محكمة قطر الدولية
ومركز تسوية المنازعات
QATAR INTERNATIONAL COURT
AND DISPUTE RESOLUTION CENTRE

In the name of His Highness Sheikh Tamim bin Hamad Al Thani,

Emir of the State of Qatar

Neutral Citation: [2024] QIC (E) 1

IN THE QATAR FINANCIAL CENTRE

CIVIL AND COMMERCIAL COURT

ENFORCEMENT JUDGE

Date: 14 February 2024

CASE NO: CTFIC0055/2023

STEPHEN FERRIS

Applicant

v

SANGUINE INVESTMENT MANAGERS LLC

1st Respondent

AND

CHRISTOPHER JOHN LEACH

2nd Respondent

JUDGMENT

Before:

Justice Dr Muna Al-Marzouqi, Enforcement Judge

Order

1. The Court makes the following declarations:

    i. The Respondents are in contempt of court for failing to satisfy the following orders:

        a. The order of 27 September 2022 giving judgment for the Applicant in the sum of $300,000 plus interest.

        b. The order of 8 January 2023 giving judgment for the Applicant in the sum of $200,000 plus interest.

        c. The order of 14 November 2022 giving judgment for the Applicant on a costs assessment in the sum of $6,340.

        d. The order of 2 April 2023 giving judgment for the Applicant on a costs assessment in the sum of $6,741.

        e. The order of 4 April 2023 directing that the Respondents file and serve an affidavit disclosing their worldwide assets.

    ii. The Second Respondent is in contempt of court in respect of the representations made in the affidavit dated 18 April 2023 that:

        a. The Second Respondent's assets are limited to what was disclosed in the affidavit.

        b. The details of the Second Respondent's net assets are accurately noted in the affidavit.

iii. The Respondents are in contempt of court for breaching the terms of the Tomlin Order dated 24 June 2022.

2. Each Respondent is to pay a financial penalty in the sum of QAR 25,000 in respect of the findings of contempt of court within 14 days of the date of this judgment.

3. The Respondents are joint and severally liable for the reasonable costs incurred by the Applicant in bringing this application. These costs are to be determined by the Registrar if not agreed.

Judgment

Introduction and background

1. On 26 May 2023, the Applicant applied for declarations of contempt, sanctions, and allied relief against the Respondents. This case unfortunately has an unhappy and lengthy history which requires a brief review.

2. The Applicant and Respondents were in a financial dispute. They concluded that substantive dispute by way of a settlement agreement dated 24 June 2022 (the '**Settlement Agreement**'). The Settlement Agreement required the payment of sums from the Respondents to the Applicant in instalments on or before 31 August 2022, 31 October 2022, and 30 November 2022. None of those instalments were met and no payment whatsoever has been made to the Applicant.

3. The Applicant applied to the First Instance Circuit to enforce the Settlement Agreement which resulted in an order giving judgment for $300,000 on 27 September 2022 with interest and costs. The Applicant applied for the costs of that application and, on 14 November 2022, judgment was issued for those costs in full ([2022] QIC (C) 2). On 8 January 2023, the Court made a further order in favour of the Applicant in respect of the Settlement Agreement in the sum of $200,000 plus interest. The Applicant applied for its reasonable costs of that application and was awarded the sum of $6,741 on 2 April 2023 ([2023] QIC (C) 2).

4. On 8 March 2023, the Applicant applied to the Court for an order requiring the Respondents to provide an affidavit disclosing their worldwide assets. The Respondents

did not provide any response to the application, and therefore on 4 April 2023 an order was made requiring the Respondents to provide affidavits as to their worldwide assets as sought by the Applicant. On 18 April 2023, an affidavit was filed and served by email. On 18 May 2023, a further application was made by the Applicant for its costs of the 8 March 2023 application. By way of a judgment issued on 3 July 2023, the Applicant was awarded its costs in full ([2023] QIC (C) 5).

5. It is worth noting once again that neither the payments required under the Settlement Agreement, nor under the court orders or the costs judgments have been satisfied as at the date of this judgment.

The applications before the Court

6. As a result of the foregoing, the Applicant made applications for declarations that the Respondents were in contempt of court for failing to comply with the following orders of the Court:

    i. The order of 27 September 2022 giving judgment for the Applicant in the sum of $300,000 plus interest.

    ii. The order of 8 January 2023 giving judgment for the Applicant in the sum of $200,000 plus interest.

    iii. The order of 14 November 2022 giving judgment for the Applicant on a costs assessment in the sum of $6,340.

    iv. The order of 2 April 2023 giving judgment for the Applicant on a costs assessment in the sum of $6,741.

    v. The order of 4 April 2023 directing that the Respondents file and serve affidavits disclosing their worldwide assets.

