Neutral Citation Number: [2023] EWHC 1889 (Comm)

Case No: CL-2017-000077

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT

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

Date: 21/07/2023

Before :

CHRISTOPHER HANCOCK KC

- -

Between :

JALDHI MIDEAST DMCC

Claimant / Respondent

- and -

(1) AL GHURAIR RESOURCES LLC

First Defendant

(2) ESSA ABDULLAH AHMAD AL GHURAIR

Second Defendant / Applicant

- -
- -

Rory Brown (instructed by **GSC Solicitors LLP**) for the **Applicant**
Emmet Coldrick (instructed by **Clyde & Co LLP**) for the **Respondent**

- -

JUDGMENT

This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:30 on Friday 21 July 2023.

Christopher Hancock KC :

Introduction and background.

1. The relevant background is as follows.

   (1) These proceedings were commenced in February 2017. The Claimant's claim against the First Defendant ("**AGR**") related to losses arising out of the arrest, in December 2016 in Malaysia, of the vessel "Captain Silver".

   (2) Initially, AGR was represented by London solicitors, Campbell Johnston Clark Limited. However, they came off the record in August 2018. AGR has not taken any further active part in the proceedings.

   (3) On 6 September 2018, judgment in default of defence was granted by Phillips J. The default judgment was in respect of liability only. The Claimant applied for damages to be assessed. On 9 July 2019, Moulder J ordered that AGR is liable to pay the Claimant damages for breach of contract in the sums of US$774,908.04 and GB£33,157.47 ("the Judgment Debt"). The Judgment Debt remains unpaid.

   (4) With a view to identifying assets against which the Judgment Debt could be enforced, the Claimant applied for an order requiring AGR to give information as to its assets. On 22 October 2019, Bryan J ordered AGR to provide information about its assets, including all of its bank accounts and all of its assets worldwide over US$10,000 in value ("the 22 October 2019 Order").

   (5) That order was served on AGR by email on 23 October 2019 to the al-ghurair.com email addresses listed in paragraph 1 of Teare J's order of 16 May 2019, which had granted permission to serve documents in the proceedings by email. The first address in the list was an email address of the Second Defendant ("**Mr Al Ghurair**").

   (6) Initially, no response was received. But on 28 November 2019, Mr Al Ghurair wrote to the Claimant's solicitors, Clyde & Co, by email from the address of his office manager, Salma Abdulmajeed ("the 28 November 2019 Letter").

   (7) The 28 November 2019 Letter stated, amongst other things: *"... I want to put this on record that I absolutely agree to pay the final awarded amount of USD 774,908.04 and GBP 33,157.47 but unilaterally I will not be able to pay/settle from AGR as I am not the only authorized banking signatory. The other authorized banking signatures for AGR are Abdul Aziz Al Ghurair (Chairman Executive Committee, AGI) and Ibrhaim Al Ghurair (General Manager, AGROP & Acting CEO, AGI), who will have to sign to effect/make the awarded payment"*. Mr Al Ghurair enclosed various letters from him to the other authorized banking signatories, to which he said he had received no response.

   (8) On 3 December 2019, the Asset Disclosure Order was made by Bryan J. It was in similar terms to the 23 October 2019 Order, but this time bearing a penal notice.

   (9) The same day, 3 December 2019, Clyde & Co sent the Asset Disclosure Order to AGR by email, by way of information only, not service. A covering letter, marked

for Mr Al Ghurair's attention, urged AGR and Mr Al Ghurair to take legal advice and drew attention to the severe penal consequences, including imprisonment and asset seizure, if the order was not complied with. No response was received.

(10) On 25 January 2020, pursuant to CPR 81.8(2) and as an alternative to personal service, Andrew Baker J granted permission to serve the Asset Disclosure on AGR and Mr Al Ghurair by email. The Asset Disclosure Order was served accordingly on 28 January 2020.

(11) On 30 January 2020, Clyde & Co LLP were copied in to an email, from Ms Abdulmajeed's email address but signed *"Essa Al Ghurair, GM, Al Ghurair Resources LLC"*. It attached a letter from AGR, signed by Mr Al Ghurair as General Manager of AGR, to Al Ghurair Investment LLC ("AGI") ("the 30 January 2020 Letter"). The letter requested that Abdul Aziz Al Ghurair sign bank transfer mandates providing for the payment by AGR of the Judgment Debt to the Claimant.

