Neutral Citation Number: [2023] EWCA Civ 1504

Case No: CA-2023-002368

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE GUILDFORD COUNTY COURT
HH Judge George
E00GU138; E00GU191

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21 December 2023

Before :

LORD JUSTICE BAKER
and
LORD JUSTICE WARBY

- -

Between :

SHARAZ AHMED	**Appellant**
- and -	
SHAMRAN REHMAN	**Respondent**

- -
- -

Fiona Horlick KC (instructed by **AHZ Solicitors**) for the **Appellant**
Nicholas Isaac KC and Matthew Winn-Smith (instructed by **Fulchers**) for the **Respondent**

Hearing date : 12 December 2023

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Approved Judgment

This judgment was handed down by the judges remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:30am on 21 December 2023.

LORD JUSTICE BAKER :

1. Sharaz Ahmed, a barrister called to the Bar in 2000, appeals against an order made on 24 November 2023 committing him to prison for six weeks (of which three were to take effect immediately) and fining him £9,000 for breach of an undertaking to the court. His appeal was listed before us on 12 December 2023. At the end of the hearing, we allowed the appeal and directed his release from prison, for reasons to be given at a later date. This judgment sets out my reasons for agreeing with that decision.

Background

2. In 2012, the appellant was appointed as a designated member of Landmark Legal LLP ("Landmark"). He worked in a branch office of the partnership where it traded as 12 Bridge Solicitors. It is his case that his role was to conduct advocacy only and that he had no administrative responsibilities and was not a signatory to the banking facilities.

3. In 2019, Landmark were engaged to represent Mr Zahir Ahmed (who is no relation of the appellant and is hereafter referred to as "the defendant") in defending a claim for possession in proceedings in the Guildford County Court brought by Mr Shamran Rehman. The claim was listed for five days before HH Judge Evans-Gordon in November 2019 at a hearing at which the appellant appeared on behalf of the defendant. In the event, for reasons which are not relevant to this appeal, the hearing was adjourned on the defendant's application to a later date. Under the terms of the adjournment, the defendant was ordered to pay the costs thrown away by reason of the application and further ordered to pay to his solicitor the sum of £1,600 every month, representing the sum which the claimant contended was rent due to him. The order made at the conclusion of the hearing contained the following undertaking:

> "UPON the Defendant's solicitors providing their undertaking that they will hold any payments made by the Defendant pursuant to paragraph 5 below in their client account pending order of the court."

The order further provided that, unless the defendant paid the costs and the monthly sums as ordered, he would be debarred from defending the claim.

4. At the hearing, the appellant had confirmed to the court that he had authority to give the undertaking. He did not, however, tell the judge that he was a designated member of Landmark.

5. After a number of further hearings, concerning issues which are not relevant to this appeal, the defendant's defence was struck out. On 7 December 2022, the matter finally came before HHJ George as an undefended possession action. By this time, Landmark was no longer on the court record, having been replaced as the defendant's legal representative by an entity called No 12 Chambers Ltd of which the appellant is the sole director and majority shareholder. At the hearing on 7 December 2022, he again appeared on behalf of the defendant. At the conclusion of that hearing, the judge granted possession of the property to the claimant together with rent arrears plus interest in the sum of £111,342 and ordered the defendant to authorise Landmark to release the sum of £57,600 held by them to the claimant's solicitors by 4pm on 12 December 2022, such payment to be applied to the rent arrears.

6. On 12 December 2022, the claimant's solicitors wrote to 12 Bridge Solicitors enclosing a copy of the order of 7 December and giving details of the account into which the expected payment of £57,600 should be paid. The next day, the claimant's solicitors wrote by email to Landmark (copied to No 12 Chambers Ltd and to the appellant) seeking release of the funds. Twenty minutes later, they received the following reply from Landmark:

> "We thank you for your email, we are not party to the proceedings and have given no undertakings to anyone in respect of the monies we currently hold."

It transpired that this email, which was unsigned, had been sent by or on behalf of a Ms Naseem Kadri, who described herself as a partner of Landmark. Inquiries later revealed that Ms Kadri had become a designated member of the LLP in May 2022.

7. After a further exchange of emails with Landmark, the claimant issued an application for a statement of account of the monies held pursuant to the undertaking. The application was listed but adjourned on two occasions. On 9 June 2023, three days before the adjourned hearing date, the claimant's solicitors received an email from Ms Kadri informing them that Landmark had transferred £57,600 to the defendant on 14 December 2022.

8. At the hearing before HH Judge George on 12 June 2023, the appellant again appeared on behalf of the defendant. He told the judge that No 12 Chambers was able to conduct litigation "under the Bar Standards conditions of trade" and that it was "a branch office" of Landmark. Landmark was separately represented at the hearing by counsel who in the course of submissions (which have been transcribed but are difficult to follow) appeared to deny that Landmark had given the undertaking and argued in the alternative that, if Landmark had given the undertaking, the release of the monies to their former client at the end of proceedings was not in breach of the same. In her judgment delivered at the end of the hearing, which additionally dealt with unrelated matters, the judge noted there was a dispute about whether the undertaking had been given and, if so, whether it was still in force in December 2022, adding that she was unable to resolve that dispute at that hearing.

