent knew that the statements did or were in all likelihood materially to interfere with the course of justice.

43. On the final day of the hearing I drew Mr Riley QC's attention to the decision in *JSC BTA Bank v Ereshchenko* [2013] EWCA Civ 829. I was troubled that the application had been made at a stage where the competing evidence still had to "play out" and be properly assessed at trial. Having reflected upon the matter and the evidence relevant to each individual ground of contempt to which I shall shortly turn, and being unable to ignore for these purposes Mr Shelley's admission and the facts and matters set out in the Response, I arrived at the view that this was a proper case where the committal application could proceed. In reaching that view, I have taken into account the public interest in ensuring the efficacy of Freezing Orders. In my judgment any overlap in evidential considerations does not in itself justify postponing a committal application until after trial but it does mean that each particular ground of contempt must be carefully considered: see the approach of Teare J in *Ablyazov v JSC BTA Bank* [2011] EWHC 1522 (Comm), upheld by the Court of Appeal in [2011] EWCA Civ 1386. I am satisfied that the grounds put forward by Mr Riley QC can be addressed now for the reasons that will become apparent in my analysis of each individual ground.

*The allegations*

44. At the outset of my review of the contempt allegations, I should again say that Mr Shelley has filed a written admission in the Response to each of the grounds put forward. He has also, to some extent anyway, described the circumstances surrounding

the contempt that he accepts. He has sought to give his side of the story. I nevertheless invited Mr Riley QC who appeared for the Applicant to take me through each ground in turn so that I could independently satisfy myself that each had been made out. In approaching that evidence, I reminded myself that I must apply the criminal standard, such that I must be sure that each ground of contempt was established.

45. Mr Riley QC (and Mr McWilliams who appeared with him) helpfully set out in their skeleton argument, for which I am indebted to them, each of the grounds of contempt relied upon together with a brief synopsis of the relevant evidence. I will now describe those grounds.

46. By its **first** ground of contempt, the D alleges that:

> *"After personal service on him of the Freezing Order, on 22 August 2019 the Claimant transferred £10,000 from his account held at Metro Bank numbered 27606202 and with sort code 23-05-80 ("**the Claimant's Metro Bank Account**") to an account held in the sole name of Mrs Georgina Shelley at Halifax numbered 11466561 and with sort code 11-04-91 ("**Mrs Shelley's Halifax Account**") in breach of paragraph 5(2) of the Freezing Order, being a disposal, dealing with and/or diminishment of his assets in excess of his entitlement to ordinary living expenses"*

47. It is said that contempt of court is established with respect to this ground because:

i) Mr Shelley has not disputed that he knew of the terms of the Freezing Order at the time that he made the transfer; and that the Freezing Order, bearing a penal notice in the appropriate form on its face, had been personally served on him just 10 minutes before he made the transfer.

ii) Mr Shelley does not dispute that he breached the Freezing Order by transferring the sum of £10,000 in circumstances where:

a) paragraphs 5 and 6 of Freezing Order prevented him from removing, disposing of, dealing with or diminishing the value of any of his assets up to the value of £3,990,000;

b) paragraph 14 of the Freezing Order only permitted him to spend £2,000 per week on his ordinary living expenses and only a reasonable sum on legal advice and representation;

c) he was not permitted to spend any money which was subject to the proprietary injunction; and

d) the Metro Bank Account from which the transfer was made, while held in the name of SS Equities Trading Limited, was an account which he accepts was one caught by the terms of the Freezing Order.

48. In the Response, Mr Shelley explains that he did transfer £10,000.00 from this account to his wife, Mrs Georgina Shelley (**Mrs Shelley**). When he received the files relating

to the Freezing Order, this put him in sheer panic. He says that he did not receive any explanation as to the terms or the order or the implications of it and the first thing that came into his mind was how was he going to support his family and pay the bills if he could not access any money. Mr Shelley goes on to say in the Response that he didn't realise at the time that he could withdraw £2,000 a week and pay legal fees, he just thought all assets were to be frozen. He didn't understand the contents of the order and the consequences of any breach were not explained to him properly and whilst this was no excuse, he really did not think at the time that he would be doing anything so serious if he withdrew money.

49. To this explanation Mr Riley says that there is no real doubt that Mr Shelley knew that his conduct amounted to a breach of the Freezing Order because:

i) It was a transfer for a substantial sum and almost immediately followed service of the Freezing Order.

ii) As the evidence shows, the monies were transferred by Mr Shelley to Mrs Shelley, the monies were then transferred onwards to further accounts ostensibly held by Mrs Shelley which in turn appear to have been used by Mr Shelley to circumvent the Freezing Order, being accounts into which Mr Shelley appears to have diverted his salary. This was a clear attempt to put assets beyond the scope of the Freezing Order.

iii) Although Mr Shelley professes by way of mitigation not to have understood the terms of the Freezing Order, it is clear that he understood that the Freezing Order would prevent him from accessing his assets and that he wanted to prevent that from happening. In any event, contrary to the impression given by Mr Shelley, the terms of the Freezing Order were fully explained to him in the covering letter provided to him when it was served.