(12) The 30 January 2020 Letter enclosed a letter dated 8 September 2015 from AGR to *"All Relationship Banks"* giving instructions as to authorised signatories. This appears to indicate that Mr Al Ghurair cannot authorise payments without the co-signature of Abdul Aziz Al Ghurair or Ibrahim Al Ghurair.

(13) Clyde & Co sent a brief response to the 30 January 2020 Letter the same day. No response was received. The Judgment Debt remained unpaid and the information and disclosure required by the Asset Disclosure Order was not provided.

(14) On 23 September 2021, the Claimant issued a Contempt Application against AGR and Mr Al Ghurair, which sought an order for committal against Mr Al Ghurair. By order dated 29 September 2021, as an alternative to personal service, Foxton J granted permission to serve the Contempt Application on AGR and Mr Al Ghurair by email.

(15) The Contempt Application and supporting evidence were served on AGR and Mr Al Ghurair by email on 1 October 2021. No response was received.

(16) On 3 December 2021, the Contempt Application was listed for hearing on 14 June 2022. On 8 December 2021, the Claimant gave notice of the hearing date to AGR and Mr Al Ghurair and asked whether they would agree to seek an earlier hearing date. No substantive response was received.

(17) Shortly before the hearing on 14 June 2022, there were communications between the Claimant's owner, Mr Vira Chand Bothra, and Mr Al Ghurair. In those circumstances, at the first oral hearing on 14 June 2022, at which neither AGR nor Mr Al Ghurair appeared or were represented, Knowles J adjourned the hearing of the Contempt Application.

2. Mr Bothra met with Mr Al Ghurair in Dubai on 20 June 2022. At that meeting Mr Al Ghurair informed him that he was keen to pay the judgment debt owed to Jaldhi, but that his brothers, Abdul Aziz Al Ghurair and Ibrahim Al Ghurair, were not cooperating. He also said that AGR's non-compliance with the asset disclosure order was on account of the non-cooperation of his brothers.

3. The adjourned Contempt Application was heard by Knowles J on 15 July 2022. AGR and Mr Al Ghurair failed to attend the hearing and were not represented. Knowles J found AGR and Mr Al Ghurair to be in contempt of court. He imposed a fine of £100,000 on AGR and a sentence of 12 months' imprisonment on Mr Al Ghurair. In the course of his judgment, Knowles J said as follows:

"24. The Court will pass sentence or impose sanctions in circumstances where it will remain open to the LLC and Mr Ghurair to approach the Court and to ask the court to purge the contempt or to return to the question of sentence or sanction in light of any compliance with the court's order for asset disclosure albeit late compliance. The court will consider such an application on the part of the LLC or Mr Ghurair on its merits at any point in time that it is made. I wish there to be no misunderstanding given the clarity in the present case of awareness of obligation that already exists, but is very much in the interests of the LLC and Mr Ghurair to approach the Court soon, very soon, if either or both wishes to invite the court to return to the matter in the way that I have indicated.

25. The sentence or sanctions that I impose in the present case will apply but the court can return to them…

… 28. So far as Mr Ghurair is concerned, the Court imposes a sentence of imprisonment of 12 months. I have been asked to consider and I do in any event, as is my duty, the question of whether that sentence should be suspended or not. There is no material in the present case that would cause me to suspend that sentence. That is a different matter, I emphasise, to whether the sentence is adjusted, reduced or suspended in the context of an approach by Mr Ghurair, especially in good time, asking the court to accept late compliance and asking the court to purge his contempt.

29. I have taken into consideration what was described by the claimant through Mr Coldrick as the arguable mitigation in the case. That was the term used to refer to the wish of Mr Ghurair that the judgment debt be paid and the difficulty he has in achieving that without cooperation as he says from one or more other people. I do not regard that as arguable mitigation, with respect, and indeed it focusses on the question of payment of the judgment debt. I see nothing that has stopped Mr Ghurair from himself causing the LLC through himself to provide details of asset disclosure. It was always and still is open to him to say that there is a limit to what he knows but he has not said anything at all."

