Neutral Citation Number: [2020] EWHC 1868 (Ch)

Case No: CR 2018 006183

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)

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

Date: 13 July 2020

Before :

HHJ JOHNS QC
Sitting as a Judge of the High Court

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Between :

(1) PAUL ATKINSON & GLYN MUMMERY (as joint liquidators of Grosvenor Property Developers Limited)
(2) GROSVENOR PROPERTY DEVELOPERS LIMITED (in liquidation) — **Applicants**

- and -

(1) SANJIV VARMA
(2) ARJUN KHADKA
(3) GROSVENOR CONSULTANTS FZE
(4) SIDDHANT VARMA
(5) JONATHAN ENGLAND — **Respondents**

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MR RORY BROWN and MR ANDREW SHIPLEY (instructed by **Gunnercooke LLP**) for the **Applicants**
MR JAMES LEONARD (instructed by **Janes Solicitors**) for the **First Respondent**

Hearing dates: 9-12 June 2020

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JUDGMENT

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 2 pm on 13 July 2020.

HHJ JOHNS QC:

1. This is my judgment following the substantive hearing of an application to commit Mr Sanjiv Varma to prison for contempt of court. The alleged acts of contempt are extensive, being set out over 20 pages attached to an application notice of 9 September 2019. They arise out of insolvency proceedings concerning Grosvenor Property Developers Limited ("the Company"). The applicants are the Company and its liquidators Paul Atkinson and Glyn Mummery. They complain that, among other things, Mr Varma has breached an order for disclosure of assets made as part of a freezing order. And that he has made false written statements about what was done with the Company's money.

Background

2. I start with some background.

3. The apparent purpose of the Company was the acquisition of the Grosvenor Hotel in Bristol, its redevelopment to form studio flats to be used as student accommodation, and the sale of those units. Around £7m was paid to the Company by investors. But the hotel was never acquired by the Company, no planning permission was obtained or even applied for, and little or no work was done to the hotel.

4. The Company went into compulsory liquidation by order made on 14 November 2018 and the liquidators were appointed on 6 December 2018.

5. There was an interview with Mr Varma on 27 February 2019 by Mr Russell Herbert for the liquidators. Mr Varma told Mr Herbert that while the registered

shareholder of the Company had been Jonathan England, the true owner was a Mr Maneet Singh. Mr Varma said his own role was that of consultant to the Company and he would produce the consultancy agreement. On the topic of payment by the Company of around £3m to a Dubai registered company, Grosvenor Consultants FZE ("GCFZE"), he said that this related to investment by the Company in diamonds and jewellery.

6. There was then an application by the liquidators dated 27 March 2019 ("the Main Application") for a private examination under s.236 of the Insolvency Act 1986 and for delivery up of company property under s.234. An order was made on the Main Application by ICC Judge Jones on 2 April 2019. That order required the attendance of Mr Varma at a private examination at 2pm on 16 April 2019. It also required the delivery up by Mr Varma by 4pm on 12 April 2019 of all documents belonging to the Company and all documents giving information concerning his dealings with the Company or its property during the period from 16 December 2016 to 14 November 2018. Further, directions were given for points of claim, points of defence and points of reply. The time for delivery up of documents was later extended to 4pm on 15 April 2019.

7. Mr Varma failed to attend the examination on 16 April. The circumstances of that failure I will need to examine later. As to documents, he delivered up only a few, his then solicitors Edwin Coe LLP sending to the liquidators by email on 6 May 2019 5 documents comprising a total of 9 pages. The documents included a "business consultancy agreement" dated 19 December 2016 made between Mr Varma and the Company, an invoice dated 27 June 2017 from GCFZE to the Company in the sum of £4.95m for 9 listed items of jewellery, and a written

agreement dated 11 June 2018 between the Company and GCFZE entitled "Settlement, Receipt, Release and Discharge" ("the Settlement Agreement"). The Settlement Agreement includes recitals that the Company has asserted claims against GCFZE, that the parties wish to settle the claims, and that the Company accepts receipt of assets listed in a schedule in settlement. The assets listed in the schedule are the items of jewellery referred to in the earlier invoice.

8. In the meantime, on 1 May 2019 Birss J had made a worldwide freezing order against Mr Varma. GCFZE was also a party to the order. It was made on the liquidators' application without notice. It restrained the removal or disposal of or dealing with assets up to the value of £3.25m. In addition to the familiar provisions of a freezing order, including requiring information to be given as to assets, there was an order for delivery up by Mr Varma of his passport.

9. As to information on assets, by emails of 5 May 2019 from Mr Varma and his solicitors, the liquidators were told that GCFZE had bank accounts the exact balance of which could not be stated but which was thought to be £2500 - £3500, and that the sole asset of Mr Varma that may qualify for disclosure was his shareholding in My Casa PBSA Ltd. The value of this was said to depend on netting off liabilities in that company and may amount to £14,000. The information as to Mr Varma's assets was later confirmed by his affidavit of 7 May 2019. That affidavit also recorded that he was the sole owner of GCFZE ("I am the beneficial owner of it") but that such asset was believed to be of notional value only.

10. The passport was delivered up on 7 May 2019 in a sealed envelope. It remains in the envelope. A video clip taken by Mr Varma's then solicitors of them

inserting the passport into the envelope reveals that some pages of the passport are not whole, having had a portion torn off them.

11. The freezing order was continued by Falk J on the return date of 15 May 209. It is plain from the recitals to the order that she considered Mr Varma and GCFZE in breach of the 1 May 2019 order. She ordered that Mr Varma file and serve a further affidavit by 4pm on 16 May 2019 giving true, full, and accurate answers to a list of questions scheduled to an affidavit of Mr Atkinson.

12. Mr Varma did file and serve an affidavit on 16 May 2019. There is a dispute as to whether the answers it gives are true, full and accurate.

13. Directions on the Main Application were given by Chief ICC Judge Briggs on 4 June 2019. Permission to amend was given to make additional claims against Mr Varma and there was an order for joinder of further respondents including GCFZE and Mr Varma's son, Siddhant Varma. The other respondents were to file points of defence by 2 July 2019.

14. Given the claims now being made, the private examination was adjourned generally by order of 13 June 2019. ICC Judge Mullen also made an order for costs against Mr Varma on that occasion on the basis that he did not have a genuine reason for failing to attend the private examination on 16 April 2019.

15. In the meantime, the liquidators had obtained information from Kennedys (former solicitors for the Company) as to payment of Company money including to an account in Mr Varma's name at Emirates NBD Bank.

16. There was then an application by the liquidators for Mr Varma to attend for cross examination. Following a 2-day hearing, Mr Adam Johnson QC, sitting as

a Deputy High Court Judge, made such an order on 3 July 2019 in aid of the freezing order. It is apparent from the transcript of his judgment and the recitals to his order, that he did so on the basis that Mr Varma had failed to comply with the 1 May 2019 and 15 May 2019 orders. He further ordered that Mr Varma must by 4pm on 11 July 2019 send by email and special delivery a signed letter of instruction to Emirates NBD Bank (where GCFZE holds an account) instructing it to disclose GCFZE's bank statements to the liquidators. Mr Varma had previously refused consent for the liquidators to contact the bank to obtain information on GCFZE's account.

17. On 12 July 2019, an unless order was made on the Main Application. Mr Varma would be debarred from defending the Main Application if he failed to serve points of defence by 2 August 2019.

18. The cross examination ordered by Mr Adam Johnson QC took place before Mr Hochhauser QC, sitting as a Deputy High Court Judge, on 26 July 2019. And it was on the occasion of that cross examination that Mr Varma handed over the signed letter of instruction ordered by Mr Adam Johnson QC. By then, an application by Mr Varma to the Court of Appeal for permission to appeal the 3 July 2019 order and for a stay had been dismissed.

