Neutral Citation Number: [2021] EWHC 2761 (Comm)

Case No: CL-2018-000289

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS

OF ENGLAND AND WALES

COMMERCIAL COURT (QBD)

Royal Courts of Justice
Strand
London,

Date: 14 October 2021

Before :

THE HON. MR JUSTICE BRYAN

- -

Between :

JOSEF EIM

First Applicant

and

RADEK STACHA

Second Applicant

and

PERRY LEWIS

Second Defendant

- -

Andrew Fletcher QC instructed by Bryan Cave Leighton Paisner for the Applicants
Christopher Sykes instructed by for the Second Defendant

Hearing 7 October 2021

- -

Approved Judgment on Committal Application and Sentencing Remarks

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MR JUSTICE BRYAN:

A: INTRODUCTION.

A1: The Contempt Application

1. On 7 October 2021 the parties appeared before the Court on the hearing of the Claimants' ("Applicants' ") committal application against the Second Defendant ("Mr Lewis"). I heard oral evidence from Mr Lewis, and oral and written submissions from Mr Andrew Fletcher QC on behalf of the Applicants and Mr Christopher Sykes on behalf of Mr Lewis. At the end of that hearing I reserved my judgment. This is my judgment on the committal application.

2. The committal application was issued by the Applicants against Mr Lewis on 16 October 2020. It was originally listed for hearing on 8 March 2020, but adjourned by the Court and refixed at Mr Lewis's request.

3. Originally, the Applicants made two allegations of contempt:-

(1) The first contempt allegation ("Allegation 1") is as follows:

> *"On two occasions between June and November 2019, dealing with and or disposing (or attempting to dispose) of assets (namely part of his entitlement as a legatee under his late mother's will) in breach of §4 of the Revised Freezing Injunction… ."*.

The "Revised Freezing Injunction" there referred to was the freezing injunction granted in these proceedings on 15 February 2019 by Mr. Andrew Henshaw QC sitting as a Deputy Judge of the High Court.
The sums in question were:
(i) £120,000 disposed of on 9 - 14 June 2019 and
(ii) £186,104.80 disposed of on 11 November 2019**.**

The majority of these sums were recovered by Mr Lewis' Trustee in Bankruptcy (the "Trustee") when the disposals were discovered by him, but costs were incurred by him for this purpose (the extent of which, and reasonableness of which, are in dispute).

(2) The second allegation ("Allegation 2") was that Mr. Lewis made knowingly false statements as to his assets in his 7th Affidavit sworn on 23 September 2019 ("Lewis 7").

4. Allegation 2 is maintained as a factual allegation (in circumstances where the Applicants say that it is relevant to the Court's assessment of Mr. Lewis's conduct in relation to Allegation 1), but not as an allegation of contempt of court (as Lewis 7, although sworn, was not filed or put before the Court by Mr. Lewis.) The Applicants took the view that in these circumstances it was questionable whether, as a matter of law, an interference with the administration of justice had arisen, and accordingly decided not to proceed with an Allegation 2 as an allegation of contempt. The Court and Mr. Lewis were informed of this decision by the letter of Bryan Cave Leighton Paisner ("BCLP") (the Applicants' solicitors), dated 7 December 2020.

A2: Evidence and Directions

5. The Applicants relied upon the following evidence in support of their Application:-

   (1) The 2nd affidavit of Mr. Andrew Tuson (a partner in BCLP) sworn on 16 October 2020 ("Tuson 2") which contains the principal evidence in support of the application.
   (2) Mr. Tuson's 3rd affidavit sworn on 22 January 2021 ("Tuson 3") which updates the Court as to developments in relation to recoveries and costs since his first affidavit.
   (3) Mr. Paul Allen's witness statement dated 10 August 2021 ("Allen 1") and accompanying exhibit providing further details in respect of the Trustee's costs and legal expenses supplemented by Mr Allen's 2nd witness statement dated 20 September 2021 ("Allen 2").

6. On 30 September 2021 it was indicated on behalf of Mr Lewis that the Applicants' witnesses (Mr Tuson and Mr Allen) were not required to attend for cross-examination. Their affidavits and statements accordingly stand as their evidence.

7. On 17 December 2021, by consent, Jacobs J gave directions (the "Directions") for the oral hearing of the Contempt Application (the "Committal Application"), including as to the filing of evidence by Mr. Lewis.

8. In accordance with those directions, on 4 January 2021, Mr. Lewis served an affidavit. Service of this affidavit did not override or displace Mr. Lewis's right to silence, so that this affidavit remained in limbo unless and until Mr. Lewis chose to deploy it: see *Deutsche Bank v Sebastian Holdings* [2020] EWHC 3536 (Comm) per Cockerill J at [53].

9. Shortly before the hearing Mr Lewis served a witness statement dated 22 September 2021. It was agreed between Counsel that this statement should stand as Mr Lewis's evidence in chief for the purposes of the Committal Application and that he should be cross-examined on it. I agreed to that course.

A3 The Admitted Contempt

10. In the event it was accepted by Mr Lewis that the Affidavit was relevant for providing the date when the contempt (Allegation 1) was admitted by him (as acknowledged at paragraph 4 of the Skeleton Argument served on behalf of Mr Lewis (the "Lewis Skeleton Argument")). Mr Lewis confirmed his admission at the outset of his oral evidence, confirming paragraph 25 of his Affidavit which provided, *"I hope it will be apparent from the foregoing that I have elected at a very early stage to acknowledge the contempt and to relieve the Applicants of having to overcome various technicalities and procedures in order to pursue the permission application and/or establish the contempt conclusively".*

11. In the light of the admission, what remained in issue for determination at the hearing for the purpose of considering the appropriate penalty to be imposed, were two

questions. First, what was the mindset of Mr Lewis at the time of the contempt. In this regard it is common ground that the key factual issue for determination is whether Mr Lewis was acting in deliberate breach of the Revised Freezing Injunctions (as the Applicants allege but Mr Lewis denies). Secondly, did Mr Lewis knowingly make false statements as to his assets in his Seventh Affidavit sworn on 23 September 2019 (as the Applicants allege but Mr Lewis denies).

B. APPLICABLE PRINCIPLES

12. The applicable principles in relation to an allegation of contempt were common ground.

13. CPR 81.8 makes provision in respect of the hearing of contempt proceedings - see subrules (1)-(2), (6) and (7).

14. Page 3 of the Contempt Application sets out important information as to the defendant's rights and as to the course the hearing may take, including:
    a. The defendant is entitled but not obliged to give written and oral evidence in his defence.
    b. The defendant has the right to remain silent and may not be compelled to answer any question which may incriminate him.
    c. If the defendant does not attend the hearing, the court may proceed in his absence.
    d. If the court is satisfied that the defendant has committed a contempt, the court may punish him by a fine, imprisonment or other punishment permitted under the law.
    e. If the defendant admits the contempt and wishes to apologize to the court, that is likely to reduce the seriousness of any punishment by the court.
    f. The court's findings will be provided in writing as soon as practicable after the hearing.

15. Any term of imprisonment, is for a fixed term which, by virtue of s. 14(1) of the Contempt of Court Act 1981, must not exceed 2 years (the maximum term applies irrespective of the number of contempts alleged and dealt with by the Court on any occasion - see Arlidge, Eadie & Smith on Contempt 5th Ed (2017) ("Arlidge") at 14-16).

16. Allegation 1 is an allegation of civil contempt. Nevertheless, the standard of proof is the criminal standard of proof. As Christopher Clarke J (as he then was) stated in *Masri v Consolidated Contractors International Company SAL* [2011] EWHC 1024 (Comm) at [144]:

> "The onus of proving the acts of contempt of which he complains rests on the judgment creditor. He must satisfy the court so that it is sure that the judgement [debtors] are in contempt in the respects alleged i.e. to the criminal standard. The judgment debtors are to have the benefit of any reasonable doubt."

17. See also *Kea Investments Ltd v Watson & Others* [2020] EWHC 2599 (Ch) per Nugee LJ at [13] approving Rose J's statement of the applicable principles, including the following:

> "i) the burden of proving the contempt that it alleges lies on the Bank. Insofar as [the Defendant] raises a positive defence he carries an evidential burden which he must discharge before the burden is returned to the [Applicant].
> ii) the criminal standard of proof applies, so that the [Applicant's] case must be proved beyond reasonable doubt – or so that the court is sure."

18. So far as *mens rea* is concerned, it is not necessary to show that there is a direct intention to disobey the order: but it is necessary to show that what the defendant did was intentional in the sense that it was not accidental - see *Khawaja v Popat* [2016] EWCA Civ 362 per McCombe LJ at [32].

19. Thus, as was said by Christopher Clarke J in *Masri v Consolidated Contractors International Company SAL* (supra) at [150] (applied in *XL Insurance v IPORS Underwriting* [2021] EWHC 1407 (Comm) per Cockerill J at [57-60]):

> "In order to establish that someone is in contempt it is necessary to show that (i) that he knew of the terms of the order; (ii) that he acted (or failed to act) in a manner which involved a breach of the order; and (iii) that he knew of the facts which made his conduct a breach."