4. Paragraph 4 of the Order of Knowles J provided as follows:

"Liberty to apply. Without prejudice to the generality of the foregoing:

(a) The Defendants may apply under CPR r.81.10 to discharge this Order.

(b) The Defendants may apply for discharge from the sentences imposed by this Order."

5. The fine has not been paid, Mr Al Ghurair has not served his prison sentence and no disclosure of AGR's assets has been given. As far as the Claimant is aware, Mr Al Ghurair has remained out of the jurisdiction.

6. In August 2022, Mr Al Ghurair instructed English solicitors, GSC Solicitors LLP ("GSC") and on 1 September 2022 he issued the applications that are now before this Court.

7. The applications are supported by Mr Al Ghurair's affidavit dated 30 August 2022, which asserts that he lacks authority to act on behalf of AGR and is unable to cause AGR to comply with the Asset Disclosure Order. He relies on a shareholders' resolution of AGR made on 13 October 2016, pursuant to which Abdul Aziz Al Ghurair, jointly with Ibrahim Al Ghurair or Rashid Al Ghurair, were appointed and authorized *"to be true representatives and lawful attorneys"* for AGR ("the Shareholders' Resolution").

8. The Claimant therefore applied for a fresh asset disclosure order, with a view to serving it on Abdul Aziz Al Ghurair, Ibrahim Al Ghurair and Rashid Al Ghurair. This was issued, so it is said, so as to put clear beyond doubt that they face penal consequences (if the Court ultimately finds that they are *de facto* directors of AGR or otherwise responsible for its contempt), and so as to afford all concerned with AGR a final opportunity to give disclosure as ordered. That application was made on 19 January 2023 and was granted by Henshaw J on 30 March 2023. I was told that an incorrect version of the order was sealed, but that the Claimant is in the process of seeking to correct that under the slip rule.

9. Pursuant to leave given by Foxton J on 16 May 2023, Mr Al Ghurair was cross examined before me remotely.

Discharge application – the law

10. CPR 81.10 provides that:

> *"(1) A defendant against whom a committal order has been made may apply to discharge it.*
>
> *(2) Any such application shall be made by an application notice under Part 23 in the contempt proceedings.*
>
> *(3) The court hearing such an application shall consider all the circumstances and make such order under the law as it thinks fit."*

11. As I understood it, the parties were agreed that, although this Rule replaced earlier, rather more complex, procedural rules, there was no intention to change the previous substantive law. The Claimant submitted that this was clear from the provisions of CPR 81.1(2) and (3), which provide as follows:

> *"(2) This Part does not alter the scope and extent of the jurisdiction of courts determining contempt proceedings, whether inherent, statutory or at common law.*
>
> *(3) This Part has effect subject to and to the extent that it is consistent with the substantive law of contempt of court."*

12. The dispute between the parties, as became clear during the course of the hearing, could be sub-divided as follows:-

    (1) Was it open for me to reopen the finding that Mr Al-Ghurair was in contempt of Court?

    (2) If it was not open to me to reopen this finding, how, and by reference to what factors, should I approach the current application?

    (3) Applying the relevant factors, should I reduce the sanction that had been imposed on Mr Al Ghurair and if so, to what extent?

Reopening the finding of contempt.

13. It was argued that it was open to Mr Al Ghurair to reopen the position in relation to the finding of contempt by virtue of paragraph 4 of the Committal Order and the above passages of Knowles J's judgment. Mr Brown, on behalf of Mr Al Ghurair, submitted that the assertion that there was no jurisdiction to reopen the question of contempt finds no support in r. 81.10, nor in the commentary at 81.10.2, nor in the case law which confirms (what is obvious on the face of r. 81.10) that on an application to discharge a committal order, the court 'considers all the circumstances' and has a 'complete discretion' to make such order as it thinks fit: *Sahara Energy Resource v Rahamaniyya Oil & Gas* [2022] EWHC 3285, per Jacobs J, para. 7.