50. Mr Riley QC also invited the court to take into account that for all Mr Shelley's protestations, he is an individual with a financial background, being a sophisticated Investment Manager, more than capable of understanding the simple and clear terms of a freezing injunction.

51. For all the reasons put forward by Mr Riley QC, I do find, because I am sure, that the first ground has been proved. Whilst I have taken into account Mr Shelley's admissions and explanations, I am nevertheless entirely satisfied on the evidence that he knew of the terms of the order; that he made the transfer; and that he knew by making the transfer he was acting in breach of the Freezing Order.

52. By its **second** ground of contempt, the D alleges that:

> *"After personal service on him of the Freezing Order, on 22 August 2019 the Claimant transferred £10,000 from the Claimant's Investec Metro Bank Account to Mrs Shelley's Halifax Account in breach of paragraph 11(b) and/or (c) of the Freezing Order, being a disposal, dealing with and/or diminishment of his monies received directly or indirectly from the Trust."*

53. The second ground of contempt relies on the same conduct as the first ground but is said to amount to a further breach of the Freezing Order because it breached the discrete proprietary injunction. Similar arguments as made for ground one are made *mutatis mutandis* for establishing the ground two contempt save that it is argued that Mr Shelley acted in a manner which involved a breach of the Freezing Order by transferring the sum of £10,000 in circumstances where:

    i) Paragraph 11 of the Freezing Order prevented Mr Shelley from disposing, dealing with or diminishing, monies received directly or indirectly from the WFT.

    ii) The Metro Bank Account from which the transfer was made was an account which had received £60,074.29 from the WFT, and it is to be presumed that mixed property in that bank account belonged to the party asserting the proprietary claim. In circumstances where the monies in the account as at the date of the Freezing Order were less than the sum received from the WFT and where Mr Shelley has not adduced evidence to prove that the remaining monies were his own, it is argued that the monies Mr Shelley transferred were trust monies subject to the proprietary injunction contained at paragraph 11 of the Freezing Order.

    iii) The prohibition imposed by paragraph 11 of the Freezing Order was not subject to the exceptions to the worldwide freezing order for ordinary living expenses or reasonable legal fees.

54. In the Response, Mr Shelley admits this allegation. He adds nothing more by way of explanation to the matters he had already related in his response to ground one.

55. It seems clear that Mr Shelley knew of the facts that made his act a breach in that he knew of the Freezing Order and its effect and he knew he was making a transfer in breach of it; in this instance a disposal or dealing with monies that had come into the account from the WFT. In the Response he says that he "just thought that all assets were to be frozen". In all the circumstances I am again satisfied on the evidence such that I am sure, that this ground of contempt is established.

56. By its **third** ground of contempt, the D alleges that:

> *"After personal service on him of the Freezing Order, between 22 August 2019 and 25 September 2019 the Claimant spent more than £20,295.15 from an account held at Metro Bank plc numbered 27606202 and with sort code 23-05-80 in the name of SS Equities Limited but containing monies belonging beneficially to him ("the Claimant's Metro Account") on expenditure other than his reasonable legal fees in breach of paragraph 5(2) of the Freezing Order, being a disposal, dealing with and/or diminishment of his assets in excess of his entitlement to ordinary living expenses of £2,000 per week."*

57. The D says this ground is made out because:

i) For the reasons already argued, Mr Shelley knew of the terms of the Freezing Order.

ii) It is not disputed that Mr Shelley spent a sum in excess of £2,000 per week in circumstances where:

a) Paragraph 11 of the Freezing Order prevented Mr Shelley from disposing, dealing with or diminishing, monies received directly or indirectly from the WFT. The only exception to this was that Mr Shelley was permitted by paragraph 14 of the Freezing Order to spend £2,000 per week on his ordinary living expenses and a reasonable sum on representation, provided the monies were not trust monies and he first notified the D.

b) Between 22 August 2019 and 25 September 2019, the Claimant spent more than £20,295.15 from his Metro Bank Account on expenditure other than his reasonable legal fees. This is revealed by the bank statements obtained pursuant to the *Norwich Pharmacal* applications and exhibited to Mr Fairbrother's evidence.

58. Mr Shelley responds to this allegation of overspending on one of his accounts in a manner not permitted by the Freezing Order by making reference to monies he says he did receive from the WFT. He makes no attempt to deny the allegation which is founded on the bank statement evidence and indeed again the Response is indorsed with the word "Admit". For reasons similar to those I have explained in regard to the other grounds, I am again satisfied such that I am sure, that this ground of contempt is established.

