Neutral Citation Number: [2023] EWHC 3119 (Ch)

Claim Number: BL-2018-000544

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

Rolls Building
7 Rolls Buildings
Fetter Lane
London, EC4A 1NL

5th December 2023

Before :

MR JUSTICE EDWIN JOHNSON

- -

Between :

(1) TONSTATE GROUP LIMITED
(In Liquidation)
(2) TONSTATE EDINBURGH LIMITED
(In Liquidation)
(3) DAN-TON INVESTMENTS LIMITED
(In Liquidation)
(4) ARTHUR MATYAS **Claimants**

and

EDWARD WOJAKOVSKI **Defendant**

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- -

Andrew Fulton KC and **Sam Goodman** (instructed by Rechtschaffen Law) for the Claimants
Rupert Bowers KC and **Claire Overman** (instructed by Cobleys Solicitors Limited) for the Defendant

Hearing date: 19th October 2023

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JUDGMENT

Remote hand-down: This judgment was handed down remotely at 10.30am on Tuesday, 5th December 2023 by circulation to the parties and their representatives by email and by release to the National Archives.

Mr Justice Edwin Johnson:

Introduction

1. This is my reserved judgment upon the trial of a contempt application. By the application the Claimants in this action seek an order for the committal of the Defendant in this action, Mr Edward Wojakovski, to prison. The application was made by application notice issued on 6th July 2021. It will be noted immediately that the application has taken a quite extraordinary amount of time to come to a substantive hearing.

2. The grounds of the application (**"the Contempt Application"**) are that the Defendant is guilty of multiple and serious contempts of court, comprising failures to comply with four court orders and knowingly making false statements in a witness statement and in an affidavit. The alleged acts of contempt of court are set out in more detail in a table attached to the application notice. Depending upon how one classifies the alleged acts of contempt in the table, the alleged acts of contempt fall under five or six separate heads.

3. The allegation of breaches of one of the orders of the court is now formally admitted by the Defendant. The Claimants' case is that these particular breaches had already been the subject of a binding admission. The remainder of the allegations are disputed by the Defendant.

4. The hearing of the Contempt Application was originally listed to be heard before me on 20th July 2023 (**"the July 2023 Hearing"**). The July 2023 Hearing had to be adjourned however, after I was informed by leading counsel for the Defendant that she and junior counsel representing the Defendant were obliged to withdraw from acting for the Defendant, for reasons which leading counsel was not at liberty to disclose. This left the Defendant without legal representation at the July 2023 Hearing. For the reasons which I set out in a judgment which I delivered at the July 2023 Hearing, I reached the reluctant conclusion that the hearing of the Contempt Application, already long delayed, would have to be adjourned. The Contempt Application came back before me for determination on 19th October 2023. I will refer to this hearing, that is to say the substantive hearing/trial of the Contempt Application, as **"the Trial"**.

5. The Claimants were represented at the Trial by Andrew Fulton KC and Sam Goodman, counsel, as they were at the July 2023 Hearing. The Defendant was represented at the Trial by Rupert Bowers KC and Claire Overman, counsel. For the avoidance of doubt, I should add that Mr Bowers and Ms Overman are new counsel. They did not appear for the Defendant at the July 2023 Hearing.

6. No witness was called to give oral evidence at the Trial, although a number of affidavits were filed in connection with the Contempt Application. I will need to come back to the affidavit evidence later in this judgment. There was a substantial bundle of documents prepared for the Trial. I also had the benefit of skeleton arguments from counsel, in

addition to their oral submissions at the Trial. Following the Trial I received further written submissions and accompanying additional authorities on evidential issues which had arisen in the course of the Trial.

7. Given that this is a contempt application I would much prefer to have delivered a judgment immediately following the Trial, without having to leave the parties and, in particular, the Defendant, in a state of suspense. Unfortunately, and while this was not the fault of any party, the volume of material and argument which I had to consider, including the subsequent submissions and additional authorities, precluded this course. The result is this reserved judgment, which has been produced as soon as has been practicable.

Relevant background

8. The background to the Contempt Application is lengthy and complex litigation involving the Tonstate group of companies, the Defendant and various other parties. For present purposes however, I can state this background fairly briefly.

9. The first three Claimants are companies in the Tonstate group of companies. All three are in members' voluntary liquidation. The Tonstate Group is a group of companies which have been involved in the property investment business for over a quarter of a century. The Defendant is a former director of the Claimant companies. The Fourth Claimant is Mr Matyas. The Defendant was formerly married to the Fourth Claimant's daughter. The entire group became effectively deadlocked, as a result of a dispute between the Defendant, who was the beneficial owner of 50% of the Group, and the Fourth Claimant who was, with his wife, the beneficial owner of the other 50% of the Group.

10. In relation to what I have said about beneficial ownership, I should add that, in a separate action, the Fourth Claimant and his wife sought the rescission of transfers of shares in the First Claimant which they had made to the Defendant. I understand that this separate action (**"the Shares Action"**) was settled, on 20th May 2020, on terms that the Defendant's shares in the First Claimant were transferred to the Fourth Claimant, his wife and their daughter, with the Defendant retaining 22,500 of these shares.

11. It is common ground that both the Fourth Claimant and the Defendant had, for some years prior to this action, been extracting funds from the Tonstate Group without lawful authorisation. This action (BL-2018-000544) was commenced as a derivative action, against the Defendant and a number of other parties as additional defendants. In this action, which I will refer to as **"the Main Action"**, the First to Third Claimant companies sought the return of the monies unlawfully extracted from them by the Defendant. The Defendant was therefore, strictly speaking, the First Defendant in the Main Action but, for the purposes of this judgment, it is convenient to refer to Mr Wojakovski simply as the Defendant. The Fourth Claimant is a party to the Main Action by reason of his prior status as a derivative claimant, advancing claims on behalf of the previously deadlocked companies. There were also additional claims made in the Main Action. I understand that these additional claims were also settled on 20th May 2020.

12. In addition to the Main Action, and the Shares Action, the Defendant commenced an action of his own, by unfair prejudice petition, seeking various forms of relief against the Fourth Claimant and Mrs Matyas and other entities in the Tonstate Group. I will refer to

this third action as **"the Petition"**. I will use the expression **"the Actions"** to refer collectively to these three actions.

13. On 20th November 2019 Zacaroli J made an order striking out parts of the Defence filed by the Defendant in the Main Action and, consequent upon that strike out, ordered that judgment should be entered against the Defendant in relation to what were referred to as the Transactional Payments, which I understand to have been a reference to the sums wrongfully extracted from the First to Third Claimants by the Defendant. The Defendant was ordered to pay the sum of £12,994,642.43 to the Claimants. The Defendant was also ordered to give an account of what he had done with the monies extracted from the Claimant companies and whether he had extracted monies from any other company in the Tonstate Group.

14. The order for payment was subject to a temporary stay, pending a case management conference. The case management conference was held on 16th January 2020, consequent upon which Zacaroli J made the first of the four orders in the Main Action with which I am concerned in the Contempt Application. By paragraph 3 of the order of 16th January 2020 the stay on the earlier order of 20th November 2019, for payment of the judgment sum of £12,994,642.43 and any other sum due on the account to be given by the Defendant, was extended to 4.00pm on 31st March 2020. As from that time the judgment debt and any other sum due on the account were stated to be immediately payable.

15. By paragraph 4 of the order of 16th January 2020 Zacaroli J also directed that the Claimant companies had a proprietary interest in the judgment debt and its traceable proceeds, which were held by the Defendant on trust for the Claimant companies.

16. As part of the same order of 16th January 2020, the Fourth Claimant, Mr Matyas, consented to an order that he should give an account in the same terms as the account which the Defendant was ordered to give. The Fourth Claimant also agreed to pay to the Claimant companies the sum of £3,215,469.75 and any other sum found to be due on the account which he was ordered to give.

17. The Defendant has not paid the judgment debt of £12,994,642.43. A relevant point to make in this context is that the Defendant was made bankrupt, on 15th August 2020, on the petition of a Mrs Rachel Robertson, who had been joined as an additional defendant to the Petition. The Claimant companies however have a proprietary interest in the monies comprising this judgment debt; see paragraph 4 of the order of 16th January 2020. I will refer to these monies, being monies wrongfully extracted from the Claimant companies by the Defendant, as **"the Extractions"**. This proprietary interest entitles the Claimant companies to continue to pursue payment of the Extractions and their traceable proceeds.

18. In the four years since the above orders were made the Claimant companies have, by a number of routes, sought to enforce payment of the judgment debt which exists in relation to the Extractions. The Claimants' case is that the Defendant has waged a four year campaign of resistance to the Claimants' attempts to enforce their judgment debt, displaying what is characterised as a persistent disregard for the authority of the court. The result, so the Claimants say, is that they have been driven to make the Contempt Application.

Definitions and conventions in this judgment

19. A very large number of orders have been made in the Actions. In order to distinguish the four particular orders with which I am concerned, I will use the following, admittedly rather cumbersome expressions, to refer to the four orders. I will refer to the order of 16th January 2020 as **"the January 2020 Order"**, the order of 6th July 2020 as **"the July 2020 Order"**, the order of 27th August 2020 as **"the August 2020 Order"** and the order of 14th May 2021 as **"the May 2021 Order"**.

20. So far as the allegations of contempt are concerned, it is convenient to follow the same course as the table attached to the Claimants' application notice (**"the Table"**), and to divide the allegations into five allegations or sets of allegations, using the same numbering as in the Table. I will therefore use the expression **"Allegation 1"** to refer to the allegation (numbered (1) in the Table) that the Defendant has committed breaches of the January 2020 Order, **"Allegation 2"** to refer to the allegation (numbered (2) in the Table) that the Defendant has committed breaches of the July 2020 Order, and so on through the allegations numbered (3), (4) and (5) in the table. In the case of Allegation 4, which is split into two categories comprising, respectively, alleged breaches of the August 2020 Order and the making of knowingly false statements, I will use the expression **"Allegation 4(1)"**, to refer to the alleged breaches, and **"Allegation 4(2)"**, to refer to the alleged making of knowingly false statements.

21. References to the Claimants mean, as the context requires, either the Claimant companies, who have the proprietary interest in the Extractions and their traceable proceeds and the right to be paid the same by the Defendant, or the Claimants, who together bring the Contempt Application. Italics have been added to quotations in this judgment.

The scope of this judgment

22. In this judgment I am considering the question of whether the allegations of contempt of court, save in so far as admitted, have been proved by the Claimants to the requisite standard of proof. So far as the question arises, I will deal with the question of sanction in a separate hearing. I put the matter in these terms because, as matters stand, it is only Allegation 1 which is the subject of an admission. Whether the Claimants have succeeded in proving any of the remaining Allegations is what I have to consider in this judgment.

Burden and standard of proof

23. The question of what has to be proved in a contempt application, and to what standard is conveniently summarised by Roth J in *Jones v Hamilton* [2023] EWHC 1216 (Ch) at [43]-[45]:

> *"43. It is fundamental that the criminal standard of proof applies for a finding of contempt. As recently observed by Cockerill J in ADM International SARL v Grain House International SA [2023] EWHC 135 (Comm) at [37], the modern way of expressing that in a criminal case is to direct that the jury "must be satisfied so that they are sure". This is in substance the same as proof beyond reasonable doubt and I respectfully agree with Cockerill J that the modern expression should be adopted for civil contempt cases.*
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> *44. It is common ground that to be in contempt a respondent must:*
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> *i) know of the relevant order;*

ii) have acted, or failed to act, in a manner prohibited or required by the order, as the case may be;

iii) intended to do the act, or to fail to do the act, as the case may be: mere inadvertent conduct will not suffice.

45. However, knowledge by the respondent that the act is a breach is not required. As Rose LJ (as she then was) said in Varma v Atkinson & Another [2020] EWCA Civ 1602 at [54]:

> *"once knowledge of the order is proved, and once it is proved that the contemnor knew that he was doing or omitting to do certain things, then it is not necessary for the contemnor to know that his actions put him in breach of the order; it is enough that as a matter of fact and law, they do so put him in breach."*

24. I was also referred to the summary of the contempt jurisdiction provided by Nugee LJ in *Kea Investments Ltd v Watson* [2020] EWHC 2599 (Ch), at [7]-[19]. I highlight the following parts of this summary.

25. At [13] Nugee LJ quoted at length from the summary of the principles regarding the burden and standard of proof given by Rose J (as she then was) in *JSC Mezhdunarodniy Promyshelnniy Bank v Pugachev* [2016] EWHC 192 (Ch):

> *"13. It is well established that the burden of proof lies on the applicant and that the standard of proof is the criminal standard (now specifically referred to in PD 81 para 9 as set out above). In JSC Mezhdunarodniy Promyshelnniy Bank v Pugachev [2016] EWHC 192 (Ch) (**"Pugachev"**) Rose J summarised the principles at [41] as follows:*
>
> *"i) the burden of proving the contempt that it alleges lies on the Bank. Insofar as Mr Pugachev raises a positive defence he carries an evidential burden which he must discharge before the burden is returned to the Bank.*
>
> *ii) the criminal standard of proof applies, so that the Bank's case must be proved beyond reasonable doubt – or so that the court is sure. In case the meaning of this formulation were unclear, Phipson on Evidence (17th edition, 2009 at paragraph 6.51) cites the Privy Council in Walters v. R [1969] 2 A.C. 26 as indicating that "[a] reasonable doubt is that quality or kind of doubt which when you are dealing with matters of importance in your own affairs you allow to influence you one way or another".*
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> *iii) The court needs to exercise care when it is asked to draw inferences in order to prove contempt. The law in this respect is summarised in a passage in the judgment of Teare J in JSC BTA Bank v. Ablyazov [2012] EWHC 237 (Comm). Circumstantial evidence can be relied on to establish guilt. It is however important to examine the evidence with care to see whether it reveals any other circumstances which are or may be of sufficient reliability and strength to weaken or destroy the Bank's case. If, after considering the evidence, the court concludes that there is more than one reasonable inference to be drawn and at least one of them is inconsistent with a finding of contempt, the claimants fail. Where a contempt application is brought on the basis of almost entirely secondary evidence, the court should be particularly careful to ensure that any conclusion that a respondent is guilty is based upon*

cogent and reliable evidence from which a single inference of guilt, and only that inference, can be drawn."

