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NEUTRAL CITATION: [2022] EWHC 1118 (Ch)

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

No. PT-2021-001048

Rolls Building
Fetter Lane
London EC4A 1NL

Friday, 25 March 2022

Before:

HIS HONOUR JUDGE PAUL MATTHEWS
(Sitting as a Judge of the High Court)

B E T W E E N :

HOWARD FIELD
(as administrator of the estate of Douglas Field, deceased) — Claimant

- and -

GIOVANNI DEL VECCHIO — Defendant

MR T. SHERWIN (instructed by Howard Kennedy LLP) appeared on behalf of the Claimant.

THE DEFENDANT did not appear and was not represented.

J U D G M E N T
(As approved)

JUDGE PAUL MATTHEWS:

1 This is an application for an order for committal for contempt of court made by the claimant against the defendant. I have already given a judgment in this case (on Wednesday of this week) and I set out the background to the matter then. I will simply repeat some of the most important points now.

2 The deceased, Mr Duggie Fields (as he was known), was the brother of the claimant, who is the administrator of his estate. Duggie Fields died in March 2021, when he was still living at 29 Wetherby Mansions in Earls Court. The defendant was living with him, and had been since about 2019. However, although the claimant became the administrator of Duggie‘s estate, he had difficulty in obtaining access to the flat and taking possession of the chattels which belonged to the estate, in particular, examples of Mr Fields' artwork.

3 It appears that the defendant was negotiating for money to be paid to him in order to hand over the artwork, and the claimant was attempting to get possession of the artwork, but this failed. Eventually this claim was issued on 2 December for wrongful interference with and delivery up of goods. On 13 December, Marcus Smith J made an order, at a remote hearing in which the defendant participated by telephone, for delivery up on 20 and 21 December. That order, it appears, was not complied with. I will come back to questions of compliance in more detail.

4 A second application was made, this time to Falk J, who made a similar order, in similar terms, on 20 January 2022, for delivery up on 24 and 25 January. Again, there was no delivery up on those days.

5 This led to an application for judgment in default of defence issued on 4 February. I dealt with this on Wednesday, when I gave judgment in default of acknowledgement of service and defence. Subsequently, too, an application by notice was issued on 3 March 2022 for contempt. The notice of the hearing was given as being a three-day window from 23 March (that is Wednesday). This is the third day of those three days.

6 There then followed, on 7 March, an attempt by the process server engaged by the claimant to serve the application personally on the defendant. I will come back to that. Then a further application was made on 16 March by the claimant to regularise service of the contempt application if that should be necessary.

7 Since then, it appears that the defendant gave up possession of the flat on about 14 March. It further appears that artworks are missing from the flat, and also that damage has been done to the flat.

8 I come, therefore, to the committal application. The committal application in this case was, as I say, dated 3 March 2022. It provides in box 5 details of the nature of the contempt. It says the contempt is for breach of an order – in fact, two orders – and in the answer to box 7 it gives details of the two orders that have been breached; that of Marcus Smith J of 13 December and that of Falk J of 20 January. Both orders, I am entirely satisfied to the criminal standard, contained penal notices in appropriate form and, in addition, gave the statements required by r.81.4(2) of the Civil Procedure Rules.

9 As far as service of these orders is concerned, I have already held (on Wednesday) that the order of 13 December 2021 was served personally on the defendant and, in relation to the order of 20 January 2022, of Falk J, para.14 of her order dispensed with personal service and

permitted it simply by email and post. I have been taken to the evidence of the service of the order of Falk J by email and by post and I am satisfied, to the criminal standard, that the defendant was served as required.

10 The contempt application, in an appendix, sets out the details of the relevant orders, the terms of the orders that matter. The order of Marcus Smith J directed the defendant, by para.1, to:

> "… deliver up to the claimant and those individuals listed in paragraph 2 below the artwork listed in schedule 1 [of the order], until final determination of the Claim or further order of the court, by providing the artwork to the claimant and those individuals … on 20 and 21 December 2021."

And then para.2 required the defendant to permit access to the flat at Wetherby Mansions on those dates (20 and 21 December) "to the claimant, his daughter Ms Newman, to any one or more of Mr Tim Bignell, Ms Hannah Hooper, and Mr Ajay Fournillier of Howard Kennedy LLP, and to couriers employed by Williams & Hill Forwarding Ltd and/or Williams & Hill Fine Art Storage and Distribution Ltd., so that the claimant and those individuals can inspect and take delivery up of the artwork listed in schedule 1" to the order.

