

UPDATE

Contempt of court: litigation is not a game

Update prepared by Sally French (Senior Associate, Guernsey)

When it comes to the imposition of sanctions for non-compliance, the Royal Court of Guernsey is not bound by overly prescriptive rules; rather it acts to further the overriding objective, which is to deal with cases justly. Flexible it may be, but the Royal Court is no soft touch. Litigants who consistently and flagrantly flout the Royal Court's orders can be expected to be held to account. This was made abundantly clear in the recent committal ordered in the civil action of *Invescap Holdings Limited v Lee Douglass* (judgment 20 February 2015).

Facts

Mr Douglass was a former director of Invescap. Invescap brought proceedings against Mr Douglass in respect of a number of breaches of his contractual and fiduciary duties committed while he held that office.

On 21 December 2012, Invescap obtained the freezing order (**Freezing Order**) against Mr Douglass over his assets, including two motor vehicles, a Ferrari and a Range Rover. Despite acknowledging receipt of the Freezing Order, Mr Douglass subsequently removed both the Ferrari and the Range Rover from Guernsey.

The Law

The Freezing Order was granted pursuant to section 1 of the Law Reform (Miscellaneous Provisions) (Guernsey) Law 1987 (the **Law**). Section 1(4) of the Law provides that a person who fails to comply with an injunction is guilty of contempt of court.

Section 1(5) of the Law provides that the Royal Court may grant an injunction subject to such penalty as may be specified, and if the respondent contravenes or fails to comply with the injunction, the penalty shall be enforceable against him.

The Freezing Order set out in clear terms the penalties, including imprisonment, which could be imposed if the Freezing Order was disobeyed.

In accordance with Section 1(5) of the Law, the Royal Court had the power to enforce the specified penalty. It was therefore within the discretion of the Royal Court to order the Defendant to pay a fine, to order that his assets be seized, and/or to sentence him to a term of imprisonment.

The Decisions

On 6 February 2015, the Royal Court found as a fact beyond reasonable doubt that Mr Douglass had breached the Freezing Order by removing the Ferrari and the Range Rover from Guernsey. By the Court's order of the same date, Mr Douglass was allowed a further opportunity to purge his contempt by delivering up the vehicles. He was also afforded the opportunity to adduce evidence before sentencing on the matter.

The matter returned before the Royal Court on 20 February 2015. Mr Douglass was not present and had declined to either purge his contempt or submit evidence regarding the contempt. Deputy Bailiff McMahon

therefore proceeded to sentence Mr Douglass to a term of imprisonment for 12 months, with six months of the sentence to be punitive and six months coercive.

In his judgment, the Deputy Bailiff noted the absence of Guernsey authorities on contempt, and had regard to English guidance.

The Deputy Bailiff in particular quoted with approval paragraph 170 of the judgment of Rix LJ in the Court of Appeal decision in *JSC BTA Bank v Ablyazov (No 8)*.¹

'Litigation is not a game, but I may perhaps use the metaphor of 'playing by the rules'. If an adjudged contemnor is able, whatever the circumstances, to hold an order for committal at nought and yet at the same time demand that the litigation continue as though nothing had happened, because the court is powerless to say that the fugitive contemnor should face up to his responsibilities by surrendering to custody and should do so as a condition of being able to continue with the litigation, then the utility of the contempt of court procedure can be destroyed and a significant factor in the checks and balances which operate in the field of civil litigation is lost.'

Conclusion

This decision serves as a useful reminder that the Royal Court is not to be trifled with. The Court can and will make orders for committal and pass considerable sentences when the circumstances warrant it.

Parties may also draw useful guidance from the March 2015 decision of the English High Court in *Otkritie International Investment & Ord v Gersamia & Anor*.² The case contains a helpful summary, at Appendix 1 of the Judgment, of principles on sentencing in contempt matters.

Though in Guernsey, as in England, it is to be remembered that contempt sentences are fact specific and the Courts have no formal guidelines,³ it remains paramount to abide by the Court's orders.

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¹ [2012] EWCA Civ 1411.

² [2015] EWHC 821 (Comm).

³ As noted at point 7 of Appendix 1 to the Otkritie judgment, with reference to *Shah v Patel* [2008] EWHC 1360 (Ch).

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