Neutral Citation Number: [2021] EWHC 1877 (Ch)

Case No: PT-2020-000489

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

IN THE MATTER OF THE ESTATE OF DANIEL FOSBROKE TRUELL DECEASED

Royal Courts of Justice
Rolls Building, Fetter Lane, London, EC4A 1NL

Date: 07/07/2021

Before :

THE HONOURABLE MR JUSTICE MICHAEL GREEN

- -

Between :

(1) EDMUND GEORGE IMJIN FOSBROKE TRUELL
(2) JOHN RAYNER HATCHARD
(as Executors of the will of DANIEL TRUELL) **Claimants**

- and -

MAGDALENA ZALINSKA **Defendant**

- -
- -

Edward Hicks (instructed by **Moore Barlow LLP**) for the **Claimants**
Amit Karia (instructed by **Taylor Rose MW**) for the **Defendant**

Hearing dates: 19 and 20 May 2021

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HONOURABLE MR JUSTICE MICHAEL GREEN

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and other websites. The date and time for hand-down is deemed to be 10.30am on 7 July 2021

Mr Justice Michael Green :

Introduction

1. This is the Claimants' committal application dated 21 October 2020 brought against the Defendant for alleged breaches of a freezing order made on 3 July 2020 and continued at the return date of 17 July 2020. The Claimants are the Executors of the estate of Daniel Truell (the **Deceased**): the First Claimant is his brother; and the Second Claimant his former solicitor. The Defendant (**Ms Zalinska**) is the former partner of the Deceased. She is a Polish national. They had been together for some 14 years (according to Ms Zalinska) before the Deceased died, at the age of 55, on 29 September 2019.

2. Ms Zalinska gave evidence and was cross-examined for 1½ days. What emerged was actually a very sad story. Ms Zalinska was not in a good way and required several breaks during the course of her evidence to compose herself. She told of her life spiralling downwards after the Deceased died and she was alcohol and drug dependent. She clearly has serious mental health problems and is in desperate need of help. She has admitted a certain level of breach of the freezing order and has apologised for that.

3. But I was left with the feeling that it was unfortunate that this committal application, with the threat of Ms Zalinska being sent to prison, should have got to a substantive hearing at which Ms Zalinska had to endure the tremendous pressure of giving evidence and being cross-examined. It was fairly obvious from her evidence that she did not have any clear idea as to what was going on in her life in the weeks following the freezing order (because of the drink and drugs) and, while the Court must be concerned to ensure that its orders are complied with, Ms Zalinska clearly needed rehabilitation, not punishment and certainly there could be no serious suggestion that she should be committed to prison.

4. There are two main areas of alleged breaches of the freezing order:

   (1) That Ms Zalinska has dissipated funds far in excess of the permitted spending limits imposed by the freezing order;

   (2) That Ms Zalinska failed to make proper disclosure of her assets.

5. Mr Edward Hicks, who appeared on behalf of the Claimants, principally focused on the dissipation allegations but he did still maintain that the disclosure allegations could be proved and were further grounds for committal. Mr Amit Karia, who appeared for Ms Zalinska, accepted that the allegations of dissipation needed to be addressed by his client but he submitted that the disclosure allegations were unsustainable on the evidence and were in any event trivial and should not have been pursued. Ms Zalinska had sought to have them struck out, but this was refused by Mr Nicholas Thompsell, sitting as a deputy High Court Judge, on 16 April 2021.

Factual Background

6. The Claimants' underlying claim against Ms Zalinska is for approximately £4 million in respect of transfers of money and assets to her from the Deceased. The broad allegation is that these transfers were brought about by the exercise of undue influence over the Deceased and/or in breach of an alleged fiduciary duty.

7. The Deceased was a highly successful fund manager. From 2005 until 2017, he was the Chief Investment Officer of the Wellcome Trust, growing its investment portfolio from £12.3 billion to £20.9 billion under his management. He had considerable personal wealth but lived an apparently frugal lifestyle. He did not drive, have expensive hobbies or go on many holidays. He lived in a modest and poorly furnished basement and ground floor maisonette at 5A Auckland Road, London SW11, near Clapham Junction.

8. In or around 2012, the Deceased was diagnosed with multiple sclerosis which later became a form of motor neurone disease. During his illness, he was dependent on alcohol and Ms Zalinska believes that his death was hastened by alcohol abuse. As his physical health declined he needed to use a wheelchair and, from 2017 onwards, he was effectively flat-bound and needed assistance from carers.

9. Ms Zalinska says that, following the Deceased's separation and later divorce from his former wife, they started a romantic loving relationship from around 2004. The Claimants have insisted on describing Ms Zalinska pejoratively as a "call girl", and while they accept that there was a sexual relationship between them, they claim that she was the Deceased's employed carer from the time of his diagnosis in 2012 and they were not living together.

10. It is not for me to resolve these different characterisations of the relationship (that may be necessary for the purposes of the underlying claim) although I would point to the terms of the Deceased's will dated 13 November 2016, which is not challenged by the Claimants. Indeed they were granted probate of the will on 30 January 2020. Ms Zalinska was referred to in the will as his "*partner and dependent*"; she was made a trustee of a charitable trust set up by the will; and she was left assets worth over £1 million in addition to all the Deceased's personal chattels.

11. The transactions that are under challenge by the Claimants in these proceedings can be summarised as follows:

    (1) Around £1.34 million paid between November 2013 and September 2018 to a company called Magfos Ltd, which was a company under Ms Zalinska's control and was used to operate a nightclub in Southwark;

    (2) Around £915,000 in BACS/electronic transfers direct from the Deceased to Ms Zalinska between June 2012 and September 2019;

    (3) Questionable spending on the Deceased's debit card which is said to have been controlled by Ms Zalinska and which is claimed not to have been for the Deceased's benefit; they say around £950,000 of cash withdrawals and £416,000 in debit card spending is suspect and that it had increased significantly as the Deceased's health deteriorated;

    (4) The transfer of the Deceased's reversionary interest in a property at Flat 1, 35 Lavender Gardens, London SW11 1DJ to Ms Zalinska on 4 March 2019 (since

2017, the Deceased had sublet the flat to Ms Zalinska) (the **Lavender Gardens flat**).

12. Ms Zalinska denies the claims. In relation to the Lavender Gardens flat she points out that the Second Claimant acted for the Deceased on the transfer.

