

JERSEY / JUDGMENT

Dalemont -v- Senatorov [2012]

JRC 061A (21 March 2012)

[2012] JRC 061A

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judgment

the deputy bailiff: 1. The Court sat on 5th and 7th March to consider two representations by the Plaintiff alleging contempt by the First, Second and Fourth Defendants in respect of the interim orders contained in the Order of Justice in this case, re-issued on 25th November, 2011, and served on the Second and Fourth Defendants on 1st December and on the First Defendant on 9th December, 2011. 2. As the Court indicated in its judgment dated 12th January, 2012, in relation to an interlocutory summons brought by the First Defendant, the Plaintiff's claim is that it received an assignment of rights from a Russian private bank enabling it to sue the First Defendant under personal guarantees which had been given to that bank. In May 2010 the Plaintiff obtained two judgments in Russia against the First Defendant in the aggregate sum of US\$44,342,706.71 plus 80,000 Russian roubles (the "Russian judgments"). The Russian judgments were unsuccessfully appealed by the First Defendant in September and November 2010. The Plaintiff asserts that it has received some assets from the First Defendant but there is a sum outstanding under the judgments of just under US\$43 million. The Plaintiff seeks judgment against the First Defendant for the sum claimed, and orders enabling it to pierce the corporate veil of the Second Defendant so that the Russian judgments can be enforced against its assets, which include the shares in the Fourth Defendant itself the holding company in a structure of underlying companies incorporated inter alia in the BVI, Cyprus and Russia, which are alleged to hold valuable real estate assets. The alternative basis of claim is a Pauline action by which the Plaintiff asserts that it can look through a series of transactions which it is said were made with the intention and purpose of defeating the Plaintiff's ability to enforce the Russian judgments against the First Defendant. The result of the Pauline action, if the Plaintiff succeeds, is that the shares in the BVI companies would be returned to the ownership of the Third Defendant which is asserted to belong to the First Defendant. In the case of either claim, enforcement of the judgment debts is sought against shares in one or more BVI companies which, it is claimed, are in reality beneficially owned by the First Defendant although ostensibly beneficially owned by the Second Defendant, where legal title is currently vested in the Fourth Defendant. 3. The Order of Justice contained various freezing orders which are not material for the purposes of this judgment. However it also contained disclosure orders which were in these terms:- "(1) The Defendants shall each within 10 working days of service of the Order of Justice upon them provide the

Plaintiff's advocate in writing with details of all his/its assets worldwide whether in his/its own name or not and whether solely or jointly owned, giving the value, location and details of all such assets. Such disclosure shall include bank statements, share registers, correspondence, asset schedules and like documents. This information includes but is not limited to interests in companies ultimately owned by the Fourth Defendant which beneficially own real estate in Russia and Eastern Europe. (2) The information must be confirmed in an affidavit which must be provided to the Plaintiff's advocate within 10 working days of service hereof and which must exhibit thereto documentation in support of the information being provided. ..." 4. In the interpretation provisions of the Order of Justice, provision is made for how one is to construe the terms "defendant's assets", "assets" and "document". It is clear from the interpretation provisions generally that the disclosure orders are to be construed very widely. Thus, for example, in relation to the term "document", that word is said to include "correspondence of any one or more of the defendants in relation to any of the assets". 5. The Court has not been informed whether the Third Defendant has or has not complied with the orders made. To date, the Third Defendant appears to have taken little part in these proceedings, although it has filed a defence in which it denies the Court has any jurisdiction over it. The position as regards the First Defendant. 6. On 23rd December, 2011, the Court granted the First Defendant's request for an extension of time for disclosure until 5th January, 2012. At that time, there was pending an application by the First Defendant to limit disclosure to his assets in Jersey, and to discharge any obligation on his part to provide any information relating to the companies ultimately owned by the Fourth Defendant. On 27th December, the First Defendant provided his first affidavit which disclosed that he had nothing except "my beneficial interest in Helios Investments Foundation", the Second Defendant. 7. On 12th January, the First Defendant's application to vary the width of the disclosure orders was dismissed, but he was granted leave to appeal that decision, with a stay on the disclosure obligations pending appeal, conditional upon him providing full worldwide disclosure in an affidavit to be filed with the Court by close of business on 16th January, failing which the stay would be automatically lifted. The First Defendant did not in fact comply with that condition, because the affidavit was filed with the Judicial Greffier at 9.45am on 17th January. Technically therefore, the stay ceased to operate, in accordance with the Court's order of 12th January, and disclosure was immediately due, putting the First Defendant in breach of the order. On 18th and 19th January, the First Defendant filed and then served an application to extend the conditional stay that had been automatically lifted as a result of his failure to file by 5pm on 16th January, and at the same time, the Plaintiff filed its representation alleging the First Defendant was in contempt. 8. We now turn to that representation. 9. Advocate Baker agreed that the two points which the Plaintiff asserted in relation to contempt were:- (i) The First Defendant's failure to provide an affidavit to the Greffier as to his worldwide assets by 5pm on 16th January resulted in an automatic lifting of the stay and accordingly full disclosure was then due in accordance with the re-issued Order of Justice. By failing to make disclosure, the Defendant was in contempt. (ii) Notwithstanding that affidavits had been filed by the First Defendant with the Greffier by 18th January when this representation was presented, the Respondent had failed to make disclosure of its worldwide assets to the Representor pursuant to the re-issued Order of Justice. 10. In other words the contempt which was alleged was a failure to provide information to the Plaintiff in

