

JERSEY / JUDGMENT

Sicules C de Bourbon des Deux v BNP Paribas Jersey Trust [2020] JCA 017 (29 January 2020)

[2020] JCA 017

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Court of Appeal (Samedi) 29 January 2020 Before : James W. McNeill, Q. C., President John V. Martin, Q. C., and Sir Richard Collas, Bailiff of Guernsey. Between Camilla De Bourbon des Deux Siciles Appellant And BNP Paribas Jersey Trust Corporation Limited Respondent Advocate D. S. Steenson for the Appellant. Advocate W. A. F. Redgrave for the Respondent.

judgment

The president: 1. This Appeal concerns contempt proceedings and the proper manner in which they should be approached by the court hearing them.

Background

2. On 7 October 2019, the Royal Court (Clyde-Smith, Commissioner, with Jurats) granted a contempt order (the "Order") (BNP Paribas Jersey Trust Corporation v Siciles C. de Bourbon des Deux

[2019] JRC 199) pursuant to which it was held that the Appellant (to whom we shall refer as "Camilla" as has been the custom in the numerous judgments on the issues to which the Order relates) was in contempt of court in failing to provide the disclosure ordered under a Disclosure Order of December 2018 and in failing to pay two costs orders. 3. The Order arose in respect of proceedings in the case of *Crociani v Crociani* in which Camilla was the fifth defendant. In a judgment dated 11 September 2017

[2017] JRC 146 (the "Substantive Judgment") the Royal Court held that Camilla's mother, Madame Crociani , and the present Respondent were in breach of trust and liable to reconstitute trust funds. On appeal this court determined that the liability to reconstitute was restricted. An appeal to the Privy Council at the instance of Camilla's daughters is being pursued. 4. As part of that litigation, the present Respondent obtained a world-wide freezing order on 4 August 2016 against Madame Crociani and in respect of which some 29 artworks were listed. Contemporaneously with the Substantive Judgment, a further world-wide freezing order was made against Madame Crociani which also required Camilla and

others to inform the present Respondent of "all assets which they believe, whether on the basis of information held by them of which they are entitled to call, are owned beneficially by [Madame Crociani] of which she is able to benefit or which are under her direct or indirect control" (the "September 2017 Disclosure Order"). This was granted for the purpose of supporting an order against Madame Crociani to indemnify the Respondent in respect of orders made against it, adverse costs orders and its own costs. 5. As a consequence of certain developments, the Royal Court, on 14 December 2018, made a disclosure order against Camilla (the "December 2018 Disclosure Order") which was in the following terms: "(1) The Fifth Defendant shall within fourteen working days of service hereof, or such longer period as the Third Defendant may agree, inform the Third Defendant's Advocate in writing of her knowledge of assets held by or on behalf of the First Defendant since the 6th July 2015, including, but not limited to, the following: (a) The Fifth Defendant's involvement in any movement of the 29 Artworks listed at paragraph 1(3) (a) of the WWFO ("the Artworks") from the 6th July, 2015, to the present including their movement from Singapore in November 2016; (b) Full details of any such transfers, including in each case where each of the Artworks was moved to, and the reason for any such transfer; (c) To the extent not already covered, everything the Fifth Defendant knows or believes about the location of all the Artworks from the 6th July, 2015, to the present; (d) Full details of all third parties (including but not limited to art experts, valuation agents, insurers, shipping and transport companies, storage facilities and freeports) which have had any involvement with the Artworks from the 6th July, 2015, including in each case relevant individuals, contact details and a description of their involvement with the Artworks; and (e) In relation to the proceeds of the Grand Trust investment portfolio, everything the Fifth Defendant knows or believes about its location from the 6th July 2015, to the present; (2) The Fifth Defendant shall within fourteen working days of service hereof, or such longer period as the Third Defendant may agree, inform the Third Defendant's Advocate in writing of her knowledge of transfers of any assets held by or on behalf of the First Defendant made since the 6th July, 2015, by the First Defendant (or her agents, employees, attorneys and anyone acting on her behalf, or any company, trust or other entity she controls directly or indirectly whether in whole or in part) to the Fifth Defendant (or to her agents, employees, attorneys and anyone acting on her behalf, or to any company, trust or other entity she controls directly or indirectly whether in whole or in part); (3) The term "assets held by or on behalf of the First Defendant" used in paragraphs (1) and (2) above means assets which the Fifth Defendant believes, whether on the basis of information held by her or for which she is entitled to call, are or were owned beneficially by the First Defendant or from which the First Defendant is or was able to benefit or which are or were under her direct or indirect control (to include those assets held by a third party in accordance with the First Defendant's direct or indirect instructions) in the Island of Jersey or elsewhere whether such are or were held in her own name or not and whether such are or were solely or jointly owned. For the avoidance of doubt this includes any asset which is or was purportedly beneficially owned or controlled directly or indirectly by the Fifth Defendant, where it is reasonable to infer that in reality

