Neutral Citation Number: [2020] EWHC 3475 (Ch)

Case No: CR-2019-005926

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES (ChD)

The Rolls Building,
7 Rolls Buildings,
Fetter Lane,
London EC4A 1NL

Date: Wednesday, 16th December 2020

Before:

THE HONOURABLE MR JUSTICE FANCOURT

- -

Between:

ALEXANDER WALSH	**Petitioner/Defendant**
- and -	
(1) DECCA CAPITAL LTD **(2) SHAHRAAB AHMAD**	**Respondents/Claimants**

- -

- -

MR TIMOTHY FRITH (instructed by **Wilson Browne Solicitors**) for the **Petitioner/Defendant**
MR JAMES LEONARD (instructed by **Janes Solicitors**) for the **Second Respondent/Claimant**

Hearing date: 11 December 2020

- -

Approved Judgment

Digital Transcription by Marten Walsh Cherer Ltd.,
2nd Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP.
Telephone No: 020 7067 2900. DX 410 LDE
Email: info@martenwalshcherer.com
Web: www.martenwalshcherer.com

MR JUSTICE FANCOURT:

1. This is an application by Shahraab Ahmad for permission to pursue a contempt application against Alexander Walsh in respect of allegedly untruthful statements made in a witness statement and in Points of Claim, both of which were supported by statements of truth signed by Mr Walsh personally. Permission to pursue such a contempt application is required pursuant to the new rule 81.3(5), which gives the court a broad discretion whether to grant it. The new rule made no change in the procedure in that respect.

2. Mr Ahmad is the second respondent to a petition by Mr Walsh, originally for the winding up of the first respondent, a company called Decca Capital Limited ("the Company"), but now in substance a claim for equitable relief for Mr Walsh as a minority shareholder, under section 994 of the Companies Act 2006. There remains an issue between Mr Walsh and the Company as to the consequences of not pursuing the winding up, but the s. 994 claim will be heard in due course between Mr Walsh, who has a 5% shareholding in the Company, and Mr Ahmad, who is the 95% shareholder.

3. The business of the Company was the management of investments on behalf of its clients, and it received management fees, which were its income. It had a joint venture agreement with another company called City Financial Investment Company (CFIC) to launch and manage an investment fund called the Decca Fund. Mr Walsh alleges that all the income came from that joint venture agreement. Mr Walsh was a shareholder in the Company from September 2014, when it was incorporated, and he was employed by the Company under a contract dated 24 February 2015, the same month in which the joint venture agreement with CFIC was made.

4. Relations between Mr Walsh and Mr Ahmad deteriorated in 2016 and in December 2016 his contract was terminated. After a period of gardening leave he formally left his employment in March 2017, but remained a shareholder in the Company. On 7 April 2017 the joint venture with CIFC was formally replaced by a new joint venture agreement with an offshore company called Orama Holdings (Cayman) Limited ("Orama"). There is a question about whether that was agreed or took effect the previous September, in 2016. The contempt application and one of the four grounds for relief in the underlying petition turn on what happened with Orama between 2016 and April 2017.

5. In the witness statement in support of the petition, which was made on 9 October 2019, Mr Walsh says that in mid-2016 Mr Ahmad proposed incorporating an offshore company on the basis that the Company's clients could be reassured that they would have the same protections in law as the Company provided. Paragraphs 36 and 37 of that witness statement read as follows:

> "After some negotiation I signed a shareholder agreement on June 30 2016, again on the basis of the representations made to me by Mr Ahmad. I only ever gave consent to incorporating Orama (Cayman) and the terms of the shareholder agreement. I expected we would discuss if and how the joint venture would be transferred once it got to that point.

> However, much to my dismay Mr Ahmad in his role as a director in the Company did not inform me, nor am I aware of any recorded shareholders' resolutions regarding the Company from that point onward, despite my repeated requests for clarity on the matter." (Quotation unchecked)

Mr Walsh therefore accepts that he knew about Orama and its purpose from mid-2016, but expected that there would be no business transfer until a further discussion with him, and that no further information was forthcoming from Mr Ahmad despite his requests for it. He then says that in late 2017 to early 2018 he discovered information about the moving of the Company's business to the Cayman Islands and that the assets of the Company had significantly reduced in its year-end December 2016 financial statements. He says that he found out in about May 2018 that the joint venture with CFIC had been terminated and a new joint venture with Orama was made in April 2017 and backdated to 1 September 2016. The clear implication of this is that Mr Walsh had not agreed to the transfer of the joint venture business with CFIC.