accordance with the re-issued Order of Justice in circumstances where a stay on the Court's order of 12 th January had been imposed but had been automatically lifted, and where the First Defendant had issued a summons seeking an extension of the stay. The Representation did not in terms assert that the disclosure which had been provided was incomplete in any other respect.

11. Between 18 th January and 5 th March, there were further developments. We do not think the procedural details are sufficiently important to be recited at length, but the essence of them is that in fact the First Defendant abandoned its appeal against the order of 12 th January, thereby accepting that worldwide disclosure needed to be made under the terms of the re-issued Order of Justice, and the affidavit which he had lodged with the Judicial Greffier on 17 th January then became available to the Plaintiff. At the same time he provided further affidavits and indeed has now provided 7 th and 8 th affidavits pursuant to these orders. The 7 th affidavit was provided on 22 nd February and the 8 th affidavit is dated 5 th March. 12. For the hearing on 5 th March the Plaintiff filed a skeleton argument on 22 nd February, an additional skeleton argument on 27 th February, a position statement on 4 th March and a response to the First Defendant's submissions on 7 th March. The First Defendant had filed his skeleton argument on 1 st March and, as we have said, the 7 th and 8 th affidavits on the dates set out above. 13. It is not at all uncommon for there to be developments in the progress of litigation, but we do accept the following principles as proposed by the First Defendant; (i) A defendant facing an offence of a criminal character must know precisely the case which he is required to answer, including the nature and cause of the accusation against him. That arises from his right to a fair trial consistent with Article 6 of the European Convention on Human Rights. (ii) A person will not be found in contempt for failing to comply with the terms of a court order unless that court order unambiguously directed what was to be done. There are doubtless many authorities to this effect, but we were referred to *Iberian Trust Limited-v-Founders Trust and Investment Company Limited*

[1932] 2KB87 at page 95. (iii) Any ambiguity as to meaning of an order that has been said to have been breached should be construed in favour of the defendant - see *Commission for Equity in Human Rights-v-Griffin and Others*

[2010] EWHC 3343 (Admin) . 14. In these circumstances the First Defendant contended that the Plaintiff's assertions in the different skeleton arguments, position statements and response went too far because the real nature of the complaint which the Plaintiff was making was not that which is set out in the Representation, but instead was a complaint that the First Defendant was not in fact complying with the substantive terms of the order which had been made despite the fact that affidavits had been lodged with the Court in purported compliance. 15. Advocate Thompson, on behalf of the First Defendant accepted that the First Defendant had committed a contempt, but he asserted it was a technical contempt. He was out of time, but there were understandable circumstances which accompanied the late filing of the affidavit of worldwide assets. He said that the question of compliance had been addressed, and the time period for giving disclosure was always unrealistic. He contended that the Court should consider giving further directions as to disclosure, should impose a rebuke or nominal fine, and as to the ambiguities in the order, direct the parties to agree the scope in the order within seven days and if there were no