59. By its **fourth** ground of contempt, the D alleges that:

> *"After personal service on him of the Freezing Order, the Claimant caused his salary from his employment by First Equity Limited to be paid to Mrs Shelley's Halifax Account on 7 October 2019 in the amount of £7,311.67, 7/8 November 2019 in the amount of £4,554.52, 6/7 December 2019 in the amount of £6,261.43, 8 January 2020 in the amount of £4,952.23 and 7/9 February 2020 in the amount of £7,247.21 in breach of paragraph 5(2) of the Freezing Order, being a disposal, dealing with and/or diminishment of his assets in excess of his entitlement to ordinary living expenses of £2,000 per week."*

60. It is said that this ground is made out because:

i) For the reasons explained in relation to the first and second grounds, Mr Shelley knew of the terms of the Freezing Order.

ii) Mr Shelley does not deny that he dissipated sums in excess of £2,000 per week in circumstances where:

a) Paragraph 5 of the Freezing Order prevented Mr Shelley from disposing, dealing with or diminishing, monies received directly or indirectly from

the WFT. The only exception to this was that Mr Shelley was permitted by paragraph 14 of the Freezing Order to spend £2,000 per week on his ordinary living expenses and a reasonable sum on representation, provided the monies were not trust monies and he first notified the D.

b) Between October 2019 and February 2020, Mr Shelley caused his salary to be diverted to an account in Mrs Shelley's name in circumstances where it was his own salary and where those monies had previously been paid into an account held in his own name subject to the Freezing Order, as revealed by the bank statements obtained pursuant to the *Norwich Pharmacal* applications.

61. In response to this allegation Mr Shelley again says that he had panicked and had not understood the consequences of doing what he did. He had truly believed that if his wages were not paid into Mrs Shelley's bank account, he would be unable to withdraw funds to pay bills. His position is that he had not asked for his wages to be paid into Mrs Shelley's account in order to try and conceal or hide money, rather he did it in order to ensure he could pay bills and make sure his family had food on the table. At the time he did not think it was wrong and his only concern was to pay bills for his family.

62. In my judgment it is clear that Mr Shelley knew of the facts that made his act a breach in that he knew of the Freezing Order and he knew that he was diverting his wages to avoid the effect of the Freezing Order. I also note that with regard to this ground the breach took place over an extended period of several months and not in the immediate aftermath of service of the Freezing Order.

63. Having regard to the facts and matters that I have related, I am satisfied such that I am sure that this fourth ground of contempt is made out.

64. By its **fifth** ground of contempt, the D alleges that:

> *"After personal service of the Freezing Order, between 22 August 2019 and 25 September 2019 the Claimant spent or transferred more than £20,295.15 from the Claimant's Metro Account in breach of paragraph 11(b) and/or (c) of the Freezing Order, being a disposal, dealing with and/or diminishment of his monies received directly or indirectly from the Trust."*

65. It is argued that this ground of contempt is made out because:

i) For the reasons explained above in relation to the first and second grounds, Mr Shelley knew of the terms of the Freezing Order.

ii) Mr Shelley accepts that he acted in a manner which involved a breach of the Freezing Order by disposing, dealing with, diminishing monies received directly or indirectly from the Trust.

66. This ground is in terms another way of constructing a contempt based upon the same facts or event as described at ground three, but in this instance characterised as a breach of the order preventing dealings with trust assets, that is to say "*disposing, dealing with,*

*diminishing monies received directly or indirectly from the Trust*". It is accepted by Mr Shelley that the monies came into the account from the WFT as indeed Mr Fairbrother in his affidavit explains. It therefore follows that his actions amounted to a breach of the Freezing Order and in turn, in my judgment, a contempt.

67. By its **sixth** ground of contempt, the D alleges that:

> *"The Claimant was required to but failed to give full disclosure of the £163,574.29 received into the Claimant's Investec Account and Metro Account in breach of paragraph 12(1)(a) of the Freezing Order, being monies he had received from, or by virtue of his status as a beneficiary of, the Trust."*

68. D puts forward this ground of contempt because it says it is clear that Mr Shelley knew of the terms of the Freezing Order, and that he acted in breach of it by failing to give full disclosure of £163,574.29 in circumstances where:

i) paragraph 12(1)(a) of the Freezing Order required Mr Shelley to give full details of monies he had received from, or by virtue of his status as a beneficiary of, the WFT; and

ii) Mr Shelley had received £163,574.29 into his Investec Bank Account and his Metro Bank Account, shown incontrovertibly by the bank statements for these accounts and corresponding with the disclosure received from Mr Crane, but Mr Shelley only disclosed receipt of payments of approximately £125,000.

69. In regard to this allegation Mr Shelley once again offers an admission. He goes on to explain in the Response that he did receive this money from the WFT, being amounts which Mr Crane arranged to pay to him. He accepted Mr Crane's advice that it was appropriate for the WFT to pay him this money. £120,000 was for agreed management fees. £3,574.29 was the court fee for the claim he issued against the D. This was to recover his fees due from the D which Mr Crane had encouraged him to pursue. £40,000 was for an investment into a property that did not proceed. As Mr Crane had not asked for the £40,000 back, he did not pay it back, something Mr Shelley now regrets as he should have offered to return it when the investment did not proceed. Instead of returning it to the WFT, he invested it into shares which he put in his sole name but "earmarked for his children". What Mr Shelley acknowledges that he had not admitted was that this was WFT money. He had always kept it separate in a separate investment in case he was asked to repay it but had not disclosed it and had not said that the investment came from WFT money.