6. Against that background, Mr Walsh's witness statement identifies the first ground of unfairly prejudicial conduct in these terms, at paragraph 55:

> "I was not advised at any point throughout this process by Mr Ahmad that he intended to strip away the value of the Company and transfer that value to the offshore company which I had virtually no knowledge of and was ultimately incorporated in a jurisdiction which in terms of protection of shareholders' rights was materially disadvantageous to my interests."

(I refer to that paragraph in this judgment as "Paragraph 55"). At paragraph 57 of the same witness statement Mr Walsh says:

> "Mr Ahmad's decision to move the joint venture with CFIC stripped the Company of its only source of revenue, the entirety of its team and the majority of its assets without any directors' material event or significant transaction notice being given."

7. Following directions from the Companies Court, Mr Walsh then signed off Points of Claim. Paragraph 10, by way of initial summary of the pleaded case, says as follows (so far as material):

> "Alternatively, the business of the Company has been conducted in a manner which is unfairly prejudicial to the petitioner for the purposes of s.994 Companies Act 2006, in that the Company at the behest of the second respondent has – (a) transferred accrued fees due to the Company to a third party company in 2017 in excess of £10 million without the consent of the petitioner…"

8. The particulars of claim plead the April 2017 change in the joint venture arrangement and the first ground of conduct relied on as being unfairly prejudicial to Mr Walsh is then described in paragraph 38 of the Points of Claim as follows:

> "The petitioner was never made aware that the value of the Company was transferred to an offshore entity. While the second respondent had proposed to operate future business through an offshore structure, the petitioner had not consented to this transfer. Further, the second respondent had not intimated that he intended to strip away the existing value of the Company and transfer that value to the offshore company, which is incorporated in a jurisdiction which in terms of protection of shareholders' rights was and is materially disadvantageous to the petitioner's interests."

(I refer to that paragraph in this judgment as "Paragraph 38"). Paragraph 39 of the Points of Claim then pleads that Mr Ahmad's decision to move the joint venture with CFIC "stripped the Company of its only source of revenue, the entirety of its team and the majority of its assets" without any notice having been given. The detailed allegations in the Points of Claim therefore appear wider than the summary previously given in paragraph 10.

9. Reading these various allegations in the witness statement and Points of Claim together and (so far as possible) consistently and in context, what Mr Walsh appears to be saying is the following.

(1) During his time at the company there were proposals to move some or all of the Company's business offshore.

(2) Orama was set up for that purpose and Mr Walsh signed a shareholders agreement, but he had virtually no knowledge of Orama.

(3) There was no suggestion by Mr Ahmad that he intended to remove value from the Company and take it offshore.

(4) He did not expect the business change to be made without further discussion with him.

(5) There was in fact no further discussion before he left the Company.

(6) On 7 April 2017 the change was made by Mr Ahmad, which had the effect of taking substantial assets away from the Company.

(7) Mr Walsh was never made aware by Mr Ahmad that this had happened.

I shall refer to these as Mr Walsh's 7 points, and it is points (2) and (3) that are most material to this application.

10. Mr Ahmad would have received Mr Walsh's witness statement in October 2019 and the Points of Claim in November 2019.

11. The answer to these allegations, pleaded in the Points of Defence dated 7 February 2020, is that Mr Walsh consented in mid-2016 to the existing joint venture ending and was aware of a new agreement being made between CFIC and Orama and was indeed involved in setting up Orama. The making of the Orama shareholder agreement is said to make that clear. It took about 6 months to negotiate the final terms of the

Orama/CFIC joint venture agreement, but it was effective from September 2016. So the defence is that what Mr Walsh complains of was finally agreed by him before he left the Company, but documenting the terms of the new joint venture took time to complete.

12. A request for further information was served by the Company and Mr Ahmad on Mr Walsh on 27 February 2020. It sought clarification of (amongst other things) whether Mr Walsh was saying that he did not consent to the incorporation of Orama and the making of the Orama/CFIC joint venture agreement or know that such a joint venture agreement would be made. The answers to those questions were "This is adequately dealt with in the Petitioner's Points of Claim and witness statement". This was therefore an invitation by Mr Walsh's lawyers to Mr Ahmad to take the Points of Claim and the witness statement at face value. No further explanation or qualification was required. These answers were given by Mr Walsh on 1 April 2020.

