Neutral Citation Number: [2020] EWHC 561 (Comm)

Case No: CL-2018-000100

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/03/2020

Before :

THE HONOURABLE MR JUSTICE HENSHAW

- -

Between :

(1) DELL EMERGING MARKETS (EMEA) LTD
(2) DELL COMPUTER SA
(3) DELL TECHNOLOGIES INC. **Claimants/**
(4) DELL FZ – LLC **Applicants**

- and –
(1) SYSTEMS EQUIPMENT TELECOMMUNICATIONS SERVICES S.A.L.

Defendant/
Respondent

(2) MAHER CHAHLAWI
(3) MARWAN JUNIOR CHAHLAWI
(3) PIERRE ALBERT CHALHOUB
(5) SARAH BIBI

Respondents

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Sara Masters QC and Andrew Feld (instructed by **Osborne Clarke LLP**) for the **Claimants**
The Defendant and the Respondents did not appear and were not represented

Hearing date: 26 February 2020

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

Mr Justice Henshaw:

(A) INTRODUCTION

1. This judgment follows a hearing on 26 February 2020 of an application by the Claimants ("***Dell***"), made on notice dated 20 May 2019, for an order that each of the Respondents is guilty of contempt of court, for the committal of second to fifth Respondents to prison for such contempt of court, for permission to issue writs of sequestration against all the Respondents, and for related relief.

2. Cockerill J on 22 May 2019 gave permission to serve the committal application on the second to fifth Respondents out of the jurisdiction, pursuant to CPR PD 6B para 3.1(3), as necessary or proper parties to the application against the First Defendant ("***SETS***"). SETS was already subject to this court's jurisdiction, its solicitors having in March 2018 accepted service of the substantive proceedings (in which Dell sought anti-suit relief) on SETS' behalf in March 2018, and SETS having issued a challenge to the court's jurisdiction on 17 April 2018 but then withdrawn it on 16 May 2018. The committal application was served personally on each of the Respondents on 20 June 2019, and by a letter of 22 January 2020 Dell reminded the Respondents of the importance of attending the hearing. The Respondents initially reserved their position as to the validity of that service, but have issued no application to challenge the court's jurisdiction or service of the application. In these circumstances I am satisfied that the court has jurisdiction over each of the Respondents in relation to this application.

3. The committal application is supported by the first and second affidavits of Charles Christian Alexander Wedin, a partner in Dell's solicitors Osborne Clarke, and by an expert report on issues of Lebanese law of Mr Mohamed Youssef Alem. In opposition to the application, each of the second to fifth Respondents filed an affidavit, and the Respondents also relied on an expert's report on issues of Lebanese law from Professor Chibli Mallat.

4. The hearing proceeded, in the Respondents' absence, to address the issue of whether contempts of court have occurred, with any issues of sentence or sanction to be adjourned to a later date. That was the course proposed by Dell following receipt of a letter dated 21 February 2020 from the Respondents' Lebanese lawyer (Mr Naji Lahoud of Jurisfirma), unsupported by any evidence, seeking an adjournment of unspecified duration of the hearing, failing which the Respondents would not attend the hearing. Near the outset of the hearing on 26 February 2020 I gave a detailed oral judgment setting out the background to that request, the steps I took in response to it (including receipt of submissions and evidence from Dell and affording the Respondents a further opportunity to file submissions and/or evidence) and my reasons for proceeding with the hearing in the Respondents' absence.

(B) BACKGROUND

5. The contempt application relates to the Respondents' breaches of interim and final anti-suit injunctions (together, "***the Anti-Suit Injunctions***") restraining the pursuit of proceedings brought by SETS against Dell in Lebanon. SETS is a Lebanese company. The Second to Fifth Respondents were the members of SETS' board of directors at the relevant times, and have between them owned 100% of company's share capital at all relevant times. In slightly more detail:-

   i) The Second Respondent, Mr Maher Chahlawi, is a director and the general manager or chief executive of SETS and owns 40% of its share capital.

   ii) The Third Respondent, Mr Marwan Junior Chahlawi, is a director of SETS and the chairman of its board, and owns 50% of its share capital.

   iii) The Fourth Respondent, Mr Pierre Albert Chalhoub, has since 4 July 2018 been the third and only other director of SETS. He owns the remaining 10% of SETS' share capital.

   iv) The Fifth Respondent, Ms Sara Bibi, was until 4 July 2018 the third director of SETS and owned 10% of its share capital. She was thus Mr Chalhoub's predecessor.

6. The underlying dispute arises from the termination of an international distribution agreement executed on 22 June 2004 between the First Claimant and SETS, under which the First Claimant appointed SETS as a non-exclusive distributor of Dell products in Lebanon. The agreement contained an exclusive jurisdiction clause in favour of the English courts.

7. Dell says that as result of SETS's breaches of the 2004 agreement, Dell terminated it. SETS responded by commencing proceedings in Commercial Court of Lebanon on 5 December 2017 for wrongful termination of the agreement. Dell reacted by commencing proceedings in this court in February 2018 claiming a final and permanent anti-suit injunction restraining pursuit of the Lebanese proceedings. The First Claimant also brought contractual claims for declarations and damages under the 2004 agreement.

8. Dell obtained interim and final anti-suit injunctions on 19 April 2018 and 15 June 2018 respectively. SETS nonetheless continued to pursue the Lebanese proceedings, and

indeed commenced a second set of proceedings ("***the Invalidation Proceedings***") on 28 May 2018. In this judgment I refer to the two sets of proceedings in Lebanon together as "***the Lebanese Proceedings***". Various steps and hearings occurred in the Lebanese Proceedings, as indicated in more detail below. Most recently, the Lebanese court on 21 January 2020 held that it lacked jurisdiction due to the exclusive English jurisdiction clause (rejecting SETS' argument that that clause was void under Lebanese law because the agreement was an exclusive distribution agreement). However, SETS has now filed an appeal from that decision.

(C) TERMS OF THE ANTI-SUIT INJUNCTIONS

9. On 19 April 2018, Moulder J granted Dell an interim anti-suit injunction pending trial of its claim ("***the Interim Anti-Suit Injunction***") after a contested, on-notice hearing on 23 March 2018 at which SETS was represented by solicitors and counsel. The Interim Anti-Suit Injunction was endorsed with a penal notice directed at both SETS and third parties including directors:

> "IF YOU SYSTEMS EQUIPMENT TELECOMMUNICATIONS SERVICES S.A.L. DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND YOU MAY BE FINED AND HAVE YOUR ASSETS SEIZED AND ANY OF YOUR DIRECTORS MAY BE IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED.
>
> ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS THE RESPONDENT TO BREACH THE TERMS OF THIS ORDER MAY ALSO BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED."

10. The operative provisions of the Interim Anti-Suit Injunction provided in material part:

> "2. Until trial or further order, save as consented to in writing by the solicitors for the Claimants, Osborne Clarke LLP:
>
> a. [SETS] shall not whether by itself or by its directors, officers, employees, or agents, pursue, continue or take any further steps in the Lebanese Proceedings, and/or commence any further proceedings in Lebanon in relation to the 2004 IDA, or the Defendant's appointment as a distributor of Dell products, against the Claimants or any additional Dell entities.
>
> …
>
> c. [SETS] shall take no steps in Lebanon or before the Lebanese Courts to interfere with these English Proceedings."

11. The Interim Anti-Suit Injunction also ordered SETS to pay Dell's costs in the sum of £90,000. Those costs have not been paid.

12. On 15 June 2018, Robin Knowles J made a permanent and final anti-suit injunction against SETS ("***the Final Anti-Suit Injunction***"), in addition to granting summary judgment on certain other of Dell's claims. The application for the Final Anti-Suit Injunction and summary judgment was made on notice, although by that time SETS' English solicitors DWF had come off the record. Robin Knowles J ordered that the steps taken to serve SETS with the application were good service.

