

Neutral Citation Number: [2020] EWHC 426 (Comm)

Case No: CL-2011-001058

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS**  
**OF ENGLAND AND WALES**  
**COMMERCIAL COURT**

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

**Date: 30 January 2020**

Before :

**Mr Justice Waksman**

Between :

(1) **Lakatamia Shipping Co LTD** Claimants  
(2) **Slagen Shipping Co LTD**  
(3) **Kition Shipping Co LTD**  
(4) **Polys Haji-Ioannou**

- and -

Defendants  
(1) **Nobu Su (aka HSIN Chi Su; aka Nobu Morimoto)**  
(2) **TMT Co LTD**  
(3) **TMT Asia LTD**  
(4) **Taiwan Maritime Transportation Co LTD**  
(5) **TMT Co. LTD Liberia**  
(6) **Iron Monger I Co LTD**

**Stephen J Phillips QC and Noel Casey (instructed by Hill Dickinson LLP) for the Claimant**

Hearing date: 30<sup>th</sup> January 2020

**APPROVED JUDGMENT**

Judgment by MR JUSTICE WAKSMAN

1. I had before me today two applications.
2. The first of those was to commit the defendant, Mr Nobu Su, a Japanese national, to prison for contempt of court. That arises in circumstances where he is a present judgment debtor of the first claimant, Lakatamia, and I think one other entity in respect of a remaining amount due of about \$60 million pursuant to a judgment which was made by Cooke J as long ago as 5 November 2014, supplemented by a further judgment in January 2015.
3. The contempt application arises out of what is said to be his breach of an order made by His Honour Judge Pelling QC on 27 November 2019 to sign within seven days, a number of bank mandates in respect of a bank with which it is said he is associated in order to enable the claimant to obtain further information about his assets, a quest on which it has been engaged since it originally obtained judgment.
4. It is not necessary for me to say anything about the judgment. It has not been appealed. It was an award of damages made in respect of Mr Su's breach of a forward contract on freight rates. I record that Mr Nobu has certainly been a billionaire in the past as a result of his shipping empire and it is said that he has been one of Asia's richest men.
5. There is a forthcoming further application to commit Mr Su. This concerns his alleged non-disclosure of three apartments in New York which it is said by the claimants, who have only very recently discovered it, are in truth his assets but which have gone undisclosed.
6. Having considered the matter this morning, I acceded to the application made by Mr Phillips QC on behalf of the claimant that it is appropriate for both of those committal applications to be heard together in accordance with usual practice. I have already ruled that they will be heard in the week commencing 10 February and appropriate directions about that have been made.

7. The reason for the date is significant. As a result of a first order for committal made by Sir Michael Burton on 25 March of last year, he ordered that Mr Su be committed to prison for 21 months, the maximum being 24 months. I will say a little more about that later. But the present position is that Mr Su, who has been produced by HMP Pentonville today, remains at Pentonville until the release date which is automatic and unconditional upon him having served half of that 21-month sentence, which is, at its earliest, 12 February and, at its latest, probably 15 February. A definitive calculation from Pentonville is awaited.
8. At this point, I should explain that in the numerous proceedings which have taken place since judgment, Mr Su has been variously represented either by McKenzie friends and/or by leading or junior counsel, as indeed he was represented by counsel in the hearing before Sir Michael Burton.
9. On Monday of this week, which was to have been the occasion when I would consider a separate application, that matter was adjourned until today for reasons that I need not go into now. At that stage, it was said that he had solicitors acting for him. Indeed, leading and junior counsel appeared on a pro bono basis, for which I was most grateful, but they no longer play any part in this.
10. However, this morning, Mr Su asked whether he could have a McKenzie friend and whether that that McKenzie friend could address the court on his behalf. I have already given a ruling about that. I am not going to repeat it, save to say that Mr Coleman, the chosen McKenzie friend, has been very helpful to me and I think to Mr Su in being able to make sharply focused submissions, first of all on the housekeeping matters we dealt with this morning and, secondly, in relation to the second application which I have dealt with and to which I now turn.
11. The second application is for Mr Su to attend a cross-examination on his assets pursuant to CPR 71. We have been there before, to this extent: on 27 and 28 February, he attended a cross-examination on his assets dealt with by Sir Michael Burton, but which it is said proved to

be of little use because he did not give any of the pre-hearing disclosure that he was ordered to give, except late and inadequate.

