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IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
QUEEN'S BENCH DIVISION
COMMERCIAL COURT
[2020] EWHC 1384 (Comm)

No. CL-2018-000100

Rolls Building
London EC4A 1NL

Thursday, 2 April 2020

Before:

MR JUSTICE HENSHAW

B E T W E E N :

(1) DELL EMERGING MARKETS (EMEA) LIMITED
(2) DELL COMPUTER SA
(3) DELL TECHNOLOGIES INC
(4) DELL FZ - LLC — Claimants

\- and -

(1) SYSTEMS EQUIPMENT TELECOMMUNICATIONS SERVICES SAL
(2) MAHER CHAHLAWI
(3) MARWAN JUNIOR CHAHLAWI
(4) PIERRE ALBERT CHALHOUB
(5) SARAH BIBI — Defendants

MR A. FELD (instructed by Osborne Clarke LLP) appeared on behalf of the Claimants.

THE DEFENDANTS did not appear and were not represented.

J U D G M E N T

(BY TELEPHONE)

MR JUSTICE HENSHAW:

INTRODUCTION:

1 This judgment is given at the resumed hearing of the claimants' application by notice dated 20 May 2019 for an order that all the respondents are guilty of contempt of court, for the committal of the second to fifth respondents to prison for such contempt of court, for permission to issue writs of sequestration against all the respondents, and for various other relief.

2 This hearing has proceeded in the absence of the respondents in circumstances which I shall explain shortly. It has been listed and held in open court, in court 25 of the Rolls Building, with the proceedings audible in the court room. However, due to the current Covid-19 pandemic, the judge and those parties and representatives who chose to attend have attended the hearing remotely by telephone. Media representatives who have asked to attend the hearing remotely by telephone have also been provided with the details so that they can do so.

FINDINGS IN PREVIOUS JUDGMENT:

3 In my judgment dated 13 March 2020 I concluded for the reasons set out there that each of the respondents, Systems Equipment Telecommunications Services SAL, Maher Chahlawi, Marwan Junior Chahlawi, Pierre Albert Chalhoub and Sarah Bibi is guilty of contempt of court, that having been proven to the criminal standard. That judgment followed a hearing in open court on 26 February 2020 of which the respondents had notice but chose not to attend.

4 The hearing proceeded in the respondents' absence to address the issue of whether contempts of court had occurred, with any issues of sentence to be adjourned to a later date. This followed the receipt of a letter dated 21 February 2020 from the respondents' Lebanese lawyer, Mr Naji Lahoud of Jurisfirma, unsupported by any evidence, seeking an adjournment of unspecified duration of the hearing, failing which he said the respondents would not attend the hearing. Near the outset of the hearing on 26 February 2020, I gave a detailed oral judgment setting out the background to that request, the steps I took in response to it, including receipt of submissions and evidence from Dell, and affording the respondents a further opportunity to file submissions and/or evidence, and my reasons for proceeding with the hearing in the respondents' absence.

5 My written judgment dated 13 March 2020 sets out my reasons for my conclusion that each of the respondents is guilty of contempt of court. In essence, the contempt consisted of the respondents' breaches of interim and final anti-suit injunctions restraining the pursuit of proceedings brought by the first respondent (whom I shall call "SETS"), against Dell in Lebanon. SETS is a Lebanese company. The second to fifth respondents were the members of SETS' board of directors at the relevant times and have between them owned 100 per cent of the company's share capital at all relevant times. The second respondent, Mr Maher Chahlawi, is a director and the general manager or chief executive of SETS and owns 40 per cent of its share capital. The third respondent, Mr Marwan Junior Chahlawi, is a director of SETS and the chairman of its board, and owns 50 per cent of its share capital. The fourth respondent, Mr Pierre Albert Chalhoub, has since 4 July 2018 been the third and only other director of SETS. He owns remaining 10 per cent of SETS' share capital. The fifth

respondent, Miss Sarah Bibi, was until 4 July 2018, the third director of SETS and owned 10 per cent of its share capital. She was thus Mr Chalhoub's predecessor.

6 I found that each of the second to fifth respondents in the ways set out in my written judgment wilfully caused and permitted SETS to commit and wilfully failed to take reasonable steps to prevent SETS from committing the breaches of the anti-suit injunctions.