70. In my judgment there is no basis for finding otherwise than the sixth ground of contempt is proved to the criminal standard. Mr Shelley admits the breach of the Freezing Order disclosure requirements. He knew he had received additional money from the trust which he had segregated into a separate fund. He knew well that it was there but did not reveal its existence. Even on Mr Shelley's case there are funds beyond those which he had disclosed, which in fact belonged to the WFT.

71. By its **seventh** ground of contempt, the D alleges that:

> *"The Claimant was required to but failed to give full disclosure of the assets acquired by him or by others on his behalf with any monies or assets he had received from, or by virtue of his status as a beneficiary of the Trust in breach of paragraph 12(1)(c) of the Freezing Order in that he had received £163,574.29 from the Trust into the Claimant's Investec Account and Metro Account but those monies were no longer standing to the credit of either account in full as at the date of the Freezing Order."*

72. The D puts this ground of contempt of court forward because knowing of the terms of the Freezing Order, Mr Shelley breached its terms by failing to give full disclosure of assets acquired by him with monies he had received from the WFT in circumstances where:

    i) paragraph 12(1)(c) of the Freezing Order required Mr Shelley to give full details of any assets acquired by him or by others on his behalf with monies he had received from, or by virtue of his status as a beneficiary of, the WFT;

    ii) Mr Shelley had received £163,574.29 into his Investec Bank Account and his Metro Bank Account as Mr Fairbrother's evidence and Mr Shelley's bank statements demonstrate; and

    iii) despite not having retained those monies in the accounts into which they had been received, Mr Shelley gave no disclosure whatsoever of any assets having been acquired by him or by others on his behalf.

73. In his affidavit at para 118, Mr Fairbrother says this:

> *"The Estate now knows that Mr Shelley did in fact acquire assets with the monies he received from the Trust into these Accounts, as the bank statements for the relevant accounts and analysis of fund movements I have prepared and exhibited to this affidavit show; Mr Shelley was required to give disclosure of these transfers, being the acquisition of an asset, but he wholly failed to do so. I believe this was a deliberate breach of paragraph 12(1)(c) of the Lambert Order.*
>
> *119. In respect of the assets he did disclose, he (i) failed to disclose them as assets which he had acquired with Trust monies as he was required to, and (ii) actively misled the Court and the Estate about them; for example, on 17 April 2019, shortly after my firm began asking Mr Shelley pointed questions about his involvement in the Trust, he decided to transfer £40,000 of Trust monies into a Jarvis Stocks and Shares Account ("Jarvis Account"); given those funds were Trust monies, Mr Shelley was required to disclose such transfer and the provenance of monies in the Jarvis Account under the Lambert Order. He did not. Instead, when swearing his Second Affidavit, he misled the Court and the Estate into believing that the funds in the Jarvis Account were a longstanding savings account held for his children. Had the Estate not obtained Norwich Pharmacal relief to reveal the*

> *true source of those funds, the Court would have remained misled."*

74. Mr Shelley now admits this breach. He goes on to say that the £40,000 referred to by Mr Fairbrother is still available.

75. Once again I am satisfied such that I am sure that this ground of contempt has been established. There was a clear failure to disclose and Mr Shelley accepts this. He knows precisely what he failed to reveal and knew that he was breaching the Freezing Order when he acted in this way.

76. Turning now to the **eighth** ground of contempt, the D alleges that:

> *"The Claimant was required to but failed to disclosure of all of his worldwide assets in excess of £10,000 in value in breach of paragraph 9 of the Freezing Order, such failure to be inferred from the extent of the Claimant's assets as disclosed by reference to the sums received by the Claimant and withdrawn in cash in the period prior to the Freezing Order."*

77. In this instance I am asked to draw an inference. It is said that in circumstances where Mr Shelley knew of the terms of the Freezing Order, for the reasons set out by Mr Fairbrother in his affidavit, there are circumstances from which the court can properly infer that Mr Shelley has failed to give asset disclosure of his worldwide assets in excess of £10,000. The argument is that:

    i) Paragraph 9 of the Freezing Order required Mr Shelley to give full details of all his worldwide assets exceeding £10,000 in value, whether or not in his own name and whether or not solely or jointly owned. To the extent that Mr Shelley has any asset with a value in excess of £10,000 but has failed to disclose it, he will be in breach of the Freezing Order.

    ii) Mr Shelley received very substantial sums from the WFT and also by way of a £122,200 secret commission from Provincial but his disclosed assets do not reflect such wealth. No adequate explanation has been given by Mr Shelley for what has become of the monies he received.

    iii) For the reasons set out generally in the Application, Mr Shelley is disposed to lying if he perceives it suits his interests.

    iv) While Mr Shelley appears to dispute that he failed to give full disclosure notwithstanding his admission of the ground of contempt, the fact remains that to the extent that Mr Shelley does in fact have such assets but has failed to disclose them as the D believes, there can be no dispute that Mr Shelley knew of facts that amounted to a breach of the Freezing Order.