such asset may be or has been held for the benefit of the First Defendant. In each case, the Fifth Defendant shall, where she has such information, give brief particulars of the value, location and details of all such assets. Where the information which the Fifth Defendant has is not current, she shall specify the approximate date upon which she obtained such information. She is not required to disclose information which has already been disclosed in the trial papers in this action nor to disclose any documents which are subject to legal professional privilege. The information must be confirmed in an Affidavit exhibiting all relevant supporting documents, which must be provided to the Third Defendant's Advocate within fourteen working days after providing the information; (4) The Fifth Defendant's obligation to provide disclosure pursuant to the WWFO and this Order is not subject to a de minimis exception;" The December 2018 Disclosure Order contained the following warning, in capital letters: "YOU MUST OBEY THE ORDERS CONTAINED IN THIS ORDER. IF YOU DO NOT YOU WILL BE GUILTY OF CONTEMPT OF COURT AND MAY BE SENT TO PRISON. YOU ARE ENTITLED TO APPLY TO THE COURT TO RECONSIDER THIS ORDER." 6. As noted by the court below, compliance with the December 2018 Disclosure Order was extended by agreement to 25 January 2019, on which day the Jersey Advocate for Camilla wrote to the Advocate for the Respondent enclosing advice from a lawyer in Monaco claiming that, as a matter of the law of Monaco, Camilla was not obliged to comply with the December 2018 Disclosure Order. This advice was refuted on behalf of the Respondent by reference to Affidavits sworn by other Monégasque lawyers and, on 21 March 2019, a Representation was made in the Royal Court on behalf of the Respondent maintaining that there had been contempt in respect that the present Appellant had not provided any information in compliance with the December 2018 Disclosure Order. 7. By 31 May 2019, the deadline for Camilla to file any Answer and any evidence relied upon in support of any Answer, nothing had been filed. On 19 June 2019 Camilla submitted a Fifth Affidavit purporting to comply with the December 2018 Disclosure Order. On 16 July 2019 an Affidavit on behalf of the Respondent was filed in response. Camilla's skeleton argument was filed on 9 August 2019 and the contempt hearing took place on 3 and 4 September 2019. 8. Attempts were made on 2 and 3 September 2019 to have that hearing adjourned; but they failed. On the second day of the hearing Camilla, through a personal email, filed a Sixth Affidavit which had been sworn on 3 September. 9. In the Act of Court of 7 October 2019 the Royal Court found that Camilla was in contempt in failing to pay the two costs orders, was in contempt for failing to provide disclosure ordered under the December 2018 Disclosure Order between 25 January and 19 June 2019, and remained in contempt notwithstanding the filing of her Fifth and Sixth Affidavits. 10. The nub of the March 2019 Representation was short and to the point. Paragraph 17 stated "The Fifth Defendant has not provided any information in compliance with the December 2018 Disclosure Order." 11. At the contempt hearing in September 2019, Advocate Steenson for Camilla quite fairly volunteered that the arguments which he was putting forward on behalf of Camilla might be regarded as "somewhat technical". However, as he continued, committal proceedings were technical in the sense that there was an overwhelming responsibility to ensure that procedural fairness was done to someone accused of