The Freezing Order

13. Prior to those proceedings being issued, the Claimants applied without notice for a domestic freezing injunction. The application was supported by an affidavit of the First Claimant dated 30 June 2020. On 3 July 2020, Miles J, at a virtual hearing over Skype for Business, made the freezing order in largely standard terms in a sum of up to £4 million (the **First Order**). The relevant terms were as follows:

> "4. Until the return date or further order of the court, [Ms Zalinska] must not remove from England and Wales or in any way dispose of, deal or diminish the value of any of her assets which are in England and Wales up to the value of £4,000,000.
>
> 5. Paragraph 4 applies to all [Ms Zalinska's assets whether or not they are in her own name and whether they are solely or jointly owned. For the purpose of this order [Ms Zalinska's] assets include any asset which she has the power, directly or indirectly, to dispose of or deal with as if it were her own. [Ms Zalinska] is to be regarded as having such power if a third party holds or controls the asset in accordance with her direct or indirect instructions.
>
> 6. This prohibition includes the following assets in particular –
>
> 6.1 the property known as 35 Lavender Gardens, Lavender Hill, London SW11 1DJ, or the net proceeds of sale if it has been sold;
>
> 6.2 any interest of [Ms Zalenska] in the businesses known as:
>
> 6.2.1 M Zalinska Ltd, registered at Companies House under company number 12630493, whose registered office is at Flat 1 35 Lavender Gardens, London, England, SW11 1DJ; and
>
> 6.2.2 Magdalena Property Ltd, registered at Companies House under company number 12330982, whose registered office is at 35a Lavender Gardens, London, England, SW11 1DJ
>
> 6.3 any money standing to the credit of any bank including the amount of any cheque drawn on such account which has not been cleared
>
> 6.4 Any amount standing due by way of the Wellcome Trust Pension Plan or the Wellcome Trust Expected Group Life Assurance Scheme; and/or
>
> 6.5 Any money or property due by way of the last will and testament of Daniel Truell dated 13 November 2016.

7. …

8.

8.1 Unless paragraph (8.2) applies, [Ms Zalinska] must by 4.30pm on the day after service of this order and to the best of her ability inform the Applicants' solicitors of all her assets in England and Wales exceeding £1,000 in value whether in her own name or not and whether solely or jointly owned, giving the value, location and details of all such assets.

8.2 If the provision of any of this information is likely to incriminate [Ms Zalinska], she may be entitled to refuse to provide it, but is [sic] recommended to take legal advice before refusing to provide the information. Wrongful refusal to provide the information is contempt of court and may render [Ms Zalinska] liable to be imprisoned, fined or have his [sic] assets seized.

9. Within 7 working days after being served with this order, [Ms Zalinska] must swear and serve on the Applicants' solicitors an affidavit setting out the above information.

EXCEPTIONS TO THIS ORDER

10.

10.1 This order does not prohibit [Ms Zalinska] from spending £500 a week towards her ordinary living expenses and also a reasonable sum on legal advice and representation. But before spending any money [Ms Zalinska] must tell the Applicants' legal representatives where the money is to come from.

10.2 [Ms Zalinska] may agree with the Applicants' legal representatives that the above spending limits should be increased or that this order should be varied in any other respect, but any agreement must be in writing.

…

INTERPRETATION OF THIS ORDER

13. A Respondent who is an individual who is ordered not to do something must not do it herself or in any other way. She must not do it through others acting on her behalf or on her instructions or with her encouragement."

14. This order, endorsed with a penal notice, was emailed to Ms Zalinska at 20:48 on Friday 3 July 2020. It was also emailed to Charles Douglas Solicitors LLP that evening on the basis that they had said on 2 June 2020 that they had been instructed by Ms Zalinska in relation to the will of the Deceased. Ms Zalinska said that she did not see the email to her.

15. A hard copy of the First Order was left outside the door of the Lavender Gardens flat on Monday 6 July 2020. However, Ms Zalinska said she did not see this on that day because she was not living there. At that time she was renting a flat at 212 Pinnacle

Apartments, Croydon CR0 2DD (the **Croydon flat**), and was living there. She says she first heard of the First Order on 7 July 2020 when she received a call at about midday from Charles Douglas Solicitors informing her of it. That fits with the fact that it was only on 7 July 2020 that Charles Douglas Solicitors acknowledged the email attaching the order that was sent to them on 3 July 2020. They also notified the Claimants' solicitors that they would be receiving a payment from Ms Zalinska's Barclays bank account in respect of her reasonable legal costs.

16. The Claimants' solicitors had great difficulty serving Barclays Bank and getting Ms Zalinska's accounts frozen by the bank. It was only 31 July 2020 that the account was actually frozen. In the meantime there were withdrawals from the account, some of which Ms Zalinska admits were in breach of the freezing order.

17. The return date for the First Order was originally going to be on 10 July 2020 but, by agreement with Ms Zalinska's solicitors, this was put back to 17 July 2020. In another letter dated 7 July 2020, Charles Douglas Solicitors had asked for an increase in the living expenses weekly allowance from £500 to £1,000, principally because of the rent that had to be paid on the Croydon flat. They also disclosed, in purported compliance with paragraph 8.1 of the First Order, that Ms Zalinska had the following assets: the Lavender Gardens flat; and the Barclays bank account with a balance of "*c£1,400,000*". This was largely comprised of the death benefits received from the Deceased's Wellcome Trust Pension on 23 June 2020.

18. Shortly before the return date on 17 July 2020, Charles Douglas Solicitors had ceased to act for Ms Zalinska. Instead she was represented at the hearing before Nugee J (as he then was) by the Bar pro bono CLIPS scheme barrister for that day, Mr Fletcher QC. The hearing was conducted remotely and there was no opposition to the continuation of the First Order in the sum of £4 million. Even though there was some difficulty in Ms Zalinska communicating with Mr Fletcher QC including after the hearing, she clearly knew about at least the broad terms of the freezing order that she was subject to and the limit on her living expenses, which was increased to £1,000 pw. It is unclear however whether she knew exactly how it operated in practice.

19. Nugee J's Order of 17 July 2020 (the **Second Order**) also ordered as follows:

    (1) That Ms Zalinska give a signed written authority to Barclays Bank to provide up to date bank statements of her known account and any other accounts she had with Barclays to the Claimants' solicitors (para. 8.1);

    (2) That Ms Zalinska give a signed written authority to the Trustees of the Wellcome Trust Pension Plan and the Wellcome Life Assurance Trust and the Wellcome Trust to disclose to the Claimants' solicitors all the information they have in relation to the benefits payable to her following the Deceased's death (para 8.2);

    (3) That paragraph 9 of the First Order was varied so as to include the details of her rental agreement of the Croydon flat, any income together with its source and any payslips; and the time for service of the affidavit to include that information was extended to 4.30pm on 29 July 2020;

    (4) That Ms Zalinska could apply to discharge the order on any grounds that would have been available to her on a return date without having to show any change in

circumstances (this was to cater for the fact that her solicitors had come off the record at short notice and she was being represented by the CLIPS barrister).