7. The Applicant also seeks declarations that each of the Respondents is in contempt of court for providing false and/or misleading information to the Court by:

i. Executing a Tomlin Order (in relation to the Settlement Agreement), thereby making a false representation to the Court that they would comply with the Settlement Agreement.

ii. Making various false and/or misleading representations to the Court between 4 September 2022 and 29 November 2022 as to their intention to pay the sums due, steps that had been taken to pay, why payment had been delayed, and that they did not know why the first instalment had been delayed.

8. A declaration that the Second Respondent is in contempt of court for providing false and/or misleading information to the Court in the affidavit ordered on 4 April 2023 as follows:

    i. That the Second Respondent's assets are limited to what was disclosed in the affidavit.

    ii. That the details of the Second Respondent's net assets are accurately noted in the affidavit.

9. The Applicant also seeks an order requiring each Respondent to pay a financial penalty of QAR 10,000 or any other sum that the Court deems fit, an order for the arrest of the Second Respondent, and an order compelling the attendance of the First Respondent – through the Second Respondent as director – and Second Respondent to attend Court for questioning as to their worldwide assets.

10. The matter was set down for an in-person hearing on 4 October 2023 during which I heard Mr Williams on behalf of the Applicant. Although on ample notice of the hearing, neither Respondent appeared nor engaged substantively with the Court process.

Preliminary issues

Attendance at the hearing

11. As noted above, neither Respondent was present nor represented at the hearing. The Applicant applied to proceed in the absence of the Respondents. I allowed that application and stated that reasons were to follow.

12. Mr Williams foreshadowed this circumstance in his helpful skeleton argument and submitted, both in writing and orally, that I should proceed in the absence of the Respondents. He cited *XL Insurance Company SE v IPORS Underwriting Ltd, Paul Alan Corcoran & Others* [2021] EWHC 1407 (Comm), a useful recent authority from England and Wales. At paragraph 46 of her judgment, Cockerill J referred to a checklist of matters which the Court should take into account when deciding whether or not to proceed in the absence of a respondent (that, too, was a case involving a contempt of court application against a respondent who did not attend a hearing):

    i. Whether the respondents have been served with the relevant documents, including notice of the hearing.

    ii. Whether the respondents have had sufficient notice to enable them to prepare for the hearing.

    iii. Whether any reason has been advanced for their non-appearance.

    iv. Whether by reference to the nature and circumstances of the respondents' behaviour, they have waived their right to be present; [i.e. is it reasonable to conclude that the respondents knew of or were indifferent to the consequences of the case proceeding in their absence?]

    v. Whether an adjournment would be likely to secure the attendance of the respondents or facilitate their representation.

    vi. The extent of the disadvantage to the respondents in not being able to present their account of events.

    vii. Whether undue prejudice would be caused to the applicant by any delay.

viii. Whether undue prejudice would be caused to the forensic process if the application was to proceed in the absence of the respondents.

ix. The terms of the 'overriding objective' [including the obligation on the court to deal with the case justly, and doing so expeditiously and fairly and taking any step or making any order for the purposes of furthering the overriding objective].

Service (paragraph 13(i)), sufficiency of notice (paragraph 13(ii)), reasons (13(iii)), and waiver of right to be present (paragraph 13(iv))

13. Mr Williams submitted that the application was served on 26 May 2023 via email to the Respondents' then solicitors, Simmons & Simmons Middle East LLP. He argues that this is valid service pursuant to article 18.3.5 of the Court's Regulations and Procedural Rules (the '**Rules**'); in other words service by email by agreement of the parties, given that all paperwork both ways had been served via email throughout the course of the proceedings.

14. On 24 July 2023, the Court emailed all parties the order that concerned the arrangements for the hearing. This was emailed to the Respondents at a Sanguine Impact Investment email address, which is an email address used by the Respondents to communicate with the Applicant and the Court on 18 April 2023, 13 June 2023 and 8 July 2023. In the email of 13 June 2023 (the day Simmons & Simmons Middle East LLP came off the record), the Respondents specifically requested that the Court should send all future communications to that email address. Mr Williams submitted that this background makes it clear that the directions order was indeed communicated to the Respondents and that there can be no question as to whether or not it was received. The Respondents have not provided any reason for their non-attendance – either to the Court or to the Applicant – and they have failed properly to engage with the Court's directions, orders and other communications.

15. Mr Williams also submitted that the Respondents had over 10 weeks' notice of the hearing, which he described as "*manifestly sufficient*".

16. Mr Williams further submitted that, having been made aware of the hearing and simply not attending, the Respondents had waived their right to be present at the hearing.