7 Ms Nina Lazic, an associate director with Osborne Clarke LLP, legal representative to the claimants, has provided evidence in the form of a witness statement, which I accept, that on 10 March 2020 her firm wrote to Jurisfirma to explain that the respondents had a final opportunity to purge their contempts. Because of the current lockdown in Lebanon, it was not possible to deliver that letter by the notary public procedure used on previous occasions in these proceedings. However, it was sent to the respondents' Lebanese legal advisers, Jurisfirma, at two email addresses, including the email stated as the address for communications in the respondents' notice of change of solicitor filed and served on 21 February 2020. That email address had also been used in communications with the court and the parties shortly before the previous hearing in this case in February.

SUBSEQUENT EVENTS:

8 On 13 March 2020, the date of publication of my written judgment, I directed that the hearing of the claimants' committal applications against the respondents be adjourned to today for the purpose of considering questions of sentencing and other remedies and all other matters arising out of the judgment. Copies of my order were sent to the parties the same day, including to the respondents at the email address of Jurisfirma stated in the respondents' notices of change of solicitor. Today's hearing was accordingly listed as the resumed hearing of the claimants' applications to commit and for other relief, and the case was listed accordingly in the cause list.

9 On 20 March 2020 I gave directions as follows:

> "1 Each of the respondents must, by 4 pm on Tuesday, 31 March 2020 notify the court via email to the Judge's clerk at [email address stated], and the claimants by email to their solicitors at [email address stated] if he / she / it intends to attend or be represented at the adjourned hearing of the claimants' committal applications against the respondents listed for Thursday, 2 April 2020.
>
> 2 The claimants shall ensure that notice of the said adjourned hearing, if not already provided, and a copy of these directions is provided to the respondents by such means as may be reasonably practicable as soon as possible.
>
> ***REASONS:***
>
> 3 The court's practice is for committal hearings to be held as a physical hearing in a court room in the Royal Courts of Justice, Strand, London, at least in a case where any respondent is expected to attend.
>
> 4 In light of the current Covid-19 problems, special arrangements would need to be made for such a hearing to occur. It is therefore necessary and/or desirable for the court to be informed in advance whether, in the present case, any of the respondents, none of whom attended the first stage of the hearing

on 26 February 2020, intends to attend the hearing listed for Thursday, 2 April 2020.

5 Each of the respondents should clearly understand that if they do not attend the hearing then the court may proceed in their absence and that may result in orders being made in their absence for their committal to prison, and/or for permission for the claimants to issue writs of sequestration against them, and/or for other relief, including, but not limited to, costs orders."

10 My clerk emailed that direction to Jurisfirma on the day it was issued. In addition, Ms Lazic's evidence is that she sent a copy of my directions by email both to Jurisfirma, using the same two email addresses as previously, and also to SETS at the generic email address on its website, and at the email address of the second respondent, Maher Chahlawi at SETS, which her firm holds for those parties. She did not receive any bounce-back or notification that her email had been rejected by the relevant server or servers. Ms Lazic said it was not possible, given the continuing lock-down, to effect notary public or postal service of those directions. However, she says her firm has been in frequent and uninterrupted email contact with Mr Malek Kallas, the managing partner of the Lebanese law firm, Kallas Law Firm, who acts for the claimant in the ongoing proceedings in Lebanon. She says Osborne Clarke have received no indication that there is any issue with the normal functioning of emails in Lebanon. Therefore, she has no reason to believe or suspect that her firm's emails to Jurisfirma and/or the SETS email addresses have not reached their intended recipients. I accept that evidence and am fully satisfied that the respondents have received proper notice of today's hearing and of my directions issued on 27 March 2020.

11 Finally, my clerk yesterday circulated to the parties, including to the respondents using both of the available Jurisfirma email address, details of how they could participate in this hearing remotely by telephone.

12 The claimants are represented by Mr Andrew Feld of counsel and by Osborne Clarke. There has been no response from any of the respondents and none of them is present or represented at today's hearing. There has been no request either to adjourn today's hearing or for any of the respondents to take part in it remotely. I bear in mind that proceeding with a trial, including a committal application, in the absence of a respondent is an exceptional course - see e.g. *Lamb v Lamb* [1984] FLR 278 CA.