9. Following that hearing, the claimant applied for a freezing injunction against the defendant which was granted on a without notice basis on 23 June 2023 and extended at a hearing on notice on 12 July 2023 at which the defendant was ordered to file an affidavit setting out inter alia details of how he had used the £57,600 transferred by Landmark. In his affidavit sworn in compliance with that direction, the defendant said that he had retained some of the money in cash, used part of it to repay creditors, and paid £9,000 to his current legal representatives, No 12 Chambers.

The committal proceedings

10. On 11 July 2023, the claimant's solicitors issued proceedings for contempt of court. The notice of application was in Form N600. The defendant to the application was named as Landmark. The application gave notice to Landmark of its rights and other matters relating to the application in accordance with CPR rule 81.4(2)(i) to (s). The nature of the contempt was described as breach of the undertaking provided by Landmark to HH Judge Evans-Gordon on 25 November 2019 "that they will hold any

payments made by the defendant pursuant to paragraph 5 below in their client account pending order of the court." The summary of facts alleged to constitute the contempt was set out in the following terms:

> "1 . Following the provision of the undertaking on 25 November 2019 referred to above ("the Undertaking") the Defendant paid £1,600 per month to Landmark Legal LLP ("Landmark").
>
> 2. On 5 January 2022 the Defendant's Defence was struck out as disclosing no reasonable grounds for defending the claim, pursuant to the order of HHJ George.
>
> 3. On 7 December 2022 the matter came before the Court as an undefended possession action. The Defendant confirmed that at this date he had paid £57,600 to Landmark.
>
> 4. By order of HHJ George on 7 December 2022 the Defendant was required to give possession of 141 Maybury Road, judgment was given for £111,342.14 rent arrears (plus £52.60 per day until possession) and costs. Further, the Defendant was ordered to "forthwith authorise Landmark Legal LLP to release the £57,600 currently held by them to the Claimant's solicitors by 4pm on 12 December 2022 which sum shall be applied to the above mentioned rent arrears."
>
> 5. The Claimant's solicitors wrote to 12 Bridge Solicitors (the Defendant's new solicitors) on 12 December 2022 attaching a copy of HHJ George's 7 December 2022 order and providing account details for receipt of the expected payment of the £57,600.
>
> 6. On 13 December 2022 the Claimant's solicitors sent an email timed at 15.42 to Landmark, 12 Bridge Solicitors and to Sharaz Ahmed. It was noted that the £57,600 had still not been received.
> 7. Landmark responded by email at 16.01 on the same day. They wrote: "We thank you for your email, we are not party to the proceedings and have given no undertakings to anyone in respect of the monies we currently hold."
>
> 8. On 14 December 2022 Landmark transferred the £57,600 to the Defendant. It did so without notifying the Court, the Claimant or his solicitors.
>
> 9. At no time did Landmark seek an order from the Court discharging or varying the terms of the Undertaking.
>
> 10. On Friday 9 June 2023 the Claimant's solicitors received an email timed at 14:04 from Naseem Kadri, a partner of Landmark enclosing a letter which informed the Claimant's solicitors, for the first time, that Landmark had transferred £57,600 to the Defendant on 14 December 2022.

> 11. On 12 June 2023 in open court the fact of the transfer of the £57,600 previously held in Landmark's client account to the Defendant was confirmed by Sharaz Ahmed (and Ms Robina Omar, counsel for Landmark)."

11. In a skeleton argument on behalf of the claimants for the committal hearing, Mr Nicholas Isaac KC and Mr Matthew Winn-Smith recited the history and summarised the relevant provisions of CPR Part 81. They stated that an English limited liability partnership falls within the definition of a "body corporate" for the purposes of contempt liability (citing *Olympic Council of Asia (No. 2) v Novans Jets* [2023] EWHC 276 (Comm) in support) and submitted that, if the court found Landmark in contempt of court, it could impose a period of imprisonment (an order of committal) against its director, a fine, confiscation of assets or other punishment permitted under the law. Citing other reported cases on the sanctions for contempt, they submitted that the court's task was to assess culpability and harm, including:

    i. the harm caused to the person in respect of whose interests the undertaking was designed to protect by the breach;

    ii. whether the contemnor has acted under pressure from another;

    iii. whether the breach was deliberate or unintentional;

    iv. the degree of culpability of the contemnor, and

    v. mitigation by an admission of breach (especially an immediate and voluntary admission), an admission or appreciation of the seriousness of the breach, any co-operation by the contemnor to mitigate the consequences of the breach and genuine expression of remorse or a sincere apology to the court for his behaviour.