11 Then by the order of Falk J, dated 20 January 2022, the defendant was again directed in practically identical terms, by para.1, to deliver up to the claimant and the individuals listed in that order the artwork listed in schedule 1 to the order, until final determination of the claim or further order of the court, by providing the artwork to the claimant and those individuals on 24 and 25 January 2022. And then by para.2 of that order, the defendant was directed to permit access to the flat on 24 and 25 January 2022 to the claimant, to Ms

Newman, to any one or more of Mr Tim Bignell, Ms Hooper, and Mr Fournillier of Howard Kennedy, and couriers employed by Williams & Hill Forwarding Ltd and/or Williams & Hill Fine Art Storage and Distribution Ltd., so that the claimant and those individuals could inspect and take delivery up of the artwork listed in the schedule to that order.

12 In the contempt application, box number 12 sets out the facts relied on as constituting the contempt of the defendant. I need not read the first two paragraphs because I have dealt with those, but the third paragraph says:

> "In breach of the First Order, the Defendant refused to permit the Claimant's agents access to the Property on 20 December 2021, and did not deliver up the artworks."

Then I need not read para.4 because I have dealt with that. Paragraph 5 says:

> "In breach of the Second Order, the Defendant refused to permit the Claimant's agents access to the Property on 24 January 2022, and did not deliver up the artworks."

Paragraph 6:

> "In the premises, the Defendant is in contempt of court."

13 I have been taken to the affidavit evidence of Mr Fournillier, a solicitor of Howard Kennedy, in particular, and I have also been taken to the affidavit evidence of the process server, Mr Jaden Sepulveda.

14 First of all, in dealing with the question of service of the contempt application, I am entirely satisfied, to the criminal standard, that on 7 March 2022, in the Earls Court Road, the process server did indeed attempt to serve the defendant with an envelope containing the application and associated papers. After telling the defendant that these were important legal papers connected with a case in which he (the defendant) was involved, I am satisfied, again to the criminal standard, that he pushed the envelope at the defendant and it touched him, and that the process server let go of the envelope. Because the defendant refused to hold onto it, it fell to the floor and the defendant ran away from the process server down the road. The process server waited some twenty minutes to see if the defendant would return. He did not, so the process server picked up the envelope from the ground and took it to Wetherby Mansions. Having gained entry to the block, he left it leaning against the front door of the flat concerned.

15 The question I have to decide is whether that amounts to good personal service or whether, if not, I should exercise any power to dispense with personal service and to provide full recognition of what happened as sufficient service. The test for personal service has been set out in a number of cases. The most recent one, to which I was referred, is a decision of HHJ Pearce in *Gorbachev v Goriev*, where at para.27 HHJ Pearce says this:

> "The relevant law on the personal service of a claim form can be summarised as follows:
>
> i) CPR 6.3(1) provides for services of a claim form by various means, including '*personal service in accordance with rule 6.5*.'

ii) CPR 6.5(3) provides that '*a claim form is served personally on an individual by leaving it with that individual …'*.

iii) Service on an agent could not be good personal service – see for example Morby v Gate Gourmet Luxembourg IV Sarl, [2016] EWHC 74.

iv) In what has been described as a '*concession to practicality*', if the person upon whom service is being attempted will not accept the document, service can be effected either by handing the document to the person (what is often called a 'limb 1' case) or by telling 'the person what the document contains and leaving the document … with or near the person (a 'limb 2' case) – see Kenneth Allison Ltd v A E Limehouse & Co [1991] 3 WLR 671.

v) Knowledge of what the documents contain for this purpose is acquired by it being brought to the intended recipient's attention '*that it is a legal document which requires his attention in connection with proceedings'* – see Hoffmann LJ in Walters v Whitelock, unreported, 19 August 1994, cited by Phillips J in Tseitline v Mikhelson [2015] EWHC 3065 (Comm).

vi) '*The focus is on the knowledge of the recipient, not the process by which it is acquired'* – per Phillips J in Tseitline.

vii) Once the intended recipient has '*a sufficient degree of possession of the document to exercise dominion over it for any period of time however brief, the document has been 'left with him' in the sense intended by the Rule*' – see

Waite LJ in Nottingham Building Society v Peter Bennet & Co. The Times, 26 February 1997 cited by Phillips J in Tseitline.