Adjournment to facilitate representation/attendance (paragraph 13(v))

17. It was submitted on behalf of the Applicant that the Respondents have demonstrated a pattern of non-compliant behaviour, false assurances and non-engagement. This included a promise to make an immediate payment into Court in the sum of $50,000 on 8 July 2023, a representation that was not honoured. Further, Mr Williams submitted, there was no response to the application, the skeleton argument, or cooperation regarding eBundles. The Applicant averred that it was overwhelmingly likely that, if there were an adjournment, the Respondents would fail to attend a refixed hearing.

Disadvantage to the Respondents (paragraph 13(vi), undue prejudice from delay (paragraph 13(vii), undue prejudice to the forensic process (paragraph 13(viii), and overriding objectives (paragraph 13(ix))

18. Mr Williams submitted that no response to the application was filed and served by the Respondent, and that given that he – at the hearing – would make all points that could properly be put on the Respondents' behalf in accordance with his professional duties, there would be no prejudice to proceedings in the Respondents' absence. However, he also submitted that any delay would cause significant prejudice to the Applicant, an individual owed hundreds of thousands of dollars by the Respondents. He also submitted that the forensic process would not suffer any prejudice should the Respondents not be present at the hearing.

19. As to the overriding objective, the Applicant submitted that articles 4.1 and 4.4 of the Rules support proceeding in the absence of the Respondents.

Conclusion

20. I must first make it clear that the case of *XL Insurance Company SE v IPORS Underwriting Ltd, Paul Alan Corcoran & Others*, whilst persuasive, is not binding in this Court. However, in the absence of any relevant principles on this point from this Court, the case provides a useful framework through which this decision can be made. That notwithstanding, the Court has the power to make the order sought under articles 10.3 and 34.3.2 of the Rules.

21. I agree with Mr Williams' submissions. It is clear that the relevant paperwork was served on the Respondents via email as agreed and practiced by the parties throughout the course of this litigation, in accordance with article 18.3.5 of the Rules. There can be no doubt whatsoever that the Respondents were aware of this application and received all relevant documentation, including the order that made directions for the hearing dated 24 July 2023. The Applicant has also had ample notice of this hearing and has, in my view, chosen not to be present. There has not even been any attempt on the part of the Respondents to request that the Court hold this hearing virtually for ease of participation. This, in my view, chimes clearly with the pattern of non-engagement and compliance that the Respondents seem to have chosen in their conduct of this litigation. As a result, I am satisfied that the Respondents have waived their right to attend this hearing. Taking account of that pattern, I also agree with Mr Williams that even should this hearing be adjourned and refixed, the Respondents would likely not attend (it appears that the Respondents are based outside of the State of Qatar, in Australia).

22. Given the trail of paperwork submitted in the eBundle, along with the professional duties of Mr Williams to take every proper point on behalf of the absent Respondents, I am satisfied that there will be no prejudice to the Respondents if the matter proceeds in their absence, and that the forensic process will not suffer in any way. It is clear that the Applicant has suffered great loss and prejudice by the Respondents' behaviour, which includes obfuscation and delay. That will not continue.

23. I am also satisfied that the overriding objective of this Court supports proceedings in the absence of the Respondents, namely dealing with this case justly entails proceeding taking account of the history of this matter and my analysis above. I am also satisfied that in the circumstances of the case, it is appropriate and just to proceed in the absence of the Respondents.

The law on contempt of court

General

24. Article 34.3 of the Rules notes as follows in relation to the Court's powers, namely that the Court has the *"… power to enforce its own judgments, decisions and orders, and to deal with contravention of its judgments, decisions and orders and matters relating to contempt*". Mr Williams submits that this presumes the concept of contempt thus exists.

I agree. This is supported by *Qatar Financial Centre Regulatory Authority v First Abu Dhabi Bank PJSC* [2019] QIC (F) 8 in which the Court held the Defendant in contempt of court for failing to produce documents and an affidavit as ordered (see paragraph 12 per Justice Lord Hamilton).

25. The contempt of court jurisdiction in this Court has yet to be developed to a significant extent and therefore it is appropriate to look to other jurisdictions to provide some guidance as to the proper approach to take in such cases. In *Her Majesty's Attorney General v Punch Limited and another* [2002] UKHL 50, at paragraph 2 (per Lord Nicholls of Birkenhead), the House of Lords described contempt as follows:

> *Contempt of court is the established, if unfortunate, name given to the species of wrongful conduct which consists of interference with the administration of justice. It is an essential adjunct of the rule of law*.