13 The principles to be applied have been considered in a series of cases, including *R v Hayward, Jones and Purvis* [2001] EWCA Crim 168, para.22.5. The Court of Appeal in that case made clear that:

> "[The discretion to proceed without a defendant] must be exercised with great care and it is only in rare and exceptional cases that it should be exercised in favour of a trial taking place or continuing, particularly if the defendant is unrepresented.
>
> In exercising that discretion, fairness to the defence is of prime importance but fairness to the prosecution must also be taken into account. The judge must have regard to all the circumstances of the case …"

14 More recently Cockerill J, in *ICBC Standard Bank Plc and Ors v Erdenet Mining Corporation* [2017] EWHC 3135 (QB) set out a check list of factors approved in previous case law. Applying that check list, the position is as follows:

(i) The respondents have been served with the relevant documents, including notice of this hearing.

(ii) The respondents have had sufficient notice to enable them to prepare for the hearing. They have had ample time to do so and have served evidence of fact and Lebanese law during the course of the present committal application.

(iii) The respondents have not advanced any good reason for their non-appearance. When I proceeded with the first stage of the hearing on 26 February, I did not accept their assertion that they had been unable to secure legal representation for the hearing by reason of difficulties in transferring funds. They had put forward no documentary, witness or affidavit evidence in support of their assertion. They had not responded to Dell's point that, since SETS has offices in several countries outside Lebanon and claims to do business in a variety of countries, there is no reason to believe that funds could not be made available from sources outside Lebanon; or alternatively, from fresh funds brought in to Lebanon and then paid to English lawyers. I considered it more likely that, like the respondents' previous conduct in this matter, the respondents were seeking to ignore the processes of this court and to evade any sanctions for breaching its orders. I agreed with Dell that the timing of the adjournment request and the respondents' refusal to appear in person before the court lent further support to that view. In my view, the situation is exactly the same today. Specifically, I do not consider that the respondents are absent today, or have failed to respond, because of the Covid-19 problem. I consider it clear from the circumstances as a whole that they decided to cease to engage with the process from well before the lock-down. As I say, there has been no suggestion whatever from them, whether before or after the lock-down, of any desire to attend or seek the adjournment of today's hearing.

(iv) In the light of the respondents' behaviour, I conclude that the respondents know the consequences of the case proceeding in their absence and have chosen neither to be represented nor to be present in person or remotely.

(v) I do not consider that an adjournment would be likely to secure the attendance of the respondents or facilitate their representation.

(vi) There is inevitably some disadvantage to the respondents in not being able to present their account of events or mitigation, in person or by legal representation. However, they set out their case on the facts and have not sought to challenge the facts set out in Dell's evidence in support of this application. The disadvantage is therefore limited.

(vii) A further delay would be highly prejudicial to Dell because it would reduce the chance of the Lebanese proceedings being halted, and would increase the chance of them continuing yet further, thereby putting Dell to further significant expense and trouble, which it is entitled not to have to endure.

(viii) I do not consider that undue prejudice would be caused to the forensic process by the application proceeding in the absence of the respondents. Their factual case, including their case as to Lebanese law, is already before the court. They have now had two opportunities to appear or be represented but have not taken them up.

(ix) The overriding objective favours proceeding with the hearing. The respondents should not be allowed to cause unjustifiable delay and prejudice to Dell by their continued refusal to engage with this application. Moreover, further delay would give the defendants a clear opportunity to commit further breaches of this court's anti-suit injunctions.

15 As a result of those considerations, I concluded that it was right to hear the remainder of Dell's application today in the absence of the respondents.