contempt: see the Transcript, Day 2, morning. 12. Earlier that morning Advocate Steenson had, again quite fairly, accepted that paragraph 17 of the Representation was accurate in that Camilla had not provided any information in response to the December 2018 Disclosure Order at the time that the Representation was issued in March, nor had she done so until service of the Affidavit served in June. The arguments for Camilla, below, therefore, were as to procedural fairness and, in particular, as to the lack of specification by the present Respondent as to what Camilla ought to have done, that such specification should have been given in a formal way and that there had not been fair warning that failure to respond properly to an order might result in contempt proceedings. The Decision Below 13. As is clear from the Judgment below, the Royal Court felt it important to record references to certain passages in the Substantive Judgment, over which proceedings the learned Commissioner had also presided. Those are set out in paragraph 8 of the Judgment below and the learned Commissioner was content to point to them, by way of example of the finding of the Court in 2017 that Madame Crociani and Camilla had worked in concert to deprive Camilla's sister, Christiana, of family assets; with Camilla being heavily involved in the movement of assets and the setting up of numerous structures. 14. The court also noted the terms of Camilla's three Affidavits pursuant to the September 2017 Disclosure Order (but did not refer to an unsigned Fourth Affidavit) where reference had been made to Camilla's belief as to certain assets in respect of which Madame Crociani had beneficial ownership, beneficial entitlement or control (First Affidavit), as to arrangements by which Camilla leased property from Madame Crociani (Second Affidavit) and as to the ownership of certain assets (Third Affidavit). As the court indicated in paragraph 10 of the Judgment below, the assets referred to in the Affidavits by Camilla were a minimal fraction of the wealth enjoyed by Madame Crociani as described by the Court in the Substantive Judgment. 15. The court then noted that Camilla's Fifth Affidavit, filed on 19 June 2019 in response to the Representation of March 2019, had indicated that the making of the Affidavit and the contents were "in no way to be deemed as a derogation from my earlier evidence as to the prohibitions placed upon me by virtue of Monégasque law." 16. Even so, the Royal Court noted that in that Fifth Affidavit, whilst referring to certain artworks as belonging to herself and certain others as belonging to Madame Crociani, Camilla had been entirely silent as to matters of belief, as opposed to knowledge, as to knowledge of reasons for certain transfers to which reference was made, as to details of third parties involved in matters referred to and in failing to provide any supporting documentation in support of the statements in the Affidavit. The court then noted that the Skeleton Argument for Camilla, filed 9 August 2019, was succinct in the extreme and suggested that, in her Fifth Affidavit of 19 June 2019, Camilla had deposed to all matters in respect of the Representation which were within her knowledge and "her contempt was purged by her Fifth Affidavit." Discussion 17. In these circumstances we consider that the issues before us are of limited scope. Contempt of the December 2018 Disclosure Order 18. Both by reference to the skeleton argument for Camilla below and to the submissions made to the learned Commissioner it is clear that there was a concession that there had been a failure to respond immediately to the December 2018 Disclosure

Order. On its face, this constituted contempt; and that is what the Skeleton Argument before us appears to accept. Leaving aside the issue as regards the law of Monaco, which was not pursued before us, the only question before us is whether, technical arguments apart, the Fifth and Sixth Affidavits provided information which showed that an order in respect of which there could be contempt had been responded to in appropriate terms. 19. The December 2018 Disclosure Order required Camilla to provide information as to her knowledge of assets held by or on behalf of Madame Crociani including, but not limited to, Camilla's involvement in movement of specified artworks, details of transfers, knowledge of location and details of third parties involved with the specified artworks. Camilla was also required to provide information in relation to the location of the proceeds of the Grand Trust investment portfolio and of any transfers of assets by or on behalf of Madame Crociani . 20. Below, the argument for Camilla was that, whilst it was accepted that she had not complied with the December 2018 Disclosure Order between January and June 2019, before the Court could find her in contempt during that period it would have to be satisfied beyond reasonable doubt that she was permitted under Monaco law to comply with the order. That argument was not repeated before us and, as the Royal Court indicated, leaving aside the advice from Monaco lawyers, the fact that Camilla had purported to comply with the December 2018 Disclosure Order in itself indicated that she was free to do so. 21. Given the purported compliance, we find it difficult to understand how arguments of procedural fairness in relation to the presentation of and dealing with the Representation can arise and we deal with these briefly. 22. The first argument for Camilla was that the detailed allegations of contempt should have been set out clearly in a formal document such as a Scott Schedule rather than in the Third and Fourth Affidavits of Lynne Gregory. The question, in the submission for Camilla, was whether she knew in what precise respects the information that she had provided was inadequate. In our judgment this seeks to turn the issue on its head and suggests that the Representor has to know the details of undisclosed assets before seeking a finding of contempt. Given the terms of the December 2018 Disclosure Order and the circumstances surrounding it, this cannot be the case. 23. Each case will depend upon its own facts, but the background here lies in the findings of the court in the substantive proceedings as to the close relationship between Madame Crociani and Camilla as set out in paragraphs 54 to 57 of the Judgment below. 24. Before us it was argued on behalf of Camilla that, in apparently relying on its findings in the earlier litigation, the court below was importing evidential findings which had been made in a different hearing and upon the basis of the civil standard of proof. Its conclusions of contempt, accordingly, were not properly reached as such conclusions had to be reached on the basis of the criminal standard. 25. It is correct that contempt has to be proved to the criminal standard: see *Leeds United Football Club v The Phone-In Trading Post*