13. The Final Anti-Suit Injunction is endorsed with a penal notice directed at both SETS and its directors and officers:

> "IF YOU SYSTEMS EQUIPMENT TELECOMMUNICATIONS SERVICES S.A.L. DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND YOU MAY BE FINED AND HAVE YOUR ASSETS SEIZED AND ANY OF YOUR DIRECTORS MAY BE IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED.
>
> ANY OFFICER, EMPLOYEE, REPRESENTATIVE, AGENT OR SERVANT OF THE DEFENDANT WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS THE DEFENDANT TO BREACH THE TERMS OF THIS ORDER MAY ALSO BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED"

14. The operative provisions of the Final Anti-Suit Injunction provide in material part:

> "2. Save as consented to in writing by the solicitors for the Claimants, Osborne Clarke LLP:
>
> a) The Defendant shall not, whether by itself or by its directors, officers, employees, or agents, pursue, continue or take any further steps in the Lebanese Proceedings, and/or commence any further proceedings in Lebanon in relation to the 2004 IDA, or the Defendant's appointment as a distributor of Dell products, against the Claimants or any additional Dell entities.
>
> …
>
> c) The Defendant shall take no steps in Lebanon or before the Lebanese Courts to interfere with these English proceedings.
>
> 3. The Defendant shall, as soon as reasonably possible and in any event by no later than 26 June 2018, withdraw, terminate or otherwise finally discontinue the Lebanese Proceedings."

15. Robin Knowles J also ordered SETS to pay Dell the sum of US$ 940,222.76 (including interest of US$ 22,448.45) plus costs in the sum of £125,000, neither of which sums has been paid.

16. The English court undoubtedly had jurisdiction to make the Anti-Suit Injunctions. The claim form was served out of the jurisdiction by permission of the court, SETS acknowledged service, and issued but later withdrew a challenge to the jurisdiction, which was formally dismissed by Robin Knowles J's order of 15 June 2018.

(D) NOTIFICATION OF THE ANTI-SUIT INJUNCTIONS TO THE RESPONDENTS

17. The Interim and Final Anti-Suit Injunctions were notified to the Respondents by the following means:

    i) On 19 April 2018, SETS was represented by solicitors (DWF) and counsel at the hearing at which Moulder J handed down judgment and granted the Interim Anti-Suit Injunction.

    ii) On 20 April 2018, the day on which the Interim Anti-Suit Injunction was sealed, Dell served it by email on DWF, who were at that time still on the record as SETS' solicitors, including to the email address set out in SETS' acknowledgement of service (which was thus an address for service permitted by PD6A § 4.1(2)(c)). DWF subsequently came off the record on 24 May 2018.

    iii) On 6 June 2018, Osborne Clarke wrote to Mr Maher Chahlawi at his SETS email address, attaching a copy of the Interim Anti-Suit Injunction, referring Mr Chahlawi to its provisions, and stating that SETS's conduct in requesting a hearing in the Lebanese Proceedings was a breach of the injunction rendering both SETS and its directors liable to be held in contempt of court, pursuant to which SETS' directors may be imprisoned and SETS may have its assets seized.

    iv) On 18 June 2018, Dell served the Final Anti-Suit Injunction on SETS by email to (a) Mr Maher Chahlawi and (b) SETS' Lebanese lawyer, Mr Lahoud (using both the firm's general email address and Mr Lahoud's email address at the firm).

    v) On 22 June 2018, Dell effected service of the Final Anti-Suit Injunction by registered post at SETS' registered office.

    vi) On 25 June 2018, Dell effected service of the Final Anti-Suit Injunction by registered post at the offices of SETS' Lebanese lawyers.

    The methods of service referred to in (iv), (v) and (vi) above were methods which Robin Knowles J had on 15 June 2018 ordered constituted good service, pursuant to CPR 6.15(2) and 6.27, of Dell's application for the Final Anti-Suit Injunction. They included service at the email address and postal address given as addresses for service when DWF came off the record for SETS in May 2018.

    vii) Also on 25 June 2018, Dell effected service of the Anti-Suit Injunctions by the notary public procedure, which involved a Lebanese court clerk leaving copies of them (under cover of a letter from Osborne Clarke) at SETS' registered office for the separate attention of the directors, Mr Maher Chahlawi, Mr Marwan Chahlawi and Ms Bibi. The deeds of notification record that, in each case, the letter and attachments were left with a secretary, who refused to sign for them. The covering letters reminded the addressees of the terms of the Anti-Suit

Injunctions, demanded that SETS discontinue the Lebanese Proceedings, and made clear that a failure to comply with the Anti-Suit Injunctions was a criminal offence, and that *"Any other person who knows of this order and does anything which helps or permits the respondent to breach the terms of this order may also be held in contempt of court and may be imprisoned, fined or have their assets seized."*

viii) On 16 January 2019 the Claimants effected personal service of the Anti-Suit Injunctions on Mr Maher Chahlawi, Mr Marwan Chahlawi and Ms Bibi by the notary public procedure. Each of the covering letters included the following notice:

> **"A failure to comply with these injunctions is a criminal offence.**
>
> **If SETS disobeys the Orders, SETS and you, as a director of SETS, may be held to be in contempt of court and SETS and you, as a director of SETS, may be fined and have your assets seized. Any other person who knows of the Orders and does anything which helps or permits SETS to breach the relevant terms of the Orders may also be held in contempt of court and may be imprisoned, fined or have their assets seized."**
>
> The deeds of notification produced by the bailiff serving the letters show that each of the three directors personally received the letter at their residential address. Mr Maher Chahlawi and Mr Marwan Chahlawi signed the deed of notification. It is recorded that Ms Bibi declined to sign the deed of notification.

ix) On 15 February 2019 Dell effected personal service of the Anti-Suit Injunctions on Mr Chalhoub under cover of a letter in substantially identical terms. The deed of notification indicates that Mr Chalhoub received and signed for the letter and the attached Anti-Suit Injunctions on that date.

18. The evidence of Mr Wedin, which I accept, was that the personal service referred to in (viii) and (ix) above occurred after it had become apparent (contrary to earlier legal advice) that it was possible to effect personal service of individuals in Lebanon under the Lebanese Code of Civil Procedure. Osborne Clarke was unable to find a private investigation firm willing to effect such service, those firms whom they approached having previously encountered physical violence or arrest and detention without charge when attempting such service in other cases. However, in January 2019 Osborne Clarke realised, following further advice, that personal service on SETS' directors could be effected in compliance with Lebanese law using the notary public procedure.

(E) BREACHES OF THE ANTI-SUIT INJUNCTIONS

19. There is no dispute on the evidence that SETS has taken steps in the Lebanese Proceedings, and failed to withdraw those proceedings, contrary to the terms of the Anti-Suit Injunctions. In summary:

i) On 22 May 2018, SETS instructed Mr Lahoud to make a request to list a hearing in the Lebanese Proceedings. That was a step in the Lebanese Proceedings, in breach of paragraph 2a of the Interim Anti-Suit Injunction.

ii) On 28 May 2018, SETS instructed Mr Lahoud to commence the Invalidation Proceedings, by which SETS (i) sought a declaration that the Interim Anti-Suit Injunction is invalid; and (ii) alleged that the exclusive jurisdiction clause in the 2004 agreement was invalid because SETS had been appointed as an exclusive distributor. Commencement of the Invalidation Proceedings was thus a breach of the Interim Anti-Suit Injunction because it was (a) a commencement of "*further proceedings in Lebanon in relation to the 2004 IDA, or the Defendant's appointment as a distributor of Dell products…*"; and (b) a "*step in Lebanon or before the Lebanese Courts to interfere with these English proceedings*".

iii) On 26 June 2018, SETS instructed Mr Lahoud and Mr Michael Meouchy to attend a hearing in the Lebanese Proceedings, and consented at that hearing to a timetable for exchange of pleadings and to a further hearing being listed. That was a further step in the Lebanese Proceedings in breach of the Final Anti-Suit Injunction, which by that time had superseded the Interim Anti-Suit Injunction on 18 June 2018.

iv) On 16 October 2018, SETS instructed its lawyer to attend a hearing in the Lebanese Proceedings, and at that hearing filed a written statement of case. That was a further step in the Lebanese Proceedings in breach of the Final Anti-Suit Injunction.

v) On 27 November 2018, SETS instructed Mr Lahoud to attend a hearing in the Lebanese Proceedings, and at that hearing made a submission to the Lebanese court requesting that the court reject Dell's case. That was a further step in the Lebanese Proceedings in breach of the final Anti-Suit Injunction.

vi) On 28 January 2019, SETS instructed Mr Lahoud to file a further submission in the Invalidation Proceedings, by which it sought an additional declaration that the Final Anti-Suit Injunction was invalid: a further breach of the Final Anti-Suit Injunction.

vii) SETS is in continuing breach of paragraph 3 of the Final Anti-Suit Injunction, being the mandatory order requiring withdrawal of the Lebanese Proceedings by 26 June 2018.

