Neutral Citation Number: [2022] EWHC 2910 (Comm)

Case No: CL-2019-000562

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT (KBD)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/11/2022

Before :

THE HON MR JUSTICE BUTCHER

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Between :

OLYMPIC COUNCIL OF ASIA	**Claimant**
- and –	
(1) NOVANS JETS LLP **(2) NOVANS INVESTMENTS LTD** **(3) MR JULY GRINGUZ**	**Defendants**

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Michael McLaren KC and Deborah Horowitz (instructed by **The Air Law Firm LLP**) for the **Claimant**
John Kimbell KC and Vincent Scully (instructed by **Bargate Murray Ltd**) for the **Third Defendant**
The First and Second Defendants did not appear and were not represented

Hearing dates: 3 November 2022
Further written submissions: 4, 9 November 2022

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Approved Judgment

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Mr Justice Butcher :

1. I have to determine four preliminary issues in relation to an application which the Claimant ('OCA') has brought to commit the Second and Third Defendants for contempt. The issues have been raised by the Third Defendant ('Mr Gringuz'), and he was the only Defendant represented at this hearing.

Background

2. The background to the present hearing may be shortly stated. In brief:

(1) OCA leased a Bombadier Global Express 5000 aircraft from the First Defendant ('Jets') under an agreement dated 31 August 2018. Under that agreement OCA was furnished with 1515 block hours 'for priority usage' of the aircraft from 1 October 2018 to 31 December 2022. The aircraft could be chartered by Jets to third parties when not in use by OCA, with net profits from such charters to be shared between Jets and OCA. OCA was required to make advance payments to Jets to cover block hours of use; and OCA paid the sum of US$9.675 million. A dispute arose, and Jets terminated the agreement, retaining all sums paid, including about US$7 million equal to the value of block hours that OCA had been entitled to use, but which it could not use due to the termination of its access to the aircraft.

(2) OCA commenced proceedings against Jets. OCA succeeded in its action. The judgment of Moulder J is [2022] EWHC 88 (Comm). Jets had been represented by Bargate Murray Ltd and by Mr Kimbell QC. By an order of Moulder J dated 19 January 2022 ('the January order'), Jets was (1) ordered to pay to OCA the sums of US$7,537,923.10 by way of damages and interest, and £350,000 as an interim payment on account of costs; (2) required to file submissions as to the percentage share each of it and OCA should receive of the net profits from third party charters; and (3) required to disclose, for the period from 1 September 2018 to 31 December 2021, a consolidated flight report for the aircraft, a copy of the logbook showing those flights, and the proposed net profit margin of each flight operated by the aircraft during that period, with supporting documentation. Jets applied for permission to appeal, which was refused.

(3) Jets did not comply with the order. OCA sought, and obtained ex parte from Moulder J on 18 March 2022, a worldwide freezing order and an asset disclosure order against Jets ('the March order'). The Penal Notice on the March order stated: 'If you, Novans Jets LLP, disobey this order you (and Mr July Gringuz, a director of the said Novans Jets LLP) may be held to be in contempt of court and may be imprisoned, fined or have your assets seized. Any other person who knows of this order and does anything which helps or permits the Respondent to breach the terms of this order may also be held to be in contempt of court and may be imprisoned, fined or have their assets seized.' The inclusion of Mr Gringuz was on the basis that he had described himself as such in evidence for the trial, and Moulder J had found that he had held the role of Managing Director (at [90]).

(4) Pursuant to the March order, OCA was served with a letter, sent on 25 March 2022, from Novans Aviation Ltd ('Aviation') in its capacity as one of Jets' Designated Members. The letter stated that Mr Gringuz was not a director of Jets; and further that Jets had a single asset exceeding £20,000 in value, namely a

receivable due from the Second Defendant ('Investments') in accordance with an Asset Purchase Agreement dated 27 November 2020.

(5) As a result of that letter, OCA's solicitors sought to widen the freezing order to include the receivable referred to and to cover Jets, Investments and Aviation, and to include disclosure of the Asset Purchase Agreement, entities involved in chartering the aircraft and income streams from chartering.

