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IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION



[2023] EWHC 2950 (KB)

No.QB-2021-000760

Royal Courts of Justice

Wednesday, 25 October 2023

Before:

HIS HONOUR JUDGE RICHARD ROBERTS
(Sitting as a Judge of the High Court)

B E T W E E N :

METROLINE LIMITED

Claimant

- and -

MR DIEGO BARBOSA ARAUJO

Defendant

MISS A KARSERAS (instructed by Weightmans) appeared on behalf of the Claimant.

THE DEFENDANT did not appear and was not represented.

J U D G M E N T

JUDGE RICHARD ROBERTS:

Introduction

- 1 This is the final hearing of a committal application for contempt on the grounds that the defendant knowingly made false statements in documents supported by statements of truth and for interference with the due administration of justice. I am grateful to Ms Karseras of Counsel, who represents the claimant, for her skeleton argument dated 18 October 2023 and for her oral submissions. The defendant does not appear and is not represented.
- 2 There are before the court a number of hearing bundles:
 - 1) A bundle marked “Additional bundle” of 381 pages, which I will refer to below as “main bundle”.
 - 2) A statements and exhibits bundle of 203 pages;
 - 3) A small bundle relating to the process server;
 - 4) A bundle of authorities;
 - 5) The bundle for the permission hearing on 5 May 2021.

Service on the Defendant

- 3 The first issue that I must consider is whether the claimant can prove that the notice of hearing today has been served upon the defendant.
- 4 The Claimant’s application for permission to bring committal proceedings was listed to be heard on 5 May 2021. By an order dated 17 March 2021, Stewart J ordered¹,
 - 1) “UPON considering the papers filed in this matter and noting that service was affected on 16th March 2021
 - 2) IT IS ORDERED
 1. The application for permission to bring committal proceedings will be heard at the Royal Courts of Justice, by remote hearing, on Wednesday 5th May 2021 with an estimated length of two hours.
 2. The defendant may respond to the application by filing witness statement evidence by 4pm 14th April 2021.”
- 5 On 5 May 2021 HHJ Walden-Smith granted the claimant permission to bring these contempt proceedings; and her order² records in terms that the Court was satisfied that the defendant had been served with proceedings and that he was given notice of the proceedings.

¹ Main bundle, 1

² Main bundle, 12-13

6 On 15 September 2021 Lavender J made an order³ that the order of HHJ Walden-Smith dated 5 May 2021 be varied to the effect that the claimant have permission to serve that order and any further documentation in this case by first class post at 36 Wellington Road London E17 6LS. The order further provided that the date of deemed service shall be the second business date after the date of posting the order.

7 The committal application was listed for a final hearing before HHJ Walden-Smith on 4 May 2023. The defendant did not attend the hearing. A copy of HHJ Walden-Smith's judgment is in the statements and exhibits bundle at 94 to 101. HHJ Walden-Smith found that⁴,

“35. The difficulty, as I have referred to before, is the fact that, even if satisfied, as I am, that the claimant has complied with the service requirements and in accordance with the order for substituted service by notifying the defendant of this hearing - notifying the defendant first of the hearing on 3 May and providing all the necessary documentation and then notifying him of the change of date - that service has been extremely late through no fault of the claimant. Had the defendant remained in the property he had been in, he would have been served back in late March. As it is, the earliest that I can be satisfied that he was served with the documentation was Tuesday of this week, two days ago, with notification of the change of date yesterday.

“36. Given the seriousness of this matter and that this is a substantive hearing with respect to committal for contempt and the potential consequences of any finding of contempt beyond reasonable doubt I am not minded, taking into account the matters contained in the checklist set out by Cockerill J in the case of *ICBC Standard Bank PLC & Ors v Erdenet Mining Corporation LLC* [2017] EWHC 3135, that this is a matter where the proceedings should continue in the absence of the defendant.

“37. Going through the checklist, I am satisfied that the defendant has been served with the relevant documents, including notice of the hearing, that the defendant has failed to advance any reason for his non-appearance and that his previous behaviour, both within these particular contempt proceedings but also within the costs aspect of this case, indicates that he has made the determination not to attend. The disadvantage to him in not presenting his account of events is, of course, obvious, but he has been given opportunity to do so by reason of the order I made and has made a determination not to provide evidence. The prejudice to the claimant, both by way of costs and time, is of course, significant.

“38. However, looking at the checklist, I have to consider whether there is sufficient notice to enable the defendant to prepare for this hearing and I have to consider whether there is undue prejudice to the forensic process by reason of the absence of the defendant and the overriding objective. Had there been notice given at an earlier stage,

³ Statements and exhibits bundle, 92

⁴ 100-101

in the way that notice has now been given, then I would have been of the view that this is a case appropriate to proceed with in the absence of the defendant. He has been given the opportunity to take part in the past and has failed to do so and he is, and has been aware, aware of the fact that permission was given for these proceedings to continue to a substantive hearing with opportunity to give his own evidence.

