



Neutral Citation Number: [2021] EWHC 1789 (QB)

Case No: QB-2021-000357

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**MEDIA AND COMMUNICATIONS LIST**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 30 June 2021

**Before :**

**THE HONOURABLE MR JUSTICE MURRAY**

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**Between :**

**BONNIER BOOKS UK GROUP HOLDINGS  
LIMITED**

**Claimant/  
Applicant**

**- and -**

**RICHARD MARCUS JOHNSON**

**Defendant/  
Respondent**

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**Mr Hugh Tomlinson QC and Mr Andrew Smith** (instructed by **Mishcon de Reya LLP**) for  
the **Claimant/Applicant**

The Defendant/Respondent did not attend and was not represented.

Hearing date: 17 June 2021  
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**Approved Judgment**

I direct that copies of this version as handed down may be treated as authentic.

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**THE HONOURABLE MR JUSTICE MURRAY**

**Covid-19 Protocol:** This judgment was handed down remotely by circulation to the parties' representatives by email and release to BAILII. The date and time for hand-down are deemed to be 10:30 am on 30 June 2021.

**Mr Justice Murray :**

1. On 17 June 2021 the following applications were listed before me for hearing:
  - i) the application dated 3 March 2021 (“the First Contempt Application”) of Bonnier Books UK Group Holdings Limited (“Bonnier”), alleging that Mr Richard Marcus Johnson, is in contempt of court for failing to comply with paragraph 7 of the order of Choudhury J dated 31 January 2021 (“the 31 January Order”); and
  - ii) the application dated 6 May 2021 (“the Second Contempt Application” and, together with the First Contempt Application, “the Applications”) of Bonnier alleging that Mr Johnson is in contempt for court for failing to comply with paragraphs 2 and 3 of the order of Collins Rice J dated 25 March 2021 (“the Default Judgment and Injunction Order”).
2. Mr Johnson did not attend the hearing. I decided to proceed in his absence for reasons to which I will turn in a moment.
3. On the basis of the evidence submitted by Bonnier, I was satisfied beyond reasonable doubt that each instance of contempt of court alleged in the Applications had been committed by Mr Johnson.
4. I also accepted that Mr Johnson had belatedly substantially complied with paragraph 7 of the 31 January Order and paragraphs 2 and 3 of the Default Judgment and Injunction Order by filing a short witness statement dated 16 June 2021. There remained, however, the question of what the consequences should be of Mr Johnson’s failure to comply with the 31 January Order for over four months, and his failure to comply with the Default Judgment and Injunction Order for almost three months.
5. Accordingly, I decided to make an order that by a date falling roughly 7 days after the making of the order Mr Johnson was to file a signed written statement, accompanied by a statement of truth, explaining why he failed until 16 June 2021 to comply with paragraph 7 of the 31 January Order and paragraphs 2 and 3 of the Default Judgment and Injunction Order, identifying any relevant mitigating factors or circumstances that he wished to bring to the court’s attention and any evidence he wished to rely on, in particular, in relation to his medical condition/psychological health. The order gave Mr Johnson permission to apply in writing for an extension of time for compliance with paragraph 1 of the order, provided that such application was made before the deadline for compliance. The Court would then consider the consequences of Mr Johnson’s contempt of court and whether a further hearing was necessary or appropriate.
6. At the hearing, I indicated that I would provide my full written reasons for making this order in due course. These are my reasons.

*Proceeding in the absence of the defendant*

7. The Applications were listed before Griffiths J on 10 June 2021. Mr Johnson did not attend the hearing, despite being duly served, as noted by the court on that occasion.