13. Almost 6 months then passed before Mr Ahmad's solicitors wrote to Mr Walsh giving notice of an intention to apply for the committal to prison of Mr Walsh in respect of untruthful answers given in Paragraph 55 and Paragraph 38. They allege that it was Mr Walsh who dealt with lawyers and accountants to develop the offshore structure in anticipation of the Company being closed down, so that it cannot truthfully be said that he was unaware that the Company would be transferring value offshore. They allege that it is untrue that Mr Walsh was never made aware that the value of the Company was transferred offshore and untrue that he had not consented to that transfer and was unaware of Mr Ahmad's intention.

14. Various documents were relied on to establish the contrary proposition. I asked Mr Leonard, who appeared for Mr Ahmad on this application, to take me carefully through the evidence relied on. He did so, and the documents (taken at face value) appear to show that the idea of setting up an offshore company had been discussed by Mr Walsh with advisers as early as 2014; that a structure through Delaware and Cayman Islands companies was decided by Mr Walsh and Mr Ahmad by August 2014, and that on 9 November 2015 Mr Walsh told a US tax attorney that he wanted to get up to speed on the implications of the closure of the Company and the new corporate entity. On 16 February 2016 Mr Walsh and Mr Ahmad were apparently informed by First Names in Jersey by email that Orama had been incorporated, and the documents relating to Orama's incorporation and constitution were attached to it.

15. Mr Walsh emailed by return in the following terms:

> "I believe we had sent through a copy of the previous articles and shareholders agreement. Have the articles attached changed much from the version we sent? Our intention was to use those as a base with the addition of a couple of provisions. I had been working on that this end and planned to send once ready."

On the following day Mr Walsh emailed Mr Ahmad:

> "Working on this as fast as possible. As we discussed, I want to be sure I fully understand the structure to have peace of mind. I'm having a legal review of the docs now and am meeting him tomorrow to discuss standard minority protections."

16. On 22 April 2016 Mr Walsh was sent the written advice of tax consultants, which summarised the need for a new business structure and recorded that the new structure was that CFIC would engage Orama to provide management services to the Decca Fund and that it would have a new 100% owned UK subsidiary that it could license to provide services. On 27 September 2016 Mr Walsh apparently exchanged emails with an employee of the Company, who noted that the Decca financial year ended that week "and new fiscal year is with Orama in October". Mr Walsh was then apparently asked if he would sign the articles of association of Orama, and he indicated by return that he had done so. He had previously signed a shareholder agreement as a shareholder of Orama on 30 June 2016.

17. Comparing that documentary evidence to Mr Walsh's 7 points, as I have summarised them previously, the documentary evidence supports the first point. There were proposals to move some or all of the Company's business offshore and some of the second point - Orama was set up for that purpose and Mr Walsh signed a shareholder agreement. But it appears to cast very substantial doubt on the suggestion that Mr Walsh had virtually no knowledge of Orama at the time. It is also apparently inconsistent with the notion that Mr Ahmad had not discussed with Mr Walsh moving value from the Company into Orama (point 3), unless Mr Walsh meant that although future business would be moved the existing assets, whatever they were, would not be.

18. Mr Frith, on behalf of Mr Walsh, said that Paragraph 55 is to be understood as a reference only to stripping away the monies of the Company that were already in its bank account as a result of fees paid by CFIC, not as a reference to stripping away the assets of the Company more generally. Although I make no decision about that, it is not an obvious interpretation in view of what is said in paragraphs 36, 37, 51 and 57 of the witness statement. Mr Walsh has not adduced any evidence to explain the matter, as of course he is entitled not to do, but it means that there is no explanation that I can take into account at this stage. Mr Frith submitted that Paragraph 38 too was to be read as a complaint about fees in the Company's bank account. He submitted that Mr Walsh in fact has no complaint about the transfer to Orama of the joint venture agreement with CFIC, only with the transfer of the liquid assets of the Company that had already been earned up to the date of transfer. It is true that paragraph 10(a) of the Points of Claim identifies the complaint as being about accrued fees, but paragraphs 38 and 39 are not expressly limited in that way and could easily have been drafted in a narrower form if that was what was intended.

19. As for the fourth of Mr Walsh's points, namely that Mr Walsh did not expect the business change to be actually made without further discussion, there is lack of clarity in the documentary evidence about whether Mr Walsh knew prior to leaving the Company that the change had finally been made. The nearest the evidence comes is that a transfer was contemplated as being at the end of the Company's fiscal year and preparations were being made for that. Although Mr Ahmad pleads that Mr Walsh agreed the change, he does not make it clear whether that was agreement in principle or agreement to implement termination of the Company's joint venture at the end of September 2016 and making a new joint venture with Orama. The evidence relied on does not show that Mr Walsh knew that an agreement between CFIC and Orama was actually implemented in September 2016, nor does it establish that Mr Walsh was wrong to say that there was no further discussion with him before he left the Company about actually implementing the new agreement with CFIC.