20. Following the hearing on 17 July 2020, Ms Zalinska instructed new solicitors, Bishop & Sewell LLP. Pursuant to the Second Order, the Claimants' solicitors obtained the bank statements from Barclays Bank which showed substantial activity on the account during July 2020 while the freezing order was in force. These are the basis of the Claimants' dissipation allegations.

21. Ms Zalinska swore an affidavit on 14 August 2020 in purported compliance with the Second Order (it was clearly late). In that affidavit, she disclosed assets worth approximately £3.2 million, including £1.34 million in her Barclays account. (There are further points about this affidavit that I will return to later.)

22. On 20 August 2020, the Claimants issued an application for further disclosure, coupled, strangely, with an application for committal. The application for committal was withdrawn by a further application notice dated 16 September 2020. On 18 September 2020, Bishop & Sewell LLP came off the record and Ms Zalinska was acting in person.

23. The Claimant's application was heard on 21 September 2020 by Mr Peter Knox QC, sitting as a deputy High Court Judge. Ms Zalinska did not attend and was not represented. Mr Knox QC continued the freezing order and granted a wide-ranging disclosure order that required Ms Zalinska to swear an affidavit by 15 October 2020 explaining her interest in various assets and to provide details of over 20 transactions listed in the order (the **Third Order**). Surprisingly, the order reduced Ms Zalinska's weekly allowance for ordinary living expenses back down to £500 and removed the usual exception for reasonable legal expenses, only allowing her to spend £10,000 plus VAT on legal expenses related to the preparation of the affidavit. On 14 October 2020, Ms Zalinska retained her current solicitors but only, at that stage, to draft the affidavit.

24. On 16 October 2020, Morgan J effectively extended time for the filing of the affidavit by Ms Zalenska to 30 October 2020. Her second affidavit, running to 98 paragraphs, was sworn and filed on 30 October 2020.

The Committal Application

25. On 21 October 2020, without waiting to receive Ms Zalinska's second affidavit, which they knew was due on 30 October, the Claimants issued the Committal Application. The allegations of contempt were set out in the Application Notice as follows:

(1) Dissipating the balance of her Barclays Account in breach of paragraph 4 of the First Order in relation to the period up to 17 July 2020 by making payments from the Barclays Account:

(a) in the week up to and including 10 July 2020 in the sum of £10,592.49;

(b) in the week up to and including 17 July 2020 in the sum of £12,646.96;

which were not for legal advice and representation as permitted by paragraph 10.1 of the said order; and which exceeded the weekly spending limit of £500 as permitted by paragraph 10.1 of the said order.

(2) Dissipating the balance of her Barclays Account in breach of paragraph 4 of the Second Order in relation to the period up to 31 July 2020 by making payments from the Barclays Account:

(a) in the week up to and including 24 July 2020 in the sum of £13,405.28;

(b) in the week up to and including 31 July 2020 in the sum of £39,539.95;

which were not for legal advice and representation as permitted by paragraph 10.1 of the said order; and which exceeded the weekly spending limit of £1,000 as permitted by paragraph 10.1 of the said order.

(3) Further, the Defendant has failed to provide full disclosure of her assets in England and Wales exceeding £1,000 in value in breach of paragraph 8 and 9 of the First Order as amended by the Second Order as more particular [sic] set out in paragraphs 59 to 64 of the affidavit of Thomas Middlehurst dated 19 October 2020, in that her affidavit of 14 August 2020 served in purported compliance therewith:

(a) She gave misleading information about her interest in Lavender Gardens, failing to disclose details of the charging order or underlying litigation against her;

(b) She failed to disclose any information about her interest in M Zalinska Ltd;

(c) She gave inadequate or misleading information about her interest in Magdalena Properties Ltd in that she denied any knowledge of it;

(d) She gave inadequate or misleading information in relation to her car in that she claimed it was worth £9000 to £10,000 when it was in fact purchased for £21,800 on or about 1 June 2020 and falsely claimed that it was not in her possession.

(4) …" [Ground 4 was not pursued for the reasons set out below.]

26. The Claimants sought an early listing for the Committal Application on the basis that it would take 2 hours. It was listed for 25 November 2020.

27. As the legal fees exemption had been removed by the order of 21 September 2020, Ms Zalinska's solicitors asked the Claimants' solicitors to consent to an order reinstating the exemption so that she could defend the Committal Application. They refused to do so then and reserved their position pending the receipt of further evidence from Ms Zalinska. For most of November 2020 leading up to the potential hearing of the Committal Application, Ms Zalinska was therefore acting as a litigant in person. She did however manage to get a representation order for legal representation from the Legal Aid Agency and Taylor Rose confirmed to the Court that they were acting on 23

November 2020. The following day, Ms Zalinska filed her third affidavit which was specifically in opposition to the Committal Application.

28. The hearing on 25 November 2020 was before Fancourt J and the parties were represented by their present Counsel. The Claimants were refused permission to rely on Ground 4 of the Committal Application which alleged that Ms Zalinska had made false statements in her first affidavit. Fancourt J considered that it was merely duplicative of Ground 3. Directions were given for the purposes of the substantive hearing of the Committal Application, and the directions took account of Ms Zalinska's stated intention to bring a strike out application. (Fancourt J gave further directions on 23 February 2021.)

29. On 6 January 2021, Ms Zalinska did bring such a strike out application. The basis for the application was that Ground 3 had no real prospect of success and that Grounds 1 and 2 were being pursued for improper purposes, particularly to oppress Ms Zalinska. On 16 April 2021, Mr Nicholas Thompsell, sitting as a deputy High Court Judge, dismissed the application.

30. On 7 May 2021, following receipt of a transcript of Mr Thompsell's judgment, Ms Zalinska lodged an appellant's notice and sought permission to appeal, principally on the basis that no reasons were given as to why Ground 3 had real prospects of success and was allowed to proceed. Ms Zalinska also applied to adjourn the substantive hearing of the Committal Application, because of the outstanding appeal and the unfairness of subjecting a vulnerable witness, Ms Zalinska, to unnecessary cross-examination. However on 14 May 2021, Mr Murray Rosen QC, sitting as a deputy High Court Judge, refused to grant the adjournment.

31. Mr Karia sensibly did not seek to cross-examine the Claimants' main deponent, Mr Thomas Middlehurst, a partner in the Claimants' solicitors. Instead the hearing was predominantly taken up with the cross-examination of Ms Zalinska and Counsel's submissions.