8. On 10 June 2021, Griffiths J made an order (“the 10 June Order”) adjourning the Applications to 17 June 2021, to be reserved to himself, if available, or otherwise to be heard by another judge authorised to sit in the Media and Communications List. In the event, he was not available, and the hearing came on before me.
9. In the 10 June Order, Griffiths J made provision for service of the order by email, dispensing with the need for personal service and reserving costs. He also appended observations, noting that Mr Johnson had by email to Bonnier’s solicitors, Mishcon de Reya LLP (“MdR”), and to the court indicated that he intended to take legal advice and to comply with the orders of the court. He asked for “a week’s grace so that I can fulfil the court’s requirements”. Griffiths J advised Mr Johnson to take legal advice as a matter of urgency, informed him of his right to legal aid and set out helpful passages in that regard from the judgment of Chamberlain J in *All England Lawn Tennis Club v McKay* [2019] EWHC 3065 (QB).
10. Mr Johnson was served with the 10 June Order on 11 June 2021.
11. On the evening of 15 June 2021, MdR wrote to Mr Johnson noting that he had still taken no steps to remedy his breaches of the 31 January Order and the Default Judgment and Injunction Order.
12. On 16 June 2021 Mr Johnson sent emails to MdR and the court attaching a short witness statement dated 16 June 2021, verified by a statement of truth, which reads:

“STATEMENT BY RICHARD JOHNSON

In the matter of my employment with Bonnier Publishing Limited (subsequently Bonnier Group Holdings Ltd) I can confirm there are no third parties that I have disclosed confidential information to either verbally or via documents and I have no property, documents or copies under my possession that relate to my employment with Bonnier Publishing Limited and neither do any third parties under my control.”

13. Mr Johnson did not attend the hearing on 17 June 2021, just as he had failed to attend the prior hearings in these proceedings.
14. I have had regard to the checklist of considerations for a civil court set down by Cobb J, sitting in the Family Division, in *Sanchez v Oboz* [2015] EWHC 235 (Fam) [5]. Cobb J’s checklist was drawn from the list of factors set out in guidance given by the Court of Appeal in *R v Hayward*, *R v Jones*, *R v Purvis* [2001] EWCA Crim 168, [2001] QB 862 (CA) [22] on proceeding with a criminal trial in the absence of a defendant. The list of factors in *R v Hayward* was approved by the House of Lords in *R v Jones (Anthony)* [2003] 1 AC 1 (HL). Cobb J’s checklist has been adopted in subsequent civil cases: see, for example: *Navig8 Chemicals Pool Inc v Nu Tek (HK) Pvt Ltd* [2016] EWHC 1790 (Comm) [28]-[36] (Flaux J); *JSC BTA Bank v Stepanov* [2010] EWHC 794 (Ch) [12] (Roth J); and *JSC BTA Bank v Solodchenko* [2011] EWHC 1613 (Ch) [13] (Briggs J). Each of *Stepanov* and *Solodchenko* involved committal applications. In *Solodchenko* Briggs J made it clear that the court should only deal with

a contempt/committal application in the absence of the respondent in exceptional circumstances.

15. Having regard to the checklist in *Sanchez v Oboz* [5], my conclusions are as follows:
- i) I am satisfied that Mr Johnson was properly served with notice of the hearing on 17 June 2021.
  - ii) Mr Johnson was also properly served with notice of the hearing before Griffiths J on 10 June 2021. He had indicated in correspondence with MdR just prior to that hearing that he could not attend for medical reasons, although to date no medical evidence has been provided.
  - iii) Griffiths J decided to adjourn the hearing listed on 10 June 2021 in order to give Mr Johnson a further week to prepare. The Griffiths J Order was promptly served on Mr Johnson. In those circumstances, Mr Johnson clearly had sufficient notice of the hearing on 17 June 2021.
  - iv) Mr Johnson put forward no reasons for not attending the hearing on 17 June 2021, although it is a reasonable inference that he relied on the same or similar medical reasons to those previously put forward. Mr Johnson has not, however, submitted any medical evidence to support those reasons.
  - v) In the circumstances it seemed highly unlikely that a further adjournment would secure Mr Johnson's attendance.
  - vi) Mr Johnson does not appear to have taken any steps to obtain legal representation, despite the helpful observations of Griffiths J in the 10 June Order. A further adjournment to facilitate his obtaining legal representation did not, therefore, appear to be justified.
  - vii) The breaches alleged against Mr Johnson are clear and straightforward. He has, in effect, admitted them in correspondence and by, belatedly, complying by filing his witness statement with the court on 16 June 2021. Therefore, Mr Johnson would not be at a particular disadvantage in not being able to present his account of events at the hearing as far as the alleged contempts are concerned.
  - viii) Given the history of this matter to date, there would be clear prejudice to Bonnier if this matter were further delayed.
  - ix) It was consistent with the overriding objective, including the obligation to deal with the Applications "expeditiously and fairly", to proceed with the hearing in Mr Johnson's absence.
16. For these reasons, at the hearing on 17 June 2021 I concluded that there were exceptional circumstances justifying proceeding in Mr Johnson's absence.