agreement to return to Court with a summons by which the scope of the order could be challenged and/or determined. These contentions were in response to the Plaintiff's submissions that the First Defendant should be given a six figure fine, should answer questions on affidavit in respect of a list of questions which the Plaintiff produced, should be directed to use his authority over all the companies within the Second Defendant's structure to require those companies to provide the Second Defendant and the Plaintiff with all information necessary as to the value and activities of the company and assets within the structure and to be barred from filing any further evidence or making any submissions on the merits of the case while he remained in contempt of court. 16. The Court considers that:- (i) The First Defendant was right to assert that when dealing with an allegation of contempt, he should only have to answer the complaints which are made in the Representation alleging contempt. To require him to answer other alleged contempts which emerged in the course of a succession of skeleton arguments and other submissions put before the Court would be wrong as it did not give him appropriate notice of the important allegations which he had to face. Where the allegations of contempt change, there should therefore have been an amendment to the Representation, an application for which would have been dealt with on the usual principles. (ii) The First Defendant was also right to assert that there was a distinction to be drawn between discovery on the issues raised by the pleadings and disclosure pursuant to the interim orders; and that it was not the function of the interim order to provide early discovery before the issues were crystallised by the pleadings. Here the substance of the issues raised by the Order of Justice included the assertion that the Court could look through the structure of the Second Defendant and its subsidiary companies, and also the assertion that transfers have been made in order to defeat creditors and could be set aside under the Pauline action. We agree that discovery in relation to those issues is not the same as the disclosure which has been ordered on an interim basis. (iii) However, the disclosure orders obtained by the Plaintiff on an interim basis are justified both because this is a post judgment action against the First Defendant in respect of whom judgment in Jersey is now being sought, and the Plaintiff is therefore entitled to seek orders for the fullest disclosure of the First Defendant's assets; and secondly because, in the circumstances of the present claims, the Plaintiff having been granted injunctions restraining the various defendants from dealing with any of the assets which are the subject of the injunctions, is entitled to disclosure of those assets to ensure that the injunctions can be appropriately and properly policed. 17. There is therefore a distinction between information which goes to the value location and specification of the assets which are caught by the injunctions with any documentary evidence which goes to those matters on the one hand, and correspondence and other documents which might be relevant to the setting up of the Second Defendant and the underlying structure, and/or the transfers which are the subject of the Pauline claim. The former is the subject of the interim orders for the various reasons stated. The latter is or may be relevant depending on what is in issue in the pleadings when complete, and therefore might be the subject of disclosure at a later stage. In this respect therefore, we think the First Defendant was entitled to assert that there was some ambiguity in relation

to the order to produce documents because the language of the Order of Justice as described in paragraphs 3 and 4 of this judgment is extremely wide. Accordingly, we do not at present consider it would be right at present to give the Plaintiff the kind of relief for which it contended in the skeleton arguments and before us. 18. However, despite these criticisms which might be made of the Plaintiff's approach, we think the more serious criticism is to be made of the approach of the First Defendant. His affidavits have not only been late but clearly inadequate, as indeed is illustrated by the fact that he has filed successive affidavits progressively giving more information. He asserts that the information has not been available to him, but the Court finds that hard to accept in circumstances where it is clear from his 7th and 8th affidavits and from the submissions that were made to us that by virtue of his relationship with the Russian company CJSC IG Kobernik ("Kobernik") which manages a number of Russian companies that deal with real estate development projects, he must have access to considerably more information than has so far been apparent. We think that the Plaintiff is entitled to complain, as it does, that until the 7th affidavit, the First Defendant had provided not one single document notwithstanding the terms of the disclosure orders, and even as of now it is quite apparent from other documents which have been produced that the First Defendant must have access whether in hard copy or electronically to a wide range of information which has not yet been provided. It was noteworthy that until 12.40pm on 7th March, 2012, not one single bank statement had been disclosed. No company accounts had been disclosed, neither had any documents of title. It was impossible to tell whether in fact there had been the lock down of assets which the Defendants claimed had been the result of the Order of Justice, particularly so in the light of some Powers of Attorney which had been granted by companies within the structure to third parties, where those Powers of Attorneys appeared to be still operative. 19. The disclosures which have been made to date, both by the First and by other Defendants all point to an ability on the part of the First Defendant to gain access to documentary evidence, and the Court considers that he should do so. In summary, we think that the First Defendant comes to this Court on the contempt representation with some legitimate criticisms of the Plaintiff's approach but in circumstances where the balance of justice at this stage in relation to the orders which have been made lies overwhelmingly with the Plaintiff. 20. The Court accordingly intends to deal with the contempt representation by confirming that the First Defendant is technically in breach of the Court's earlier orders and by clarifying the disclosure which must be made in accordance with the Order of Justice. In doing so we are going to allow a further period of 28 days from 7th March, given the ambit of the disclosure which is required, and we would also like to emphasise that all the relief for which the Plaintiff contended is relief which we would carefully contemplate if any further contempt by the First Defendant is brought back to us for attention. The contempt of the Fourth Defendant 21. It is convenient next to turn to the contempt alleged against the Fourth Defendant. 22. The disclosure order against the Fourth Defendant is as set out at paragraphs 3 and 4 above. The position of the Fourth Defendant is in one respect not the same as that of the First Defendant. Here there is no post judgment relief being claimed. The disclosure