12. Applying those principles to the facts of the present case, Mr Isaac and Mr Winn-Smith noted that the claimant had lost the entirety of the £57,600 and that the breach "was self-evidently deliberate and intentional". Under the heading "The degree of culpability of the contemnor", they asserted:

> "The degree of Landmark's culpability could not be more serious. It operates as a solicitor's firm and through its agents, in this instance [the appellant], it understood perfectly well what took place and the importance of the Undertaking given to the Court. Moreover, the representative in court [the appellant], was a co-director and person of significant control of Landmark. The overlapping roles of [the appellant] as advocate in court and the agent through which the Undertaking was provided by Landmark increases the culpability in this instance. Having breached the Undertaking it then appears Landmark was complicit with [the defendant] in the dispersal of the £57,600, it having received £9,000 of the money back from its former client. It is difficult to conceive of more cynical and disreputable behaviour. Nor did it volunteer the fact that it had received £9,000 of the monies released in breach of the Undertaking. That

> information was only discovered from the sworn affidavit evidence of [the defendant]."

13. Under the heading "Mitigation", they added:

> "Landmark has done nothing whatsoever in mitigation. It has not admitted its contempt. Remarkably, it has not even admitted that it gave the Undertaking to the Court despite the overwhelming evidence. It has forced the Claimant to go to the expense of making this application. Landmark has expressed no remorse nor apologised to the Court. It has done nothing to purge its contempt. It has made no offer to pay £57,600 to the Claimant to repair the loss it has caused him by its breach of its Undertaking. Nor has it made any offer to pay interest on that sum or the costs of this process."

14. The application came before HH Judge George on 9 October 2023. The claimant was represented by Mr Isaac and Mr Winn-Smith. Landmark were represented by Mr Roger Evans of counsel. Ms Kadri was present, but the appellant was not. At the outset of the hearing, Mr Evans informed the court that "my instructions are we admit the contempt of court". He acknowledged that there had been "a gross breach of the undertaking". He observed to the judge that "one of the exacerbating features in this saga has been the number of totally unsustainable arguments which have been skewered successively by Mr Isaac and yourself". He described the fact that the appellant, as a designated member of Landmark, had appeared for the defendant at the hearing in June as "an extraordinary situation". He submitted that the most important matter now was that Landmark purge its contempt and informed the court that £25,000 had already been paid. After hearing further submissions as to the payment of the outstanding sums, including interest and costs, the judge agreed to adjourn consideration of "sentence" (by which she meant penalty or sanction) until after the contempt had been purged.

15. The order made at the conclusion of the hearing on 9 October stated:

> "UPON the contempt hearing brought by the Claimant against Landmark Legal LLP pursuant to an application notice dated 11 July 2023
>
> AND UPON the contempt being admitted by Landmark Legal LLP
>
> AND UPON HEARING [Counsel]
>
> IT IS ORDERED THAT
>
> The application is adjourned until 9.30am on 25 October 2023 for Landmark Legal LLP to purge its contempt by payment of
>
> (a) the balance of the sum due (that being £32,600);
>
> (b) interest of £3,768.40 up to and including 9 October 2023 and increasing at a daily rate of £7.15 from 10 October 2023 until payment is made;

> (c) £7,205.05 on account of indemnity costs to be assessed summarily at the adjourned hearing."

16. On 19 October 2023 , the claimant's solicitors wrote to the appellant enclosing the order made on 9 October and the notice of hearing on 25 October, and added:

> "We respectfully ask whether you intend to offer any explanation for the alleged contempt, now admitted by Landmark Legal LLP, and whether you intend to appear before the Court to offer any personal explanation or apology for the matters complained of."

17. On 24 October, Ms Kadri filed an affidavit in the contempt application. She stated that, until 2022, Landmark had been in business in two offices, the main office at 284 Harrow Road, London W2, and the other office at 486 Great Western Road, Hounslow, where it traded as "12 Bridge Solicitors". The financial records of the two offices were kept separate, and separate accounts were drawn for the two offices, together with a consolidated balance sheet. She said that the appellant had managed the staff and clients at 12 Bridge Solicitors and had no involvement with the main office. 12 Bridge Solicitors had ceased trading in the course of 2022, at which point its files and computers were placed in storage. Ms Kadri said that she had had no access to those records and at the time she joined the firm in 2022 was unaware of the undertaking given to the court in 2019. There was no reference to the undertaking in the undertakings file held at Landmark's main office. She expressed regret for the confusion and misunderstanding caused by her failure to scrutinise the matter and apologised to the claimant and the court.

18. Following the filing of her affidavit, the parties agreed that the next hearing be adjourned again until 24 November 2023. For that hearing, Mr Isaac and Mr Winn-Smith prepared a further skeleton argument in which they substantially repeated the analysis of how the principles derived from case law should be applied to the present case, but added further observations under the heading "The degree of culpability of the contemnor". Having repeated Mr Evans' comment about the appellant's overlapping roles amounting to "an extraordinary situation", they continued:

> "(ii) Having breached the Undertaking it then appears that [the appellant] was complicit with [the defendant] in the dispersal of the £57,600, No 12 Chambers having received £9,000 of the money from [the defendant]. It is difficult to conceive of more cynical and disreputable behaviour. [The appellant] failed to volunteer the fact that the entity of which he is sole director (and 90% owner) had received £9,000 of the monies released in breach of the Undertaking. That information was only discovered from the sworn affidavit evidence of [the defendant].
>
> (iii) The high level of involvement on the part of [the appellant] is explicitly clear. The level of involvement or knowledge on the part of Naseem Kadri is uncertain ….
>
> (iv) By [the claimant's solicitors'] letter dated 19 October 2023 the appellant was asked if he intended to offer any explanation

> for the contempt or any personal explanation or apology for the matters complained of. No response has been received. In fact, no communication has been received from [the appellant] or No 12 Chambers since the adjourned hearing scheduled for 25 October 2023."