SENTENCES FOR CONTEMPT OF COURT:

16 Contemptuous breaches of anti-suit injunctions are to be treated for sentencing purposes as analogous to breaches of freezing injunctions. In both cases a breach of the court's order is a serious attack on the administration. I have been taken to a number of cases, including *Mobile Telecommunications v HRH Prince Hussam Bin Abdulaziz Al Saud* [2018] EWHC 3749, and *Trafigura v Emirates General Petroleum* [2010] EWHC 3007. In those cases 12 month sentences were given for breaches of either a freezing order or a freezing order and an anti-suit injunction. Jacobs J in the former case underlined the analogy between freezing injunction and anti-suit injunction cases. Guidance on the appropriate sentence in the case of freezing injunctions was also set out by Popplewell J in *Asia Islamic Trade Finance Fund v Drum Risk Management* [2015] EWHC 3748, para.7, and that guidance has been approved by the Court of Appeal in *Olga Olita Sellers v Artem Podstreshnyy* [2019] EWCA Civ 613 and *Financial Conduct Authority v McKendrick* [2019] 4 WLR 65. I have had careful regard to that guidance. As the Court of Appeal emphasised in *McKendrick*, the inherent seriousness of a breach of a freezing order is such that it is likely that nothing other than a prison sentence will be sufficient to punish it. Moreover, a broad range of conduct can fairly be regarded as justifying a sentence at or near the two year maximum. A sentence in that range is not restricted to the very worst sort of contempt which can be imagined - that is *McKendrick* at para.40. Similar considerations apply in my view to serious breaches of an anti-suit injunction.

17 I consider first the position of Maher Chahlawi and Marwan Junior Chahlawi, who are the second and third respondents. I take into account in their cases the following factors:

(i) Their breaches in this case have been both repeated and continuing. Not only has SETS failed to withdraw the Lebanese proceedings, but on 18 February 2020 it filed an appeal from the Lebanese court's judgment of 21 January 2020, in which that court had held that it lacked jurisdiction due to the exclusive English jurisdiction clause, and rejected SETS' argument that the clause was void under Lebanese law. The breaches are, therefore, particularly serious.

(ii) The breaches of the orders were deliberate, and there is a high degree of culpability on the part of each of Maher Chahlawi and Marwan Junior Chahlawi. They were the controlling minds of SETS and, as I have previously found, were motivated by a deliberate intention to breach the anti-suit injunctions.

(iii) Dell has been seriously prejudiced by the breaches. It has been forced to engage in the Lebanese proceedings and incurred substantial costs in doing so. That is the very prejudice the anti-suit injunctions were designed to prevent.

(iv) Maher Chahlawi and Marwan Junior Chahlawi have not accepted any responsibility, nor shown any remorse or change of course, or offered any apology,

even after this court has held them to be in contempt, and even after they have been given a further opportunity to purge their contempt.

(v) Maher Chahlawi and Marwan Junior Chahlawi have not offered any reasonable excuse for their lack of compliance with the anti-suit injunctions. As I have already found, the excuse that they were motivated by the threat of civil liability had no substance.

18 In the case of both of Maher Chahlawi and Marwan Junior Chahlawi I consider that, in all the circumstances, nothing short of a sentence of immediate imprisonment is necessary, and in both cases the shortest period of imprisonment commensurate with the serious levels of their offending, taken in its totality, is 18 months. It is not appropriate for those sentences to be suspended. In my judgment, appropriate punishment can only be achieved by immediate custody. These respondents have repeatedly breached the court's orders in this case and no strong personal mitigation has been put forward. Each of Maher Chahlawi and Marwan Junior Chahlawi will serve up to half of his sentence in custody, and will then be subject to release pursuant to s.258 of the Criminal Justice Act 2003.

19 I give a non-binding indication that were Maher Chahlawi to cause SETS' breach of the final anti-suit injunction to come to a prompt end by the full cessation of the Lebanese proceedings, the court would be likely to give favourable consideration to remitting half of his sentence. I give the same non-binding indication in relation to Marwan Junior Chahlawi.

20 I now turn to Sarah Bibi. Ms Bibi was not the prime mover on SETS' board. However, I have already found that her role went beyond that of a passive director with no involvement in this matter and that she actively rejected the anti-suit injunctions and gave active encouragement to the position being taken by Maher Chahlawi and Marwan Junior Chahlawi; and further, that she was wilfully encouraging and actively endorsing the breaches of the anti-suit injunctions. Her own evidence indicated that she had no wish to seek to prevent the breaches of the injunctions. I have already held that the excuse put forward by Ms Bibi, that she had no power to act and merely took a passive role in the management of SETS, had no basis in fact. In the light of those findings, it cannot be said that Ms Bibi was placed in breach of the anti-suit injunctions only by the conduct of others. Ms Bibi has declined to apologise or show any remorse in the light of the court's finding that she is in contempt of court.