“39. The difficulty, as I have set out in the course of submissions, is the lateness of the service with respect to this particular hearing and, given the significance of the matters, I do not consider that it would be appropriate to proceed in his absence at this time.

“40. Nonetheless, given I am satisfied that there has been service and that the defendant has throughout this matter being given the opportunity to event attend and, given all the evidence pointing towards the fact that the defendant will not take part in these proceedings unless he is compelled to do so, I am willing, and consider it essential, to grant a warrant for his attendance at the next hearing of this matter. Without such a warrant, I consider it highly likely that he will not attend and the claimant will be left again with seeking to have this matter dealt with in his absence.”

8 Attempts were made earlier this morning to execute this bench warrant without success.

9 The substantive committal hearing was listed before HHJ Lickley KC, sitting as a Judge of the High Court, on 23 May 2023⁵. The Defendant was neither present nor represented. The bench warrant was not executed. The substantive hearing of the claimant’s application was adjourned.

10 The claimant issued an application, dated 11 October 2023, for alternative service. Hill J ordered on the papers⁶ that there be permission to serve the defendant by alternative methods under CPR 6.15, namely:

- 1) By first class pre-paid post to 33 Westward Road, London E4 8LX; and/or
- 2) By Facebook

with the deemed service date being the second business date after the posting of the order to the above address.

11 There is a witness statement from Michelle Riley, a solicitor employed by the claimant’s solicitors, dated 16 October 2023⁷, in which she says at paragraph 15 that she has notified the Tipstaff of the hearing on 25 October 2023 and requested that further attempts are made to execute the warrant and bring the defendant to Court on 25 October 2023. Ms Riley says in her witness statement⁸,

“17. In summary, the defendant has been notified of the Court Hearing on 25 October 2023 by the following methods:

⁵ Statements and exhibits bundle, 107-108

⁶ Statements and exhibits bundle, 194-195

⁷ Statements and exhibits bundle, 186-189

⁸ Statements and exhibits bundle, 189

- By first class post at the 33 Westward Road address on 29 August 2023
- By first class post at the 19 Brookdale Road address on 10 October 2023
- Via Facebook/Messenger on 12 October 2023, enclosing earlier correspondence and the order of Mrs Justice Hill
- By first class post at the 33 Westward Road address enclosing the order of Mrs Justice Hill J on 12 October 2023.”

12 Ms Karseras has read to the Court an email from the Tipstaff which details the efforts the Tipstaff have made earlier this morning to execute the bench warrant.

13 I conclude that the defendant has been served in accordance with the order of Hill J made on 12 October 2023.

Absence of Defendant

14 The second issue is whether the Court should proceed to hear the committal but not sentence in the absence of the defendant.

15 The claimant was given permission to issue these proceedings on 3 March 2021 by HHJ Walden-Smith. The hearing of the committal application has been adjourned on two occasions, on 4 May 2023 and on 23 May 2023.

16 In *JSC BTA Bank v Alexander Yu Stepanov* [2010] EWHC 794 (Ch) in the Chancery Division, Roth J said:

“11. The court has jurisdiction to hear a contempt application in the absence of the defendant in exceptional circumstances. In *Lamb v Lamb*, [1983] FLR 278 Oliver LJ, in his judgment in the Court of Appeal, said this:

‘... I see the danger of hearing any application for committal for contempt, which is, after all, a quasi-criminal proceeding, ex parte. It is, I think, established that it is something that should only be done in exceptional circumstances, but the question is always one for the discretion of the judge who has to hear the matter. He has to balance the desirability of making an immediate hearing, the urgency of the matter, and so on, against the possibility that the evidence before him may not be complete. But here, if the evidence was to be believed, and there is no reason why it should not have been (and indeed it was not, I think substantially challenged on the subsequent hearing), the judge was faced with what he considered to be a flagrant and deliberate contempt of court committed only two days after the injunction had been granted, an injunction which had been fully explained to the respondent and in circumstances in which the respondent could be under no illusion about the consequences of a breach. He had to balance the desirability of obtaining the

respondent's account of the matter against the possibility that, in the case where the petitioner had been complaining of harassment, such harassment as had taken place was again going to be committed and in his discretion he came to the conclusion that it was a case which he ought to hear ex parte and deal with on that basis. I am not, speaking for myself, on the present material, prepared to say that in making that decision he was wrong.'

...

"12. Contempt proceedings are quasi-criminal proceedings, as Lord Justice Oliver there emphasises, and they are criminal proceedings for the purposes of Article 6 of the European Convention on Human Rights. I was therefore referred to consideration by the House of Lords as to when a criminal trial can take place in the absence of the defendant. This was in the case of *R v Jones (Anthony)* [2002] UKHL 5; [2003] 1 AC 1. There their Lordships approved, with one qualification, the guidance given in that case in the Court of Appeal in a judgment of the court delivered by Lord Justice Rose, *R v Hayward* [2001] QB 862. The Court of Appeal, after noting the general right of a defendant to be present at his trial and indeed to be legally represented, and the discretion of the trial judge to proceed without him, said this (at para.22):

'That discretion must be exercised with great care, and it is only in rare and exceptional cases that it should be exercised in favour of a trial taking place or continuing, particularly if the defendant is unrepresented. In exercising that discretion fairness to the defence is of prime importance, but fairness to the prosecution must also be taken into account. The judge must have regard to all the circumstances of the case, including in particular ...'