*Background*

17. Bonnier, formerly known as Bonnier Publishing Limited, is the holding company for several trading publishing companies and a subsidiary of the Swedish company, Bonnier Books AB.
18. Mr Johnson was the former CEO and a former statutory director of Bonnier. His employment commenced on 8 September 2009. Bonnier terminated his employment on 8 March 2018 alleging gross misconduct. Mr Johnson contested his dismissal and threatened claims against Bonnier. That dispute was settled under the terms of a settlement agreement dated 25 July 2018 (“the Settlement Agreement”).
19. By clause 3.1 of the Settlement Agreement Mr Johnson warranted that he had returned all confidential information (as defined in clause 1 of the Settlement Agreement) to Bonnier, all property belonging to Bonnier, and all documents and copies made or compiled by him in the course of his employment.
20. In November 2019 Mr Johnson published on his Instagram account what appeared to be a covertly recorded video of a meeting he had attended on behalf of Bonnier with Sir Bob Geldof. This was subsequently taken down.
21. In September 2020 Bonnier commenced proceedings against its former accountants, Haysmacintyre LLP, alleging that they were negligent in auditing its financial statements (“the Haysmacintyre Claim”). Mr Johnson was not a party to those proceedings, but his alleged misuse of funds and misconduct was detailed in the Particulars of Claim.
22. It appears that the press approached Mr Johnson to comment on the Haysmacintyre Claim. On 30 January 2021 Mr Johnson sent an email to three executives of Bonnier’s parent company (the “30 January Email”). In it Mr Johnson said that:
  - i) he had “taped a lot of conversations with senior people in Bonnier over the years and the conduct and those tapes are as clear as anything. Both audio and video and all my evidence on everything is held remotely”;
  - ii) he had “multiple pieces of evidence which run into over 40GB”; and
  - iii) he had “files I have on the cover up scandal, the accounting policies, the tax evasion and anything else I can find. I have multiple emails, texts, audio tapes, file notes”.
23. In the 30 January Email, Mr Johnson went on to say that he had authorised two people to release this evidence publicly and that, if he received one legal letter, he would immediately release the information. He demanded that Bonnier take steps “within 48 hours” to remove his name from any court document and “to ensure” that he was not mentioned in any press discussion of the Haysmacintyre Claim or he would immediately release his “files” to the press in Sweden and Finland, to the book press in Germany and the UK, to the shareholders of Bonnier and to Haysmacintyre.

*The first injunction application and the 31 January Order*

24. As a result of the threats to disclose information made in the 30 January Email, Bonnier made a without notice application for injunctive relief on Sunday, 31 January 2021. That application was heard by Choudhury J, who made the 31 January Order.

25. Paragraph 7 of the 31 January Order reads:

“7. The Defendant shall, by 6pm on 2 February 2021, file and serve on the Claimant’s solicitors a Witness Statement verified by a Statement of Truth

(a) confirming the identity of each and every third party to whom he has disclosed the Confidential Information stating the nature of the information disclosed and when the disclosure took place.

(b) Identifying the persons to whom he has provided copies of the Files and confirming that they have been deleted by those persons.”

“Confidential Information” is defined in Schedule C to the 31 January Order. “Files” is defined in paragraph 4(c) of the 31 January Order.

26. Paragraph 9 of the 31 January Order permitted service by email. The 31 January Order was served on Mr Johnson by email on the evening of Sunday, 31 January 2021. An attempt was also made, on 2 February 2021, to serve Mr Johnson personally at his residential address, but Mr Johnson did not answer the door.