20. In relation to knowledge, and as was explained in *Atkinson v Varma* [2020] EWCA Civ 1602 per Rose LJ at [54] (with whom Stuart-Smith and Lewison LJJ agreed*):*

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

21. Knowledge is, however, material to what order should be imposed in respect of a contempt - see *Miller v Scorey & Others* [1996] 1 WLR 1122 per Rimer J at p. 1132:

> "The question of whether or not a contempt in the nature of a breach of an undertaking to the court has been committed involves an essentially objective test requiring the determination of whether or not the alleged contemnor has acted in a manner constituting a breach of his undertaking. If he has, then a contempt will ordinarily be established, regardless of whether or not he acted contumaciously or with the direct intention of breaking his promise, although I accept that whether any, and if so what, punishment or other consequences ought to be imposed on him will, or may, be materially dependent on considerations of this sort."

22. As is rightly emphasized by Mr Sykes on behalf of Mr Lewis, and as I have had at the forefront of my mind, the defendant's state of mind must also be established to the criminal standard – see *Z Bank v D1 and Others* [1994] 1 Lloyd's Rep 656 per Colman J at p. 667 cols 1 & 2.

23. Penalty is a matter for the Court, not the applicant (see *AG v Hislop* [1991] 1 QB 514 per Parker LJ at 533). It is convenient to set out at this point some aspects of the approach to sentencing set out in the authorities, because these are relevant when considering the evidence, especially as to whether (as the Applicants contends in the present case), the breach of the Court's order was contumacious.

24. The public policy rationale for civil contempt and approach was described by Jackson LJ in *JSC BTA Bank v Solodchencko* [2011] EWCA Civ 1241 at [45] (quoted in *Arlidge* at 12-8 (and the passage from Rix LJ's judgment in *JSC BTA Bank v Ablyazov* also there quoted)):

> "[45] The sentence for such contempt performs a number of functions. First, it upholds the authority of the court by punishing the contemnor and deterring others. Such punishment has nothing to do with the dignity of the court and everything to do with the public interest that court orders should be obeyed. Secondly, in some instances, it provides an incentive for belated compliance, because the contemnor may seek a reduction or discharge of sentence if he subsequently purges his contempt by complying with the court order in question.
> …
> [51] … [A]ny deliberate and substantial breach of the restraint provisions or the disclosure provisions of a freezing order is a serious matter. Such a breach normally attracts an immediate custodial sentence which is measured in months rather than weeks and may well exceed a year…"

25. See also the observations of the Court of Appeal in *Templeton Insurance v Thomas & Others* [2013] EWCA Civ 35 per Rix LJ at [42]:

> "In my judgment, whereas it will always remain appropriate to consider in individual cases whether committal is necessary, and what is the shortest time necessary for such imprisonment, and whether a sentence of imprisonment can be suspended, or dispensed with altogether: nevertheless, it must now be accepted that the attack on the administration of justice which is made when a freezing order is breached usually merits an immediate sentence of imprisonment of some not insubstantial amount.*"*

26. A helpful summary of matters which may be regarded as relevant to sentencing was approved in *Okritie International Investment Management & Others v Gersamia* [2015] EWHC 821 (Comm) by Eder J at [6] the key factors being (as with sentencing generally) culpability and harm.

27. In *Crystalmews Ltd v Metterick* [2006] EWHC 3087 (Ch) Lawrence Collins J identified (at [13]) seven matters as relevant to penalty in cases of civil contempt (in the context of freezing orders):

> "First, whether the Claimant has been prejudiced by virtue of the contempt and whether the prejudice is capable of remedy.
> Second, the extent to which the contemnor has acted under pressure.

> Third, whether the breach of the order was deliberate or unintentional.
> Fourth, the degree of culpability.
> Fifth, whether the contemnor has been placed in breach of the order by reason of the conduct of others.
> Sixth, whether the contemnor appreciates the seriousness of the deliberate breach.
> Seventh, whether the contemnor has co-operated."
>
> (line-breaks added for ease of reference)

28. This passage is quoted in Arlidge at 14-11 (which itself gives general guidance as to the nature and length of penalty in cases of civil contempt), but every case is, of course, fact specific, and I agree that they are not to be regarded as sentencing guidelines.

29. In *Asia Islamic Trade Finance Ltd v Drum Risk Management Ltd & Others* [2015] EWHC (Comm) at [7] Popplewell J gave guidance as to the approach to be adopted in relation to breaches of a freezing injunction stating:
> "A breach of a freezing order, and of the disclosure provisions which attach to a freezing order is an attack on the administration of justice which usually merits an immediate sentence of imprisonment of a not insubstantial amount."

30. In *Broomleigh Housing Association Ltd v Okonkwo* [2010] EWCA Civ 1113 it was stated at [1], that it is generally only an intentional breach that merits a custodial sentence.

C: BACKGROUND

C1 Introduction

31. The factual background set out below (as largely recounted in the Applicants' Skeleton Argument) is agreed on behalf of Mr Lewis save to the extent that there was any conflict with Mr Lewis' statement. The main outstanding dispute concerns the state of mind of Mr Lewis. Where matters are emphasised, or commented on, that emphasis and comments are my own.

C2 The underlying proceedings

32. The underlying proceedings (which were commenced in April 2018) arose out of a complex joint venture arrangement between a number of parties including the Applicants (on the one hand) and Shire Warwick Lewis Capital Limited (an English Company of which Mr. Lewis was a director) intended to implement a Euro/Czech Koruna currency trading strategy devised by the Claimants. The outcome of the joint venture, so far as they were concerned, was that they lost all the margin they put up and received none of the profit to which (it was common ground) their strategy would (or should) have given rise.

33. The causes of action pleaded included damages for conspiracy and fraudulent misrepresentation. The course of the proceedings was described in Tuson 2 at [8]-

[22], and in [5] – [17] of the judgment of Andrew Henshaw QC delivered on 1 February 2019. This was the judgment on the basis of which the Revised Freezing Injunction was granted.

34. Shortly thereafter, on 11 March 2019, default judgment was entered against all the Defendants (including Mr. Lewis) in the total sum of €4,448,416.24 (plus interest and costs in amounts to be decided by the Court). The principal judgment remains unsatisfied (such sums as have been recovered via Mr Lewis's bankruptcy have been applied to outstanding costs orders).

C3 The Revised Freezing Injunction – relevant provisions and personal service

35. Paragraph 4 of the Revised Freezing Injunction prohibited the Respondent (defined so as to include Mr. Lewis - see para 3) from disposing or dealing with his assets, as follows:

> "4. Subject to paragraph 4.3 below until the conclusion of these proceedings, or (upon entry of judgment against the First Second and Third Defendants and separate judgments for interest and costs (the "Judgments")) further order of the Court, **the Respondent must not**:
>
> 4.1 remove from England and Wales any of its or his assets which are in England and Wales up to the value of EUR4,800,000; or
>
> 4.2 **in any way dispose of, deal with or diminish the value of any of its or his assets** whether they are in or outside England and Wales up to the same value.
>
> 4.3 If and to the extent that the Judgments are satisfied in part at any time prior to satisfaction in full, the limit specified in paragraph 4.1 of the Freezing Injunction shall be reduced by the amount of such partial satisfaction (such reduction to be recorded in writing pursuant to the variation provision in paragraph 9 of the Freezing Injunction, with liberty to apply in default of agreement)." (emphasis added)

36. The passages emphasised above (which are part of the standard wording) are, it might be thought, clear and unambiguous, on their face, to any reader thereof.

37. Paragraph 5 of the Freezing Injunction contained standard wording descriptive of the assets to which paragraph 4 applied, in terms which, it might be thought, are again clear, unambiguous, and comprehensive in their breadth, making clear that they extend to assets whether or not they are in his own name and whether the Respondent is interested in them legally, beneficially, or otherwise. The paragraph also spells out (again in what might be thought to be clear terms) that the order extends to assets over which the Respondent has power:

> "5. Paragraph 4 applies to all the Respondent's assets **whether or not they are in its or his own name, whether they are solely or jointly owned and whether the Respondent is interested in them legally, beneficially or otherwise. For the purpose of this order the Respondent's assets include any asset which it or he has the power, directly or indirectly, to dispose**

of or deal with as if it were its or his own. The Respondent is to be regarded as having such power if a third party holds or controls the asset in accordance with its or his direct or indirect instructions." (emphasis added)

38. As required by CPR 81.4.(2)(c), the Freezing Injunction (endorsed with the requisite Penal Notice) was served personally on Mr. Lewis by Mr. Brooke-Clark, a process server, on 21 February 2019 (as evidenced at paragraph 4 of Mr. Brooke-Clarke's witness statement dated 27 February 2019).

C4: The Bankruptcy of Mr. Lewis

39. On 19 July 2019, the Applicants presented a bankruptcy petition against Mr. Lewis, based on a statutory demand in respect of the Judgment debt; and on 27 January 2020, following adjournments on 23 September and 18 November 2019, Mr. Lewis was adjudged bankrupt.

40. On 12 February 2020, Mr. Paul Allen of FRB Advisory Trading Ltd was appointed as trustee in bankruptcy of Mr. Lewis (the "Trustee"). The Trustee appointed Weightmans LLP as his solicitors.

C5: The estate of Mrs. Gertrude Lewis, grant of probate and Mr. Lewis's interest under Mrs. Lewis's will.

41. Mr. Lewis's late mother, Mrs. Gertrude Lewis, died on 27 October 2018. Probate of Mrs. Lewis's will was granted on the application of Mr. Lewis, as an Executor, on 13 May 2019. The Grant of Probate recorded that the net value of Mrs. Lewis's estate stated in the application was £1,026,080.