78. This ground in essence asserts that Mr Shelley can be shown to have had an interest in material sums of money. His financial activity on his bank accounts does not reveal a standard of living where such sums would have been dissipated in the ordinary course. Mr Riley QC carefully took me through the bank statement evidence during the hearing. So where is the money now, asks the D. I am also asked to take into account Mr

Shelley's admitted tendency to lie. It is clear even just from his admissions in his Response that he accepts that he has been less than truthful in the past.

79. When it comes to drawing an inference and taking into account alleged lying on the part of Mr Shelley, I remind myself of the direction that would be given to a jury in terms that if I think Mr Shelley has told lies, that in itself cannot establish guilt. A defendant may lie for many reasons, and they may possibly be innocent ones in the sense that they do not denote guilt, for example, lies to bolster a true defence, to protect somebody else, to conceal some disgraceful conduct or out of panic, distress or confusion.

80. If I think that there is, or may be, an innocent or alternative explanation for Mr Shelley's lies then I must take no notice of them. It is only if I am sure that he did not lie for an innocent or alternative reason that his lies can be regarded by me as evidence supporting the case put forward by D.

81. In this case I am satisfied that Mr Shelley's conduct, taken as a whole is demonstrative of someone who has at material times, sought to conceal what has been going on. He is disposed to lying if he thinks it will help him conceal assets or what has in truth been happening. I do take this into account when deciding whether to draw the inference that the D invites me to draw. I also have in mind the approach taken to inferences by Christopher Clark J in *Masri*. In the event, in my judgment no reasonable person would fail to draw the inference, and on the evidence I hold myself compelled to draw the inference.

82. It follows that I hold Mr Shelley in contempt on the eighth ground and find that he has, as he admits in the Response, failed to disclose fully his assets in excess of £10,000 in value, as required by the terms of the Freezing Order.

83. By its **ninth** ground of contempt, the D alleges that:

> *"The Claimant gave sworn evidence in the form of his first affidavit on 3 September 2019 that he believed that "Mr Norman's family retained an interest [in the investments in Provincial, C4C and Digby] and the Trust was also subject to the terms of any will that Mr Norman had in place" which was false and the Claimant either knew it to be false or had no honest belief in its truth."*

84. The D says that Mr Shelley's sworn evidence was patently false insofar as it is now clear, as Mr Shelley must have and did know, that Mr Norman's family retained no interest in the WFT. Indeed Mr Shelley himself was a beneficiary in the WFT. During the hearing I was taken to evidence that revealed how:

    i) Mr Shelley sent an email to Mr Crane at 17:56 on 4 July 2020 stating that he alone was the beneficiary of the WFT;

    ii) the Letter of Wishes presented by Mr Shelley to Mr Norman for signature on 7 July 2020 did not name Mr Norman's family as beneficiaries at all, let alone as the *"main beneficiaries"*. The only family specifically named was *"the family,*

*wider family, including any cause from any legal or common law marriage, of Mr S Shelley"*;

iii) no one other than Mr Shelley or Mr Crane in fact benefitted from the assets being transferred into the WFT;

iv) In his own Amended Reply and Defence to Counterclaim served in December 2019, Mr Shelley asserted at paragraphs 53(f) and 59(e) that Mr Norman had informed him that *"he wanted him to have a proportion of the Provincial, Digby and C4C investments for himself and his family"*;

v) Mr Crane's position was that Mr Shelley was the sole beneficiary of the WFT and did not believe that any persons related to Mr Norman were beneficiaries of the WFT;

vi) Mr Shelley and Mr Crane were manifestly unwilling to provide to the Executors any information about the WFT.

85. The D says that the statement made by Mr Shelley was likely to interfere with the course of justice, apparently being intended to be used by him to secure the discharge of the Freezing Order.

86. In the Response, Mr Shelley admits the contempt and goes on to say that he accepts his statement was false and is misleading. He says that he did not make the statement intentionally being dishonest. He had received information from the trustee who told him that the trust was "a discretionary one and therefore he was not a beneficiary". Mr Shelley claims little understanding of this kind of structure and he had explained what he believed to be the position to his solicitor who prepared the statement that was given to him to sign "saying that this was the way to explain it". He had not read it in detail and for that he accepts blame. Though he admits that this statement was false, at the time of making the statements, he was not in a good mental state and was taking anti-depressants to cope. His main worry wasn't the case itself, it was the rising legal fees and pressure being put upon him. He had buried his head in the sand; he had not truly appreciated or understood the importance of the statements he was signing and the need to be accurate and factually correct. Mr Shelley goes on to say that he is truly sorry for the problems caused and wishes he had paid more attention to what he now understands is a very serious situation. It will never happen again he says and a lesson has been learnt.