19. In light of the answers given by Mr Varma during cross examination, Mr Hochhauser QC made on 26 July 2019 an order that Mr Varma provide by 4pm on 30 July 2019 copies of the documents listed in schedule A to his order. Among the liquidators' complaints on this application for committal, is an alleged failure by Mr Varma to provide the documents listed at paragraph 8 of schedule A following that order, being documentary evidence showing what

happened to the proceeds of the sale of Flat 54, 49 Hallam Street, Marylebone, London W1W 6JW in about June 2019 ("Hallam Street").

20. Significantly for Mr Varma's defence of this committal application, there was also a Schedule B to Mr Hochhauser QC's order, being a list of documents which Mr Varma undertook to provide copies of within 72 hours of his entry into the United Arab Emirates. Mr Varma says these documents are held in a fingerprint lock safe in Dubai. They include the "option agreement and any other documents associated to the transaction pursuant to which he invested £8.75m and lost all of his personal wealth in Q3 and Q4 of 2018", the "deed of gift or contract pursuant to which Mr Varma transferred diamonds and jewellery in GCFZE", and a non-disclosure agreement with "silent shareholders" in GCFZE.

21. Mr Hochhauser QC made a further order on 1 August 2019 for Mr Varma to sign and return authority letters to Portners Law (the conveyancing solicitors for Hallam Street), Singhania & Co Limited (other lawyers acting for My Casa PBSA Limited) and Metrobank. The liquidators complain that these letters were provided only on 15 August 2019. That order also added further categories of document to the schedule B list, including a document setting out contact details for the silent shareholders in GCFZE, now named as Bilal Ahmed and Suresh Kumar. The order further provided for the return of Mr Varma's passport if he complied with the order.

22. On 7 August 2019 the liquidators obtained a freezing order against Mr Varma in Dubai. That order was made by the Dubai International Financial Centre Courts and included an order against Emirates NBD Bank for production to the

liquidators of the bank statements for GCFZE's and Mr Varma's accounts. It was by this means that those statements were obtained.

23. This application for committal was made by application notice of 9 September 2019. The application included allegations of making false statements verified by a statement of truth. To that extent permission was required (see CPR 81.17). That permission was given on 11 September 2019 by Falk J. She also gave directions for evidence. Mr Varma was to serve any evidence by 29 November 2019. He made an affidavit dated 21 November 2019 as part of defending this application.

24. Further on 11 September 2019, Falk J dismissed an application for the return to Mr Varma of his passport. By virtue of her decision, it is being held by the liquidators' solicitors pending the determination of these committal proceedings.

25. Since the making of the application for committal, the claims in the Main Application have been determined as against Mr Varma by Deputy ICC Judge Agnello QC. She heard an application for judgment over 3 days (19 November 2019, 20 January 2020, and 2 April 2020) and handed down a written judgment on 13 May 2020. She ordered the payment by Mr Varma of sums of £1,361,315.61 and £3,122,841.75 representing equitable compensation for breach of duty as a de facto director of the Company. She also ordered the payment of interest and costs. It is right to note that Mr Varma was debarred from defending that hearing of the Main Application and that the relevant standard of proof was the balance of probabilities.

26. On the following day, being 14 May 2020, on the application of Mr Varma, Fancourt J adjourned the then imminent hearing of this committal application to the week beginning 8 June 2020 in view of Mr Varma's suggestion that he may have contracted Covid-19.

The hearing

27. The trial of the committal application was arranged as a remote hearing by Skype for Business. Neither side objected to that course and cooperated to make sure the hearing was effective. I thank them for that cooperation. The hearing was public and was attended remotely by members of the press and media.

28. Mr Brown of counsel appeared for the liquidators, as he had done on previous occasions. Mr Varma was very well represented by Mr Leonard of counsel.

29. I was particularly alive to ensuring the hearing was fair given the use of technology. While there was one early teething issue, with the picture of Mr Brown freezing on occasion, Mr Leonard confirmed (being in separate contact with Mr Varma) that there were no problems with the technology before we began evidence on the first day. There were a few occasions on the first day in which Mr Leonard dropped out of the skype connection. But he very quickly rejoined and, on doing so, identified the point at which he had left and I was able to ensure nothing was missed by him. Each day brought some momentary sound interruptions. But they represented only a departure from the ideal. There was no real impairment of the giving or hearing of the evidence.

30. As to evidence, Mr Gray, solicitor for the liquidators, gave oral evidence. He was subject to suitably brief cross examination by Mr Leonard for Mr Varma.

31. I heard extensively from Mr Varma. He gave evidence over 3 days. He did so fully aware of his right to remain silent and that such carried with it the right not to go into the witness box. I established with Mr Leonard at the outset of the hearing that Mr Varma had been advised of that right. And I reminded Mr Varma of it before he was sworn. Mr Varma was also reminded of his separate privilege against self-incrimination before giving evidence. Throughout his evidence I gave him frequent short breaks of around 10 minutes each in view of his underlying health conditions and as requested at the outset for him by Mr Leonard.

32. There were included in the hearing bundle witness statements of three other witnesses. I have regard to those. But as hearsay evidence only. The makers did not attend to give oral evidence.

33. The listed days were used for opening and evidence. I acceded on the first day of the hearing to what became a joint request to have written closing submissions. Mr Brown wanted that course in order to avoid being cut short in his cross examination of Mr Varma. Mr Leonard wanted that course so that he could see the submissions for the applicants before formulating his submissions for Mr Varma.

34. Mr Brown filed his submissions on 15 June 2020, being the Monday following the hearing, and Mr Leonard did so on 18 June 2020.

35. Mr Varma's team also sent in some further documents concerning an apparent claim for possession of The Penthouse, 130 Park Lane. The solicitors for the applicants do not object to me having regard to these but say I should give them no weight.

Legal framework

36. It is important in any application for committal to be clear about the nature of contempt liability alleged to have been incurred. I accordingly clarified with Mr Brown the foundations of the alleged liability in this case in opening. He made clear they were breaches of order and false statements in documents verified by a statement of truth. While there were references in his skeleton argument and the evidence to fabricated documents and answers given by Mr Varma in cross examination, these were not put forward as amounting to any alleged contempt with a different foundation such as interference with due administration of justice (see CPR 81.12). Rather they were relied on as part of the case that there had been breaches of order.

37. I did not understand the following principles to be in dispute:

(1) The applicants may not, without permission, rely on any grounds of contempt other than those set out in the application notice – see CPR 81.28.

(2) In order to establish that a respondent is in contempt of court through disobedience of a court order, it is necessary to establish the following to the criminal standard of proof:

(a) That the respondent knew the terms of the relevant order;

(b) That he acted (or failed to act) in a manner which involved a breach of the order, and

(c) That he knew of the facts which made his conduct a breach

- see *Grant & Mumford, Civil Fraud – Law, Practice & Procedure,1st Ed.* at 35-005.

(4) By CPR 81.9 a judgment or order to do or not do an act may not be enforced by committal unless there is prominently displayed, on the front of the copy of the judgment or order, what is known as a penal notice, being a warning to the person required to do or not do the act in question that disobedience to the order would be a contempt of court punishable by imprisonment, a fine or sequestration of assets.

(5) That requirement for a penal notice may be dispensed with where the lack of such a notice has caused no injustice to the respondent – see CPR PD 81 at 16.2 and *Grant & Mumford, Civil Fraud – Law, Practice & Procedure,1st Ed.* at 35-015 & 35-016.

(6) There may also be liability in contempt for making a false statement in a document verified by a statement of truth as CPR 32.14 (and CPR 81.17 & CPR 81.18) makes clear:

"32.14—(1) Proceedings for contempt of court may be brought against a person if he makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth."

I note that CPR 32.14 applies to witness statements made under the Insolvency Rules 2016 – see IR 12.1(3).

(7) In order to establish that a respondent is in contempt of court by making a false statement in a document verified by a statement of truth, it is necessary to establish beyond reasonable doubt (1) that the statement in question was false,

(2) that the statement has, or if persisted in would be likely to have, interfered with the course of justice in some material respect, and (3) that at the time it was made the maker of the statement (a) had no honest belief in the truth of the statement and (b) knew of its likelihood to interfere with the course of justice – see *White Book 2020* at 3C-11.