26. "Contempt of court" in this Court also includes failing to do what is required to be done by a court order absent a defence (see paragraph 12 of *Qatar Financial Centre Regulatory Authority v First Abu Dhabi Bank PJSC*). Article 34.2 of the Rules relevantly states as follows:

> *34.2 A person commits a contravention of a judgment, decision or order of the Court if, without reasonable excuse, he:*
>
> *34.2.1 fails to comply with a judgment, decision of order of the Court;*
>
> *…*
>
> *34.2.5 engages in conduct that is intended to obstruct the Court in the exercise of any of its powers, including without limitation:*
>
> *…*
>
> *(b) giving information that is false or misleading…*

27. More broadly speaking, articles 10.3 and 34.3.2 of the Rules note as follows in relation to the Court's powers:

The Court may grant all such relief and make all such orders as may be appropriate and just, in accordance with the overriding objective …

The Court shall have the power to enforce its own judgments, decisions and orders, and to deal with contravention of its judgments decisions and orders and matters relating to contempt … by the making of any order that it considers necessary in the interests of justice…

Liability for contempt of court

28. Again, in the absence of any specific caselaw on liability for contempt of court, it is in my view appropriate to draw guidance from other jurisdictions. The cases of *National Highways Limited v Ana Heyatawin and others* [2021] EWHC 3078 (QB) and *Business Mortgage Finance 4 Plc v Hussein* [2022] EWHC 449 both provide useful guidance from which the following test can be elucidated (willful disobedience of a Court order):

    i. The alleged contemnor knew of the terms of the order.

    ii. He acted (or failed to act) in a manner which involved a breach of the order.

    iii. He intended the act or omission in question.

    iv. He knew of the facts which made his conduct a breach.

29. I must be satisfied so that I am sure of each of these elements.

30. In relation to providing false and/or misleading information, Mr Williams submits that the case of *Nottingham University Hospitals NHS Trust v Sven Raymond Bogmer* [2023] EWHC 1724 (KB) provides an appropriate test as follows (per Constable J at paragraph 34; adopting the analysis of Spencer J in *Calderdale and Huddersfield NHS Foundation Trust v Atwal* [2018] EWHC (QB) 2547):

    i. The Respondents made the representations.

    ii. The representations were false.

iii. The intention in making the representations was to deceive the Court.

iv. The Respondents intended to interfere with the administration of justice.

31. It would be a defence for a respondent to a contempt of court application if there was a reasonable excuse for taking or not taking the action that allegedly constitutes a contempt of court (e.g. see *Invios Limited v Richard Marsh* [2023] EWHC 1985 (KB) at paragraph 9).

Analysis

Money orders

32. Applying the test elucidated above to the money orders (i.e. those set out at paragraph 6(i)-(iv) above):

i. *The alleged contemnor knew of the terms of the order:* I am sure that this limb is made out. The Court sent the four orders in question to the Respondents via email on 27 September 2022, 14 November 2022, 8 January 2023 and 2 April 2023. The eBundle includes copies of each of these emails at HB/248, HB/272, HB/92 and HB/285, respectively.

ii. *He acted (or failed to act) in a manner which involved a breach of the order:* I am sure that the Respondents acted in this way by failing to pay the sums that they were ordered to pay under each order. This is a clear question of fact. Furthermore, the Respondents were represented by Simmons & Simmons Middle East LLP until 13 June 2023, and so I infer that they would have been advised as to the nature and effect of the orders they have ignored: namely that failing to satisfy those orders would constitute a breach. Simmons & Simmons Middle East LLP were also in communication with the Court via email until they came off the record and so there can be no issue as to whether the relevant information was received by the Respondents; furthermore, after Simmons and Simmons Middle East LLP came off the record, the Respondents exchanged emails with both the Applicant and the Court –

again, there can be no question as to whether relevant information has been received.

iii. *He intended the act or omission in question:* As noted above, I am sure that the Respondents were aware of their obligations to satisfy the money orders in question. No proper explanation has been given for the failure to satisfy these orders. Furthermore, this is not for want of opportunity as there has been extensive correspondence between the parties and the Court concerning these judgment debts. There has been no evidence put forward by the Respondents of a contrary intention. Indeed, on 8 July 2023, the Respondents stated via email that they would pay $50,000 as a down payment in relation to the outstanding sums of money owed to the Applicant that day, but that payment was not made. The fact that, despite having knowledge of the orders and of these proceedings, nothing has been submitted to suggest a contrary intent, is also relevant. I am therefore sure that the Respondents intended to breach these orders by not making payment.

iv. *He knew of the facts which made his conduct a breach:* As noted above, it is clear from the contemporaneous evidence, including the correspondence, that the Respondents were clearly aware of all of the relevant facts, and indeed they engaged in that correspondence and never once suggested that they were unaware of certain facts or were confused as to the events. It is beyond doubt that the Respondents were perfectly clear that they had liabilities and that they failed to discharge those liabilities. I also take account of the fact that until 13 June 2023, they were advised by an international law firm of significant repute who would have advised them properly on their obligations and duties. I am sure that this limb of the test is made out.

