IN THE HIGH COURT OF JUSTICE **CL-2011-001058**
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
QUEEN'S BENCH DIVISION
COMMERCIAL COURT
Neutral Citation Number: [2021] EWHC 1929 (Comm)

Rolls Building
Fetter Lane
London EC4

Wednesday, 7 July 2021

Before:

SIR MICHAEL BURTON GBE SITTING AS A JUDGE OF THE HIGH COURT

BETWEEN:

LAKATAMIA SHIPPING COMPANY LIMITED

Applicant

-and-

(1) HSIN CHI SU (ALSO KNOWN AS NOBU SU)

Respondent

Mr S Phillips QC appeared on behalf of the Applicant.

Mr A Underwood QC and Mr A Tear appeared on behalf of the Respondent

JUDGMENT
(Approved)

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(Official Shorthand Writers to the Court)

1. **SIR MICHAEL BURTON GBE:** This has been the hearing of a contempt application by the Claimant, Lakatamia Shipping Company Ltd, against Mr Su, against whom they have an unpaid judgment handed down by Cooke J in November 2014 for over $57 million, which has now increased to well over $70 million, of which nothing has been paid by the Defendant, who has disobeyed numerous orders of the court and acted in flagrant breach of them.

2. In respect of 15 contempts, he was sentenced by me on 29 March 2019 to 21 months' imprisonment, of which he served half by virtue of the Criminal Justice Act 2003 and, in respect of a further five contempts, he was sentenced by me on 11 February 2020 to a further four months, of which he again served half.

3. He has now committed and admitted 20 further contempts, all in pursuance of a continuous disobedience of court orders. Insofar as necessary I refer to my judgment [2019] EWHC 898 (Comm) ("the 2019 Judgment") and [2020] EWHC 314 (Comm).

4. Mr Su vigorously but hopelessly denied the first 15 contempts and did not admit the second set of five, but on this occasion he has very recently admitted all the contempts, and Mr Underwood QC and Mr Tear have appeared before me on his behalf.

5. I have read and carefully considered the Defendant's Statement of Mitigation, which, apart from the fact that he thereby admits the 20 contempts, adds little. He relies on having been in prison for some part of the time, although a number of the contempts were prior to his being in custody (contempts 1 to 3, 11 to 17, 18, a dissipation effected the very day before his first committal and 19); and some post-dated his custody, (e.g.contempt 10).

6. In any event (i) he had the opportunity to respond to the orders while in custody and in part did so, although wholly inadequately: (ii) he has remained determinedly non-compliant during the 15 months since his release.

7. I turn to deal briefly with the 20 contempts, which were described by Mr Phillips QC for the Claimant as simply specimens of the Defendant's non-compliance with, and contravention of, court orders.

8. Counts 1 to 4 involve continued non-disclosure, in breach of three court orders, and in affidavits, including one purportedly served to purge his contempt, of his interest in a Japanese property, worth at least $460,000. He gives no substantive answer to this.

9. Contempts 5 to 6 relate to Mr Su's failure to disclose documents in breach of the order of Waksman J of 30 January 2020. Up Shipping and Blue Diamond, to which the disclosure order was directed, were the recipients of the €27 million proceeds of the properties in Monaco paid away by Mr Su, in breach of the original freezing order and which, if only it could have been located, could go far towards paying off the judgment debt. The only answer Mr Su gives is that he supplied some few documents relating to Up Shipping to Baker McKenzie, acting for his mother, in February 2019, but, insofar as relevant at all, that was 11 months before the Waksman order.

10. Contempt 7 was failure to disclose what were defined as the Schedule A documents, which had been the subject of earlier contravened orders of the court, the Popplewell order dated 29 January 2018, and the Bryan order, 16 January 2019. A new order in that regard was made by Teare J on 11 March 2020. No answer has been put forward at all in relation to this failure.

11. Contempts 8 and 9 relate to the failure to provide access to emails and social media and provide password details, in contravention of the order of Foxton J of 27 March 2019. There was no substantive answer to this, and a continued defiance.