38. Two other points:

(1) Some of the alleged false statements said to amount to contempts in this case are in fact contained in affidavits rather than witness statements. There is no doubt that knowingly swearing a false affidavit may also be a ground of contempt but it appears this is outside the scope of CPR 32.14 and CPR 81.17 – see the notes in the *White Book 2020* at 3C-11. There was no suggestion for Mr Varma that this point offered any answer to these grounds of contempt; indeed, it means that permission to bring the application on these grounds was probably unnecessary. Both sides approached the allegedly false statements in the affidavits in the same way as though they had been in witness statements. I will therefore adopt the same course.

(2) Additionally, it was common ground that the court may have regard to judgments given in the course of these wider proceedings but that they are part only of the material. It seems to me Mr Leonard is right that I should give judgments in this case limited weight. Not only was any burden of proof different, there has been no contested trial and so no findings of fact made after hearing all the evidence.

<u>The jewellery and diamonds deal</u>

39. Before going through each of the other contempt allegations in turn in the order in which they are raised by the application notice, I propose to deal first with one of the alleged false statements because it raises a question of fact which is at the core of Mr Varma's story about dealings with the Company money. The alleged false statement is the statement in his affidavit of 16 May 2019 that the funds of approximately £3.1m paid to GCFZE "were paid against sale of jewellery and diamonds to the company". The figure represents the total of a series of payments made to GCFZE out of Company money between June and October 2017. It is one of the two sums for which Deputy ICC Judge Agnello QC entered judgment. The other sum for which she entered judgment included £925,000 paid direct on 1 July 2017 to Mr Varma from the Company's funds held in Kennedys' client account. Mr Varma says this too was payment for the jewellery and diamonds. The liquidators say that there was no such deal. This was a straight misappropriation of the Company's money.

40. The key issue for me given that this is a committal application, is whether I am satisfied beyond a reasonable doubt that this part of Mr Varma's story is untruthful.

41. I have reached the firm conclusion that it is untrue. The Company money was not spent on jewellery and diamonds. My reasons are these.

42. First, there is a commercial improbability to the transaction. The apparent purpose of the Company and the reason for the payments to it by investors was the acquisition and redevelopment of the Grosvenor Hotel into student apartments. Substantial deposits were taken from prospective apartment purchasers with a view to completing sales in 2017 or, at the latest in 2018. The

sample contract in the hearing bundle was dated 8 August 2017 and stipulated an intended completion date of 8 September 2017 with a long stop date of 30 September 2018 after which the contract could be rescinded and the deposit would be repaid; the deposit being £49,500 against an apartment purchase price of £99,000. It is inherently improbable, assuming as I do in Mr Varma's favour that the apparent purpose of the Company was its real purpose, that the Company would decide in the middle of 2017 to turn its cash, which would be needed either to pursue the project or repay purchasers, into jewellery and gem stones.

43. Second, there is no real evidence of the existence of the jewellery and diamonds. These items have certainly not been produced to the liquidators to help repay creditors. There are not even photographs of them. I was told that photographs have been taken of them by or for Mr Maneet Singh and Mr Arjun Khadka. But no such photographs have been produced and Mr Varma did not even give clear evidence that he has sought them from Mr Singh or Mr Khadka; even with his liberty at stake. There is no record of insurance for the valuables, despite them apparently being worth £4.95m. There are only, by way of documents, the invoice of 27 June 2017 and the Settlement Agreement. But I found myself unable to place any reliance on those for reasons I will explain.

44. Third, the explanation of the payment of £3.1 million to GCFZE as being for jewellery and diamonds relies on or is at least linked to the same explanation for the payment of £925,000 made direct to Mr Varma out of Company money. Mr Varma told me (as he had earlier told Mr Hochhauser QC) that this sum was paid to him as part of the diamonds and jewellery transaction. But that is not the

reason for the payment of £925,000 put forward in the documents. The documents in the hearing bundle included an invoice dated 25 June 2017 in the sum of £925,000 from Mr Varma to the Company for "Commission for sale of units at the Grosvenor – Bristol", and an email of 27 June 2017 from Mr Varma to Kennedys directing payment of the sum of £925,000 to GCFZE with the explanation that "they are the main contractors for the Bristol development and this payment is against their invoice for the works". The conclusion I reach is that there is no legitimate purpose for payment of the sum of £925,000, but rather a series of different pretended bases of which payment in respect of jewellery and diamonds is just one. That is a further strong indicator that the payment to GCFZE of £3.1m was not in respect of diamonds and jewellery either. And it means the invoice of 27 June 2017 lacks any credibility.

45. Fourth, the decision to buy the jewellery and diamonds is said by Mr Varma to have been a decision of Mr Maneet Singh as the true owner and controller of the Company. But I am sure that there was no involvement of a Mr Singh in the Company. There is no reference to such a person in the exchanges between Mr Varma and Kennedys (the Company's solicitors on the Bristol project), no one has been able to contact such a person, and the registered shareholder Mr England emailed Kennedys on 27 January 2017 to say that Mr Varma was the beneficial owner of the Company. Like Deputy ICC Judge Agnello QC, I do not ignore the fact that there are 2 letters purportedly from Mr Singh but conclude that the evidence overall does not support the involvement or even the existence of such a person. I also do not ignore the fact that Mr England (the Fifth Respondent) has filed Points of Defence referring to a Mr Singh and to letters from Mr Singh, but Mr England has given no evidence for Mr Varma in these

committal proceedings and the contemporary document, being his email to Kennedys of 27 January 2017, makes clear Mr Varma rather than a Mr Singh is the owner.

46. Fifth, the Settlement Agreement is a very odd document. While it lists the diamonds and jewellery in a schedule, it does not fit the suggested circumstances. It speaks not of a sale but of claims being asserted by the Company against GCFZE. Further, it is purportedly entered into on 11 June 2018 in Mumbai, India. But the evidence indicates that Mr Varma was in London then. His bank statements appear to show expenditure at Mayfair Walk Doctors on 12 June 2018. He confirmed in cross examination that that was his spending, not that of someone else to whom he might have loaned his bank card. The Settlement Agreement has, as I find, been created to make pursuit of the Company money more difficult. It is not reliable evidence of a jewellery sale. I should add that I do not ignore the late witness statement of Vinay Varma, Mr Varma's brother, by which he says, among other things, that he accompanied Mr Varma to the notary's office on 11 June 2018 and had earlier showed the jewels to Mr Khadka. But Vinay Varma did not attend to give evidence with no good reason for that failure offered, the witness statement came very late with no good reason for that lateness given, and if the statement is indeed of Vinay Varma he would have a strong incentive to help his brother at this time by saying whatever seemed to be necessary. Given all that, I gave it little or no weight. Nor do I ignore the late witness statement of Niyanta Bhoir in which she says that she used Mr Varma's bank card in the UK in May and June of 2018. But again, the witness statement is very late, the witness did not attend, and she is (according to the witness statement) a family friend. In any event, Mr Varma

accepted that the spending at Mayfair Walk Doctors was his. Again, I give this statement little or no weight.

47. Sixth, while Mr Varma claims there is a relevant document, namely a "deed of gift or contract pursuant to which Mr Varma transferred diamonds and jewellery in GCFZE" stored in a fingerprint lock safe in Dubai, he adduced no evidence of the existence of such a safe and the safe is an obviously convenient suggestion. The absence of evidence of the existence of the safe is particularly notable in circumstances where the liquidators highlighted that absence in plenty of time for Mr Varma to remedy it, namely in Mr Gray's second affidavit of 13 December 2019. The other points I have outlined lead clearly to the conclusion that there is no such deed or contract. Further, as will be apparent from subsequent findings, had other documents said to be in this safe truly existed then copies would have been provided to the liquidators by Mr Varma from other sources. There is the yet further point that Mr Varma did produce such documents as he did give to the liquidators, including the Settlement Agreement, without visiting Dubai. Accordingly, as I find, there is no fingerprint lock safe in Dubai containing this and other exonerating documents.