33. Therefore, the Respondents are in contempt of court for failing to satisfy the money orders enumerated at paragraph 6(i) to (iv), above. As the Respondents, notwithstanding having been made aware of this application and these proceedings, have not engaged with the Court process and have not filed and served any response, I

am unable to speculate as to whether there may have been a reasonable excuse. I thus find there is no defence of reasonable excuse.

Affidavit

34. The terms of the order dated 4 April 2023 seeking disclosure of the Respondents' worldwide assets noted, inter alia, as follows:

> *Each of the Defendants makes and serves on the Claimant's counsel an affidavit,* ***no later than 16.00 (Doha time) on 18 April 2023****, setting out their worldwide assets, whether in their own name or not and whether solely or jointly owned, giving the value, location and details of all such assets.*

35. Unfortunately, the affidavit that was ultimately filed and served on 18 April 2023 via email and signed by the Second Respondent was defective:

    i. In paragraph 9 of the affidavit, the First Respondent referred to a net loss asset position without disclosing the other assets against which that net loss fell to be calculated.

    ii. In paragraph 7 of the affidavit, no location is given in respect of the assets listed therein.

36. These are breaches of the clear instructions of the terms of the order as set out in paragraph 34, above. Thus, applying the test for contempt of court to these facts:

    i. *The alleged contemnor knew of the terms of the order:* I am sure that the Respondents knew of the terms of the order given that the Respondents filed and served a document in response.

    ii. *He acted (or failed to act) in a manner which involved a breach of the order:* The affidavit is clearly defective in the respects outlined in paragraph 35, above, which constitute a breach of the terms of the order, and no explanation or defence has been provided by the Respondents.

    iii. *He intended the act or omission in question:* As noted variously above, I am sure that the Respondents were aware of their obligations, and this

includes in relation to the affidavit (again, this was filed and served at a time when Simmons & Simmons Middle East LLP were on record). Further, no explanation has been given as to why there are those omissions in the affidavit, despite ample opportunity. No evidence or submission has been made which would suggest that the Respondents did not intend to file and serve a defective affidavit. It is, for example, inconceivable that a Respondent would not know the location of furniture noted on an affidavit. I am therefore sure that the Respondents intended to file and serve an affidavit that was defective in the terms noted above.

iv. *He knew of the facts which made his conduct a breach:* It is again not in doubt that the Respondents were fully aware of the facts and what was required from them. They were aware of the requirements of the affidavit, filed a defective affidavit, and have provided no explanation or defence. I am sure that this limb of the test is made out.

37. Therefore, I find the Respondents are in contempt of court for failing to satisfy the requirements for the affidavit. As the Respondents, notwithstanding having been made aware of this application and these proceedings, have not engaged with the Court process and have not filed and served any response, I am unable to speculate as to whether there may have been a reasonable excuse. I thus find there is no defence of reasonable excuse.

<u>False and/or misleading information – affidavit</u>

38. The Applicant has submitted that the Second Respondent failed fully to disclose all of his worldwide assets in the affidavit, despite being directed to do so. The relevant parts of the Applicant's Sixth Witness Statement dated 26 May 2023 note as follows (at paragraphs 25 to 27):

> *The Second Respondent's disclosure is also false because it appears to omit his other assets, as set out below.*
>
> *From the limited publicly available information which my lawyers have found, I believe that the Second Respondent has shareholdings in the following companies:*

Sanguine Capital Advisory Limited ("SCAL"): SCAL is a company incorporated in Hong Kong, of which the Second Respondent is a director and a shareholder. SCAL's latest annual return was filed on 13 February 2021 [SF6/68-75]. It appears from that document at page 2 that SCAL holds 100,000 shares with the paid-up value of HKD 100,000 [SF-6/69]. The same document at page 8 reveals that the Second Respondent is the sole shareholder of SCAL, with a shareholding of 100,000 shares [SF-6/75]. (Admittedly, the definitive, up to date position could only be discerned from the annual returns for the financial years 2021 to 2022, but these are not available.)

Sanguine Holdings BV ("SHBV"): SHBV is a private company registered in the Netherlands. It is a member company of the Netherlands Chambers of Commerce ("the NCC"). Amongst other things, the NCC prepares and stores data regarding the filings made by its member companies, and publishes those filings on its website. Those filings are available to the public upon payment of a nominal charge. The NCC also publishes company information extracts, which contain basic details about the companies, including as to its officers and shareholders. On 4 May 2023, my lawyers downloaded the latest company information extract available from the NCC for SHBV, using an online service provider, Dato Capital 8 (https://en.datocapital.com/) [SF-6/76-136]. The Court will see that the Second Respondent is the director and sole shareholder of SHBV [SF-6/94-95].