20. All of these breaches are established by Dell's evidence and not disputed by the Respondents.

(F) CONTEMPT: APPLICABLE PRINCIPLES

21. In order to conclude that any particular Respondent is guilty of contempt of court, it is necessary to be sure that: (1) the Respondent in question knew of the terms of the order; (2) he or she acted (or failed to act) in a manner which involved a breach of the order; and (3) he or she knew of the facts that made his or her conduct a breach: *Masri v Consolidated Contractors* [2011] EWHC 1024 (Comm) § 150 (Christopher Clarke J).

22. Dell is required to prove the acts of contempt of which it complains to the criminal standard of proof: *Masri* § 144. As a result, I can only find any of the Respondents guilty of contempt if I am sure that he or she committed the necessary acts or omissions with the necessary state of mind.

23. A Respondent's act or omission has to be deliberate, but it is not necessary to show that he or she knew, believed or intended there to be a breach of the order: *Masri* at § 150; approved in *Devere v Hither Green Developments* [2015] EWCA Civ 1365 at §§ 44-47 (Sharp LJ), and *Khawaja v Popat* [2016] EWCA Civ 362 § 32 (McCombe LJ). The distinction is between deliberate or intentional conduct in breach of an order, and conduct that is merely "*casual, accidental or unintentional*" (*Masri* §§ 150-151).

24. There is no defence of 'reasonable excuse' in contempt proceedings. In particular, a breach of an order of the English court is not excused by the fact that compliance with it would or might constitute a breach of a foreign law: *Masri* §§ 156, 244-249 and 257-261; *Billington v Davies* [2017] EWHC 3725 (Ch) (Barling J). Where an order of the English court would or might conflict with the law of a foreign state, that is a point that should be taken when seeking to persuade the court not to exercise its discretion in the first place, or to vary or set aside an order that has been made: *Masri* § 257.

25. Where a company is guilty of contempt, CPR 81.4(3) provides that a committal order may be made against "*any director or other officer of that company or corporation*". The requirements for a director's liability in contempt under that provision were set out in *Attorney General for Tuvalu v Philatetic Distribution Corporation* [1990] 1 WLR 926 (Woolf LJ). In particular:

    i) A director is under a duty to take reasonable steps to ensure that the court's order is obeyed. If he or she wilfully fails to take such reasonable steps and the order is breached, he or she is liable in contempt: p. 936F.

    ii) The word "*wilful*" is intended to distinguish the situation in which a director reasonably believes that some other director or officer is taking the reasonable steps required to ensure that the court's order is obeyed: p. 936F.

    iii) There must be culpable conduct on the part of a director: mere inactivity is not sufficient. However, it is not necessary for the director to have actively participated in the breach of the order in order to be culpable. A failure to supervise those to whom a director has delegated responsibility can be regarded as sufficiently culpable: p. 938A-G.

26. As pointed out in Arlidge, Eady & Smith on Contempt (5th ed.) at § 12-131, the approach set out in *Tuvalu* does not mean that the breach of an undertaking by a company automatically discloses a case to answer against all the directors. In *Sectorguard Plc v Dienne Plc* [2009] EWHC 2693 (Ch), Briggs J said at § 42:

> "I consider that the effect of the *Tuvalu* case is that an applicant for the committal of a company director who relies upon a breach by the company of an order or an undertaking must disclose in the committal application a case for the establishment of responsibility on the part of that director, either on the grounds of aiding and abetting or wilful failure to take reasonable steps to ensure that the order or undertaking is obeyed."

27. In *Ipartner PTE Shipping v Panacore Resources* [2014] EWHC 3608 (Comm), Hamblen J cited both cases, and said at § 27:

> "It was submitted by the Claimants that the issue of whether a failure to take reasonable steps is "wilful" only arises where the director can reasonably believe that others are taking those steps. Whilst that was the primary example given by the Court of Appeal in the *Tuvalu* case, I do not accept that it is limited to such a case. This is apparent from the more general statements made later in the judgment and is supported by Briggs J.'s analysis of the effect of the case."

28. I understand Hamblen J in this passage to be making the point that a director of a company, with knowledge of the order and the company's breach, is not necessarily to be regarded as acting wilfully save only where he reasonably believes another officer to be taking steps to comply with the order. On that basis, I respectfully agree. I note that the individual respondent in *Tuvalu* was the chairman and managing director of one of the companies in breach of the court's order, and majority owner of the other. I do not consider *Tuvalu* to be authority for the proposition that one of several directors of a company is automatically to be regarded as acting wilfully unless he believes another director or officer to be taking action to comply with the order. Rather, the question of wilfulness must be assessed on the facts as a whole without any presumption or preconception. Dell accepts that it must prove culpable conduct by each Respondent, and submits that the evidence shows it has occurred here.

(G) CONTEMPT: SETS

29. The Respondents do not dispute that SETS, by its directors, had knowledge of both the terms of the Anti-Suit Injunctions and the facts that made SETS' conduct a breach.

30. SETS' knowledge of the terms of the Anti-Suit Injunctions at the dates of each of the breaches identified in § 19 above is in any event demonstrated to the criminal standard.

31. As already noted, the hearing of the Interim Anti-Suit Injunction application before Moulder J on 23 March 2018 was on notice and the application was contested by SETS, which was represented by solicitors and counsel. SETS was similarly represented by solicitors and counsel at the handing down of judgment on 19 April 2018, when the Interim Anti-Suit Injunction was made. That in itself was sufficient to give SETS knowledge of the injunction. Moreover, following discussions between counsel as to the terms of the order, the sealed order was on 20 April 2018 served on DWF, who remained on the record for SETS. That was more than a month before the first of the breaches referred to in § 19 above.

32. Further, SETS' own case in the Invalidation Proceedings, commenced on 24 May 2018, referred to and exhibited the Interim Anti-Suit Injunction, conclusively demonstrating its knowledge of that injunction.

33. The steps taken in relation to the Final Anti-Suit Injunction referred to in § 17(iv), (v), (vi) and (vii) above, between 18 and 25 June 2018, were undoubtedly sufficient to bring that injunction to SETS' knowledge, and took place before each of the breaches referred to in § 19(iii), (iv), (v) and (vi) above.

34. That fact is confirmed by the fact that on 27 June 2018, Mr Maher Chahlawi, Mr Marwan Chahlawi and Ms Bibi formally responded to Dell in a notarial letter ("***the first***

notarial letter"), which made reference to both the Interim and Final Anti-Suit Injunctions.

35. SETS also clearly knew the facts amounting to breaches of the injunctions, namely its own steps in the Lebanese proceedings, and those breaches were self-evidently deliberate. That conclusion is reinforced by the contents of the notarial letters sent, and affidavits signed, Mr Maher Chahlawi and Mr Marwan Chahlawi which I detail later in this judgment. It is further reinforced by SETS' own case in the Invalidation Proceedings, which amounts to a direct attack on the Anti-Suit Injunctions granted by this court.