"The Court of Appeal then set out various factors to be considered, which I read omitting the one that was disapproved by Lord Bingham on appeal in the House of Lords:

- '(1) The nature and circumstances of the defendant's behaviour in absencing himself from the trial or disrupting it, as the case may be and, in particular, whether his behaviour was deliberate, voluntary and such as plainly waived his right to appear;
- '(2) Whether an adjournment might result in the defendant being caught or attending voluntarily and/or not disrupting the proceedings;
- '(3) The likely length of such an adjournment;
- '(4) Whether the defendant, though absent, is, or wishes to be, legally represented at the trial or has, by his conduct, waived his right to representation.'

- ‘(5) Concerns an absent defendant's legal representations which does not here apply.
- ‘(6) The extent of the disadvantage to the defendant in not being able to give his account of events, having regard to the nature of the evidence against him.’
- ‘(7) Concerns the risk of the jury reaching an improper conclusion about the absence of the defendant and so obviously does not apply; and (8) refers to the seriousness of the offence;
- ‘(9) The general public interest and the particular interest of victims and witnesses that a trial should take place within a reasonable time of the events to which it relates.’”

- 17 I was referred helpfully today by Ms Karseras to *ICBC Standard Bank Plc v Erdenet Mining Corporation PLC* [2017] EWHC 3135, a decision of Cockerill J. At paragraphs 53 to 65 Cockerill J dealt in detail with the hearing of contempt proceedings in the absence of a defendant. Her Ladyship adopted a checklist, which had been set out by Cobb J in *Sanchez v Oboz* [2015] EWHC 235 (Fam). I will adopt the same checklist and apply it to the facts of this case.
- 18 The first issue identified by Cobb J is whether the defendant has been served with the relevant documents, including notice of the hearing. In this case the defendant has been served with all of the relevant documents including notice of this hearing.
- 19 The second issue considers whether the defendant had sufficient notice to enable them to prepare for the hearing. I find that in this case the defendant has had sufficient notice to enable him to prepare for the hearing. He was given notice of the committal hearings on 4 May 2023, 23 May 2023 and this hearing, today.
- 20 The third issue is whether any reason has been advanced for the defendant’s non-appearance. I find that no reason has been advanced by the defendant. The defendant has totally failed to engage with these committal proceedings or any of the other enforcement proceedings. For example, the defendant failed to attend the application for an oral examination.
- 21 The fourth issue is whether by reference to the nature and circumstances of the defendant’s behaviour, he has waived his right to be present. That means that it is reasonable to conclude that the defendant knew of or was indifferent to the consequences of the case proceeding in his absence. I find that in the present case, it is appropriate to conclude the defendant has waived his right to be present because he knows or is indifferent to the consequence of this case proceeding in his absence.
- 22 The fifth issue is whether an adjournment would be likely to secure the attendance of the defendant or facilitate his representation. In my judgment the defendant has failed to attend two previous committal hearings. The Tipstaff has been unable to execute the Bench Warrant for the defendant’s arrest earlier this morning. In these circumstances, I find that it is unlikely that if an adjournment was granted by the court today, this would secure the attendance of the defendant.

- 23 The sixth issue is the extent of the disadvantage to the defendant in not being able to present his account of events. I find that the disadvantage to the defendant is entirely of his own making, and the grounds for committal are extremely strong. I conclude that looked at in the round, the disadvantage to the defendant is outweighed by his deliberate failure to attend the hearing.
- 24 The seventh issue is whether undue prejudice would be caused to the claimant by any delay. I find that delay would cause undue prejudice to the claimant. Justice delayed is justice denied. There is already a costs order in the claimant's favour of over £20,000 and that costs bill is increasing.
- 25 The claimant has spent considerable time and resources, and delay would significantly increase that expenditure.
- 26 The eighth issue is whether undue prejudice would be caused to the forensic process if the application was to proceed in the absence of the defendant. I find that there would not be undue prejudice to the defendant because the claimant has cogent and compelling evidence to prove the grounds of committal in the absence of the defendant.
- 27 The ninth and final issue is to consider the "overriding objective" in CPR Part 1 to deal with this case justly at proportionate cost. I find that applying the overriding objective, it points firmly to this case proceeding in the absence of the defendant.
- 28 Standing back and looking at my findings on the checklist issues, I conclude that this is an exceptional case and that as a matter of discretion, I should proceed to hear the committal in the absence of the defendant.
- 29 I have considered whether I should sentence the defendant in his absence if I find any or all of the grounds of committal have been proved beyond reasonable doubt. Ms Karseras rightly acknowledged that if the Court found all or any of the grounds of committal approved and then adjourned for three weeks, this would give the defendant an opportunity to make an application to set aside a committal order if one is made, and also would give the defendant one last opportunity to attend the sentencing hearing. I conclude that if I find all or any of the six grounds of committal proved beyond reasonable doubt, I should adjourn the sentencing hearing for a period of three weeks.