Growth Investment Guild ("GIG") and Panglossian Capital Pty Ltd ("PCPL"): GIG is a private company incorporated in Australia. To understand whether the Second Respondent has any shareholding in GIG, my lawyers downloaded a current and historical company extract for GIG which contains information derived from the database of the Australian Securities and Investment Commission ("ASIC") [SF-6/141-144]. The extract shows that the Second Respondent was previously the sole shareholder, director and secretary of GIG, but his shares were transferred to GIG's current sole shareholder, Panglossian Capital Pty Ltd ("PCPL"), which is also incorporated in Australia [SF-6/143]. To understand who owns, operates and manages PCPL, my lawyers downloaded the current and historical company extract for PCPL from ASIC's website [SF-6/137-140]. The Second Respondent is the sole shareholder, director and secretary of PCPL [SF-6/138- 139].

SDA Consulting (UK) Limited ("SCL"): SCL is a company incorporated in the UK. My lawyers downloaded from Companies House in the UK the latest confirmation statement filed by SCL on 15 April 2023 [SF6/145-149]. This reveals that, out of the 100 shares in SCL, the Second Respondent holds 24 shares [SF-6/146-147].

39. I cannot be sure that, at the time that the affidavit was filed and served, that the Second Respondent had any interest in Sanguine Capital Advisory Limited due to the age of the corporate documents that the Applicant has included as part of the eBundle (the passage of time point is fairly conceded by the Applicant).

40. It appears to the Court on the evidence that the Second Respondent omitted to include shareholdings in the following companies on the affidavit:

    i. Sanguine Holdings BV.

    ii. Growth Investments Guild and Panglossian Capital Pty Limited.

    iii. SDA Consulting (UK) Limited.

41. On a close reading of the *Nottingham University Hospitals NHS Trust v Sven Raymond Bogmer*, as this is a case in which the allegation concerns a document that was verified with a statement of truth, the Court's view is that this falls under the second of the two categories set out by Constable J in that case at paragraph 31. Therefore, the test to be applied is as follows:

    i. *The statements in question were false:* It is clear that the Second Respondent made the representations as they were made in an affidavit which was signed by the Second Respondent. At the date of the affidavit, I am sure that those representations were false based on the evidence provided to the Court by the Applicant contained within the eBundle (see paragraph 38 for references to the eBundle).

    ii. *At the time the statements were made, the Second Respondent (a) had no honest belief in the truth of the statements, and (b) knew that they were likely to interfere with the administration of justice:* Having found that the representations were false, in the absence of any explanation from the Second Respondent, I am sure that the Second Respondent had no honest belief in the truth of those statements (he can be expected to know the extent of his business interests). Omitting to disclose certain assets in an affidavit that required the disclosure of worldwide assets – in the context of a case in which the Respondents owe the Applicant a significant debt which the Applicant was seeking to recover – can only have been in order to deceive the Court and the Applicant as to the true asset position of the Second Respondent, thereby interfering with the

administration of justice. There is no other reasonable inference (in the absence of an explanation), taking account of the circumstances of the case as a whole and the conduct of the Respondents since the signing of the Settlement Agreement and sealing of the Tomlin Order.

iii. *The statements, if persisted in, would have interfered in the administration of justice:* It is clear to me and I am sure that the false declaration that the assets disclosed in the affidavit were the full extent of the Second Respondent's assets interfered with the administration of justice in this case. The purpose of this litigation is to ensure that the Applicant obtains what he is due under the various court orders, and of course what he can obtain depends on the asset position of the Second Respondent. If the Second Respondent provides false information which obscures or hides the full extent of his assets, the Applicant will not obtain what he is owed and the administration of justice would not just have been interfered with, but will have been harmed.

42. Therefore, I find the Second Respondent in contempt of court for providing false information in the affidavit, namely that it contained the full extent of his worldwide assets. As the Second Respondent, notwithstanding having been made aware of this application and these proceedings, has not engaged with the Court process and has not filed and served any response, I am unable to speculate as to whether there may have been a reasonable excuse. I thus find there is no defence of reasonable excuse.

<u>False/misleading information – Tomlin Order and in communications with the Court</u>

43. As noted above, the Applicant seeks a declaration that the Respondents be found in contempt of court for (i) executing the Tomlin Order thereby making a false representation that they would comply with the Settlement Agreement, and (ii) making various statements to the Court via email that they had taken steps to effect payment, why payment had not been made and/or delayed, and that they were unaware as to why the first instalment had been delayed (eBundle references HB/43-46, HB/209, HB/210, HB/218, HB/220 and HB/222).