48. Seventh, Deputy ICC Judge Agnello QC decided that the sum of £3.1m was not paid in respect of jewellery and diamonds. While this is material I have regard to, I give it only limited weight in circumstances where Mr Varma was debarred from defending and I must apply a higher standard of proof, namely the criminal standard of beyond reasonable doubt.

49. But applying that higher standard of proof and for the reasons I have given, I find that the statement by Mr Varma in his affidavit of 16 May 2019 that the

funds of approximately £3.1m paid to GCFZE "were paid against sale of jewellery and diamonds to the company" is false. It also follows from my reasoning that he cannot have had an honest belief in its truth.

50. I add and make clear that I take full account, as I must, in arriving at these findings, of Mr Varma's inability to travel to Dubai since 7 May 2019. But that does not give rise to a reasonable doubt. It is clear to me from the evidence, as I have said, that there is no cache of exculpatory documents in a fingerprint lock safe in Dubai.

51. I address later in this judgment the further question of interference with justice which falls to be considered where there are false statements.

52. I turn now to deal with the other contempt allegations, beginning with the allegation of breaches of the 2 April 2019 order.

Breach of orders

53. There was no issue between the two sides as to service or notification of the orders which the liquidators say were breached. Rather, Mr Leonard's submission was that it had not been shown to the criminal standard of proof that Mr Varma had acted or failed to act in breach of any order. Further, he argued that for those orders which did not include a penal notice, the court should not be satisfied there was no injustice to Mr Varma and so should not dispense with the requirement for such a notice.

Failure to deliver documents to the liquidators' solicitors as required by the order of 2 April 2019

54. The 2 April 2019 order included this at paragraph 5:

> "Pursuant to s234, Insolvency Act 1986, by no later than 4pm on 12 April 2019, the Respondent shall deliver to the Applicant's solicitors electronically or by hard copy, as he chooses, the originals or copies (as appropriate) of all documents belonging to the Company and all documents giving information concerning his dealings with the Company or its property during the period from 16 December 2016 to 14 November 2018, which are in his possession or under his control, wherever they may be situated, subject to the following:
>
> i. in the event that such disclosure is impracticable or otherwise is not possible, he shall identify to the best of his ability the relevant documents/category of documents which cannot be disclosed as above and explain the reason why he cannot produce them within a witness statement to be served by 4pm on 12 April 2019;
>
> ii. there is no obligation on the Respondent under this order to produce any documents which are the subject of legal privilege, whether his own or a third party's (unless it is the Company's), subject to any express waiver of that privilege, but if documents are not produced for this reason he shall in the same witness statement referred to in the forgoing sub-paragraph explain that he is not producing documents, which he may describe by category, for that reason and shall specify who is claiming any legal privilege;
>
> iii. for the avoidance of doubt, he will not be in breach of this order should he genuinely forget about or otherwise not appreciate that any document is within the description above and/or is within his possession or control."

55. Time for compliance with paragraph 5 of the order was extended by ICC Judge Barber on 12 April 2019 to 4pm on 15 April 2019.

56. Was there a breach of this order? The complaint is not only as to the timing of the delivery up of documents but that not all documents were delivered up. Mr Varma in fact delivered up very little under this order. His solicitors, Edwin Coe, sent to the liquidators by email on 6 May 2019, 5 documents comprising a total of 9 pages including the invoice dated 27 June 2017 from GCFZE to the Company in the sum of £4.95m for jewellery, and the Settlement Agreement.

57. Having heard the evidence, I am satisfied so as to be sure that this modest collection of documents does not comprise all that Mr Varma had and was aware of within the scope of the order.

58. The paucity of documents provided only begins to be explicable if two statements of Mr Varma are true, namely that a Mr Maneet Singh rather than Mr Varma owned and controlled the Company, and that Mr Varma has no electronic documents because he deletes all irrelevant emails at the turn of each calendar year and he threw out his laptop in around January 2019 as the screen went blank.

59. But I do not believe either statement. I have already indicated that the evidence does not support any involvement of a Mr Singh. As to the unavailability of any electronic documents, the throwing out of the laptop and the deletion of all emails relating to the Company are, certainly taken together with the unreality of Mr Singh's involvement and the fact there was no jewellery and diamonds deal, too convenient to be credible.

60. It follows that there was a breach of this order, both in failing to deliver up documents by 15 April and in failing to deliver up all the documents within the scope of the order. It is a consequence of the breach that it is impossible to be precise about the extent of the failure to deliver up documents in accordance with the order.

61. However, neither the 2 April 2019 order nor the order extending time for compliance contained a penal notice.

62. Mr Brown submits that does no injustice to Mr Varma. Among his points are that Mr Varma was legally represented at the time of 2 April 2019 order, that the order provided for evidence under s.236 to be given on oath, and that s.236 of the Insolvency Act 1986 emphasises the importance of obedience to an order under s.236 by providing for an arrest warrant if there is a failure to attend without reasonable excuse.

63. I have decided that the requirement of a penal notice should not be dispensed with in the circumstances of this case. While the fact Mr Varma was represented is a factor in favour of dispensation, there is no evidence that his solicitors informed Mr Varma that contempt could be a consequence of disobeying this order. It is not said that the liquidators or their solicitors did so, as they could have done when serving the order. And Mr Brown's points concerning s.236 do not help with this part of the 2 April 2019 order, which was made under s.234 of the Insolvency Act 1986.

64. The lack of a penal notice therefore means that I do not find this ground for committal made out, despite determining that Mr Varma was in breach of the order.

Failure to attend court for a private examination on 16 April 2019 as ordered on 2 April 2019

65. The order of 2 April 2019 included this at paragraph 2:

"Pursuant to s236 of the Insolvency Act 1986, the Respondent shall attend court at the Rolls Building, 7 Fetter Lane, London to be privately examined under oath at 2pm on 16 April 2019 (continuing on 17 April 2019 if necessary) ….".

66. It is not in dispute that Mr Varma failed to attend the private examination on 16 April 2019. The submission of the liquidators is that this represents a contempt of court because Mr Varma was not genuinely unable to attend; his failure to provide compelling medical evidence excusing the failure leading to the inference that "this was a pretended or self-induced episode".

67. ICC Judge Mullen decided at a hearing on 13 June 2019 that he was "not satisfied that Mr Varma was genuinely unable to attend for private examination".

68. However, the question for me is a different one, namely whether I can be sure that Mr Varma did not have a genuine reason for his non-attendance. I cannot be sure of that. It is common ground that Mr Varma has underlying health issues including diabetes, and that he was in fact at the hospital on 16 April 2019. There is a letter from his doctor dated 7 May 2019 indicating that he "sent Mr Varma to the Emergency Department for assessment on 16/4/19 due to chest pain and elevated blood glucose levels". While Mr Varma no doubt preferred not to attend court for questioning and I am somewhat sceptical as to whether

his medical condition really justified non-attendance, I cannot be sure that it did not.

69. This allegation of contempt is not therefore established.

Failure to tell the liquidators' solicitors where spending money is to come from as ordered on 1 May 2019

70. The 1 May 2019 freezing order included this at paragraph 11.1:

"This order does not prohibit the Respondent from spending £1,000 per week towards his ordinary living expenses and also a reasonable sum on legal advice and representation. Before spending any money, the Respondent must tell the Applicant's solicitor where the money is to come from."

71. Has there been a breach of paragraph 11.1 of the order? I am not prepared to find that there has been.

72. Mr Varma has given some information to the liquidators' solicitors as to the source of his funds. The document bundle for trial included an email of 11 June 2019 from Mr Varma referring to a gift of £4000 from a Mr W Malik being used for legal fees, an email of 9 August 2019 from Mr Varma referring to a further gift of £5000 from Mr Malik which was, again, to be used for legal fees, an email of 14 August 2019 from Mr Varma informing the solicitors of gifts of £1300 from Mr Bhimsen Bartra and of £1050 from Mr Sajid Malik being used for living expenses.