Relevant Legal Principles

32. The Committal Application is brought under the revised CPR Part 81 which came into force from 1 October 2020 and has simplified the procedure. The core requirements remain, namely that the burden is on the Claimants and they must prove to the criminal standard, that is beyond reasonable doubt, that the alleged contempts of court have been committed. As was said by Christopher Clarke J (as he then was) in *Masri v Consolidated Contractors International Company SAL* [2011] EWHC 1024 (Comm) at [150]

> "In order to establish that someone is in contempt it is necessary to show that (i) that [sic] 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."

33. As to the mental element and in particular whether the alleged contemnor has to intend to breach the order, the Court of Appeal has recently confirmed that that does not need

to be proved: *Atkinson v Varma* [2021] 2 WLR 536, disapproving *Irtelli v Squatriti* [1993] QB 83. At [54], in which Rose LJ (as she then was) said:

> "In my judgment *Irtelli v Squatriti* cannot stand in the light of the many earlier and later cases which establish that once knowledge of the order is proved, and once it is proved that the contemnor knew that he was doing or omitting to do certain things, then it is not necessary for the contemnor to know that his actions put him in breach of the order; it is enough that as a matter of fact and law, they do so put him in breach."

34. An aspect of the application of the criminal standard of proof is that if there is more than one reasonable inference as to the facts that can be drawn and at least one of them is inconsistent with a finding of contempt, that allegation will not be proved: see *Daltel Europe Ltd v Makki* 2005] EWHC 749 (Ch) at [30]. David Richards J (as he then was) also said:

> "The burden remains on the claimants and, if after considering all the evidence…I conclude that an innocent explanation of an alleged contempt is a reasonable possibility, the claim must fail."

35. As will be seen, much of Ms Zalinska's evidence as to how the money was spent from her account, was said to have come about because she gave her debit card to a number of different people who were congregating in her Croydon flat at the time and who on occasion threatened her unless she allowed them to use her card, which she did. The Claimants say that she knew what she was doing and she benefitted from the expenditure on the card which was expressly or impliedly authorised by her. I will deal with the facts below.

36. But there are a couple of potential legal issues that this gives rise to. Mr Hicks relies heavily on para. 13 of the First Order (and the same wording in para. 14 of the Second Order) and says that either they were acting as her agent in using her debit card with her permission or they were acting "*with her encouragement*". Mr Hicks referred to *World Wide Fund for Nature v THQ/Jakks Pacific LLC* [2004] FSR 10 as authority for the proposition that a person subject to an injunction must take all reasonable steps to prevent persons under their control from acting in breach of the injunction. But in that case, that proposition was applicable to licensees over whom the defendant clearly had substantial control. As Mr Karia pointed out, there is no free-standing requirement for a defendant to control third parties in relation to an injunction, particularly where there is no contractual relationship between the defendant and those third parties.

37. The other potential legal issue concerns whether there is a defence of duress to this sort of committal application. Mr Hicks says that there is no defence and it might only be relevant to mitigation. He relied on *The Coca Cola Company and Schweppes Ltd v Gilbey* [1996] FSR 23, 32 (this was an *ex tempore* judgment of a two-man Court of Appeal deciding whether to grant permission to appeal) and the reliance on that decision by Peter Smith J in *The Coca Company v Aytacli* [2003] EWHC 91 (Ch). However I agree with Mr Karia that this is not the strongest authority and accept what is said in *Arlidge, Eady & Smith on Contempt* (5th Ed) at para 12-109A in which the learned authors said:

> "It would thus seem now to be reasonably clear that there is no basis for the proposition that duress cannot provide a defence to an application for committal, or for the view that its relevance should be confined to mitigation of penalty."

38. Assuming that duress can be a defence, the next question is whether the test of duress is the criminal one or the contractual one. Mr Hicks submitted that the criminal test as set out in *R v Z* [2005] 2 AC 467 ("*the threat relied on must be to cause death or serious injury*" to the defendant or someone close to him or her) is the applicable one. It is an objective test in the sense that the conduct of the defendant is assessed by reference to whether the "*sober person of reasonable firmness, sharing the characteristics of the defendant*" would have been driven to act as the defendant did – see *R v Graham* [1982] 1 All ER 801.

39. I have some difficulty in seeing the relevance of these authorities both to civil contempt applications generally and this one in particular. In an intriguing set of submissions, Mr Karia maintained that the relevant test was whether the alleged duress would be sufficient to avoid a contract. He took me to various extracts from *Chitty on Contracts* (33rd Ed.) for the tests of illegitimate pressure in the form of threats of violence and the fact that such threats do not have to be the predominant reason for entering the contract so long as there was no reasonable alternative available to him or her. Mr Karia submitted that the threats that were made to Ms Zalinska forced her to hand over her debit card and PIN but that the duress she faced negatived any question of authority or agency being granted by her to those who then used the debit card.

40. I do not need to decide this interesting question and it would not be right that the outcome of the Committal Application should turn on the relevant test of duress. It should more properly be decided on the facts and whether the Claimants have established contempts of court that are sufficiently serious to require punishment, possibly by committal to prison.

Ms Zalinska's evidence

41. Before turning to the detailed allegations, I should record my general assessment of Ms Zalinska's evidence. Ms Zalinska has served a combined total of six affidavits and witness statements (three affidavits and three witness statements) in these proceedings. Her first affidavit was in purported compliance with the Second Order and the second affidavit with the Third Order. The second affidavit is where Ms Zalinska really deals with the heart of the Committal Application and the use of the Barclays account. Her other written evidence is largely repetitive of the second affidavit or contains submissions in relation to the Committal Application and/or her strike out application.

42. As I have said above, Ms Zalinska was cross-examined for 1½ days. Her broad case is that she was in a loving and romantic relationship with the Deceased for some 14 years, albeit that, certainly in the latter years, they were both heavily alcohol-dependent. Since his death, Ms Zalinska's alcohol and drug dependency has continued, probably to a more extreme level, and her actions must be viewed in that context. While it is no defence to a breach of a freezing order, it is relevant to inquire into Ms Zalinska's state of mind at the time and whether she appreciated what was happening. I have little doubt that she has no clear recollection as to what was going on in her life during July 2020

and that she was surrounded by undesirable and unscrupulous individuals who took advantage of her. While it could be said that she allowed herself to be in that position, I do not think she had any control over events at that time.