orders are justified against the Fourth Defendant for the reasons which are set out in the Court's judgment of 19 th January, 2012, in respect of which the Fourth Defendant sought leave to appeal and was refused such leave by a single judge of the Court of Appeal. 23. From the very outset, the Fourth Defendant's response to these proceedings has been unconvincing, and it is very much to be hoped that the Fourth Defendant, which has a very close connection with a firm of Cyprus lawyers, will show in the future a greater degree of respect for the Royal Court of Jersey and its orders. The Fourth Defendant was served on 1 st December, 2011, and was due to make disclosure by 15 th December. By agreement, that was extended by one day to 16 th December. On that day, Advocate Nicholls appeared to apply for an extension of time to 12 th January, 2012, to provide the disclosure which had been required by the Order of Justice. He informed the Court he had been instructed on 2 nd December. No justification for the extension of time was advanced, and the application for an extension was therefore refused. On 21 st December, the Fourth Defendant made a further application for an extension. Advocate Nicholls gave an unequivocal apology to the Court on behalf of his client. He provided an affidavit, unsworn but approved by Ms Korelidou, the sole director of the Fourth Defendant. Ms Korelidou's affidavit set out the basis of the application for an extension of time. It was solely that the disclosure order to be made was very extensive and the Fourth Defendant required time in order to be able to comply. She indicated that the service manager for the Fourth Defendant and the underlying BVI and Cyprus companies was Proteas Management Limited ("Proteas"). She said that Proteas was not in a position to provide valuations of underlying assets nor to confirm the corporate structure which was exhibited by the Plaintiff, and furthermore that in the BVI there was no obligation to file accounts for BVI companies and none had been filed or prepared. She indicated that as a consequence, in relation to each of the companies, steps would have to be taken to obtain a valuation of the assets and that would take time. As regards the Cyprus companies it would also take time to produce draft accounts which so far had not been filed or prepared, and as to the Russian companies, she said that there would be a substantial amount of work that would be required in preparing valuations of the Russian assets. She went on:- "This is simply not something that the Fourth Defendant could produce quickly as it will be necessary for experts to carry out this valuation exercise. It will inevitably take time to arrange this, especially when taking into consideration the considerable amount of detail required. To this end the Fourth Defendant has instructed Konstantin Lebedev a partner in the Moscow office of Cushman & Wakefield to carry out the valuation of the assets in Russia. The Fourth Defendant has received an indication, after discussions in relation to the exercise with the expert, that they will not be able to prepare a final report on the value of those assets until mid January..." 24. On the basis that instructions had been given for valuations to be carried out, it seemed obvious that the Fourth Defendant must have had details of what assets were required to be valued and the extension of time as requested by the Fourth Defendant was granted on condition that the Fourth Defendant provide to the Plaintiff by close of business on 23 rd December, 2011, a list of the real estate which it held directly or indirectly or through any subsidiary company in which it