12. It is further said that there have been developments since that hearing which would justify a further cross-examination. So far as that is concerned, CPR 71.2(1)(b)(i) says that a judgment creditor may apply for an order requiring the judgment debtor to attend court to give information about his means.
13. The note at 71.2.8 of the White Book recites that according to a decision called *Sturges* from 1914, it was held that:

"A further examination could be ordered in special circumstances. The new rule places no restriction on repeat examinations, no doubt relying on the court's case management and costs powers to prevent abuse."
14. That is the basis on which the claimant now seeks this present order.
15. I need to say now a little more about the history. Following Cooke J's judgment, the claimant discovered that Mr Su appeared to be the owner of two undisclosed properties in Monaco, the legal owners being described as one company called Cresta and another company called Portview. That, the claimant said, put him in breach of the freezing order which had been granted against him as long ago as 2011 and its provision of information requirements.
16. It turned out that both of those properties had been mortgaged to Barclays Bank, but once the debt to the bank had been discharged following a sale for about €65 million, there was a balance of €27 million which was released to the lawyer acting for Cresta at the time. There was a further €3 million effectively paid into court or in escrow in Monaco and subject to the decision of courts of Monaco to abide an unresolved dispute with Barclays.
17. I should add that so far as the €3 million is concerned, the Court of Appeal in Monaco has held that most of that is due to Barclays, but there is a residual amount which in due course would otherwise be Mr Su's or Cresta's to deal with. Cresta has appealed that decision to the Supreme Court and I know nothing further about it.

18. On 26 January 2018, Popplewell J granted an order for the cross-examination of Mr Su on his means and ordered disclosure and that should he come back to this jurisdiction (because although he had submitted to this jurisdiction in connection with the claim heard by Cooke J, he was not at that time in the jurisdiction), he must surrender his passports and inform the Tipstaff of where he was staying.
19. He did come back on 10 January 2019. He was met by police officers who served him with Popplewell J's order, confiscated his passport and when asked where he was staying, was told he was at the Dorchester; I am told that various credit card bills subsequently produced shows that he was a frequent visitor to that hotel.
20. In fact, this was untrue. He was not staying at the Dorchester. He went to the Intercontinental Hotel in Park Lane instead. From there, he took a taxi to Liverpool where he tried to get free passage on the ferry to Belfast, but the staff were aware of the order in respect of him or they were suspicious; they called the police and he was arrested.
21. On 18 January, Bryan J made a number of orders for disclosure and a reporting requirement on a daily basis to the police. He did not comply with those disclosure orders.
22. It then was revealed, in the course of the previous cross-examination, that the €27 million which had been sent to the lawyer for Cresta had now been transferred to Mr Su's mother, Mrs Morimoto. That led the claimants to issue a claim against her, along with Cresta and Portview and Mr Su, alleging conspiracy to injure by dealing with net proceeds of sale in breach of the freezing order against him.
23. A freezing order in respect of that second action was granted and while, on an inter partes basis, Sir Michael Burton discharged it, the Court of Appeal restored it, so it remains in place. That second action continues. Indeed, I am told there is a CMC on 15 February.
24. The effective strands of the first contempt application made before Sir Michael Burton, were ten separate acts of contempt by deliberate breaches of court orders. These included failing to