21 I consider in all the circumstances relating to Ms Bibi that nothing short of a sentence of immediate imprisonment is necessary, and that the shortest period of imprisonment commensurate with the seriousness of her offending taken in its totality is nine months. It is not appropriate for that sentence to be suspended. In my judgment, appropriate punishment can only be achieved by immediate custody. Ms Bibi on several occasions breached the court's orders in this case and no strong personal mitigation has been put forward. Ms Bibi will serve up to half of her sentence in custody and then be subject to release pursuant to s.258 of the Criminal Justice Act 2003.

22 I give a non-binding indication that were Sarah Bibi to cause the company's breach of the final anti-suit injunction to come to an end by the full cessation of the Lebanese proceedings, the court would be likely to give favourable consideration to remitting half of her sentence.

23 I turn now to Pierre Albert Chalhoub. Like Ms Bibi, Mr Chalhoub was not the prime mover on SETS' board. In one sense his role was less active than that of Ms Bibi in terms of active encouragement of the breaches of the anti-suit injunctions. Conversely, however, unlike Ms Bibi, he remains a director and shareholder to this day and I have concluded that

Mr Chalhoub has been wilfully complicit in the breaches since October 2018, and has wilfully failed to take reasonable steps to secure compliance with the anti-suit injunction. That situation has continued up to the date of the present application in that Mr Chalhoub is complicit in the SETS' ongoing flouting of the anti-suit injunctions. It cannot be said that Mr Chalhoub was placed in breach of anti-suit injunctions solely by the conduct of others. Mr Chalhoub has offered no reasonable excuse for his conduct, nor any apology, nor shown any remorse. His own evidence indicated that he has no wish to seek to prevent or to bring to an end the breaches of the anti-suit injunctions.

24 I consider that in all the circumstances relating to Mr Chalhoub, nothing short of a sentence of immediate imprisonment is necessary, and that the shortest period of imprisonment commensurate with the seriousness of his offending, taken in its totality, is nine months. It is not appropriate for that sentence to be suspended. In my judgment, appropriate punishment can only be achieved by immediate custody. Mr Chalhoub on several occasions, and on an ongoing basis, has breached the court's orders in this case, and no strong personal mitigation has been put forward. Mr Chalhoub will serve up to half his sentence in custody and then be subject to release pursuant to s.258 of the Criminal Justice Act 2003.

25 I give a non-binding indication that were Pierre Albert Chalhoub to cause the company's breach of the final anti-suit injunction to come to an end by the full cessation of the Lebanese proceedings, the court would be likely to give favourable consideration to remitting half of his sentence.

26 The Practice Direction on Contempt of Court requires me now to state in open court my main conclusions. For the reasons set out in my judgment of 13 March 2020, which has already been made publicly available, including on the BAILII.org website, I have concluded that each of the respondents, Systems Equipment Telecommunications Services SAL, Maher Chahlawi, Marwan Junior Chahlawi, Sarah Bibi and Pierre Albert Chalhoub is guilty of contempt of court, that having been proven to the criminal standard in each case.

27 The general nature of such contempt and the sentence imposed in each case is as follows:

(i) Systems Equipment Telecommunications Services SAL committed breaches of the interim and final anti-suit injunctions on 22 and 28 May, 26 June, 16 October and 27 November 2018, and 28 January 2019, and is in continuing breach of the final anti-suit injunction as set out in more detail in my judgment of 13 March. As it is a company it is not possible to commit it to prison for contempt of court, I shall deal later in this hearing with other relief sought against SETS.

(ii) Maher Chahlawi, in his capacity as a director of Systems Equipment Telecommunications Services SAL, (a) with knowledge of the interim anti-suit injunction wilfully caused and permitted that company to commit, and wilfully failed to take reasonable steps to prevent that company from committing, breaches of the interim anti-suit injunction on 22 and 28 May 2018; and (b) with knowledge of the final anti-suit injunction, he wilfully caused and permitted that company to commit, and wilfully failed to take reasonable steps to prevent that company from committing, breaches of the final anti-suit injunction on 26 June, 16 October and 27 November 2018, and 28 January 2019, and the company's continuing breach of that injunction. I sentence Maher Chahlawi to 18 months' imprisonment for those contempts of court.