viii) If the intended recipient has gained possession within the meaning referred to in the previous sub-paragraph, it makes no different that the person seeking to effect service may subsequently remove the document, for example because the intended recipient has not taken the documents and has walked away from the – see Phillips J in Tseitline.

ix) The burden is on the Claimant to show a good arguable case that service was effected on the Defendant – see for example Tseitline.

x) Where an issue of fact arises as to whether there is such a good arguable case, the court must take a view on the evidence if it can reliably do so (Goldman Sachs International v Novo Banco SA [2018] UKSC 34).

xi) If the court is not able to make a reliable assessment of an issue on the evidence available, it is sufficient for the Claimant to show a plausible evidential basis on the issue (again, Goldman Sachs International v Novo Banco SA [2018] UKSC 34)."

16 In addition, I was referred to the decision of Phillips J (as he then was) in *Tseitline v Mikhelson* [2015] EWHC 2065 (Comm). In that case, which was a case concerning a purported service of proceedings just outside, and then inside, the Whitechapel Art Gallery in East London. The evidence, accepted by the judge in para.10 of his judgment, was on any view, the process server was able to walk up to the defendant and to tell him that he had

some papers for him, and to push them at the defendant's body, where they simply dropped to the floor or, possibly, lodged in the crook of somebody's arm and then dropped to the floor by the arm. It does not matter which. Then, at para.44-45, Phillips J says, at 44:

> "On the first aspect, Mr Harber's actions, no matter which version is most accurate, clearly amounted to leaving the documents with or near Mr Mikhelson. The envelopment was placed on Mr Mikhelson's upper body and fell (or was thrown by him) to the ground by his feet, so there is no doubt that it was left near him and that Mr Harber had relinquished control of the envelope to him. An almost identical process was regarded as 'leaving' the document in *Walters*."

Then in para.45:

> "As indicated above, Mr Choo-Choy [that is counsel for the defendant] argued that, because Mr Harber picked up the envelope and lodged it between Victoria Mikhelson's back and her bag whilst Mr Mikhelson was walking away, it was not left with him. For the reasons given above, in particular the reasoning in *Nottingham Building Society*, it matters not if documents are taken away by the process service if the recipient had sufficient control as to be able to exercise dominion over them, even for the briefest period: the documents have been left with the person being served."

17 That, of course, is very similar to what I have held happened factually in the present case. The documents were pushed towards the defendant by the process server so that they touched his body but, because the defendant refused to take them, they dropped straight to the ground and were left there whilst the defendant ran away down the Earls Court Road.

18 In my judgment, if the question is whether the envelope was left with or near the defendant, I have absolutely no doubt it was and I am satisfied of that to the criminal standard. So that part of the test is satisfied.

19 The second part of the test is whether the defendant was made aware that these were papers connected with legal proceedings in which he was engaged. I am satisfied again, to the criminal standard, that the process server did explain to the defendant that he was a process server and he was serving papers connected with the legal proceedings in which he was involved and that, therefore, the defendant knew very well the nature of the documents that were being served upon him. In these circumstances, I am in no doubt that the contempt application, and supporting paperwork, were personally served on the defendant.

20 In those circumstances, it is not strictly necessary for me to consider, therefore, whether a court should regularise service of the documents. I would only say that the law in relation to waiving or dispensing with personal service seems to be rather more complicated than it deserves to be on such an important aspect of our civil procedure. It is clear that in *Mander v Falcke* [1891] 3 Ch 488, Kekewich J was clear that the court could waive the requirement for personal service where the respondent was evading service.

21 Whether that is the only circumstance in which the court could dispense with personal service is not something which the judge in that case had to decide or which he actually dealt with. If, however, one looks at the discussion in the well-known textbook of **Arlidge, Eady & Smith on Contempt** (5th ed), which I understand was published in 2019 and so before the revision of the current Part 81 of the Civil Procedure Rules, there, at para.12-40, the learned editors write:

> "Where committal is sought, personal service will generally be insisted upon, although the court has power to dispense with service of the claim form or notice of application (as the case may be), where it considers it just to do so, or order service by an alternative method or place. It was recognised that personal service would generally be insisted upon unless there was clear evidence of evasion. It was in the nineteenth century held that the attendance of the alleged contemnor at the hearing does not per se waive the need for service. The need for service also applies to a notice of an adjourned hearing date. Today the focus is upon what justice requires in the circumstances of the particular case, rather than upon any hard and fast rule."