43. At times, it was painful to watch her giving evidence. She was, rightly in my view, offended by any suggestion that she was not in a deep and loving relationship with the Deceased or that she had taken advantage of him. She also became visibly upset and shaken when she was forced to recollect incidents that had taken place in both the Croydon and Lavender Gardens flats, when she had been attacked and intimidated, both verbally and physically, by the individuals who had forced her to let them use her debit card. These shadowy characters obviously knew that Ms Zalinska had come into a lot of money as a result of the Deceased's death and that she was extremely vulnerable. During July 2020, when the First and Second Orders were in force although the Barclays account was not yet frozen, the Croydon flat was the venue of some serious partying in which copious amounts of alcohol were drunk and drugs were being taken. Ms Zalinska's money was used for such purpose and it seems that that just continued despite the making of the First and Second Orders.

44. The heart of Ms Zalinska's explanation for this is contained in paragraph 8 of her second affidavit which is worth setting out in full:

> "I turn now to deal with the Barclays' Account. From the time I was served with the Order of 3 July 2020, I hardly left my flat in Croydon. I have seen the schedule that shows cash withdrawals for the period 3 July 2020 to 17 July 2020 and I have been told that it amounts to over £12,000. These withdrawals were not all made by me. The majority were made by people to whom I gave my card. I ended up giving my debit card to about 10 different people who I thought were my friends. They told me they were desperate for money. I believed that the bank account was frozen and once the withdrawals had reached the limit set of £500 by the Court that there would be a lock on the account, much like the daily cash withdrawal limited [sic] banks impose of £300 or £500 in a day or 24-hour period. So, for that reason I was not as careful with the card as I should have been. At the time I was suffering from depression and was easily manipulated and exploited. I am also suffering from alcohol dependency, which I will discuss in more detail below. By way of a single example, on 6 September 2020 at about 3:00am I was visited by a number of people, some of whom I knew and others I didn't. They kept asking me for money because they knew I was vulnerable and exploitable. I explained I could not give them any more money, because the account was frozen, but they kept insisting. Some of the people tried to take my phone in order to attempt to access my emails. When I resisted, I was attacked by a group of them and suffered injuries to my face, legs and arms. I have not reported this to the police because I am in fear of reprisals. In addition, many of these people I know by their first names only and I do not know where they live. They were people I knew through Southwark Rooms. I have reflected on my relationship with these people. They were not friends at all. For a long time they treated me like a cash machine and only ever showed up when they needed money from me. I had been very fortunate with money, through my relationship with Danny but I became known as a soft touch and someone who always had money for anyone that asked. I now regret being so naïve about my situation."

45. There was a further incident on 27 February 2021 (referred to in Ms Zalinska's fifth witness statement dated 8 April 2021) where she was extorted, beaten and dragged from her home. This incident was reported to the police. She has also been hospitalised on a number of occasions. All of this has exacerbated her mental health and welfare problems and it has led to the intervention of Wandsworth's adult social care team and fortunately she is now receiving assistance. Ms Zalinska has confirmed that she does intend to take alcohol and drug rehabilitation therapy. She desperately needs to. It was clearly apparent from her heightened emotional state while giving evidence that she remains extremely unwell.

46. Given her condition and the immense strain and pressure of giving evidence in court, it is unfortunate, to say the least, that the Claimants have pursued this Committal Application to a trial where Ms Zalinska had to give evidence. They claim that some £76,000 out of over £1.4 million standing in her Barclays Account (after receipt of the money from the Wellcome Trust Pension Trustees) was withdrawn by Ms Zalinska in breach of the First and Second Orders. It was obvious from the bank statements and Ms Zalinska's explanations that this was not a concerted effort to dissipate funds to avoid execution of a future judgment debt; this was, if anything, the continuation of a lifestyle fuelled by drink and drugs.

47. Before the first hearing of the Committal Application before Fancourt J on 25 November 2020 (which was a day or two after Ms Zalinska had been able to secure legal representation through legal aid) Ms Zalinska had admitted spending approximately £9,500 in breach of the First and Second Orders. This was on a number of purchases from Apple, a payment to her son in Poland and to her ex-husband for the storage of her personal possessions in Poland. She has repeatedly apologised for doing so.

48. I suppose that Ms Zalinska's admission of breaches perhaps confirmed the Claimants' view that there had been more extensive breaches of the First and Second Orders. But they could see from the nature of the expenditure, which was largely made up of Uber/Bolt taxis, Deliveroo orders, cash withdrawals and online purchases of fashion and electronics goods, that this was not being done in deliberate flouting of the Orders. While they might have maintained the view that Ms Zalinska had underplayed the amounts that she knew about and authorised, even if they could prove that she was responsible for the full £76,000, that would still only amount to 5% of the amount standing in that account.

49. I too do not accept all that Ms Zalinska has said and she has certainly behaved recklessly in allowing her debit card to be used in this way, albeit that it seems likely that the haze of drink and drugs prevented her from fully appreciating what was going on and she was threatened at times and thereby forced to hand it over. But my general assessment of her evidence is that I accept the broad thrust of it, namely that she was, at the relevant time, surrounded by a large number of "*hangers-on*" who took advantage of her when she was in a particularly vulnerable state. I think she knew more than she has admitted to about some of the uses of the money taken from her account in relation to food and drink deliveries, and possibly some other items which were either bought by her or for her or her family's benefit. But it is also clear that some use of the card could not have been by her or with her authority. I also think it is now frankly impossible for her to disentangle the evidence and work out what she did and did not know about at the time.

50. In any event, the burden is on the Claimants to prove beyond reasonable doubt the breaches that they rely upon. They have sought to do so by their cross-examination of Ms Zalinska. While they are entitled to do so, I question the proportionality of having subjected her to this, in her current fragile state, when it could only have possibly established that she knew more about the withdrawals from her bank account than she has admitted to.

Grounds 1 and 2

51. Grounds 1 and 2 of the Committal Application concern withdrawals from the Barclays Account from 3 July 2020, when the Claimants say that the First Order was seen by Ms Zalinska, to 31 July 2020 when the account was frozen by Barclays. A total of £76,184.68 was debited to the Barclays Account in that period. The weekly ordinary living expenses allowance was £500 in the First Order and £1,000 in the Second Order.

52. The Claimants' analysis of the bank statements shows that the total sum of £76,184.68 was made up as follows:

    (a) £22,563.93 was by cash withdrawals (including transaction costs), often by multiple daily withdrawals up to an assumed daily limit of £1,000;

    (b) £19,000 in bank transfers – these were to Ms Zalinska's son and daughter and her ex-husband;

    (c) £2,400.51 was spent on Deliveroo food takeaways;

    (d) £1,273.16 was spent on Uber/Bolt taxis;

    (e) £30,947.08 was spent on online purchases such as fashion items or electronic goods, as well as in store supermarket shopping.