19. The skeleton argument concluded with the following observations:

> "37. In summary, the breach of the Undertaking was a very serious matter. It was aggravated by the highly unusual feature of this case whereby Sharaz Ahmed was the relevant actor both in court as advocate but also as one of the designated LLP members of Landmark. It was further aggravated by No 12 Chambers (which is totally controlled by Sharaz Ahmed and almost wholly owned by him) receiving some of the £57,600.
>
> 38. However, there are now mitigating factors and these will likely have a bearing on the Court's view as to appropriate sentence. It is fair to note that the breach of the Undertaking has now been remedied so no sanction needs to be imposed to serve the objective of securing future remedy in respect of this particular breach …."

20. It is the claimant's case that a copy of this skeleton argument was sent to the appellant. At the hearing before us, Ms Fiona Horlick KC on behalf of the appellant told us that her client denied receiving it.

21. At the hearing on 24 November, the appellant appeared in person. Mr Evans again appeared, on this occasion for Landmark and Ms Kadri. At the outset of the hearing, the appellant said:

> "I have attended in order to - well, firstly, offer the apology to this court and then secondly, to assist with what I can in this sentence hearing."

When the judge asked him what he was apologising for, he said it was his failure to attend the earlier hearing. Mr Evans then called Ms Kadri who was cross-examined by Mr Isaac. The appellant declined to ask her any questions.

22. The judge then turned to the appellant and the following exchange took place:

> "Judge: Mr Ahmed, I cannot make you give evidence but would you like to give evidence?
>
> Appellant: Your Honour, no, I do not intend to give any evidence. I can clarify points that I put to ---
>
> Judge: Well, you cannot clarify points that are put to you unless you give evidence. I do not understand what clarifying points that are put to you?
>
> Appellant: Sorry, I was going to - yes ---

> Judge: And I want to make sure that you understand the position that you are in as well, Mr Ahmed.
>
> Appellant: Yes.
>
> Judge: There has been an acceptance by Landmark Legal that it was in breach of the undertaking. Clearly, that is a very serious matter. It was an undertaking that you gave to her Honour Judge Evans-Gordon in 2019. Both you and Miss Kadri as the - I do not know what the formal name is because it is an LLP but effectively the principals of the firm are liable for punishment for contempt of court. That contempt has been accepted. And that could mean that either one or both of you get sent to prison or fined, and it certainly means - certainly given the evidence I have heard so far this morning - that my judgment will be sent to the SRA [Solicitors Regulatory Authority].
>
> Appellant: Yes.
>
> Judge: Now, in those circumstances - I know you were not here at the last hearing - if you want to have a few minutes to think about it then you can do so in respect of giving evidence, but when you say you can answer points, you cannot answer points just sitting on the Bench.
>
> Appellant: Um, could I perhaps have a few minutes just to reflect on that position?
>
> Judge: I will give you five minutes to consider the position.
>
> Appellant: Yes, thank you."

23. After a short adjournment, the appellant told the judge that he would not be giving evidence. The judge then proceeded to hear submissions from Mr Evans, the appellant, and Mr Isaac. Mr Evans took no procedural point objecting to the court punishing Ms Kadri but advanced points in mitigation on her behalf. In his submissions, the appellant started by referring to the fact that the breach had been purged and that the claimant had been compensated with interests and costs on an indemnity basis. There followed the following exchange:

> "Judge: Is there anything you want to say in respect of yourself in mitigation and why I should not send you to prison as being a member of this solicitor's firm?

Appellant: OK. Well, a couple of points then please. The first point being this, that the, that the sum has been paid. That is the first point. The second is that costs have been paid on an indemnity basis ---

Judge: Well, that is the minimum.

Appellant: That is the minimum, absolutely. And it is a minimum that the, the court will start with. It is not a position that the money has not been paid or that there was any resistance. In terms of the undertaking position, the money was effectively held by Landmark and the control in respect of the release of that money was controlled within Landmark. It was within the control of the persons who were there. … the authorised persons who are able to make those, those sums payable. I have had no involvement. My role has been defined by Miss Kadri in the witness statement, I have a very nominal role within that organisation. And therefore, the suggestion or the inference that somehow ---

Judge: Are you not a member then?

Appellant: I am a member but I have a limited role and I think ---

Judge: So, you have an equal responsibility then as a member of the - of the limited liability partnership?

Appellant: From a, from a practical point in terms of ---

Judge: I am not asking from a practical point, Mr Ahmed, I am asking from a legal point.