[2013] JRC 058 at paragraph 33; *Skinner v Le Main*

[1990] JLR 13B; In Re Bramblevale Limited [1970] Ch 128, 137-138. As it was put by Lord Denning MR in In Re Bramblevale, if there were two equally likely possibilities, one suggesting contempt and the other not, the criminal standard would not be met. 26. Here, the question for the Royal Court was whether, having regard to the terms of the December 2018 Disclosure Order, Camilla had sought to comply with the matters upon which she was ordered to respond. The Royal Court dealt with the content of the Fifth Affidavit at paragraphs 22 to 26 and, in paragraph 27, pointed out the absolute silence as to material matters upon which she had been ordered to respond. It was against that background that the only answer to the suggestion of contempt was to show that compliance was impossible, and the Royal Court was satisfied that this was not so: see paragraphs 44 to 47. 27. We are satisfied, therefore, that the Royal Court asked itself the correct question and applied the correct standard of proof. The references to the Substantive Judgment provided background material; but, having provided the Fifth Affidavit, the question for the court was whether, through it, Camilla had purported to respond properly to each of the matters raised in the December 2018 Disclosure Order. 28. This takes us to Camilla's Sixth Affidavit and Advocate Steenson's argument that the Royal Court had failed to give proper weight to it. 29. It is difficult to understand the basis for this line of argument. In opening his response on the second day of the contempt hearing, Advocate Steenson, in referring to the Sixth Affidavit, had accepted that it was presented extraordinarily late in the day and stated: "I don't propose to comment on that Affidavit, if the Court is prepared to consider it in the context of this hearing, other than to say this. It is a document which was prepared in some haste with limited input, to put it mildly, from my firm. It is intended to be a show of good faith. Finally, for reasons which I shall explain in my substantive submissions, it may not in fact take this hearing much further." Thereafter, his only reference to the Sixth Affidavit was as regards Camilla's understanding of Monégasque law. 30. The Royal Court made a number of specific observations in relation to the Sixth Affidavit (at paragraph 58) but then went on to consider each of the orders in the December 2018 Disclosure Order in turn to see what in fact had been disclosed by Camilla whether through the Fifth or Sixth affidavits. The principal contention by Advocate Steenson before us was that the Royal Court in indicating, in relation to Camilla's knowledge or belief as regards the artworks and as regards the location of the Grand Trust investment portfolio, that "it stretches credulity that Camilla does not at least have a belief as to where [certain assets are] currently located", had used an imprecise paraphrase which prevented the alleged contemnor from knowing what standard of proof had been applied. 31. We disagree. In stating that something "stretches credulity" this not uncommon phrase is being used to indicate that the exercise of belief that what has been said is likely to be true has been taken to a point where only cogent support can allow that belief to be sustained. If there is no cogent support, the point in question cannot, as a matter of logic, be taken to be a reasonable doubt against the view that a different conclusion should be reached. The issue here was whether the fact that no information had been disclosed on a relevant matter might have had an underlying basis that Camilla had no knowledge or belief, as opposed to being in contempt for her failure. One example