L A T E R

Grounds of Committal

- 30 The six grounds of alleged contempt are particularised in the details of claim⁹:
- 1) Knowingly making a false statement of truth in his witness statement dated 15 November 2019 at paras.19 to 20 that the defendant sold the motorcycle to Fawza Motorcycles on 3 June 2019, who collected it the same day and he "had no idea what happened to my vehicle after 3 June 2019";
 - 2) Interference with the due administration of justice by attempting to bring a claim for the pre-accident value of the motorcycle and

⁹ Main bundle, 32-34 at 33

hire charges on false pretences when he knew the claims could not properly be brought at the time he brought them;

- 3) Interference with the due administration of justice by preventing the claimant from inspecting the motorcycle;
- 4) Knowingly making a false statement of truth either in the witness statement dated 15 November 2019 at para.18 that Bravos Motorcycles had advised they did not want to purchase it, or in his supplemental witness statement dated 20 February 2020 at para.7 that Bravos Motorcycles verbally agreed to buy the motorcycle on 3 June 2019;
- 5) Knowingly causing a false statement of truth to be made in the particulars of claim in respect of claims for a damaged helmet and mobile phone; and
- 6) Interference with the due administration of justice in not reporting that repairs had been carried out to his motorcycle.

I remind myself that these allegations must be proved by the claimant beyond reasonable doubt.

- 31 The allegations fall into two separate categories:
1. Knowingly making false statements in documents supported by statements of truth; and
 2. Interference with the due administration of justice.

Interference with the Due Administration of Justice

- 32 Firstly, there are allegations that the defendant interfered with the due administration of justice. I was referred to *Attorney General v Leveller Magazine Ltd* [1979] AC 440, a decision of the House of Lords (as it then was) where Lord Diplock said at p.449:

“... although criminal contempts of court may take a variety of forms, they all share a common characteristic: they involve an interference with the due administration of justice either in a particular case or more generally as a continuing process. It is justice itself that is flouted by contempt of court, not the individual court or judge who is attempting to administer it.”

- 33 The existence of this form or species of contempt liability is recognised in the Contempt of Court Act 1981 at s.6(c).

False Statements made in Witness Statements and Statements of Case

- 34 Secondly, there are allegations that deal with false statements made in witness statements and statements of case. I was referred to CPR 22.1(1), which sets out the documents which might be verified by a statement of truth. They include a statement of case and a witness statement. CPR 22.1(4) states,

“...a statement of truth is a statement that – (a) the party putting forward the document; (b) in the case of a witness statement, the maker of the witness statement; ...believes the facts stated in the document are true.”

35 I was also referred to CPR 32.14, which states:

“Proceedings for contempt may be brought against a person who makes or causes to be made a false statement in a document, prepared in anticipation of or during proceedings and verified by a statement of truth, without an honest belief in its truth.”

36 In Civil Procedure volume 1 at CPR 81CC.10¹⁰ it is said, “That provision [CPR 32.14] did not create a new form of contempt liability. The utilisation of the rule by the Courts may be regarded as an application of the “interference” principle to novel circumstances.”

37 I was referred to the case of *Walton v Kirk* [2009] EWHC 703 at paras.8 and 14B where it was held that for the claimant to establish contempt in respect of witness statements, three matters must be proved beyond reasonable doubt:

- 1) The falsity of the statement in question;
- 2) That the statement has, or if persisted in would be likely to have, interfered with the course of justice in some material respects; and
- 3) That at the time it was made, the maker of the statement had no honest belief in the truth of the statement and knew of its likelihood to interfere with the course of justice—

38 In short, a false statement is one which is not true and which when made, the maker knew was not true or did not honestly believe to be true.

39 Ms Kareras has referred me to the case law dealing with the contrast between careless statements and reckless statements. The key element of distinction between the two is that reckless statements involve a conscious awareness of what a person is saying.

Witnesses

40 The claimant called two witnesses to give evidence:

- 1) Mr David John Marriott, an employee of the claimant and Head of Claims. Mr Marriott has provided an affidavit sworn on 8 December 2020¹¹ and a number of exhibits. He sets out each of the six allegations and with an analysis thereunder.
- 2) Mr Alan Wolfson, the claimant’s Operations Manager. He provided a witness statement of 9 December 2019¹² and he took a number of photographs or images of the motorcycle at or near the defendant’s home.

¹⁰ P. 2345

¹¹ Bundle for the permission hearing, 13-29

¹² Bundle for the permission hearing, 201-202

Ground 1: Knowingly making a false statement of truth in his witness statement dated 15 November 2019 at paragraphs 19 to 20 that he sold the motorcycle to Forza Motorcycles on 3 June 2019 who collected it the same day and he had “no idea what happened to my vehicle after the 3rd June 2019”.