had a beneficial interest of more than 50%. The reference to real estate was a reference to real estate worldwide. 25. The Fourth Defendant failed to give disclosure of the real estate assets as ordered. Instead an email was sent to the Court on 21 st December after the Court had closed for the Christmas period indicating that the company was not able to do so. There was a hearing on 5 th January. For that hearing a draft affidavit of Ms Korelidou was in the Court papers. The Court indicated to Advocate Nicholls that a draft affidavit containing an apology for the contempt of Court was inadequate, and there was no merit in an assertion that the affidavit could not be sworn because Ms Korelidou happened to be away on leave. 26. On 6 th January, Advocate Nicholls handed up a sworn affidavit by Ms Korelidou. The assertion then made was that the effect of making the disclosure which had been ordered - the list of assets - would render the application made by the Fourth Defendant to have the disclosure order set aside nugatory. It was said that no disrespect to the Court was intended, but at the time of seeking the application for an extension of time before Christmas, the Fourth Defendant had not decided to challenge the order which had been made. The primary focus had been to obtain an extension of time. However Advocate Nicholls did not wish to fetter the unequivocal apology. 27. On 13 th January, Ms Korelidou swore her fourth affidavit in these proceedings. This affidavit was sworn in support of an application made by the Fourth Defendant pursuant to Royal Court Rule 6/7 to dispute the jurisdiction of the Court. In it, Ms Korelidou said, of the Fourth Defendant, that "its resources are relatively limited and accordingly, it has not been in a position to prepare an affidavit within the existing time constraints which comprehensively addresses all the issues which are relevant to this application." 28. On 27 th January, Ms Korelidou swore her fifth affidavit. Some five weeks after informing the Royal Court on oath that instruction had been given to a Russian firm of valuers, she deposed as follows:- 144. The Fourth Defendant has collated information and documentation from companies in the BVI and Cyprus that it owns directly and indirectly. The Fourth Defendant does not have knowledge of the assets ultimately owned by these entities. 145. The Fourth Defendant is aware that the Cypriot companies that it owns indirectly through the BVI companies acquired assets in Russia prior to the Fourth Defendant's ownership of the structure. These assets were acquired by entities acting on behalf of the Cypriot companies under various Powers of Attorney. 146. The Fourth Defendant has requested details of the underlying interests and this information was to have been provided to the Cypriot companies by those exercising the Powers of Attorney. Unfortunately this information has not been provided. 147. The Fourth Defendant has now written to those who were appointed to act under the Powers of Attorney and requested, in strong terms, that they provide the information they hold which is required to be disclosed under the orders of the Jersey court. 148. The Fourth Defendant has been advised that this information must be disclosed and, accordingly, as soon as this information is received, it will be provided. 149. As I explained in my first affidavit, the Fourth Defendant had instructed a partner in the Moscow office of Cushman & Wakefield to carry out a valuation of the Russian assets. Unfortunately, it has not, as yet, been able to advance that instruction because the Fourth Defendant did not have sufficient information as to the extent of such assets." 29. Pausing

there, the difference between the first affidavit and the fifth affidavit in relation to the instructions given to Messrs Cushman & Wakefield in Moscow is stark. It is hard to read the first affidavit other than as stating that instructions had been given such that a final report would be ready by mid-January. Yet the same deponent says in her fifth affidavit that the instructions cannot be taken forward because the Fourth Defendant does not have sufficient information as to the extent of those assets in order to give instructions. The Court is in little doubt that there was a deliberate attempt in the first affidavit to obfuscate the true position, and this of course had the effect of misleading the Court when that affidavit first came to be considered. 30. The matter came before the Court on 15 th February on an application by the Plaintiff for improved disclosure from the Second and Fourth Defendants. It was then accepted that disclosure was inadequate, and Advocate Steenson, for the Fourth Defendant, indicated that information was being collated as soon as possible. He did not oppose the making of the orders which the Plaintiff sought and agreed that the information given by the Fourth Defendant should extend to the provision of an explanation of the efforts which it had made to comply with the interim orders. The Court ordered on that day that the Fourth Defendant should disclose copies of the Powers of Attorney within three days, a timetable with which the Fourth Defendant agreed, and translations as soon as possible thereafter; should identify the entities, and if corporate entities identify the human beings in respect of the Powers of Attorney and any correspondence which had taken place with a view to ascertaining what the assets of the underlying companies were; should produce copies of the correspondence to show the efforts which had been made to collect the information which Ms Korelidou indicated in paragraphs 144 to 149 of her fifth affidavit, and should produce Ms Korelidou at the hearing on 5 th March for questions to be put by the Plaintiff or by the Court. 31. On 29 th February the Court received a copy of the medical certificate issued in Limassol by Dr Androula Zoppou-Gousev confirming that Ms Koreodiou was not fit to travel at that time. As a result, arrangements were made for her evidence to be taken by video conference on 5 th March. Unfortunately for technical reasons the quality of the link between Jersey and Cyprus on 5 th March was poor and it was not always easy to identify what Ms Korelidou was saying in her evidence although we are satisfied the references in this judgment to the evidence she gave are fair. The position was not improved by the fact that she determined that she would give evidence using an interpreter, notwithstanding that her first five affidavits had all been sworn in the English language, and apparently exhibited a good command of that language. In her evidence she was able to say that her affidavits had been translated to her, and although her firm's website indicated that she spoke English, it did not indicate the level of her competence in that language. She agreed that she sent emails in the English language sometimes. 32. As to substance, she said that she was a nominee director. She did not personally know the client who runs the Fourth Defendant. She was asked if she believed her client was the First Defendant and she said she did not know. She gave evidence that she knew nothing about the assets of the underlying companies. Her manager might have direct contact with the ultimate client but she did not. She had been told that there were no documents and she accepted it. She was shown