73. There is a lack of clarity as to precisely what facts are relied on by the liquidators to establish that Mr Varma is, notwithstanding his provision of information, in breach of the order.

74. Given the particular care with which the Court should address allegations of contempt, I requested that the liquidators' written closing submissions identify clearly what findings of fact I was invited to make. That was not otherwise clear to me following cross examination on this topic.

75. But no specific invited findings are clearly identified in the submissions relating to this ground of contempt. Rather, the evidence of Mr Varma on this topic is criticised and "The court is invited to draw the inference that he is in breach of this obligation to disclose the sources of his spending".

76. Given the standard of proof, I do no not draw that inference. First, the cross examination and submissions on this seem to me to confuse the position in November 2018, when the evidence does point to significant spending by Mr Varma, with his circumstances in 2019. Second, while I am somewhat sceptical that Mr Varma has, as he told me, been provided with accommodation and meals by friends and has been receiving his necessary medication from India brought into the UK by well-wishers, he may well have taken such a course by way of attempting not to reveal any assets or income and so it is not a course of action I can safely rule out.

Failure to deliver up his passport in accordance with the order of 1 May 2019

77. Paragraph 22 of Birss J's order of 1 May 2019 was in these terms:

"22. On production to him or receipt of an approved copy of this order, the First Respondent shall

22.1. forthwith identify and inform the Applicant's solicitor of the whereabouts of all of his passports and any document, ticket, travel warrant ('Travel Documents'), that might facilitate his departure from the jurisdiction and

22.2. as soon as practicable deliver up to the Applicant's solicitor or their agent any and all Travel Documents in his name or names and/or of which he is the bearer."

78. Mr Varma delivered up his passport on 7 May 2019 in an envelope in the circumstances I have already described.

79. It is not clear to me that the timing of the delivery up is said to be a breach. Again, no precise findings of fact as to the practicability of delivering up the passport more quickly are set out in the written submissions. It is said only that Mr Varma was ordered to surrender his passport as soon as reasonably practicable and did not do so until 7 May 2019. In any event, I do not find a failure in this respect. Any such breach does not seem to me to have been put squarely to Mr Varma in cross examination, and the passport was delivered up within a few days at the time of a bank holiday weekend and via his solicitors using a method (placing it in an envelope) which has not so far been regarded as a breach of the order.

80. Insofar as delivery up in an envelope is said to be a breach of the order, I do not accept that. In refusing the liquidators sight of the passport, Mr Adam Johnson QC, as I read his judgment of 3 July 2019 at paragraphs 47 to 48, rejected Mr

Brown's submission that delivery up of the passport in an envelope represented a breach of the 1 May 2019 order. I agree. The order should be construed in light of its purpose. The purpose of the order for delivery up of the passport was to prevent Mr Varma fleeing. The method adopted fulfilled that purpose.

81. What of the torn pages? While it is possible that Mr Varma deliberately caused such damage in order to avoid the liquidators being able to trace his movements as Mr Brown suggested, I am far from sure of that. Such would be unnecessary given the delivery up in an envelope. And it is not easy to explain why only part of some pages would be torn if that were the design. Mr Varma's explanation that this was accidental damage by dogs is not one, in the circumstances, that I am satisfied is wrong. It was not suggested that there was a breach if the damage was other than deliberate.

82. It follows from all I have said on this topic that I do not find this ground of contempt established.

Failure to inform the liquidators' solicitors of assets within 48 hours as required by order of 1 May 2019

83. The order of 1 May 2019 included the following requirement as to asset disclosure:

"9.

9.1. Unless paragraph (9.2) applies, the Respondent must within 48 hours of service of this order and to the best of his ability inform the Applicant's solicitors of all his assets worldwide exceeding £2,000 in value whether in his own name

or not and whether solely or jointly owned, giving the value, location and details of all such assets.

9.2. If the provision of any of this information is likely to incriminate the Respondent, he may be entitled to refuse to provide it, but is recommended to take legal advice before refusing to provide the information. Wrongful refusal to provide the information is contempt of court and may render the Respondent liable to be imprisoned, fined or have his assets seized."

84. As already noted, the information given to the liquidators' solicitors on 5 May 2019 was that the sole asset of Mr Varma that may qualify for disclosure was his shareholding in My Casa PBSA Ltd. Its value was said to depend on netting off liabilities in that company and may amount to £14,000.

85. The liquidators say that cannot have represented full disclosure of his assets. They rely on, among other things, the judgment of Adam Johnson QC on 3 July 2019.

86. That judgment includes this at paragraph 29: "In my view, the starting point for analysis is the adequacy or otherwise of the information provided thus far by Mr Varma in response to the orders of Birss J and Falk J. This assessment is of central importance both to the question of whether there should be cross examination and to the question of whether Mr Varma's passport should be retained for a further period pending such cross-examination. As to this, I have come to the conclusion that the disclosures provided so far by Mr Varma are inadequate and, indeed, that the deficiencies in his evidence are both serious and significant."

87. Having heard Mr Varma give evidence over 3 days I have reached the same conclusion as Adam Johnson QC. I am satisfied so as to be sure that his shareholding in My Casa PBSA Ltd is not his only asset worth over £2000.

88. There is no dispute that Mr Varma was a wealthy man worth millions of pounds. Central to his denial of this ground of contempt is his story that he lost all his wealth in the second half of 2018. This was something he told Mr Hochhauser QC when being cross examined on 26 July 2019. He told me that he lost his wealth in Dubai property transactions. He referred in particular to an option agreement under which he paid a substantial sum. He said to Mr Hochhauser QC it was £8.75m. He was less certain of the figure before me.

89. I have decided that his story as to the loss of his wealth is not true. My reasons are these.

90. First, I was unable to rely on him to tell me the truth on the central aspects of his story. That is clear from his maintaining that the payments of £3.1 million and £925,000 were part of a jewellery and diamonds deal.

91. Second, there are no documents whatsoever evidencing this transaction in which he invested, for himself and others, £8.75 million or thereabouts. That total absence is striking given the apparent scale of the transaction, the fact that it is said to have included a major loan of £4.5m to Mr Varma, and that he had, he says, 5 co-investors. And especially striking in circumstances where he told me all his co-investors have a copy of the option agreement so that, had it existed, it would surely have been produced to the liquidators by Mr Varma from those other sources if his copy is, as he says, in a fingerprinted safe in Dubai. I also found it revealing that he told me he has not sought any documents from his

lenders and that there have been no demands under the loans. The obvious explanation for those things which he told me is that there were no loans because there was no failed property transaction.

92. Third, scant detail of this very significant event has been given. Such detail as Mr Varma did give, he was unable readily to reproduce in that, having given the names of his co-investors to Mr Hochhauser QC (Ricard Mommet Kumar, Jeevan Metah, Rajesh Kamal, Rimet Kapoor and Ismail Tan), he was unable to recall those before me. That was despite this having been a financially catastrophic event, had it happened.

93. Under this head of contempt in the pages attached to the application notice, there is also a list of statements made under oath and said to be false and of documents produced by Mr Varma but said by the liquidators to be fabrications, including the Settlement Agreement.

94. But I do not see how these can be analysed as separate breaches of the order to disclose assets made on 1 May 2019. And there is no reasoning or authority offered in the written submissions in support of the suggestion that they can be so analysed. Mr Varma gave information under the order on 5 May 2019. The question seems to me to be whether that information was true and complete. I am satisfied for the reasons I have given that that information was far from true and complete. What Mr Varma told the Judge on 26 July 2019 or on the later occasion of 1 August 2019 does not represent, at least in light of the submissions I have had, separate breaches of the order of 1 May 2019. Given that, I consider it would be wrong to embark on the exercise of determining whether the statements under oath were false or the documents were fabricated in

circumstances where this application for committal is confined, as Mr Brown made clear in opening, to breaches of order and false statements in witness statements or affidavits. It would be to embark on consideration of an application for contempt with a different foundation and which has not been made. I should add that, as will be apparent from elsewhere in this judgment, I have considered, so far as necessary for my determination of the contempt allegations which are properly framed as breaches of order or false statements in witness statements or affidavits, whether documents have been fabricated.