22 Although that is, in my respectful view, a clear statement of what is considered to be the law, it has been thrown into some confusion by the statement in the consultation document that preceded the re-issue of Part 81, where, at p.14, in a commentary following the new r.81.5, what the authors of the consultation paper say this:

> "Rule 81.5(1) brings into play the rules in Part 6 of the CPR on personal service and dispensing with service. We see no need for the 85.1(1) to say more. The judge would only dispense with personal service if sure the defendant is evading service or already aware of and fully informed about the contempt proceedings."

I am not sure where the learned authors of the consultation paper get that from. It may be that part of it comes from *Mander v Falcke*, because that is the example given by Kekewich J. But it does seem to me that they have rather elevated his example into a firm rule, which I do not think was his intention, and certainly does not appear to be the view taken by the editors of **Arlidge, Eady & Smith on Contempt**. In my judgment, the test which they

brought forward at para.12-40, that the focus is on what justice requires in the circumstances of the particular case, is the right approach to be adopted here.

23 I go on to say that, had I not been satisfied that there was proper personal service of the contempt application on the defendant in this case, I would have considered that it was an appropriate case in which to treat the service attempts that were made as sufficient service upon the defendant. This because, first of all, the defendant well knew what the terms of the contempt application were, both in soft and in hard copy, by the end of 7 March, and, in any event, the defendant had tried to evade service upon him by the process server by running away after the documents had been pushed towards him. But, for the reasons I have already given, I hold that there was proper personal service of the application upon the defendant.

24 The question of whether, as I say, the affidavit evidence satisfies me to the criminal standard that the breaches alleged by the defendant were, in fact, committed, is clear. The affidavit of Mr Fournillier was made on 3 March 2022. What Mr Fournillier says in his affidavit, at para.12 onwards, was that he attended the flat on 20 December and that he tried to buzz the flat but received no answer. He managed to obtain access to the building through the building manager and he attended the flat by himself. There were notices on the door, stating, in handwriting of which I have seen a photograph and which says, specifically addressed to Mr Bignell of Howard Kennedy:

> "Provided a another DATE I will comply with the order or go back to the court because you didn't agree follow the conditions to grant you access."

And another sign said:

"I didn't let you in! You are trespassing."

Mr Fournillier rang several times but there was no answer. So he rang the telephone number which had been provided on the front door, a mobile telephone number, and the defendant answered. They had a conversation. The defendant said he was at home and that he had Covid-19 Delta and would not be letting Mr Fournillier in because he was self-isolating. He told him to go away. The conversation proceeded. Eventually Mr Fournillier explained that if the defendant did not let him in, he would be in breach of the injunction and, therefore, in contempt of court. But the defendant continued to refuse. There was another call with the defendant and a similar refusal. After that he did not answer any calls made to the number.

25 Then insofar as concerns the second order, Mr Fournillier says that he attended on 24 January and again he buzzed the flat but received no response. As it happens, he was accompanied by the claimant's daughter, Ms Newman, who had a key to the building which had been provided by the manager of the building, and so the parties gained entry to the building and went up to the flat. There were no longer any signs attached to the building doorbell or to the front door of Flat 29. However, the door handle to the flat was now missing and when Mr Fournillier rang the doorbell there was no answer. He subsequently called the defendant on his mobile number but there were no responses to his calls. The solicitor considered that there was some concern about the defendant's conduct and that they should call the police.

26 The Metropolitan Police attended. As it happens, Mr Fournillier is himself a former police officer and was aware of the practices of the police. The police arrived and there was then a discussion with the police. The police went upstairs to the flat and were permitted entry to the flat by the defendant. The defendant discussed the situation with the police. Eventually

Mr Fournillier actually went inside the flat to join them, although the defendant initially resisted this. Discussions then took place between the police and the defendant and between the police and Mr Fournillier. It went nowhere in the sense that the defendant refused to allow Mr Fournillier to enter or to hand over any of the chattels which were the subject of the orders.

27 In my judgment, this evidence satisfies me to the criminal standard that the orders were not complied with. So the question I have to ask myself is what is the test for contempt?