42. The terms of Mrs. Lewis's Will and Mr. Lewis's beneficial interest in her estate are described in Mr Tuson's second statement. In short, Mr. Lewis had a beneficial interest (as a one-third residuary legatee) in Mrs. Lewis's estate, which interest in the event had a value of some £326,604.80.

43. The Applicants' case is that Mr. Lewis's interest in Mrs. Lewis's estate (both as executor and residuary legatee under her will) constituted an asset of his for the purposes of paragraphs 4 and 5 of the Revised Freezing Injunction. That is clearly the case (and Mr Lewis now accepts that is so, albeit he denies knowing that at the time).

44. For their part the Applicants did not know of Mr. Lewis's interest in Mrs. Lewis's estate until 23 June 2020, when Mr. Tuson was informed of it by the Trustee, who had discovered it as a result of his own enquiries. Mr. Lewis did not himself disclose that interest to the Trustee.

D: THE CONTEMPT OF COURT ALLEGED

45. The contempt which is pursued as such (i.e. Allegation 1 above) is that on two occasions in (a) June 2019 and (b) November 2019 Mr. Lewis dealt with and or disposed (or attempted to dispose) of his assets to a value of £306,104.80), being part of his entitlement (his "Entitlement") under the will of his late mother. These two disposals are described in Sections D1 and D2 below.

D1: Limb 1 - £120,000 paid on 14 June 2019 to Mrs. Lorraine Lewis (Mr. Lewis's wife) pursuant to a Deed of Variation.

46. On 14 June 2019 the sum of £120,000 (part of Mr. Lewis's entitlement under his mother's will) was paid to Mrs. Lorraine Lewis (Mr. Lewis's wife) by the Executors (of which he was one) at Mr. Lewis's request. That request was made in a Deed of Variation (the "Deed of Variation") which Mr. Lewis executed on 9 June 2019.

47. The Deed of Variation defined Mr. Lewis as the "*Beneficiary*"; Recital 1 b) referred to paragraph 7.1 of Mrs. Lewis's will; Recital 1 c) recited that Mr. Lewis (the "Beneficiary") "*has decided that* ***of the remainder of the estate due to himself*** *... the sum of £125,000 be left to his wife".* By Article 2, Mr. Lewis purported to "*authorise and request the Executors to appropriate £120,000 of the Estate to [his wife]"* (emphasis language).

48. The language "of the remainder of the estate **due** to him" is, it might be thought, the language of an asset. The Applicants rely on these provisions of the Deed of Variation as evidence that Mr. Lewis's entitlement under Mrs. Lewis's will was an asset in which Mr. Lewis was interested legally (as an executor) and beneficially (as a beneficiary under the terms of the will) and that he had power (by making requests to the Executors) to dispose of or deal with such asset as if it were his own, and that the Executors who controlled that asset held it in accordance with his instructions. This is all clearly right, as is now accepted by Mr Lewis. However, once again, the issue is as to Mr Lewis' knowledge thereof.

49. On this basis, the Applicants allege that, by virtue of paragraph 5 of the Revised Freezing Injunction, Mr. Lewis's entitlement under his mother's will was an asset of his for the purposes of paragraph 4 of the Revised Freezing Injunction. That, as a fact, is not disputed (hence the admission of Mr Lewis).

50. The Applicants say (but Mr Lewis denies) that Mr. Lewis must have been aware when executing the Deed of Variation (1) of the terms of the Revised Freezing injunction and (2) that it applied to his entitlement under Mrs. Lewis's will. In this regard the Applicants submit:

(1) The Revised Freezing Injunction was granted on 15 February 2019, only some 4 months before Mr Lewis executed the Deed of Variation

(2) The Revised Freezing Injunction was personally served on Mr. Lewis on 27 February 2019, on which occasion the Penal Notice was drawn to his attention see Brookes-Clarke 1.

(3) Mr. Lewis is a professional man (having qualified as a Chartered Accountant in 1979) and having considerable experience working in the financial services sector.

(4) Accordingly (it is said) he was well able to understand the terms of §§ 4 and 5 of the Freezing Injunction, which are not complex.

(5) The Deed of Variation refers (at clause 1 c)) to the "*Testator's last wishes"* as being that £125,000 be left to Mr. Lewis's wife. This was not a provision of the late Mrs. Lewis's will (though Mr Lewis' evidence was that that reflected her wishes).

51. When Mr Tuson's second affidavit was sworn, the position was that, by letter dated 25 August 2020, Weightmans LLP had notified Mrs. Lewis of the Trustee's claims pursuant to s.339 of the Insolvency Act 1986 in respect of the £120,000 paid to her; in response, her solicitors had resisted making repayment, making no admission that the Deed of Variation was invalid, and stating that £116,000 of the sum in question had been used to pay off her mortgage and asserting that Mrs. Lewis had insufficient liquid funds to make any substantive payment. : see §§11, 13 and 24 of SALH's letter dated 14 September 2020. Since then, as explained in paragraph 6 of Mr. Tuson's third Affidavit sworn on 22 January 2021 (the Trustee's summary of Receipts and Payments) £90,000 of the £120,000 paid to Mrs. Lewis was recovered following a settlement reached between the trustee in bankruptcy and Mrs. Lewis on 25 November 2020.

D2: Transfer of £186,104.80 on 11 November 2019 to Mr. Lewis's brother, Mr. David Lewis

52. The manner in which this transfer was effected is described in Mr Tuson's Second Affidavit at paragraphs 42 to 51. In summary:

(1) SALH's letter (on behalf of Mr David and Mr Richard Lewis (Mr Lewis's brothers) dated 31 July 2020 states that "*On the 21st October 2019, by way of a Deed of Renunciation [Mr. Lewis] disposed of his remaining share of the deceased's estate to the estate totalling £186,104.80*". It appears that the Deed of Renunciation itself was prepared by Mr Lewis himself (and he gave evidence that he had amended a form he had found online). Insofar as it purported to renounce any interest Mr Lewis had in Mrs Gertrude Lewis's estate, it was void by virtue of section 284 of the Insolvency Act 1986 (as is common ground).

(2) Mrs. Lewis's Estate Accounts set out the one-third "***Originally due***"(emphasis added) to Mr. Lewis under the terms of Mrs. Lewis's will (being £326,649.14 after miscellaneous payments and legacies) and explain that this sum was accounted for by (i) £124,000 paid to Mrs. Lorraine Lewis; (ii) living expenses of £16,475, and (iii) (relevant to this allegation) £186,174.14 "included in payments to DH Lewis re renunciation of settlement" (see Tuson 2 at [46]). The relevant transfer was made on 11 November 2019 as part of the sum of £481,000 paid to Mr David Lewis that day (see Sheet 10 of the Executors' bank account).

(3) By letter dated 24 August 2020, BCLP asked Mr. Lewis for an explanation of these transfers and distributions. In paragraph 20 of their response dated 1 September 2020**,** SALH (acting for Mr. Lewis) stated as follows:

> "… the sum of £186,104.80 which had previously been part of our client's inheritance … has now been paid over by his brother David Lewis, to the Trustee in Bankruptcy. Our client had previously executed a Deed of Renunciation in this respect."

53. SALH's statement set out above is relied upon by the Applicants as an admission on behalf of Mr. Lewis that he procured the disposal of £186,104.80 comprising part of his entitlement under his mother's will. In their letter SALH advance the argument that payments out of the HSBC account were not made in Mr. Lewis's personal capacity but as trustee. However, paragraph 5 of the Revised Freezing Injunction in effect defines "assets" so as to include assets "whether the Respondent is interested in them legally, beneficially or otherwise", which "include any asset which it or he has the power, directly or indirectly, to dispose of or deal with as if it were … his own". This is now accepted (though Mr Lewis denies knowing that at the relevant time).

54. The renunciation and transfer together constituted a clear breach of paragraph 4(2) of the Revised Freezing Injunction (albeit Mr Lewis again denies knowing that at the relevant time).

55. SALH also submitted (at paragraph 28 of their letter that if Mr. Lewis had the intention to side-step the court orders (which he denied having), "*the documents executed and steps taken in consequence thereof would have been undertaken in a covert and not overt manner*".

56. By way of riposte thereto, the Applicants submit:-

(1) It has not been suggested by SALH that Mr. Milliman, the second executor, was informed of the existence of the Revised Freezing Injunction. However, in the event, it emerged from Mr Lewis' evidence that Mr Milliman in fact took no part in the executorship.

(2) The Applicants were not informed of the proposal to make the disposals to Mrs. Lewis and Mr. David Lewis which are the subject of Allegation 1.

(3) Nor did Mr. Lewis disclose the existence of his entitlement under Mrs. Lewis's will: indeed, (so it is said, as addressed in Section D3 below in relation to Allegation 2) he concealed it from the Applicants' solicitors when they inquired about his assets prior to the first hearing of the Bankruptcy petition on 23 September 2019 (see Tuson 2 at [50]).

57. It is the Applicants' case that Mr. Lewis acted covertly, hoping that (what they say is) his deliberate and contumacious breach of the Revised Freezing Injunction would go undetected by them. On behalf of Mr Lewis it was said (before he gave oral evidence) that this case was not evidentially supported.