95. Had I been prepared to consider the answers given to Mr Hochhauser QC as contempts, Mr Leonard sought to argue I should not find contempt established as no warning was given by the Judge of the privilege against self-incrimination at the hearings on 26 July 2019 and 1 August 2019. But that issue does not in the event arise.

96. I should make clear that the liquidators did not identify to my satisfaction any particular undisclosed assets owned by or for Mr Varma as at April 2019.

97. The written submissions for the liquidators invite me to draw an inference that Mr Varma owns furniture and fine art at 33 Charles Street where he has been staying. And it is submitted that "the evidence suggests that Mr Varma has interests in multiple properties".

98. As to the furniture and art at 33 Charles Street, the liquidators submit that Mr Varma's ownership of these items is "the clear inference from the evidence". But the basis for such an inference is slight. Mr Varma has been staying at 33 Charles Street. And the liquidators point to the lack of supporting witness or documentary evidence from Mr Varma that the items are owned by others. But

there is no real evidence of his ownership of the chattels. His oral evidence to me was that they are owned by his former wife and his son's partner. I am not satisfied these chattels are his. I arrive at that decision without relying on the late witness statement of Krishna Thapa in which she says she is the tenant of 33 Charles Street and Mr Varma has been staying there as her house guest. The witness statement is very late and she did not attend to give evidence.

99. As to properties, the written submissions for the liquidators referred to 4. I will consider each in turn.

100. 42 Upper Brook St, Mayfair. The liquidators point to an email dated 18 November 2016 from Mr Varma to a Mr Popat referring to this property as "my own place" and the fact that Mr Varma's son referred to this as his own address on 1 April 2019. Again, the evidence is too slight for me to reach a conclusion to the criminal standard of proof that Mr Varma owns this asset. Mr Varma's son's occupation would be consistent with a tenancy obtained by Mr Varma's wife for their son, that being the evidence Mr Varma gave to both Mr Hochhauser QC and me. It is possible to explain the email to Mr Popat as consistent with Mr Varma being involved in the development of the property without being the owner. Further, it was the liquidators' case that Mr Varma was prepared to lie and fabricate documents to do a deal with Mr Popat; any implication of ownership in the email could be part of that pattern. Finally on the email, it appears to refer to the property being developed by an SPV which was then sold; rather than remaining as an asset of the developer even if the owner-developer was, as the liquidators appear to assert, Mr Varma.

101. The Penthouse, 130 Park Lane, Mayfair. The liquidators point to the use of this address, including by Mr Varma's son's partner very recently, and ask for an inference to be drawn that Mr Varma must have an interest in the property, or be paying rent. That is in any event a thin basis for rejecting Mr Varma's evidence that this property was rented and repossessed following rent arrears. There is now documentary evidence of possession proceedings on the basis of failure to pay rent, including a copy of the particulars of claim and of an order made in the proceedings. While I take into account these documents were produced only after the hearing and that this affects the weight to be given them, I am far from being sure that Mr Varma has an interest in (or is even paying the rent) on this property.

102. 1A Vaughan Road. Mr Varma's company, My Casa PBSA Limited has been registered to this address and Mr Varma has used the address as his own. Mr Brown also put to Mr Varma in cross examination that around £123,500 was paid by that company to an "A Jain" between March and December 2017 and that the registered owner of this property is an Abhishek Ashok Kumar Jain recorded as having paid a price on 5 October 2007 of £124,999. This is stronger material, but I am unable to draw with the confidence required an inference that Mr Varma owns this property. The time between the 2 similar sums is very significant and the A Jain of the later payments may be a different person with the same common surname as Mr Varma suggested.

103. 1905 Burj Residence, Dubai. I am not satisfied that this is an asset of Mr Varma in the sense of a long term interest in property. The property may be rented as Mr Varma has said. But I am confident that it represents either an asset or a

property for which Mr Varma has been able to continue paying a substantial rent. Mr Varma told Mr Hochhauser QC that his current rental of the property had expired a couple of months before the hearing of 26 July 2019 and that he could not afford to rent the property any longer. But it remains his residence a year after he says he last paid rent. The obvious available explanations are that he owns a long term interest in the property or has paid more rent. Mr Varma's attempts to offer a different explanation were confused. He first said in cross examination before me he had now been told he was going to be evicted and then that landlords are being very accommodating. Having heard him give evidence, that Mr Varma has been able to hold on to what he says is his principal residence indicates to me that he owns it or has been able to pay for that occupation. This therefore further supports my conclusion that in declaring his shareholding in My Casa PBSA Ltd as his only asset worth over £2000, he was not complying with the order made.

104. While the liquidators have not identified to my satisfaction any particular undisclosed assets owned by or for Mr Varma as at April 2019, for the reasons I have given, I am satisfied that Mr Varma acted in breach of this order by failing to inform the applicants' solicitors of all his assets.

105. I should make clear that I have hesitated before arriving at the conclusion that Mr Varma is in breach where I have no direct evidence of particular assets. It seems to me the Court should be wary of finding a contempt by the drawing of inferences. But I consider the inference that he has substantial assets a safe one. Quite apart from his continued enjoyment of his Dubai residence being difficult

to explain without him having assets, the only proferred explanation for Mr Varma's professed impecuniosity is one I do not believe.

106. As with the breach of the 2 April 2009 order by failing to deliver up documents, it is a consequence of the breach that it is impossible to have any certainty about the extent of the failure to inform the liquidators of his assets. What I am sure of is that Mr Varma has undisclosed assets.

107. Two further points under this head.

108. One, I am not prepared to find that the value of the asset which was disclosed, namely the shareholding in My Casa PBSA Limited, was understated. The net proceeds of sale of this company's asset, namely Hallam Street, turned out following sale on 10 July 2019 to be £131,185.94. But, according to the disclosure email of 5 May 2019, there were debts to be netted off. And Mr Varma has produced some receipts indicating payment of debts of My Casa PBSA Limited. To find that the suggested value was an untruth would involve finding that the receipts were fabrications. I am not sure they are. They include one apparently from Maxrid DMCC which has no real oddities pointing to it being fabricated and which even the evidence for the liquidators says could be genuine – see the first affidavit of Mr Gray at paragraph 107.1.

109. Two, nor am I prepared to determine that the timing of the disclosure involved a breach of the order as being outside the stipulated 48 hours. There is no clue in the pages attached to the application notice that such timing is the basis of an alleged contempt. An alleged contemnor must be told, with sufficient particularity to enable him to defend himself, what exactly he is said to have done or omitted to do which constitutes contempt of court. The application

notice does not tell Mr Varma the timing of the disclosure is alleged to be a contempt.

110. The order of 1 May 2019 included a penal notice. It follows from that and my determination of breach, that I find this important ground for committal established.

Failure to serve an affidavit setting out the information as to assets in compliance with the order of 1 May 2019

111. Paragraph 9 of the 1 May 2019 order, already set out above, is followed by this:

"10. Within 7 working days after being served with this order, the Respondent must swear and serve on the Applicant's solicitors an affidavit setting out the above information."

112. Two contempts are alleged relying on this part of the 1 May 2019 order which need to be considered separately.

113. The first is that the affidavit sworn by Mr Varma on his own behalf is in breach of the order as failing to give true information. This adds nothing to the further ground of contempt, which I will come to in due turn, that the affidavit contains false statements made on oath. The complaint is best considered on that ground.

114. The second is that Mr Varma failed to swear any affidavit on behalf of GCFZE.

115. It is true that Mr Varma did not swear such an affidavit. The question is whether that puts him in breach of the order.

116. Mr Leonard's submission on this was that the order of 1 May 2019 does not require Mr Varma, as opposed to GCFZE, to provide such an affidavit. He points to the terms of the order itself and to a recital to the order made by Falk J on 15 June 2019 which recited that GCFZE had not complied with paragraph 10 of the Birss J order without then going on to indicate that that was a failure of Mr Varma personally.