- disclose his interest in the Monaco properties, disposing of the net proceeds of sale of those properties, attempting to flee the jurisdiction to Belfast in breach of Popplewell J's order, failing to serve documents required by Popplewell J and Bryan J, and failing to serve an affidavit dealing with all of his assets over £10,000.
25. In committing Mr Su to prison for 21 months, the judge said that it was close to the maximum of 24 months. The reason why there was a small reduction was because of the time that Mr Su had spent in the jurisdiction, not incarcerated, but nonetheless subject to daily reporting requirements.
  26. On 27 March last year, Mrs Morimoto served a witness statement stating that the net proceeds of €27 million had now been transferred to a company called UP Shipping which she said belonged to her son. If that is right, that was another breach of the disclosure order, although his evidence stated or implied that this was his mother's company.
  27. On 5 May 2019, she served a second witness statement which produced some bank statements of UP Shipping which she said she had found in her son's "old office". Those statements reveal that the net proceeds had indeed gone to UP Shipping (and I have seen some of those statements), but that subsequently, UP Shipping had transferred substantial tranches of those monies to another company called Blue Diamond Sea Transport Limited.
  28. In pursuance of the quest to obtain further information concerning Mr Su's assets, that gave rise to the original request for the bank mandates to be signed by Mr Su. That did not happen, which is why eventually the claimant applied to the court. The court made the order. As I have said, the consequences of all of that form part of the second committal application now to be heard with the third committal application.
  29. There were belated attempts by Mr Su, unsuccessfully, to appeal the committal order from Sir Michael Burton out of time, together with an allied application for bail. Both of those applications were refused by the Court of Appeal. There was an application to purge his

contempt which came before Richard Jacobs J who, having heard the matter, held that there was nothing in the new materials to justify purging the contempt for which he was now serving a prison sentence and indeed he certified it as being totally without merit.

30. Mr Su had, at earlier stages, for example in relation to the first cross-examination, stated that he would provide the requisite disclosure on a rolling basis, but that did not happen. He has obviously had at various stages the means to employ leading and junior counsel and he has had the assistance of others not presently incarcerated to include, for example, Mr Coleman today, a Mr McDonald and a Mr McKendrick, whom I think he met at Pentonville and who was himself a contemnor; Mr McKendrick has given assistance and, at least on one occasion, was himself permitted to address the court as a McKenzie friend.
31. That then brings us to the instant application. The first limb of the application is the reason why the claimants say that they should be given a further opportunity to cross-examine Mr Su on his assets. They do so in circumstances where they say that, subject to any further custodial order that may or may not be made at the hearing of the two committal applications, once Mr Su is released and it is an unconditional release, subject to any order, he will be free to leave the jurisdiction and that will really be that so far as any meaningful process by which the claimants can obtain any information from Mr Su.
32. So far as the new developments are concerned, I have already recited those in terms of the discovery of the very large sum of money of £27 million emerging from, according to the claimants and as found by Sir Michael Burton, undisclosed assets in the form of the Monaco properties, all of which emerged after the initial cross-examination. Included in that, critically, say the claimants, are the two companies identified as transferees, UP Shipping and Blue Diamond Sea Transport.

33. There is, secondly, the issue about the old office and what it might contain, which was revealed by Mrs Morimoto. There is then the question about the Cresta company itself, although Sir Michael Burton took the view that was clearly owned by Mr Su.
34. Those are the further developments which, in my judgment, are material and important.
35. As for the problem with the first cross-examination, I also accept that because of Mr Su's non-compliance with disclosure orders, notwithstanding what he promised, the result of all of that was that the cross-examination yielded much less than would have been expected.
36. In addition to that, it is clear from the brief history I have recited, simply looking at the basis for the judgment of Sir Michael Burton, that Mr Su has lied to the court previously and has made manifest attempts to avoid full disclosure.
37. So far as the general utility of this is concerned, it is important to note that in two passages of the transcript of the hearing before Jacobs J, albeit Mr Su said he needed to be out of prison to do anything about it, there was money which could be made available in order to satisfy this judgment (if he wished to do so), and I refer to bundle B, divider 36, pages 377 and 378. So this is not a case of someone who is saying, "There is no point asking me about assets because I haven't got any"; that is not Mr Su's position.
38. Regardless of the practical difficulties of being presently incarcerated, he can identify where the money is, he can give descriptions of assets that he has not done so far, and, to the extent that he is in prison before the cross-examination takes place, he has those on the outside, as it were, who can assist him, and, as I have indicated, he has had the wherewithal in the past to instruct leading and junior counsel. So I do not regard the pre-hearing disclosure now sought or his preparation for the hearing as being impossible simply because he is in prison at the moment.
39. Mr Coleman, in his helpful submissions, really concentrated on two or three key points. First of all, he said, if, as is clear from the documents, he has been found to be and been called a liar



and a contemnor, it may be that that would in some way expose him to criminal proceedings here, although as far as I am aware none have been intimidated. Of course the right to self-incrimination privilege is a fundamental right, but it arises in relation to a real risk of criminal proceedings in the event that the relevant witness says something or not. It is not clear at all to me at the moment that there is any such risk, but, to the extent that there was, this is classically a matter for the judge who will be conducting the cross-examination; it is no reason not to order a cross-examination.