41 The Defendant said in his witness statement dated 15 November 2019¹³ that he sold the motorcycle to Forza Motorcycles on 3 June 2019:

“18. ... Indeed, the storage garage, Bravos Motorcycles, had advised that they did not want to purchase it, and I had approached a few other garages about buying it without success. As such I still had my vehicle on the 3rd June 2019 when I was contacted by my solicitors and was asked if the Defendant’s engineer could inspect my vehicle. I therefore agreed to the inspection accordingly.

“19. However on the very same date I was contacted by one of the garages I had approached, Forza Motorcycles, who advised me that they now wanted to purchase my vehicle as they needed the parts for a repair to a customer’s vehicle, and that they would pay me £250.00 for the same ... I therefore agreed to the sale on that same date. The garage then also came and collected my vehicle that same date, although my vehicle did not formally change owners until the 2nd July 2019...

“20. I confirm I have no idea what happened to my vehicle after 3rd June 2019. As far as I was concerned it was going to be broken down for parts, and then scrapped thereafter, although it appears that the garage have now sold it on.”

42 The statements in the Defendant’s witness statement, dated 15 November 2019, repeated what had been said a number of times in correspondence by the Defendant’s solicitors, namely that the motorbike was no longer with the Defendant during June 2019, when that was untrue.

43 By an email dated 3 June 2019¹⁴ from the defendant’s solicitors to the saying they had spoken to their client. They confirm the vehicle is available for inspection facilities at the following address and say,

“Our client has advised he is available Thursdays. Can you please pass my details on to the assessors in order for them to notify me when they have arranged an inspection so I can inform my client.”

44 By an email dated 4 June 2019¹⁵, the defendant’s solicitor said that she would:

“... try and speak with the defendant today to arrange for Friday and get back to you.”

¹³ Pages 90-91 of bundle for hearing for permission on 5 May 2021

¹⁴ Bundle for hearing for permission on 5 May 2021, 172

¹⁵ Bundle for hearing for permission on 5 May 2021, 174

- 45 A note by the claimant's solicitors dated 5 June 2019¹⁶, recording a call from the defendant's solicitors, says,
- “Re. request for inspection.
- Vehicle scrapped and sold for salvage.
- This took place on 3 June 2019.
- Was sold to Bravos Motorcycles.”
- 46 An email dated 10 June 2019¹⁷ from the defendant's solicitors to the claimant's solicitors says,
- “I've checked with RGS, clients advise the vehicle was sold for salvage to Bravos Motorcycles.”
- 47 An email from the claimant's solicitors dated 10 June 2019¹⁸ says,
- “Thank you for the update. I will update my client and take instructions; however it is extremely concerning your client's disposed of evidence when he was aware we wanted to inspect it. We will require an inspection. Can you please contact Bravos and inform them not to dispose of the vehicle. We can inspect the vehicle at their offices. I still await evidence in respect of all aspects of the claim in addition. Could you please provide our engineers images as previously requested.”
- 48 By an email from the defendant's solicitors dated 19 June 2019¹⁹:
- “We've spoken with Bravos Motorcycles who advised they are no longer in possession of the vehicle.
- We confirm that hire is currently ongoing.”
- 49 By an email from the defendant's solicitors dated 25 June 2019²⁰ they say,
- “The vehicle was sold by Bravos Motorcycles to a third party for parts.”
- 50 In the Claimant's witness statement, dated 9 December 2019, of Mr Alan Wolfson, the Claimant's operations manager, he says²¹,
- “4. I located the claimant's scooter on 10 May 2019 (exhibit AW1), 13 May 2019 (exhibit AW2), 17 May 2019 (exhibit AW3), 7 June 2019 (exhibit AW4), 11 June 2019 (exhibit AW5), 14 June 2019 (exhibit AW6), 21 June 2019 (exhibit AW7), 26 June 2019 (exhibit AW8), 28 June 2019 (exhibit AW9).”

¹⁶ Bundle for hearing for permission on 5 May 2021, 178

¹⁷ Bundle for hearing for permission on 5 May 2021, 180

¹⁸ Bundle for hearing for permission on 5 May 2021, 186

¹⁹ Bundle for hearing for permission on 5 May 2021, 192

²⁰ Bundle for hearing for permission on 5 May 2021, 194

²¹ Page 201 of bundle for hearing for permission on 5 May 2021

51 Mr Wolfson has photographs of the motorcycle on all of those dates, in particular the June 2019 dates when the defendant said he had no idea where his vehicle was, yet it was parked on the road next to the council bike shelter outside 63 Brookdale Road, approximately 100 metres down the road from where the defendant lives.