117. But that submission fails, in my judgment, to grapple with the principle that a director may be personally liable in contempt for a breach by of order by a company if he was responsible for the acts or omission constituting the breach; having a duty to take reasonable steps to ensure the order is obeyed – see *Grant & Mumford, Civil Fraud – Law, Practice and Procedure, 1st Ed.* at 35-037.

118. Mr Varma's oral evidence before me was that he performed the role of director in relation to GCFZE, though as GCFZE is a Dubai registered company such role is called something different. It was plain he took no steps to cause GCFZE to provide an affidavit. And no other person was identified as being able to do so.

119. Those circumstances mean, given the principle I have outlined, that Mr Varma is personally liable in contempt for GCFZE's failure to comply with the order of 1 May 2019, being responsible for that failure.

120. Mr Varma's position was that he did not realise the order placed him under any obligation to make an affidavit for the company. But it is not a required ingredient of contempt that the contemnor knows he is breaching or intends to breach the order. It may, however, be relevant to sentence.

121. I find this ground of contempt established.

Failure to serve an affidavit complying with the order of 15 May 2019

122. Falk J's order continuing the freezing order also imposed this obligation on Mr Varma:

"5. The First Respondent shall by no later than 4pm on 16 May 2019 swear, file and serve an affidavit setting out the truthful, full and accurate answers to the questions set out in Schedule A to the First Affidavit of Paul Atkinson dated 10 May 2019".

123. Mr Varma did swear, file and serve an affidavit addressing these questions.

124. The liquidators' complaint is as to the substance of the answers. The matters relied on as establishing contempt are the same as those pointed to in support of a contempt allegation that the affidavit contains false statements verified by a statement of truth. I will consider these complaints under that later head.

Failure to send a signed letter of instruction in the period specified by the order of 3 July 2019

125. The order of Adam Johnson QC made on 3 July 2019 included this:

"4. Pursuant to s39 Senior Courts Act 1981, the First Respondent shall, by 4pm on 11 July 2019, send by email and special delivery a signed letter of instruction (in the form attached in copy to the Applicants' solicitor and enclosing a copy of this order) to Emirates NBD Bank (where GCFZE holds an account or accounts) instructing it forthwith to disclose by letter to the Applicants' solicitor

(at the address given at the end of this order) bank statements for any and all GCFZE bank accounts it holds or held from 1 August 2017 to date."

126. The Judge further ordered that, in default, the letter could be signed by a Chancery Master.

127. The facts are that a signed letter was provided to the liquidators' solicitors, but that was on 26 July 2019 when Mr Varma attended court for cross examination. In the meantime, Chief Master Marsh had on 15 July 2019 signed such a letter as further provided by the order. While Mr Varma suggested at one point in his cross examination before me that there was an email in the document bundle for trial showing him sending the letter, no such email would be located, and I therefore do not accept there was any such email.

128. It is true that, as Mr Varma emphasised in his oral evidence before me, he sought to appeal the 3 July 2019 to the Court of Appeal, asking that court for a stay, and that the refusal of Lewison LJ did not come until 22 July 2019.

129. But that is no answer to the allegation of breach and therefore of contempt. Neither the request for permission to appeal nor for a stay operated as a stay of the order. Accordingly, in allowing 4 pm on 11 July 2019 to pass without sending an instruction letter to GCFZE's bank Mr Varma breached the order of Adam Johnson QC.

130. I should make clear that given the request for permission to appeal and for a stay and Mr Varma not having the benefit of being legally represented at this stage, I was not satisfied on hearing his evidence that he had an intention to breach the order. But that is relevant, it seems to me, only to sentence.

131. This order contained a penal notice. I find this ground of contempt established.

Failure to provide to the liquidators copies of documents showing what happened to the proceeds of sale of Hallam Street in breach of the order of 26 July 2019

132. The order of Mr Hochhauser QC made on 26 July 2019 required that Mr Varma, among other things, "By no later than 4 pm on 30 July 2019 … provide to the Applicants … copies of the documents listed in Schedule A hereto to the Applicants' solicitors". Paragraph 8 of Schedule A read "Copies of any documentary evidence showing what happened to the proceeds of the sale of the Property in about June 2019"; "the Property" being Hallam Street.

133. There may have been a breach of this part of the order by Mr Varma. Part of the expressed basis for Mr Hochauser QC's later order of 1 August 2019 is that Mr Varma had failed to comply with the 26 July 2019 order. The recitals to the order of 1 August 2019 included this: "AND UPON the Court determining that there has not been full compliance with the Order of Andrew Hochhauser QC dated 26 July 2019".

134. However, there is no admission in Mr Varma's written evidence in these committal proceedings, being his affidavit of 21 November 2019, that he failed to provide documents in breach of this part of the 26 July 2019 order. Certainly, the submissions for the liquidators do not point to any such admission.

135. And the only documents specifically referred to in the written submissions for the liquidators following the cross examination before me are receipts later provided by Mr Varma and said by him to show where the net proceeds of sale

went. While these documents were referred to in cross examination by Mr Brown, that did not appear to be for the purpose of suggesting that a failure to provide them earlier was a breach of this order. I agree with Mr Leonard that no such breach was put squarely. Rather, the suggestion was that the receipts were concocted so that Mr Varma had understated the value of Hallam Street. In any event, I note the receipts are dated 1 August 2019 and so post-date the time by which documents were required to be provided under the order of 26 July 2019.

136. Neither this nor any wider failure to produce documents under this part of the 26 July 2019 order having been put to Mr Varma in cross examination, and there being no admission, I am not prepared to find this contempt allegation made out.

Failure to sign and return authority letters in breach of the order of 1 August 2019

137. The later order of Mr Hochhauser QC, made on 1 August 2019, included the following:

"3. The First Respondent shall forthwith sign and return the Authority Letters provided to him by the Applicants' solicitors pursuant to their undertaking to the court."

138. The "Authority Letters" were, as is spelled out in a recital to the 1 August 2019 order, letters to Portners Law Limited, Singhania & Co Limited, and Metrobank, drafts of which were provided by the liquidators' solicitors to Mr Varma.

139. The facts constituting this breach do not seem to me to be in issue.

140. The first affidavit of Mr Gray in support of the application for committal states clearly at paragraphs 81 and 82 this requirement and that Mr Varma failed to comply, delivering the letters only on 15 August 2019. Mr Varma's response to these paragraphs in his own affidavit served for the purposes of these committal proceedings does not dispute that. On the contrary, he states at his correspondingly numbered paragraph 82 that "I met with all conditions of the order except the signing of the letter …".

141. Accordingly, I find this allegation of breach made out.

142. This order of 1 August 2019 does not, however, contain a penal notice. In this instance, I have decided that the requirement for a penal notice should be waived, there being no injustice to Mr Varma. This order of Mr Hochhauser QC was plainly made further to his earlier order of 26 July 2019 and was even expressed to be made upon a determination that there had not been full compliance with that earlier order. In circumstances where the order of 26 July 2019 displayed a penal notice and was itself made in aid of freezing orders which bore penal notices, Mr Varma had no right to expect that a failure to comply with this further order could not expose him to a finding of contempt.

<u>False statements</u>

143. Having dealt with the central false statement as to the jewellery and diamonds deal and been through each of the alleged breaches of orders, I turn to tackle the remaining allegations of making false statements in documents verified by a statement of truth. As already indicated, alleged false statements in affidavits were approached by both sides in the same way as statements in witness statements and I will therefore deal with them in accordance with that approach.

Mr Leonard's submission on these allegations was that the liquidators had failed to prove to the criminal standard that the statements were false. I will therefore look first at the question of falsity under each of the grounds, before addressing briefly the question whether the statements interfered with the course of justice in some material respect.

The affidavit of 7 May 2019

144. Mr Varma's affidavit of 7 May 2019, sworn following the freezing order of 1 May 2019, included his statement that "I have only one asset that may qualify for disclosure …", namely his shareholding in My Casa PBSA Ltd.