(6) By an order dated 4 April 2022 ('the April order') Moulder J extended the freezing order to cover both Jets and Investments. Jets was ordered to provide an electronic copy of the Asset Purchase Agreement plus metadata and documents referred to in the Asset Purchase Agreement, information about entities involved in chartering the aircraft, and the terms of chartering, and details of the officers, shareholders and those who had a controlling interest in Jets or Aviation. The Penal Notice was directed to Jets and Investments, as well as having the usual provision referring to other persons who know about the order. Mr Gringuz was not referred to. This, as OCA says, is because of the letter of 25 March 2022.

(7) A petition for the voluntary winding up of Jets had been issued in March 2022. It was granted on 28 June 2022.

(8) In the meantime, on 5 May 2022, Moulder J made a further order ('the May order') whereby, inter alia, the freezing order was continued against Jets and Investments in respect of the receivable owing to Jets and the aircraft; and Investments was ordered to provide the same information that Jets had been ordered to provide under the April order to the extent that it was within its possession or control or knowledge. The Penal Notice was addressed to Jets and Investments, and to Mr Gringuz as a director of Investments.

(9) On 21 May 2022 Mr Gringuz swore his second Affidavit, in response to the April and May orders. It deposed that he could provide information about chartering entities only from 17 September 2018 to 29 November 2020, when the aircraft was sold to Investments. He stated that from 25 September 2018 to 11 March 2019 the only party which had use of the aircraft was OCA, and provided the flight log from September 2018 to December 2019. He said that he had sold Investments and had ceased acting for that company as of 31 March 2021, and that since he had ceased to act for Investments he could not provide a copy of that entity's most recent accounts. He said that he does not have a copy of the aircraft's logbook as it went with the aircraft when it was sold to Investments.

(10) On 2 September 2022 OCA obtained an extension of the freezing order against Jets and Investments as it had been due to expire on 18 September 2022.

The Contempt Application and the hearing of 5 October 2022

3. It is OCA's case that each of Jets and Investments has breached each of Moulder J's orders which was addressed to that Defendant, that Mr Gringuz was instrumental in Jets' breach of orders due to his controlling role and/or position as de facto director at Jets, and that each of Jets, Investments and Mr Gringuz is in contempt of court. On 20 July 2022 it issued a Contempt application against Investments and Mr Gringuz. It did not issue the application against Jets because, as it says, in circumstances where

Jets was in liquidation and owed it a judgment debt, that would be contrary to its interests, as defending a contempt application would reduce Jets' funds.

4. A hearing of the Contempt application was fixed for 5 October 2022. Mr Gringuz raised a number of objections to the application against him, and also applied to adjourn the hearing on the basis that his leading counsel could not be present on 5 October 2022. The application came before me on that date. I made an order which, inter alia:

(1) Gave OCA permission to amend the Contempt application to provide further particulars of the contempt alleged in Box 12;

(2) Dispensed with personal service of the Contempt application on Mr Gringuz;

(3) Ordered that any issues as to (i) service out, (ii) alternative service, (iii) original service by email on Mr Gringuz of the January, April and May orders as good service for the purpose of these proceedings, and (iv) whether permission is needed for amended contempt proceedings to be brought, should be addressed at a further hearing fixed for 3 November 2022. Issues (i) and (ii) were to be treated as if an ex parte order for service out and alternative service had been made and the further hearing was to decide whether or not to set aside those orders, but without prejudice to what would otherwise have been the burden or standard of proof.

(4) Gave directions for the hearing fixed for 3 November 2022.

The Allegations of Contempt

5. Pursuant to the permission to amend Box 12 of the Contempt application which I had given on 5 October 2022, OCA served a Revised Summary of Facts alleged to constitute the contempt. This stated two counts, which may be briefly summarised as follows:

(1) As Count 1, (a) that Jets had breached the January, April and May orders by failing to disclose information in relation to the proposed net profit margin of each flight operated by the aircraft in the period up to at least 29 November 2020; (b) that Jets had breached the April and May orders by failing to provide information about the entities involved in chartering the aircraft up to at least 29 November 2020; and (c) that Jets had breached the January, April and May orders by failing to disclose a consolidated flight report of all flights operated by the aircraft for the period 30 November 2020 to 31 December 2021. It was further alleged that Mr Gringuz was liable for contempt for those breaches of orders on the bases that he was a de facto director of Jets, alternatively that he had wilfully interfered with the administration of justice by permitting Jets to act in contempt, alternatively that he had Accessory Liability.