53. Ms Zalinska's evidence was that she rarely shops online; she does not have accounts with Uber, Bolt or Deliveroo; and only very occasionally during July 2020 did she leave the Croydon flat and so only very few of the cash withdrawals or supermarket purchases could have been by her. She did not recall ever making multiple cash withdrawals at the same time. Furthermore, it appears that some of the Uber/Bolt amounts were actually incurred in Poland but Ms Zalinska was not in Poland during that month.

54. However, as noted above, she has admitted responsibility for debit card transactions to a total of £2,834 to Apple.com (three separate transactions on 10, 12 and 23 July 2020 being for a mobile telephone and 2 laptops) and a payment to Ikea of £520.25 on 28 July 2020. She has also admitted to authorising bank transfers to her son JanDyduch of £1,000; and to her ex-husband, Wojciek Zalins, in the sum of £6,000 to pay for the storage of her personal belongings in Poland. In her second affidavit Ms Zalinska had suggested that she asked her daughter, Aleksandra (Ola) Zalinska, to effect these transfers. However in her oral evidence she maintained that there was no online banking facility set up on her account and she had to ring the bank in order to make a transfer. Furthermore she said that there was a voice recognition system so only she could actually do it. She thought that in the end she had made the transfers.

55. A problem with this explanation is that it appears that a sum of £12,000 (in tranches between 25 and 28 July) was transferred to her daughter but Ms Zalinska was adamant that she had not done or authorised this. It must have been done by her daughter, but if there was no online banking facility and the telephone authorisation had voice recognition, it is difficult to see how that transfer could have been made without Ms Zalinska's involvement. Mr Hicks said that this showed that Ms Zalinska must have authorised the transfer and therefore that she had not been telling the truth about bank transfers. However, in my view, given the shambolic situation that Ms Zalinska was in at that time and that she clearly assumed that her daughter was able to transfer sums from the Barclays Account (she had asked her to make the transfers to her son and ex-husband) it is perfectly possible that her daughter was able to effect transfers from the Barclays Account and she could therefore have done so to herself without her mother knowing. It certainly cannot be proved beyond reasonable doubt that this was not possible.

56. In relation to the cash withdrawals of £23,263.93, Ms Zalinska admitted that some may have been done by her and applied towards her living expenses such as food, telephone credit, pet food and cigarettes but she thought that the bulk of it would have been the other 10 or so people who had the use of her debit card and knew her PIN. While I accept the narrative of there being many people around in the Croydon flat and the fact that Ms Zalinska allowed others to use her debit card and they did, I think that it is likely that the cash withdrawals, whether made by Ms Zalinska or others, were in relation to what was going in the Croydon flat. In other words, it was probably largely spent on drink and drugs and the non-stop party that continued in the Croydon flat seemingly for the whole of the relevant period. As such, Ms Zalinska probably benefitted from more of the cash withdrawals than she cared to admit but I still believe that she was unaware of the full extent of such withdrawals and what they were spent on. I also think it likely, as she said in paragraph 8 of her second affidavit, that she may have thought the effect of the freezing orders would at some point have prevented any more than £500 being withdrawn from the bank in any week and that this provided some protection for her from those who were demanding to use her card.

57. As to the Uber/Bolt taxis, Ms Zalinska maintained that she did not have their apps and she would not know how to order one. When she ever used a mini-cab, she said in her evidence that she used Addison Lee, but this was only very occasionally and not during the relevant period. She said that she did not go in a taxi throughout the month of July 2020. It was still in the middle of the Covid 19 pandemic, albeit that the country was no longer then in lockdown. There were also, as referred to above, a number of Uber/Bolt taxi rides taken in Poland, which could not have been her. All in all, it seems to me that others were using her card to order taxis, including her family in Poland.

58. Similarly with the Deliveroo takeaways, I imagine these were ordered and paid for by others using Ms Zalinska's card. There is no proof that it was her and even though it is likely that she would have known if such orders were delivered to her Croydon flat, it is impossible to determine which ones she knew about and which she did not.

59. As for the online purchases, Ms Zalinska insisted that she rarely shops online and does not like to do so. From the bank statements, there are references to a number of different online clothes stores, including Vestaire Collective, Loverboy.net, LN&CC.com, SP Charlotte Kno and SSENSE. There are also cosmetics and beauty stores and body piercing and tattooing suppliers. Ms Zalinska was adamant that none of this was her

and it was those who had access to her debit card, including, I assume, her daughter. Mr Hicks pointed to the fact that there appeared to be credits posted on the Barclays Account in August 2020 from such online fashion stores, meaning somebody bothered to return items and claim a refund. He submitted that it would only be likely to be Ms Zalinska who would go to the effort of returning items and those who had used the card without authority would not have done that. Unfortunately there is no evidence, from emails or the like, as to who made these returns. In my view it is insufficient for the Claimants to raise a suspicion that it was Ms Zalinska. They have to prove beyond reasonable doubt that it was. I do not think they have done so.

60. Mr Hicks submitted that it was inherently unlikely that someone with £1.4 million in her account would allow others to use her debit card and so relinquish control over the account. That is particularly so when there are freezing orders in place, as Ms Zalinska knew, and where she did nothing to raise these issues with Barclays, the police or even the Claimants, for instance at the hearing on 17 July 2020. In a normal world, I agree that this would be an unlikely scenario. Indeed, to most people, Ms Zalinska's account of what was happening in her life at the time would seem extraordinary and bizarre. But her account has to be properly contextualised (including by reference to the use made of the money) and knowing her mental state at the time and seeing her give evidence leads me to the conclusion that it is actually very likely that she handed over her debit card and did so under a certain amount of pressure and threats of violence. In short, the Claimants cannot disprove that this was what actually happened.

61. Insofar as third parties had used the debit card, Mr Hicks relies on para. 13 of the First Order and para. 14 of the Second Order to say that they were using the card "*on her behalf or on her instructions or with her encouragement*". I do not think it can sensibly be said that the third parties were acting as Ms Zalinska's agent in effecting transactions on the debit card, save perhaps when she specifically asked her daughter to make the transfers to her son and ex-husband. Nor, given the circumstances under which I have accepted she handed over the debit card, can she be considered as encouraging the use of her card. There was some dispute between the parties as to what "*encouragement*" meant in the Orders, but it is for the Claimants to prove that she did so encourage its use and I do not believe they have managed to do so. This is also where the argument as to duress comes in, but as I have said above, the Claimants have first to establish that Ms Zalinska has breached the Orders in the respects alleged, and if they do not do so, there is no need for Ms Zalinska to rely on a defence of duress.