one of the Powers of Attorney in relation to the underlying companies and said that she had not seen that document previously; she noted that the document enabled the Attorney to transfer title to the underlying property and she said that she had no power to cancel it. When pressed, she said that she did not know what the Fourth Defendant owned. The lawyers in Cyprus and Russia who were responsible for the case wrote up the affidavits for her to complete, in conjunction with the Fourth Defendant's Jersey lawyers. She then added "truly I don't know much about what is in my affidavits". 33. It is a considerable understatement to say that the Court found the evidence which Ms Korelidou gave to be surprising. On the face of it, the Court has had put before it affidavits sworn by the sole director of the Fourth Defendant in circumstances where she professes no knowledge about the underlying content of the affidavits, claims not to understand fully the language in which the affidavits are sworn, and asserts that she is a nominee director. We do not know whether Cyprus law permits the appointment of "nominee" directors but we proceed on the basis that whatever the law of Cyprus might permit in that respect, the Royal Court of Jersey expects a director of a company, especially a sole director of a company, to have or to have access to all the information which the company should have. Advocate Baker understandably submitted that in effect the evidence she gave revealed a state of affairs consistent with the worst criticisms that might be made of the offshore financial services industry. He invited the Court to draw the inference that those who did know the information which the Fourth Defendant had been required to produce had deliberately mislead the Court and/or Ms Korelidou by keeping her in the dark. 34. It is clear that belatedly the Fourth Defendant has been making some efforts to produce information; nonetheless the Court is of the view that there has been at best indifference in the Fourth Defendant to the orders which have been made to date. Advocate Nicholls agreed that the disclosure more recently made by the Fourth Defendant should have been provided sooner. He accepted that there remained deficiencies in the disclosure and that its contempt in this respect has not been entirely purged. Both the lateness of delivery of the information and the lack of completeness were accepted as breaches of the order, but he submitted that in respect of the earlier failures, the Court had already punished the Fourth Defendant by making an indemnity costs order. He also indicated that there had been considerable further disclosure made. The Fourth Defendant continued to express its apologies to the Court and was taking the whole process now extremely seriously. By Ms Korelidou's sixth affidavit, which was her second disclosure affidavit, sworn on 2 nd March, she gave further information but it was recognised that there was still no Russian bank statements, no company accounts and no Russian title deeds disclosed. The Second Defendant 35. The Second Defendant was served on 1 st December. It is a Jersey foundation. From the papers put before us, it would seem that there are three council members and a guardian. In accordance with the Foundations (Jersey) Law 2009 ("the Foundations Law"), one of the council members is an entity which is regulated by the Jersey Financial Services Commission, namely JTC Foundations Limited. On behalf of the Second Defendant an affidavit was sworn by Ms Saffron Harrop on 16 th December, 2011. The affidavit exhibited a draft statement of affairs prepared in relation to the Second