12. Contempt 10 relates to the failure to comply with the search order made by Andrew Baker J on 27 June 2019. No substantive answer to this. The Claimants submit that there was possibly inadequate or poor legal advice to him, but Mr Su himself does not so suggest.

13. Contempts 11 and 12 relate to the failure to disclose his interest in Ocean Net Company Ltd, in breach of the Popplewell order and the Bryan order. This now admitted contempt is of some significance because it was dishonestly denied by Mr Su before me in March 2019, when charged with a contempt in relation to his non-disclosure of such interest, as I set out in paragraph 42 of the 2019 Judgment. I said:

"*I cannot find the contempt pleaded to be proved, namely that Mr Su has a beneficial interest in Ocean Net beyond reasonable doubt."* I found that in his favour in the light of his then denial, but he has now admitted that he had that interest and consequently that the evidence before me, which I accepted to the extent I did in paragraph 42 of my 2019 Judgment, was dishonestly untrue. There is no substantive answer by Mr Su.

14. Contempts 13 to 15 relate to the dissipation of his interest in a vessel, Clean Ocean 1, in January/February 2019, at the same time that he was facing cross-examination as to his means and then a contempt application, which interest had a value of some $1.9 million: and non-disclosure of such interest, in breach of the Popplewell and Bryan orders.

15. Contempts 16 and 17 relate to his failure to disclose his interest in a vessel, Triumph, in breach of the Popplewell order and the Bryan order, an interest alleged to have had a value of some $4 million. Again, no substantive answer to this.

16. Contempt 18 relates to the dissipation by Mr Su of $432,000 on the very day before he was committed for contempt on the first occasion, by email instructions to pay away the money, dated 28 March 2019. Another plainly aggravating factor. No substantive answer.

17. Contempt 19 relates to the dissipation of $53,875 in late February 2019, at the time when he was being cross-examined as to his means and was putting forward apologies for his breaches. No substantive answer.

18. Finally, contempt 20 relates to the dissipation of funds through an account at Rakbank, totalling something less than $1 million. I say "something less" because it may be, although no explanation has been given, that some of that expenditure may have been permitted expenditure. No answer.

19. These have been very serious breaches indeed and, on top of the previous contempts for which the defendant was committed to prison, have shown a continuing blatant disregard of court orders, non-cooperation (e.g. contempts 8 to 10), non-compliance, non-disclosure and blatant contravention and dissipation)e.g. counts 13, and 18 to 20).

He has been determined to find some way, notwithstanding the continuing court orders, to avoid payment and to hide and dissipate assets.

20. I have addressed the following considerations:

(i) It is important for the Court to uphold the law and court orders. See the words of Nicklin J in **Oliver v Shaikh** [2020] EWHC 2658 (QB) at [24]. In the interests of the public, the Defendant must be shown that he is not above the law and beyond its reach. This is perhaps both in quantum of the liability evaded and in the duration and extent of the contemptuous conduct, the most serious campaign of contempt in the English courts.

(ii) It plainly can be appropriate to impose further sentences for further contempts. See per McFarlane LJ in **Wilkinson v Anjum** [2012] 1 WLR 1036 at [37], provided of course, that the sentences are in respect of the new contempts and not the old, which have already been punished.

(iii) The question can arise whether the time has come when any coercive element has evaporated. See **Wilkinson** at 41. This is, however, less relevant where the court orders are not simply requiring positive action but are directed towards unlocking missing assets.

(iv) In serious cases, to impose the statutory maximum of two years is appropriate. There is a broad range of conduct which can justify such a sentence. See **FCA v McKendrick** [2019] 4 WLR 65 at [40].