36. In this context, I agree with Dell that the Second to Fifth Respondents' professions in their affidavits that they did not intend to be "*disrespectful to the English Courts*" is irrelevant.

37. I am therefore satisfied to the criminal standard that in relation to each of the matters set out in § 19 above, SETS knew of the terms of the Anti-Suit Injunction then in force, knew the facts that made its conduct a breach, and deliberately breached the injunction. SETS was therefore in contempt of court in each of the seven respects alleged.

(H) CONTEMPT: MAHER CHAHLAWI AND MARWAN JUNIOR CHAHLAWI

38. Mr Maher Chahlawi and Mr Marwan Junior Chahlawi both state in their affidavits, which are dated 28 November 2019 and in very similar form, that they manage SETS together and have done so at all relevant times. Neither of them makes any attempt to disclaim knowledge of the terms or effect of the Anti-Suit Injunctions, nor their involvement throughout in procuring the pursuit by SETS of the Lebanese proceedings. Instead, they say they were bound to pursue the proceedings in Lebanon or else face civil liabilities in Lebanon.

39. I am in any event sure that they both knew of the terms of the Anti-Suit Injunctions as a result of:

    i) (in the case of Mr Maher Chahlawi) each of the steps referred to in § 17(i) to (viii) inclusive, and

    ii) (in the case of Mr Marwan Junior Chahlawi) each of the steps referred to in § 17(i)-(ii) and (iv)-(viii) inclusive.

40. It is clear from both of their affidavits that Mr Maher Chahlawi and Mr Marwan Junior Chahlawi were running SETS and in charge of its pursuit of the Lebanese Proceedings. I conclude that they were the persons instructing DWF and Mr Lahoud, and that those firms are bound to have told both of them that the Anti-Suit Injunctions had been granted following the events referred to in § 17(i), (ii), (iv) and (vi) above. They will also have been (re-)informed of the Anti-Suit Injunctions following their service on SETS as set out in § 17(v) and (vii) above.

41. The knowledge of Mr Maher Chahlawi and Mr Marwan Junior Chahlawi of the terms and effect of the Anti-Suit Injunctions as at 27 June 2018 and 25 January 2019 is further confirmed by the first and second notarial letters to which I refer below.

42. Mr Maher Chahlawi states at §§ 16-20 of his affidavit:

> **"Exclusive Jurisdiction of the Lebanese Courts**
>
> 16. By way of the agreements that were executed between the Claimants and SETS that gave rise to these proceedings, SETS were appointed as DELL's exclusive distributor in Lebanon.
>
> 17. On the basis of legal advice that I have received, it is my understanding that, as a matter of Lebanese law, such agreements are considered to be a matter of "Public Order". Again on the advice provided to me, I further understand that for matters concerning Public Order, the Lebanese Courts consider that they have exclusive jurisdiction to hear any dispute that arises relating to such matters.
>
> 18. This means, I understand, that had SETS not commenced the Lebanese Proceedings, it could be said that the company had acted in breach of Lebanese Law.
>
> 19. Further, I am aware that, under articles 166 and 167 of the Lebanese Code of Commerce, the board members of a company such as SETS are legally accountable to third parties and shareholders for any fraudulent acts, infringement of law, or mismanagement and/or breach of the company's by-law.
>
> 20. The result of all of this is that, as I understand it, if, as required by the English Court Orders, SETS discontinued the Lebanese Proceedings, I would have left myself exposed to liability to the other shareholders and third parties; especially in circumstances where the underlying Lebanese claim seemed likely to succeed. Taken as a whole, given that SETS is a business that operates predominately in the Lebanese market, myself and Mr Marwan Junior Chahlawi were ultimately left with no choice but to continue the Lebanese Proceedings."

43. Mr Marwan Chahlawi's affidavit makes the same points.

44. I do not accept this evidence, nor in any event that it would provide a defence to the charge of contempt of court.

45. First, as already noted, it is well-established that contemptuous breach of an English court's order is not excused by the fact that obedience to the order might expose the contemnor to liability under a foreign law: *Masri* at § 156.

46. Secondly, the alleged risk to the Respondents under Lebanese law has not been established. The expert report of Professor Mallat states that the Lebanese courts as a matter of "*public order*" have exclusive jurisdiction over the dispute with Dell, pursuant to Article 5 of Decree-Law 34/67, because there was an exclusive distributorship between Dell and SETS. That premise has now been held to be incorrect by the

Lebanese Commercial court, which by its judgment of 21 January 2020 held that the distributorship relationship was non-exclusive so that Decree-Law 34/67 did not apply.

47. Leaving that point aside (on the basis that the Respondents may not have predicted it), Professor Mallet does not point to any rule or principle of Lebanese law under which SETS or its directors were obliged to commence or pursue the Lebanese Proceedings. He suggests in §56 of his report that *"The anti-suit orders in the DELL/SETS proceedings issued in England under a penal notice of contempt of court creates a risk for SETS being considered in violation of Lebanese public order"*. However, the ensuing reasoning is directed towards the proposition that SETS ought not to be held liable for breach of the Anti-Suit Injunctions. Professor Mallet identifies no particular claim that could be brought against SETS or its directors were they to have complied with the Anti-Suit Injunctions. Any liability to SETS' shareholders would in any event be hypothetical, since the Respondent directors are/were also the company's shareholders in this case. Mr Alem's evidence, filed on behalf of Dell and which I accept, makes clear that directors generally have no liability to third parties absent (i) fraud or (ii) a breach of general company law or the company's by-laws; and that claims by third parties for mismanagement of a company's affairs may only be brought where the company in question is insolvent.

48. Thirdly, and in any event, I do not accept that any fear of civil liability was the reason for the decision to pursue the Lebanese Proceedings in breach of the Anti-Suit Injunctions. No such fears were mentioned by SETS' representatives when the Interim Anti-Suit Injunction was granted, even though SETS did unsuccessfully take the point, on the basis of evidence from Professor Mallat, that the exclusive jurisdiction clause was unenforceable as a matter of "*public order*" pursuant to Decree-Law 34/67.

49. On the contrary, the notarial letters sent on behalf of SETS and Mr Maher Chahlawi, Mr Marwan Junior Chahlawi and Ms Bibi personally on 27 June 2018 and 25 January 2019 show a deliberate intention to breach the Anti-Suit Injunctions on the basis that they were considered to be invalid.

50. The first notarial letter was written by Jurisfirma and stated that it was sent "*By virtue of the Power of Attorney granted to us*" by SETS, Mr Maher Chahlawi, Mr Marwan Junior Chahlawi and Ms Bibi in their capacities as directors of the board of SETS. It set out in trenchant terms their case that the Lebanese court had exclusive jurisdiction and the English court no jurisdiction; that SETS had not been given the opportunity to present its defence sufficiently before the English court (despite, I interpolate, SETS having made no such complaint at the time, and having been represented by solicitors and counsel when the Interim Anti-Suit Injunction was sought); that the Anti-Suit Injunctions were in violation of public order, non-binding and unenforceable; that Dell had committed a crime by seeking to deprive Lebanese natural and corporate persons of their right to resort to the Lebanese courts; that the Anti-Suit Injunctions were a breach of Lebanese territorial sovereignty; and that the *'Principal'* (defined as SETS and all three of its directors) *"will spare no efforts to take all available actions and recourse to the Lebanese courts to recover its firm and established rights and claims"*.

51. The second notarial letter, like the first, was sent on behalf of Mr Maher Chahlawi, Mr Marwan Junior Chahlawi and Ms Bibi. It repeated by cross-reference the position taken in the first notarial letter, adding however that Ms Bibi was no longer a director.