Defendant for the period 5 th July, 2010, to 30 th November, 2011, and verified that the assets of the Second Defendant were detailed within the accounts statement. The affidavit of Ms Harrop confirmed that the Second Defendant held shares in the Fourth Defendant and also that it held 50,000 ordinary shares in a BVI company called Zorane Investments Limited. It noted that there was one bank account in the name of the Second Defendant, which was with the Marfin Popular Bank Public Limited of Cyprus with a negative balance of approximately €250. Ms Harrop deposed at that time that an affidavit would be lodged by the Fourth Defendant dealing with the disclosure orders in relation to the assets which it held. 36. It is plain that the affidavit filed by the Second Defendant did not meet the disclosure obligation, and on 15 th February when the Plaintiff was seeking further and better disclosure, the Court ordered that Ms Harrop be available for cross examination by the Plaintiff or examination by the Court when the contempt proceedings came to be heard. 37. Ms Harrop duly appeared in Court on 5 th March. Advocate Nicholls on behalf of the Second Defendant agreed that she (like Ms Koreodiou) could be cross examined both in relation to contempt as well as disclosure. When giving evidence, she said that she had never met her fellow council members in the Second Defendant, Mr Andreas Marangos and Mr Amalia Hadjipapa. Council meetings took place by written resolution. She did not at that time know if either of the council members were directors of any of the underlying companies. She agreed that she would expect them to tell her if they were, on the basis that it might disclose a conflict. 38. She said that until recently the Second Defendant had had very little information about the companies in the corporate structure below the Fourth Defendant. 39. When Jersey Trust Company became involved in the corporate structure by providing a qualified council member for the Second Defendant, it did not ask for detail of the real estate owned by the subsidiary companies. The firm did ask for confirmation that none of the assets which it was to receive were subject to the Russian judgments or bankruptcy process and lawyers from the Cyprus firm with which Ms Koreodiou is associated had given that confirmation. Sufficient enquiries were made as to what the business of the underlying companies was so that JTC could be sure they would not be involved in sensitive activities. She said that when she made her affidavit on 16 th December, 2011, she expected that the Fourth Defendant would make full disclosure of what it had. Ms Koreodiou's fifth affidavit showed that she did not have information on Russian assets and when Ms Harrop saw this affidavit for the first time, she thinks it was on that occasion that she realised that the Fourth Defendant did not have much information. She told us that she had been making regular enquiry of the Cyprus law firm with a view to obtaining copies of the relevant documents, and she was becoming slightly frustrated at the little information which was coming through. 40. The Second Defendant, like the Fourth Defendant, acknowledged that it was in breach of the orders of the Court by failing to provide disclosure of documents which were not within its physical possession and failing to provide disclosure within the relevant timetable. In her second affidavit, Ms Harrop asserted that the Second Defendant did not hold the information in question because its regulations have never required it to do so. This is the result of how the structure is arranged. She said that the qualified member, JTC Foundations Limited

was responsible for the ongoing administration of the Second Defendant in line with the Second Defendant's charter and regulations. However that administrative role did not in practice extend to any administration of the underlying entities including the Fourth Defendant. She went on:- "JTC Foundations Limited was always conscious that it would have a limited role in relation to the Second Defendant, and for this reason it sought to protect itself as the regulated local entity by requiring certain fundamental changes to the Foundations regulations for anti-money laundering purposes." 41. Clause 54 of the Second Defendant's regulations require that certain key decisions must be subject to the qualified member's consent. This was no doubt done for regulatory reasons. The key decisions are the acceptance by the Foundation of endowments, the application of any of the Foundation's assets and finally any payments or other distributions to the beneficiaries. How those decisions could practicably be taken, and how there could be any control exercised to ensure they were referred to the Council members at all given the lack of information JTC Foundations Limited had, would seem open to question. 42. As we understand it therefore, the consequence of the Foundations Law and the regulations which have been adopted in this particular case is that a foundation can be established with a council where the qualified member is in a minority, and where in practice the qualified member does not have any information regarding the Foundation's assets liabilities or business. This case demonstrates that the qualified member may apparently be reliant upon the co-operation of the other council members, resident in another jurisdiction, who so far have not provided the qualified member of the council in Jersey with the information which has been requested. As a result, legal proceedings which have been commenced in this Island and which include a requirement from the Court that the Jersey registered foundation produce a certain amount of information have resulted in the Foundation not providing that information because it is not in the Island and there is no basis upon which the qualified member can compel fellow council members to produce it. All this is said to be consistent with the Foundations Law. We do not have to resolve that particular matter today, but we do think that if the result of the Foundations Law and the charter and regulations actually adopted in this case is as the Second Defendant contends, then the relevant authorities might want to revisit with a degree of urgency the structure of the Foundations Law and the requirements that are imposed on qualified members, because the current position seems to us to be quite unacceptable. We are inclined to assume that both the Jersey Financial Services Commission and the Attorney General would also find the current position to be unacceptable because the service of statutory notices by either of those entities would be no more successful in ensuring the relevant information was produced than the order of this Court, and for the purposes of mutual legal assistance and law enforcement, it would seem that that too would be a strange result. 43. In essence, Ms Harop admitted that the Second Defendant is hamstrung. It cannot get access to the information. A council member has signed one of the Powers of Attorney and not told the qualified council member about it. It appears to us that one result of the way in which the affairs of the Second Defendant have been structured is that it is in fact very difficult to prevent the underlying structures from being used for money