40. The second point that is made by Mr Coleman is that on the basis that Mr Su came here with a three-month visa only, being a non-national of this country, he is an overstayer now and he is committing an offence. We have not had the opportunity to investigate all of the provisions on the Immigration Acts, but I do know that there are many circumstances in which those who have come here can be detained prior to removal or deportation or are otherwise subject to court orders, and for my part I think it is extremely unlikely that there would be any risk of prosecution in circumstances either, which is the present case, where Mr Su is in fact overstaying but in prison, or, if I were to make any such order, an order that actually prevents him from leaving the jurisdiction. So I do not think there is anything in that point.
41. Mr Coleman's third point is that, supposing he was released and there was no further period of imprisonment, he cannot work because he is an overstayer without a right to be here, he cannot have access to healthcare and benefits and so on. That may be so but, as I have indicated, he has had the financial wherewithal to instruct leading and junior counsel as well, and if he was out of prison I do not think for a moment it would be beyond his wit to obtain funding, bearing in mind that when he first came here, according to the police, he was destined straight for the Dorchester, and that his credit card statements show a fairly lavish lifestyle. So there is nothing in that point either.

42. The final point made by Mr Coleman concerns the overall justice of the case, which is that he has spent enough time in prison now and should go home and be allowed to go home. However, that begs a very large number of questions, given the way in which he has acted before and given the fact that, through no fault of their own, the claimants have been hampered in their perfectly legitimate attempts to gain information about his assets by the way in which Mr Su has deliberately conducted himself.
43. I am quite satisfied, in those circumstances, that this is a case (and, if it needs to be exceptional, it is, for the reasons I have given, exceptional) that there should indeed be a further cross-examination of Mr Su.
44. The second order which I am asked to make in that connection is that he give disclosure before the hearing. That is quite limited, and it states this: that by a certain date, he shall serve on the claimants' solicitors the following documents to the extent that they are in his control. If, therefore, they are not in his control, the order does not bite, and that is a sensible and proportionate qualification. The documents are (a) those that concern the company incorporated in the BVI known as UP Shipping, including, in particular, bank statements for any and all bank accounts held in the name of UP Shipping Inc; and (b) documents that concern the company incorporate in the United Arab Emirates known as Blue Diamond Sea Transportation LLC. On the face of it, if only by going on the bank statements that his mother has produced, there clearly are documents somewhere, and there is, in my judgment, a real prospect that Mr Su will be able to obtain those documents using the other people that are assisting him, even while he is still in prison, to comply with that disclosure order. I consider that in the light of the history it is right that there should be a penal notice on the order.
45. The final limb of the application concerns the movements and the location of Mr Su. If it turns out that there was a further period of imprisonment as a result of the committal applications not yet heard, then of course there would be no need for any order restricting his movements. But I

am not going to anticipate what might happen on those applications, and therefore I have to assume that before the cross-examination hearing, at some point Mr Su may be released from prison unconditionally.

46. This is a paradigm case where the court should make a further protective order, which is that Mr Su must not leave or attempt to leave England or Wales or make any application for or attempt an application for a passport, identity card, ticket travel warrants or any travel document which would allow him to leave; and that if he has been discharged from prison, he must, before leaving inform the Tipstaff of where he intends to reside within the jurisdiction, and provide a working telephone number and email address where he can be contacted. Of course, it goes without saying that the present confiscation of the passports pursuant to the order of Popplewell J will remain in place. One only has to state the attempt by Mr Su to flee the jurisdiction by going to Liverpool and hopefully onto Belfast, and his general conduct, to conclude without any hesitation on my part that he is a serious flight risk. Accordingly, as a matter of principle, I will grant the application that is being made for the further cross-examination.
47. There remain questions of timetables and when evidence should be provided and matters of that kind. I will deal with those now.