Appellant: It may well be a matter which - if your Honour is minded to refer the matter to the SRA, it is a matter which the professional body will take up in terms of what influence there has been, if any, but from the practical position as it has been presented, I am not authorised to make any payments. The casework, in terms of the practice at Landmark, is something that I do not have and I do not engage in. My role is limited to the advocacy role and I say for those, for those reasons, I think it is right to say it is a monumental blunder ---

> Judge: Mmm.
>
> Appellant: ---but there has been an attempt and there has been - to remedy the position. We apologise and I apologise. I apologise to the court. And save for that, I do not think I could perhaps take up any more of your time, but the position is before your Honour. Thank you.
>
> Judge: Thank you."

24. Mr Isaac then addressed the court. His submissions focused principally on the appellant. He observed that he had been involved throughout the case, had known at every moment that the undertaking had been given, was in court when the fact that there had been a breach of the undertaking was raised, and had only apologised himself in submissions "in the last two minutes". Mr Isaac observed that he did not need to address the court further on the appellant's conduct because "it speaks for itself", adding that £9,000 had been paid to No 12 Chambers out of the monies released to the defendant in respect of the appellant's fees which was "salt in the wound". Mr Isaac then made brief submissions relating to Ms Kadri's position. The appellant was not given an opportunity to respond to the points made against him in Mr Isaac's submissions.

25. In her judgment, delivered ex tempore, the judge described the application as being "to commit Landmark Legal LLP for contempt of court". Having set out the relevant aspects of the history of the proceedings, she summarised briefly the hearing on 9 October, noting that counsel on behalf of Landmark and Ms Kadri had admitted and apologised fully for the contempt whereas the appellant "did not attend and did not provide the court with any explanation of his absence; nor did he seek an adjournment." Having summarised the structure of the partnership, she said that "the issue for the court today is to consider the sentence in respect of Landmark Legal, Miss Naseem Kadri, and Mr Sharaz Ahmed." She recorded that the appellant was not represented, that she had given him the opportunity to give evidence and warned him that he might be fined and/or sent to prison, and that he had not sought an adjournment nor wished to give evidence.

26. The judge directed herself as to the standard of proof and stated that "the law is well-established that principals can be punished for contempt where there is an LLP", citing the decision in *Olympic Council of Asia v Novans Jets LLP*. She added: "it follows therefore that the court has jurisdiction to sentence not only Landmark Legal LLP but also the principals, Miss Kadri, and Mr Ahmed." She identified, correctly, the factors to be taken into account when determining the penalty for contempt, as identified in the claimant's skeleton argument. Dealing first with Ms Kadri, she made some adverse findings against her, including that she had failed to supervise the practice and that she failed to ensure that there were proper procedures in place. She was, however, satisfied that Ms Kadri was unaware of the undertaking. The judge concluded that, when matters came to a head, Ms Kadri had taken "very swift action to remedy the breach".

27. The judge then considered the appellant.

> "34. As far as Mr Ahmed is concerned, he is in quite a different position. He has chosen not to give evidence, entirely

> his right, but that clearly means that the claimant's evidence is unchallenged by him. He has not filed a statement. Mr Ahmed in his submissions in mitigation has sought to minimise the impact of the breach of the undertaking. He attended court, he says, to apologise. The apology was, in my view, entirely half-hearted and lacking in substance. He indicated that he thought the repayment of the amounts were in effect sufficient and even went so far as to talk about compensation having been paid simply because there was interest on the money….
>
> 35. Mr Ahmed's position is frankly untenable. He was the one who gave the undertaking to the court. He went away to obtain instructions, despite the fact he was a principal within the firm and presumably could have given the undertaking himself. Nevertheless, he did expressly obtain instructions and then gave the undertaking to the court. Whatever the procedures were in Landmark Legal, having given that undertaking it would appear that steps were not then taken by him to ensure that the undertaking was properly recorded in the firm's records because when Miss Kadri tried to find out about the undertaking and check their records was no evidence of that undertaking."

28. Before deciding penalty, the judge moved to a different court room. She continued:

> "40. Was the breach deliberate? As far as Miss Kadri is concerned, I do not consider the breach was deliberate. I consider it was unintentional because she was not aware of the undertaking. As far as Mr Ahmed is concerned, he was fully aware of the undertaking. He was clearly aware that money had been paid. He accepted a financial benefit from the breach by accepting £9,000 by way of fees. Therefore, as far as Mr Ahmed is concerned, I do find beyond reasonable doubt that the breach was a deliberate breach of the undertaking. He must take an equal responsibility to Miss Kadri being an equal principal in Landmark Legal LLP."

She concluded that the appellant "has a very great degree of culpability" and on the question of mitigation held that, whereas Ms Kadri had taken steps to remedy the breach, there was "really no mitigation" from the appellant.

29. The judge imposed a fine of £20,000 on Landmark and directed that a copy of her judgment should go to the SRA. She made no further order in respect of Ms Kadri. With regard to the appellant, she concluded in these terms:

> "47. As far as Mr Ahmed is concerned, I consider his position to be very serious. He gave the undertaking and has been involved in the proceedings throughout; he knew of the payment out and was copied into all the correspondence that took place in December 2022. He was in attendance at the hearing in December 2022 and knew the order that the court had made. He has benefitted financially from the breach of the undertaking in

> receiving £9,000 to No.12 Chambers. He has put a position before the court in June that suggested first of all there was no undertaking and secondly, disputed the court's jurisdiction. Both of those were disingenuous in my view and he has been very late in making any sort of an apology to this court; that apology is at best half-hearted. He has considered that the repayment to the defendant is sufficient. He has not apologised to the court for the breach of the undertaking which he personally gave on behalf of the solicitors.
>
> 48. I therefore consider that in respect of Mr Ahmed, the only punishment that is appropriate for such a serious breach is a sentence of imprisonment. The court's orders and undertakings are there to be respected. It is important for the rule of law that such orders and undertakings are respected…."