27. At 11:51 am on 2 February 2021, Mr Johnson sent an email to Mr Erik Haegerstrand, Chief Executive Officer of the Bonnier Group, and Mr Magnus Janson, a director of Bonnier, in which he made various allegations about the historic conduct of Bonnier’s business, referred to his mental health and freedom of speech; and “strongly advise[d]” Bonnier to leave him alone. In that email he referred, for example, to information he had discussed with a previous employee of a group company of Bonnier, and photos he had taken at events organised by Bonnier.

28. At 11:52 am on 2 February 2021, Mr Johnson sent an email to MdR (“the 2 February Email”), in which he claimed to be suffering from post-traumatic stress disorder. In the 2 February Email, he said that:

i) he did not hold anything acquired in relation to his employment with Bonnier “as you [Bonnier] define that”;

ii) no one held any such material for him; and

iii) he did not hold anything that is not already generally in the public domain.

29. He went on to say that:

“... this answers your questions per the court direction. I shall now therefore be ceasing to use this email any longer so you cant harass me.”

30. MdR replied to Mr Johnson via email that afternoon, noting that his response did not satisfy the terms of the 31 January Order and requesting that he:

“... keep this line of communication open in order that we can correspond in relation to these proceedings”.

31. MdR sent a further letter that afternoon to the same email address, reiterating the requirements of the 31 January Order; explaining the consequences of non-compliance; and encouraging Mr Johnson to take legal advice.

32. MdR received a response from Mr Johnson’s email account which stated:

“Hello I no longer use this email address and don’t check the inbox for any received.”

*The return date for the 31 January Order*

33. MdR made attempts to notify Mr Johnson of the return date for the 31 January Order, which was listed on 5 February 2021. Mr Johnson failed to attend that hearing, which proceeded in his absence. At the hearing, Nicol J made an order in Bonnier’s favour (the “5 February Order”):

- i) continuing the prohibitory injunction in the 31 January Order (on slightly modified terms); and
- ii) requiring Mr Johnson to pay Bonnier’s costs in the sum of £35,000, by 19 February 2021.

34. Paragraph 7 of the 5 February Order dispensed with personal service and provided for service by email of any contempt application arising out of the January 31 Order.

*The claim, failure to defend and application for default judgment*

35. On 1 February 2021, Bonnier issued the claim form bringing its claim against Mr Johnson, with Particulars of Claim following on 15 February 2021.

36. Mr Johnson failed to file an acknowledgement of service or Defence to the claim by the deadline of 3 March 2021.

37. On 5 March 2021, Bonnier made an application for default judgment.

38. Bonnier’s application for default judgment was listed before Stacey J on 16 March 2021, however Mr Johnson did not attend and was not represented. Stacey J made an order adjourning the application and transferring the case to the Media and Communications List.

*The First Contempt Application*

39. On 3 March 2021, Bonnier issued the First Contempt Application on the basis of Mr Johnson's continuing failure to comply with his obligations under paragraph 7 of the 31 January Order.

*The 25 March 2021 hearing*

40. On 25 March 2021, the adjourned hearing of Bonnier's application for default judgment took place before Collins Rice J. Mr Johnson again failed to attend the hearing, which proceeded in his absence. Collins Rice J ordered that judgment be entered for Bonnier. Mr Johnson was ordered to pay Bonnier's costs of the claim and the default judgment application, summarily assessed in the total sum of £48,000.
41. Collins Rice J gave a judgment at that hearing and made the Default Judgment and Injunction Order, which included a penal notice. Paragraphs 2 and 3 of that order provide:

“2. The Defendant shall, within 14 days of the date of this Order:

- (a) deliver up to the Claimant all property belonging to the Claimant including any lap top computer or other electronic device in his possession or under his control and file and serve on the Claimant's solicitors a Witness Statement verified by a Statement of Truth confirming that he has complied with this requirement, or, in the alternative
- (b) if he has no such property in his possession or under his control, file and serve on the Claimant's solicitors a Witness Statement verified by a Statement of Truth confirming this.