52. In these circumstances, I do not accept either that compliance with the Anti-Suit Injunctions gave rise to a risk of adverse consequences in Lebanon for Mr Maher Chahlawi or Mr Marwan Junior Chahlawi, nor that fear of any such consequence was the reason for their involvement in the breach.

53. By reason of the facts set out above, I am satisfied to the criminal standard that in relation to each of the matters set out in § 19 above, each of Mr Maher Chahlawi and Mr Marwan Junior Chahlawi knew of the terms of the Anti-Suit Injunction then in force and of the Lebanese Proceedings, knew the facts that made SETS' conduct a breach, and wilfully caused, permitted and failed to take reasonable steps to prevent the breaches of the injunctions. Mr Maher Chahlawi and Mr Marwan Junior Chahlawi are therefore guilty of contempt of court in each of the seven respects alleged.

(I) CONTEMPT: SARAH BIBI

54. Mr Maher Chahlawi and Mr Marwan Junior Chahlawi go to some lengths in their affidavits to exculpate Mr Chalhoub and Ms Bibi, stating that neither had any involvement in the management of SETS, and certainly none in the progression of the Lebanese Proceedings. Mr Maher Chahlawi and Mr Marwan Junior Chahlawi state that they manage SETS together, and that Mr Chalhoub and Ms Bibi were appointed solely in order to comply with the requirement under Lebanese law for a third director.

55. Mr Chalhoub and Ms Bibi take the same position in their own affidavits. Thus Ms Bibi says:

> "10. Despite my appointment to this role, and during my time in this role, Mr Maher Chahlawi and Marwan Junior Chahlawi exclusively carried out the day-to-day management of SETS. I did not contribute to executive decision-making at SETS. My only contribution was to ensure that SETS had the requisite number of board members to ensure it complied with Lebanese company law. All executive decisions were made by Mr Maher Chahlawi and Mr Marwan Junior Chahlawi.
>
> 12. Nor have I had any involvement in the management or progression of the Lebanese Proceedings. I have not dealt with any lawyers in Lebanon in relation to those proceedings, nor provided any instructions to lawyers (or any third parties) in relation to them. To my knowledge, these proceedings have only been managed by Mr Maher Chahlawi and Mr Marwan Junior Chahlawi.
>
> 13. It is my understanding that, even had I wanted to direct that those proceedings be discontinued, given the exclusive authority granted to Mr Maher Chahlawi and Mr Marwan Junior Chahlawi, I had no authority to do so. In other words, it was not within my power to ensure that the Lebanese Proceedings were discontinued."

56. However, I have no doubt that Ms Bibi was aware of the Anti-Suit Injunctions from the outset, and that she acted wilfully in permitting and encouraging SETS to breach them by the continued pursuit of the Lebanese Proceedings.

57. First, Ms Bibi makes no suggestion in her affidavit that there was any delay in informing her about the making, contents or effect of either of the Anti-Suit Injunctions, or of the Lebanese Proceedings or that she was unaware of any of those matters for any relevant period. Had there been any such delay or lack of awareness, there is every reason to believe Ms Bibi would have mentioned it, given that she knew she was at risk of being committed for contempt of court.

58. Secondly, when the Interim Anti-Suit Injunction was made, on notice, on 19 April 2018, SETS's lawyers would have been bound, in light of the terms of the injunction (in particular, its effect on directors and other third parties), to have drawn its attention to the whole of SETS' board. Even if Mr Maher and Mr Marwan Junior Chahlawi were the lawyers' main point of contact for the purpose of taking instructions in relation to the litigations, it would have been a grave dereliction of the lawyers' duty to fail to bring the injunction to the specific attention of all the members of their client's board of directors.

59. Thirdly, it is not possible to be sure whether or when the copy of the Anti-Suit Injunctions served by the notary procedure on 25 June 2018 and left for Ms Bibi's separate attention actually reached her. What is clear, however, is that two days later she provided a power of attorney to Mr Lahoud under which he proceeded to write the first notarial letter on (*inter alia*) her behalf the same day. The notarisation documents accompanying the second notarial letter indicate that Ms Bibi granted a power of attorney in favour of Mr Lahoud on 27 June 2018, i.e. the same date as the first notarial letter. That in my judgment gives rise to a compelling inference that Ms Bibi either specifically approved the contents of the first notarial letter, or at the very least specifically authorised Mr Lahoud to purport to reject the Anti-Suit Injunctions on her behalf. There is thus no reason not read the first notarial letter at face value where it states that the "*Principal*", defined to include Ms Bibi, *"categorically reject and deny … for the following reasons"* the contents of Dell's letter of 25 June 2018 serving the Anti-Suit Injunctions, and *"will spare no efforts to take all available actions and recourse to the Lebanese courts to recover its firm and established rights and claims"*.

60. The sending of the first notarial letter also makes clear that Ms Bibi's role went well beyond that of a passive director with no involvement in this matter. Through her attorney, and acting in her personal capacity, she thereby actively rejected the Anti-Suit Injunctions, and, moreover, gave active encouragement to the position being taken by SETS, Mr Maher Chahlawi and Mr Marwan Chahlawi.

61. Moreover, in the light of the contents of Ms Bibi's witness statement, I consider it clear that that was her state of mind throughout, and that she was wilfully encouraging and permitting the Lebanese Proceedings in breach of the Anti-Suit Injunctions not only as from the date of the first notarial letter (27 June 2018) but at all relevant times during her directorship of Dell. In particular, in her affidavit Ms Bibi twice asserts that she lacked the power or authority to stop the Lebanese Proceedings *"[e]ven if I had wanted to"*: indicating by clear implication that she did not want to do so.

62. In these circumstances, the evidence and the inherent probabilities point clearly to the conclusion that Ms Bibi was by 22 May 2018, the date of the first breach of the Interim Anti-Suit Injunction, aware of the injunction and its effect, and aware of and wilfully permitted and/or encouraging the pursuit and non-withdrawal of the Lebanese Proceedings. That situation continued up to her resignation as a director on 4 July 2018. Her resignation, after having actively encouraged and participated in SETS' defiance of the Anti-Suit Injunctions in the way I have described, in no way undid her previous actions.

63. I do not accept Ms Bibi's assertion that she had no power to do anything to prevent the pursuit of the Lebanese Proceedings. She retained her legal authority and power as a director, but chose not to exercise it. The expert evidence of Mr Alem indicates that Ms Bibi (and later Mr Chalhoub) had the power to take steps aimed at preventing a breach of the injunctions on the part of SETS: (1) they were entitled to vote as directors against the continuance of the Lebanese Proceedings; (2) they had the power to vote as shareholders in Ordinary General Assembly meetings against a discharge and release of the board in respect of the Lebanese Proceedings; and (3) they were entitled as shareholders to file proceedings for mismanagement against Mr Maher and Mr Marwan Junior Chahlawi under Article 167 of the Lebanese Code of Commerce. More generally, Ms Bibi was in a position at the very least to attempt to dissuade her two fellow directors from the course they were taking.

64. She chose not to do so, instead actively endorsing their approach (including in the first notarial letter) and has admitted in her own evidence that she had no wish to halt the progress of the Lebanese Proceedings.

65. For these reasons, I am satisfied to the criminal standard that in relation to each of the breaches identified at § 19(i), (ii), (iii) and (vii) above, Ms Bibi knew of the terms of the Anti-Suit Injunction then in force and of the Lebanese Proceedings, knew the facts that made SETS' conduct a breach, and wilfully caused, permitted and failed to take reasonable steps to prevent the breaches of the injunctions. Ms Bibi is therefore guilty of contempt of court in each of the four respects alleged against her.