30. Turning to the appellant the judge imposed "a period of six weeks' imprisonment, of which he will serve half" and a fine of £9,000 "to reflect the financial gain that he obtained from the breach", payable forthwith.

The appeal

31. The grounds of appeal initially drafted by solicitors on the appellant's behalf were expanded by Ms Fiona Horlick KC, instructed for the appeal hearing, with no objection taken by Mr Isaac. In summary, the eleven grounds were as follows:

(1) the hearing on 9 October 2023 should not have gone ahead in the appellant's absence and/or any representation on his behalf, particularly in circumstances where the judge made findings of fact against him in relation to a personal contempt as a designated member;

(2) the hearing on 24 November 2023 should not have gone ahead in circumstances where it was apparent that the appellant had no representation and no reasonable opportunity to obtain representation;

(3) the hearing on 24 November 2023 should not have been listed as a sentencing hearing for Landmark without informing the appellant that it was a sentencing hearing against him personally as a designated member – at no point were committal proceedings issued against the appellant personally as a designated member of Landmark;

(4) the appellant was not afforded a sufficient opportunity to take legal advice, seek representation, understand the importance of giving evidence, provide documentation to the court in his personal capacity or present any proper defence or mitigation;

(5) the judge made findings of fact against the appellant which were contrary to evidence and/or the factual background;

(6) the judge failed to take sufficient or any account of the fact that the appellant had personally purged the contempt by paying almost all of the monies himself out of his personal accounts;

(7) the judge failed to take into account the fact that the appellant has practiced as a barrister for twenty-three years without any complaints or findings against him;

(8) the judge failed to make any enquiry as to the appellant's personal circumstances and hardships caused by imposing an immediate sentence of imprisonment;

(9) the judge failed to take any or any sufficient consideration of suspending the sentence of imprisonment;

(10) the sentence of 6 weeks immediate imprisonment was both wrong and excessive in all of the circumstances;

(11) the fine of £9000 was wrong in all of the circumstances.

32. At the outset of the hearing, we informed counsel that from reading the papers we had concerns about the procedure which led to the appellant's committal. The oral argument therefore focused on those aspects of the grounds which related to procedure, rather than the substance of the allegations against the appellant or the sentence imposed.

33. Ms Horlick relied first on the fact that the defendant to the committal application was Landmark rather than any of its officers. In those circumstances, there was no reason why the appellant would have been on notice that the court at the sentencing hearing would be considering punishment for anyone other than Landmark. It is clear from the transcript of the November hearing that the appellant had no idea that the judge had either already found or might find that he personally was in contempt of court. Ms Horlick submits that this is clear from the appellant's initial statement at the hearing: "…I have attended in order to firstly offer the apology to this court and then secondly, to assist with what I can in this sentencing hearing."

34. Ms Horlick submitted that at no point was there any proper inquiry as to whether it could be proved to the criminal standard that the appellant was personally in contempt. Instead, it is plain that the judge wrongly equated an acceptance of the breach of the undertaking by Landmark with an acceptance of the breach by the appellant personally. She could not and should not have proceeded on that basis in the absence of any evidence of acceptance of this by the appellant himself. If that finding was made on 9 October 2023, it was not apparent from the face of the transcript of those proceedings, nor was that fact communicated to the appellant.

35. Nevertheless, it is clear from the transcript of the November hearing that the judge was proceeding on the basis that the finding of contempt made on 9 October included the appellant and Ms Kadri personally as well as the partnership. In those circumstances, she ought to have ensured that the appellant had a sufficient opportunity to take legal advice and seek representation, and to present any proper defence or mitigation, and that he understood the importance of giving evidence. The transcript of the November hearing demonstrates that the judge took none of those steps. Ms Horlick further argued that the judge did not allow the appellant a fair opportunity to make submissions on the issue of sentence. She allowed him only "a few minutes" to think about his position

and, on his return to court, unfairly interrupted him during the hearing and shut him off from making relevant submissions in circumstances where he was unrepresented and unprepared.

36. Ms Horlick submitted that it was very difficult to believe that anyone – particularly an experienced lawyer – who knew they were in personal jeopardy would turn up for such a hearing without being properly prepared. She contended that he was effectively blindsided by what happened.

37. In reply, Mr Isaac recognised that the committal application did not expressly identify the appellant as a defendant. It was the claimant's case, however, that the appellant was in fact on notice from the outset that he was potentially liable for the contempt. Furthermore, the admission of breach made at the hearing on 9 October by Mr Evans on behalf of Landmark bound the appellant as one of the partnership's two designated LLP members. Once he was informed of that admission, by email from the claimant's solicitors on 19 October, he ought to have realised that he was at risk of punishment at the subsequent sentencing hearing. Mr Isaac submitted that, just as Ms Kadri appreciated the risk to herself personally as a designated member of Landmark, the appellant must have appreciated the same.