28 The first point to make, as was made to me by Mr Sherwin, is that the court's jurisdiction to deal with contempt of court applications is a very important one in the administration of justice today. In the Court of Appeal's decision in *JSC BTA Bank v Ablyazov (No.8)* [2013] 1 WLR 1331 [188], Rix LJ – with whom the other judges, Toulson LJ and Maurice Kay LJ, agreed on this point – said this:

> "The authorities demonstrate that it is vital for the court, in the interests of justice, to have effective powers, and effective sanctions. Without these, it would be possible for a defendant (or, in a different situation, a claimant) to flout the orders of the court, which are the court's considered means by which to keep the scales of justice for the parties even. If once it became known that the court was unable or unwilling to maintain the effectiveness of its orders, then it would lose all control over litigation of this kind, with terrible consequences for the administration of justice. Those wrongly accused of fraud would be relieved of a certain amount of inconvenience, but fraudsters would rejoice and hitch a free ride to interminable litigation on the back of ill-gotten gains."

29 On the back of that, the test which has been applied in the context of contempt of court applications was summarised by Christopher Clarke J (as he then was) in para.150 of his decision in *Masri v Consolidated Contractors International Company SAL & Ors* [2011] EWHC 1024 (Comm), where he says this:

> "In order to establish that someone is in contempt it is necessary to show that (i) that he knew of the terms of the order; (ii) that he acted (or failed to act) in a manner which involved a breach of the order; and (iii) that he knew of the facts which made his conduct a breach."

And then there is a reference to *Marketmaker Technology (Beijing) Co Ltd v Obair Group International Corporation & Ors* [2009] EWHC 1445 (QB). Then he goes on to say:

> "There can be no doubt in the present case but that the judgment debtors have at all times been fully aware of the orders of this court. It is not and could not sensibly be suggested that the conduct of which complaint is made was casual or accidental or unintentional. However, the question arises whether it is, also, necessary to show that they acted knowing that what they were doing was a breach of, and intending to breach, any of the orders."

Then he refers to a number of authorities; *Stancomb v Trowbridge Urban District Council* [1910] 2 Ch 190, *Adams Phones Ltd v Gideon Goldschmidt and others* [2000] CP Rep 23, and *Bird v Hadkinson* [2000] CP Rep 21.

30 In para.155, the judge comes to this conclusion:

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

31 So in these circumstances it is clear that, although the defendant, or respondent to the application, must know the facts which actually amount to a breach, it is not necessary that the applicant proves to the criminal standard that the respondent was aware that those acts did amount to a breach, as a matter of law, of the order.

32 Looking then at the position in this case, so far as concerns knowledge of the orders themselves, in relation to the order of Marcus Smith J, the defendant did actually participate in that hearing and knew that the judge was making the order. In any event, Mr Fournillier explained the terms of that order to him on the telephone outside his flat subsequently, on 20 December 2021.

33 In relation to the order of Falk J, the defendant knew about its terms because it had been served on him both by email and by post. In addition, Mr Fournillier explained that to him in person on the occasion when he was at the flat with the defendant.

34 The second point is whether there was actually a breach of the orders. Did the defendant fail to act in such a way as to amount to a breach of the orders? In my judgment, I am

satisfied, to the criminal standard, that he did. He refused to let the claimant's agents into the property as directed and he failed to deliver up the chattels, as directed.

35 Thirdly, did he know of the facts which actually, as a matter of law, amount to a breach even if he did not know that they were a breach? In my judgment, he deliberately refused to allow the claimant's agents access to the flat, even after the service of the orders had been explained, and he has taken no action subsequently as if to say, "I did not understand at the time but I understand now", to try and comply with the orders or to mitigate his actions or, indeed, apply to the court to vary or, indeed, to make any kind of apology, except a minimal one in a subsequent email which I have seen and which does not amount to anything more than a recognition of the fact that he ought to have complied with the orders but in fact did not.

36 In these circumstances, I am entirely satisfied to the criminal standard that the defendant is in contempt of court for failing to comply with the two orders that I have referred to.

37 The next question is the question of sentence. Mr Sherwin has quite properly drawn my attention to a number of authorities which deal with this and, in particular, the decision of Briggs J (as he then was) of *JSC BTA Bank v Solodchenko* [2011], where the learned judge said that the court should pause before proceeding to the sentencing question when the defendant is not present. So that is what I propose to do.

LATER

38 This morning I gave judgment in this matter indicating that I found proved, to the criminal standard, the contempt of court committed by the defendant in failing to comply with the

orders of Marcus Smith J, of 13 December, and of Falk J, on 20 January 2022. I said that I would pause, in accordance with the suggestion made by Briggs J in the *JSC BTA Bank v Solodchenko* case, at para.16, until this afternoon in order to consider the position.