52 On 18 October 2019 the scooter was again parked near the defendant's house.

53 The Claimant has served an affidavit from David John Marriott, dated 8 December 2020²². In his affidavit, Mr Marriott says that:

- 1) There is no dispute that the statement that the Defendant sold the bike on 3 June 2019 and he has no idea what happened to it after that are false. The Defendant says in his second supplemental statement, which is undated, at paragraphs 7-8²³ that Bravos motorcycles verbally agreed to buy his motorcycle on 3 June 2019 but did not agree to purchase his vehicle until 3 July 2019. At paragraph 9²⁴ he says,

“I acknowledge that my initial witness statement contains factual errors in respect of the actual date of sale – but it was never my intention to mislead and I never deliberately tried to stop the Defendant from inspecting my vehicle either.”

- 2) The Defendant cannot have had a reasonable belief in the truth of his statements as he knew he had not sold the bike until 2 July 2019 and he knew where the bike was until then. In the Defendant's initial witness statement he said that his bike was wanted “immediately” and the garage picked it up on the same day, namely 3 June 2019.
- 3) The Defendant has not explained how he could have said that he did not know where his bike was after 3 June 2019 when it was in fact outside his home.

54 I find that in his supplemental statement²⁵, which in the Portuguese version is signed and dated by him, the defendant says at paragraphs 7 and 8 that Bravos Vehicles verbally agreed to buy his motorcycle on 3 June 2019. At paragraph 9²⁶ he says,

“I acknowledge that my initial witness statement contains factual errors in respect of the actual date of sale – but it was never my intention to mislead and I never deliberately tried to stop the Defendant from inspecting my vehicle either.”

Findings as to Ground One

55 I find that the claimant has proved beyond reasonable doubt that:

- 1) The defendant made false statements that he sold the motorcycle on 3 June 2019, and had no idea what had happened to the vehicle after 3 June 2019.
- 2) The defendant had no honest belief in the truth of the statements.

²² 10-29 of bundle for hearing for permission on 5 May 2021

²³ Page 305 of bundle for hearing for permission on 5 May 2021

²⁴ Page 305 of bundle for hearing for permission on 5 May 2021

²⁵ Bundle for hearing for permission on 5 May 202, 304-306

²⁶ Bundle for hearing for permission on 5 May 2021, 306

- 3) The defendant knew that the false statements would interfere with the course of justice by preventing the claimant from being able to carry out an inspection of the motorcycle. Such an examination would have shown that the motorcycle was not damaged and there was no basis for claiming credit hire charges of approximately £50,000 and the write off value of the motorcycle.

56 In conclusion, I accept that the Claimant's submissions and I find that the Claimant has proved beyond reasonable doubt that the Defendant deliberately made false statements that he sold the motorcycle on 3 June 2019 and had no idea what happened to the vehicle after 3 June 2019 to provide a reason for stating that the Claimant could not inspect the motorcycle and also to provide a basis for claiming credit hire. I find that the Claimant has proved beyond reasonable doubt that the Defendant had no honest belief in the truth of his statements and knew of their likelihood to interfere with the course of justice.

57 I therefore conclude that the claimant has proved Ground 1 beyond reasonable doubt.

Ground 2 - Interference with the due administration of justice by attempting to bring a claim for the pre-accident value of the motorcycle and hire charges on false pretences when he knew the claims could not properly be brought at the time he brought them

58 Initially, the defendant said that his motorcycle was struck in the rear by the bus and then fell to the offside sustaining damage. This can be seen from:

- 1) The defendant's expert report of Evans Harding Engineers (CG) Limited, dated 17 July 2019²⁷:

“The damage I have reported upon is consistent with the vehicle having been struck in the rear and falling to the offside. The vehicle was rendered undriveable in the index accident.”

- 2) The Defendant's solicitors' email to the Claimant, dated 30 September 2019²⁸, in which it is said,

“The [Defendant] also maintains that his vehicle was knocked to the floor (on the right side) as a result of the collision and this will be fully detailed within his witness statement.”

59 Prior to the defendant serving his witness statement, the claimant disclosed CCTV footage. Mr Marriott says in his affidavit of 8 December 2020 at paragraph 8²⁹,

- 1) “8. There is now shown to me marked ‘Exhibit DM5’ CCTV footage from the Bus which was disclosed on 29 October 2019. This showed a minor impact between the front of the bus and rear of the Bike at around 14:27:24 hours as a result of which the Bike moved forward slightly but the Defendant and the Bike remain upright. The Defendant then rode the Bike forwards and parked on the left side of the road. At 14:27:47 hours the Defendant was off the Bike and put the footrest down and started to inspect the rear for damage. The Bus then pulled over to the side of the road and the Claimant's driver got out and went to speak to the Defendant. The Defendant and the

²⁷ 41 of bundle for hearing for permission on 5 May 2021

²⁸ 81-82 of bundle for hearing for permission on 5 May 2021

²⁹ 15-16 of bundle for hearing for permission on 5 May 2021

Claimant's driver and another man in a motorcycle helmet then got onto the Bus to talk and appeared to fill out documentation. The Defendant got off the Bus at 14:33:22 hours and went towards the Bike but got back on the bus. The Bus remains parked with the hazard lights on until the CCTV finishes at 14:34:59 hours. The CCTV footage does not show the Bike falling at any point. The Bike can be seen in the CCTV from the impact at 14:27:24 hours until 14:34:59 hours, for over 7.5 minutes, and during that time, the Bike does not at any point, fall or get dropped onto its side."