38. The appellant had notice of the 24 November 2023 hearing and a reasonable opportunity to obtain representation if he wished to do so. Mr Isaac submitted that, as a legal professional who had specialised in litigation for more than twenty years, the appellant must be taken to have understood the importance of giving evidence, disclosing relevant documentation, and presenting proper argument or mitigation to the court. Insofar as the appellant was in any doubt, he was put on notice by the claimant's solicitors who wrote to the appellant on 19 October asking about his personal position but received no reply. Subsequently the skeleton argument filed and served on the claimant's behalf prior to the November hearing included specific assertions about his culpability. If the nature of the hearing on 24 November had come as a surprise to the appellant, he would have sought an adjournment to prepare his defence and/or seek representation. He made no such application, nor did he raise any complaint whatsoever about the purpose of the hearing.

39. Mr Isaac's submissions also rested on the evidence about the appellant's role in what happened during the possession proceedings. He was counsel for the defendant at the hearing in 2019 when the undertaking was given and at that point also a designated member of Landmark. He also represented the defendant at the earlier hearing in December 2022 when the order was made that ought to have led to the release of the monies. He was copied into the correspondence which was directed at giving effect to that order. He was present at the hearing in June 2023 when it was denied on behalf of Landmark that there had been such an undertaking or, if there was, that there had been a breach. He failed to disclose that he had received part of the monies himself. When the committal proceedings were started, he did not engage with them at all until the November hearing. Mr Isaac described the appellant as the architect of everything that had happened in connection with the breach of the undertaking.

Discussion

40. It was common ground before us that under CPR Part 81 the court has power to commit a director or other officer of a body corporate which has breached a court order or

undertaking. That power extends to the officers of any entity which has a distinct legal personality separate from that of its members or those in control of it but which can only act through the decisions of natural persons. A limited liability partnership is just such an entity and its designated members fall within the category of "director or other officer" for the purposes of CPR Part 81: *Olympic Council of Asia (No. 2) v Novans Jets*, supra, per Foxton J, in particular at paragraphs 37 and 44.

41. The potential liability of a director or other officer in these circumstances has been recognised for many years. In *Tuvalu v Philatelic Distribution Corp. Ltd* [1990] 1 WLR 926, Woolf LJ (as he then was) stated at 936F:

> "In our view where a company is ordered not to do certain acts or gives an undertaking to like effect and a director of that company is aware of the order or undertaking he is under a duty to take reasonable steps to ensure that the order or undertaking is obeyed, and if he wilfully fails to take those steps and the order or undertaking is breached he can be punished for contempt."

But before such punishment can be imposed, the general principles applicable in contempt cases must be complied with. As Lord Woolf observed earlier in that judgment (at p934H to 935A),

> "The essential point which the cases establish is that an alleged contemnor should be told, with sufficient particularity to enable him to defend himself, what exactly he is said to have done or omitted to do which constitutes contempt of court. The cases make clear that compliance with this rule will be strictly insisted upon since the liberty of the subject is at stake…."

42. In *Sectorguard PLC v Dienne PLC* [2009] EWHC 2693 (Ch) Briggs J (as he then was) rejected a submission that a committal application relying on a breach of an undertaking by a company automatically disclosed a case to answer against all its directors, however passive their role, so that it was for any director served with the application to show why he should not be regarded as responsible for the contempt. At paragraph 42, he concluded:

> "…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."

It is thus a requirement for a committal of a director or other officer of a body corporate that the committal application must name the individual as a defendant and disclose the basis on which it is alleged that they are responsible for the breach of order or undertaking.

43. It is therefore correct, as the judge observed, that the court has jurisdiction to commit not only an LLP but also its principals. But it can only exercise that jurisdiction over any particular individual if the procedural requirements for a committal have been complied with, or waived. It is plain that there were serious deficiencies in the procedure adopted on this occasion.

44. The contempt application dated 11 July 2023 named Landmark Legal LLP as the sole defendant to the application. The appellant was not named as a defendant, and no notice was given to him of the rights he would have as a defendant under CPR rule 81.4(2) or the consequences of a finding that he had been in contempt. The nature of the contempt identified in the application was "breach of the undertaking provided by Landmark…" The summary of facts alleged to constitute the contempt focused on the actions of Landmark. Although it contained two passing references to the appellant, it did not set out the basis on which he was alleged to be responsible for the breach. The application was not served personally on the appellant as would have been required under rule 81.5 if he had been a defendant to the contempt application.