will suffice. 32. In the First Affidavit of Lynne Gregory, dated 21 March 2019, reference had been made to passages in the Substantive Judgment demonstrating that Camilla was very close to her mother and had been heavily involved in the movement of assets and the setting up of alternative structures: see paragraphs 26 and 27. Notwithstanding those detailed passages, no reference was made in response by Camilla in her Fifth Affidavit dated 19 June 2019. Those cross references were repeated in the Third Affidavit of Lynne Gregory dated 16 July 2019 at paragraph 20, but the only responses in Camilla's Sixth Affidavit were denials. It is also noteworthy that Camilla, who had filed a witness statement dated 29 June 2016 in the substantive proceedings, gave notice by email to the court on 22 December 2016 that she would not be represented at the Substantive hearing and would not be giving evidence. Accordingly, her witness statement was untested. 33. In these circumstances the Royal Court was entitled to treat the Sixth Affidavit as it did at paragraph 59 and 60 of the Judgment below. Advocate Steenson also submitted that there was no clear indication in the Judgment below that the Court had properly applied itself to the need to make findings according to the criminal standard. We disagree. The Royal Court noted this requirement at paragraph 51 and the findings at paragraphs 55 to 59 are amply vouched by the documentation recovered by the Respondent during the present disclosure proceedings and referred to in its supporting Affidavits, to the full detail of which Camilla chose not to respond. We would particularly note that the finding in paragraph 56, that Camilla was actively involved in the November 2016 transfers of artworks, appears to be well vouched. As Madame Crociani was shown to have chosen to communicate to the insurers through Camilla instead of through an independent agent, there is no room for reasonable doubt but that she was sharing information with Camilla, thus indicating that Camilla must have had greater knowledge or belief than she was prepared to admit in her Affidavits. Equally the documentation referred to at paragraph 58, regarding Camilla's involvement in the Apollo Trust, which had been met by a bare assertion by Camilla, gave a clear indication of Camilla's direct involvement in matters relating to the transfer of assets. 34. Given the views which we have just expressed we consider that there is no merit in the suggestion, on appeal, that the court below should have adjourned the hearing on 3 September 2019 in the absence of a properly particularised case. 35. Further, we see no merit in the suggestion of abuse of process at the hand of the Respondent. These have been complex proceedings at all stages as the Substantive Judgment makes clear. In the circumstances which we have set out above, Camilla can have been in no doubt as to the allegations of contempt by reason of her failure to respond to the orders and, indeed, eventually purported to comply in the Fifth and Sixth Affidavits. As the Royal Court found, however, those Affidavits were quite silent on important matters in respect of which the only reasonable conclusion was that Camilla would have had a belief if not actual knowledge. The appeal in relation to the Disclosure Order is therefore refused. The Costs Orders 36. Before us the argument for Camilla was that, as there was no penal notice attached to either of the costs orders, there was no warning that failure to pay could result in proceedings for contempt. Separately it was submitted that the court should be astute to detect when contempt proceedings were not

being pursued for legitimate aims: see Public Joint Stock Company Vseukrainskyi Aktsionernyi Bank v Sergey Maksimov

- [2014] EWHC 4370 (Comm) at paragraph 22. 37. In response Advocate Redgrave for the Respondent submitted that there was no Jersey authority or indeed English authority for the proposition that a penal notice was a prerequisite for a finding of contempt. Whilst a penal notice may be required in relation to an application for committal to prison, there is no basis for it to apply more generally: cf *Douherty v Chief Constable of Essex Police*
- [2019] EWCA Civ 55. 38. As was submitted on behalf of the Respondent, Camilla had now paid the cost orders, but only, it would appear, because her ability to bring the present appeal would have been imperilled if she had not. This, it was submitted, suggests that Camilla complies with court orders only if it suits her interest to do so and that, by definition, constitutes contemptuous conduct. Discussion 39. There is no authority for the proposition that a penal notice must be given in order for contempt proceedings to be taken. The position in this jurisdiction was set out by the Royal Court (Birt, DB and Jurats) in *Taylor v Chief Officer of States of Jersey Police*
- [2004] JLR 494 at paragraphs 30 to 33 where it was stated that there was an objective test as to the determination of whether or not there had been acting in a manner constituting a breach of an order and that proof was to the criminal standard. There was an absolute rule that orders must be obeyed. 40. In the present matters, the last minute decision of Camilla not to participate in the substantive proceedings taken together with the last minute decision to pay the costs orders because of the present appeal show, beyond reasonable doubt, a determination to avoid the proper controls of the Court. It is entirely proper for the Respondent to maintain these proceedings. 41. In any event, we would have been reluctant to interfere with the decision of the Royal Court on these grounds. We consider that the Royal Court was correct in paragraph 43 in indicating that the two costs orders created debts owed by Camilla to the Respondent and, if the Royal Court had been dealing with that alone, there might well have been restrictions under Jersey law upon an ability to commit to prison for refusal to discharge the debt. However, as to proportionality, the court of first instance is much more likely to be astute to detect when contempt proceedings are not being pursued for legitimate aims and the Royal Court appears to have had no qualms on that account. 42. For all these reasons the appeal in relation to the costs orders is refused. *Authorities BNP Paribas Jersey Trust Corporation v Siciles C. de Bourbon des Deux*
- [2019] JRC 199 *Crociani v Crociani*
- [2017] JRC 146 . *Leeds United Football Club v The Phone-In Trading Post*
- [2013] JRC 058 *Skinner v LeMain* [1990] JLR 13B *In Re Bramblevale Limited* [1970] Ch *Public Joint Stock Company Vseukrainskyi Aktsionernyi Bank v Sergey Maksimov*

[2014] EWHC 4370 (Comm) *Douherty v Chief Constable of Essex Police* [2019] EWCA Civ Taylor v Chief Officer of States of Jersey Police

[2004] JLR 494 Page Last Updated: 03 Feb 2020 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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