3. The Defendant shall, within 14 days of the date of this Order:

- (a) deliver up to the Claimant all documents and copies (whether written, printed, electronic, recorded or otherwise and wherever located) made, compiled or acquired by him in the course of his employment with the Claimant relating to the business or affairs of the Claimant or any member of the Group, defined in clause 1 of the Settlement Agreement dated 25 July 2018 ('the Settlement Agreement') as encompassing any subsidiary or parent undertaking of the Claimant, and any subsidiary undertaking of



any such parent undertaking ('the Documents'), in his possession or under his control; and file and serve on the Claimant's solicitors a Witness Statement verified by a Statement of Truth confirming that he has complied with this requirement, or, in the alternative

- (b) if he has no Documents in his possession or under his control, file and serve on the Claimant's solicitors a Witness Statement verified by a Statement of Truth confirming this."

42. In the course of her judgment, Collins Rice J said:

"34. The form of Order proposed by the Claimant, and which I am making today, includes a penal notice, which makes failure to comply with it a potential basis for committal for Contempt of Court, including potential liability to imprisonment, fines and seizure of assets. This is not a formality. It means that, if persisted in, Mr Johnson's failure to engage with these proceedings can lead to his arrest and being made subject to quasi-criminal proceedings and punishment.

35. The Order requires Mr Johnson to take some active steps to account for his dealings with the Claimant's property and information, and to give back any of the Claimant's property, documents in any form (electronic or otherwise) and copy documents, in his hands. Failure to take the steps indicated will expose him to penal sanctions."

43. Of relevance to the Second Contempt Application, paragraphs 7 to 9 of the Default Judgment and Injunction Order provided that service of the Default Judgment and Injunction Order was permitted by email to each of two specified email addresses and/or by leaving a copy in the letter box at a specified address in Chichester and that personal service was dispensed with.

44. On the same day, Collins Rice J made a second order:

- i) adjourning the First Contempt Application, with liberty to restore;
- ii) providing that costs of the First Contempt Application would be costs in the application;
- iii) permitting service of the second order on Mr Johnson on the same terms as in the Default Judgment and Injunction Order; and

- iv) providing that, for the purposes of any contempt application arising out of the Default Judgment and Injunction Order, service could be made on the same terms as in the Default Judgment and Injunction Order, except that only one email address was specified for service.

*The Second Contempt Application*

45. On 6 May 2021, Bonnier issued the Second Contempt Application on the basis of Mr Johnson's continuing failure to comply with his obligations under paragraphs 2 and 3 of the Default Judgment and Injunction Order, the deadline for compliance with which had been 8 April 2021.

*The applicable legal principles*

46. The procedural requirements governing a committal application are set out in CPR Part 81.
47. As to the law that applies to establish that there has been a contempt of court by virtue of the breach of an order, these are summarised by Marcus Smith J in *Absolute Living Developments Limited v DS7 Limited* [2018] EWHC 1717 (Ch) [30]. That case concerned breaches of a freezing order, but the same principles apply in this case. The key principles are:
- i) The order must bear a penal notice and have been personally served on the respondent.
  - ii) The order must be capable of being complied with (in the sense that the time for compliance is in the future), and it must be clear and unambiguous.
  - iii) The breach of the order must have been deliberate, which includes acting in a manner calculated to frustrate the purpose of the order. It is not necessary, however, that the respondent intended to breach the order in the sense that he or she knew the terms of the order and knew that his or her relevant conduct was in breach of the order. It is sufficient that the respondent knew of the order and that his or her conduct was intentional as opposed to inadvertent. See *Spectravest Inc v Aperknit Ltd* [1988] FSR 161 (ChD) 173 (Millet J).
  - iv) A deliberate breach of an order is very significant. It is clearly in the public interest that court orders be obeyed.
  - v) The standard of proof in relation to each allegation that an order has been breached is the criminal standard. The burden of proof is on the applicant to establish an allegation of breach to the criminal standard.
48. In this case, I must, in other words, be sure, beyond reasonable doubt, that:
- i) in relation to the First Contempt Application, Mr Johnson has committed a deliberate breach of paragraph 7 of the 31 January Order; and
  - ii) in relation to the Second Contempt Application, Mr Johnson has committed a deliberate breach of paragraphs 2 and 3 of the Default Judgment and Injunction Order.