26. At [15] Nugee LJ drew attention to the need to consider the overall picture:

> *"15. Ms Jones drew my attention to some other points relevant to the proof of contempt mentioned in the authorities. First, where a number of contempts are charged, it is appropriate to have regard to the overall picture: see Gulf Azov Shipping Co Ltd v Chief Idisi [2001] EWCA Civ 21 (**"Gulf Azov"**) per Lord Phillips MR at [16]-[18], especially at [18] where he said:*
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> > *"It is not right to consider individual heads of contempt in isolation. They are details on a broad canvas. An important question when that canvas is considered is whether it portrays the picture of a Defendant seeking to comply with the orders of the Court or a Defendant bent on flouting them. It is right that the individual details of the canvas should be informed by the overall picture. But, having said that, each head of contempt that has been held proved must be established beyond reasonable doubt."*

27. At [16] Nugee LJ noted that although each essential element of a charge of contempt must be proved to the criminal standard, it is not necessary that every fact relied on in support of the charge must be proved beyond reasonable doubt, quoting Rix LJ in *JSC BTA Bank v Ablyazov* [2012] EWCA Civ 1411:

> *"16. Second, although each essential element of a charge of contempt must be proved to the criminal standard, it is not necessary that every fact relied on in support of the charge must itself be proved beyond reasonable doubt: see Ablyazov (CA) per Rix LJ at [51]-[52] where he said:*
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> > *"51. The error of law alleged is that the judge failed to apply the correct criminal standard of proof because he sometimes adopted the language of a civil trial, saying that something was "improbable", or "likely", or words to that effect. It is true that the judge so expressed himself on occasions. However, the judge overwhelmingly used the language of the criminal standard (of being sure, or of rejecting the possibility that something may be as suggested), and he uniformly did so when reaching his conclusions on any essential plank of the bank's case. Examples of that are so numerous as to be unnecessary to exemplify. Moreover, it is not true that every single aspect of a criminal case has to be proved to the criminal standard, although of course the elements of the offence must be.*
> >
> > *52. It is, however, the essence of a successful case of circumstantial evidence that the whole is stronger than individual parts. It becomes a net from which there is no escape. That is why a jury is often directed to avoid piecemeal consideration of a circumstantial case: R v. Hillier (2007) 233 ALR 63 (HCA), cited in Archbold 2012 at para 10-3. Or, as Lord Simon of Glaisdale put it in R v. Kilbourne [1973] AC 729 at 758, "Circumstantial evidence…works by cumulatively, in geometrical progression, eliminating other possibilities". The matter is well put in Shepherd v. The Queen (1990) 170 CLR 573 (HCA) at 579/580 (but also passim):*
> >
> > > *"…the prosecution bears the burden of proving all the elements of the crime beyond reasonable doubt. That means that the essential ingredients of each element must be so proved. It does not mean that every fact – every piece of evidence – relied upon*

to prove an element by inference must itself be proved beyond reasonable doubt. Intent, for example, is, save for statutory exceptions, an element of every crime. It is something which, apart from admissions, must be proved by inference. But the jury may quite properly draw the necessary inference having regard to the whole of the evidence, whether or not each individual piece of evidence relied upon is proved beyond reasonable doubt, provided they reach their conclusion upon the criminal standard of proof. Indeed, the probative force of a mass of evidence may be cumulative, making it pointless to consider the degree of probability of each item of evidence separately." "

28. In terms of proof by inference and circumstantial evidence, Nugee LJ quoted, at [17], Christopher Clarke J (as he then was) in *Masri v Consolidated Contractors International Company SAL* [2011] EWHC 1024 (Comm):

> *"17. Third, as to proof by inference and circumstantial evidence, see Masri v Consolidated Contractors International Company SAL [2011] EWHC 1024 (Comm) (**"Masri"**) per Christopher Clarke J at [145]-[146]:*
>
> *"**Inferences***
>
> *145. In reaching its conclusions it is open to the court to draw inferences from primary facts which it finds established by evidence. A court may not, however, infer the existence of some fact which constitutes an essential element of the case unless the inference is compelling i.e. such that no reasonable man would fail to draw it: Kwan Ping Bong v R [1979] AC 609.*
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> ***Circumstantial evidence***
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> *146. Where the evidence relied on is entirely circumstantial the court must be satisfied that the facts are inconsistent with any conclusion other than that the contempt in question has been committed: Hodge's Case [1838] 2 Lewin 227; and that there are "no other co-existing circumstances which would weaken or destroy the inference" of guilt: Teper v The Queen [1952] AC 480, 489. See also R v Blom [1939] AD 188, 202 (Bloemfontein Court of Appeal); Martin v Osborne [1936] 55 CLR 367 , 375. It is not, however, necessary for the court to be sure on every item of evidence which it takes into account in concluding that a contempt has been established. It must, however, be sure of any intermediate fact which is either an essential element of, or a necessary step on the way towards, such a conclusion: Shepherd v The Queen 170 CLR 573 (High Court of Australia).*
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> ***Adverse inferences***
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> *Mr James Lewis QC on behalf of the judgment debtors accepted that, although (i) an application for contempt is criminal in character, (ii) an alleged contemnor may claim a right to silence, and (iii) the provisions of sections 34 and 39 of the Criminal Justice Act 2003 do not apply, it was open to the Court to draw adverse inferences against the judgment debtors to the extent that it would be open it to do so in comparable circumstances in a criminal case. Thus it may be legitimate to take into account against the judgement debtors the fact (if it be such) that, when charged with contempt, as they have been in these proceedings, they have given no evidence or explanation of*

something of which they would have had knowledge and of which they could be expected to give evidence if it was true."

29. Finally, at [18], Nugee LJ noted the ability of the court to have regard to the cumulative effect of purported explanations which, taken together, can lead to the conclusion that the relevant evidence is deceitful:

> *"18. Fourth, in an appropriate case the Court can have regard to the cumulative effect of purported explanations given by the alleged contemnor which together can lead to the conclusion that the evidence is deceitful: see Ablyazov (CA) per Rix LJ at [96], [100]. At [96] he said:*
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> > *"96. I would end this section of my judgment by saying this. It is noticeable from the facts of this case, both as found by the judge, but also in the nature of the structure of the arguments as they have developed, how time and time again, as some aspect of Mr Ablyazov's conduct has come under question, so the evidence deployed has become remarkable for the way in which it has taken tortuous turnings which have asked the court to suspend its belief in reality in favour of reduplicating unrealities…."*
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> *Then after summarising the explanations given in that case, he continued at [100]:*
>
> > *"100. As this series of coincidences, misfortunes, errors, misunderstandings and inexplicable developments multiply, the court is entitled to stand back and ask whether there is in truth a defence or defences as alleged, even if no burden rests on Mr Ablyazov, and the burden remains on the bank, or whether there is at any rate the realistic possibility of such, or on the other hand whether the court is being deceived. The trial judge decided that it was being deceived by witnesses without credibility. It is not for this court to say that he was wrong without strong grounds for doing so, grounds which have simply not been formulated."*

30. In summary therefore, and returning to the basic position, the burden is upon the Claimants to prove, to the criminal standard of proof, the Allegations, save in so far as the same are admitted. In relation to each of the Allegations which remain in dispute I must be satisfied, so that I am sure, that each of the elements which is required to establish the relevant contempt has been proved by the Claimants.

31. Beyond these basic propositions, and subject to one exception, I approach the evidence in the Contempt Application keeping in mind the guidance which can be found in *Kea* and in the other authorities to which I was referred on the question of the burden and standard of proof and on the question of how I should approach the evidence.

32. The exception relates to the question of drawing adverse inferences from silence, which is referred to in the quotation from *Masri* above. In the present case the question of whether I could draw any such inferences generated considerable argument, which was the subject of further submissions following the Trial itself. I will return to this particular question later in this judgment, at the point where it is relevant to my analysis.

33. In the remainder of this judgment, where I make findings of fact or state that I have reached a particular conclusion on a matter of fact, I make such findings and arrive at

such conclusions on the basis of the criminal standard of proof. Where I refer to the question of proof I mean, unless otherwise indicated, the criminal standard of proof.

What are the allegations of contempt which I am considering?

34. The Claimants' case is that the Defendant has been in serial breach of court orders in the Actions. I was told that the Allegations are the equivalent of specimen charges, brought by the Claimants in the hope of bringing home to the Defendant the necessity of complying with court orders. It seems to me however that I must concentrate on the Allegations. Given that this is a contempt application, I do not think that it is open to me to take into account allegations of serial breaches of court orders which are not the subject of the Contempt Application. This has been made clear in a number of cases. The position is usefully summarised by Nugee LJ in *Kea*, at [22]. I can see that other conduct of the Defendant in relation to court orders might have some relevance, in considering the question of whether any particular Allegation has been proved. Subject to this point, it seems to me, as I have said, that I must concentrate on the Allegations.

The evidence in the Contempt Application

35. The evidential position in the Contempt Application is not straightforward, and requires some analysis.

36. Broadly, the evidence in the Contempt Application falls into two parts.

37. First, there is a considerable mass of documentary evidence, including witness statements and affidavits made in the Actions, separately from the Contempt Application, which has accumulated over the course of the Actions and has been included in the core bundle and the hearing bundle for the Trial. This includes documentation, such as bank statements and correspondence, obtained or coming into existence in relation to the Contempt Application.

38. Second, there is the evidence filed for the Contempt Application. This requires individual listing:
    (1) The original evidence filed in support of the Contempt Application comprises a first affidavit of Shlomo Rechtschaffen, of the Claimants' solicitors, sworn on 6th July 2021.
    (2) In response there is an affidavit of the Defendant, sworn on 16th February 2023 and a witness statement of Michael Marx dated 14th February 2022. Mr Marx is a qualified accountant, who has known the Defendant for many years and has provided assistance to the Defendant, in the Actions and in the Contempt Application. By way of example, Mr Marx addressed me (with my permission) at the July 2023 Hearing on behalf of the Defendant, following the withdrawal of the Defendant's counsel. It is apparent from an order made by Trower J on 2nd February 2022 (**"the Directions Order"**), which gave directions for the hearing of the Contempt Application, that Mr Marx's witness statement replaced an earlier witness statement which was struck out by the Directions Order. It is also apparent from the Directions Order that the Defendant's affidavit was intended to be a version of an earlier witness statement, which the Defendant had made on 9th September 2022, which had failed to comply with the requirements of CPR 32 and PD32A.
    (3) In response to the Defendant's evidence Mr Rechtschaffen made a second affidavit, sworn on 30th September 2022, and a third affidavit, sworn on 28th June 2023.

(4) Shortly before the Trial the Defendant served a second affidavit of his own, sworn on 6th October 2023, and an affidavit of Paolo Martini, managing partner at the Defendant's solicitors, sworn on 2nd October 2023. As there was no permission for this evidence to be served pursuant to the Directions Order, the Defendant made applications for permission to adduce these affidavits. The Defendant's second affidavit is concerned with Allegation 1. Mr Martini's affidavit is concerned with Allegation 2.

(5) Finally, there are two witness statements made by Mr Rechtschaffen in relation to the Contempt Application. The first is a 21st witness statement made by Mr Rechtschaffen on 17th July 2023, which gives some idea of the scale of the evidence previously served in relation to the Actions. This witness statement introduces correspondence concerning the Defendant's membership of a private members club. The second witness statement is a 22nd witness statement, made by Mr Rechtschaffen on 10th August 2023, which was concerned with a possible further adjournment of the Trial, following the July 2023 Hearing. In the event there was no such further adjournment, and, as it seems to me, the 22nd witness statement is not directly relevant to the Trial.

39. At the Trial itself the Defendant elected not to give evidence himself or to call Mr Marx to give oral evidence. The Defendant also elected not to rely upon his own affidavit evidence or the witness statement of Mr Marx which had previously been filed for the Trial.

40. In oral submissions Mr Fulton drew my attention to CPR 32.5 and to the decision of the Court of Appeal in *Williams v Hinton* [2011] EWCA Civ 1123 [2012] H.L.R. 4, specifically at [43], where Gross LJ explained that witness statements made by witnesses who were not called to give evidence at the relevant trial were not in themselves evidence, unless put in as hearsay evidence. On this basis Mr Fulton submitted that the position was that there was no evidence from either the Defendant or Mr Marx, in relation to the Contempt Application itself. The Defendant could not rely upon his own affidavit evidence. Nor could the Defendant rely on the witness statement of Mr Marx. The only exception to this was that Mr Fulton did not object to Mr Martini's evidence being put before the court.

41. I understood Mr Bowers not to dispute this analysis of the position. He also maintained however that this meant that the second and third affidavits of Mr Rechtschaffen could not be relied upon, because they contained evidence in reply to the evidence of the Defendant and Mr Marx, which was not before the court. For this purpose Mr Bowers relied upon what was said by Cockerill J in *Deutsche Bank AG v Sebastian Holdings Inc* [2020] EWHC 3536 (Comm), at [53], in relation to affidavit evidence in a contempt hearing which was not formally adduced at the hearing:

> *"53. In this regard I should perhaps clarify at this point that the basis upon which Mr Vik is entitled to take this position, is that:*
>
> *i) The defendant to a committal application is, it is well-established, entitled to remain silent and is not a compellable witness. This is set out in Re L (A Child) [2016] EWCA Civ 173, [2017] 1 FLR 1135 at [31]-[32] where the court referred to: "the absolute right of a person accused of contempt to remain silent, which carries with it the absolute right not to go into the witness box";*

ii) The correlate of that right is that the Court is required to manage committal proceedings so as to safeguard that right and a failure to do so will justify the setting aside of an order for committal, even where the failure might not have changed the outcome: see Hammerton v Hammerton [2007] 2 FLR 1133 at [14]-[19];

iii) That means that if a respondent serves evidence in advance of the committal hearing that evidence is not taken as having been deployed. The respondent may, right until the last moment, choose not to deploy it. And until it has been so deployed, it is inadmissible: Templeton Insurance v Motorcare Warranties [2012] EWHC 795 (Comm) at [(second) 24] (Eder J);

iv) The evidence may, however, be used by the applicant for the purpose of "gathering preparatory evidence in reply" (Re B (A Minor) [1996] 1 WLR 627 at 635-636B, 638B-G, per Wall J). Pending the deployment of the respondent's evidence both his affidavit and any evidence in reply remain "in limbo".

Nothing in new Part 81 affects this line of authorities."

42. I should also quote the extract from the judgment of Eder J in *Templeton Insurance Limited v Motorcare Warranties Limited* [2012] EWHC 795 (Comm), at the second paragraph 24 in the judgment, which was relied upon by Cockerill J in *Deutsche Bank*:

> *"24. Third, I should mention that at the close of Templeton's case, Mr Quiney made an application that I should, in effect, reject the application for committal on the basis of "no case to answer". This gave rise to two main points in respect of which I gave rulings. First, a question arose as to whether Mr Quiney could make that application without having to elect that if such application failed he would not himself call any evidence. In the event, I ruled that he was under no obligation to elect. Second, a question arose on the hearing of the application of "no case to answer" as to whether Templeton could (as it sought to do) rely upon the affidavit evidence that had been sworn and filed by both Mr Anthony Thomas and Mr Panesar. In the event, I ruled that such evidence would have been inadmissible if it had simply been sworn and filed in accordance with the court's order but that, consistent with the observations of Wall J in Re B (A minor) (Contempt: Evidence) [1996] 1 FCR 158, it was admissible because, in addition, it had been "used" by in particular Mr Quiney on behalf of Mr Anthony Thomas viz such evidence had been included without demur in the hearing bundles; I had been specifically invited by the parties (including by Mr Quiney in his skeleton) to read it in advance of the hearing and, as requested, I had done so; Mr Quiney's skeleton (which I also read in advance of the hearing) not only requested that I read such evidence but expressly referred to certain passages in such evidence which he specifically relied on. Quite apart from the foregoing, I should note that Annex A relied specifically on such evidence (at least in part) without any objection having been taken; and Mr Cook opened the case relying upon certain parts of that evidence again without any objection having been taken. Accordingly, I rejected Mr Quiney's application in relation to the admissibility of such evidence. I also rejected his application of "no case to answer" and the case then proceeded with Mr Quiney calling Mr Anthony Thomas to give oral evidence."*

43. In principle, and on the basis of these authorities, it seems to me that Mr Bowers was right to say that the Defendant's decision not to give evidence or to call evidence from

Mr Marx meant not only that there was no evidence, written or oral, from either of these individuals, but also that the second and third affidavits of Mr Rechtschaffen could not be relied on. I reach this conclusion because both of these affidavits contain evidence in reply to the affidavit of the Defendant and the witness statement of Mr Marx, neither of which is now in evidence. Applying what was said by Cockerill J in *Deutsche Bank*, it seems to me that the second and third affidavits are not themselves admissible in evidence.

44. In terms of admissible evidence therefore, this leaves Mr Rechtschaffen's first affidavit and accompanying exhibit, and the affidavit of Mr Martini, in addition to the mass of documentation which I have identified above as comprising the first category of evidence before the court in the Contempt Application. Mr Rechtschaffen was not required to be cross examined on his first affidavit. Nor was Mr Martini required for cross examination on his affidavit. There is also the 21st witness statement of Mr Rechtschaffen, which I will come back to later in this judgment, at the point where it becomes relevant.

45. The absence of any evidence from the Defendant generated the further issue which I have identified earlier in this judgment. This was the question of whether I could draw any adverse inferences from the absence of any evidence from (i) the Defendant and/or (ii) Mr Marx, and/or (iii) a Mr Rugova. another associate of the Defendant. As I have said, I will return to this question later in this judgment, at the point where it is relevant to my analysis.

46. In referring to the point at which the above matters become relevant I am, for ease of reference, referring to the point, later in this judgment, where I come to my analysis of Allegation 3.

Allegation 1 – alleged breaches of the January 2020 Order

47. Although Allegation 1 is now admitted, it is necessary to say something about Allegation 1, as it has potential relevance to the remaining Allegations. The Claimants submit that the brazenness of the Defendant's *"misconduct"* in relation to Allegation 1 is relevant to the assessment of the remaining Allegations. There is also the question of whether the breaches comprising Allegation 1 had already been the subject of an admission, prior to the admission of Allegation 1 made for the Trial.