58. The Applicants rightly point out that in assessing the gravity of acts of contempt, the Defendant's conduct should be evaluated as a whole. As Lord Phillips MR said in *Gulf Azov* (in a passage quoted with approval by Nugee LJ in *Kea Investments v Watson*)[1]

[1] Supra at [15]

> It is not right to consider individual heads of contempt in isolation. They are details on a broad canvas. An important question when that canvas is considered is **whether it portrays the picture of a Defendant seeking to comply with the orders of the Court or a Defendant bent on flouting them**. It is right that the individual details of the canvas should be informed by the overall picture. But, having said that, each head of contempt that has been held proved must be established beyond reasonable doubt. (emphasis added)

59. The Applicants say that this principle applies, on its face, to conduct amounting to contempt of court. Thus, both limbs of Allegation 1 (the disposal to Mrs Lewis on 14 June 2019, and the disposal to Mr David Lewis on 11 November 2011 have to be considered as part of the overall picture. In addition, other conduct (the Applicants say dishonest conduct) forming part of the relevant chain of events even if not itself amounting to contempt (in this case the false statement which are the subject of Allegation 2), is relevant to the Court's assessment of culpability, insofar as it throws light on the question whether in undertaking those acts which are held to amount to contempt, the Defendant was intending to flout the Court's order, or had an honest (even if incorrect) belief that his conduct did not breach the terms of that order. The Applicants' case is that the former of these alternatives is the position so far as Mr Lewis's conduct in making the disposals which are the subject of Allegation 1 (in advance of the oral evidence it was submitted on Mr Lewis' behalf that this case was not evidentially supported).

D3: Allegation 2: False statements made in Lewis 7 (sworn on 23 September 2019)

60. The Applicants also allege that Mr. Lewis made a knowingly false statement as to the extent of his assets in his 7th affidavit sworn on 23 September 2019 ("Lewis 7"). As already noted, Allegation 2 is not pursued as part of the contempt application but is advanced as a factual allegation that the statement of Mr Lewis's assets was knowingly false, and was part of a deliberate process by which he sought to conceal his assets and to put them beyond the reach of the Applicants as judgment creditors by means of the dispositions which are referred to in Allegation 1. It is also submitted that concealment of those assets demonstrates that Mr Lewis had no honest belief that he was entitled to alienate them as he sought to do by procuring their transfer to Mrs Lorraine Lewis and Mr David Lewis. Hence Allegation 2 (if proved to the criminal standard) is relied on as support for the Applicants' case that the transfers to Mrs Lorraine Lewis and Mr David Lewis were made in contumacious breach of the Revised Freezing Injunction.

61. The facts in relation to Allegation 2 are set out in Tuson 2 paragraphs 52 – 65, but it suffices to note at this point, by way of summary as to the points made that:

(1) Mr. Tuson requested an affidavit of assets in circumstances where Mr. Lewis was attempting to persuade the Applicants to withdraw the bankruptcy petition on the basis of a payment by Mr. Lewis of £37,5000 (Tuson 2 [54] – [55] (which the Applicants point out is a small fraction of the judgment debt).

(2) As a precursor to Lewis 7, on 21 September 2021 Mr. Lewis put forward a draft statement of assets which made no mention of Mr. Lewis's entitlement under his mother's will. In response, Mr. Tuson asked (among other things) "*whether Mr. Lewis*

has any assets held in the names of third parties, or the beneficial entitlement to any assets owned by third parties" (see Tuson 2 at [55]).

(3) Mr. Lewis's response (given in paragraph 3 of Mr. Appleton's email of 22 September 2019 was "*I do not have any assets in the name of third parties or a beneficial interest in such assets*" (Tuson 2 at [55]). The Applicants say this was untrue, having regard to the existence of Mr. Lewis's interest in his mother's estate under her will, of which he was aware.

(4) Lewis 7 was provided, sworn, to Mr. Tuson at 9:35 am on 23 September 2019 (Tuson 2 at [56]). It made no mention of Mr. Lewis's entitlement under his mother's will.

(5) In a further email exchange with Mr. Tuson that morning, Mr. Lewis stated: "*I confirm I have no contingent rights and or interests to acquire any other property in the future.*" The Applicants say that this was also untrue. Leaving aside any claims he had as a matter of law in respect of the transfer he had already by then procured to Mrs Lorraine Lewis, it is said that Mr Lewis, as an executor, knew full well he had rights to further sums under his late mother's will.

(6) Mr. Tuson was not satisfied with this information: but nevertheless, on 23 September 2019, the hearing of the bankruptcy petition was adjourned to a further hearing (in the event until 8 November 2019) on the basis of allegedly defective service (Tuson 2 at [59]).

(7) In the lead up to the adjourned hearing of the bankruptcy petition, on 11 November 2019 Mr. Lewis put forward a further offer to settle the bankruptcy petition by a payment of £100,000, stating that "his brother" had agreed to lend him the difference between this sum and the £37,500 previously offered (see Tuson 2 at [60]). 11 November 2019 was the very day on which the transfer from the Executors' HSBC account was made to Mr. Lewis's brother which included the sum of £186,104.80 due to Mr. Lewis himself under his mother's will.

(8) The Applicants' case (which Mr Lewis denies) was that Mr. Lewis was (dishonestly) seeking to persuade the Applicants to abandon the bankruptcy petition in exchange for payment of less than was still actually due to Mr. Lewis himself from his mother's estate, which he had arranged, that very day, to be transferred to his brother.

62. Mr Lewis (in his Skeleton Argument for the hearing) submitted that this case was speculation (no evidence having been adduced from the brother about his intentions, knowledge or finance).

63. In his solicitors' letter dated 1 September 2020 Mr Lewis justified his failure to disclose his interest in his mother's estate in Lewis 7 on the grounds that that affidavit states that, other than the assets listed therein, Mr. Lewis had no realisable assets which (it was asserted) "*correctly states the position at that date"*. The Applicants submit that this argument is unsustainable:

(1) First, if a "*realisable asset"* is an asset capable of being sold, plainly Mr. Lewis's entitlement under his mother's will could have been sold.

(2) The demonstrable worth to a putative buyer is shown by the fact that it gave rise to the right to a cash distribution of some £186,000 on 11 November 2019, only some 6 weeks later.

(3) No doubt, given its nature, a buyer would have demanded a discount: but whether this asset was realizable does not depend on the price, or whether 100% of its real worth could be realized. What matters is whether it could have been sold to a buyer, albeit possibly at significant discount, assuming that full disclosure had been made of relevant circumstances. To that, there can be only one answer: a buyer could have been found at the right price.

(4) Even on the date of swearing Lewis 7 (23 September 2019) £21,180.99 was held in cash in the Executors' account, of which £4,000 was paid to his company that very day (see the relevant HSBC Executors' Account statement).

(5) Further, it must have been in Mr. Lewis's contemplation, given his role as an executor, and resultant knowledge of the affairs of the estate, that substantial further sums were soon to come into that account (as in the event occurred just over six weeks later, on 8 November 2019, when £760,252.67 was transferred into the executor's account.

(6) It is said that this explanation is irreconcilable with Mr Lewis's own statement, in response to a question from Mr Tuson, on the same day he swore Lewis 7, that "*the only non-realisable assets of which I am aware are the arrears of salary owed by Shire Warwick Lewis group mentioned in my earlier email."* (see paragraph 1 of his email of 23 September 2019).

64. Mr Lewis agrees with sub-paragraphs (1) to (3) and now realises that his entitlement was a realisable asset but asserts that he did not know it was a realisable asset at the time.

65. In contrast, the Applicants' case in respect of Allegation 2 is that Mr. Lewis was fully aware of his entitlement under his mother's will when swearing Lewis 7 (and when making the associated unsworn representation that he had no beneficial interest or assets held in the name of third parties or contingent interests), but deliberately and dishonestly failed to refer to that entitlement in order to mislead the Applicants into believing that he had fewer assets than was the case (1) so as to induce them to discontinue the bankruptcy proceedings on the basis of a payment much lower than he was actually in a position to pay (see Tuson 2 at [65] and (2) thereby seeking to put his entitlement as a beneficiary of his mother's will beyond the reach of his creditors (including the Applicants as judgment creditors). Mr Lewis's state of mind (as so alleged) in relation to Allegation 2 is relied on by the Applicants in support of the Applicants' case that the breaches set out in Allegation 1 amounted to intentional disobedience of the Revised Freezing Injunction.

66. For his part (in the Skeleton Argument on his behalf in advance of him giving evidence) Mr Lewis asserted that he did not know that his entitlement was a realizable

asset and asserted that the contempt was committed not dishonestly but in ignorance of the law.

E: RECOVERIES MADE AND COSTS INCURRED BY THE TRUSTEE IN BANKRUPTCY

67. The evidence before me comes from Mr Tuson's second and third affidavit and the witness statement of Paul Allen dated 10 August 2021 ("Allen 1"). In particular:

(1) £186,104.80 was recovered from Mr. David Lewis (the full amount of the first disposal).

(2) £90,000 was recovered from Mrs. Lorraine Lewis (leaving a shortfall of £30,000).

(3) The time costs of the Trustee himself identifying and pursuing recovery of assets from Mrs Lorraine Lewis and Mr David Lewis totalled £42,000 (£35,000 plus VAT), these costs being incurred in the period from 12 February 2020 to 9 July 2021 (see Allen 1 at [5]).