(2) As Count 2, that Mr Gringuz was in contempt by making a false statement in his second Affidavit, to the effect that Investments had ceased to be a part of the Jets LLP on the day it was sold. This was said to be in direct contradiction to the letter of 25 March 2022, which Mr Gringuz had signed, which had stated that Jets had two LLP Designated Members, namely Aviation and Investments.

6. I now turn to consider each of the four issues which under my order from the hearing of 5 October 2022 fall to be decided on this occasion.

The First Issue: Permission to Serve Out of the Jurisdiction

7. The first issue is whether OCA required permission to serve the Contempt application on Mr Gringuz out of the jurisdiction, and if so, whether the present was a case in which such permission was appropriate.

8. The Skeleton Argument put in on behalf of Mr Gringuz indicated that it would be contended that (1) permission was required because Mr Gringuz is resident in Ukraine, (2) that Article 24 of the Recast Brussels Regulation (EU 1215/2012) was not applicable because the application to commit Mr Gringuz was issued only after Implementation Period Completion Day (31 December 2020), and in any event only applied where the person sued is domiciled in a Member State. OCA would have taken issue with these arguments.

9. At the hearing, however, Mr Kimbell KC for Mr Gringuz realistically accepted that, even if permission for service out was required, it would be granted. It was not contested that there was a serious issue to be tried on the merits. Furthermore, the new 'gateway' in PD 6B para. 3.1(24) had been in effect since 1 October 2022. The present case fell within its terms, as it involved a Contempt application. The date on which the order had been made which gave deemed permission to serve out was after 1 October 2022. Thus there was no realistic argument that the present was a case in which permission to serve out should not have been granted. Issue 1 accordingly fell away.

Service of the Contempt application

10. The second issue is whether the present is a case in which an order for alternative service of the Contempt application is appropriate.

11. The effect of the order made after the hearing of 5 October 2022 is that it is deemed that there has been an ex parte order for alternative service by the means already employed, namely the emailing of the Contempt application to Mr Gringuz and to Bargate Murray, but it is now to be decided whether such an order should have been made. The burden rests on OCA to show that that order was appropriate and unless it does so, the service will be held not to be valid service.

12. For Mr Gringuz it is said that the present is not a case in which an order for alternative service under CPR 6.15 is appropriate. Mr Gringuz is domiciled in Ukraine. Ukraine is a party to the Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (the 'Hague Service Convention'), and has adopted reservations under Articles 8 and 10 of that Convention. Given this, the test for whether there should be an order for alternative service is whether there are exceptional circumstances, and not merely whether there is a good reason for such an order. It is submitted on behalf of Mr Gringuz that there is no good reason, and still less are there exceptional circumstances.

13. On behalf of OCA, it is contended that the relevant test is whether there is a good reason to order alternative service, and that there is. Even if the test is exceptional circumstances, however, OCA contends that it is met in this case.

14. The starting point is accordingly to determine what is the relevant test. CPR 6.15(1) provides that

> 'Where it appears to the court that there is a good reason to authorise service by a method or at a place not otherwise permitted by this Part, the court may make an order permitting service by an alternative method or at an alternative place.'

15. However, in cases of countries which are party to the Hague Service Convention, there are particular considerations which mean that a more stringent test may be applicable.