145. The allegation is that that statement was false. Mr Varma has other assets. It follows from my decision already made on the allegation that Mr Varma was in breach of the asset disclosure order that I find this statement was indeed false and was made by Mr Varma without an honest belief in its truth. I am satisfied so as to be sure that he has, and had as at 7 May 2019, other assets beyond his shareholding in My Casa PBSA Limited.

146. Mr Varma also stated by the affidavit of 7 May 2019 that "I do not have any declarable interest (whether sole ownership or jointly with or through others) in any real property (land) jewellery (such as watches) cars or vehicles wherever situated". The liquidators allege that this further statement is also false.

147. As I have been unable to determine on the evidence before me a particular asset which is owned by or for Mr Varma, while this further statement in the affidavit of 7 May 2019 is likely to be false I am not satisfied to the criminal standard

that it is so. It may be that his wealth is held in a different form than the asset classes listed in this statement.

The affidavit of 16 May 2019

148. Mr Varma's affidavit of 16 May 2019 was sworn in answer to the questions listed in a schedule to an affidavit of Mr Atkinson and as ordered by Falk J on 15 May 2019.

149. It was this affidavit of Mr Varma which included his statement that "The funds were paid against the sale of jewellery and diamonds to the company". I have already determined that statement was false.

150. The affidavit contains further statements alleged by the liquidators to be false. The first is this:

"Question 3: Please disclose the account detail of all of the bank accounts worldwide which at or immediately prior to 1 May 2019 were:

a. In your name

b. In your name or someone else's name

c. In someone else's name but to which you had access (either using debit card or online or telephone or other means of access)

d. Used to hold money on trust for you (whether discretionary trust or otherwise)

e. In which you had a beneficial interest.

Answer 3: I have not bank account in my name or as listed in a to e above. There is an account in RAK Bank UAE which was a loan account and I still approx. AED 65,000 to the bank. A connected current account in the same bank has Zero balance for several months. I cannot access this remotely and do not have the details with me. When I return to the UAE I can provide details".

151. The allegation is that Mr Varma had other accounts. In that regard, the liquidators point to the three bank accounts with Emirates NBD Bank revealed once the DIFC order was served on that bank.

152. I am not convinced that these statements, if false, were made without an honest belief in their truth. While the information at the head of the bank statement obtained for each account refers to the account as being active, all have zero balances, there has been no activity on any of the accounts since November or December 2018 and at least 2 of them appear to refer in the last entry to account closure. Mr Varma told me he considered them closed. I am not sure he did not believe that, whether or not it is false.

153. The second statement in this affidavit of 16 May 2019 said to be false is given in answer to the following question: "When the Company paid circa £3.1m into the account of Grosvenor Consultants FZE, what happened to these funds after that?". Mr Varma's answer included this: "Grosvenor Consultants FZE used some the money to meet its financial obligations and debts, some of the monies was used towards expenses and some of the money was used towards failed and abortive transactions in Dubai/ UAE".

154. In fact, as is now known from documents subsequently obtained, £2m of the funds were transferred first to a personal account of Mr Varma with Emirates

NBD Bank, thence out to an account in the name of his son Siddhant Varma, and then came back to Mr Varma's company Grosvenor PBSA Limited purportedly by way of loan; finally being used by that company to purchase 33 Charles Street.

155. Given that use of a large portion of the money, this statement in the affidavit of 16 May 2019 is false, and given that the money went in the first instance to Mr Varma and was used shortly thereafter by one of his companies, he cannot have had an honest belief in the truth of the statement.

156. Put another way, this statement represented a breach of the order made on 15 May 2019 to set out "the truthful, full and accurate answers to the questions set out in Schedule A to the First Affidavit of Paul Atkinson dated 10 May 2019".

157. Finally in relation to this affidavit, the liquidators complain in their written submissions of a failure by Mr Varma, when stating that he had no documents relating to the matters in the affidavit, to refer to a non-disclosure agreement later mentioned by him. But, as will be seen from my findings under the next head, there is, in my judgment, no such non-disclosure agreement.

The witness statement of 26 June 2019

158. Mr Varma made a witness statement of 26 June 2019 for the purposes of the hearing before Mr Adam Johnson QC. Paragraph 18 of the statement included this concerning GCFZE: "Although I am recorded as the sole shareholder and director, there are other silent shareholders".

159. The liquidators allege that statement is false. I am satisfied so as to be sure that it is false. As I find, Mr Varma is the sole beneficial owner of GCFZE. My reasons are these.

160. First, there was no mention of silent shareholders at the start of the liquidators' involvement. On the contrary, in written answers given by Mr Varma on 3 May 2019 to questions of the liquidators, he stated "FZE is solely owned by me". And by his affidavit of 7 May 2019 prepared with the help of his solicitors, Edwin Coe, he again stated "I am the sole owner" of GCFZE, adding "I am the beneficial owner of it".

161. Second, although in his witness statement of 26 June 2019 Mr Varma seeks to explain away these earlier statements by reason of being bound by a non-disclosure agreement, I am satisfied that there is no such non-disclosure agreement with silent shareholders. Plainly Mr Varma had not told his solicitor of any such agreement when he made the affidavit of 7 May 2019. No copy of the agreement has ever been produced. That is despite the other apparent parties having copies and having given permission for a copy of the document to be produced, according to what Mr Varma told Mr Hochhauser QC on 26 July 2019. Mr Varma said "I am more than happy to produce it". No explanation has been given for why, if the other parties were content for the document to be produced, they would not give Mr Varma a copy to enable him to do so. The non-disclosure agreement is another suggested document which, had it truly existed in a fingerprint locked safe in Dubai, would have been provided to the liquidators by Mr Varma from other sources.

<u>The witness statements of 1 July 2019, 26 July 2019 and 15 August 2019</u>

162. The application notice in these committal proceedings included, as a final ground of contempt, an allegation that Mr Varma's witness statements of 1 July 2019, 26 July 2019 and 15 August 2019 contained a false statement in that they indicated the date directed for points of defence was 2 July 2019.

163. Mr Varma had got the date wrong (2 July was the date for the points of defence of other respondents) but it was a strange course to pursue this error as a contempt allegation. It was not a course continued in the written submissions. Mr Brown makes clear no finding of contempt is now sought on this ground. I therefore make none.

Interference with the course of justice

164. In my judgment, there can be little doubt that Mr Varma's false statements have interfered with the course of justice in a material respect. Indeed, there was no separate argument about this before me. In inventing the jewellery deal, the silent shareholders in GCFZE, and the non-disclosure agreement with them, as well as failing to disclose his own assets and what became of the £3.1m paid by the Company, Mr Varma has made it more difficult for the liquidators to obtain judgment for and recovery of sums paid to him. Indeed, as that can have been his only object in making the false statements, he not merely knew of the likelihood that they would interfere with the course of justice, he intended that result.

Summary

165. From the above, I find Mr Varma in contempt of court:

(1) by making a false statement in his affidavit of 16 May 2019 that the funds of approximately £3.1m paid to GCFZE "were paid against sale of jewellery and diamonds to the company";

(2) by failing to inform the liquidators' solicitors of assets within 48 hours in breach of the order of 1 May 2019;

(3) by being responsible for GCFZE's failure to serve an affidavit setting out information as to assets as required by the order of 1 May 2019;

(4) by failing to send a signed letter of instruction in the period specified by the order of 3 July 2019;

(5) by failing to sign and return authority letters in breach of the order of 1 August 2019;

(6) by making a false statement in his affidavit of 7 May 2019 that "I have only one asset that may qualify for disclosure …", namely the shareholding in My Casa PBSA Ltd;

(7) by making a false statement in his affidavit of 16 May 2019 that GCFZE used the £3.1m "to meet its financial obligations and debts, some of the monies was used towards expenses and some of the money was used towards failed and abortive transactions in Dubai/ UAE"; and

(8) by making a false statement in his witness statement of 26 June 2019 that there are silent shareholders in GCFZE.

166. There will need to be a further hearing for sentencing. That should be held as a face to face hearing in a physical courtroom with Covid-19 precautions.