87. Mr Shelley makes his living as an Investment Adviser. He has had numerous jobs in that position over many years. Substantial fees that he has been paid, as has been seen in this case, have derived from his role as investment manager advising the WFT. I have seen a wealth of correspondence between Mr Shelley, Mr Crane and the solicitors Walker Morris. The result of all of this is that I do not accept for one moment that Mr Shelley lacks the understanding on trust structures that is claimed in the Response. I am satisfied, and I am sure, that for the reasons advanced by the D, and the further matters outlined by me, that Mr Shelley was well aware that he was making a statement that was in every respect false. He did so deliberately doubtless in an attempt to try to cover his tracks.

88. For all these reasons, I find the ninth ground of contempt proved.

89. As far as the **tenth** ground of contempt, the D alleges that:

> *"The Claimant made a false statement of truth in respect of his Particulars of Claim dated 6 June 2018 in that his pleaded case that "Terms and Conditions were issued as normal in any business arrangement" was false and the Claimant either knew it to be false or had no honest belief in its truth."*

90. As to this ground the D says that Mr Shelley's pleaded case was patently false, in that Terms and Conditions were not issued to Mr Norman by Mr Shelley. It is really that straightforward. Mr Shelley accepts that he did not issue Terms and Conditions to Mr Norman. I agree with Mr Riley QC that it is not easy to see how Mr Shelley can ever have been mistaken about this. It was an issue of importance to the claim he brought by these Proceedings: that is the manner in which his alleged contractual entitlement to the substantial sums he was claiming arose.

91. The background to the issue concerning the Terms and Conditions is important in a number of respects as will become self-evident. Mr Fairbrother deals with it in his evidence at paragraphs 16-19 and they are worthy of attention.

> "16. These proceedings were commenced by Mr Shelley on 6 June 2018 in the County Court Business Centre, as a claim for £74,300.45 in respect of fees said to be due to him under the Alleged Agreement for unspecified work allegedly done between 20 July 2016 and 5 August 2016, that is during the last weeks of Mr Norman's life when he was gravely ill, together with interest and costs.
>
> 17. The brief CF Particulars, the contents of which were verified by a statement of truth, provided: "My relationship with Christopher Norman (Deceased) was one of Investment Advisor. Terms and Conditions were issued as normal in any business arrangement". The "Terms and Conditions" to which Mr Shelley referred were not enclosed with the Claim Form but, three weeks after issuing his claim, on 2 August 2017, Mr Shelley sent to Ms Norman a document which purported to be an 'audit' of the business relationship between him and her father carried out on Mr Shelley's instructions by 'Baker Crane', who described themselves as "independent accountants", ("the Baker Crane Report"). Consistent with Mr Shelley's pleaded case as it was then, the Baker Crane Report explained that "A formal business relationship was established between Mr Shelley and Mr Norman by way of the issue and acceptance of Terms and Conditions and Power of Attorney Documentation" and a copy of the alleged Terms and Conditions were attached to the report at Appendix C ("the Alleged Terms") but with no evidence as to how they came to be either issued or agreed. Ms Norman has explained that she and her sister had concerns about the integrity of the Baker Crane Report, not least because it was not signed off and provided no contact details and later investigations showed Baker Crane to be an enigma. Efforts by the Estate to

> contact Baker Crane were unsuccessful but the Estate now knows that the Baker Crane Report was in fact drafted by the Third Party to these proceedings. The Third Party, who styles himself Baron Stuart Gordon Crane of Cluny ("Mr Crane"), admitted the same in his response dated 4 May 2020 to the Estate's request for further information, having previously denied this to me by telephone on 28 August 2019. Ms Norman has told me that she concluded that the Baker Crane report was not in fact genuine independent evidence but was in fact an attempt to bypass the proceedings and to mislead her into paying the sums claimed without further investigation into the matter.
>
> 18. The Estate does not believe that the Alleged Terms represent the terms of the agreement between Mr Shelley and Mr Norman, to the extent that formal terms were ever agreed at all. I say that because I was able to download a copy of Baker Crane's own purported terms of business from their website before it was apparently taken down after service of the Lambert Order on Mr Shelley and Mr Crane. As the Court will note, Baker Crane's terms are identical to Mr Shelley's Alleged Terms save for minor amendments of the terms "Baker Crane" to "Steven Shelley" and other changes to paragraph 8 on "Fees" and the footer. I have performed a comparison of the two documents in Word, so that the Court may easily identify the very minor differences.
>
> 19. In light of that comparison, I believe it is clear that the so-called Terms that Mr Shelley contended were provided to Mr Norman were in fact merely 'cribbed' from Baker Crane's website for the purposes of these proceedings in an attempt to give, falsely, a clear contractual basis for his claim. I am reinforced in that view because, amongst other things:
>
> > 19.1. Mr Shelley and Mr Crane were not introduced to one another until July 2016, eight months after Mr Shelley claimed to have sent the Alleged Terms to Mr Norman in November 2015; it would therefore be a remarkable coincidence if Mr Shelley's Alleged Terms were identical to Mr Cranes' business terms although they were unknown to one another at the time;"
> >
> > 19.2. Ms Norman informs me that she has conducted a search of her father's email account and there is no evidence of Mr Norman ever having received the Alleged Terms by email despite that being the principal medium by which Mr Shelley communicated with Mr Norman; and
> >
> > 19.3. Mr Shelley himself changed his case completely, in the circumstances I describe more fully below, expressly to disavow any reliance on any written terms and conditions."