44. As to the Tomlin Order, this was sealed on 24 June 2022. No payments under its terms and those in the Settlement Agreement have been made. It is axiomatic that by entering into the Tomlin Order and signing the Settlement Agreement, the Respondents were representing that each would abide by the terms. That was over 19 months ago. The Court is able to conclude, by inference, that this representation was false based on the following:

    i. No payments have been made to date.

    ii. The pattern of behaviour of the Respondents over the last 19 months, both in their attitude towards the Applicant and the Court.

    iii. No evidence of any contrary intent has been tendered by the Respondents, despite ample opportunity.

    iv. No submissions in relation to this application for contempt of court have been made by the Respondents.

45. The evidence, along with inferences drawn from that evidence, suggest that the Respondents had no intention of honouring the terms of the Settlement Agreement or the Tomlin Order. Indeed, the first payment was due under the Settlement Agreement in the summer of 2022. This reinforces the conclusion: I am sure that the Respondents did not intend to honour the Tomlin Order at the time it was sealed and therefore they are in contempt of court for not honouring its terms.

46. As to the statements made to the Court via email, I cannot be sure that the representations that were made as alleged by the Applicant were made with the intent to deceive the Court rather than simply to obfuscate and delay proceedings. Given that this limb fails, I need go no further.

Conclusion

47. I therefore make the following findings/declarations:

i. For the reasons given above, the Respondents are in contempt of court for failing to satisfy the following orders:

a. The order of 27 September 2022 giving judgment for the Applicant in the sum of $300,000 plus interest.

b. The order of 8 January 2023 giving judgment for the Applicant in the sum of $200,000 plus interest.

c. The order of 14 November 2022 giving judgment for the Applicant on a costs assessment in the sum of $6,340.

d. The order of 2 April 2023 giving judgment for the Applicant on a costs assessment in the sum of $6,741.

e. The order of 4 April 2023 directing that the Respondents file and serve an affidavit disclosing their worldwide assets.

ii. For the reasons given above, the Second Respondent is in contempt of court in respect of the representations in the affidavit that:

c. That the Second Respondent's assets are limited to what was disclosed in the affidavit.

d. That the details of the Second Respondent's net assets are accurately noted in the affidavit.

iii. For the reasons given above, the Respondents are in contempt of court for breaching the terms of the Tomlin Order dated 24 June 2022.

48. Further, for the reasons given above, I am sure that it is necessary in the interests of justice and that it is appropriate and just – and in accordance with the overriding objective, to make the findings that I have made in paragraph 47.

Penalty

Introduction

49. The Applicant seeks a financial penalty in respect of each Respondent, the arrest of the Second Respondent, and also an order directing the attendance of the Second Respondent at Court for judgment debtor proceedings.

50. Article 34.3 of the Rules notes as follows in relation to the powers of the Court in these circumstances

> *The Court shall have the power to enforce its own judgments, decisions and orders, and to deal with contraventions of its judgments, decisions and orders and matters relating to contempt:*
>
> *... by the levy of fines; and/or*
>
> *... by the making of any order that it considers necessary in the interests of justice; and/or*
>
> *... by referring the matter to a relevant competent agency or authority of the State.*

51. The powers of the Court, as noted in paragraph 50, are very wide, and include the power in article 10.3 of the Rules:

> *The Court may grant all such relief and make all such orders as may be appropriate and just, in accordance with the overriding objective…*

52. It seems to the Court that, in respect of the gravamen of the conduct of the Respondents and, given that I have found them variously in contempt of court, a financial penalty is appropriate rather than anything more draconian at this stage.

53. As to the level of financial penalty, Mr Williams has submitted that QAR 10,000 each is appropriate taking account of the Qatari Penal Code (article 176 regarding the swearing of a false oath) which he submits applies in the QFC by virtue of article 18 of the QFC Law (No. 7 of 2005). I am not persuaded to use that QAR 10,000 as a benchmark as we are operating in a civil jurisdiction in this matter and this Court does not have jurisdiction over criminal cases: that is for the criminal courts to do. My view is that article 18 of the QFC Law (No. 7 of 2005) simply makes it clear that the criminal

law of the State of Qatar applies in the QFC as administered by the criminal courts, rather than some other criminal law. It does not give this Court jurisdiction to impose criminal penalties and therefore a direct comparison is not in my view appropriate.

54. Mr Williams submits that the Court should account of the following factors in determining the level of financial penalty:

    i. Part of the aim of the penalty imposed for contempt of court is to punish the contemnor.

    ii. The nature of the contempt involved breaching Court orders and providing false information under a statement of truth.

    iii. The intention of the Respondents – as I have found – was to breach those Court orders.

    iv. The Second Respondent has intended to interfere with the administration of justice.

    v. The Applicant has been caused significant prejudice, being owed hundreds of thousands of dollars by the Respondents.

    vi. The Respondents have committed contempt of court over a long period of time and the contempt in relation to the money orders is ongoing.

    vii. The Respondents have not purged their contempt nor sought to purge their contempt.