48. Paragraph 5 of the January 2020 Order contains the proprietary injunction granted against the Defendant. Paragraph 5 is in the following terms:

> *"5. Mr Wojakovski shall not, without the leave of the Court or the corporate Claimants' prior written permission, deal with, dispose of or diminish the value of any of the following cash or assets:*
>
> *a. the sum of £13,594,642.43 (referred to at paragraph 4) or its traceable proceeds and any profits generated thereon; and*
>
> *b. any other sums received by Mr Wojakovski for similar purposes and in respect of which there was no valid authorisation from the relevant company."*

49. The sum of £13,594,642.43 was identified in paragraph 4 of the January 2020 Order in the following terms:

> *"4. The sum of £13,594,642.43 (in respect of which Judgment was entered on 20 November 2019, but without regard for Mr Wojakovski's set-off), any other*

sum for which Mr Wojakovsk is required to account pursuant to paragraph 6 below, and in each case their traceable proceeds, are, insofar as they remain in his ownership or control, held on trust by Mr Wojakovski for the relevant companies."

50. As noted earlier in this judgment, paragraph 4 of the January 2020 Order confirmed that the Claimants had a proprietary interest in the sum for which judgment was entered by paragraph 3 of the order of 20th November 2019. As also noted earlier in this judgment, this judgment was entered in respect of the Extractions.

51. The allegations of breaches are in the following terms, in the Table:

"(1) Breaches of paragraph 5 of the 16.01.2020 Order: *Expenditure from Lloyds bank account 46963768 which EW knew contained Scottish rental income from Quastus Holdings Limited which were the proceeds of extractions and therefore caught by the proprietary injunction. Even after the injunction was imposed, EW caused a further £70,000 of rental income to be transferred from Quastus into the account (on 23.1.2020; 7.2.2020; 25.2.2020; 12.3.2020; 31.3.2020) and continued to spend it."*

52. It is common ground that the Defendant purchased a number of properties in Scotland, through a Jersey company called Quastus Holdings Limited (**"Quastus"**), using monies from the Extractions. It is now formally admitted by the Defendant that, following the January 2020 Order and on various occasions, the Defendant received rental income from these Scottish properties, in the total sum of £70,000, into the Lloyds Bank account, which was in his own name. The Defendant then spent that money for his own purposes. This breached paragraph 5 of the January 2020 Order, because the rental income represented the traceable proceeds of the Extractions or profits generated thereon.

53. The Defendant's bank statements, for his Lloyds account, are available for the period from January 2020, exhibited to Mr Rechtschaffen's first affidavit. The bank statements disclose that the pattern of the Defendant's spending, funded by the Quastus monies coming into the account, remained consistent, after the January 2020 Order, with his previous pattern of spending. Nor was this spending confined to subsistence. The bank statements disclose expenditure on items such as a skiing trip, wine, entertaining (including entertainment at two Mayfair clubs) and professional fees of solicitors and a tax adviser. Essentially, the Defendant continued to maintain his existing lifestyle, after the January 2020 Order, using monies which were caught by the proprietary injunction in paragraph 5 of the January 2020 Order.

54. The Defendant formally admitted the breaches of paragraph 5 of the January 2020 Order which comprise Allegation 1 shortly before the Trial. The admission was made by the Defendant's counsel in paragraph 1.1 of their skeleton argument for the Trial, which is dated 10th October 2023. In their skeleton argument the Defendant's counsel accepted, in my view both fairly and correctly, that there should have been formal acceptance of *"the breach"* (which I take to be a reference to the breaches of the January 2020 Order which comprise Allegation 1) much earlier in the proceedings.

55. The Defendant also filed what was described as a second affidavit, sworn on 6th October 2023, making formal admission of the breaches which comprise Allegation 1. As I have explained however, the Defendant chose not to give any evidence of his own at the Trial,

or to call evidence from any other witness. In addition to this, the Defendant had no permission to serve this second affidavit. Directions for the service of further evidence in relation to the hearing of the Contempt Application were given by the Directions Order. Those directions were supplemented/varied by further directions contained in my order of 20th July 2023, made at the July 2023 Hearing. Neither set of directions permitted the service of the second affidavit of the Defendant shortly before the Trial. The Defendant did issue an application, on 6th October 2023, for permission to serve this second affidavit out of time, but this application was not pursued at the Trial.

56. In any event, I agree with the Claimants that the Defendant had already made binding admissions in relation to the breaches which comprise Allegation 1. I say this for the following three reasons.

57. First, on 8th April 2020 the Claimants and other parties in the Actions made an application for a debarring order against the Defendant, seeking to debar the Defendant from participating in the Actions unless he discharged accrued costs orders. This application came before Zacaroli J on 24th April 2020. Zacaroli J gave a written judgment on the application on 28th April 2020. For the reasons set out in that judgment, Zacaroli J made an order debarring the Defendant from defending unless he paid the relevant costs order within 14 days. In response to the debarring application the Defendant made what was described as a fifth witness statement dated 23rd April 2020. In paragraphs 8-10 of that witness statement the Defendant admitted that, since the January 2020 Order, £70,000 had been paid out of Quastus' account and into the Defendant's personal Lloyds account, which the Defendant had then used for his own expenditure.

58. Second, the Defendant was represented at the hearing of the application for a debarring order by leading counsel. In his skeleton argument for the hearing Mr Haque KC set out the following apology on behalf of the Defendant:

> *"10. But before anything further it is with deep regret that Mr Wojakovski apologises to the Court because, as the Court will have read in Mr Wojakovski's statement dated 23 April 20120, after the 16 January Order (imposing a penal sanction) was made Mr Wojakovski has used has rental monies from properties purchased through an offshore trust, Quastus, for his living expenses. As he explains, he has no other source of income. He did not have untainted money and the submission made on his instructions, that Mr Wojakovski did, was not true. He appreciates there may well be consequences. Had he appreciated that the Empire loan had matured last November, then he would not have been in this position. He will be able to purge any contempt by using the monies due to him via Empire."*

59. Despite the expectation of leading counsel that the Defendant would be able to purge his contempt, this has not occurred. As I understand the position, the sum of £70,000 has never been repaid by the Defendant.

60. Third, Mr Haque repeated the Defendant's apology at the hearing of the debarring application. The transcript of the hearing discloses the following exchange between leading counsel and Zacaroli J:

> *"MR HAQUE: Thank you. My Lord then dealing first as I absolutely must do with the apology which is given in full serious and openness by Mr Wojakovski. It was maybe suggested, and I think suggested is probably as high as it can go by Mr*

Fulton, that it was not a serious apology in the sense that Mr Wojakovski continued to spend the money that he had extracted from Quaestus - the £70,000. Your Lordship, it is a serious apology because behind the extraction is the very human problem which is that as he says he has no money, he had no money. And so, it was desperation in a way which has meant that the only money that he had to spend to live, which included as you will have seen the maintenance orders and everything else, was to use the money from Quaestus. He does regret it and he does apologise, and he understands the significance and the seriousness of what he has done.
MR JUSTICE ZACAROLI: Can I just stop you there a moment?
MR HAQUE: Yes.
MR JUSTICE ZACAROLI: So are you saying that, to understand this apology correctly ---
MR HAQUE: Yes.
MR JUSTICE ZACAROLI: --- are you saying he did know that it was the company's money but had to use it out of desperation or are you saying that he did not know it was the company's money?
MR HAQUE: No, it is I think he knew it was the company's money.
MR JUSTICE ZACAROLI: Right.
MR HAQUE: I cannot go beyond what he says in his statement but certainly beyond 16 January, the date that the order was placed, sorry, the order was made, then yes, he would know it was extracted money that he was using."

61. It seems to me that these earlier admissions would have prevented the Defendant from disputing Allegation 1 even if the Defendant had sought, at the Trial, to continue to dispute Allegation 1. As I have said, the Defendants' counsel accepted in their skeleton argument for the Trial, both fairly and correctly, that there should have been formal acceptance of the breaches comprising Allegation 1 much earlier in the proceedings.

62. The above is all I need to say about Allegation 1 for the purposes of this judgment. For the avoidance of doubt, I am satisfied, on the basis of the Defendant's admissions and, for that matter, on the basis of the admissible evidence which I have seen, that the Defendant committed the breaches of the January 2020 Order which comprise Allegation 1 and that these breaches constituted acts of contempt of court. The question of sanction will be for a separate hearing.

63. I now turn to deal with the remaining Allegations, all of which remain in dispute.

Allegation 2 – alleged breaches of the July 2020 Order – analysis and determination

64. The July 2020 Order dealt with various applications made by the parties. One of these was an application for disclosure made by the Claimants. By paragraph 12 of the July 2020 Order Zacaroli J made an order for the Defendant to swear and serve on the Claimants an affidavit setting out information about his assets. For present purposes the relevant parts of this order can be found in sub-paragraphs (4) and (5) of paragraph 12, which required the provision of the following information:

> *"(4) The following in relation to his mother's will: (i) a copy of the will, (ii) the identity of the executor/s of that will, (iii) an update as to the current status of probate; and (iv) the estimated value and location of any assets which Mr Wojakovski is due to inherit pursuant to the will.*

(5) The following in relation to father's will: (i) a copy of the will; (ii) the identity of the executor/s of that will; and (iii) details of how any assets inherited by Mr Wojakovski pursuant to the will have been spent and/or dissipated."

65. The reason for the difference in language between these two sub-paragraphs is that the Defendant's father had died prior to July 2020 Order. The Defendant's mother was alive at the time of the July 2020 Order but, sadly, has since died.

66. In relation to these two sub-paragraphs, paragraph 13 provided as follows

"13. To the extent that the Respondent claims not to have personal knowledge of any of the matters identified in paragraph 12(4) or 12(5) above, he is required to:

(1) Promptly request the same from the executor/s of the relevant will/s and provide copies of this correspondence (and any response) to the Claimants' solicitors; and

(2) Take all reasonable steps to obtain the same from the executor/s of the relevant will/s."

67. I should also set out paragraph 15 of the July 2020 Order, which featured in the argument in relation to Allegation 2. In relation to what constituted assets of the Defendant, paragraph 15 provided as follows:

"15. For the purpose of this Order the Respondent's assets include:

(l) Any asset which he has the power, directly or indirectly, to dispose of or deal with as if it were his own. The Respondent is to be regarded as having such power if a third party holds or controls the asset in accordance with his direct or indirect instructions.

(2) Any interest under any trust or similar entity including any interest which can arise by virtue of the exercise of any power of appointment, discretion or otherwise howsoever."

68. The allegations of breaches which comprise Allegation 2 are set out in the following terms, in the Table:

*"**(2) Breaches of paragraphs 12(4), 12(5) and/or 13 (if applicable) of the 6.7.2020 Order**: EW made no attempt to comply with paragraphs 12(4) and (5) and/or 13 (if applicable) of the 6.7.2020 Order, asserting only that his interest under the will was "discretionary"."*

69. The Defendant provided an affidavit in response to this order which was sworn on 3rd August 2020. In paragraph 18 of that affidavit, the Defendant said this:

*"18. In accordance with paragraphs 12 (4) and 12 (5) of the 6 July order, I exhibit at **pages 17 to 21** a copy of the Will of my mother and father. The sole executor of the Will is Gil Wojakovski, my brother. Any entitlement I may have under the Will is purely discretionary."*

70. The will itself (**"the Will"**) is described as the last will and testament of Gideon Wojakovski and Miriam Wojakovski, the late parents of the Defendant. The Will is dated 20th March 2008 and was made by the Defendant's parents, I assume in Israel. The Will is written in Hebrew, but there is an English translation of the Will available. It seems clear to me that the Will is governed by Israeli law. I am referring to the Will in the singular because, as I understand the position, the Defendant's late parents made one

will, namely the Will. I have seen reference to wills, in the plural, in some documents. I have also seen reference to a mutual will. I proceed on the basis that the Will is a single will, and not two wills in the same form.

71. It will be noted that the Will is not specifically mentioned in the relevant paragraphs of the July 2020 Order. Indeed, the language of paragraphs 12(4) and 12(5) assumes separate wills. The reason for this is that the Claimants were not aware of the Will or of the precise testamentary arrangements made by the Defendant's parents, when the July 2020 Order was made.

72. Clause 12 of the Will describes the purpose of the trust created by the Will (**"the Trust"**) in the following terms:

> *"12. <u>The purpose of the Trust</u>*
> *The Trust will take care of the financial shortage of the surviving spouse and Our Descendants, and the Trust will also take care of their health. In addition, the Trust will take care out of the share of every descendant to help with the education of the descendant's kids and the building of their future, and will assist, if required, in accordance with the rules set by the trustee."*

73. In its material part, clause 11 of the Will describes the trusteeship of the Will in the following terms:

> *"11. <u>The Trustee</u>*
> *(a) The trustee of the Trust will be the surviving spouse, and if god forbid he/she will not be among the living or will not be capable of performing his/her duties as trustee, we appoint our son, Gil Wojakovski, as trustee. We ask him for his consent to serve as trustee.*
> *(b) As long as the surviving spouse will be alive and serve as trustee, we instruct him/her to consult in all legal decisions with our son Gil Wojakovski, and in all financial decisions with our son, Oded Wojakovski. After the death of both of us, when Gil Wojakovski will serve as trustee, he must consult in all financial decisions with our son Oded Wojakovski and with our son Shai Wojakovski.*
> *(C) The trustee will make decisions according to his discretion. After the death of both of us or when our son Gil Wojakovski will serve alone as trustee, even though he will make the decisions on his own, he will not be entitled to make a decision if there is a written objection by our sons Oded Wojakovski and Shai Wojakovski together, and in case that the decision is for distribution of funds to him only, when identical funds are not distributed for the rest of the children, this decisions requires the consent of Shai and Oded together for distribution for the benefit of Gil."*

74. Clause 13 of the Will instructs the trustees *"to handle the assets in accordance with the principle rules as follows:"*. There then follow sub-clauses which set out the entitlements of the children. In view of their importance to Allegation 2, I set out these sub-clauses in full, and the following clause 14:

> *"(a) The Trust Assets will be managed in a manner that it will do internal accounting so that in terms of calculation, as long as any of us is still alive, half will serve for his/her shortage if he/her will not have enough means from the share left in his/her possession and the residue will serve for each of our children in four equal shares.*

(b) Every one of my children will be entitled for his share as long as he will not have alternative income sources, of a monthly allowance for living expenses in the amount of 100% of the average wage in the market at that time.

(c) Other than that, the trustees of the Trust will be entitled to give and provide different amounts to my children or take out money for expenses for my children and their descendants as they see fit (out of the share of the same descendant) to fulfill the purpose of the Trust as described in Section 13 above, and this for the purpose of a particular matter and/or by giving a monthly allowance, all in accordance with their absolute discretion and this, and/or nursing costs will be required for any child of mu children, such costs will be funded out of all the endowment assets in equal parts.

(d) In the event that any of my children will wish not to use his share in the Trust (i.e., to waiver his share), he will be entitled to do so only after he arrives at the age of 60 years old, or after all of his children are married, whichever is later."

"14. In the event that god forbid, any of my children will pass away, his descendants will be the beneficiaries of his share in the Trust, all in accordance with the rules of the Trust."

75. The trustee of the Will is Mr Gil Wojakovski, who is one of the Defendant's brothers. Amongst the evidence filed for the Trial there is the affidavit of Mr Martini. As I have noted, the Claimants did not object to this affidavit being admitted as part of the evidence for the Trial. The affidavit collates correspondence which has taken place with Mr Gil Wojakovski in his capacity as trustee of the Will. Mr Gil Wojakovski is a qualified Israeli lawyer. In summary, and in its material part, this correspondence is to the following effect:

(1) By a letter to one of the Defendant's trustees in bankruptcy, dated 10th February 2021, Mr Gil Wojakovski asserted that the Defendant was not a beneficiary under the Will. Mr Gil Wojakovski went on to state that the trustee in bankruptcy had no right to any information with regard to the trust established by the Will (the Trust) or its assets, but also stated, as a courtesy and amongst other items, that he had exclusive discretion concerning the assets of the Trust and that there was no justification to place monies out of the Trust fund in favour of the Defendant.

(2) In a lengthy letter to the Defendant's solicitor dated 8th August 2022 Mr Gil Wojakovski provided the following information about the Trust:

"3. The late parents of GW and EW and their other brothers, Oron and Shai, decided that after they (the parents) will pass away all their estate shall be transferred to a trust that is founded by virtue of their will (these kinds of trusts are recognized by Israeli law). The reason for the above was mainly due to special life circumstances, in which their first-born son was born with cognitive disabilities (mental disability). The deceased parents wanted to look after all their sons but mainly after their elder son and his daughter who was also born with mental disabilities. In their will, dated 20 March 2008, the late parents appointed GW as the trustee of the trust. I will not get in to all the instructions of the will, but I will say that GW has the full discretion regarding the management, control and distribution of the trust assets (except in specific and special circumstances which are not relevant).