(4) Further, legal costs were incurred by the Trustee to his solicitors, Weightmans in relation to seeking recovery of assets from Mrs Lorraine Lewis and Mr David Lewis. These total £74,570.40 (£62,142 plus VAT) (see Allen 1 at [7]-[8].

(5) Weightmans have informed the Trustee that of this sum of £62,142 (excluding VAT) £32,594 relates to recovery of £186,104 from Mr David Lewis and £29,548 relates to the settlement with Mrs Lorraine Lewis (see Allen 1 at [8]).

(6) Mr Allen (now the former Trustee) states in paragraph 3 of his Second Witness Statement dated 20 September 2021 ("Allen 2") that he is satisfied that the legal costs incurred to make recoveries from Mr David Lewis and Mrs Lorraine Lewis were reasonable and necessary in order to obtain the recoveries made. On this basis the total cost to Mr. Lewis's estate of the unrecovered element and costs (and therefore the reduction in distributions to his creditors, in effect the Applicants) would be approximately £146,570.40 (including VAT).

68. On behalf of Mr Lewis, it is said that the estimated costs of Weightmans is excessive and unsupported, and relies upon a letter dated 21 September 2021 from a Mr Michael Monaghan, a Legal Costs Lawyer, commenting upon the estimate. In particular it is said that:

    (1) There is lack of specific information supporting the quantum of fees and that the hours spent, identity of the fee earner, and work undertaken have all been insufficiently particularised.

    (2) The work undertaken by Weightmans appears to duplicate the work undertaken by the Trustee.

    (3) The work undertaken is excessive. Weightmans became aware of the waiver of inheritance in or around July 2020. The funds in question were returned by the

end of 2020 by agreement. In such circumstances it is said to be unclear how costs of £116,000 could reasonably have been incurred during this period.

(4) The costs claimed in respect of the recoveries made from Mrs Lorraine Lewis are excessive. The letter before action was sent to her on 25 August 2020. The settlement was reached on 25 November 2020. It is said to be unclear how costs of £29,000 could have been incurred in that period.

69. The Applicants rely upon such (unrecovered) costs as a relevant factor (in the context of sentencing), whilst (on behalf of Mr Lewis) it is submitted that what is characterized as the "questionable basis for those costs" means this factor should play no further part in these proceedings.

F: MR LEWIS AND HIS EVIDENCE

F1 MR LEWIS' WITNESS STATEMENT

70. In his witness statement made on 22 September 2021 (i.e. very shortly before the start of the hearing), and to which I confirm I have had full regard as representing his evidence in chief, Mr Lewis stated amongst other matters as follows:-

(1) "Prior to my mother's death (27 October 2018), I told her about the action of the Claimants against me. I said that it could result in my becoming bankrupt. My mother, as was typical of her forceful nature, became angry with me as to how I could allow myself to be in this position. She asked if my wife and I could lose our home. My mother was very poorly at the time with numerous underlying health conditions including heart failure and COPD. I explained that our home belonged to Lorraine although she had a mortgage which at the time I thought was some £125,000. The mortgage was due for repayment in August 2019. No provision had been made for repayment following my spending all of our savings on legal fees. My mother reminded me that it was my duty to ensure that Lorraine's home was secure (Lorraine had been very good in helping and supporting my mother) and that she (my mother) wanted these monies paid to my wife after her death from her assets so that the mortgage could be repaid. My mother was very emphatic about this point. Given her failing health, my brother David (who was also present) and I, thought that it would cause her too much stress to raise the issue again to effect change in her formal testamentary instructions. Her wishes, however, were quite clear" (paras 2.1 to 2.4).

(2) "I **was aware of the terms of the freezing injunctions**, but my reading of Mr Andrew Henshaw's Order of 15 February 2019 led me to believe that this order was personal to me and not in my capacity as Executor of my mother's estate. I thought that paragraphs 4 and 5 of the order did not apply to me. I understand now that this was an incorrect conclusion. I was without legal representation at the time and did not take legal advice". (para 2.7) (emphasis added)

(3) "In order for me to give effect to my mother's wishes, I drafted and executed a Deed of Variation on 9 June 2019. I re-allocated £125,000 of her estate to my wife, Lorraine Lewis. However, I learned that my wife's mortgage was only £120,000 and,

in my capacity as Executor of the estate, paid this sum to my wife on 14 June 2019 in accordance with my mother's wishes". (para 2.8)

(4) "…I knew that it had been important for her to ensure the inheritance went to support Lorraine. I formed the view that I would rather give up my share of the inheritance than lose it in my bankruptcy. I wrongly thought that it did not form part of my assets until it was distributed to me. I decided to waive my inheritance". (para 2.10)

(5) "I had already decided to waive my inheritance before I executed my affidavit on 23 September 2019. I had informed my brother David (My brother Richard lives in Israel). I therefore did not regard this as a realisable asset as referred to in the affidavit. I formalised this when I executed the Deed of Renunciation on 21 October 2019. Again, I now accept this was wholly wrong". (para 2.11)

(6) "At the time I believed that my action of waiving my entitlement was lawful. Here, although I have little experience with the law relating to freezing orders and insolvency, I had experience in my professional career, of clients who had waived or reassigned their entitlement under a will. These assignments were treated as if the Testator had amended their will. What I did not appreciate is that the deeds so executed, were effective only for tax purposes and not for insolvency and other purposes. I therefore thought that the execution of the deeds was lawful and that therefore the assets in my mother's estate did not form part of my assets." (para 2.13)

(7) "Given my impending bankruptcy, in November 2019 and as Executor I paid all the residue of my mother's estate to my brother David. I asked him to take over the administration and distribution of the remaining estate." (para 2.14)

(8) "It was only after solicitors acting for my Trustee in Bankruptcy wrote to my brothers on 11 July 2020 that I took legal advice and discovered that I had breached the freezing injunction. I now realised that the Deeds drafted to re-allocate my mother's estate were void under the Insolvency Acts". (para 2.14)

(9) "I truly believed that I was not breaching the terms of the freezing injunction at the time I executed the two Deeds. Indeed had I been of the mind just to breach the Order, it would have been a pointless exercise in executing these Deeds as they would have had no legal effect. I did not regard the effect of the Deeds as making gifts as at the time as I thought these were not yet my assets to give. I understand now that I was wholly wrong. I apologise to the Claimants and to the Court for my wrongdoing and the difficulties that it has caused to them". (paras 2.18-2.19)

F2 MR LEWIS' ORAL EVIDENCE IN CHIEF

71. I have a full transcript of all the oral evidence given by Mr Lewis and I confirm that I have reviewed it, and have had full regard to it in reaching the findings I have made.

72. Although it had been agreed that Mr Lewis' witness statement would stand as his evidence in chief I allowed Mr Sykes to ask Mr Lewis further questions in chief.

73. In his oral evidence in chief, Mr Lewis confirmed the admission of contempt in his Affidavit that I have already quoted. He then confirmed that "the subsequent statement" (i.e. his statement of 22 September 2021 made very shortly before the hearing) "more accurately reflects the case that you wish to put before the court" stating "Yes, it expands on that I said in my first statement". He expressly confirmed that he has "had a chance to review the contents of that statement before today's hearing" and he confirmed that he "[stood] by its contents as accurate to [the] best of [his] knowledge".

74. Mr Lewis therefore reviewed his statement and had every opportunity to correct (or expand) on any matter stated therein prior to the hearing or indeed when confirming the truth of his statement. He did not do so.

75. Neither the affidavit or the witness statement mentioned anything about Mr Lewis having (1) prepared the deed of renunciation in June 2019, or (2) that he discovered in about October 2019 that he had failed to sign it, but in his oral evidence in chief he gave just such evidence for the first time, and said that evidence was true. When cross-examined about this he confirmed that he knew from as long ago as October 2019 that the applicants were alleging that he had lied in his affidavit sworn on 23 September 2019, but he said he did not give his knowledge of matters (1) and (2) much attention until he gave them further thought, when he was preparing and re-reading the latest witness statement (i.e. that only made a few weeks ago on 22 September 2021).

76. Yet Mr Lewis did not provide a further witness statement to address such matters, he did not state that he wanted to clarify or correct the evidence in his affidavit or witness statement or add this potentially important evidence (given that it would be at least some explanation as to why he was telling what lies to Mr Tuson were as to his assets back in 2019) despite being given every opportunity to do so. On the contrary, and as noted above, he confirmed that his statement, made very shortly before the hearing, and which he had re-read even more recently "more accurately reflects the case that [he wished] to put before the court" stating "Yes, it expands on that I said in my first statement" and he confirmed that he "[stood] by its contents as accurate to [the] best of [his] knowledge".

77. This was so despite the fact that, as he confirmed he understood when he prepared his affidavit and his witness statement that it was in his interest to provide a full and detailed answer to the allegations made against him, and that he would "have included everything that [he] thought consistent with [his] recollection, was an answer to those allegations".

78. In such circumstances, I am satisfied so that I am sure (notwithstanding Mr Lewis' denial) that Mr Lewis was not telling the truth in this latest oral evidence, and was making up such matters "on the hoof" because it was the only way that he could see to answer the allegation that that he had told lies to Mr Tuson when he was asking about his assets. It is simply incredible that Mr Lewis would have forgotten the matters now relied upon at the time of his affidavit or statement (or not given them much thought), and even had he done so, any honest witness would have either put in a further statement to clarify the position or (though far less satisfactory) would have

orally given such evidence when asked to confirm his statement. Mr Lewis did neither.