16. In Société Générale v Goldas Kuyumculuk Sanayi Ithalat Ihracat AS [2017] EWHC 667, Popplewell J reviewed the authorities and said this, at [49(9)]:

> (9) Cases involving service abroad under the Hague Convention or a bilateral treaty:
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> (a) Where service abroad is the subject matter of the Hague Convention or a bilateral treaty, it will not normally be a good reason for relief under CPR 6.15 or 6.16 that complying with the formalities of service so required will take additional time and cost: *Knauf* at [47], *Cecil* at [66], [113].
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> (b) It remains relevant whether the method of service which the Court is being asked to sanction under CPR 6.15 is one which is not permitted by the terms of the Hague Convention or the bilateral treaty in question. For example, where the country in which service is to be effected has stated its objections under Article 10 of the Hague Convention to service otherwise than through its designated authority, as part of the reciprocal arrangements for mutual assistance on service with this country, comity requires the English Court to take account of and give weight to those objections: see *Shiblaq* at [57]. In such cases relief should only be granted under Rule 6.15 in exceptional circumstances. I would regard the statement of Stanley Burnton LJ in *Cecil* at [65] to that effect, with which Wilson and Rix LJJ agreed, as remaining good law; it accords with the earlier judgment of the Court in *Knauf* at [58]-[59]; Lord Clarke at paragraphs [33] and [45] of *Abela* was careful to except such cases from his analysis of when only a good reason was required, and to express no view on them (at [34]); and although Stanley Burnton LJ's reasoning that service abroad is an exercise of sovereignty cannot survive what was said by Lord Sumption (with unanimous support) at [53] of *Abela*, there is nothing in that analysis which undermines the rationale that as a matter of comity the English Court should not lightly treat service by a method to which the foreign country has objected under mutual assistance treaty arrangements as sufficient. That is not to say, however, that there can never be a good reason for ordering service by an alternative method in a Hague Convention case: *Bank St Petersburg* at [26].

The Court of Appeal approved this aspect of Popplewell J's summary: [2018] EWCA Civ 1093 at [31]-[35] per Longmore LJ.

17. Similarly in Marashen Ltd v Kenvett Ltd [2017] EWHC 1706 (Ch) David Foxton QC also reviewed the authorities and said at [57]:

> In my judgment, the current state of the law is as set out in the decisions of Mr Justice Cooke in Deutsche Bank AG v. Sebastian Holdings Inc. and Mr Justice Popplewell in Société Générale v. Goldas Kuyumculuk Sanayi and others [2017] EWHC 667 (Comm), and that in [Hague Service Convention] cases, or cases in which there is a bilateral service treaty which is exclusive in its application:
>
> i) "exceptional circumstances", rather than merely good reason, must be shown before an order for alternative service other than in accordance with the terms of the treaty can be used; and
> ii) mere delay or expense in serving in accordance with the treaty cannot, without more, constitute such "exceptional circumstances". I say "without more" because delay might be the cause of some other form of litigation prejudice, or be of such exceptional length as to be incompatible with the due administration of justice.

18. I consider that in a case involving service on a party located in a country which is a party to the Hague Service Convention, and which has entered a reservation under Article 10 of that Convention, exceptional circumstances must exist for the court to make an order for alternative service by means other than those provided for by the Convention. For there to be exceptional circumstances will, in this context, require there to be present some factor sufficient to constitute good reason, notwithstanding the significance which is to be attached to the Article 10 reservation.

19. In the present case, in my judgment, there are such exceptional circumstances. This is for the following reasons:

(1) What is at issue here is a Contempt application. Such applications should if possible be dealt with expeditiously in order to ensure compliance with and uphold the authority of court orders. Moreover, in the present case, OCA has a legitimate interest in seeking to obtain, without unnecessary delay, information which will allow it to quantify, and prove in Jets' liquidation for, the share of profits to which it has been held entitled by paragraph 2 of the January order.

(2) There is no doubt that the means which have already been used to bring the Application to Mr Gringuz's notice have been effective. There is no plausible case that alternative service would cause Mr Gringuz any prejudice.

(3) Ukraine made a declaration on 9 March 2022 in relation to the Hague Service Convention, as follows:

'In view of the ongoing aggression of the Russian Federation against Ukraine, Ukraine hereby informs the Depositary […] of the inability to guarantee the fulfilment by the Ukrainian side of obligations [under the above Convention] to the full extent for the period of the armed aggression of the Russian Federation and the martial law in place in the territory of Ukraine until complete termination of the encroachment upon the sovereignty, territorial integrity and inviolability of Ukraine.'