4. *It is important to note, that according to Israeli law the Trust and the trustee (i.e. GW) are the owners of the assets of the estate while according to the will the sons of the deceased are only potential beneficiaries of the Trust. I emphasize the word "Potential" for a few reasons: (1) As stated above, the beneficiaries are* ***not*** *the owners of the trust; (2) GW has full discretion regarding the distribution of the assets of the Trust, the portion of distribution, the time of distribution and to which beneficiary a portion of the trust should be distributed to. In other words, there might be certain circumstances that a potential beneficiary shall not receive any portion of the assets of the Trust; (3) According to the will, in certain circumstances the potential beneficiaries have the right to waive their potential rights in the Trust. The important point that should be understood is that the potential beneficiaries have no specific right in a specific asset of the Trust, and in certain circumstances such potential rights may not be realized. In any case, the realization of such potential right remains at the trustee's full discretion.*
5. *The abovementioned is particularly relevant to EW. As was brought to my attention, GW has no intention to distribute to EW any money of the Trust not least since the latter owes considerable sums of money to the Trust. It should be noted that a proof of debt was submitted by GW, as a trustee of The "Wojakovski Brothers" Trust, to the Trustees in bankruptcy of EW.*
6. *It should be pointed out that EW's Trustees in bankruptcy asked GW to give them information regarding the assets of the Trust however, GW refused to give them any information for all of the above mentioned reasons."*

(3) There is then some more recent email correspondence between Mr Gil Wojakovski and Mr Martini, in September 2023, in which Mr Martini asked for information as to what the Defendant was due to inherit under the Will (following the language of paragraph 12(4) of the July 2020 Order). Mr Gil Wojakovski responded on 18th September 2023. His response was stipulated to be confidential, and not to be disclosed further but, according to Mr Martini's affidavit, Mr Gil Wojakovski subsequently consented to his response being shared with the court and the Claimants. I have therefore seen the email of 18th September 2023. In the email Mr Gil Wojakovski essentially repeats his position that the Defendant is no more than a potential beneficiary under the Will. The email is quite lengthy, but Mr Gil Wojakovski's explanation of his analysis of the position should be set out in full:

"1. As noted in your email, I am the sole trustee of the Wojakovski family Trust in which certain family members are and may be counted as potential beneficiaries from the Trust.
2. I noted above "potential" because the relevant family members, including Eduard, are not entitled to inherit anything from the will, nor they are considered to be the owners of the estate/Trust. The potential beneficiaries have only a potential right which may or may not materialize.
3. Not only does Eduard not own any of the Trust's assets, he owes to the family Trust more money than his "potential share", hence he is not due to receive any further distributions from the Trust.

4. *In light of the above, it is my view that Eduard and certainly not his debtors have the right to receive any information regarding assets that Eduard is not entitled to receive. The information of the family trust is private and confidential.*
5. *Without derogating from the above, I should further note that the purpose of the family Trust is not to pay the debts of potential beneficiaries. Hence, even if Eduard was intitled to receive something from the Trust, I would not give him money to pay his debts. Furthermore, Israeli law does not allow debtors to foreclose on trust assets or be redeemed from them. Therefore, Eduard's debtors are not entitled to receive any information about the trust's assets.*
6. *Regarding s13(b) of the will which stipulates that any one of the children is entitled to receive, out of his potential share, an "allowance" for the purposes of paying his living expenses if he does not have any other income sources, I will say the following - (1) this section is not mandatory and is under my discretion; (2) the purpose of the allowance is not for paying debts but only for living expenses; (3) the allowance is to be paid if there are no other sources of income; (4), as stated above the allowance source is from the potential share of the relevant beneficiary and in Eduard's case he has already exhausted his potential share of the Trust (if not more) since he owes considerable sums of money to the Trust..*
7. *In light of all the above I respectfully decline to provide any information about the Trust's assets*
8. *If you have any further questions, do not hesitate to contact me."*

76. With this explanation of the Will in place, I return to the question of whether the Defendant breached any of paragraphs 12(4), 12(5) or 13 of the July 2020 Order. By way of reminder, in his affidavit of 3rd August 2020, the Defendant did no more than exhibit a copy (in the original Hebrew) of the Will, identify Mr Gil Wojakovski as sole executor, and identify any entitlement he might have under the Will as discretionary.

77. So far as paragraph 12(5) is concerned, the Defendant produced a copy of the Will, which was the will of his late parents. I have not seen any evidence that the Defendant had actually inherited anything under the Will, as at 3rd August 2020. Accordingly, it seems to me that there was compliance with paragraph 12(5) so far as it applied to the Defendant. I do not think that the Claimants have established any breach of paragraph 12(5).

78. Equally, I cannot see that paragraph 13 of the July 2020 Order applied. The Defendant did not claim any lack of personal knowledge in his affidavit of 3rd August 2020. The Defendant disclosed the Will, and took his stand on the basis that there were no assets which he was due to inherit under the Will, because his entitlement was discretionary only. It seems to me that paragraph 13 would only have been engaged if there was some information which the Defendant, by reason of his lack of personal knowledge, should have sought from the trustee of the Will. There is however no evidence that the Defendant was in this position. Accordingly, it seems to me that the Claimants have not established any breach of paragraph 13.

79. This leaves paragraph 12(4), keeping in mind that the word *"assets"* in paragraph 12(4) has the extended meaning given in paragraph 15 of the July 2020 Order.

80. The key feature of paragraph 12(4) seems to me to be that the assets which were caught by its wording were those which the Defendant was *"due to inherit pursuant to"* the Will. I use the past tense because, as I construe paragraph 12 of the July 2020 Order and specifically paragraph 12(4), this wording has to be considered as at the time when the Defendant swore and served the affidavit required by paragraph 12. I note that the Defendant had 21 days to swear and serve this affidavit. It appears that the affidavit of 3rd August 2020 was sworn and served outside this time limit, but I did not understand this apparent non-compliance to be part of Allegation 2. I will refer to the time when the Defendant swore his affidavit of 3rd August 2020 as **"the Relevant Time"**.

81. It seems to me that the Defendant was obliged to make the disclosure required by section (iv) of paragraph 12(4) if two conditions were satisfied. First, there had to be an asset, subject to the point that the definition of asset extended to an asset over which the Defendant had control and/or to an interest under a trust. Second, the asset had to be one which the Defendant was due to inherit under the Will. In relation to this second condition, the word *"due"* has to be given some meaning. In my view the word *"due"* was wide enough to be capable of encompassing two situations. The first situation was that the Defendant had a right to inherit the relevant asset under the Will. The second situation was that the Defendant could expect to inherit the relevant asset, with a sufficient degree of certainty for it to be possible to say that the Defendant was *"due"* to inherit the relevant asset.

82. It seems to me that there are two difficulties which confront the Claimants, in demonstrating a breach of paragraph 12(4).

83. The first difficulty is as follows. If one reads the Will as if it was a will governed by the law of England and Wales, it is less than clear to me that the provisions of the Will gave the Defendant either a right or a sufficiently certain expectation of inheriting any particular asset. It is true that clause 13(a) of the Will refers to the four children having an equal fourth share in their parents' residuary estate, but this residue was uncertain and appears to me to have depended upon how the assets of the trust were managed and employed. In terms of specific assets, it seems to me that the composition of this share, if it would exist at all, was unknown. I find it difficult to see how this right to a quarter share, if right it was, corresponded to a specific asset which the Defendant was *"due"* to inherit under the Will, within the meaning of paragraph 12(4). I can see the argument that the Defendant was due to inherit a quarter share of his parents' residuary estate, and should so have declared in his affidavit. I am not however persuaded by this argument. It seems to me to beg the question of what, if anything, that quarter share might amount to, in terms of assets.

84. It is also true that clause 13(b) of the Will gave each child an entitlement to a monthly allowance for living expenses if the relevant child should not have alternative income sources. Once again, I find it difficult to see how this right to a monthly allowance, if right it was, corresponded to an asset which the Defendant was *"due"* to inherit under the Will, within the meaning of paragraph 12(4). Rather, it seems to me that clause 13(b) established a right to an income, which might or might not arise according to the Defendant's circumstances, pursuant to the trust established by the Will. To my mind,

the reference to an asset in paragraph 12(4) means a specific asset, not an income stream which, depending upon circumstances, might at some point be paid out of the assets in the estate of the Defendant's late parents.

85. Mr Fulton drew my attention to the Defendant's evidence, in paragraph 14 of his fifth witness statement dated 23rd April 2020, concerning a company called Maxima Corporate Holdings Limited (**"Maxima"**). According to the Defendant's witness statement this company was incorporated in 1997, upon the suggestion of the Fourth Claimant, to enable the Defendant's parents to invest in the Tonstate Group and, through this company, gain exposure to valuable property investments. Both the Defendant's parents were said to have had a beneficial interest in Maxima. Mr Fulton's point was that, by reference to the Defendant's evidence the beneficial interest of his parents in Maxima should have formed part of their estate and part of the assets subject to the trust created by the Will. Indeed, as Mr Fulton explained, it was the Claimants' concern that the Defendant was hiding assets in his parents' estate which caused them to include specific provisions for the disclosure of assets in the estate of the Defendant's parents within paragraph 12 of the July 2020 Order.

86. References to Maxima however do no more than explain to me how the disclosure provisions in paragraph 12 of the July 2020 Order came about. The same applies to the remainder of the Claimants' submissions to the effect that the Defendant had been hiding assets within his parents' estate. None of this answers the question of what assets had to be disclosed, pursuant to the disclosure obligation in paragraph 12(4). The question for me is not whether a beneficial interest in Maxima formed part of the assets subject to the trust established by the Will (the Trust), but whether the Defendant was due to inherit that beneficial interest or any part of it at the Relevant Time.

87. Mr Fulton also argued that paragraph 15(2) of the July 2020 Order operated to engage paragraph 12(4). His argument was that the Will created an interest, in favour of the Defendant, under a trust, which was an asset within the meaning of paragraph 15(2). It seems to me however that this particular argument confuses two separate concepts. First, it can be argued that the Will, on its face, created some kind of interest under a trust which was vested in the Defendant. If however this argument is correct, the relevant interest was an interest created by the Will. Specifically, this was an interest created by the trust established by the Will, which I am referring to as the Trust. Second, there is the question, which I am concerned with, of what assets the Defendant was due to inherit pursuant to the Will. If the Defendant had an interest under the Trust, he was not due to inherit that interest pursuant to the Will. The interest under the Trust was created by the Will. Paragraph 15(2) was only relevant if the Defendant was due to inherit an interest under a trust pursuant to the Will. There is however no evidence that the Defendant was due, in any sense of this word, to inherit an interest under a trust pursuant to the terms of the Will.

88. Turning to the second difficulty to which I have referred to above, it is a more fundamental difficulty. Even if I am wrong in my analysis of the provisions of the Will, as set out above, the Will is not a will governed by the law of England and Wales. It is a will governed by Israeli law. The same applies to the trust established by the Will, which I am referring to as the Trust. The trustee of the Will is Mr Gil Wojakovski. By reference to the correspondence from Mr Gil Wojakovski which I have seen, his position is that the Defendant has no right to any asset in the estate. According to the letter of 10th February

2021 the Defendant is not a beneficiary of the Will, and Mr Gil Wojakovski has an exclusive discretion regarding any distribution of the assets of the Trust. The recent email of 18th September 2023 describes the Defendant as no more than a potential beneficiary, who cannot expect to receive anything from the estate because he owes the Trust more money than his potential share.

89. I am not an expert in Israeli law, let alone in the manner to which it applies to the Will. I have received no admissible evidence as to how Israeli law applies to the Will and, specifically, what effect Israeli law has on the ability or right of the Defendant to receive anything under the Will. I do not know to what extent clauses 13(a) and 13(b) of the Will can be said to have created, at the Relevant Time, any right or expectation of the inheritance of assets under the Will. The same applies to the remaining provisions of the Will, so far as relevant. In those circumstances I am in no position to disagree with or reject what has been said by Mr Gil Wojakovski, in the correspondence exhibited by Mr Martini, as to the Defendant's rights or, more accurately, absence of rights under the Will. Beyond that, I am also unclear as to what dealings have taken place between the Defendant and Mr Gil Wojakovski which have resulted in a position where, according to Mr Gil Wojakovski, the Defendant is not entitled to anything under the Will. If this is the true position, as a matter of fact, I do not know whether the position was the same or different at the Relevant Time.

90. In all these circumstances and independent of my reading of the Will as if it was a will governed by the law of England and Wales, I cannot see how I can be satisfied to the required standard of proof, in relation to an Israeli will and by reference to the evidence before me, that the Defendant was, at the Relevant Time, *"due to inherit"* any assets under the Will.

91. There are two further arguments advanced by the Claimants in relation to Allegation 2 with which I should deal.

92. The first argument is that if the true position was that the Defendant was not due to inherit anything under the Will, and had not previously inherited anything under the Will, the Defendant was required to provide a nil return answer in his affidavit of 3rd August 2023. I do not accept this. It seems to me that section (iv) of paragraph 12(4) required the Defendant to provide the required information about assets if there were any assets caught by the terms of section (iv). I do not see that an express nil return was required. The same reasoning seems to me to apply to the information required by section (iii) of paragraph 12(5). In any event, and if I am wrong in this analysis, it seems to me that the Defendant did provide what was, in reality, an effective set of nil returns by paragraph 18 of his affidavit of 3rd August 2020.

93. The second argument related to a judgment given by District Judge Duddridge on 18th June 2021 in the Central Family Court, in relation to financial relief proceedings between the Defendant and his former wife. The judgment is a lengthy one, but I was referred specifically to the section of the judgment where the District Judge considered the provisions of the Will, and noted the absence of information as to the assets in the estate of the Defendant's parents. In particular, I was referred to paragraph 86 of the judgment, where the District Judge concluded that the Trust was a resource against which the Defendant had legitimate claims for support.

94. The Claimants argued that the Defendant's claim to have only a discretionary entitlement under the Will was plainly false, for the reasons identified by District Judge Duddridge. I do not accept this argument. The District Judge was not concerned with Allegation 2, but with the question of financial relief as between the Defendant and his former wife. I do not think that the findings or the reasoning of the District Judge in his judgment can be relied upon in the Contempt Application as establishing that the Defendant failed to comply with his disclosure obligations and associated obligations in the July 2020 Order.

95. Drawing together all of my analysis of Allegation 2, I reach the following overall conclusion. It is for the Claimants to prove, to the required standard of proof, that the Defendant breached one or more of paragraphs 12(4), 12(5) and 13 of the July 2020 Order. In my judgment, and for the reasons which I have given, the Claimants have failed to prove any such breach to the required standard. I am not satisfied, to the required standard, that any such breach occurred.

Allegations 3-5 – general introduction

96. Allegations 3-5 are related. All of these Allegations are concerned with a sum of £50,000 (**"the Sum"**) which was paid by the Defendant to a company called Intelligent Legal Solutions Limited (**"Intelligent Legal"**) on 10th July 2023. Intelligent Legal was a company under the control or apparent control of a Mr Rugova, an associate of the Defendant.

97. It is convenient to deal with the issues which are common to Allegations 3-5 in my analysis and determination of Allegation 3. Given the complexity of some of these issues, and the amount of material which has to be covered, it is necessary to break down my analysis and determination of Allegation 3 into a number of separate sections.

Allegation 3 – what is alleged?

98. Paragraph 12(1) of the July 2020 Order required the following information to be provided by the Defendant:

> *"(l) All of his assets worldwide exceeding £5,000 in value whether in his own name or not and whether solely or jointly owned and whether the Respondent is interested in them legally, beneficially or otherwise, giving the value, location and details of all such assets."*

99. The allegation of breach is in the following terms, in the Table:

> *"**(3) Breach of paragraph 12(1) of the 6.7.2020 Order**: EW failed to disclose his interest in the sum of £50,000 which he had paid to Intelligent Legal Solutions Limited on 10.7.2020"*

100. As I have already noted, the Defendant responded to the disclosure requirements in paragraph 12 of the July 2020 Order by his affidavit of 3rd August 2020. The affidavit made no mention of the Sum. The Claimants' case is that the Sum should have been mentioned, because the Defendant retained an interest in, or control over the Sum after it was paid over to Intelligent Legal.

