

Case No: CH-2016-000237

Neutral Citation Number: [2017] EWHC 2116 (comm)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice
Strand
London
WC2A 2LL

Friday, 30 June 2017

BEFORE:

MR JUSTICE KNOWLES CBE

BETWEEN:

A

Respondent

- and -

B

Applicant

MR RICHMOND appeared on behalf of the Applicant

MR HENDERSON appeared on behalf of the Respondent

Judgment
(As Approved)

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8th Floor, 165 Fleet Street, London EC4A 2DY
Tel No: 020 7404 1400 Fax No: 020 704 1424
Web: www.DTIGlobal.com Email: TTP@dtiglobal.eu
(Official Shorthand Writers to the Court)

1. MR JUSTICE KNOWLES: Following an arbitration award in a relatively modest sum in favour of the claimant and against the defendant, Huaya Maritime Corporation, a freezing order was made in this jurisdiction. As is often the case, the freezing order included disclosure requirements. The order was made originally by Cranston J and later continued by HHJ Waksman QC. The order required that Mr Hua meet the disclosure requirements. A penal notice was attached to the order.
2. One of the matters that has transpired since is that Mr Hua has limited English. He enjoys the position of being the principal individual connected with the corporate defendant. The disclosure requirements directed to Mr Hua were not complied with. After an initial hearing where it was unclear whether Mr Hua had received notice, the question of his committal for contempt for not complying with the order came before the court, and specifically before Cranston J. Mr Hua was again absent at that subsequent hearing.
3. The result of the hearing, with Cranston J having made a number of findings of fact as best he could on the material (some of it indirect) that was available before him, was a sentence of imprisonment for a period of 18 months. Cranston J recorded towards the end of his decision that were Mr Hua to comply now with the disclosure order requirements, “there would be a substantial remission”.
4. Since that point a lot has happened. The order has been complied with in full, and there is no argument about that on the part of the claimant. Indeed, the entire proceedings have reached a conclusion because the arbitration award has been settled in full and, where costs are involved, those that were due have been settled. It transpires that the disclosure that was not provided was to the effect that there were no assets on the part of the corporate defendant. That information of course is still useful and should have been disclosed. However it was one of a number of areas, it now transpires on undisputed evidence, where there was confusion or misunderstanding or less understanding than there might have been on the part of Mr Hua.
5. It is very clear from the evidence before this court that the present case did not involve in any sense a conscious or tactically inspired decision not to comply with the order of this court. There is no shadow of advantage to be detected in the present case from the non-provision of information. This is not a case where there was any concealment in order to take advantage.
6. Also available to this court now is a closer picture than was available on the evidence before Cranston J of what had come to the attention of Mr Hua and what had not. It is very clear that a number of key communications did not come to his attention, and it is also clear that in some cases key communications did not come to his attention in translated form. I have mentioned before he has limited command of this language. It is also now clearer than it could possibly have been before Cranston J why Mr Hua was not present at the committal hearing. Specifically it appears now that he was not aware of that hearing and of its consequences as the court would have wished him to be.

7. There is (as is rightly often emphasised) a public interest in the orders of this court being obeyed. Any uncertainty should be raised with the court so that clarification has been given. The importance of this is underlined by the fact that the sanctions for non-compliance will ordinarily be serious. It is by no means unusual to find a prison sentence of the length imposed in this case imposed in circumstances of non-compliance with a disclosure order attached to freezing injunction relief. However, in the present case the circumstances have shown themselves to be in material respects different from the more limited presentation available to Cranston J.
8. It is the case (and the evidence shows this) that Mr Hua has incurred financial consequences both in terms of payment of the award and costs. It is also very clear that in the particular commercial community in which he is engaged, there have been adverse reputational consequences for Mr Hua that are material. Through Mr Jeremy Richmond of counsel, who has assisted the court in a very substantial and realistic way on behalf of Mr Hua, Mr Hua apologises without qualification to the court. Mr Hua adds a personal and direct expression of that apology in the witness statement evidence before this court. In circumstances on which I need not elaborate but which I accept, and accept are acceptable, Mr Hua is not present personally within this jurisdiction on this occasion, but I am satisfied that that is not to be weighed in any balance against him in the present case.
9. I have come to the conclusion that the present case is one in which the substantial remission that Cranston J contemplated should in fact, with the additional advantage of the material that I have had, amount to remission in full. It is the just and fair outcome of the present case at this stage that Mr Hua should have suffered what he has suffered and that the additional sanction of service of a prison term not continue to be added to the consequences. The order of the court will recite in addition that it appears that the orders imposed by the court have now fully been complied with and the contempt is purged.