While this declaration clearly does not amount to a statement that Ukraine cannot fulfil its obligations under the Hague Service Convention during the Russian invasion, it is a recognition of the risk that it may not be able to do so.

(4) There seems no doubt that the Russian invasion has added to the length of time which it is taking to effect service in Ukraine in accordance with the Hague Service Convention. The evidence before me was not clear as to the amount of time which has been added. Ukrainian lawyers instructed for Mr Gringuz, Lavrynovych & Partners, acknowledge that, while the judicial and postal services are operating in Kyiv, 'there are delays in delivering the documents to and from Ukraine due to the limited transport links with other countries'. They also say that 'in normal times of peace' service of foreign court documents would take approximately three months, but now is taking approximately one-two months longer. That estimate of the additional length of time being taken is difficult to reconcile with the information supplied by the Foreign Process Section that the time for service in Ukraine is at present over a year. The evidence of the Ukrainian lawyers instructed for OCA, Ilyashev & Partners, appears entirely credible, namely that 'the whole process of executing a foreign court request seeking to serve documents on a person located in Ukraine may take a much longer time than usual', and I accept that this is so. Thus, while it is right that mere length of time to serve in accordance with the Hague Service Convention is not of itself a good reason for allowing alternative service, I consider that the delays arising from the Russian invasion are a relevant factor in considering whether there are exceptional circumstances in this case.

(5) There are grounds for considering that Mr Gringuz will attempt to avoid service and frustrate efforts to effect service. Thus, it is the evidence of Mr Blumire that an effort was made to serve a copy of the Contempt application on Mr Gringuz by post at the address used by him in his first Affidavit of 1 April 2022. The local postal service made two attempts to deliver the documentation but there was no answer at the address; and that while a note was left at the address with instructions as to how to make arrangements for delivery, no such arrangements were made. I also consider that there is force in the submission made on behalf of OCA that Mr Gringuz's conduct in instructing Bargate Murray Ltd to represent him for the purposes of this hearing but not to accept service of the Contempt application betokens a desire to make service difficult.

(6) Ilyashev & Partners' report indicates that service by the relevant authorities of a Contempt application would involve personal service by handing it or attempting to hand it to the addressee or if that is not effected, then typically by service via registered mail. In the latter case, if the addressee is not at home at the time of delivery then the postman seeks to inform the recipient by phone or by a written notification put into the addressee's letter box that a court summons has arrived and may be received at the post office. If the recipient does not receive the court summons within three days, the post office makes a note on the summons to the effect that the recipient is absent at the specified address and returns the documents to the court. Other procedures for seeking to serve documents would only be available in cases of urgency or where the place of residence of the addressee was unknown. This last situation would very possibly not be considered to apply here, given that a residential address for Mr Gringuz is known. This material gives grounds for considering that there is a real risk, especially given that Mr Gringuz may seek to

frustrate the process, that service by the means available under the Hague Service Convention may not be effected, even after a possibly extended process attempting to do so.

(7) The above points are not satisfactorily answered by reliance on Article 15 of the Hague Service Convention and Ukraine's declaration of 1 February 2001, whereby Ukraine accepted that if all the conditions provided for in the second paragraph of Article 15 were fulfilled, which includes the lapse of a period of at least six months 'since the date of the transmission of the document', 'the judge … may give judgment even if no certificate of service or delivery has been received.' It is unclear when the 'date of the transmission' would be. In any event, I consider that it is fair for OCA to say that it would suffer litigation prejudice even by a six month delay. These are existing proceedings, and it may often be the case that it is desirable for there to be swifter service out in such proceedings than in the case of service of a self-standing claim (see Avonwick v Azitio Holdings [2019] EWHC 1254 (Comm), at [34]). That is particularly the case here because of the nature of the proceedings, and because of OCA's interest in obtaining the information the subject of the relevant orders, referred to in (1) above.

