Neutral citation number: [2023] EWHC 915 (Ch)

Case No: CR-2022-004674

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

The Royal Courts of Justice
Strand
London WC2A 2LL

Wednesday, 29 March 2023

BEFORE:

MR JUSTICE RICHARD SMITH

BETWEEN:

MOHAMMED SALLEM EHAWAJA

Petitioner

- and -

(1) STELA STEFANOVA
(2) BIOTECHNOLOGIES UK LTD
(3) DERMAMED SOLUTIONS LTD

Respondent

MR G ROSEMAN (instructed by Mills Chody LLP) appeared on behalf of the Applicant
MR R HOWARD (instructed by Stokoe Partnership) appeared on behalf of the Respondent

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JUDGMENT
(As Approved)

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1. MR JUSTICE RICHARD SMITH: I now turn to the question of the appropriate sanction or sentence for the contempts that I have found. Given my lengthy judgment this morning concerning the background to these proceedings, I can do so more briefly.

2. In deciding the appropriate sentence, I have regard to what is called in the criminal courts the 'totality' principle. That means ensuring that the sentence I impose reflects the Respondent's breaches of the numerous orders, albeit also standing back to ensure that the sentence that I impose is proportionate to her conduct overall.

3. As to the general principles on contempt applications, these were helpfully set out by Eder J in *Otkritie International Management v Gersamia* [2015] EWHC 821. Briefly summarising those principles, the most serious penalty for contempt is committal to prison. Any such order must be for a fixed term and may not on any one occasion exceed two years, the person remanded being entitled to unconditional release after serving half the sentence. Committal serves two distinct purposes: punishment firstly and securing compliance secondly. Committal may be suspended. That is a matter of discretion for the judge and may be appropriate to secure compliance and in view of cogent personal mitigation. One important factor in that question is whether the contemnor has caring responsibilities for children, particularly young children. The court may also impose a fine.

4. As a general matter, the court should bear in mind the desirability of keeping offenders, particularly first-time offenders, out of prison. Imprisonment is only appropriate where there is a serious (or, what the courts say) 'contumelious' flouting of orders. The key questions are culpability and harm which both go to inform the seriousness of the offending. Relevant mitigating factors in all cases include whether the contempt is admitted, whether remorse has been expressed, whether the contemnor has belatedly complied with the order and the contemnor's character and antecedents.

5. Specifically, in relation to non-compliance with disclosure orders, Eder J held that such breaches in the context of freezing orders, as here, indicate that condign punishment normally means a prison sentence and that in cases of continuing failure to disclose the court should consider imposing a long sentence, possibly even to the maximum two years. Other related matters may include the extent of the failure to disclose, how long

it lasted, how far it caused or might have caused harm, whether it was deliberate and the reasons for it, and whether it was accompanied by positively misleading disclosure.

6. Looking at the seriousness of the breaches I have found to be proven, in terms of culpability, I am sure that the Respondent's conduct represented serious and contumelious flouting of the County Court orders, with the repeated need to seek the intervention of the court to secure compliance, even to the point of the judge proposing himself the endorsement of a penalty notice and explaining the penal consequences and,despite this, a continued failure by the Respondent to comply, as has now been largely admitted.

7. Although the breach of the High Court orders took place over a shorter period of time, despite already being endorsed with penal notices and the Respondent's disclosure obligations arising in the context of a freezing injunction, the Respondent again failed to comply. In the words of Meade J, the Respondent had conspicuously and, he very strongly suspected, deliberately, not complied with the disclosure order of Zacaroli J. As he went on to say:

> "She has been in breach, a very plain breach, of the disclosure order of Zacaroli J and she has no one but herself to blame for the fact I am operating in a vacuum today."

8. Whether or not the case on the merits against the Respondent is made out, and I leave that to others to decide, given the repeated opportunities afforded to the Respondent to comply, that some misleading information at least was provided in response to the orders, including as to the Respondent's legal fees and her pension payments, as well as the sequence of events which indicate the depletion of the very subject matter of those proceedings, namely Dermamed, whilst those proceedings were ongoing, and the subsequently disclosed information, including that gleaned from the Barclays Bank statements, which the Petitioner only obtained fully through its own third party disclosure application, and more recently still the information gleaned from Santander, I am sure that these were deliberate breaches of the orders to avoid the disclosure of information which might otherwise have given grounds for more serious and earlier intervention by the court.