20. Looked at in this way, and bearing in mind that any ambiguity in the witness statement or Points of Claim would have to be resolved at a substantive contempt hearing in favour of Mr Walsh, I consider that there is a strong *prima facie* case that Paragraph is false and that Mr Walsh must have known that it was false as written. If, as was implied in argument, this was a case of poor drafting, one would have expected the error to have been identified at an early stage and corrective measures taken. Instead, Mr Walsh's solicitors had replied to the letter before action, threatening consequences for Mr Ahmad if he persisted with the "misconceived application". The purpose of the statement in Paragraph 55 appears to be to allege that Mr Ahmad had acted wrongly by diverting assets of the Company to a virtually unknown offshore company without Mr Walsh's agreement and to his disadvantage as a shareholder of the Company. That is a very serious allegation.

21. On the same point in relation to Paragraph 38, the position is somewhat less clear. The paragraph can be read as referring, first, to the finalisation of the new joint venture with CFIC, which was not in fact documented until after Mr Walsh left the Company, and in light of paragraph 10(a) of the Points of Claim as otherwise complaining of the transfer to Orama of assets other than future business. As written, Paragraph 38 does say that Mr Walsh was never made aware that the value of the Company was transferred. That is not obviously wrong. There is no clear evidence that he knew of a transfer actually being effected in September 2016, and it is notable that in paragraph 23 of his affidavit Mr Ahmad does not go that far. Equally, there is no evidence that Mr Walsh knew of the final completion of the joint venture agreement with Orama in April 2017. The third sentence of Paragraph 38 is, on its face, very similar to the allegation in Paragraph 55 and so *prima facie* is equally doubtful, but the context in Paragraph 38 makes some difference. "Existing value" can be seen as being in contradistinction to future business. I am therefore not persuaded that there is a strong *prima facie* case of knowing untruthfulness for the third sentence, or indeed any of Paragraph 38.

22. The right approach as a matter of law to the exercise of discretion on whether to grant permission for a contempt application is addressed in a series of recent decisions of the Court of Appeal, all of which identify important principles and considerations, while stressing that the ultimate question is whether it is in the public interest for the contempt application to proceed in the circumstances of the particular case. That is an exercise of judgment. In the first of the authorities *KJM Superbikes Ltd v Hinton* [2009] 1 WLR 2406 Moore-Bick LJ said at paragraphs 16 and 17:

> "16. Whenever the court is asked by a private litigant for permission to bring proceedings for contempt based on false statements allegedly made in a witness statement it should remind itself that the proceedings are public in nature and that ultimately the only question is whether it is in the public interest for such proceedings to be brought. However, when answering that question there are many factors that the court will need to consider. Among the foremost are the strength of the evidence tending to show not only that the statement in question was false but that it was known at the time to be false, the circumstances in which it was made, its significance having regard to the nature of the proceedings in which it was made, such evidence as there

> may be of the maker's state of mind, including his understanding of the likely effect of the statement and the use to which it was actually put in the proceedings. Factors such as these are likely to indicate whether the alleged contempt, if proved, is of sufficient gravity for there to be a public interest in taking proceedings in relation to it. In addition, the court will also wish to have regard to whether the proceedings would be likely to justify the resources that would have to be devoted to them.
>
> 17. In my view the wider public interest would not be served if courts were to exercise the discretion too freely in favour of allowing proceedings of this kind to be pursued by private persons. There is an obvious need to guard carefully against the risk of allowing vindictive litigants to use such proceedings to harass persons against whom they have a grievance, whether justified or not, and although the rules do not prescribe the class of persons who may bring proceedings of this kind, the court will normally wish to be satisfied that the applicant was liable to be directly affected by the making of the statement in question before granting permission to bring proceedings in respect of it. Usually the applicant will be a party to the proceedings in which the statement was made, but I would not exclude the possibility that permission might be granted to someone other than a party if he was, or was liable to be, directly affected by it. In my view there is also a danger of reducing the usefulness of proceedings for contempt if they are pursued where the case is weak or the contempt, if proved, trivial. I would therefore echo the observation of Pumfrey J in the *Kabushiki Kaisha Sony Computer case* [2004] EWHC 1192 (Ch) at 16 that the court should exercise great caution before giving permission to bring proceedings. In my view it should not do so unless there is a strong case both that the statement in question was untrue and that the maker knew that it was untrue at the time he made it. All other relevant factors, including those to which I have referred, will then have to be taken into account in making the final decision."