20. When all these considerations are taken together, I consider that exceptional circumstances have been shown.

Service of the January, April and May Orders

21. The third issue is as to whether there was or should be considered to have been good service on Mr Gringuz of the January, April and May orders.

22. Mr Gringuz contends that in order to commit for civil contempt, it is ordinarily necessary for the claimant to prove that the order alleged to have been breached was personally served on the alleged contemnor before the time for complying with it elapsed. There can be orders for alternative service of such orders, but Moulder J made no provision as to service of the January order; and, while she made orders for alternative service by email of the April and May orders, this was alternative service on the First and Second Defendants, not on Mr Gringuz. There is no good reason for a retrospective validation of alternative service on Mr Gringuz, because OCA simply did not comply with the requirements for formal service of court orders.

23. OCA for its part contends that there was good service on Mr Gringuz. In the April order OCA was given permission to serve the order on 'the Respondents', viz Jets and Investments, 'by email to Mr July Gringuz at email address [ ] under CPR rule 6.27', and on Jets by email to Mr Bargate at Bargate Murray Ltd. There has been no suggestion that the order was not properly served on Jets; and clearly the order came to the attention of Mr Gringuz. Given that Mr Gringuz was a de facto director of Jets, and also controlled whether it complied with the order or not, this was good service on Mr Gringuz. In relation to the May order, Moulder J made a similar order as to service. Once again, service by that alternative means was good service on Jets and on Mr Gringuz as its de facto director. It also named Mr Gringuz in the Penal Notice 'as a director of Investments'. If he was not a director of Investments at that time, then the order was served on him, via his email account, in his personal capacity.

24. This issue arises as part of the question of whether OCA has complied with the requirements necessary for it to proceed with its Contempt application against Mr Gringuz.

25. The 'Requirements of a contempt application' are set out in CPR rule 81.4. Rule 81.4(2) provides, in part, that a contempt application must include statements of:

'(b) the date and terms of any order allegedly breached or disobeyed;

(c) confirmation that any such order was personally served, and the date it was served, unless the court or the parties dispensed with personal service;

(d) if the court dispensed with personal service, the terms and date of the court's order dispensing with personal service…'

26. This envisages that an order will have been personally served on the person who is said to be in contempt, unless an order dispensing with service has been made. I accept Nicklin J's analysis in MBR Acres Ltd v Maher [2022] EWHC 1123 (QB), esp. at [67]-[105], that a general requirement that the injunction order should have been personally served for there to be the possibility of proceedings for contempt, is a part of the substantive law of contempt.

27. There can, however, be retrospective dispensation with such personal service: Business Mortgage Finance 4 PLC v Hussain [2022] EWCA Civ 1264 at [62]-[80] per Nugee LJ. If there is such an order, then the requirements of CPR r. 81.4 and in particular (c) and (d) can be regarded as having been complied with. Such an order can be made after the issue of the Contempt application: Business Mortgage Finance 4 at [81].

28. There may equally be a retrospective order for alternative service of the injunction order: see CPR 6.15 and CPR 6.27; and also MBR Acres at [106]-[115], though alternative service was not, in fact, ordered in that case.

29. In the present case, I am not satisfied that there was personal service, within the meaning of CPR 6.5 (and 6.22(3)) of any of Moulder J's January, April or May orders on Mr Gringuz himself. They were not left with him. Nor am I satisfied that Moulder J's orders as to alternative service on Jets and Investments applied to service on Mr Gringuz himself.

30. On the other hand, the present is in my judgment a clear case for dispensing retrospectively with personal service of each of the orders. The 'key question' in considering whether there should be dispensation is whether the court is satisfied to the criminal standard that the material terms of the injunction order said to have been breached were effectively communicated to the defendant (see MBR Acres at [117]). I consider that that is as much the key question when considering dispensing with personal service of a mandatory order such as one to provide disclosure of assets or produce documents or information in the context of a worldwide freezing order, as with a prohibitory order. Such was the approach of Phillips J in Ifaco Feed Company SA v SODINAF [2019] EWHC 3715 (Comm), esp at [6]-[7]. While that was a case in which only one side was represented, the approach of Phillips J appears to me to be correct and applicable in this case.