(J) CONTEMPT: PIERRE CHALHOUB

66. Mr Chalhoub succeeded Ms Bibi as SETS' third director and minority shareholder, and based on the Respondents' evidence did not actively participate in the management of SETS. Unlike Ms Bibi, he was not party to either of the notarial letters, and there is no evidence of any relevant action or communication from him or specifically on his behalf. Similarly to Ms Bibi, he states in his affidavit:

> "9. Throughout my time in this role, Mr Maher Chahlawi and Mr Marwan Junior Chahlawi have exclusively carried out the day-to-day management of SETS. I do not contribute to executive decision-making at SETS. My only contribution is to ensure that SETS have the requisite number of board members to ensure that it complies with Lebanese company law. All executive decisions are made by Mr Maher Chahlawi and Mr Marwan Junior Chahlawi.
>
> 10. As examples of this:-

> 10.1. At page 5, I set out a circular prepared on behalf of SETS addressed to the Lebanese Ministry of Justice dated 5 February 2019, which confirms that Mr Maher Chahlawi and Mr Marwan Junior Chahlawi are solely responsible for executive decision-making and the only persons authorised by SETS to sign on its behalf.
>
> 10.2. On 11 March 2019, I attended a SETS board meeting (the "**Board Meeting**"), the minutes (original and translated) of which show that only Mr Maher Chahlawi and Mr Marwan Junior Chahlawi had authority to sign on SETS' behalf, contract with third parties and manage the activities of |SETS generally are at page 1.
>
> 10.3. My Minority shareholding in SETS amounts to only 10% of SETS' issued share capital and my board member vote represents one third of SETS board. The shareholdings of Mr Maher Chahlawi and Mr Marwan Junior Chahlawi, collectively, amount to the remaining 90% of SETS' issued share capital and their board member votes represent the remaining two thirds of the SETS board. At pages 10 to 13, I set out shareholder meeting minutes dated 11 March 2019 (original and translated) which show the respective shareholdings.
>
> **Proceedings in Lebanon**
>
> 11. Nor have I had any involvement in the management or progression of the Lebanese Proceedings. I have not dealt with any lawyers in Lebanon in relation to those proceedings, nor provided any instructions to lawyers (or any third parties) in relation to them. To my knowledge, these proceedings have only been managed by Mr Maher Chahlawi and Mr Marwan Junior Chahlawi.
>
> 12. It is my understanding that, even had I wanted to direct that those proceedings be discontinued, given the exclusive authority granted to Mr Maher Chahlawi and Mr Marwan Junior Chahlawi referred to at paragraph 10.1 above, I had no authority to do so. In other words, it was not within my power to ensure that the Lebanese Proceedings were discontinued."

67. However, I have no doubt that Mr Chalhoub was aware of the Final Anti-Suit Injunction from the time he became a director, on 4 July 2018, or very shortly thereafter, and acted wilfully in permitting its breach.

68. First, Mr Chalhoub makes no suggestion in his affidavit that he was unaware, at any stage during his directorship of SETS, of the existence, contents or effect of the Final Anti-Suit Injunction, or of the Lebanese Proceedings. Had he been unaware of any of those matters, there is every reason to believe Mr Chalhoub would have mentioned it, given that he knew he was at risk of being committed for contempt of court.

69. Secondly, since Mr Chalhoub became a director on 4 July 2018, the Lebanese Proceedings have continued for more than 18 months, including the court hearings on 16 October 2018 and 27 November 2018 and SETS' written submission dated 24 January 2019 (filed on 28 January 2019) to which the fourth to sixth breaches identified in § 19 above relate. Mr Chalhoub's evidence includes minutes of a board meeting on 11 March 2019 in which he participated, as well as a record of a shareholders meeting on 11 March 2019 in which he participated, indicating that his role in the company was not merely passive. Mr Chalhoub became a director at the same time as Ms Bibi left, in the immediate aftermath of the service of the Final Anti-Suit Injunction on 25 June 2018. It is highly probable that Mr Chalhoub became aware of both the Final Anti-Suit Injunction and the Lebanese Proceedings almost immediately after (if not before) replacing Ms Bibi as director.

70. Thirdly, Mr Chalhoub was personally served with the Anti-Suit Injunction on 15 February 2019. However, another year has elapsed since then, during which time Mr Chalhoub has known of the Final Anti-Suit Injunction and is bound to have been aware of the Lebanese Proceedings. Indeed, the Final Anti-Suit Injunction itself makes explicit reference to the Lebanese Proceedings.

71. Moreover, Mr Chalhoub has in my judgment wilfully failed to take any steps to try to halt the Lebanese Proceedings or to persuade his fellow directors to do so. I do not accept Mr Chalhoub's assertion that he had no power to do anything to prevent the pursuit of the Lebanese Proceedings, for the same reasons as I give in § 63 above. It is unlikely that there would since 4 July 2018 have been no directors or shareholders meetings at which the subject of the Lebanese Proceedings was discussed: and even if there have not, it is clear that there will have been directors meetings in which Mr Chalhoub participated or was entitled to participate and at which he could have at least sought to dissuade his fellow directors from the course they were taking. There is no indication that Mr Chalhoub did so. On the contrary, like Ms Bibi, he asserts twice in his affidavit that he lacked the power to stop the Lebanese Proceedings *"[e]ven if I had wanted to"*: indicating by clear implication that he did not want to do so.

72. In these circumstances, the only credible conclusion is that Mr Chalhoub has been wilfully complicit and has wilfully failed to take reasonable steps to secure compliance with the Anti-Suit Injunction. The evidence and the inherent probabilities point clearly to the conclusion that Mr Chalhoub was by 16 October 2018 (the date of the breach identified in § 19(iv) above) aware of the injunction and its effect, and was aware of and wilfully permitted and/or encouraged the pursuit and non-withdrawal of the Lebanese Proceedings. That situation has continued up to the date of the present application.

73. For these reasons, I am satisfied to the criminal standard that in relation to each of the breaches identified at § 19(iv), (v), (vi) and (vii) above, Mr Chalhoub knew of the terms of the Final Anti-Suit Injunction and of the Lebanese Proceedings, knew the facts that made SETS' conduct a breach, and wilfully permitted and failed to take reasonable steps to prevent the breaches of the injunction. Mr Chalhoub is therefore guilty of contempt of court in each of the four respects alleged against him.

(K) FORMAL SERVICE OF THE ANTI-SUIT INJUNCTIONS

74. CPR 81.5 provides so far as relevant:

> "(1) Unless the court dispenses with service under rule 81.8, a judgment or order may not be enforced under rule 81.4 unless a copy of it has been served on the person required to do or not do the act in question, and in the case of a judgment or order requiring a person to do an act—
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> (a) the copy has been served before the end of the time fixed for doing the act, together with a copy of any order fixing that time;
>
> …
>
> (2) Where the person referred to in paragraph (1) is a company or other corporation, a copy of the judgment or order must also be served on the respondent before the end of the time fixed for doing the act.
>
> (3) Copies of the judgment or order and any orders or agreements fixing or varying the time for doing an act must be served in accordance with rule 81.6 or 81.7, or in accordance with an order for alternative service made under rule 81.8(2)(b)."

75. CPR 81.21 makes similar provision in relation to the enforcement of a judgment or order by writ of sequestration.

76. Note 81.5.2 in the White Book explains that where a committal order is sought for breach of a judgment or order under which a company had obligations, and a committal order is sought against a director or other officer, that director or other officer is a person "*against whom a committal application is made or is intended to be made*" and is therefore a "*respondent*" (as defined in r.81.3(c)) upon whom a copy of the judgment or order must also be served.

77. CPR 81.6 provides that, subject to rules 81.7 and 81.8, copies of judgments or orders and any orders or agreements fixing or varying the time for doing an act must be served personally.

78. CPR 81.8 provides:

> **"81.8— Dispensation with personal service**
>
> (1) In the case of a judgment or order requiring a person not to do an act, the court may dispense with service of a copy of the judgment or order in accordance with rules 81.5 to 81.7 if it is satisfied that the person has had notice of it—
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> (a) by being present when the judgment or order was given or made; or
>
> (b) by being notified of its terms by telephone, email or otherwise.
>
> (2) In the case of any judgment or order the court may—

> (a) dispense with service under rules 81.5 to 81.7 if the court thinks it just to do so; or
>
> (b) make an order in respect of service by an alternative method or at an alternative place."