14. Mr Brown pointed out that Mr Al Ghurair received the Committal Order on 29 July 2022 by email; he instructed GSC Solicitors LLP ('**GSC**') on 1 August 2022 (two days after receipt of the Committal Order); and he made the instant application on 31 August 2022, 32 days after receipt of the Committal Order. That was - given the evidence it was necessary to prepare in support of the application, a prompt or a reasonable period of time, it was contended. Mr Brown emphasised that Mr Al Ghurair has made an apology for the fact that he failed to engage with the contempt application in the first place, an apology which is not superficially offered: Mr Al Ghurair *personally* paid the outstanding costs order against AGR and himself of £84,793.58 on 15 December 2022. It was stressed that Mr Al Ghurair's application and his evidence in support was prepared without the benefit of having seen the approved transcript of the judgment of Knowles J. Paragraph 10 of the Committal Order requires a transcript of the judgment to be published on the official website. Having spoken to GSC, Mr Trustram of Clyde and Co kindly sought a copy of the transcript by email to the court dated 16 August 2022. Mr Richardson of GSC renewed the request on 23 August 2022. The approved transcript of the judgment was published on 1 November 2022 without it being sent to the parties or notifying them. That it had been published online was discovered by Mr Richardson on checking the judiciary website at the end of November 2022.

15. It was submitted that if Mr Al Ghurair could have caused AGR to comply with the Asset Disclosure Order, he would have. This would have been far easier and cheaper, bearing in mind he is meeting his legal costs personally, than pretending (as the Claimant says is the case) that he is powerless to cause compliance. Mr Al Ghurair's evidence that he is powerless to cause AGR to comply (and not in intentional breach of the order) is also consistent with his efforts, set out in his affidavit, to persuade those in control of AGR to pay the outstanding judgment.

16. Moreover, it was argued that it was not understood why Mr Trustram (of Clyde and Co, solicitors for the Claimant), considers Mr Al Ghurair would prefer the risk of a further

sentence being imposed and the ruining of his reputation over causing compliance with a simple asset disclosure order if the latter lay within his power.

17. Turning to the Claimant's submissions under this head, Mr Coldrick submitted that Mr Al Ghurair's application under CPR 81.10 is misconceived, as the basis for it was in essence that the Court was *wrong* to find him in contempt of court as he was not in a position to cause AGR to comply with the Asset Disclosure Order; and that it is not open to him to do so on this application. Such a challenge can properly be made only by way of appeal, not by way of discharge application.

18. Thus, it was argued, in Re Barrell Enterprises [1973] 1 W.L.R. 19 – a case concerning committal for contempt of court – Russell LJ observed (at 24):

> *"We can accept without difficulty the notion that if a judgment has been obtained by fraud an action can be brought to set it aside. But when it comes to setting aside a judgment on the ground that fresh evidence has been obtained it appears to us highly desirable that the Court of Appeal alone should have jurisdiction."*

19. In the context of considering an application for discharge of the committal order, he went on to state (at 28):

> *"We would not found our decision on any lingering doubt as to whether Miss Barrell was rightly committed. We consider that once a matter is established beyond reasonable doubt it must be taken for all purposes of the law to be a fact."*

20. As regards the principles of *res judicata*, the law was stated authoritatively by Lord Sumption in Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd [2013] UKSC 46; [2014] A.C. 160 at [17]-[26]. As regards exceptions to *res judicata*, Lord Sumption stated at [22] that:

> *"… Except in special circumstances where this would cause injustice, issue estoppel bars the raising in subsequent proceedings of points which (i) were not raised in the earlier proceedings or (ii) were raised but unsuccessfully. If the relevant point was not raised, the bar will usually be absolute if it could with reasonable diligence and should in all the circumstances have been raised."*

21. The Claimants argued that a lack of legal representation and an absence of previous experience of legal proceedings are not good reasons for failing to comply with the rules; R. (Hysaj) v Secretary of State for the Home Department (Practice Note) [2014] EWCA Civ 1633; [2015] 1 W.L.R. 2472, CA at [44]. They said that this applies equally in committal cases; see Lakatamia v Su [2019] EWCA Civ 1626 at [4]. Alternatively, the Claimant submitted, if it is in principle possible that the central findings of contempt could be challenged in a discharge application, any such challenge would require exceptional circumstances. There appears to be no reported case where such a challenge has been seriously entertained, still less where it has succeeded.