31. I am entirely satisfied that Mr Gringuz will have actually known of the material terms of each of the orders shortly after its issue. Indeed, the contrary has not been suggested on his behalf. The January order was sent to him by email by OCA's solicitors shortly after it was made. The April and May orders were sent to his own email account, as well as to the solicitors who had been representing Jets of which - as he himself had said in his witness statement for trial - he was the managing director, and who represent him now.

32. As also indicated by Ifaco a consideration other than whether the defendant has notice of the order which may be relevant is whether attempts to effect personal service would likely have been ineffective. I consider that here, for reasons given in the context of the second issue, it is unlikely that personal service could have been effected on Mr Gringuz, certainly without a delay which would have been very significant in the context of the orders involved.

33. I should add that I would also have considered the present an appropriate case to make a retrospective order for service on Mr Gringuz by alternative means, namely those already employed. There is, in my judgment good reason to do so. The means employed brought the orders to his attention; he will have suffered no prejudice; and personal service would have been difficult, and probably have involved significant delay, if it proved possible at all. Applying the 'illuminating' test of whether the court would have granted a prospective order that Mr Gringuz should be served with the orders by email (MBR Acres at [110]), I have no doubt that it would.

Permission to Bring the Contempt application

34. The fourth issue is (a) as to whether permission is required for OCA to bring all the allegations of contempt against Mr Gringuz which are contained in the amended particulars of contempt, as Mr Gringuz contends, or only in respect of Count 2, as OCA contends; and (b) to the extent permission is required, should it be granted.

35. CPR r. 81.3(5) provides that 'permission to make a contempt application is required where the application is made in relation to:

> (a) interference with the due administration of justice, except in relation to existing High Court or county court proceedings;
>
> (b) an allegation of knowingly making a false statement in any affidavit, affirmation or other document verified by a statement of truth or in a disclosure statement.'

36. There is no dispute that any allegations as to interference with the due administration of justice made by OCA against Mr Gringuz are made in relation to existing High Court proceedings, and thus permission is not required pursuant to CPR r. 81.3(5)(a). OCA accepts that, because of the terms of CPR r. 81.3(5)(b), it does require permission to bring Count 2. Mr Gringuz contends that OCA requires permission to bring Count 1 as well as Count 2; and alternatively that, if permission is not given in relation to Count 2, Count 1 should be stayed or struck out.

37. The basis for Mr Gringuz's case that Count 1 requires permission, or should be stayed if permission is not granted on Count 2, is an analogy with Cole v Carpenter [2020]

EWHC 3155 (Ch). In particular Mr Gringuz relied on paragraphs [23]-[24] of Cole v Carpenter where Trower J said:

> [23] At the beginning of the hearing, I expressed some scepticism that the Defendants did not require permission in relation to ground 1. The reason for my scepticism was that, although ground 1 was formulated as an interference with the due administration of justice, it was at least well arguable that an application based on ground 1 was also "*made in relation to … an allegation of knowingly making a false statement in any … document verified by a statement of truth …*" so as to fall within CPR 81.3(5)(b). If that were to be the case, they would also require permission for a contempt application based on ground 1, even though there might be other categories of interference with the due administration of justice for which permission is not required.
>
> [24] In the event, Mr Bheeroo did not pursue this submission. I think that he was right to take that course. Even if permission is not required for ground 1, the allegations of fact relied on in relation to both ground 1 and ground 2 are in all respects identical. In these circumstances, there is at least a serious possibility that the court would consider it appropriate to stay contempt proceedings based on ground 1 if permission is refused on ground 2 (cf. *TBD (Owen Holland) Ltd v. Simons and others* [2020] EWCA Civ 1182 ("*TBD*") at [239]) and, if the refusal were to be on the basis that the contempt application was being made for an improper purpose, that might be a ground for striking it out altogether (*Sectorguard Plc v Dienne Plc* [2009] EWHC 2693 (Ch) at [53]). It follows that I will simply determine the question of whether permission should be granted on ground 2 without regard to any consideration that an application based on ground 1 might proceed in any event.