79. CPR 81.24 makes similar provision for dispensing with the service requirement under CPR 81.21 for the purposes of enforcement by writ of sequestration.

80. CPR 6.5(3), read with CPR 6.22(3), provides that a document other than a claim form is served personally on—

> (a) an individual by leaving it with that individual; and
>
> (b) a company or other corporation by leaving it with a person holding a senior position within the company or corporation.

81. In addition, Practice Direction 81PD § 16.2 states that "*The court may waive any procedural defect in the commencement or conduct of a committal application if satisfied that no injustice has been caused to the respondent by the defect"*.

82. In the present case, the Anti-Suit Injunctions were served personally on Mr Maher Chahlawi, Mr Marwan Junior Chahlawi and Ms Sara Bibi on 16 January 2019, and on Mr Chalhoub on 15 February 2019, in each case by the Lebanese notary public procedure. Personal service was purportedly made on SETS itself on 25 June 2018. However, there is an element of doubt about whether the notary was able to leave the documents "*with a person holding a senior position within the company or corporation*", given that it appears the documents were taken by a secretary (see § 17(vii) above).

83. I do not consider that Dell is required to show that service constituted valid service under Lebanese law. Nonetheless, the Respondents sought and obtained permission to adduce expert evidence as to whether or not the Final Anti-Suit Injunction was served on the Respondents in accordance with the requirements of the Lebanese Code of Civil Procedure. The report of their expert, Professor Mallat, does not however address that issue. It does consider whether the English orders could be enforced in Lebanon, but that is a different point.

84. Mr Alem's expert report, applying Article 398 of the Lebanese Code of Civil Procedure and Article 22(1) of the Law on Notary Public Rules and Fees, concludes that (a) service through the notary public procedure is a valid form of service under Lebanese law and (b) the Final Anti-Suit Injunction was validly served, for Lebanese law purposes, on all of the Respondents. I accept that evidence.

85. As regards the mandatory order in the Final Anti-Suit Injunction to withdraw the Lebanese Proceedings, a copy of the injunction was not personally served on at least some of the Respondents by 26 June 2018, the deadline for doing so stated in the injunction, in compliance with CPR 81.5(1)(a) and 81.21(1)(a).

86. As regards the prohibitory elements of the Anti-Suit Injunctions, CPR 81.5 and 81.21 do not state in terms that it is necessary for service to have taken place before the alleged

breach, in order for enforcement by committal or sequestration to occur. However, it seems highly likely that is required, since the scheme of the rules is that personal service is the primary means by which an order should be brought to a respondent's attention before any breach may result in committal or sequestration. If that approach is correct, then the effect of dispensing with service must be to render a respondent potentially liable for committal for a breach which occurred at a time when he or she was aware of the injunction but had not yet been formally served with it (including in a case where he is in fact subsequently personally served with the injunction).

87. In the present case, several of the breaches of the Anti-Suit Injunctions occurred before the relevant Respondents had been personally served with copies of the relevant (Interim or Final) Anti-Suit Injunction.

88. It is therefore appropriate to consider whether to exercise any of the powers set out in CPR 81.8 and 81.24 to dispense with personal service or to make an order in respect of service by an alternative method or at an alternative place.

89. The Court of Appeal in *Bell v Tuohy* [2002] 1 WLR 2703 stated in relation to a predecessor to CPR 81(5), forming part of the County Court Rules:

> "41. A fourth unsatisfactory feature of Order 29 is the strange relationship between paragraphs (6) and (7). The former paragraph appears to give the court the power to dispense with service of a copy of the judgment, but only in a case where the order is prohibitory and only where the defendant has been appropriately notified of the order. It is not entirely easy to see the point of that limited exception given that there is a general power to dispense with service of a judgment, as appears to be the effect of paragraph (7). To my mind, the way to reconcile the provisions, is that the terms of paragraph (6) emphasise that the more general power in paragraph (7) is to be exercised relatively sparingly, but it is fair to say that paragraph (7) is expressed in terms of a wide and unfettered discretion."

> "49. It is always a cause for concern if there are any technical or procedural defects in a contempt application. In the present case, it is of particular concern that counsel on behalf of Mr Tuohy has been able to identify so many different defects, and it is not surprising that he advances the argument that the combination of defects in the present case are such that the judge should not have committed Mr Tuohy. However, at least for my part, I think it is wrong simply to conclude that, because there are so many defects in the application, it must have been unsafe to commit Mr Tuohy to prison. The proper approach is to consider each of the defects relied on by Mr Tuohy, and to describe whether they caused any prejudice or unfairness to him, taken separately or together."

(§§ 41 and 49 per Neuberger J)[1]

90. The first of these passages was considered by Males J in *Westminster City Council v Addbins* [2012] EWHC 3716 (QB), who said:

> "54. Although Mr Trompeter drew attention to the observation by Neuberger J in Bell v. Tuohy [2002] EWCA Civ 423, [2002] 1 WLR 2703 at [41] that a discretion to dispense with a formal requirement, in that case the existence of a penal notice, should be exercised "relatively sparingly", the same paragraph of the judgment also refers to this discretion as being "expressed in terms of a wide and unfettered discretion", while the decision in the case as a whole suggests that the primary consideration is whether the defendant was prejudiced by the failure to comply with rules. As the defendant in that case was not prejudiced in any way, having been present in court when the order was made and knowing not only what he was required to do but also that he was at risk of committal to prison if he failed to do it, the Court of Appeal did dispense with the requirement for a penal notice. A similar approach was adopted by Vos J in Gill v. Darroch [2010] EWHC 2347 (Ch) at [38] and [39] after an extensive review of the authorities.
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> 55. It is clear, and Mr Griffin accepted, that he was aware of the terms of the order immediately it was made and it was not suggested that he was in any way prejudiced by the fact that the order was not served on him personally. Indeed it can only have been Mr Griffin who had given instructions that the defendants would not oppose the making of the order. Although not served upon him, the order was endorsed with a penal notice which made clear that in the event of disobedience to it a director might be sent to prison or fined. Mr Griffin had the benefit of legal advice with experienced solicitors acting for him who were thoroughly conversant with the dispute and able to advise him, as no doubt they did, as to his responsibilities. In these circumstances while I accept that the requirement for service on a director is an important safeguard and that a finding of contempt is a serious matter with serious consequences, as Mr

[1] County Court Rules Order 29 rule 1(7) provided:

"(6) A judgment or order requiring a person to abstain from doing an act may be enforced under paragraph (1) notwithstanding that service of a copy of the judgment or order has not been effected in accordance with paragraph (2) if the judge is satisfied that, pending such service, the person against whom it is sought to enforce the judgment or order has had notice thereof either—

(a) by being present when the judgment or order was given or made;
or
(b) by being notified of the terms of the judgment or order whether by telephone, telegram or otherwise.

"(7) … the court may dispense with service of a copy of a judgment or order under paragraph (2) or a claim form or application notice under paragraph (4) if the court thinks it just to do so."

> Trompeter submitted, it is in my judgment appropriate to dispense with the requirement of service."

The injunction in that case included a mandatory order requiring the removal of bins.