79. There are, of course, many reasons why a witness may lie, or embellish his evidence, but in the present case I am quite sure that such lies were on the operative path of Mr Lewis' attempted defence that he knowingly and deliberately breached the terms of the Freezing Order. In such circumstances I view with very considerable circumspection Mr Lewis' written statement and his supplemental oral evidence, and I consider very little weight can be given to it when set against the documentary material before me, and the express terms of such documentation (both the Freezing Order and the contemporary wording of the deed of variation and deed of renunciation), unless such evidence is against his interest (as it was in the case of a number of answers during the course of his cross-examination).

80. In short I consider that Mr Lewis was not a witness of truth when it came to matters forming the operative part of his defence, most particularly in relation to his understanding of the Freezing Order and its terms, and as to his own knowledge and belief about what it meant and his alleged belief that he was not breaching the Freezing Order when undertaking the matters the subject mater of Allegation 1, nor when stating the matters the subject matter of Allegation 2. Such a finding is entirely consistent (as addressed below) with (1) the ordinary and natural meaning of paragraphs 4 and 5 of the Freezing Order (their actual meaning now being common ground), and (2) the fact that Mr Lewis' evidence as to why he did not believe he was acting in breach of the Freezing Order when acting as he did simply defies belief, not least in circumstances where I formed the clear impression that Mr Lewis is not only a qualified chartered accountant but also an intelligent man well able to understand the terms of the Freezing Injunction (contrary to his protestations to the contrary) and his evidence as to why he did not think it applied to what he proposed to do, and did (which itself was not capable of belief as addressed below). Mr Lewis' evidence is also belied by certain candid and telling evidence given by Mr Lewis in unguarded moments during his cross-examination.

81. Before turning to that cross-examination, I will first identify other (supplemental) evidence given by Mr Lewis in chief. In addition to confirming matters in his statement (as identified above) and matters going to personal mitigation (of relevance when sentencing), he specifically reiterated what he said in his statement about the use of deeds of variation and renunciation and clients who had used them to re-organise a will, and his (wrong) assumption that when they execute a deed this in fact treats the testator, the person who has died, as having kept the asset and passed it on to whoever the beneficiary is under the deed of variation or renunciation.

82. Even making due allowance for the fact that he had no experience of probate law and limited knowledge of commercial and contractual law (points he was keen to stress), and although I do not consider any such specialist knowledge is needed, the simple fact is that the language of the Freezing Order is quite clear as to what amounts to an asset, and what assets are caught by the Freezing Order (when read by any intelligent person as Mr Lewis, I am satisfied, is). I am satisfied that the truth is that Mr Lewis knew perfectly well that his Entitlement was caught by the Freezing Order and that he was acting in breach of the Freezing Order in relation to the subject matter of Allegation 1(as further addressed below). I do not accept Mr Lewis' evidence that he

found the terms within paragraph 5 difficult to understand given his obvious intelligence, and their clear meaning. Nor can I accept Mr Lewis' evidence as to "certain conceptions" he said he had as to what the paragraph meant.

83. After re-iterating his evidence that he did not think that the asset of his mother was his (an answer itself belied by the fact that Mr Lewis himself in the deed of variation (in a bespoke part clearly drafted by him) referred to "the remainder of the estate **due to himself**" (emphasis added) and the fact that Deed of Renunciation provided as it did at paragraph 1(d) thereof), he stated that he was the treasurer of a charity and had control of their bank account, and director of company where he was a signatory of the bank account, and he regarded the assets in his mother's estate as having equivalent status. I cannot accept such evidence. As was put to him in cross-examination, there is an obvious distinction as the assets in each such case do not belong to Mr Lewis. Such (further) evidence from an intelligent man, himself qualified as a chartered accountant, simply defies belief. Once again, I am sure he knew that his Entitlement was an asset of his within the Freezing Order. Nor, given the clear language of paragraph 5 of the Freezing Order can I accept that Mr Lewis made wrong assumptions as to the law, and his account on this also defies belief. As is addressed further below I am satisfied he knew perfectly well what paragraph 5 meant and made no such assumptions of the type alleged.

F3 MR LEWIS' CROSS-EXAMINATION

84. Turning to Mr Lewis' cross-examination by Mr Andrew Fletcher QC, I consider that there were moments of unintended candor which are of particular importance on the issues that arise as to knowledge and intent, and shed real light on such matters. Before turning to such matters, Mr Lewis also accepted, as he had in his statement, that he was aware of the terms of the Freezing Injunction, and that he was fully aware of the importance of obeying it. He also said that he took great care to ensure that he did so - though I cannot accept that evidence given that the obvious course was to take legal advice if he was in any doubt or did not understand (for example) the scope of paragraph 5, or his position as executor, or as to the appropriateness or otherwise of the deed of variation and letter of renunciation. Contrary to his evidence, I am also satisfied that he could have paid for such advice out of the estate (with the concurrence of his brother even if, contrary to my conclusions he had already renounced any entitlement).

85. If, as Mr Lewis confirmed, he was aware of the terms of the Freezing Injunction and was fully aware of the importance of obeying it (and took it as very important because of its nature and gravity, as he confirmed was the case), he would have read it carefully. If he had read paragraph 5 carefully (as I am sure he did), he would have known, I am satisfied, that paragraph 5 extended (as it expressly stated) to all Mr Lewis' assets whether or not they are in his own name, whether they are solely or jointly owned and whether or not he was interested in them legally beneficially or otherwise. Paragraph 5 expressly spells out, and so Mr Lewis could have been in no doubt,

86. that his assets included any asset which he has power directly or indirectly to dispose of or deal with as if it were his own. Mr Lewis himself described the Freezing Order as "all encompassing" and extending to his assets.

87. It is also clear from the HSBC bank account and the estate accounts that Mr Lewis made various payments to himself out of the estate (and allocated by him as such) which (despite his denials) were clearly made to him as a beneficiary as part of his entitlement, such entitlement being part of his assets, and obviously subject to the Freezing Injunction. I did not find credible the suggestion that before or at the time of probate (13 May 2019) he had already discussed and agreed with his brothers that he was going to waive his right to the estate, and that given his lack of income he subsequently went back to them to get approval to draw money out of the account. Such evidence is inconsistent with the very language of the deed of variation of 9th June 2019 as already noted (referring to "the Beneficiary [Mr Lewis] has decided that **of the remainder of the estate due to him**" (emphasis added). This is a clear acknowledgment that the remainder of the estate remained due to him. Mr Lewis himself accepted in cross-examination that he regarded such payments as coming out of his share. As such this was obviously an asset under the express language of paragraph 5 of the Freezing Injunction). It is also notable that Mr Lewis did not call either of his brothers to support his evidence about the alleged agreement with his brothers.

88. Of course, even if Mr Lewis had been proposing to renounce his share of the inheritance, at that stage (and as Mr Lewis accepted in evidence) he had the legal entitlement to his share of his mother's will. I cannot accept that he considered he had an entitlement but that was not an asset. Paragraph 5 of the Freezing Injunction is clear in that regard. In any event answers he was to give make clear that he did know his Entitlement was caught by the Freezing Order.

89. It was put to Mr Lewis that the reason why he decided to renounce his inheritance was because he did not want it to fall into the hands of the creditors. I did not find his denial of this credible, but his answer was nevertheless telling. He said "No, **it is because I wanted to preserve my parents' inheritance**". This is a recognition that without him doing so the monies would fall into the hands of the creditors as his assets. He was therefore taking the steps he did to avoid them being taken by the creditors – and that intention was set against the backdrop of his knowledge of the Freezing Injunction and its terms.

90. A particularly insightful exchange, shedding light on Mr Lewis' knowledge, and intention, was the following:-

> Q. … But you knew that you were beneficially entitled prior to a disposition under a variation --
> A. Yes.
> Q. -- to a one-third share of your mother's will.
> A. Under the original will, yes.
> Q. And that to take steps to change that so as to cease to have an entitlement would contravene the freezing injunction.
> A. No, that's not my thoughts. I've already admitted, I've already explained to you, that I believed the action of signing the deeds and, therefore, restating the will effectively, meant that those assets were never mine and the effect of that, therefore, was that it would fall

outside the terms of the court order. I've explained before, I admit I was wrong, I didn't take advice at the time because I couldn't afford it. And I've tried to make good that wrong. I didn't -- this was not an intentional act of just ignoring or side-stepping the order. **I genuinely thought that it -- that the deeds were a mechanism for avoiding the order as against evading the order**.

Q. When you use the "avoid" and "evade", are you trying to use them this accountancy terms?

A. Yes, yes, "evade" being illegal and "avoid" being a way round -- a legal way round.

…

MR FLETCHER: So your mindset was that **you were looking to find a way around the freezing injunction?**

A. Yes.(emphasis added)

91. I find Mr Lewis' tax analogy of avoidance versus evasion to be unconvincing and contrived. I consider this to be a clear recognition on Mr Lewis' part that the deeds were a mechanism for **avoiding** the Freezing Injunction (i.e. that they were otherwise caught by the Freezing Injunction – otherwise there would be no question of its "avoidance"). Equally Mr Lewis candidly admitted that he was "looking to find a way **around** the Freezing Injunction" – again I am satisfied that carries with it a recognition that there needed to be a way around – i.e. that the Entitlement was caught by the Freezing Injunction absent a way around.