101. There is one other point to add at this stage. Applying my construction of paragraph 12 of the July 2020 Order, it seems to me that paragraph 12(1) of the July 2020 Order required the Defendant to state the position, in terms of his assets, as at 3rd August 2020;

being the date of his affidavit. I will, as with Allegation 2, continue to refer to this date as the Relevant Time.

Allegation 3 – the basic facts

102. The starting point for Allegation 3 is to identify the evidence for the payment of the Sum; that is to say the sum of £50,000 which is at the heart of Allegations 3-5. For that purpose, it is necessary to go to the exhibit to Mr Rechtschaffen's first affidavit, which exhibits the statements for the Defendant's account with Lloyds Bank between December 2019 and July 2020. These are the same bank statements to which I have already made reference in relation to Allegation 1. There are two entries in these statements for 10th July 2020. The first shows the sum of £10,000 paid out to *"INTELLIGENT FINANC"*. The second shows the sum of £40,000 paid out to *"INTELLIGENT LEGAL"*.

103. So far as bank accounts are concerned, the Defendant said this, at paragraph 17 of his affidavit of 3rd August 2020:

> *"17. Schedule C to this affidavit sets out a list of all bank accounts in accordance with paragraph 12(2) of the 6 July Order. I have provided the most up to date balances where possible. I note that shortly before finalising this affidavit I was informed that third party debt orders had been secured against six accounts and the funds effectively frozen. I, therefore, do not have access to the following accounts: (i) 46963768 (Lloyds); (ii) 1/302058026/1 (Britannia Building Society); (iii) 70300268 (Barclays); (iv) 40946265 (Barclays); (v) 80015385 (Barclays); and (vi) 3691174320 (Yorkshire Building Society)."*

104. The Lloyds Bank account was therefore disclosed but, as I have said, the Sum was not disclosed. If it was an asset of the Defendant when the affidavit of 3rd August 2020 was made, that is to say at the Relevant Time, disclosure of the Sum was required.

105. The recipient of the Sum, as paid on 10th July 2023, can be identified from Santander bank statements which were obtained by the Claimants by what I understand to have been a without notice application which was heard by Trower J. I have seen a copy of Trower J's judgment, which was delivered at what is recorded as having been a private hearing on 15th June 2021. The Santander statements are at item 13 in the core bundle for the Trial. The relevant statements, which I understand to be the statements for an account in the name of Intelligent Legal, show the sums of £40,000 and £10,000 coming into the Santander account from the Defendant on 10th July 2023. These two payments must represent the Sum. The same statements also show the sum of £15,000 being transferred out of the account to the Santander account of Intelligent Languages Limited (**"Intelligent Languages"**), another company under the control or apparent control of Mr Rugova, on 11th August 2020.

106. The Santander statements also show the following movements of monies out of the following accounts:
    (1) On 27th November 2020 £15,000 was paid out of the account which I understand to have been the account of Intelligent Legal to Raydens Limited (trading as Raydens Solicitors), a firm of solicitors who acted for the Defendant. The payment was made in respect of fees incurred by Raydens in acting for the Defendant.
    (2) On 12th January 2021 £4,800 was paid out of the same account to Keidan Harrison LLP, another firm of solicitors who acted for the Defendant. The payment was made in respect of fees incurred by Keidan Harrison in acting for the Defendant.

(3) On 10th May 2021 £7,000 was paid out of a different account, which I understand to have been the account of Intelligent Languages, to Keidan Harrison. The payment was, again, made in respect of fees incurred by Keidan Harrison in acting for the Defendant.

106. I am satisfied, and find that the monies referred to in this section of this judgment did move as recorded above, and that Raydens and Keidan Harrison were paid, as recorded above, for work done for the Defendant.

107. The Claimants' case is that the Defendant retained an interest in the Sum or at least retained control of the Sum after it was paid to Intelligent Legal on 10th July 2020. What happened, so the Claimants allege, was that in the wake of the July 2020 Order, the Defendant paid over the Sum to Intelligent Legal, in order to avoid having to disclose the Sum as part of his assets, and then made use of the Sum, with the assistance of Mr Rugova and his companies, to pay the legal expenses referred to above.

Allegation 3 – the skeleton arguments for the Trial

108. The skeleton arguments for the Trial were prepared by reference to the evidence, which is not now before the court for the reasons which I have explained, of the Defendant and Mr Marx. Substantially (but not entirely) by reference to this evidence, the Defendant's skeleton argument for the Trial provided the following explanation for the payment of the Sum to Intelligent Legal:
    (1) A loan agreement was entered into between the Defendant and a Mr Davis, by which Mr Davis agreed to lend £200,000 to the Defendant. The loan monies were paid to Candey Limited, the Defendant's then solicitors. The bulk of the loan monies were used to satisfy a costs order against the Defendant.
    (2) On 9th July 2020 Candey transferred what was left of the loan monies to the Defendant.
    (3) On 10th July 2020, as already recorded, the Defendant paid the Sum to Intelligent Legal. The Sum was paid in satisfaction of an invoice from Intelligent Legal (exhibited to the witness statement of Mr Marx). This invoice (**"the Invoice"**) is for the sum of £50,000 (£41,666.67 plus VAT of £8,333.33) for work described in the Invoice, in summary, as listening to, cross-referencing and transcribing audio material.

109. Mr Marx also exhibited to his witness statement a letter dated 31st January 2019 from Intelligent Legal to the Defendant, which set out the basis on which Intelligent Legal would be providing what was described as litigation support to the Defendant. I will use the same expression as the Claimants to refer to this document; namely **"the Agreement"**.

110. The Claimants' case, as set out in their skeleton argument for the Trial, and as previously pursued by their solicitors, both in the evidence of Mr Rechtschaffen and in correspondence with the Defendant's solicitors, is that the Invoice and the Agreement are both backdated forgeries, created as part of a dishonest scheme by the Defendant and Mr Rugova to conceal the use of the Sum by the Defendant, through Mr Rugova's companies, to pay his legal bills. In this context the Claimants' solicitors sent an email to the Defendant's solicitors on 18th February 2023, giving formal notice to the Defendant pursuant to CPR 32.19 that they required the Defendant to prove the authenticity of the Invoice, the Agreement and certain email communications.

111. Pursuant to this position, the bulk of the Claimants' skeleton argument was devoted to the task of explaining why the evidence of the Defendant and Mr Marx, and their explanation for the payment of the Sum should not be accepted.

112. As I have explained, the evidential landscape has now changed. The evidence of the Defendant and Mr Marx is not relied upon and is not admissible evidence before the court. The Invoice and the Agreement are not relied upon and are not put forward as explanation for the payment of the Sum to Intelligent Legal. There was a dispute between the parties as to whether the Claimants could require the Defendant to serve a notice under CPR 32.19 requiring the Defendant to prove the Agreement and the Invoice, in the context of a contempt application. It seems to me that I do not need to resolve this particular procedural issue. The position is that the Invoice and the Agreement are no longer relied upon and are not put forward by way of evidence from the Defendant. As such, it seems to me that the notice to prove these documents falls away. Effectively, the Defendant has chosen to remain silent as to why the Sum was paid to Intelligent Legal and has chosen to remain silent in response to the allegation that the Sum was used, at least in part, to pay his legal bills. The Defendant has also chosen not to call Mr Marx as a witness or, for that matter, Mr Rugova.

113. It was in these circumstances that the issue arose as to what inferences I could draw from (i) the silence of the Defendant and/or (ii) the absence of evidence from Mr Marx and/or Mr Rugova. I deferred consideration of this issue earlier in this judgment. For reasons which I shall explain, I have come to the conclusion that the issue is not in fact material to the matters which I have to decide. The issue was however the subject of a good deal of argument, and extensive citation of authority, at the Trial and subsequent to the Trial, particularly from the Defendant's counsel who filed a supplemental Note on the issue, with accompanying authorities. In deference to the arguments of counsel on this issue I provide the following analysis.

Allegation 3 – what, if any, inferences can I draw from the silence of the Defendant and the absence of other witnesses?

114. The Claimants' case was that I was entitled to and should draw adverse inferences from the failure to the Defendant to give any evidence in explanation of the payment of the Sum, and from the failure of the Defendant to adduce any evidence from Mr Marx or Mr Rugova to provide or support an explanation of the payment of the Sum. Mr Rugova in particular, so it was submitted, was the person who might have been expected to give evidence to explain or confirm an explanation of why the Sum was paid to Intelligent Legal and to confirm that the payments to Raydens and Keidan Harrison were made from the resources of Intelligent Legal and Intelligent Languages and were not funded, either directly or indirectly, from the Sum.

115. In support of this case, and subsequent to the Trial itself, counsel for the Claimants referred me to the decisions of Whipple J (as she then was) in *VIS Trading Co Ltd v Nazarov* [2015] EWHC 3327 (QB) and Henry Carr J in *Discovery Land Company v Jirehouse* [2019] EWHC 1633 (Ch).

116. Counsel for the Defendant also made further submissions on this question. As I have mentioned above, Counsel submitted a written Note of their further submissions, which cited a good deal of further authority. On the question of drawing adverse inferences,

the Defendant's counsel pointed out that three different questions arose; namely (i) whether adverse inferences could be drawn from the failure of the Defendant to give evidence (despite filing written evidence), (ii) the failure of the Defendant to call a witness who had provided affidavit evidence (Mr Marx), and (iii) the failure (if failure it was) to call a witness who might have been expected to give evidence (Mr Rugova).

117. In relation to Mr Marx, the Defendant's counsel contended that no issue of adverse inference arose. In relation to Mr Rugova it was contended that I should not speculate on what evidence Mr Rugova might have given, and that I should not draw any adverse inferences from the absence of evidence from Mr Rugova. In relation to the Defendant himself, it was contended that it was not open to me to draw any adverse inferences from the failure of the Defendant to give evidence. The Defendant's right to silence, so it was submitted, was absolute and would be undermined if adverse inferences could be drawn from this silence.

118. The first, and important point to make in relation to this debate is that I do not think that these questions matter in the present case. For reasons which I shall explain, I reach the same conclusions on the evidence in this case whether or not adverse inferences can or should be drawn from the absence of evidence from the Defendant and/or Mr Marx and/or Mr Rugova. In these circumstances I do not think that the present case provides the appropriate forum to arrive at a definitive conclusion on whether a defendant's right to silence in response to a contempt application is unqualified, as the Defendant contends, or on whether adverse inferences can or should be drawn from the absence of evidence from persons in an equivalent position to Mr Marx and/or Mr Rugova. As however these questions were the subject of argument at the Trial, which continued into the further submissions I have mentioned, I offer the following conclusions on these questions, subject to the important caveat that it seems to me that the present case is not a suitable case for attempting a definitive statement of the law in this area.

119. I start with the position of the Defendant himself. CPR 81.4(2) requires a contempt application to include statements of a number of matters, including the following, at sub-paragraphs (m) and (n):

> *"(m) that the defendant is entitled but not obliged to give written and oral evidence in their defence;*
> *(n) that the defendant has the right to remain silent and to decline to answer any question the answer to which may incriminate the defendant;"*

120. This is confirmed by CPR 81.7, which deals with the power of the court to give directions in contempt applications. CPR 81.7(3) states that the court may not give any direction compelling the defendant to give evidence either orally or in writing.

121. Under the heading of ***"Right to remain silent"***, note 81.4.8 (page 2328 of the White Book 2023) says as follows:

> *"A person accused of contempt, like the defendant in a criminal trial, has the right to remain silent* (*Comet Products UK Ltd v Hawkex Plastics Ltd [1971] 2 Q.B. 67, CA*). *It is the duty of the court to ensure that the defendant is made aware of that right and also of the risk that adverse inferences may be drawn from his silence* (*Invideous Ltd v Thorogood [2014] EWCA Civ 1511, CA, at [41]. This rule codifies the requirement to ensure that the defendant in contempt proceedings is made aware of that right."*

122. In *VIS Trading* this issue arose in the context of a dispute over whether there was continuing non-compliance with a disclosure order made by the court. Counsel for the defendant to the contempt application argued that because no application had been made to cross examine the defendant, no evidence could be adduced from the defendant and the court could not hold the defendant's silence against him. Whipple J did not accept this argument. As she explained, at [31], after citing from a previous version of what is now note 81.4.8 in the White Book:

> *"**31** I agree with the claimant's submissions on this point. The fact that the first defendant has produced some documents, in purported compliance with the 21 May 2015 Order, does not determine the compliance issue in the first defendant's favour; nor does it require the claimant to make any application for cross-examination. Rather, the first defendant is on notice of the claimant's case that the defendants have failed to comply with the 21 May 2015 Order, and the claimant is entitled to continue to advance that case, even in the face of purported compliance by the first defendant since the date of the application. The burden of proof remains on the claimant throughout, to the criminal standard, and the claimant can invite the court to conclude, on the basis of all the evidence in the case, that the defendants have not yet complied with the 21 May 2015 Order. If the contemnor chooses to remain silent in the face of that dispute, the court can draw an adverse inference against him, if the court considers that to be appropriate and fair, and recalling that silence alone cannot prove guilt. This is not to put the burden of proof on the first defendant; far from it, the burden remains on the claimant. Proudman J was dealing with a different situation in Solodchenko (No 2), where she had already held a fact finding hearing and found Mr Kythreotis to be in contempt, before he subsequently purported to comply with the order; and did not concern the application of rules now clearly now set out in CPR Pt 81."*

123. This was followed by Henry Carr J in *Jirehouse*. In *Jirehouse* the judge had to consider the question of whether to make an order for cross examination of a defendant to a contempt application who had filed a considerable quantity of affidavit evidence in response to the application. The judge decided, following *VIS Trading*, that the defendant could not be compelled to give oral evidence, nor could he be compelled to be cross examined on his affidavit evidence. The judge also added, again following *VIS Trading*, that this might result in the court drawing adverse inferences from the silence of the respondent. As the judge explained, at [30]:

> *"30. In conclusion, I do not consider that Mr Jones can be compelled to be cross-examined or can be put to an election as to whether to rely upon his affidavit evidence or to submit to cross-examination. However, given that very serious allegations of dishonesty, both in respect of attempts to deceive the claimants and attempts to deceive the court, are advanced with some particularity against Mr Jones, if he chooses not to be cross-examined, having received appropriate legal advice, then it may be (and I reach no conclusion on this at the moment) that there is at the very least a risk that the court will draw adverse inferences against him. That is a matter that Mr Jones will need to consider with his legal advisers."*

124. The authority cited in note 81.4.8 in the White Book, for the ability to draw adverse inferences, is the decision of the Court of Appeal in *Invideous Ltd v Thorogood* [2014] EWCA Civ 1511. The same authority was relied upon by Whipple J in *VIS Trading* and

by Henry Carr J in *Jirehouse*. I should mention that the correct title of the case, as recorded in *VIS Trading*, is *Inplayer Limited (formerly Invideous Limited) v Thorogood*. In his judgment in *Inplayer* (with which Lewison and Treacey LJJ both agreed), Jackson LJ said this at [40]:

> *"40. A person accused of contempt, like the defendant in a criminal trial, has the right to remain silent: see Comet Products UK Ltd v Hawkex Plastics Ltd [1971] 2 QB 67. It is the duty of the court to ensure that the accused person is made aware of that right and also of the risk that adverse inferences may be drawn from his silence."*

125. In order to put this statement into its proper context, I also quote the immediately following paragraphs of Jackson LJ's judgment:

> *"41. If the committal application is heard at the same time as other issues about which the alleged contemnor needs to give evidence, he is placed in the position where he is effectively deprived of the right of silence. That is a serious procedural error: see Hammerton v Hammerton [2007] EWCA Civ 248. This is precisely what happened in the present case. Furthermore no-one told Mr Thorogood that an alleged contemnor has the right not to give evidence.*
>
> *42. If the contempt application had been the subject of a separate hearing and Mr Thorogood had been informed of his right not to give evidence, he might have exercised that right. He could then have dealt with the contempt allegations by way of submissions. In that regard it should be noted that the judge based her two findings of contempt upon answers which Mr Thorogood had given under skilful cross-examination.*
>
> *43. Mr Milford points out that Mr Thorogood was reminded of his right not to incriminate himself. That is true, but it is not sufficient. Mr Thorogood should have been told that he was not obliged to give evidence. Furthermore the litigation should not have been managed in a way that forced Mr Thorogood into the witness box.*
>
> *44. Mr Milford submits that even if there had been a separate hearing of the contempt application, the result would have been the same. If Mr Thorogood gave evidence, he would have been caught out in cross-examination. If he had declined to give evidence, the court would have drawn adverse inferences.*
>
> *45. What Mr Milford says may well be true. Indeed, as things have turned out, Mr Thorogood may be a very lucky man. Nevertheless there can be no question of upholding findings of contempt against a person who has been deprived of valuable safeguards in the circumstances of this case."*

126. In their Note the Defendant's counsel contend that the statement at [40] in *Inplayer* was not supported by the citation of any authority, was obviously wrong, and should not be followed. Jackson LJ did make reference to the decision of the Court of Appeal in the *Comet* case, but I have looked at this case and I note that the decision was concerned with the question of whether cross examination of the defendant in that case should have been ordered. So far as I can see, the question of drawing adverse inferences from the defendant's silence was not addressed in *Comet*.