laundering or indeed other criminal purposes. 44. The Second Defendant is in our view in no better position than the Fourth Defendant. If the facts are that the Second Defendant has no access to information because it never has had that information in Jersey, then it is not immune from criticism in this Court. The implied suggestion that the Royal Court of Jersey cannot successfully direct a Jersey foundation to produce information about its assets is quite unacceptable. If this state of affairs were to continue, the Court will consider carefully any application for it to exercise the powers conferred upon it under Part 5 of the Foundations Law. In the interim, the Second Defendant itself will want to consider the exercise of its shareholder powers to ensure it has ultimate control of the structure of which it is apparently the head. Summary 45. For the reasons given, we find all three Defendants (the First, Second and Fourth Defendants) to be in contempt of Court. Indeed none of them really contended they were not in contempt. We have given careful thought to the possibility of making the different orders which the Plaintiff invited us to make, and this in relation to each Defendant. However, because we consider that the ambit of the disclosure orders needs to be clarified, and because we consider there should be an opportunity for each Defendant to perform fully the obligations imposed upon him/it, we think the right course is to make the following orders. For the avoidance of doubt, these orders are in addition to and do not derogate from the orders made against the Second and Fourth Defendants on 23 rd February. (i) The Defendants should produce to the Plaintiff on affidavit within 28 days of 7 th March details of all his/its assets worldwide whether in his/its own name or not, and whether solely or jointly owned, giving the value, location and details of all such assets. This information includes but is not limited to interests and companies ultimately owned by the Fourth Defendant which beneficially own real estate in Russia and Eastern Europe. (ii) Such disclosure as listed above should include copies of the following documents:- (a) Bank statements from 25 th November, 2011, to date in respect of the Second and Fourth Defendants and each company ultimately owned by the Fourth Defendant; (b) The most recent accounts and the most recent management accounts, if any, for the Second and Fourth Defendants and each of the companies ultimately owned by the Fourth Defendant; (c) All documents of title in respect of any assets owned by the Second and Fourth Defendants and any of the companies ultimately owned by the Fourth Defendant including copies of share certificates, share registers, title deeds or land registry certificates, as well as copies of any leases which have been granted in respect of any such real estate; (d) Any documents which are or represent security agreements, mortgages, hypothecs or other charges against any of the assets listed above. (iii) The First Defendant is found to have access to any documents in the hands of CJSC IG Kopernik by virtue of his position in or association with such company and can exercise such access for the purpose of compliance with these orders. 46. We take the opportunity of confirming that if there is non-compliance with this order within the 28 day period, we will look at all remedies which the Plaintiff has suggested as well as the exercise of our powers under the Foundations Law. 47. The Second and Fourth Defendants agree that they should be condemned jointly and severally to pay costs of and incidental to this application on an indemnity basis. We will consider this order with the application for

costs against the First Defendant following release of this judgment. Authorities European Convention on Human Rights. Iberian Trust Limited-v-Founders Trust and Investment Company Limited [1932] 2KB87. Commission for Equity in Human Rights-v-Griffin and Others

[2010] EWHC 3343 . Foundations (Jersey) Law 2009. Page Last Updated: 14 Oct 2015 BAILII:
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