92. Mr Lewis therefore knew, I am sure, that the Entitlement was caught by the Freezing Injunction and (I am satisfied) that (for example) at the time of the transfer of £186,104.80 to Mr David Lewis there had been no renunciation of Mr Lewis' entitlement. The transfer to him was, I am satisfied, a knowing and contumelious breach of the Freezing Injunction made with the intention of flouting the Freezing Injunction.

93. Indeed, in a candid moment, Mr Lewis even admitted that he knew (albeit under stating the position as to his knowledge) that there was a "small risk" and that he took, or suggested his brothers take precautions that they keep the money in a separate account. Thus, there was the following evidence given:

"Q. So, Mr Lewis, I suggest you knew perfectly well that making the deed of variation and instructing the executors to transfer £120,000 to your wife was a breach of the freezing injunction.

A. Is there a question there?

Q. Yes.

A. Certainly, absolutely deny it. I did not regard it as breaching the injunction.

Q. And that the reason you didn't seek legal advice was because you knew you would get an answer that you didn't

want.

A. No, that's nonsense. That is certainly denied, completely.

Q. Had you been in genuine doubt as to the effect of paragraphs 4 and 5 of the freezing injunction, you would, before making a transfer of £120,000 to your wife, have taken legal advice.

A. If I was in genuine doubt, yes. **But at the moment I had relatively little doubt. And when it came to my brother's -- the money given to my brother that doubt there was a -- I reckon there was a small risk there. Therefore, I suggested to him he put into a segregated account in case there was problem at a later time.**

Q. And the reason that you acted in this way was because you knew that if it came to the attention of either the claimants or in due course a trustee in bankruptcy your rights in relation to your mother's estate would become available to satisfy your creditors, including the claimants.

A. I didn't believe it in that way. The way I looked at it is that, given the adversarial nature of the claimants' advisers, that whether it was legitimate or not they would still have a go at me, or have a go at the funds. **So I considered that as a small risk at the time because I was completely wrong, because I only found out later that I was completely wrong about the court order**, and **the balance of the court order, but I did take precautions -- I suggested to them that they take precaution by getting a separate account for the time being**.

94. Those are not the actions of someone genuinely believing that the Entitlement was not caught by the Freezing Injunction or that such monies were not his assets available to his creditors for execution against. They are the actions of someone who failed to reveal the Entitlement, and hoped the Trustee would not find out about the will, but recognised the reality that if found out, the assets would be claimed back. They are the actions of a man that knew the transfer would breach the Freezing Injunction, and knew that he was carrying out a plan to keep the money away from the Trustee notwithstanding the fact that the monies were his asset caught by the Freezing injunction. I am sure that Mr Lewis knew perfectly well that the Entitlement was caught by the Freezing Injunction and he knowingly and deliberately took steps to transfer the money away in an attempt to evade the Freezing Injunction, hoping that his actions would never become known to the Trustee and see the light of day.

95. Of course even if (contrary to my findings) it was Mr Lewis' intention to renounce his Entitlement for reasons other than to avoid the Freezing Injunction, and even if (contrary to my findings) such intention had been discussed at or before the time probate was granted, the fact is that until he executed the Deed of Renunciation on 21

October 2019 the monies represented the Entitlement were, on any view, an asset within the meaning of the Freezing Order, and I am equally satisfied that Mr Lewis knew that. For this reason, his statement on 22 September 2019 that "*I do not have any assets in the name of third parties or a beneficial interest in such assets"* and on 23 September 2019 that *"the only non-realisable assets of which I am aware are…arrears of salary… I confirm I have no contingent rights or interests to acquire any other property in the future"* were not only misleading but, I am satisfied, knowingly untrue.

96. I am satisfied, and find, that in such circumstances the statement of Mr Lewis' assets was knowingly false, and was part of a deliberate process by which Mr Lewis sought to conceal his assets and put them beyond the reach of the Applicants as judgment creditors by means of the dispositions forming the subject matter of Allegation 1. I also consider that his concealment of those assets itself demonstrates (as I am sure is the case) that Mr Lewis had no honest belief that he was entitled to alienate them as he sought to do by procuring their transfer to Mrs Lorraine Lewis and Mr David Lewis. This further supports the conclusion that such transfers were made in contumacious breach of the Freezing Injunction, as I am satisfied they were.

97. In the above circumstances, and considering the broad canvas, the picture that is portrayed (in the words of Lord Philipps MR in *Gulf Azov*, in the passage quoted with approval by Nugee LJ in *Kea Investments v Watson*, supra, is not one of a defendant seeking to comply with the Orders of the Court but one who was, I am sure, bent on flouting them.

98. In the circumstances I have identified I am satisfied and find (to the criminal standard) (1) that Mr Lewis knew when he executed the Deed of Variation and also when he transferred the monies to his brother of the terms of the revised Freezing Injunction, (2) that Mr Lewis knew that the Entitlement, and the intended transfers, were caught by paragraph 5 of the Freezing Injunction (the same being an asset within the meaning of the Freezing Order as Mr Lewis knew), and (3) that Mr Lewis knowingly, deliberately and contumaciously breached the Freezing Injunction by instructing the transfer of such monies to Mrs Lewis and his brother David Lewis.

99. I find Allegations 1 and 2 proved to the criminal standard, and I am satisfied beyond reasonable doubt that Mr Lewis is guilty of contempt in the manner stated in this judgment in relation to Allegation 1, and I make an Order to that effect under CPR Rule 81.9(1) of the Civil Procedure Rules.

100. Once I have heard from counsel for the Applicants and for Mr Lewis in relation thereto, I will pronounce sentence, setting out my sentencing remarks at Section G hereof, and complete my Order on determination of proceedings for contempt of court under CPR Rule 81.9(1) of the Civil Procedure Rules.

SECTION G. SENTENCING REMARKS

101. In Section F hereof, I have found that Mr Lewis knowingly, deliberately and contumaciously breached the Freezing Injunction, and I have found that the statement of Mr Lewis' assets was knowingly false, and was part of a deliberate process by

which Mr Lewis sought to conceal his assets and put them beyond the reach of the Applicants as judgment creditors by means of the dispositions forming the subject matter of Allegation 1. As I have also found, I consider that his concealment of those assets itself demonstrates (as I am sure is the case) that Mr Lewis had no honest belief that he was entitled to alienate them as he sought to do by procuring their transfer to Mrs Lorraine Lewis and Mr David Lewis.

102. As was identified by Jackson LJ in *JSC BTA Bank v Solodchencko* [2011] EWCA Civ 1241 at [45], one of the functions of a sentence for contempt is to uphold the authority of the court by punishing the contemnor and deterring others. Such punishment has nothing to do with the dignity of the court and everything to do with the public interest that court orders should be obeyed. and as was recognised at [51], any deliberate and substantial breach of the restraint provisions of a freezing order is a serious matter. Such a breach normally attracts an immediate custodial sentence which is measured in months rather than weeks and may well exceed a year.

103. Such sentiments were echoed, as has already been noted, by the Court of Appeal in *Templeton Insurance v Thomas & Others* [2013] EWCA Civ 35 per Rix LJ at [42] where he stated, "In my judgment, whereas it will always remain appropriate to consider in individual cases whether committal is necessary, and what is the shortest time necessary for such imprisonment, and whether a sentence of imprisonment can be suspended, or dispensed with altogether: nevertheless, it must now be accepted that the attack on the administration of justice which is made when a freezing order is breached usually merits an immediate sentence of imprisonment of some not insubstantial amount."

104. In sentencing Mr Lewis I have borne well in mind the principles identified in the authorities to which I have been referred including *Crystal Mews Ltd v Metterick & Others*, supra, *Otkritie International Investment Management v Gersamia*, supra (in particular at Appendix 1), *Discovery Land Co LLC v Jirehouse*, supra, and *Simon Oliver v Javed Shaikh*, as well *Asia Islamic Finance*, *supra*, at [7] where Popplewell J sets out the principles to be derived from previous authorities and the latest statement of the principles in *Liverpool Victoria Insurance v Khan* [2019] 1 WLR 3833 (at [58], [60], [65] and [66] in particular). I have had particular regard to *Templeton Insurance v Thomas*, supra, and *Sellers v Postreshny* [2019] EWCA Civ 613. Ultimately, of course, and as is recognised in the authorities, every case turns on its own facts (see *Devonshire Property Ltd, Re: (a.k.a Shah v Patel)* [2008] EWCA 979). I have also had regard to the Sentencing Council's Definitive Guidelines on the Imposition of Community and Custodial Sentences (as referred to in the *Liverpool Victoria* case at [58]).

105. In the present case, Mr Lewis' offending is particularly serious. It involved deliberate breaches of the provisions of the Freezing Injunction. What is more Allegation 1 encompasses not one, but two separate breaches, and amounts to a prolonged course of conduct spanning a number of months, and as such the breaches were contumacious, and Mr Lewis stands to be sentenced for the totality of the offending of which he was the instigator and sole perpetrator. In addition a serious aggravating factor is the fact that Mr Lewis took steps to conceal his offending and what assets he had. The statement of Mr Lewis' assets was knowingly false, and was part of a deliberate process by which Mr Lewis sought to conceal his assets and put

them beyond the reach of the Applicants as judgment creditors by means of the dispositions forming the subject matter of Allegation 1. The risk of harm was great, and harm has been suffered. In this regard although most of the monies have been recovered, not all the monies have been recovered, and substantial costs have undoubtably been incurred.