38. Mr Gringuz contended that what was made clear in those paragraphs was that permission is required for allegations made 'in relation to' allegations of knowingly making a false statement in an affidavit etc, and that is not the same as saying that permission is only required for allegations that the accused has knowingly made such a false statement. In the present case, it was argued on his behalf, the foundation for all the allegations of contempt is that Mr Gringuz did not disclose documents in his two affidavits as he ought to have done. Necessarily, it was submitted, that involves an allegation that the declarations in his affidavits that he was disclosing all that he ought were untrue. The application to commit is accordingly made 'in relation to' an allegation of knowingly making a false statement in an affidavit.

39. In my judgment this argument must be rejected. In the present case, the factual premise of Count 2 is distinct from the factual premise of Count 1. Count 1 deals with Jets' alleged breaches of certain court orders by failing to produce documents and information, while Count 2 deals with the fact that in one document Mr Gringuz stated that Investments was a member of Jets, while in another he stated that Investments was not a member of Jets. This is a different position from that in Cole v Carpenter where the allegations of fact in relation to the two counts were 'in all respects identical'. The fact that the allegations in Count 1 might additionally entail an allegation that Mr Gringuz lied in his affidavits does not in my judgment mean that Count 1 falls within CPR 81.3(5)(b). OCA does not therefore require permission to bring Count 1.

40. I turn to the question of whether permission should be given in relation to Count 2. The principles which should guide the court in considering this question were extensively reviewed in Cole v Carpenter at [26]-[32], by reference to a number of authorities including KJM Superbikes Ltd v Hinton [2009] 1 WLR 2406, Cavendish Square Holdings BV v Makdessi [2013] EWCA Civ 1540, Zurich Insurance plc v Romaine [2019] 1 WLR 5224, TBD (Owen Holland) Ltd v Simons [2020] EWCA Civ 1182 and Navigator Equities Ltd v Deripaska [2020] EWHC 1798 (Comm).

41. What these authorities indicate, insofar as relevant to the present case, is that the court will have regard to the following:

(1) Whether there is a strong *prima facie* case of contempt bearing in mind that knowing falsity must be proved, taking into account the strength of the evidence going to prove:
   i. that the statement is false
   ii. that the maker of the statement knew it was false
   iii. the significance of the false statement in the proceedings
   iv. the use to which the false statement was put in the proceedings
   v. the motive of the alleged contemnor;

(2) Whether it is in the public interest to bring contempt proceedings, taking into account:
   i. Prosecutorial motive
   ii. Whether contempt proceedings would justify the court and other resources that need to be devoted to them
   iii. Whether contempt proceedings would further the overriding objective
   iv. The likely penalty and whether proceedings are proportionate.

42. I have reached the conclusion, having considered these matters, that permission should not be granted in relation to Count 2. The evidence showing that one of the statements made by Mr Gringuz was knowingly false does not amount to a strong prima facie case. The case rests essentially on the inconsistency between the letter of 25 March 2022 and the affidavit of 21 May 2022. There is the clear possibility that this inconsistency came about because Mr Gringuz had not updated the Companies House records, as he says in paragraph 10 of the affidavit. If the position is that it was the statement in the letter of 25 March 2022 which was inaccurate, then this does not appear to have much wider significance in the case. In any event, I am not satisfied that it is in the public interest to have contempt proceedings in relation to this additional matter or that it merits the resources which would be devoted to it.

43. For the sake of completeness, I should also make it clear that the fact that I have declined permission in relation to Count 2 does not mean that I either stay or strike out Count 1. As I have said, I regard Count 1 as being factually distinct.

Conclusion

44. For the reasons given above:

(1) The order for service out of the jurisdiction will not be set aside;

(2) There is an order for alternative service of the Contempt application on Mr Gringuz;

(3) Personal service of the January, April and May orders on Mr Gringuz is retrospectively dispensed with;

(4) OCA does not require permission to pursue Count 1, but permission is refused as to Count 2.

45. I will receive further submissions, if necessary, as to the terms of the order which should be made.