60 I viewed the CCTV footage during the course of this hearing. I confirm that Mr Marriott's description of the CCTV footage is entirely accurate. At no stage does the motorcycle fall to its side. The motorcycle remains upright throughout.

61 The defendant then changed his position and said in his witness statement dated 15 November 2019 at paragraph 5³⁰,

"I was incredibly frustrated and upset at having been hit forcefully and, after speaking to the bus driver, I dropped my vehicle on its right-hand side, which caused additional damage. The damage caused to the side was caused by my vehicle falling to the ground, instead of the initial impact, but was still a result of the accident."

62 I find that paragraph 5 of the defendant's witness statement contradicts the account in his expert report Evans Harding Engineers (CG) Limited, dated 17 July 2019, and his solicitors' email to the claimant, dated 30 September 2019. Further, the defendant's account in his witness statement at paragraph 5 contradicts and is irreconcilable with the CCTV footage which shows that the motorcycle was not, as he says at paragraph 5 of his witness statement, hit forcibly and never fell to the ground.

63 I find that the defendant then provided a third version in a supplemental statement. the Portuguese version of which was signed by him and dated 20 February 2020, at paragraph 4³¹,

"The defendants have highlighted the fact that the CCTV footage from the accident does not show me dropping my vehicle to the ground, despite this CCTV footage being over seven minutes long. However, I confirm that this happened after the defendant's vehicle had left the scene and I myself had attempted to leave the scene. I rode a short distance, but my vehicle was not accelerating correctly and the rear fender was getting stuck on the back tyre. I therefore had to stop riding and when I got off the motorcycle it was then, being very upset by the collision, that I dropped my vehicle."

64 I find that this third account contradicts the defendant's first account that his motorcycle was knocked to the ground and rendered undriveable and his second account that he was so frustrated and upset at having been hit forcefully that after speaking to the driver, he dropped his motorcycle on its right-hand side, causing damage.

³⁰ Page 87 of bundle for hearing for permission on 5 May 2021

³¹ Pages 304-306 at 304 of bundle for hearing for permission on 5 May 2021

- 65 The CCTV disproves the defendant's accounts of the accident.
- 66 I find that the defendant's case that his motorcycle fell to the ground goes to the core of his claim because it was the basis for the defendant alleging that the motorcycle was beyond economical repair and the basis for his claim for consumer credit hire charges and the write-off value of the motorcycle.
- 67 I conclude that the claimant has proved beyond reasonable doubt that the defendant's account is untrue and that he knows that his motorcycle never fell to the ground. I further find that he was well aware that his false statements would interfere with the course of justice. I therefore find that the claimant has proved ground 2.
- 68 I therefore conclude that the claimant has proved Ground 2 beyond reasonable doubt.

Ground 3: Interference with the due administration of justice by preventing the Claimant from inspecting the motorcycle.

- 69 During the period of time when the motorcycle was outside or near the defendant's home and could have been inspected, the defendant said on a number of occasions, including on 10, 19 and 25 June 2019, that the motorcycle had been disposed of. The defendant thereby preventing the claimant from instructing an engineer to inspect it.
- 70 I find that the defendant has no explanation for repeatedly saying through his solicitors that the bike had been disposed of in June 2019. The defendant's suggestion in his supplemental statement that he did not intend to prevent the claimant from inspecting the motorcycle is wholly hollow and unconvincing, and I reject it as implausible.
- 71 I conclude that the claimant has proved beyond reasonable doubt that the defendant deliberately and intentionally interfered with the due administration of justice by preventing the claimant from inspecting the motorcycle. I note that there is an overlap between ground 3 and ground 1, and I will bear this in mind when I come to sentence.
- 72 I therefore conclude that the claimant has proved Ground 3 beyond reasonable doubt.

Ground 4: Knowingly making a false statement of truth either in the witness statement dated 15 November 2019 at paragraph 18 that "Bravos Motorcycles, had advised that they did not want to purchase it" or in his supplemental witness statement dated 20 February 2020 at paragraph 7 that Bravos Motorcycles verbally agreed to buy the motorcycle on 3 June 2019.