39 I have had a most helpful address from Mr Sherwin, counsel on behalf of the claimant – still, of course, in the absence of the defendant/respondent – and he has taken me to a number of authorities which I do not think I need to discuss in any detail. But I will just mention that, in addition to the cases which he had already referred me to, such as the *Solodchenko* case, the *Sanchez* case and the *Johnson v Argent* case, he also referred me to another authority, *XL Insurance Co. SE v IPORS Underwriting Ltd.* [2021] EWHC 1407 (Comm), a decision of Cockerill J. This was a case where the judge decided, after considering the matter, that she would, having found the contempt proved, proceed immediately to sentence, even in the absence of the respondent.

40 It is worth making the point that the judge in that case dealt with the question of whether to proceed immediately to sentence in the absence of the respondent by reference to the checklist which was used by Cobb J in *Sanchez v Oboz* [2015] EWHC 235 (Fam), and other cases, including *Navig8 Chemicals Pools Inc* and *ICBC Standard Bank Plc*, and she repeated it in para.46 of her judgment. Then in para.47 she considered the application of that checklist on the actual facts of her case. I should just say that she considered, therefore, that it was right in the circumstances of that case to proceed direct to sentence.

41 One aspect of that case which was similar to the others was that the only evidence, and it was only slight evidence, as to the whereabouts of the respondent was to the effect that he was perhaps in Portugal but, anyway, out of the jurisdiction. I think that the court proceeded

on the basis that he at least was possibly outside the jurisdiction. As she said para.47 of her judgment:

> "The affidavit evidence shows that XL [the claimant] went to great length to identify Mr Corcoran's whereabouts. While XL's agents were not invested with the power of arrest that a bench warrant would grant, I am satisfied that they took all reasonable steps to find Mr Corcoran and that they did not succeed in doing so. Despite all their efforts it is entirely unclear where Mr Corcoran is or whether he is susceptible to the powers of compulsion of this court. In the light of this, it appears unlikely that issuing a bench warrant would secure the attendance of Mr Corcoran. I address the issue of representation separately below."

I do not need to read any more for the moment.

42 The point I am making is that here, in the present case, we have someone who has been living in the United Kingdom for a number of years, was living with the deceased, Duggie Fields, from about 2019 until his death in 2021, and continued to live in his flat until he gave it up only a week or two back, and has not been heard of since. There is no evidence to show that he has left the country, even though he is a national of the Republic of Italy and might be expected to have friends and family there. At the moment, we are in the position where we do not know whether or not he has left the country or, indeed, if he did leave the country, whether he has come back. It appears on the material before me that whether I issue a bench warrant or proceed to sentence and then issue a committal warrant, in either case the police will liaise with the immigration authorities and put a stop on ports and airports so that if he tries to leave the country this will come to the notice of the authorities, and he can be restrained, or, alternatively, if he is outside the country and comes in, notice

will be given to the authorities that way and the warrant – whichever kind it is – can be put into operation.

43 In these circumstances, as it appears to me, and I hope I am not wrong about this, the benefits that flow from either the bench warrant or the committal warrant, so far as information of whereabouts is concerned, is much the same, then there is no especially good reason that I can see for proceeding to sentence today and further, as it were, overriding the rights to a fair trial to a further extent that are guaranteed by the European Convention on Human Rights, Article 6.

44 The better course, as it seems to me, therefore, is to issue a bench warrant, to defer sentencing for a period and then, if it turns out that information comes to light to show that he has already left the country and is not coming back, then a sentencing hearing can be arranged. If, on the other hand, he is in the country and he is arrested, or he tries to leave the country and he is stopped, then a sentencing hearing can take place in which he can participate and be legally represented should he so wish. The idea at the end of the day, after all, is not just to punish a person who commits a breach of an order and thereby a contempt of court. It is to try and secure compliance with the orders because that is what the claimant had embarked upon the litigation for and, despite having the orders, they have not yet been enforced. So I am concerned to do whatever is necessary to see them to be enforced but not the unnecessary expense of overriding the rights to a fair trial which a defendant otherwise has.

45 Accordingly, for these reasons, I propose therefore to issue a bench warrant today for the arrest of the defendant/respondent, Mr Del Vecchio, and to adjourn the sentencing hearing for a period of six weeks from today but with liberty to apply in the meantime to the

claimant if it appears that any of the assumptions on which I have made this decision should prove to be unfounded and if it should be more advantageous to the claimant if there were a sentencing hearing so that the claimant can apply to the court and say, “Please can we move straight to a sentencing hearing?”

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