92. Mr Shelley in the Response says this:

> "This was false as no formal terms and conditions or contract was issued, However, there was some basic terms which were sent by e-mail and agreed to verbally. I did raise the issue of T&Cs with Mr Norman but he said he was not concerned. I should have insisted but I didn't and so when bringing the claim, I was told I would need to have T&Cs and so I said that I did as I knew the agreement that was made between us."

93. It might be that Mr Shelley seeks to say that some terms and conditions were agreed between him and Mr Norman but he does not have evidence of them now. The problem he has with that version of events is that he supplied alleged written terms with the Baker Crane Report as described by Mr Fairbrother. I accept Mr Riley QC's submission that these terms were patently concocted using Baker Crane's own terms and conditions as a template. Mr Shelley does not seek to gainsay that. He accepts that no formal terms and conditions were issued as he had pleaded. He subsequently abandoned any attempt to rely on the existence of the alleged written terms and conditions in his Amended Particulars of Claim.

94. I accept that the statement made by Mr Shelley was likely to interfere with the course of justice, apparently being intended to be used by him in order to justify and bring a claim for substantial sums allegedly due. It seems to me entirely likely that the *"Terms and Conditions"* he put forward were concocted specifically for the purposes of these proceedings after Mr Norman had died.

95. For all of these reasons, I find and I am sure, that the tenth ground of contempt has been established.

96. By its **eleventh** ground of contempt, the D alleges that:

> *"The Claimant made a false statement of truth in respect of his Reply and Defence to Counterclaim dated 31 May 2019 in that his pleaded case at paragraph 30 that "Mr Norman himself directly took the actions referred to by the Defendant in relation to the White Fence Trust and the Claimant only introduced Mr Norman to the investment opportunities themselves" was false and the Claimant either knew it to be false or had no honest belief in its truth."*

97. Mr Riley QC says this ground is made out because:

    i) Mr Shelley knew the importance of the statement he was making by way of Defence to D's Counterclaim. The Counterclaim itself was made against a backdrop of repeated and sustained enquiries by the D with respect to the WFT. The statements were not minor points of detail about which he could plausibly have been inadvertently mistaken.

    ii) The statement Mr Shelley made is so manifestly untrue that it is difficult to see how he can have had any honest belief in its truth at the time it was made, given that:

a) he had obtained and included the Lex Mercatoria Letter in the bundle for the CMC in March 2019; and

b) he had been acting as Investment Advisor to the WFT up to March 2019, just two months before he made his statement of truth, and that the trust contained substantial investments that he had diverted to his own use - there could be no scope for any assertion that he had forgotten his role in relation to the WFT.

98. In the Response, Mr Shelley admits the allegation and concedes that "Mr Norman did not take the actions directly himself. The arrangements were put in place largely by 3rd parties and myself." All of the evidence that I was taken to by Mr Riley QC was consistent with this frank and unequivocal admission. The actions referred to were the numerous steps taken to move the assets into the WFT. The email correspondence makes it plain that it was Mr Shelley who orchestrated this; Mr Norman was not involved at all.

99. I am satisfied that the statement made by Mr Shelley was likely to interfere with the course of justice. It was designed to frustrate the D's claim to discover what had become of the Investments transferred into the WFT and it did so. I am satisfied that this ground of contempt has been proved to the necessary standard.

100. The **twelfth** ground of contempt relied upon by the D alleges that:

> *"The Claimant made a false statement of truth in respect of his Reply and Defence to Counterclaim dated 31 May 2019 in that his pleaded case at paragraph 32 that "As the Claimant was not materially involved with the White Fence Trust nor the transfer into it of any related assets, the Claimant is not in possession of document [sic] and information that would assist the Defendant" was false and the Claimant either knew it to be false or had no honest belief in its truth."*

101. It must already have become obvious that Mr Shelley cannot in any honesty seek to deny his involvement in the WFT, and in the Response he admits the allegation. He goes on however to offer an explanation that needs to be set out in full:

> "I can understand why this now looks false. However, when I made this statement, I did believe it to be true. It is true that I had no documents in my possession. As the disclosure now shows, everything was driven by 3rd parties and I just signed or got documents signed. I relied upon others as I didn't really understand the trust or how it worked. Whilst I did sign documents to transfer the assets I did not consider that I was "materially involved" as I didn't set it up and really only signed what was given to me. I can understand now though how this now looks and I accept I was a beneficiary of the trust and resigned as a beneficiary and so clearly I was involved in it but I was not materially involved in setting it up."

102. I have enormous difficulty with this passage of Mr Shelley's explanation. As I have already found, there can be no doubt that Mr Shelley understood very well the workings of trusts and in particular the WFT. Mr Shelley signed his emails as a Chartered Member of the Chartered Institute for Securities and Investment. Whilst he might not have been a trusts lawyer or the person drafting the deed, he knew quite sufficient to know whether he was materially involved or not: he undoubtedly was. The emails passing between Mr Shelley, Walker Morris, Mr Gore and Mr Crane in July of 2016, put this beyond any measure of doubt.