- 73 In the defendant's witness statement dated 15 November 2019, he says at paragraph 18 that after the accident, Bravos Motorcycles had said they did not want to purchase his motorcycle³². At paragraph 19 he said that on 3 June 2019, Forza Motorcycles agreed to buy his motorcycle, and they came and collected it that day. The defendant contradicts this in his supplemental witness statement, dated 20 February 2020, where he says at paragraphs 7-8³³ that he agreed verbally to sell the motorcycle to Bravos Motorcycles on 3 June 2019, and that he contacted his solicitors that day to tell them the motorcycle was sold. He says that Bravos did not collect the motorcycle and he sold it to Forza on 3 July 2019.
- 74 I find that the defendant's accounts of the sale of his motorcycle are contradictory and irreconcilable. I find that the claimant has proved beyond reasonable doubt that at least one

³² Page 90 of bundle for hearing for permission on 5 May 2021

³³ Page 305 of bundle for hearing for permission on 5 May 2021

of the defendant's statements was untrue and he had no honest belief in the truth of his statements and knew of their likelihood to interfere with the course of justice.

75 I therefore conclude that the claimant has proved Ground 4 beyond reasonable doubt.

Ground 5 - Knowingly causing a false statement of truth to be made in the Particulars of Claim in respect of the claims for damaged helmet and mobile phone.

76 The defendant claimed at paragraph 3 of the Particulars of Claim³⁴ of the original action, which was verified by a statement of truth signed by a solicitor on the defendant's behalf, for a damaged mobile phone in the sum of £569 and a damaged helmet in the sum of £79.99. These items could only have been damaged if the defendant had been riding the motorcycle when the motorcycle had fallen to the ground as a result of the accident. The CCTV footage showed beyond reasonable doubt that the motorcycle did not fall on its right-hand side to the ground and therefore these claims were untrue. The defendant would appear to have acknowledged that these claims were untrue by not including the claims for a damaged helmet and mobile phone in his updated schedule of loss.

77 I find that the claimant has proved beyond reasonable doubt that the defendant:

- 1) Knowingly made false claims in the Particulars of Claim for a damaged helmet and mobile phone;
- 2) Had no honest belief in the truth of his claims for a damaged helmet and mobile phone;
- 3) Knew that these false claims were likely to interfere with the course of justice.

78 I conclude that that the claimant has proved Ground 5 beyond reasonable doubt.

Ground 6 - Interference with the due administration of justice in not reporting that repairs had been carried out to his motorcycle.

79 The Defendant maintained that he needed to continue hiring a motorcycle until 4 November 2019, thereby inferring that the motorcycle remained unroadworthy for that whole period.

80 In his affidavit, dated 8 December 2020³⁵, Mr Marriott says,

“55. The defendant relied on the evidence of Mr Bignall and Mr Levitt, dated 17 July 2019, which confirmed that the Bike was ‘rendered undrivable in the index incident as the rear suspension, Engine Mounts, and Rear Swing Arm required checking. The Plastic NS Belly Pan has come loose and is an obvious hazard to other road users and may fall off if the vehicle were ridden.’

“56. The damage that was seen in the photographs annexed to the defendant's engineering evidence was not visible in the photographs taken by Mr Wolfson of the motorcycle from 10 May 2019 onwards.”

³⁴ Page 33-34 of bundle for hearing for permission on 5 May 2021

³⁵ Main bundle, 39-55 at 54

81 In their replies, dated 31 January 2020, the defendant's engineers were provided the images taken by Mr Wolfson of the motorcycle from 10 May 2019, and say³⁶,

“5. Yes, I concur that the damage would have been limited to the wooden base plate of the top box, and I did not record any damage to this item at the time of my inspection.

“6. Yes, the Claimant's motorcycle was not rendered beyond economical repair in the index incident.

“7. Yes, the damage detailed in your question cannot be related to the index incident.

...

“12. Yes I agree that the motorcycle had undergone some repairs between my inspection, and the first set of images taken by Mr Wolfson.”

82 The defendant says in his supplemental statement at paragraph 11³⁷,

“However, I confirm that I did not authorise or pay for any repairs to my vehicle before it was sold. I do not know whether Bravos Motorcycles did any work to it before they brought it back to my property but they did not advise me of the same.”

83 I find that it is not credible that the defendant was not aware of repairs to his motorcycle in June 2019, bearing in mind that during this time the motorcycle was outside his home and further, it is implausible that anyone would carry out repairs to his motorcycle without his agreement.

84 I find that the claimant has proved beyond reasonable doubt that the defendant:

- 1) Was aware that repairs were carried out to his motorcycle in June 2019;
- 2) Failed to report the fact that repairs had been carried out to the claimant;
- 3) Knew that his failure to report the repairs was likely to interfere with the course of justice.

85 I therefore conclude that the claimant has proved Ground 6 beyond reasonable doubt.

Conclusion as to Findings

86 I find that for the aforementioned reasons, the claimant has proved beyond all reasonable doubt all six of the grounds of contempt.

³⁶ Page 290-291 of bundle for hearing for permission on 5 May 2021

³⁷ Page 306 of bundle for hearing for permission on 5 May 2021

L A T E R

Costs

- 1) I order that the defendant do pay the claimant's costs to date on an indemnity basis.
 - 2) I will consider whether the costs should be summarily assessed or subject to a detailed assessment at the sentencing hearing.
-

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This transcript has been approved by the Judge.