45. The order made on 9 October 2023 recited that it was made "upon the contempt hearing brought by the claimant against Landmark" and that the contempt had been admitted by Landmark. It provided that the application for Landmark to purge the contempt by payment of defined sums was adjourned to a further hearing. The appellant was not present at the hearing on 9 October and the order contained no direction to him to attend the adjourned hearing. In fact, it made no reference to the appellant at all. When the claimant's solicitors sent a copy of the order and notice of the next hearing to the appellant, they asked him whether he intended to offer any explanation for the contempt admitted by Landmark and whether he intended to appear "to offer any personal explanation or apology for the matters complained of." There was nothing in the letter to indicate that the court would be asked, or might be minded, to impose any punishment on the appellant himself. The skeleton argument prepared on behalf of the claimants for the hearing on 24 November stated that, as the breach had been admitted by Landmark, it was open to the court to commit its designated members and clearly identified the appellant as being responsible for the breach. It should be noted, however, that the skeleton argument concluded by observing that there were mitigating factors which were likely to have a bearing on the court's view as to the appropriate sentence and that the breach had by that point been remedied. There is a dispute between the parties as to whether the skeleton was served on the appellant. Assuming as I do that the claimant's solicitors are correct in saying that it was, the appellant only had at most three days' notice of the arguments made therein.

46. At no point was the appellant told, as would be required if he was a defendant to the contempt proceedings, that he had the right to be legally represented, or that he was entitled to a reasonable opportunity to obtain legal representation and apply for legal aid. When the judge addressed him at the hearing on 24 November 2023, she observed that she could not make him give evidence but asked if he wanted to give evidence and gave him five minutes to think about it. She did not tell him that he was entitled but not obliged to give evidence, nor did she say he had the right to remain silent and decline to answer any question the answer to which may incriminate him. The fact that the appellant is a qualified and experienced lawyer does not obviate the requirement under the rules to inform him of these rights because, as Woolf LJ said in the *Tuvalu* case,

compliance with the rules is "strictly insisted upon since the liberty of the subject is at stake".

47. In the event, after being warned by the judge that he and/or Ms Kadri could go to prison or be fined, the appellant chose not to give evidence and advanced only brief submissions on his behalf. Mr Isaac proceeded to make submissions highlighting certain aspects of the appellant's conduct. The appellant was not allowed an opportunity to reply, in breach of the well-established practice that a person at risk of punishment in court should have the last word.

48. There is a dispute as to whether the appellant was in fact unaware that he was in jeopardy and was, as Ms Horlick put it, "blindsided" by what happened. She submitted that his actions before and at the hearing in November were not those of an experienced lawyer who realised he was at risk of going to prison. The claimant's case is that, as "the architect" of what happened, the appellant was personally responsible for Landmark's breach of the undertaking and fully aware of the consequences for the partnership and for him personally. But it is unnecessary to resolve this dispute. However egregious the conduct of an alleged contemnor, he is entitled to the procedural protection afforded by the rules.

49. It was for those reasons that I concluded that the appeal should be allowed on grounds (3) and (4).

50. In those circumstances, it is neither necessary nor appropriate to consider the substantive allegations of contempt against the appellant nor the sentence that was imposed. As the application against him was not brought in accordance with the rules, this Court cannot be confident that there has been full and fair evaluation of the extent of his responsibility for the breach of undertaking. Furthermore, it remains open to the claimant to bring contempt proceedings against the appellant personally. In the circumstances, it would be wrong for this Court to make any further comment.

LORD JUSTICE WARBY

51. I agree.

52. As noted in Arlidge, Eady and Smith 5th ed at 14-2 note 7:

> "If a court is contemplating punishment or rebuke of any individual (however mild) for involvement in an alleged contempt, it is elementary that such a person should be made party to the application, notified of the case against him, and given an opportunity to make representations."

53. In the present case, as I see it, there were two separate flaws. First, and fundamentally, there were no proceedings against this appellant. This contempt application was not brought against a party to the proceedings in respect of which the contempt was said to have been committed. There was accordingly an originating application notice in Form 600. This named Landmark as sole defendant to the contempt application. It does appear to have been duly served on Landmark. But the appellant was never identified

as a defendant to the application nor was he served with the application notice or evidence in support. There was no attempt to effect personal service of the contempt proceedings nor was any application made for an order dispensing with service or permitting service by an alternative method. In those circumstances I doubt the court had jurisdiction to adjudicate on any allegation of contempt against him. In civil matters the court's jurisdiction over a person is generally established by identifying them as a party to the proceedings in the document that initiates the proceedings and serving that document upon them in a way recognised by the CPR.

54. The second flaw is that the application notice did not set out particulars of the case against this appellant. That was an essential ingredient of any fair process. There was nothing that could fairly be said to amount to a satisfactory alternative. The case was not clearly or distinctly set out in the application notice, supporting affidavits, correspondence or skeleton arguments.

55. Although the case was not cited to us it is comforting to know that the elementary propositions I have mentioned are supported by high authority in the form of the House of Lords' decision in *Beggs v Scottish Ministers* [2007] UKHL 3, [2007] 1 WLR 455. In that case, the Chief Executive of the Scottish Prison Service was brought before the court with a view to sanctioning him for contempt consisting of a failure to take reasonable steps to ensure compliance with an undertaking given by Ministers. The summons was set aside because of a failure to join the Chief Executive, to warn him that the court had in mind to single him out in that way, and to give him an opportunity to defend himself before the order was pronounced. In the present case, although the judge did give the appellant an opportunity to defend himself the other requirements of due process had not been met and the same result must follow.