103. I find that the statement made by Mr Shelley was likely to interfere with the course of justice, indeed it did so; I also find the twelfth ground of contempt proved to the requisite standard.

104. The **thirteenth** ground of contempt alleged by the D asserts that:

> *"The Claimant made a false statement of truth in respect of his reply dated 16 September 2019 to the Defendant's request for further information in that his pleaded response at paragraph 2.2 that "The Claimant believed that Mr Norman's family were the main beneficiaries and that his own family could also be beneficiaries" was false and the Claimant either knew it to be false or had no honest belief in its truth"*

105. This ground emerges from the evidence that Mr Shelley in fact so arranged his dealings with the WFT as to ensure that he was the beneficiary and that Mr Norman and his family had no interest at all. Mr Shelley now accepts that this is the true state of affairs. This was the intended result of the arrangement that as I have already observed, Mr Shelley orchestrated together with Mr Crane and Mr Gore.

106. In the Response Mr Shelley simply says this:

> "As explained in Point 9. I was told this was a discretionary trust but as the sole beneficiary I know that Mr Norman's family could not have benefitted."

107. In fact mention of the discretionary trust is little to the point. What is relevant is that the evidence set out in the emails and documents from July of 2016 make it perfectly plain that Mr Shelley deliberately engineered a series of transactions the result of which were that Mr Shelley became a beneficiary in the WFT and Mr Norman and his family had nothing whatsoever to do with it. This is now admitted.

108. I am once again driven to find that a statement made by Mr Shelley was likely to interfere with the course of justice, and that it did so. I am thus satisfied to the requisite standard that the thirteenth ground of contempt has been proved.

109. The **fourteenth** and penultimate ground of contempt put forward by the D alleges that:

> "The Claimant made a false statement of truth in respect of his Amended Reply and Defence to Counterclaim in that his pleaded case at paragraph 30 that "Mr Norman himself directly took the actions referred to by the Defendant in relation to the White

> Fence Trust and the Claimant only introduced Mr Norman to the investment opportunities themselves" was false and the Claimant either knew it to be false or had no honest belief in its truth."

110. As will have already have become clear from what is set out this judgment, it was not possible for Mr Shelley to advance the position as a fact that Mr Norman himself took the steps to transfer the relevant assets to the WFT where Mr Shelley himself was a beneficiary but Mr Norman was not. In the Response, Mr Shelley whilst admitting the allegation, points again to his response given at ground 11 where it will be remembered he said that,

> "Mr Norman did not take the actions directly himself. The arrangements were put in place largely by 3rd parties and myself."

111. In fact Mr Shelley was wholly responsible for the "actions" albeit that he was assisted by others, notably Mr Crane. The result is that I find that the offending statement made by Mr Shelley was likely to interfere with the course of justice, being a material averment on a matter in dispute in the proceedings. I accordingly find that the fourteenth ground of contempt has been proved and that I am satisfied in that regard to the requisite criminal standard.

112. The **fifteenth** and final ground of contempt alleged by the D asserts that:

> *"The Claimant made a false statement of truth in respect of his Amended Reply and Defence to Counterclaim in that his pleaded case at paragraph 61 that "[…] the fees received by the Claimant [in acting as Investment Advisor to the WFT] were in the sum of about £120,000" was false and the Claimant either knew it to be false or had no honest belief in its truth."*

113. The D says that Mr Shelley was being paid and was using substantial sums by the WFT in respect of the services he allegedly provided. In circumstances where these sums were supposedly paid for professional services rendered, it is to be expected that Mr Shelley would have appropriate records, not least for his own personal tax returns and insurance purposes of the professional services he had provided. Their case is that Mr Shelley in truth received at least £165,000 as fees from the WFT. Mr Shelley appears on the face of the Response to admit the allegation however his position is that £40,000 was received by him for a property transaction which aborted. The additional amount was not received as fees.

114. I did not understand Mr Riley QC to offer any independent evidence that the £40,000 though undoubtedly received by Mr Shelley, had been received by him qua fees, thus rendering the pleaded statement false. Whilst it might be that from piecing the documents together and following the evidential trail, it can with some justification be contended that Mr Shelley has a rather loose relationship with the truth, he has in this instance put forward clear evidence as to the status of the additional £40,000 which it is not possible for me, in the context of this application at any rate, to entirely rule out. As has been stated throughout this judgment I have to be satisfied on the criminal standard that is to say that I am sure, and on this ground I find that I am not sure. I am

not sure that the £40,000 was received as fees by Mr Shelley such that it can be said that his pleaded assertion is false. On this ground the D does not make out its case.

*Conclusions*

115. For the reasons that I have given above, I am satisfied that the first 14 grounds have been established. As I previously indicated, I will now hear any submissions that the Contemnor Mr Shelley and the D, might wish to make on the sanctions that I should impose having regard to the contempts that I have found have been established.