55. As was noted in *National Highways Limited v Ana Heyatawin and others* [2021] EWHC 3078 (QB), there is no set tariff for sanctions that the Courts in England and Wales impose for contempt of court, and that is the same in this jurisdiction. Sanctions for contempt of court concern the public interest that court orders must be obeyed (*JSC BTA Bank v Solodchecnko* [2011] EWCA Civ 1241 at 1241). The Court in *National*

Highways Limited v Ana Heyatawin and others set out the following general principles at paragraph 49 – and these principles are equally applicable in this Court:

i. The court has a broad discretion when considering the nature and length of any penalty for civil contempt. It may impose: (a) an immediate or suspended custodial sentence; (b) an unlimited fine; or (c) an order for sequestration of assets.

ii. The discretion should be exercised with a view to achieving the purpose of the contempt jurisdiction, namely (a) punishment for breach; (b) ensuring future compliance with the court's orders; and (c) rehabilitation of the contemnor.

iii. The first step in the analysis is to consider the culpability of the contemnor and the harm caused, intended or likely to be caused, by the breach of the order.

iv. The court should consider all the circumstances, including but not limited to: (a) whether there has been prejudice as a result of the contempt, and whether that prejudice is capable of remedy; (b) the extent to which the contemnor has acted under pressure; (c) whether the breach of the order was deliberate or unintentional; (d) the degree of culpability; (e) whether the contemnor was placed in breach by reason of the conduct of others; (f) whether the contemnor appreciated the seriousness of the breach; (g) whether the contemnor has cooperated, for example by providing information; (h) whether the contemnor has admitted his contempt and has entered the equivalent of a guilty plea; (i) whether a sincere apology has been given; (j) the contemnor's previous good character and antecedents; and (k) any other personal mitigation

v. Imprisonment is the most serious sanction and can only be imposed where the custody threshold is passed. It is likely to be appropriate where there has been serious contumacious flouting of an order of the court.

vi. Any term of imprisonment should be as short as possible but commensurate with the gravity of the events and the need to achieve the objectives of the court's jurisdiction.

vii. A sentence of imprisonment may be suspended on any terms which seem appropriate to the court.

56. Assessing the evidence and the submissions, it is clear that imposing sanctions for the various contempts of court that have been found would (i) serve to punish, (ii) reinforce that compliance with court orders is critical and hopefully ensure future compliance, and (iii) rehabilitate the contemors by seeking to change their behaviour and attitude towards orders of this court. It is also clear that the culpability in this case is high: the contempts of court have come at the end of a long pattern of deliberate non-compliance and flouting of court orders; and the harm caused to the Applicant is also significant as he has been kept out of significant sums of money lawfully owed to him. The high culpability coupled with the significant degree of harm renders this a serious case. The complete lack of any explanation or defence in relation to the submissions of the Applicant means that the Court has no mitigation in favour of the Respondent (including good character and lack of antecedents). Indeed, there has been minimal cooperation from the Respondents. There certainly has been no apology or purging of contempt on the part of the Respondents.

57. The behaviour leading to the various instances of contempt of court that I have found were serious and some are ongoing. Providing a false declaration of one's assets under a statement of truth is a particularly serious matter as it clearly disrupts the administration of justice and hampers the Court in carrying out its public function. However, I am not of the view that the custody threshold has been passed. My view is that the imposition of a financial penalty of QAR 25,000 on each Respondent is an appropriate and commensurate penalty. I am sure that it is necessary in the interests of justice and that it is appropriate and just – and in accordance with the overriding objective – to impose this penalty on each Respondent.

58. The Applicant has also sought the arrest of the Second Respondent pursuant to articles 10.1 and 33.3.3 of the Rules. I agree with the Applicant that the Court has the power to make this order, however I decline to do so. It is not clear to me from the application or the skeleton argument what the purpose of such a course of action would be; the Applicant has not adumbrated what he would wish to be done to the Second Respondent

after arrest, and therefore I am not of the view that this draconian step ought to be taken absent that submission.

59. I also decline to make an order requiring that the Second Respondent attends Court for questioning as to the assets of each Respondent. Prior to this step being taken, the Applicant must fully pursue the formal enforcement process in relation to the underlying judgment debts as is the usual practice in this Court.

60. I further order that the Respondents are joint and severally liable for the reasonable costs incurred by the Applicant in bringing this application. These costs are to be determined by the Registrar if not agreed.

By the Court,

[signed]

Justice Dr Muna Al-Marzouqi, Enforcement Judge

A signed copy of this Judgment has been filed with the Registry.

Representation

The Claimant was represented by Mr Thomas Williams of Sultan Al-Abdulla & Partners (Doha, Qatar).

The Respondents were not represented and did not appear.