22. Alternatively, if it was open to Mr Al Ghurair to seek to reopen the finding of contempt, this would require exceptional circumstances. In Shalson v Russo, Neuberger J spoke of the possibility of a case where new evidence not available at the contempt hearing had become available. This broadly accords with the recognised exception to the doctrine of issue estoppel whereby *"there has become available to a party further material relevant*

to the correct determination of a point involved in the earlier proceedings, whether or not that point was specifically raised and decided, being material which could not by reasonable diligence have been adduced in those proceedings" per Lord Keith in Arnold v National Westminster Bank plc [1991] 2 AC 93 at 109, quoted in Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd [2013] UKSC 46; [2014] A.C. 160 at [21].

23. However, the Claimant submitted, there are no such exceptional circumstances here. There is nothing in Mr Al Ghurair's affidavit that could not have been put forward at the hearing of the Contempt Application before Knowles J. Mr Al Ghurair's own failure to adduce evidence cannot amount to an exceptional circumstance.

24. As regards the reliance placed on the decision in Sahara Energy Resource Limited v Rahamaniyya Oil & Gas Limited [2022] EWHC 3285, the Claimant submitted that that case was very clearly distinguishable from the present one. In that case the contemnors applied to discharge a committal order, with the support of the respondents; the applicants accepted that they were in contempt of court and apologised for their contempt. They caused the company concerned to pay the unpaid arbitration award in full, with interest and costs, and offered to pay £75,000 to charity, to atone for their contempt. In the present case, by contrast, Mr Al Ghurair does not accept that he was in contempt, although, as I discuss below, he has apologized for his failure to explain his position before Knowles J, and has offered to do what he can to enable compliance with the Court's order. However, unlike the position in Sahara, the Judgment Debt remains unpaid and Mr Al Ghurair's application does not have the support of the Claimant.

25. The Claimant submitted that the purpose of CPR 81.10 was to provide a mechanism by which contemnors can be released, before they have served the entirety of their prison sentence, in cases where they have 'purged' their contempt by belated compliance with the Court's order and/or the offer of an undertaking to comply. It was not to provide an alternative route for challenging the correctness of the Court's earlier decision on the contempt application. The proper route for any such challenge would be an appeal.

26. I consider that the Claimant is correct in relation to this issue. In my judgment, where, as here, the essential contention is that, by reference to evidence which was available at the time of the original hearing, the ruling made at that hearing should be overturned, the appropriate forum for such a challenge must be the Court of Appeal. I do not consider that it is open to me to overturn the decision of Knowles J, given that there is no suggestion that the evidence now relied on could not have been put in front of him. The fact is that, if Mr Al Ghurair wished to make these arguments, he needed to attend in front of Knowles J to do so.

27. Nor do I think that the purpose of the liberty to apply was to enable the question of contempt to be revisited. Instead, as is apparent from the passages of the judgment cited above, the liberty to apply was to enable Mr Al Ghurair to come back before the Court in the event that the original order for disclosure of assets was complied with, albeit belatedly. That is not this case.

Purging of contempt and reduction of sentence.

28. I turn next to the question of whether Mr Al Ghurair has purged his contempt and whether I should vary his sentence. In my judgment, the submissions that I have already outlined made on behalf of Mr Al Ghurair ought properly to be considered under this heading, and I have taken them fully into account in this regard.

29. As regards the relevant legal criteria in this regard, the Claimant drew my attention to the decision in Swindon Borough Council v Webb [2016] EWCA Civ 152; [2016] 1 W.L.R. 3301, in which Tomlinson LJ (at [38]) emphasised the importance of the guidance given in earlier cases, which he collated. He quoted at length from the judgments of the Court of Appeal in CJ v Flintshire Borough Council [2010] 2 FLR 1224, in which it was noted that the power to discharge a committal order is not properly regarded as an 'unfettered' discretion. In that earlier case, Aikens LJ stated at paras. 28-29:

> *"28. In the present type of case, if there is an application by a contemnor to the court for his early discharge from the term of imprisonment imposed, the court has to make a judgment on whether it is just that this should be done. It is not the exercise of a 'discretion' in the sense that the word is frequently and often inexactly used. To my mind, the court has to consider two broad issues. First, despite the fact that the contemnor has not served the term originally imposed (which is itself subject to section 258(2) of the Criminal Justice Act 2003), has the contemnor demonstrated that he has now received sufficient punishment for his breach of the court's injunction? In this regard, the court will examine, at the least, whether the contemnor now not only accepts that he has been guilty of his contempt, but also that he is genuinely sorry for his misdeeds and repents them. Those sound old-fashioned, even religious, terms, but I think they best express what the court has to consider. There may be other things to be examined under this first question. If the answer to the question is 'no, the contemnor has not so demonstrated that he has received sufficient punishment for the breach', then for my part, I cannot see how a court can consider an early release unless there are other, extenuating circumstances which require that the court consider the exercise of its power to grant an early release.*
>
> *29. But, assuming the answer to that first question is favourable, I think the court must ask, secondly: will the interests of justice be best served in permitting his early discharge?"*

30. Similarly, Sedley LJ stated at paras. 36-37:

> *"36. .... I would draw attention to what Aikens LJ says about the dubious use of the word discretion to describe the power the judge of first instance is exercising ....*
>
> *"37. ... First, there are no unfettered discretions. A judge cannot let a contemnor out because he feels sorry for him or because he would not himself have imposed so long a sentence. There has to be a reason for discharge known to the law. Secondly, it is for the contemnor to advance such a reason for discharge, not for the court to find a reason for refusing it. Thirdly, this is not a matter or practice or parlance: it is a matter of substantive justice. This is why the vocabulary of judgment is more relevant than the vocabulary of discretion. Fourthly, it is at the point of sentence that necessity and proportionality govern judgment. When a judge comes to consider discharge from a sentence which has already been found both necessary and proportionate, he*

or she is looking at new factors, if there are any, albeit these may modify what is now necessary and what is now proportionate."

31. The main judgment in that case was given by Wilson LJ, with whom Sedley and Aikens LJJ agreed. Wilson LJ stated as follows at paras. 21-22:

> *"21. With the advantage of more time for reflection than was vouchsafed to the judge, I consider that, had I been hearing the appellant's application for early discharge, I might have asked myself eight, somewhat overlapping, questions. In case they prove to be of any value to other judges confronted with applications for early discharge in similar circumstances, I set them out as follows: (i) Can the court conclude, in all the circumstances as they now are, that the contemnor has suffered punishment proportionate to his contempt? (ii) Would the interest of the state in upholding the rule of law be significantly prejudiced by early discharge? (iii) How genuine is the contemnor's expression of contrition? (iv) Has he done all that he reasonably can to demonstrate a resolve and an ability not to commit a further breach if discharged early? (v) In particular has he done all that he reasonably can (bearing in mind the difficulties of his so doing while in prison) in order to construct for himself proposed living and other practical arrangements in the event of early discharge in such a way as to minimise the risk of his committing a further breach? (vi) Does he make any specific proposal to augment the protection against any further breach of those whom the order which he breached was designed to protect? (vii) What is the length of time which he has served in prison, including its relation to (a) the full term imposed upon him and (b) the term which he will otherwise be required to serve prior to release pursuant to section 258(2) of the Criminal Justice Act 2003? (viii) Are there any special factors which impinge upon the exercise of the discretion in one way or the other?*
>
> *22. I am clear that the success of an application for an order for early discharge does not depend on favourable answers to all the questions. Nevertheless the first is a general question which ... probably needs an affirmative answer before early discharge should be ordered. The second will surely require a negative answer. An affirmative answer to the third will usually ... be necessary but may not be sufficient ..."*

32. The Claimant argued that there is, in principle, a power to discharge a committal order before the penal and/or coercive elements of the sentence imposed have expired, but, even where the penal element has already been served, *"that power will only be exercised in exceptional cases"*, not least as doing so *"would risk bringing the court's standing and authority into disrepute, whereas one of the main purposes of the contempt jurisdiction is to do precisely the opposite"*; Shalson v Russo [2002] EWHC 399 (Ch) at [20]. Neuberger J went on to observe (at [20]) that there is *"a high onus on the contemnor before the court will consider releasing him on the basis that there is no possibility of compliance. The same point may be made in relation to May LJ's indication that an imprisonment order will not be revoked if it "may" still have a coercive effect ..."*.