127. At the Trial the Claimants also relied upon the decision of Christopher Clarke J in *Masri* at [146], which was cited with approval by Nugee LJ in *Kea*. I have already set out the

relevant part of [146] earlier in this judgment, as cited by Nugee LJ, but I repeat the quotation for ease of reference:

> *"**Adverse inferences***
>
> *Mr James Lewis QC on behalf of the judgment debtors accepted that, although (i) an application for contempt is criminal in character, (ii) an alleged contemnor may claim a right to silence, and (iii) the provisions of sections 34 and 39 of the Criminal Justice Act 2003 do not apply, it was open to the Court to draw adverse inferences against the judgment debtors to the extent that it would be open it to do so in comparable circumstances in a criminal case. Thus it may be legitimate to take into account against the judgement debtors the fact (if it be such) that, when charged with contempt, as they have been in these proceedings, they have given no evidence or explanation of something of which they would have had knowledge and of which they could be expected to give evidence if it was true."*

128. The Defendant's counsel pointed out in their Note that in *Masri* the court proceeded on the basis of a concession by counsel which, so it was submitted, was wrongly made. The same concession is not made in the present case. As the Defendant's counsel explained, Sections 34 and 39 of the Criminal Justice Act 2003 have no apparent relevance to the issue of adverse inferences arising from a defendant's failure to give evidence in criminal proceedings. The relevant provision in criminal proceedings is Section 35 of the Criminal Justice and Public Order Act 1994, which relates to adverse inferences which may be drawn by a jury, upon direction, from a defendant's failure to give evidence at trial. Section 35, so it was submitted, changed fundamentally the position at common law, pursuant to which no judicial comment was permissible which implied that the jury might draw an inference adverse to the accused from the exercise of the right to silence.

129. The essential point made by the Defendant's counsel was that there is no equivalent of Section 35 relating to contempt applications. A defendant to a contempt application is not compellable to give evidence. If therefore the defendant chooses to give no evidence as in the present case, the defendant's right to remain silent cannot and should not be undermined by the court having the ability to draw adverse inferences from the silence of the defendant. What is submitted by the Defendant's counsel to have been the common law position in criminal proceedings continues to apply to contempt proceedings.

130. The difficulty which confronts the Defendant in this argument is that there is the clear authority of the Court of Appeal, in *Inplayer*, that adverse inferences may be drawn from the exercise by the defendant of their right to remain silent. I have been shown at least two cases at first instance in which *Inplayer* has been followed (*VIS Trading* and *Jirehouse*). I do not think that I am able to say that the Court of Appeal were obviously wrong in what was said as to the drawing of adverse inferences in the judgment of Jackson LJ. I have also quoted a sufficient extract from the judgment of Jackson LJ to demonstrate that Jackson LJ's reference to the drawing of adverse inferences was not an isolated reference, and was not confined to a passing reference to a principle of law assumed to be uncontroversial. In these circumstances I regard myself as bound to accept the Claimants' argument that adverse inferences can, if appropriate, be drawn from the failure of the Defendant to give evidence; being a failure to give evidence notwithstanding the affidavit evidence of the Defendant previously filed with the court. Put simply, the Claimants' argument has the support of the Court of Appeal.

131. The Defendant's argument does strike me as one which justifies further and more full investigation by an appropriate court in the future. If the Defendant's counsel are right in their characterisation of the common law position in criminal proceedings, and given that contempt proceedings are analogous to criminal proceedings, there is an apparent logic in the argument that adverse inferences cannot be drawn from the silence of a defendant to a contempt application. As I have however already indicated, I do not think that this case is the appropriate case in which to conduct an exercise of this kind. It may also be said, given the existence of Court of Appeal authority which I do not feel able to characterise as obviously wrong, that this is not the appropriate court in which the exercise should be conducted.

132. I therefore conclude, for what it is worth on the evidence in this case, that adverse inferences can, if appropriate, be drawn from the failure of the Defendant to give evidence; being a failure to give such evidence notwithstanding the previous filing of his affidavit evidence for the Trial.

133. This leaves Mr Marx and Mr Rugova. So far as Mr Marx is concerned, the Defendant's counsel have, so far as I can see, confined their argument to the proposition that if a witness is not called whom the opposing party has indicated they wish to cross-examine then, without the leave of the court, that evidence will not be considered. It is submitted that that is the position in the present case, and that no issue of adverse inferences arises. I do not follow this argument. Mr Marx is not the defendant to the Contempt Application. He is a third party in respect of whom an affidavit has been filed for the Trial. Mr Marx has not been called to give evidence. In those circumstances I have accepted that his affidavit is not evidence in the Trial. I do not see why it follows from this that I cannot take account of the fact that there was, apparently, an intention to adduce evidence from Mr Marx and of the fact that Mr Marx has not been called to give evidence. In my judgment, and for what it is worth, I am entitled to draw adverse inferences, if appropriate, from the failure of the Defendant to call evidence from a witness in respect of whom an affidavit was filed for the Trial.

134. This leaves Mr Rugova. In the case of Mr Rugova the Defendant's counsel cite, in their Note, the decision of Rajah J in *Brittain v Raja* [2023] EWHC 2273 (Ch), at [11]:

> *"11. In this case I am being asked to draw specific inferences from the failure of the defendant to call particular witnesses. In Ahuja Investments Ltd v Victorygame Ltd [2021] EWHC 2382 (Ch) at paragraphs 23 to 25 this was said:*
>
> > *''In my judgment, before the discretion to draw an adverse inference or inferences can arise at all, the party inviting the court to exercise that discretion must first:*
> >
> > *(1) establish (a) that the counter-party might have called a particular person as a witness and (b) that that person had material evidence to give on that issue;*
> >
> > *(2) identify the particular inference which the court is invited to draw; and*
> >
> > *(3) explain why such inference is justified on the basis of other evidence that is before the court.*
>
> *Where those pre-conditions are satisfied, a party who has failed to call a witness whom it might reasonably have called, and who clearly has material*

evidence to give, may have no good reason to complain if the court decides to exercise its discretion to draw appropriate adverse inferences from such failure."

135. As I understand the Defendant's argument in this context, it is not that adverse inferences cannot be drawn where there is a failure to call a witness in respect of whom evidence has not been filed, but who might have been expected to give material evidence. Rather, the position in the present case is that no such inferences are justified because there is no other evidence before the court which would justify the drawing of such inferences. I should not speculate on what evidence might or might not have been which was not before me in the Trial.

136. In evidential terms, I do not accept that the earth is as scorched as the Defendant's counsel contend in their Note. There is admissible evidence that the Sum was paid to Intelligent Legal. There is admissible evidence that Intelligent Legal and Intelligent Language paid the legal fees of Raydens and Keidan Harrison which were incurred in acting for the Defendant. For reasons which I shall explain, later in my analysis of Allegation 3, I consider that I am entitled to take account of the fact that an explanation was previously put forward on behalf of the Defendant for the payment of the Sum, in respect of which no evidence was presented at the Trial. In these circumstances it seems to that I am entitled, if I think it appropriate and for what it is worth, to draw adverse inferences from the failure to call Mr Rugova as a witness.

137. In summary therefore, I do not accept the Defendant's argument that I am not entitled to draw adverse inferences from the failure of the Defendant to give evidence and/or from the failure of the Defendant to adduce evidence from Mr Marx and/or Mr Rugova. I conclude, for what it is worth, that I am entitled to draw such adverse inferences, if I consider it appropriate to do so.

138. Finally, and for the sake of completeness, I should mention that the Defendant's counsel have, quite properly, referred to me to what was said by Lord Leggatt JSC in *Royal Mail Group Ltd v Efobi* [2021] UKSC 33, at [41], in relation to the drawing of adverse inferences from the absence of a witness. I accept the point made by Defendant's counsel that the guidance provided by Lord Leggatt was provided in the context of an employment case, and does not bear upon the question of whether I am actually entitled to draw such adverse inferences in contempt proceedings. That said, it seems to me that the guidance provided by Lord Leggatt is applicable and relevant if, as I have concluded, I am entitled to draw such adverse inferences.

Allegation 3 – the preliminary objection

139. Mr Bowers took the preliminary objection to Allegation 3 that it was unparticularised in two respects. First, the Claimants had not specified, in the Table, the nature of the interest which the Defendant was said to retain in the Sum. Second, the Claimants had not specified, in the Table, their reliance upon paragraph 15 of the July 2020 Order which, it will be recalled, specified that the Defendant's assets, for the purposes of the July 2020 Order, included the categories of assets in paragraphs 15(1) and 15(2).

140. I accept the need for particularity in contempt applications. CPR 81 sets out what is required by way of particulars of a contempt application at 81.4(2)(a), (b) and (h). The need for particularity has been stressed in a number of cases. I refer, in particular, to the

discussion of this requirement by Cockerill J in *Deutsche Bank*, at [68]-[141], in particular at [74]-[84].

141. The essential point here, as Woolf LJ explained in *Attorney-General for Tuvalu v. Philatelic Distribution Corporation Ltd* [1990] 1 WLR 926 (at 935B-C), is that the alleged contemnor should be told, with sufficient particularity to enable them to defend themselves, what exactly they are said to have done or omitted to do which constitutes contempt of court. The cases make clear that compliance with this rule will be strictly insisted upon, since the liberty of the subject is at stake, but the cases also show that the nature or background of the case is important.

142. Applying this guidance in the present case I cannot see that the Claimants were required to specify either of the matters specified by Mr Bowers. In relation to Allegation 3 the Table makes it quite clear that the relevant failure of the Defendant was a failure *"to disclose his interest in the sum of £50,000 which he had paid to Intelligent Legal Solutions Limited on 10.7.2020"*. The allegation is that the Defendant retained *"an interest"* in the Sum. It seems to me that it would be unreasonable and unrealistic to have expected the Claimants to specify the precise nature of the interest. The Defendant was made aware, by the terms of Allegation 3, of what he needed to know; namely that he faced an allegation that he had retained an interest in the Sum. Turning to the Claimants' reliance upon paragraph 15 of the July 2020 Order, I cannot see why paragraph 15 had to be specified. Allegation 3 specifies the provision of the July 2020 Order which is said to have been breached, which is paragraph 12(1). Paragraph 15 is not specified because it is not alleged to have been breached. Paragraph 15 is a definition or interpretation provision, which operates to identify certain categories of property which are included in the definition of the Defendant's assets for the purposes of the July 2020 Order. As such, and when the question of whether paragraph 12(1) has been breached is being considered, it seems to me that it is open to the Claimants and, for that matter, the Defendant to rely upon all and any terms of the July 2020 Order which are relevant to the question of what qualifies as an asset for the purposes of paragraph 12(1). I cannot see that paragraph 15 required to be specified in the Table, any more than the nature of the interest in the Sum alleged to have been retained by the Defendant.

143. I do not therefore accept the preliminary objection taken by Mr Bowers to Allegation 3.

Allegation 3 – analysis and determination

144. It has taken some time to clear the ground for my substantive analysis of Allegation 3. I can take the substantive analysis more shortly.

145. The starting point is that by the time the Defendant came to make the affidavit of 3rd August 2020, that is to say at the Relevant Time, he had paid the Sum to Intelligent Legal. As I have already explained, my interpretation of paragraph 12(1) of the July 2020 Order is that it required disclosure of the Defendant's assets worldwide, exceeding £5,000 in value, at the Relevant Time. Paragraph 12(1) did not require, as I read the same, information to be given about assets which the Defendant had previously disposed of, assuming no retention of any interest in or control over the relevant asset.

146. On first analysis therefore, the Defendant was not required to disclose the Sum. The Sum was in the Santander account of Intelligent Legal. It is possible that the £15,000 which was paid by Intelligent Legal to Intelligent Languages on 11th August 2020 came out of

the Sum, but this is not relevant as this latter payment postdated the Relevant Time and was not, at least on the face of it, a payment in which the Defendant was involved.

147. The burden is therefore upon the Claimants to establish that the Defendant retained some form of interest in or control over the Sum in the hands of Intelligent Legal. The Claimants seek to do this by identifying a series of reasons why the only possible explanation for the payment of the Sum was the desire of the Defendant to put the Sum out of reach of the Claimants and the scope of the July 2020 Order. In this context it is convenient to repeat what is said in paragraphs 26 and 27 of the Claimants' skeleton argument (omitting footnotes):

> *"26. The Court is now asked to accept, via the evidence of Mr Marx rather than either of the more immediate protagonists, the preposterous explanation that Intelligent Legal first did work for Mr Wojakovski worth exactly £41,666.67, invoiced and paid in July 2020, before then choosing just a few months later to make "gratuitous" payments of £22,000 for Mr Wojakovski's legal advice (£15,000 to Raydens and £7,000 to Keidan Harrison). No less surprisingly, it is said that another of of Mr Rugova's companies, Intelligent Languages, made a separate £4,800 gift to Mr Wojakovski's solicitors. There is no evidence of how these supposed "gifts" have been recorded in either company's accounts, nor any explanation of how Mr Rugova as their director could possibly have thought it was in the company's best interests to give away their money to meet the legal costs of a judgment debtor who by this point was bankrupt and who had already spent millions on spectacularly unsuccessful litigation. The oddity of such corporate gifts was relied upon before Trower J more than 2 years ago. The sudden generosity of Mr Rugova's companies is all the more surprising in the context of Mr Wojakovski's evidence from April 2020 of having exhausted all available sources of funding or borrowing.*
>
> *27. The overwhelmingly more likely explanation is that as soon as Zacaroli J had ordered the disclosure of his worldwide assets, Mr Wojakovski immediately sought to put £50,000 out of the Claimants' reach by depositing it with Intelligent Legal, later drawing upon those funds to meet his legal costs."*

148. The position has now changed. The position now is there is no evidence from the Defendant putting forward the *"preposterous explanation"*. I agree with Mr Bowers that the court needs to be clinical in its approach to the evidence. I have already accepted that the Defendant's affidavits sworn for the Trial and the witness statement of Mr Marx are not to be considered.

149. I do not however accept that I can now take no account of the explanation for the payment of the Sum previously tendered by or on behalf of the Defendant. I say this for at least two reasons.

150. First, I do not think that I can or should ignore the fact that the Defendant's skeleton argument for the Trial contained that explanation. It seems to me, in this context, that I can take account of the fact that this explanation was tendered on behalf of the Defendant, for the purpose of the Trial. Equally, it seems to me that I can also take account of the fact that this explanation was not the subject of any evidence from the Defendant at the Trial.

151. Second, a substantial quantity of correspondence between solicitors has been included in the bundles for the Trial. This includes a chain of correspondence between the solicitors, commencing in February 2023, concerning the explanation which had been put forward, in Mr Marx's witness statement, for the payment of the Sum. Mr Marx's evidence is now out, but I do not accept that this means that I am prevented from taking account of the content of the correspondence between the solicitors. Nor do I accept that it would be absurd, as Mr Bowers put it, to consider this correspondence, notwithstanding that the evidence which was under discussion is not admissible. This correspondence was, in broad terms, concerned with the attempts of the Claimants' solicitors to verify the authenticity of the documents produced by Mr Marx, including the Invoice and the Agreement. This correspondence proceeded on the footing that the explanation for the payment of the Sum to Intelligent Legal, then being advanced on behalf of the Defendant, was that the Sum was paid for legal services provided to the Defendant by Intelligent Legal and invoiced by the Invoice. As with the Defendant's skeleton argument for the Trial, I consider that I am entitled to take account of the fact that the Defendant's solicitors conducted this correspondence on the basis of the explanation referred to above. I consider that I am also entitled to take account of the fact that this explanation was not the subject of any evidence from the Defendant at the Trial.