49. The burden of proof is on Bonnier to establish to the criminal standard that Mr Johnson has committed the breaches alleged in each of the Applications.
50. Because of the penal consequences of breaching an injunction order with a penal notice attached, the terms of the order must be clear and unequivocal and should be strictly construed. This was emphasised by Lord Clarke in the Supreme Court in *JSC BTA Bank v Ablyazov (No 10)* [2015] UKSC 64, [2015] WLR 4754 (SC) [19], where Lord Clarke approved a statement to this effect in the Court of Appeal's decision in the same case: [2013] EWCA Civ 928, [2014] 1 WLR 1414 (CA) [37] (Beatson LJ).

*The evidence reviewed*

51. In relation to the First Contempt Application, I reviewed:
  - i) the Affidavit dated 2 March 2021 of Mr Daniel Naftalin, a partner and solicitor at Mdr;
  - ii) the Second Affidavit dated 19 March 2021 of Mr Naftalin; and
  - iii) the Affidavit dated 19 March 2021 of Mr Cesar Sepulveda, a process server acting under the direction of Mdr.
52. In relation to the Second Contempt Application, I reviewed:
  - i) the Third Affidavit dated 5 May 2021 of Mr Naftalin;
  - ii) the Third Affidavit dated 21 May 2021 of Mr Sepulveda;
  - iii) the Fourth Affidavit dated 27 May 2021 of Mr Sepulveda; and
  - iv) the Fourth Affidavit dated 1 June 2021 of Mr Naftalin.
53. I have also had the benefit of a hearing bundle prepared for the hearing before Griffiths J on 10 June 2021 and a supplemental bundle prepared for the hearing 17 June 2021, which collectively include the various affidavits referred to at [51]-[52] above, the claim form, particulars of claim, various orders, the Applications, costs statements, the Fifth Affidavit dated 3 June 2021 of Mr Sepulveda, and correspondence.
54. I have also reviewed Mr Johnson's witness statement dated 16 June 2021. He has filed no other evidence in relation to the Applications.

*Conclusions*

55. I am satisfied on the basis of the evidence and other documents that I have reviewed that the requirements of CPR r 81.4 have been complied with in relation to each Application.
56. I am also satisfied beyond reasonable doubt on the basis of the evidence I have reviewed of the following:
  - i) Mr Johnson failed to serve a witness statement, verified by a statement of truth, addressing the matters specified in paragraph 7 of the 31 January Order,

by the 6:00 pm deadline on 2 February 2021. In fact, he served no witness statement in these proceedings prior to his witness statement dated 16 June 2021. He was therefore in breach of paragraph 7 of the 31 January Order until 16 June 2021.

- ii) Mr Johnson also failed to:
  - a) deliver up Bonnier's property or provide a witness statement, verified by a statement of truth, that he had no such property by 8 April 2021; and
  - b) deliver up any documents relating to the business of the Bonnier Group that he had acquired during the course of his employment or provide a witness statement, verified by a statement of truth, that he had no such documents by 8 April 2021.
- iii) He was therefore in breach of paragraphs 2 and 3 of the Default Judgment and Injunction Order, until he belatedly substantially complied with paragraphs 2 and 3 of the Default Judgment and Injunction Order by providing his witness statement of 16 June 2021.

57. Mr Johnson has not put forward any justification for his failure to comply with paragraph 7 of the 31 January Order and paragraphs 2 and 3 of the Default Judgment and Injunction Order prior to 16 June 2021. He has not provided any evidence in relation to the Applications, other than the witness statement of 16 June 2021. Nor has he provided any other evidence, for example, medical evidence in support of his reasons for not attending any of the hearings to which I have referred during the course of this judgment.

#### *Costs*

58. Bonnier sought its costs of each Application, to which it was clearly entitled on normal principles. Having reviewed Bonnier's costs statements, I summarily assessed its costs of the First Contempt Application in the sum of £26,505 and its costs of the Second Contempt Application in the sum of £41,298, each amount to be paid within 14 days of the date of my order of 23 June 2021.

#### *Conclusion*

59. For these reasons, on 23 June 2021 I made the order summarised at [5] above.