91. Similarly, the Court of Appeal in *Khawaja v Popat* [2016] EWCA Civ 362, after quoting § 49 of *Bell*, said:

> "… It is useful to note that the case was concerned with the power to waive procedural defects in committal applications then to be found in Order 29 r 1(7) of the old County Court Rules. That power was in identical terms to paragraph 16.2 of the Practice Direction upon which Mr Roseman successfully relied before the judge.
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> 40. Mr Hendron submitted that, as this was a penal proceeding, the dispensing power should be exercised only in the most exceptional circumstances and that the knowledge of the appellant's solicitors of the terms of the order were not sufficiently exceptional circumstances. I do not accept this submission. First, it is not what the Practice Direction says. The question is whether injustice has been caused, not whether the circumstances are exceptional. Secondly, it is clear that the appellant was well aware of the terms of this order: the authority of his solicitors to sign the order was not in question; the appellant did not say that he was unaware of the order's terms and he said expressly in paragraph 8 of his first affidavit that the non-compliance was "an oversight". For my part, I do not consider that the judge was wrong to exercise his discretion as he did." (§§ 39 and 40)

92. It is not clear why the Court of Appeal in *Khawaja* referred to former Order 29 rule 1(7) as being in identical terms to § 16.2 of the Practice Direction, when it is more similarly worded to CPR 81.5(2)(a). However, the essential point made in these cases, and also reflected in PD81 § 16.2, is that the court should be willing to dispense with service if the respondent was aware of the terms and effect of the injunction and the lack of formal service has not caused him prejudice or unfairness.

93. Turning to the present case, I have already concluded that I am sure that each of the Respondents was aware of the terms and effect of the relevant Anti-Suit Injunction before the breaches in relation to which they are alleged to have been in contempt. I do not consider that any prejudice or injustice would be caused to any of them by dispensing with formal service or by treating the informal service that was effected on them as good service. Further, I do not consider Dell to be at fault for any delay in or lack of personal service. It took all such steps as were in its power to effect personal service on SETS on 25 June 2018, and on the other Respondents in early 2019 once it had received further and better advice indicating that such service was possible via the notary public procedure.

94. SETS itself was aware of the Interim Anti-Suit Injunction from 19 April 2018, alternatively 20 April 2018, and of the Final Anti-Suit Injunction by 18 June 2018,

alternatively, 22 June 2018, by reason of the steps referred to in § 17(i)-(vii) above. The question arises whether to dispense with service under CPR 81.8(2)(a) and 81.24(2)(a) on the basis that it is just to do so, or to treat some of all of those steps as constituting good service pursuant to CPR 81.8(2)(b) and 81.24(2)(b). The first notification to SETS of the injunctions resulted from its legal team's presence at the hearing on 19 April 2018 at which the injunction was granted, either on the basis that such presence of itself made SETS aware of the injunction and its terms, or on the basis that the legal team is bound to have reported those matters immediately to one or more responsible officers at SETS. I think it would be artificial to treat either of those matters as being a form of alternative 'service', and so I consider it more logical to dispense with formal service of the Interim Anti-Suit Injunction on SETS. I would, however, have been willing in any event to treat the steps referred to in § 17 (ii) and (iii) as each constituting good service of the Interim Anti-Suit Injunction on SETS. As regards the Final Anti-Suit Injunction, I consider it just to treat the steps referred to in § 17 (iv), (v), (vi) and (vii) as each constituting good service of the Final Anti-Suit Injunction on SETS. I would in any event have been willing to dispense with formal service on SETS.

95. Similar considerations apply to Mr Maher Chahlawi and Mr Marwan Junior Chahlawi. I am sure that each knew of the terms of the Anti-Suit Injunctions by reason of the matters referred to in § 17 (i), (ii), (iv)(b), (v), (vi) and (vii) above, and in Mr Maher Chahlawi's case also § 17(iii) and (iv)(a) above: see §§ 39-41 above. I therefore consider it just, as with SETS, to dispense with formal service of the Interim Anti-Suit Injunction on Mr Maher Chahlawi and Mr Marwan Junior Chahlawi, but I would in any event have considered it just to treat the steps referred to in § 17 (ii) and (iii) as constituting good service on Mr Maher Chahlawi and the email service on DWF referred to in § 17 (ii) above as also constituting good service on Mr Marwan Junior Chahlawi. As regards the Final Anti-Suit Injunction, I consider it just to treat the steps referred to in § 17 (iv)(b), (v), (vi) and (vii) as each constituting good service of the Final Anti-Suit Injunction on Mr Maher Chahlawi and Mr Marwan Junior Chahlawi, as well as, in Mr Maher's Chahlawi's case, the email referred to in § 17(4)(a) above. I would in any event have been willing to dispense with formal service on both.

96. I am sure Ms Bibi knew of the terms and effect of the Interim Anti-Suit Injunction before 22 May 2018 and the terms and effect of the Final Anti-Suit Injunction by 27 June 2018: see §§ 56-62 above. In those circumstances, it is just to dispense with formal service on her of both injunctions. I would in the alternative have treated the steps referred to in § 17 (ii) and (vii) as constituting good service on her.

97. I am sure Mr Chalhoub knew of the terms and effect of the Final Anti-Suit Injunction when, or very soon after, he became a director on 4 July 2018: see § 68-71 above. In those circumstances, it is just to dispense with formal service on him of that injunction.

(L) CONCLUSIONS

98. For the reasons set out above, I conclude that each of the Respondents, Systems Equipment Telecommunications Services S.A.L., Maher Chahlawi, Marwan Junior Chahlawi, Sarah Bibi and Pierre Albert Chalhoub, is guilty of contempt of court, the general nature of such contempt being as follows:

    i) in the case of Systems Equipment Telecommunications Services S.A.L., that it committed the breaches of the Anti-Suit Injunctions referred to in § 19 above;

ii) in the case of Maher Chahlawi, that in his capacity as a director of Systems Equipment Telecommunications Services S.A.L.: (a) with knowledge of the Interim Anti-Suit Injunction he wilfully caused and permitted that company to commit, and wilfully failed to take reasonable steps to prevent that company from committing, the breaches of the Interim Anti-Suit Injunction referred to in § 19(i) and (ii) above; and (b) with knowledge of the Final Anti-Suit Injunction he wilfully caused and permitted that company to commit, and wilfully failed to take reasonable steps to prevent that company from committing, the breaches of the Final Anti-Suit Injunction referred to in § 19(iii), (iv), (v), (vi) and (vii) above;

iii) in the case of Marwan Junior Chahlawi, that in his capacity as a director of Systems Equipment Telecommunications Services S.A.L.: (a) with knowledge of the Interim Anti-Suit Injunction he wilfully caused and permitted that company to commit, and wilfully failed to take reasonable steps to prevent that company from committing, the breaches of the Interim Anti-Suit Injunction referred to in § 19(i) and (ii) above; and (b) with knowledge of the Final Anti-Suit Injunction he wilfully caused and permitted that company to commit, and wilfully failed to take reasonable steps to prevent that company from committing, the breaches of the Final Anti-Suit Injunction referred to in § 19(iii), (iv), (v), (vi) and (vii) above;

iv) in the case of Sara Bibi, that in her capacity as a director of Systems Equipment Telecommunications Services S.A.L.: (a) with knowledge of the Interim Anti-Suit Injunction she wilfully caused and permitted that company to commit, and wilfully failed to take reasonable steps to prevent that company from committing, the breaches of the Interim Anti-Suit Injunction referred to in § 19(i) and (ii) above; and (b) with knowledge of the Final Anti-Suit Injunction she wilfully caused and permitted that company to commit, and wilfully failed to take reasonable steps to prevent that company from committing, the breaches of the Final Anti-Suit Injunction referred to in § 19(iii) and (vii) above; and

v) in the case of Pierre Albert Chalhoub, that in his capacity as a director of Systems Equipment Telecommunications Services S.A.L., and with knowledge of the Final Anti-Suit Injunction, he wilfully permitted that company to commit, and wilfully failed to take reasonable steps to prevent that company from committing, the breaches of the Final Anti-Suit Injunction referred to in § 19(iv), (v), (vi) and (vii) above.

99. Although no sentence has so far been imposed, I consider it necessary to direct that details of the conclusions set out above should be provided to the national media and the Judicial Office pursuant to Practice Direction (Committal for Contempt: Open Court) [2015] 1 WLR 2195 § 13(iv).