152. The Claimants' skeleton argument for the Trial sets out a series of reasons why there is no credible explanation for the payment of the Sum to Intelligent Legal other than that the Defendant was seeking to put the Sum out of reach of the Claimants, and later used the Sum, at least in part, to pay his own legal expenses. These reasons were supplemented and developed by Mr Fulton in his oral submissions at the Trial. I set out the following summary, which is not intended to be comprehensive, of the principal points made by Mr Fulton:
    (1) There is no explanation for the payment of the Sum to Intelligent Legal, beyond the explanation previously advanced on behalf of the Defendant, in solicitors' correspondence and in the Defendant's skeleton argument for the Trial. That explanation has not been pursued at the Trial or supported by any evidence.
    (2) The timing of the payment of the Sum cannot be a coincidence. The disclosure order was made on 6th July 2020. The Sum was paid on 10th July 2020.
    (3) There is no explanation for the apparently gratuitous funding of the Defendant's legal costs by Intelligent Legal and Intelligent Languages. The position is all the more suspicious given that the Defendant himself claimed, in his fifth witness statement dated 23rd April 2020, that he had exhausted all available sources of funding or borrowing. Indeed this was the Defendant's excuse, in this witness statement, for raiding the rental income of Quastus to fund his personal expenditure.
    (4) The Defendant did not himself disclose to the Claimants the Lloyds bank statement which showed the payment of the Sum to Intelligent Legal. This bank statement and the bank statements relevant to Allegation 1 were provided to the Claimants by the Defendant's trustees in bankruptcy, I believe on 5th July 2021. Equally Mr Rugova did not produce the Santander bank statements which showed the payment of the Sum to Intelligent Legal and the subsequent payments of the Defendant's legal fees. The Santander bank statements had to be obtained by the Claimants' application to Trower J.
    (5) Even if one is confined to the solicitors' correspondence for this purpose, the Defendant has signally failed to deal with the challenge to the authenticity of the

Invoice and the Agreement, in circumstances where their authenticity should be simple to establish.

(6) Mr Rugova is, to quote the Claimants' skeleton argument, *"a murky figure"*, for a number of reasons. The main bundle for trial includes a witness statement of Luke Harrison, solicitor advocate and partner in Raydens, made in the Actions on 5th July 2021. This witness statement includes what the Claimants characterise as *"a bizarre explanation of Mr Rugova's business activities"*, as provided to Mr Harrison by Mr Rugova.

(7) The conduct alleged against the Defendant in relation to Allegation 3 is consistent with the conduct of the Defendant generally in the Actions, in relation to compliance with court orders.

153. I stress that this summary is not intended to be comprehensive and is not comprehensive. I have taken all of the written and oral submissions made on behalf of the Claimants into account, both in this context and in all other contexts, but the principal purpose of the above summary is to explain, in outline, how the Claimants put their case on the evidence.

154. The difficulty with this case seems to me to be this. The burden is upon the Claimants to prove that when the Defendant paid the Sum to Intelligent Legal on 10th July 2020 he did so on terms, however informal, that he retained some interest in the Sum or retained some form of power or control over the Sum, sufficient for the Sum to continue to qualify as his asset within the terms of the July 2020 Order. I have to be satisfied, so that I am sure, that this is what occurred. It will have been noted, from my summary of the Claimants' case, that there is an important difference between (i) the Claimants' case in relation to Allegations 1 and 2 and (ii) the Claimants' case in relation to Allegation 3. In relation to Allegation 1 the relevant bank statements are now available. They show the rental income coming into the Defendant's account from Quastus, and they show the same income being used by the Defendant for personal expenditure. Given that it is common ground that the Quastus rental income was caught by the proprietary injunction in the January 2020 Order, the evidential position is clear. In relation to Allegation 2 there is the July 2020 Order, and there is the Will. The two can be compared to see whether Allegation 2 is established. In the case of Allegation 3, the evidential position is rather different. There is no direct evidence of an agreement or arrangement between the Defendant and Intelligent Legal, implied or express, pursuant to which the Defendant retained some interest in or control over the Sum following payment of the Sum to Intelligent Legal. The existence of such an agreement or arrangement has to be inferred from the available evidence. This is a high bar, where the criminal standard of proof applies.

155. There are plenty of reasons for finding it decidedly odd that the Defendant should pay a sum of £50,000 to Intelligent Legal. No explanation is now advanced for this payment, and the explanation which was previously maintained, in the Defendant's skeleton argument and in the correspondence between solicitors, is not supported by any evidence and has not been pursued at the Trial. There are plenty of circumstances, which Mr Fulton has explained and advanced in much better terms than I can, to suggest that the payment of the Sum was not a bona fide payment to Intelligent Legal but was money over which the Defendant retained at least some form of control. One would not expect the Claimants necessarily to be able to pin down the precise nature of such interest or control. The matter is necessarily one for the drawing of inferences.

156. In these circumstances I have found it helpful to go back to the guidance provided by the case law on dealing with circumstantial evidence, drawing inferences and the cumulative effect of evidence. In this context I refer, in particular, to what was said by Rix LJ in *Ablyazov* and by Christopher Clarke J in *Masri*, as quoted by Nugee LJ in *Kea* at [16]-[18]. The relevant extracts from the judgment of Nugee LJ are set out earlier in this judgment. As Rix LJ explained, the essence of a successful case of circumstantial evidence is that the whole is stronger than the individual parts. The whole becomes a net from which there is no escape. As Christopher Clarke J explained, the court must be satisfied that the facts are inconsistent with any conclusion other than that the contempt in question has been committed. Equally, and as Rix LJ explained, the court is entitled to look at the evidence on a cumulative basis. The court does not have to suspend its belief in reality in favour of duplicating unrealities.

157. Undertaking these exercises in the present case, I am not left in a position where the only conclusion consistent with the evidence is the conclusion that the Defendant retained some interest in or control over the Sum when he paid the Sum to Intelligent Legal. The reality seems to me to be that I do not know why the payment was made. If I was considering Allegation 3 on the basis of an evidential test of the balance of probabilities, it seems to me the position would be different. On that hypothesis I would be able to draw inferences and reach conclusions more easily. As it is, I am confined to the criminal standard of proof. So confined, I do not think that the Claimants' case will bear the evidential burden which this standard of proof imposes. Ultimately, I am persuaded by Mr Bowers that the Claimants' case on Allegation 3 falls short of where it needs to be, in order for me to be satisfied, so that I am sure, that the Defendant did breach paragraph 12(1) of the July 2020 Order by a failure to disclose an interest in or control over the Sum.

158. I can illustrate in two ways, which I stress are examples, the difficulties which seem to me to confront the Claimants in relation to Allegation 3.

159. First, and although this anticipates the later Allegations, it is part of the Claimants' case that the Sum, after it had been paid to Intelligent Legal, was used, at least in part, to pay the Defendant's legal bills with Raydens and Keidan Harrison. This requires the Claimants to demonstrate, to the required standard of proof, that the monies used to pay the legal bills were the same monies as represented the Sum. Mr Fulton took me to starting balances in the Santander statements which demonstrated, so he submitted, that the funds paid out by Intelligent Legal and Intelligent Languages must have derived from the payment of the Sum. I am not however persuaded that I can safely make a finding, to the required standard of proof, that the monies representing the Sum were the same monies as were used to pay the legal bills.

160. I accept that a tracing exercise is not necessarily required in this context. It would be sufficient if it could be demonstrated that Intelligent Legal and Intelligent Languages paid the legal fees because they had been put in funds to do so by the payment of the Sum by the Defendant. In other words I can see that it is not necessary to demonstrate that the monies paid to Raydens and Keidan Harrison were the same monies as those comprising the Sum itself. If however one approaches the source of the funding on this wider basis, it becomes more difficult to conclude that the Sum was the source of the funding which was used to pay the legal bills. Again, I am not persuaded that I can safely make a

finding, to the required standard of proof, that the Sum was the source of the funding used to pay the legal bills.

161. It is odd that the two companies should, apparently gratuitously, choose to use their own funds to pay the legal fees of a third party. There is no explanation as to why the companies should do this. The question is however whether, looking at all the relevant evidence, the only conclusion I am left with is that the companies were acting under the ultimate direction of the Defendant, and were paying the Defendant's legal bills using the Sum, directly or indirectly, to fund these payments. I do not think that this is the position. In this context it is useful to consider the Defendant's third affidavit in the Actions, sworn on 20th May 2021, which is part of the subject matter of Allegation 4(2) and was made in response to the May 2021 Order. In this third affidavit the Defendant detailed remarkable amounts of funding provided by third parties towards his legal expenses, which were substantial. A possible explanation of the payments made by Intelligent Legal and Intelligent Language, which I do not think can be ruled out in a context where the criminal standard of proof applies, is that Mr Rugova, by these companies, lent his assistance to the Defendant, along with other third parties. As Mr Bowers pointed out, there might have been reasons why Mr Rugova was reluctant to explain these payments, other than concealment of the fact, if fact it was, that the Defendant was providing the funding for these payments.

162. If I am not able to find that the payments of the legal fees by the two companies were funded, directly or indirectly, by the Sum this also seems to me to undermine the case that the Sum was paid to Intelligent Legal for the purpose of keeping the Sum out of the Claimants' reach. The two are not necessarily linked. In theory, the Claimants' case in relation to Allegation 3 can be established without the finding that the payment of the legal fees was funded by the Sum. It seems to me however that if this latter finding cannot be made, the absence of the finding weakens the Claimants' case in relation to Allegation 3, in a context where the criminal standard of proof applies.

163. The second difficulty arises out of the 21st witness statement of Mr Rechtschaffen, which I mentioned earlier in this judgment and said I would come back to. The Claimants did not have permission to serve this witness statement, pursuant to the terms of the Directions Order, but the order which I made at the July 2023 Hearing extended the time for the service of further evidence for the Trial, and the witness statement of Mr Rechtschaffen appears, by its date, to have been served within this extended time limit. I do not think that this witness statement falls away as evidence in reply to evidence no longer relied upon by the Defendant. The evidence in the witness statement seems to me to be free-standing. I therefore take the view that I can take this evidence into account.

164. The principal purpose, or at least a principal purpose of the 21st witness statement of Mr Rechtschaffen is to demonstrate the close relationship between the Defendant and Mr Rugova. To this end Mr Rechtschaffen exhibits correspondence concerning 5 Hertford Street, a Mayfair club of which the Defendant was a member. The correspondence from the club shows that the Defendant's membership of the club was not renewed when he was made bankrupt, but that he was allowed to continue to use the club, without paying a fee, as a *"plus one"* to the membership of Mr Dashi. I understand that Mr Rugova is also known as or operates as Mr Dashi. The payments for Mr Dashi's membership were apparently paid by his companies. An inference which can be drawn, with which I was pressed by Mr Fulton in his submissions, is that the Defendant's continuing membership

of the club was being fronted by Mr Rugova/Mr Dashi, whose own membership was being paid for by funds concealed from the Claimants by the Defendant. The drawing of this inference might be said to derive support from the fact that, in relation to Allegation 1, the Defendant's unlawful use of the rental funds from Quastus included expenditure at 5 Hertford Street.

165. I agree that the inference can be drawn that Mr Rugova was fronting the Defendant's continuing membership of the club. If I was deciding matters on the balance of probabilities it is an inference I might be prepared to draw, particularly bearing in mind all the other evidence relied upon by the Claimants. It seems to me however that there is another feasible explanation for what occurred, which is the explanation which was in fact given to the club. That explanation is that Mr Rugova, it appears by the companies he controlled, rendered assistance to the Defendant by allowing the Defendant to come on to his, Mr Rugova's membership. This arrangement was agreed by the club, and the Defendant was able to continue to use the club without himself having to pay anything. This explanation may be said to confirm Mr Rugova's position as one of various third parties who have rendered assistance to the Defendant, on an apparently voluntary basis, in the Actions and in the various other legal proceedings in which the Defendant has been embroiled.

166. My point on Mr Rechtschaffen's 21st witness statement is this. The evidence in the witness statement only assists the Claimants, given the application of the criminal standard of proof, if it goes to support the case that the only explanation for Mr Rugova's various acts of assistance to the Defendant is that he has been acting as a front for the Defendant and for expenditure by the Defendant using funds which the Defendant has concealed from the Claimants. The witness statement does not seem to me to demonstrate this. Rather, the evidence of the correspondence exhibited to the witness statement demonstrates the high level of assistance rendered to the Defendant by Mr Rugova. In the context of the criminal standard of proof this evidence seems to me to leave the position uncertain, in terms of whether Mr Rugova was genuinely rendering assistance to the Defendant, using the funds of Mr Rugova or the companies he controls, or whether Mr Rugova was simply acting as a front for the Defendant. Putting the matter another way, and given that the criminal standard of proof applies, this evidence actually supports the existence of viable alternative explanations for the assistance rendered by Mr Rugova.

167. Returning to the overall position on the evidence, I do not think that the gap between what the Claimants have to prove and what, in my judgment, the Claimants have proved can be made up by resort to what has been established in relation to Allegation 1 or by resort generally to the conduct of the Defendant in the Actions. So far as Allegation 1 is concerned it is true, and I so find, that the Defendant showed a serious disregard of his obligations to comply with the January 2020 Order, but I do not think that I can safely infer from this that the Defendant breached the July 2020 Order in the manner alleged by Allegation 3. Nor do I think that the Defendant's disregard of the January 2020 Order provides the missing piece or the missing pieces of the evidential jigsaw which the Claimants have sought to assemble in relation to Allegation 3. The same reasoning applies to the general conduct of the Defendant in the Actions. It is true that the Defendant's conduct has attracted judicial criticism, in particular in relation to the Defendant's attitude to court orders; see, by way of notable example, the criticisms made of the Defendant by Zacaroli J (*"Mr Wojakovski's compliance with the order of 16*

January 2020 was woefully inadequate") in his judgment, dated 28th April 2020, on the application for a debarring order. As however I have already observed in relation to Allegation 1, I do not think that the past conduct of the Defendant can provide the missing piece or pieces of the evidential jigsaw.

168. Finally, I should return to the vexed issue of what, if any adverse inferences I should draw from the absence of any evidence from, respectively, the Defendant, Mr Marx and Mr Rugova. In my view this issue is simply not critical to the outcome of this case. While I am proceeding on the basis, contrary to the Defendant's arguments, that I am entitled to draw adverse inferences from the silence of the Defendant and/or Mr Marx and/or Mr Rugova, this does not cause me to reach a different conclusion in relation to Allegation 3. The absence of evidence from the Defendant, Mr Marx and Mr Rugova, whether taken into account collectively or individually, does not cause me to alter my overall conclusion that the Claimants have failed to prove Allegation 3 to the required standard of proof.

169. In this context I find it helpful to remind myself of what was said by Lord Leggatt in *Royal Mail Group Ltd v Efobi*, at [41]:

> *"41. The question whether an adverse inference may be drawn from the absence of a witness is sometimes treated as a matter governed by legal criteria, for which the decision of the Court of Appeal in Wisniewski v Central Manchester Health Authority [1998] PIQR P324 is often cited as authority. Without intending to disparage the sensible statements made in that case, I think there is a risk of making overly legal and technical what really is or ought to be just a matter of ordinary rationality. So far as possible, tribunals should be free to draw, or to decline to draw, inferences from the facts of the case before them using their common sense without the need to consult law books when doing so. Whether any positive significance should be attached to the fact that a person has not given evidence depends entirely on the context and particular circumstances. Relevant considerations will naturally include such matters as whether the witness was available to give evidence, what relevant evidence it is reasonable to expect that the witness would have been able to give, what other relevant evidence there was bearing on the point(s) on which the witness could potentially have given relevant evidence, and the significance of those points in the context of the case as a whole. All these matters are inter-related and how these and any other relevant considerations should be assessed cannot be encapsulated in a set of legal rules."*

170. I have already accepted that the guidance given by Lord Leggatt, which was given in the context of an employment case, is not directly applicable to the question of whether I can, in the Contempt Application, draw adverse inferences from the absence of evidence from the Defendant and/or Mr Marx and/or Mr Rugova. If however, as I have decided, I can draw such adverse inferences, the question remains as to whether I should draw adverse inferences and, if so, of what kind from the absence of evidence from the Defendant and/or Mr Marx and/or Mr Rugova. In answering this question, the guidance given by Lord Leggatt is very helpful. In particular, and as Lord Leggatt explains, the drawing of adverse inferences is an acutely fact sensitive exercise.