9. Although I do accept that the litigation against the Respondent has been a significant burden and that some logistical issues may have been encountered by her and that she may not have understood or may have been mistaken as to the information sought from her and despite her apologies to the court, I found a number of excuses put forward for non-compliance, including some of those in the affidavit, to lack credibility. One example is Barclays' suggested failure to provide bank statements, which I have no doubt could have been provided in compliance with the court orders if the Respondent had gone about matters the right way rather than concentrating so intensely on the Respondent's living expenses. Likewise, if the Respondent had put as much effort into engaging with the court process as into the hostile focus against the Petitioner and his legal team, and I am satisfied it is not just the Respondent's partner but the Respondent as well who contributed to this, this part of the proceedings might well have been avoided altogether. The Respondent's focus in these proceedings has been all wrong.

10. As to the harm or the risk of harm the Respondent's conduct created, the risk created by non-disclosure is evident from what I have said about the conduct being deliberate. By delaying the provision of information the Respondent has prevented the Petitioner from taking steps earlier to secure his position within Dermamed. That is again amply shown by the asset freezing relief which enabled the Petitioner, once equipped with the Barclays Bank statements and some information from the Respondent, to persuade the court of a real risk of dissipation of its assets. However, the Respondent had succeeded in putting off that perhaps inevitable day for quite some time to her own advantage and to the obvious detriment of the Petitioner. For all these reasons, I consider that the narrower approach of focusing solely on the allegations on this contempt application is not the correct one. Yes, the Respondent of course has to be sentenced for those allegations found to have been proved but other facts and context inform the relevant considerations which feed into that sentencing exercise.

11. In these circumstances I am satisfied that the breaches of all three orders were serious, not least the Respondent's breach of the disclosure orders made in a freezing order context, which on authority (*Otkritie*), are such as to require consideration at least of a long custodial sentence.

12. All those matters said, I do, however, pay close regard to the personal mitigation advanced on behalf of the Respondent. Most importantly of all, and which does count in your favour, is that, although late, the Respondent has admitted most of the breaches. Although the Petitioner was put to proof of seven other breaches, I found in favour of the Respondent on one of them and, although the Respondent's defences to the other six were weak, I do not count that against her when it comes to sentencing. I have also noted the Respondent's apologies to the court although, in light of what I have said about her motivation about the case and the somewhat thin excuses for non-compliance which continue to pepper her affidavit, I am unable to say that she is remorseful.

13. As to other mitigation advanced on the Respondent's behalf, I have taken account of what has been said about her mental health, including her depression and anxiety. I also recognise the pressure that the litigation has put her under and no doubt that her life is considerably different from that previously enjoyed. However, I am sure it was not these matters that actually caused the Respondent to breach the orders and that much of the stress, the anxiety and other issues now being experienced by her could have been avoided, or at least significantly diminished, had she engaged properly in the court process much sooner.

14. I recognise that you are in active employment or trade as a business woman in the industry that we have been discussing over the last few days. I also pay particularly close attention to the fact that the Respondent has caring responsibilities for a young child and that that child's life would be disrupted were I to commit her to prison. I have also had regard to the overcrowded state of the prison estate in light of the considerations in *R v Arie Ali*, particularly those at paragraph 22 referred to me today.

15. I also afford credit to the Respondent for her admissions and the fact that she has now provided further information in her affidavit, albeit it being recognised by the Respondent that information still remains outstanding.

16. Having regard to all of these considerations and weighing them appropriately, a custodial sentence is unavoidable in this case. I impose a sentence of eight months' custody. That is four months for the breaches of the High Court orders, which I treat together for sentencing purposes, and a further four months to be served consecutively,

for the breaches of the County Court order, giving a total period of imprisonment of eight months. That is the shortest sentence I can impose commensurate with the seriousness of the breaches I have found.

17. Finally, I have given anxious consideration to whether I should suspend your sentence. I have, with not inconsiderable hesitation, decided that I should suspend your sentence, the decisive matter being your caring responsibilities for your daughter and the fact she would no doubt suffer were you to be incarcerated. I therefore suspend your sentence for a period of eighteen months but that is on condition that you comply fully with the High Court orders and that includes completion of any outstanding requirements under those High Court orders within 28 days. That concludes my sentencing remarks.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Unit 1 Blenheim Court, Beaufort Business Park, Bristol BS32 4NE
Email: civil@epiqglobal.co.uk

This transcript has been approved by the Judge