33. Dealing first with the written evidence, the Claimant submitted as follows:

    (1) In paragraph 2 of his affidavit, Mr Al Ghurair explains that his role as manager of AGR included *"the negotiation and signing of all contracts, transactions and deals,*

preparation of the annual balance sheet, profit and loss account and annual report" and that he *"performed this role without issue from 2001 to 2015"* In the course of performing that role, he must have gained very extensive knowledge about AGR's business and assets.

(2) It may be that Mr Al Ghurair did not have all of information that would be required for full compliance with the Assert Disclosure in his possession or under his immediate control. But he must have known a great deal about AGR's assets and could and should have taken steps to obtain the necessary information but failed to do so.

(3) In a letter to Abdul Aziz Al Ghurair ("AAG") dated 28 March 2019, Mr Al Ghurair complained that AAG had prepared and approved AGR's financial statements for the years 2013, 2014 and 2015 whereas it was his (Mr Al Ghurair's) role as director of AGR to do so. In that letter, Mr Al Ghurair referred to *"the Silos, Gulf Pulses, Commercial Section, Investment projects, Grand Mills in the South (Algeria), Ibn Battuta Shipping, VIPV, Gulf Commercial Vessel, in addition to all the investment sections of AL Ghurair Resource*".

(4) Insofar as Mr Al Ghurair did not himself have the information required by the Asset Disclosure in his own possession or immediate control, he could and should have sought it out. There is no evidence that he made any attempt to cause AGR to comply with the Asset Disclosure Order.

(5) Correspondence exhibited by Mr Al Ghurair tends to indicate that financial information could have been made available if requested. For example, far from refusing to provide information to Mr Al Ghurair, the letter from the Al Ghurair Group Chief Financial Officer, Dirk Storm dated 2 August 2017, copied to KPMG, stated:

> *"Kindly write to me in detail what you are looking for in order for the finance team to work with the auditor into each point and revert back to you with a detailed feedback to your request."*

34. As regards the question of authority:

(1) Mr Al Ghurair was AGR's General Manager. As confirmed by Ms Corrie (an English qualified solicitor and Dubai qualified legal consultant) by affidavit, Mr Al Ghurair was recorded in the UAE government National Economic Register (which gives basic company details) as the "Responsible Manager" of AGR – a position equivalent to that of a company director in England and Wales.

(2) Mr Al Ghurair held himself out as AGR's General Manager or Director and repeatedly signed correspondence as such.

(3) The October 2016 Shareholders' Resolution to which Mr Al Ghurair has referred does not purport to strip him of his position or authority. Rather, it grants powers of attorney to others.

(4) After the Shareholders' Resolution, Mr Al Ghurair continued to hold the position of AGR's General Manager and to correspond on its behalf as such.

(5) Indeed, after the Shareholders' Resolution, AGR's majority shareholder Al Ghurair Investment LLC and its director Adul Aziz Abdulla Al Ghurair (a donee of powers of attorney under the Shareholders Resolution) continued to acknowledge Mr Al Ghurair as Director of AGR.

35. Turning to the case put forward by the Respondent:

(1) Mr Ghurair stated in his witness statement that his powers as general manager of Al Ghurair Resources LLC ("the company") were taken away by a resolution of the company passed on 8 March 2016. However, this resolution was rendered null and void by a decision of the local courts of Dubai dated 29 May 2017.

(2) Mr Al Ghurair stated in his witness statement that his shareholding in the company was diluted during 2016 despite his protests.

(3) A meeting of the company took place on 13 October 2016, and a resolution in similar terms to the March resolution was put forward. Mr Al Ghurair stated that such a resolution required a 75% approval, and 26.42% voted against. Despite this, Mr Abdul Aziz Abdullah Al Ghurair signed the Resolution. It was his evidence that a challenge to this ruling was rejected on the basis that it had not been filed in time by the Dubai Courts in 2019.