171. On the facts of the present case, and for the reasons which I have explained, the problem which confronts the Claimants, in a nutshell, is their failure to

demonstrate that the only available explanation for the payment of the Sum to Intelligent Legal is that the Defendant was seeking to conceal the Sum from the Claimants and keep it out of their reach.

172. I can see merit in the argument that, in a situation where the payment of the Sum is unexplained and looks (at the least) odd, the Defendant might have been expected to provide an explanation of the payment and/or to call Mr Marx to help explain the payment and/or to call Mr Rugova to confirm whatever explanation the Defendant might have for the payment of the Sum. The Defendant and Mr Marx were clearly available to give evidence. I know of no reason why Mr Rugova could not have been called by the Defendant to give evidence. The solicitors' correspondence demonstrates that the Defendant's solicitors were in contact with Mr Rugova. I have also seen an order of the Bournemouth County Court, by which the Defendant was ordered to give up possession of a flat in Bournemouth, made on 7th June 2023. The order records that Mr Marx attended the possession hearing as a McKenzie Friend of the Defendant, *"with Mr Dashi as support"*. I take the reference to Mr Dashi to be a reference to Mr Rugova. The order is exhibited to Mr Rechtschaffen's third affidavit, which I have decided is not part of the admissible evidence, but I consider that I am entitled to take into account an order of a court.

173. Ultimately however, and accepting the argument, contrary to the submissions of Mr Bowers, that I can draw adverse inferences from the absence of evidence from the Defendant and/or Mr Marx and/or Mr Rugova, I remain unpersuaded that the Claimants have discharged the evidential burden of proving Allegation 3. The absence of explanation or evidence from the Defendant and/or Mr Marx and/or Mr Rugova does not, on the facts of the present case, seem to me to be decisive. If I take into account the absence of this evidence, in circumstances where it could have been expected to be available, I remain in a position where I cannot be satisfied, so that I am sure, that the Claimants' explanation for the payment of the Sum to Intelligent Legal is the correct one.

174. Drawing together all of the analysis in this section of this judgment, I reach the overall conclusion that the Claimants have failed to discharge the burden of proving Allegation 3 to the required standard of proof. I am not satisfied, to the required standard, that the Defendant breached paragraph 12(1) of the July 2020 Order in the manner alleged by Allegation 3.

175. I add one final point, in case it should be relevant. In my consideration of Allegation 3 I have, for the reasons explained earlier in this judgment, disregarded the evidence of Mr Rechtschaffen in his second and third affidavits. I should however make it clear that even if I had been taking this evidence into account, this would not have caused me to alter the overall conclusion which I have reached in relation to Allegation 3. The essential problem with the Claimants' case in relation to Allegation 3, which I have identified above, seems to me to remain in place whether or not one takes into account all the evidence of Mr Rechtschaffen which has been filed for the Trial.

Allegation 4(1) – alleged breaches of the August 2020 Order - analysis and determination

176. The August 2020 Order is a worldwide freezing order made, by consent, against the Defendant. The basic restriction imposed by the freezing order is in paragraph 2, in the following terms:

> *"2. Until further order of the court, the Respondent must not—*
>
> *(a) remove from England and Wales any of his assets which are in England and Wales up to the value of £15,678,975.88; or*
>
> *(b) in any way dispose of, deal with or diminish the value of any of his assets whether they are in or outside England and Wales up to the same value."*

177. Paragraphs 3 and 4 of the August 2020 Order set out provisions defining the scope of the assets caught by the freezing order. Paragraph 3 effectively corresponds to paragraph 15 of the July 2020 Order:

> *"3. Paragraph 2 applies to all the Respondent's assets whether or not they are in his own name and whether they are solely or jointly owned and whether the Respondent is interested in them legally, beneficially or otherwise. For the purpose of this order the Respondent's assets include any asset which he has the power, directly or indirectly, to dispose of or deal with as if it were his own. The Respondent is to be regarded as having such power if a third party holds or controls the asset in accordance with his direct or indirect instructions."*

178. Paragraph 6 of the August 2020 Order lists a series of exceptions to the prohibitions imposed upon the Defendant's dealings with his assets. The exception in paragraph 6(a) is in the following terms:

> *"(a) This order does not prohibit the Respondent from spending £1,000 a week towards his ordinary living expenses and also a reasonable sum on legal advice and representation. But before spending any money the Respondent must tell the Applicants' legal representatives where the money is to come from."*

179. The allegation of breach is in the following terms, in the Table:

> *"**(4) Breaches of paragraph 6(a) of the 27.8.2020 Order**: Payments were made to Raydens and Keidan Harrison from the funds deposited on 10.7.2020 with Intelligent Legal Solutions Limited with no prior notification having been given to the Claimants."*

180. As I construe paragraph 6(a) of the August 2020 Order, and I did not understand Mr Fulton to argue to the contrary, paragraph 6(a) applies where the money being spent is money which is within the scope of the freezing order. Paragraph 6(a) does not apply to money spent by third parties, assuming the money spent by third parties does not comprise part of the assets of the Defendant, within the terms of the August 2020 Order. This analysis is consistent with the Claimant's previous approach to this question, as recorded by Zacaroli J in a judgment dated 30th April 2021. The judgment was concerned with a disclosure application made by the Claimants, and certain other applications. In dealing with the disclosure application Zacaroli J recorded the position of the Claimants in the following terms, at [79]:

> *"79. The applicants accept that the obligation under paragraph 6(a) of the WFO to inform the applicants where "the money" is to come from relates only to*

"money" that is within the scope of the WFO. They contend, however, that the money held on account by KH and Raydens is caught by paragraph 3 of the WFO."

181. What follows from this is that if Allegation 4(1) is to succeed, the Claimants must demonstrate that the payments made to Raydens and Keidan Harrison were made using the funds deposited by the Defendant with Intelligent Legal on 10th July 2020; namely the Sum. This in turn depends upon establishing that the Sum remained an asset of the Defendant, within the terms of the August 2020 Order, following the payment of the Sum to Intelligent Legal.

182. In these circumstances it seems to me that the question of whether Allegation 4(1) succeeds depends upon the outcome of Allegation 3. I refer to and repeat my analysis of Allegation 3. I have already concluded that the Claimants have failed to prove, to the required standard of proof, that the Defendant retained any interest in or control over the Sum following its payment to Intelligent Legal. I have also concluded that the Claimants have failed to prove, to the required standard, that the Sum was used, directly or indirectly, to pay Raydens and Keidan Harrison. It follows that the Claimants have failed to prove, to the required standard, that the payments to Raydens and Keidan Harrison were caught by paragraph 6(a) of the August 2020 Order. I therefore conclude that the Claimants have failed to discharge the burden of proving Allegation 4(1) to the required standard of proof. I am not satisfied, to the required standard, that the Defendant breached paragraph 6(a) of the August 2020 Order in the manner alleged by Allegation 4(1).

Allegation 4(2) – alleged knowing false statements – analysis and determination

183. Allegation 4(b) does not allege breach of any court order. Instead, the allegation is that the Defendant made knowingly false statements. Allegation 4(b) is made with the permission of Trower J, granted by paragraph 1 of the Directions Order.

184. The alleged knowingly false statements are set out in the following terms in the Table:

*"**Knowingly false statements**: In order to deny and conceal these breaches, EW knowingly made the following false statements:*

i. In paragraph 8 of his Seventh Witness Statement dated 19 April 2021, where EW said "none of the monies were at any time mine" and "at no time did I have control over the monies".

ii. In paragraph 9 of his Third Affidavit dated 20 May 2021, where EW said that "the funding came from Intelligent Legal's financial resources and did not derive from my personal funds or any entity which I am alleged to have extracted funds from".

iii. In paragraph 17 of his Third Affidavit dated 20 May 2021, where EW said that "the funds were provided from Intelligent Legal's own finances and not from my personal funds".

These statements were false because, on 10.7.2020, EW had deposited £50,000 (from his personal account with Lloyds bank) with Intelligent Legal Solutions Limited. Those funds were then used from 27.11.2020 to pay EW's legal expenses. Further or alternatively (and contrary to para 8 of Wojakovski 7), after EW had transferred £50,000 to Intelligent Legal Solutions, he retained control over that sum and directed that some of it be used to pay his legal expenses."

185. Once again, it seems to me that Allegation 4(2) depends upon the outcome of Allegation 3. I again refer to and repeat my analysis of Allegation 3. I have already concluded that the Claimants have failed to prove, to the required standard, that the Defendant retained any interest in or control over the Sum following its payment to Intelligent Legal. I have also concluded that the Claimants have failed to prove, to the required standard, that the Sum was used, directly or indirectly, to pay Raydens and Keidan Harrison. In these circumstances I do not see that I can be satisfied, so that I am sure, that any of the statements which are the subject matter of Allegation 4(2) were either false or knowingly false. I therefore conclude that the Claimants have failed to discharge the burden of proving Allegation 4(2) to the required standard of proof. I am not satisfied, to the required standard, that the Defendant made false statements or knowingly false statements in the manner alleged by Allegation 4(2).

186. For what it is worth, I am doubtful that Allegation 4(2) could have been sustained in any event, so far as it relies upon paragraph 9 of the third affidavit of the Defendant, sworn on 20th May 2021. Although this is not apparent from the extract from paragraph 9 which is quoted in the Table, the full sentence in paragraph 9 reads as follows:

> *"The letter, which my solicitors have now shown me, explains that the funding came from Intelligent Legal's financial resources and did not derive from my personal funds or any entity which I am alleged to have extracted funds from."*

187. The letter referred to by the Defendant, which is a letter dated 19th February 2021 written by Mr Rugova, on behalf of Intelligent Legal, to Raydens, does indeed contain the explanation recorded by the Defendant. In these circumstances I have difficulty in seeing how this sentence contained a false statement or a knowingly false statement. What the Defendant said was true. The letter did contain this explanation. What was not true, on the Claimants' case, was the explanation itself. If the Defendant knew that the explanation was false, it might be said that the Defendant was impliedly stating that the explanation given in the letter was true. This would however be a different allegation, and the question would have arisen as to whether this different allegation could be substituted for what is alleged in the Table. In the event none of this arises. The Claimants have failed to prove, to the required standard of proof, either that the explanation was false or that the Defendant knew the explanation to be false.

Allegation 5 - alleged breach of the May 2021 Order – analysis and determination

188. The May 2021 Order was made on the application of the Claimants for disclosure of information and documents relating to the funding of solicitors acting for the Defendant in other proceedings. As mentioned in my analysis of Allegation 4(1), Zacaroli J dealt with this and two other applications in his judgment dated 30th April 2021. For the reasons set out in this judgment Zacaroli J decided that such an order should be made. The result was the May 2021 Order.

189. Paragraph 1 of the May 2021 Order required the Defendant to do the following things:

> *"1. Mr Wojakovski shall by 4pm on 20 May 2021:*
>
> *(1) file and serve an affidavit which sets out all sums paid by way of legal expenses since 27 August 2020 (whether to lawyers in England & Wales or elsewhere) ("the relevant legal expenditure"), the sources of payment of such sums, the dates of receipt by his solicitors of such sums, the dates on which such sums were applied against invoices, and the terms of any arrangements with third parties in respect of them;*

(2) disclose to the Claimants and to the Trustees in Bankruptcy copies of the documents set out in the attached Schedule insofar as such documents are within his possession and control and relate to the relevant legal expenditure; and

(3) provide to Keidan Harrison LLP a list of all documents disclosed pursuant to sub-paragraph (2) above ("the Disclosed List")."

190. It is alleged in the Table that the Defendant breached paragraph 1(2) of the May 2021 Order in the following manner:

> *"**(5) Breach of paragraph 1(2) of the 14.5.2021 Order**: EW failed to disclose the July 2020 Lloyds Bank Statement which was in his possession or control and which evidenced the "intermediate transfer" of funds to Intelligent Legal Solutions Limited which were ultimately used to pay Raydens and Keidan Harrison. That Bank Statement fell within paragraphs 2 and/or 3 of the Schedule to the 14.5.2021 Order."*

191. The Defendant responded to paragraph 1(1) of the May 2021 Order by his affidavit sworn on 20th May 2021. I assume that this affidavit was filed and served on the same day, in compliance with the time limit in paragraph 1 of the May 2021 Order. No point is taken, so far as I am aware, that the affidavit was filed and served out of time.

192. In this affidavit, as I have identified earlier in this judgment, the Defendant disclosed the payments to Keidan Harrison and Raydens by Intelligent Legal and Intelligent Languages, and exhibited bank statements showing the payments to Keidan Harrison. The Defendant did not, either by exhibit to this affidavit or by other means, disclose the statement from his own Lloyds bank account which showed the payment of the Sum to Intelligent Legal on 10th July 2023.

193. A preliminary point which arises in relation to Allegation 5 is that there was no personal service of the May 2021 Order on the Defendant. I was asked by the Claimants to dispense with the requirement for personal service of the May 2021 Order on the Defendant. Although the jurisdiction to dispense with personal service is only to be exercised in exceptional circumstances, it seems to me that it is appropriate to grant this dispensation in the circumstances of the present case. It is clear that the Defendant was well aware of the terms of the May 2021 Order, to which he responded by his affidavit of 20th May 2021. It would, in my view, be somewhat unreal to insist on the requirement of personal service in relation to the May 2021 Order. The Claimants' application to dispense with the requirement for personal service was, sensibly, not opposed by Mr Bowers. I therefore dispense with the requirement for personal service of the May 2021 Order.

194. This leaves the substantive question of whether the Defendant did breach paragraph 1(2) of the May 2021 Order by his failure to disclose the relevant statement for his Lloyds bank account, showing the payment of the Sum on 10th July 2020. This depends upon whether the bank statement was caught by the terms of the Schedule to the May 2021 Order. The Claimant's case is that the bank statement fell within the terms of paragraphs 2 and/or 3 of this Schedule. These paragraphs provided as follows:

> *"2. Bank statements evidencing the ultimate source of relevant legal expenditure.*
>
> *3. Bank statements evidencing any intermediate transfers."*

195. As can be seen, the relevant bank statement was only caught by these paragraphs or either of them if the Sum was, directly or indirectly, used to fund the payments made to Keidan Harrison and Raydens by Intelligent Legal and Intelligent Languages. In this context I again refer to and repeat my analysis of Allegation 3. I have however already concluded that the Claimants have failed to prove, to the required standard of proof, that the Sum was so used. As such, I am bound to conclude that the Claimants have failed to prove, to the required standard of proof, that disclosure of the relevant bank statement was required by paragraph 1(2) of the May 2021 Order.

196. I therefore conclude that the Claimants have failed to discharge the burden of proving Allegation 5 to the required standard of proof. I am not satisfied, to the required standard, that the Defendant was required, by paragraph 1(2) of the May 2021 Order, to make disclosure of the relevant bank statement.

Summary of my determination of the Contempt Application

197. For the reasons set out in this judgment, I find that the Defendant has committed breaches of paragraph 5 of the January 2020 Order, and is thereby in contempt of court, as follows:
    (1) Following the making of the January 2020 Order the Defendant caused rental income from properties in Scotland owned by Quastus Holding Limited to be paid into his account with Lloyds Bank (on 23rd January 2020, 7th February 2020, 25th February 2020, 12th March 2020 and 31st March 2020) in the total sum of £70,000. All of the said rental income was subject to the proprietary injunction in paragraph 5 of the January 2020 Order.
    (2) Following the making of the January 2020 Order the Defendant used the said rental income for his personal expenditure, notwithstanding that the said rental income was subject to the said proprietary injunction.

198. For the reasons set out in this judgment, I find that the Claimants have failed to prove, to the required standard, the alleged breaches of court orders comprising Allegations 2, 3, 4(1), and 5. Also for the reasons set out in this judgment, I find that the Claimants have failed to prove, to the required standard, that the Defendant knowingly made false statements in the manner alleged by Allegation 4(2).

Outcome

199. The outcome of the Contempt Application is as follows:
    (1) I find that Allegation 1 has been established, as set out above.
    (2) In relation to the remaining Allegations, I find that the Claimants have failed to prove any of these Allegations to the required standard of proof.

200. The Contempt Application therefore succeeds in part.

201. I will consider the question of what sanction to apply, in relation to the Defendant's admitted breaches in respect of Allegation 1, at a separate hearing. It seems to me that the sanction hearing should not be delayed. I will therefore give directions for the early listing and hearing of the sanction hearing, in the terms of the draft order which the parties have agreed consequential upon this judgment.