62. Mr Karia relied on two further matters: (1) that the Claimants had to prove the entire dissipation sum set out in the Committal Application in order to succeed; and (2) that in any event the Claimants could not rely on the period between 3 and 7 July 2020 because Ms Zalinska did not know about the First Order until 7 July 2020 when her then solicitors told her about it. The first point is not a good one, although in my view, in order to succeed the Claimants need to prove that the bulk of the £76,000 was dissipated by Ms Zalinska. But the second point is correct and I find that Ms Zalinska did not have notice of the First Order until she was told about it by her solicitors on 7 July 2020.

63. By way of conclusion then on Grounds 1 and 2, Ms Zalinska has admitted some dissipation in excess of the permitted amounts in the First and Second Orders. There were also further amounts that were probably withdrawn by Ms Zalinska or specifically for her benefit but it is impossible to know how much is within this category. The

Claimants have simply failed to prove beyond reasonable doubt that the bulk of the money was withdrawn from Ms Zalinka's account either by her, or with her consent, or for her benefit. I have accepted that she was subject to threats and intimidation and she handed over her debit card under pressure from the third parties who had taken to congregating and no doubt partying in her Croydon flat.

64. So while Ms Zalinksa is admittedly in contempt of court, the core of the Claimants' allegations has been defeated by my acceptance of Ms Zalinska's explanation and the unauthorised use of her debit card. Ms Zalinska has apologised for those admitted breaches and in my view she has sufficiently purged her contempt by doing so. I consider that having to defend this Committal Application and in particular having to give evidence in court has been enough of a punishment and I will not be punishing her further for the admitted breaches.

65. I must however deal with Ground 3 of the Committal Application, as this was pursued by the Claimants.

Ground 3

66. There are four sub-grounds to Ground 3 and I will deal with them separately. I should say at the outset that in my view none of the four sub-grounds have been proved by the Claimants, and even if they had been, they would have been too trivial to form the subject matter of a committal application. I know that Mr Thompsell refused to strike out any of the remaining Grounds including Ground 3, but I do not see from a transcript of his judgment that he separately considered whether Ground 3 itself had real prospects of success. I do not think it had and, while I can understand that the Claimants felt able to proceed with it in the light of Mr Thompsell's judgment, I think the fact that they have taken it all the way to trial and persisted in it does rather demonstrate the Claimants' aggressive and potentially unfair approach to this Committal Application.

67. Ground 3 concerns alleged breaches of paras. 8 and 9 of the First Order, as amended by para. 9 of the Second Order. This required Ms Zalinska to serve an affidavit disclosing "*all her assets in England and Wales exceeding £1,000 in value whether in her own name or not and whether solely or jointly owned giving the value, location and details of all such assets*." This is a normal ancillary disclosure order to enable the Claimants to police the freezing order. The Claimants allege that Ms Zalinska's first affidavit sworn on 14 August 2020 failed to comply with the disclosure order in the four respects identified.

(1) The Lavender Gardens flat

68. The complaint that the Claimants make in relation to Ms Zalinska's disclosure that she owned the Lavender Gardens flat and that she put a value on it of £750,000 is that she did not disclose "*details of the charging order or underlying litigation against her*". It is unclear the basis upon which Ms Zalinska is said to have been obliged to disclose details of litigation against her. The Claimants say that the charging order should have been disclosed as it affects the value of the Lavender Gardens flat.

69. The Claimants discovered by looking at the office copy entries on the Land Register for the Lavender Gardens flat that a charging order dated 4 May 2020 in favour of Mirshahi Finance and Investments Ltd had been registered. The Claimants say that Ms Zalinska therefore gave misleading information about the value of the Lavender Gardens flat as she failed to disclose details of its unencumbered value.

70. Ms Zalinska denies this and says first that she did not know about the charging order when she swore her first affidavit and second that it is trivial anyway, the default judgment debt, including interest and costs, being in a sum of £12,766.96.

71. In her fourth witness statement dated 20 January 2021, Ms Zalinska provided some further details and documentation in relation to the charging order. Her solicitors obtained this from Mirshahi Finance and Investments Ltd. The claim form was issued on 20 February 2020 and was apparently served by the court by post to the Lavender Gardens flat. However, Ms Zalinska was not living at that time at the Lavender Gardens flat. After the Deceased died, Ms Zalinska moved out of the Lavender Gardens flat and let it out to Mr Filipe Martinez, primarily so that he could carry out repairs and renovations to it (see below) and pay her rent. She described in her oral evidence how she was in a highly distressed state at that time and effectively homeless. She only started renting the Croydon flat from 12 May 2020 when she knew she would be receiving the money from the Wellcome Trust Pension Fund. She moved back to the Lavender Gardens flat in August 2020.

72. Because she was not living at the Lavender Gardens flat at the time, Ms Zalinska says that she did not receive the claim form, the judgment in default entered on 13 March 2020, the application for an interim charging order made on 2 April 2020 and the charging order itself which was apparently served by post on 6 May 2020. A final charging order was made on 30 June 2020.

73. Ms Zalinska says that if she had known about the claim she would have contested it. And if she had known about the charging order, she would have probably paid it rather than risk the Lavender Gardens flat being repossessed for a relatively small sum that she could then easily afford. I accept her evidence to that effect and find that she did not know about the charging order at the time she swore her affidavit in August 2020. Mr Hicks argued that even if she was not living at the Lavender Gardens flat she could still have attended there to collect her post and to see how the refurbishment works were progressing. He is right about that but it is for the Claimants to prove that she knew of the charging order when she swore her affidavit. They have not proved that and so Ms Zalinska was not in breach of the First Order in such respect.

74. In any event, I agree with Mr Karia that this is trivial. A charging order for a judgment debt of £12,766.96 over a property worth £750,000 (the Claimants have not challenged this valuation based on a Zoopla listing) is 1.76% of the value. That is easily within the margin of error permissible by the court in respect of property valuations which is normally 10%. There was no concealment of the existence of the charging order which the Claimants found from publicly available information on the Land Register.

75. Accordingly I dismiss this allegation.

(2) Magdalena Property Ltd and M Zalinska Ltd

76. It is convenient to take Grounds 3(b) and (c) together. Ms Zalinska denies that she had an interest in either of the above companies and that she knew anything about them. Both companies were specifically referred to in the First Order, so the Claimants knew all there was to know about them from the publicly available documentation at Companies House.

77. Magdalena Property Ltd was incorporated on 25 November 2019 apparently with 1000 shares issued to Ms Zalinska bearing a nominal value of £1.2 million. The registered address was stated to be 35A Lavender Gardens, London, England, SW11 1DJ. Ms Zalinska was named as the sole shareholder and director.