(iii) Marwan Junior Chahlawi, in his capacity as a director of Systems Equipment Telecommunications Services SAL, (a) with knowledge of the interim anti-suit injunction wilfully caused and permitted that company to commit, and wilfully failed to take reasonable steps to prevent that company from committing, breaches of the interim anti-suit injunction on 22 and 28 May 2018; and (b) with knowledge of the final anti-suit injunction, he wilfully caused and permitted that company to commit, and wilfully failed to take reasonable steps to prevent that company from committing, breaches of the final anti-suit injunction on 26 June, 16 October and 27 November 2018, and 28 January 2019, and the company's continuing breach of that injunction. I sentence Marwan Junior Chahlawi to 18 months' imprisonment for those contempts of court.

(iv) Sarah Bibi, in her capacity as a director of Systems Equipment Telecommunications Services SAL, (a) with knowledge of the interim anti-suit injunction wilfully caused and permitted that company to commit, and wilfully failed to take reasonable steps to prevent that company from committing, breaches of the interim anti-suit injunction on 22 and 28 May 2018; and (b) with knowledge of the final anti-suit injunction, she wilfully caused and permitted that company to commit, and wilfully failed to take reasonable steps to prevent that company from committing, a breach of the final anti-suit injunction on 26 June 2018, and the company's continuing breach of that injunction for the period while she remained a director and shareholder. I sentence Sarah Bibi to 9 months' imprisonment for those contempts of court.

(v) Pierre Albert Chalhoub in his capacity as a director of Systems Equipment Telecommunications Services SAL, and with knowledge of the final anti-suit injunction, wilfully permitted that company to commit, and wilfully failed to take reasonable steps to prevent that company from committing, breaches of the final anti-suit injunction on 16 October and 27 November 2018, and 28 January 2019, and the company's continuing breach of that injunction. I sentence Pierre Albert Chalhoub to 9 months' imprisonment for those contempts of court.

28 I direct that details of the matters I have just set out shall be provided to the national media and the Judicial Office pursuant to para.13.4 of the *Practice Direction: Committal for Contempt - Open Court* [2015] 1 WLR 2195.

29 I direct that the oral judgment I have just given be transcribed, that the transcription be ordered today and prepared on an expedited basis.

30 I direct that copies of the transcript of judgment shall then be provided to the parties and the national media via the Copy Direct Service. Copies shall also be supplied to BAILII and to the Judicial Office at judicialwebupdates@judiciary.gsi.gov.uk for publication on their website as soon as reasonably practicable.

L A T E R

31 I am asked to deal with costs following the outcome of this committal application as a whole. Dell's total costs up to and including today are put at £231,270.89. Dell seeks a summary assessment of its costs. It points out that the application required a great deal of factual and documentary evidence which had to be prepared in accordance with the particularly rigorous standards that apply in committal cases. The events took place abroad and evidence had to be taken from Lebanese counsel. That was because the respondents

raised a number of matters in their defence to this application relating to the position they were in under Lebanese law.

32 The respondents indeed adduced evidence of Lebanese law which had to be dealt with, although, in fact, it did not support the argument which the respondents were advancing. The respondents proceeded on the footing until a late stage that they would be contesting the application and appearing by counsel, until they made the very late application to adjourn, which I have referred to in my longer judgment of this morning. So the upshot was that Dell was required to prepare for a contested hearing and had to expend considerable amounts dealing with factual evidence, Lebanese legal evidence and instructing counsel on the application.

33 I have reviewed the statements of costs. The hourly rates requested are, in my view, modest and, having taken all the circumstances into account, I am satisfied that the broad level of costs sought is reasonable and proportionate, bearing in mind the nature of the proceedings and the substantial claim which the respondents are continuing to seek to advance in Lebanon against Dell in breach of this court's orders.

34 I also think it is appropriate to assess the costs summarily in all the circumstances, and I therefore summarily assess Dell's costs in the amount of £225,000.

____

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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** This transcript has been approved by the Judge **