(v) I considered the factors to take into account in sentencing in the 2019 judgment and the same factors are still present, only more so. Apart from considering the dicta of Roth J in **JSC BTA Bank v Stepanov** [2010] EWHC 794 in paragraph 48 of the Judgment, I ran through in paragraph 47 the relevant factors consequential upon the decisions in **Crystal Mews Ltd v Metterick** [2006] EWHC 3087 and **Asia Islamic Trade Finance Fund Ltd v Drum Risk Management Ltd** [2015] EWHC 3748, per Lawrence Collins J, as supplemented by Popplewell J. The answers to the questions that I gave then are the same, and all the more so. I read them out:

(a) "*Whether the claimant has been prejudiced by virtue of the contempt and whether the prejudice is capable of remedy*. Yes: and no.

(b) *The extent to which the contemnor has acted under pressure*. .No.

(c) *Whether the breach of the order was deliberate or unintentional.* Deliberate.

(d) *The degree of culpability*. High.

(e) *Whether the contemnor has been placed in breach of the order by reason of the conduct of others.* No.

(f) *Whether the contemnor appreciates the seriousness of the deliberate breach.* Not yet.

(g) *Whether the contemnor has cooperated*. Far from it.

(h) *Whether there has been any acceptance of responsibility, any apology, any remorse or any reasonable excuse put forward.* Meaningless apologies have been given in the past and are still repeated, but he is simply paying lip service to the orders.

21. The answers, as I said, are the same and all the more so in the light of the new contempts which aggravate, both by virtue of their continuation and by the fact that a number of them were committed at the same time as meaningless apologies and false statements were being put before the court.

22. I have considered the submissions of Mr Underwood QC, but I consider that they are quite unrealistic in relation to the behaviour of the defendant to date and continuing. As to paragraph 3 of his skeleton and his oral submissions before me today:

(i) Although the Defendant has, this time, admitted the allegations in the round, he has not explained them and he has made no attempt to remedy them. The time and costs he has saved by what Mr Underwood calls his late plea are minimal.

(ii) It is said that his failure to satisfy the judgment has had its own penalty, but it has its own consolation, that he can still avoid his obligations and plan, eventually, to evade them completely by frustrating any effort to find where he has placed the missing assets.

(iii) I t is said that he is insolvent, but I am not satisfied of that, even after perusing the Trustees' report, prepared prior to the annulment from information he supplied, and knowing that the Trustees have not carried out any investigations and, in particular, no efforts had, prior to the annulment, been made to track down the missing assets.

(iv) It is said that he has paid a high price for his earlier contempts. He has paid a price which he obviously thinks has been worth it, at any rate, so far.

(v) I am not satisfied as to the harsh consequences of an immediate term of imprisonment. It will be an opportunity for him to reconsider and to avoid further cross-examination on and tracing of his assets when he comes out.

23. As to the question of a coercive element, I am quite satisfied that his constant apologies and promises for the future indicate that there is still a chance of compliance if he knows that the Court means business, particularly now that the bankruptcy, which was his latest strategy, has failed. He needs to realise that no amount of clever advice is going to help him to avoid compliance with court orders.

24. In his skeleton, although not orally, Mr Underwood trailed the possibility of a suspended sentence. Apart from the starting point that the contempts were far too serious and prolonged for that to be appropriate, the reality is that, to found an argument, it would have to be shown or even suggested that such a sentence might lead to a result. But, as Mr Phillips submitted, there has been no suggestion at all, at least since Mr Su in the course of his February 2019 cross-examination glibly said he would ask his mother to make repayment, of any present intention to cooperate or comply. In any event, a suspended sentence would be unenforceable if Mr Su left the jurisdiction.

25. As to the maximum sentence of 24 months, the only question is whether I should, as I did on the occasion of my 2019 Judgment, reduce it for his having had to remain within the jurisdiction; the jurisdiction which he claimed for himself in the bankruptcy court, and when he has not taken advantage of his time out of custody to take any steps to comply with the orders of the court. As Mr Phillips pointed out, but for the 2003 Act

he would have been, for almost all of the time, in custody serving imprisonment for his contempts.

26. I am satisfied that his conduct merits longer than 24 months and he is fortunate that the law only permits a 24-month sentence. That is what I order.

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