78. M Zalinska Ltd was incorporated on 28 May 2020 with a nominal share capital of £1. The registered office was the correct Lavender Gardens flat address (in contrast to the "35A" for Magdalena Property Ltd). Again Ms Zalinska was named as the sole shareholder and director.

79. As I have found above, Ms Zalinska was not living at the Lavender Gardens flat when these companies were incorporated. She has consistently denied knowing anything about them, including specifically in her first affidavit where she responded to the suggestion that Magdalena Property Ltd had a nominal share capital of £1.2 million. Furthermore, the registration of the wrong address would be odd for Ms Zalinska to do and she is clearly not engaged in any management consultancy or property management businesses, which were the stated businesses of the companies.

80. As confirmation of her lack of involvement in these companies, Ms Zalinska has since applied to the Companies Court to rectify the register to remove her name on the basis that this was done without her knowledge and was a fraud. On 12 March 2021, ICC Judge Jones granted her that relief, declaring that false documents were used to incorporate the companies and that Ms Zalinska was not involved. He ordered that the companies be dissolved and all references to Ms Zalinska be removed from the register. If either company had assets these would go to the Crown as bona vacantia and Ms Zalinska recognised and accepted this in her application.

81. Clearly the Claimants have not proved that Ms Zalinska had an interest in these companies that had to be disclosed pursuant to the First Order.

82. Furthermore, the Claimants have not proved that either company has a value over £1,000. As Mr Karia pointed out, if Magdalena Property Ltd really did have a value of £1.2 million and this was owned by Ms Zalinska, then her total assets would have exceeded the £4 million in the freezing orders and she would have been able to spend the excess. It should have been obvious to the Claimants that the companies were not worth anything at all and they should not have pursued these allegations.

(3) The BMW car

83. In her first affidavit, Ms Zalinska disclosed that she had a "*BMW unknown model, black 4 door, automatic*" and that it was worth £9,000 to £10,000. Her comments in the affidavit were as follows:

> "I was advised by someone I know, Felipe Martinez, that they had a friend with a car for sale. I do not know the name of the seller. After seeing pictures of the car I

> wanted to buy it and transferred money to Filipe. Filipe brought the car to my home but I had nowhere to store it so he took it to his property. Filipe and Patrick Witter have both told me that Patrick collected the car from Filipe. Patrick was supposed to bring it to me, but he didn't. I have not been provided with any paperwork and Patrick has not given me the car. I do not know where it is and I don't know if it is registered to me."

84. The allegation against Ms Zalinska is twofold: (a) that she had paid £21,800 for the car so the ascribed value in her affidavit was false; and (b) she falsely claimed that it was not in her possession.

85. As to the value, the Claimants refer to an entry in the bank statements for 1 June 2020 that indicates that Ms Zalinska transferred £21,800 to Mr Martinez for a "*Car Purchase*". Ms Zalinska has explained the discrepancy in her second affidavit. She said that she had let the Lavender Gardens flat to Mr Martinez and that he had been subletting it to tenants. Towards the end of May 2020, Ms Zalinska says that she agreed with Mr Martinez that if she paid him £21,800 he would return vacant possession of the Lavender Gardens flat and would purchase the BMW in the sum of up to £10,000. She had been shown pictures of the car before agreeing to purchase it.

86. Ms Zalinska voluntarily disclosed the existence of the car in her affidavit and her possible interest in it. I do not understand why the Claimants say that she would have put a false value on it.

87. As to whether it was in her possession or not, the Claimants have relied on a purported email from Mr Witter in which he explains that he owned the car but that because it was suspected to have been stolen, the police have seized it. He also accuses Ms Zalinska and Mr Martinez of knowing that it was stolen. But the important point is that the Claimants' own evidence is that the car was never in the possession of Ms Zalinska and certainly not at the time she swore her first affidavit.

88. The Claimants do challenge the story about Mr Martinez subletting the Lavender Gardens flat because they say that the bank statements show that he was still carrying out the refurbishment works there at the end of June 2020. But, as I have said many times already in this judgment, the burden is on them to prove to the criminal standard that Ms Zalinska did not provide accurate information about the "*value, location and details*" of her assets including the BMW. The Claimants are unable to prove what model of BMW it was or what its registration number was. There is no evidence that Ms Zalinska's valuation of the car was incorrect and it clearly was not in her possession.

89. Accordingly this, along with all the other allegations made in Ground 3, is dismissed.

Conclusion

90. Apart from the limited admissions and findings in respect of Grounds 1 and 2 (as set out in paragraphs [64] and [65] above), I dismiss the allegations of contempt made by the Claimants. As I have also made clear above, I will not be imposing any punishment on Ms Zalinska in relation to the breaches that have been established. I consider that Ms Zalinska has purged her contempt by apologising for those breaches and I think she

has learned from this process that court orders must be obeyed and she will not take such a lax attitude to them in the future. I think she understands the seriousness of the situation and the potential consequences of any further breach.

91. For the reasons set out above, I do not think there was any merit in the allegations in Ground 3 and they should not have been pursued to this stage by the Claimants. I also think that the general approach adopted by the Claimants in relation to Ms Zalinska has been disproportionate and designed to impose maximum pressure on her, presumably for tactical advantage in the litigation.

92. After circulation of a draft of this judgment, Mr Hicks took objection on behalf of the Claimants with some of my comments about the proportionality and appropriateness of the Claimants' pursuit of the Committal Application and he said that these conflicted with the "detailed and binding findings of fact and law of Mr Nicholas Thompsell on 16 April 2021". While it is unusual (and not encouraged) for Counsel to suggest substantive changes to a draft judgment of this sort, I do understand his concerns and have adjusted some of the paragraphs that he referred to. Nevertheless, I do not accept that Mr Thompsell's views, formed at a preliminary stage of the Committal Application and by reference to untested written evidence, are binding on me and prevent me from coming to a different view, having heard, in particular, Ms Zalinska give evidence. I remain concerned that the Claimants, knowing that they had to prove, to the criminal standard, breaches of the Orders that would be serious enough to justify Ms Zalinska being punished by the Court, thought fit to take their Committal Application all the way and to subject Ms Zalinska to the ordeal that it clearly was.

93. This judgment will be handed down remotely. As this is a Committal Application, the court is required by CPR 81.8(6) to sit in public to give its reasoned public judgment. I believe that the remote hand down in accordance with the Covid-19 Protocol satisfies this requirement but there will need to be a hearing in any event at which consequential matters can be dealt with. I would ask the parties to arrange a convenient time for the Court to hold that hearing at which any consequential matters, including any outstanding applications, that cannot be agreed between the parties, can be dealt with on that occasion.