106. Mr Lewis' offending is so serious that only a custodial sentence is appropriate. This was, as I have found, a deliberate course of conduct persevered in over time, to breach the Freezing Injunction, and I am satisfied that, before consideration of available mitigation, Mr Lewis' offending is so serious that committal to prison is necessary, which raises the question as to what is the shortest time necessary for such imprisonment and whether it would appropriate to suspend the sentence of imprisonment.

107. I am satisfied that, in the context of Mr Lewis' deliberate and sustained breaches of the Freezing Injunction, imprisonment is necessary and that taking into account the entirety of Mr Lewis offending in relation to Allegation 1, the appropriate term would be one of 9 months' imprisonment, before consideration of available mitigation.

108. Mr Lewis relies on five matters by way of mitigation, but many of those fall away on the basis of the findings I have made. First, it is said that Mr Lewis breached the Freezing Injunction without knowing that his entitlement was an asset and that he acted in good faith. I cannot accept either such proposition: as I have found I am satisfied, so that I am sure, that Mr Lewis knew that his entitlement was an asset and that he did not act in good faith. I take account, however, that Mr Lewis recognises that what he did was wrong – though weighed against that is the fact that he did not admit the true gravamen of his offending, and a substantial one day hearing was necessitated as a consequence of his continued denial of a knowing breach of the freezing injunction. This resulted in increased costs and a substantial use of court time.

109. Secondly, it is said that Mr Lewis is of positive good character. In this regard I have had regard to the character references before me, and the regard in which he is held as an accountant. I bear this well in mind as a mitigating factor. However, it is not uncommon for those who commit a contempt of court by reason of breaching a freezing injunction to be of previous good character, and this was not a case of a single isolated breach, but a sustained and deliberate course of conduct over a substantial period of time. I also have no doubt that Mr Lewis is anxious about the prospect of going to prison both generally, and in the context of the pandemic. However, ultimately, Mr Lewis has brought the situation he faces upon himself. Notwithstanding the character references I have which I have borne well in mind, I am not convinced that this was an isolated incident unreflective of Mr Lewis' true character as was submitted to me. This was not one inadvertent, unintentional or isolated, breach but a sustained breach accompanied by deliberate statements designed to conceal his inheritance and entitlement and motivated by a desire to keep the monies away from his judgment creditor and within the family coffers. It involved conscious thought, and sustained action, to avoid the Freezing Injunction.

110. Thirdly, it said that Mr Lewis has admitted the contempt as long ago as 4 January 2021 and it is said that his recent statement shows insight into the contempt and its gravity. The difficulty with this is that Mr Lewis' admission was limited, and did not involve acceptance that his contempt was deliberate as I have found; and as Mr Lewis no doubt knew, and as he would have been advised, that distinction would make all the difference to any sentence imposed. In the event a full one day hearing was necessitated to establish the seriousness of Mr Lewis' offending and his culpability – in reality the equivalent of a (very lengthy) Newton hearing. Considerable costs were incurred and court time used. Indeed I doubt very much whether any court time was saved. In consequence, and whilst I will factor the admission in when adjusting the sentence downwards to reflect such admission, the reduction in this case can only be a modest one in the circumstances.

111. Fourthly, it is said that Mr Lewis has "largely" purged the contempt and has "voluntarily" returned the majority of the funds. Certainly the majority of the funds have been returned, however such statement belies the fact first that, initially at least, the return of the monies from Mrs Lewis was contested (and not all those monies were returned – and there would have been no need for a negotiated settlement had these monies not been transferred in the first place), and secondly that very substantial costs were incurred to achieve such recovery (even if the precise amount of what would amount to reasonable costs is not accepted) which goes to the level of harm suffered. In addition, I do not consider it a point in Mr Lewis' favour to compare the size of the inheritance fund and the size of the judgment debt. I have no doubt that Mr Lewis would have acted as he did whatever the size of his inheritance - indeed the incentive to conceal and to divert would have been all the stronger if even greater sums had been involved, and I am in no doubt he would have acted in the same manner. Nevertheless I do bear in mind that the majority of the funds have been returned and Mr Lewis had a hand in achieving that.

112. Fifthly, it is said that an sentence of immediate custody would be especially harsh on Mr Lewis, first due to his personal circumstances, and secondly due to the ongoing pandemic. I will deal with the latter point first. I confirm that I have given full and careful consideration, and made appropriate allowance, for the fact of the harsher prison conditions in the pandemic and have had regard to the cases of *R v Manning* [2020] EWCA Crim 592 and *Lockett v Minstrell Recruitment Ltd* [2021] EWCA Civ when reaching the sentence I have. I also bear in mind the difficulties that Mrs Lewis would face as a vulnerable person in relation to whether she was able to visit Mr Lewis in prison.

113. I turn then to Mr Lewis' personal mitigation in the context of his personal circumstances which are set out in his witness statement and which were elaborated upon in his oral evidence, and Mr Syke's oral submissions, all of which I have given careful consideration to, as well as the character references that are before me which I have also taken into account. His personal circumstances do, I am satisfied, justify a significant reduction from the sentence that would otherwise be appropriate.

114. In his personal life, Mr Lewis married Lorraine Lewis (a former university lecturer) in 2014. He became her carer when she developed the long term chronic medical condition Crohn's Disease in 2015 (in relation to which I have two recent medical letters), and she also suffers from anxiety. She does not drive, and Mr Lewis

also undertakes care activities in relation to her elderly father (who lives 50 miles away), as well as in relation to her disabled son (Martin Bostock) who suffer complex health problems, and is due to have major surgery. I have had full regard to the medical evidence before me in relation to both Mrs Lewis and Mr Bostock. Mr Lewis' commitment to his family is vouched for in the references before me, to which I have had regard.

115. I bear well in mind that Mr Lewis is the primary provider for his wife and family (via Mrs Lewis' salary as director of a service company in relation to the services of Mr Lewis), and once such revenues cease, the family will only have Mr Lewis' state pension and the son-in-law's disability allowance in terms of monies coming in. Mr Sykes informed me, on oral instructions taken during the course of his mitigation on Mr Lewis' behalf, that there is currently £900 in the bank, and that after expenses, at least to date, there have been net receipts from the business of £735 a month. I also take into account Mr Lewis' age, and the likely impact of a finding of contempt upon any ability to carry on offering accountancy services. There is little information before me (other than Mr Lewis' evidence at a high level of generality and what little Mr Sykes has been able to tell me on instructions orally today) as to finances more generally, or the precise effect in that regard on others within his family in financial terms.

116. Having given due, and very careful, consideration to the aggravating and mitigating features of Mr Lewis' offending including, in particular, Mr Lewis' personal mitigation and the impact on members of his family, as well as bearing in mind current prison conditions in the pandemic, and then (at the final stage) giving a modest credit for his admission (albeit not one of the true gravamen of his offending) I consider that the sentence of imprisonment can be reduced from 9 months to one of 5 months' imprisonment. This is the shortest period of time necessary to reflect the seriousness and gravity of Mr Lewis' offending.

117. I am urged to suspend that sentence by Mr Sykes on Mr Lewis' behalf. I have given very careful consideration to his submissions in this regard, and all the personal mitigation I have identified above which has justified the substantial reduction in the term of imprisonment I have made. I have also had careful regard to the factors identified in the Sentencing Guideline (at page 8), in particular in terms of personal mitigation and the impact immediate imprisonment would have on others. However, weighing all the factors in the balance, I am in no doubt whatsoever that Mr Lewis' offending is so serious that only an immediate custodial sentence is appropriate, and appropriate punishment can only be achieved by immediate imprisonment. I am satisfied that immediate imprisonment is both proportionate and necessary for Mr Lewis' knowing, deliberate, and contumacious breach of the Freezing Injunction. Immediate imprisonment is a sentence of last resort, but it is the only sentence that fits the offending in this case.

118. As Popplewell J noted in *Asia Islamic Trade Finance Ltd v Drum Risk Management Ltd & Others* [2015] EWHC (Comm) at [7] a breach of a freezing order is an attack on the administration of justice which usually merits an immediate sentence of imprisonment of a not insubstantial amount. Those comments were approved by Rose LJ in *Sellers v Podsteshnyy*, supra, at [27].

119. This was a knowing, and sustained, course of conduct over a substantial period of time involving two separate breaches of the Freezing Injunction. Such breaches were then aggravated by the steps taken by Mr Lewis to conceal his offending and what assets he had, with the statement of Mr Lewis' assets being knowingly false, and such conduct was part of a deliberate process by which Mr Lewis sought to conceal his assets and put them beyond the reach of the Applicants as judgment creditors by means of the dispositions forming the subject matter of Allegation 1. Whilst I have given the greatest possible credit for Mr Lewis' personal mitigation, and borne well in mind his personal circumstances, and those of his immediate family, the seriousness or Mr Lewis' offending means that only an immediate custodial sentence is appropriate.

120. I accordingly issue a warrant of committal, and pass an immediate sentence of 5 months' imprisonment upon Mr Lewis. Mr Lewis is entitled to unconditional release after serving half the sentence under section 258 of the Criminal Justice Act 2003.

121. In the context of the sentence I have passed of immediate imprisonment, and bearing in mind the information I have in relation to finances (such as it is), I make no order as to costs.