(4) Mr Al Ghurair stated that, as a result of this, he had had no powers as manager of the company since October 2016.

(5) He further stated that he did not have access to audited or unaudited financial information of the company; that he had requested such, for example in a letter dated 2 August 2017 to the CFO of Al Ghurair Investments LLC; and would not have had authority to cause the company to comply with the Asset Disclosure Order. As further evidence of this alleged lack of ability to access information, he drew attention to a number of letters that he had sent in 2016 and 2017.

(6) Next, he drew attention to the fact that a new company, Al Ghurair Resources International LLC, was incorporated in 2017 to take over the business of the company and marginalise Mr Al Ghurair. He, Mr Al Ghurair, remained, however, the named manager of the company.

36. In his oral evidence Mr Al Ghurair reiterated his position in this regard. In essence, his evidence was that although he retained the titular function of general manager, his powers in this respect had been taken away from him by the October 2016 resolution, which he was unable at present to challenge, absent a decision in his favour in the Ruler's Court. He further apologised to the Court for not having participated in the hearing before Knowles J, and, in my view, apologised for his contempt, and, in effect, threw himself on the mercy of the Court. He maintained that he was not able to provide any information which would be of utility to the Claimants; and that he was willing to take any steps which the Court required him to take to obtain such information. Perhaps the most

important evidence he gave to me, however, was in response to questions that I asked him. The questions and answers were as follows:

"JUDGE HANCOCK: Can I just get straight with Mr Al Ghurair as to precisely what you did do in response to the asset disclosure order? So, who did you write to as a matter of fact in order to try and obtain the information that the court had ordered the company to provide?

A. I notice - maybe I failed into writing specifically on this point. I pardon you, sir, from this one and I will do my best to whatever you request to provide me with any information.

JUDGE HANCOCK: But is the answer to my question that you have not in fact, at least as yet, written to anybody in order to try and obtain the information that the court has ordered the company to provide?

A. No, my Lord, I have not. I do not want - I will swear in - swear it on the Quran, I do not want to give you wrong information. I have not."

37. I turn to consideration of what decision I should now make on the application to purge Mr Al Ghurair's contempt. I take the guidance given in the decisions to which I have made reference above as setting out the relevant principles.

38. In my judgment, then Mr Al Ghurair has not purged his contempt sufficiently to justify a reduction in his prison sentence, although I consider that it may well be possible for him to do so going forward. I reach this conclusion for the following reasons.

    (1) Mr Al Ghurair has served none of his prison sentence.

    (2) Prior to this hearing, he had made no apology for his contempt – on the contrary he denied he was in contempt and apologised only for his *"failure to properly engage with the Court in this matter"*. However, in my judgment, he has now made a sufficient apology for his contempt.

    (3) He has not purged his contempt. No disclosure of assets has been given; he has not taken any steps either to provide such information as to AGR's assets as he can or to cause those in possession of the information in question to provide it.

39. Whilst I accept Mr Al Ghurair's evidence that he has limited power to provide evidence as to the assets of AGR, I do not consider that he has, at least at present, taken sufficient steps to seek to obtain and provide such. Although the following is not intended to be an exhaustive list, I consider, on the evidence before me, that he could provide at least the following information:

    (1) Accounting information for the years of account that he does have access to.

(2) Correspondence with banks to evidence the fact, if it be the case, that he does not in fact have access to account information.

(3) Correspondence with other members of his family seeking the relevant information.

(4) Correspondence with other officers or employees of the company seeking the relevant information.

(5) Correspondence with auditors seeking the relevant information.

40. Going forward, I consider that, if Mr Al Ghurair can demonstrate that he has done his best to provide the necessary information, that may suffice to persuade the Court that he has indeed purged his contempt.

41. I also bear in mind that it would be desirable to ensure that any further hearing in this matter should be coordinated with a hearing involving the other members of the family, who Mr Al Ghurair has indicated have prevented him from accessing the necessary information. Accordingly, any further hearing should be listed together with the contempt hearing against the alleged *de facto* directors of the company, to which I have made reference in paragraph 8 above.