In *Zurich Insurance Plc v Romaine* [2019] 1 WLR 5224 Haddon-Cave LJ said at paragraph 30 of his judgment:

> "The issue for the Court on an application for permission to bring proceedings is, therefore, not whether a contempt has, in fact, been committed, but whether it is in the public interest for proceedings to be brought to establish whether it has or not and what, if any, penalty should be imposed. The question of the public interest also naturally includes a consideration of proportionality."

In *Barnes v Seabrook* [2010] CP Rep 42 the Court of Appeal set out principles to apply, and in deciding whether it is in the public interest to grant permission it said that the following factors were relevant:

> "(a) The case against the alleged contemnor must be a strong case (there is an obvious need to guard carefully against the risk of allowing vindictive litigants to use such proceedings to harass persons against whom they have a grievance);
>
> (b) The false statements must have been significant in the proceedings;
>
> (c) The court should ask itself whether the alleged contemnor understood the likely effect of the statement and the use to which it would be put in the proceedings;
>
> (d) The pursuit of contempt proceedings in ordinary cases may have a significant effect by drawing the attention of the legal profession, and through it that of potential witnesses, to the dangers of making false statements. If the courts are seen to treat serious examples of false evidence as of little importance, they run the risk of encouraging witnesses to regard the statement of truth as a mere formality."

In *Tinkler v Elliott* [2014] EWCA (Civ) 564 the Court of Appeal included the additional reminder that for an allegation of this kind of contempt to succeed it had to be shown that the contemnor knew that what he said was likely to interfere with the course of justice, and further said as follows:

> "Before permission is given the court should be satisfied that
>
> (a) the public interest requires the committal proceedings to be brought;
>
> (b) The proposed committal proceedings are proportionate; and
>
> (c) The proposed committal proceedings are in accordance with the overriding objective – see *Kirk v Walton* (ante) at paragraph 29.
>
> In assessing proportionality, regard is to be had to the strength of the case against the respondents, the value of the claim in respect of which the allegedly false statement was made, the likely costs that will be incurred by each side in pursuing the contempt proceedings and the amount of court time likely to be involved in case managing and then hearing the application but bearing in mind the overriding objective."

Mr Leonard also referred to the recent judgment of Griffiths J in *North of England Coachworks Ltd v Khan* [2020] EWHC 2596 (QB), in which he said at paragraph 30:

> "Perjury and false statements verified by statements of truth are very serious indeed. Litigants and others should be terrified of the consequences if they lie to the court, whether on oath, or backed with the modern solemnity of a statement of truth. So

> much of the process of justice depends on evaluating contested assertions, or on accepting uncontested assertions, that it is a point of the greatest possible importance that everyone, honest and dishonest alike, should be in no doubt that lying to the court is not an option. For those who are honest and conscientious, it is to be expected as a matter of principle that lies will not be told in the formal context of verification by a statement of truth. But for those who are slapdash or even dishonest, it is right that the consequences of saying, verified by a statement of truth, something untrue – knowingly or recklessly untrue – should be severe enough to demonstrate that it is also against their own interests to do it, and unthinkable, for that reason too, that they should do it. Not only punishment, but also deterrence, comes into play."

23. Bearing all the guidance and the admonition of Griffiths J in mind, which I do, the question I have to decide is whether it is in the public interest for the allegation that Mr Walsh knowingly made untruthful statements in Paragraph 55 to be tried in a contempt application at this stage, or at some other stage, bearing in mind that this will involve some analysis of the dealings between Mr Walsh, the Company and Mr Ahmad in 2016, and an investigation (so far as possible) into Mr Walsh's knowledge and state of mind at the time that he made the statements. The central factual issues that would be raised in a contempt application in relation to Paragraph 55 are substantially the same as the first of 4 grounds in the unfair prejudice petition if Paragraph 38 of the Points of Claim is read as written. However, Mr Frith has clarified that that paragraph should be read, and therefore should in due course be amended to read, as complaining only about the transfer to Orama of funds standing to the Company's bank account, or possibly other liquid assets or debts derived from the Company's own provision of services. The extent of Mr Walsh's knowledge of Orama and the question of transferring any other assets of the Company, including its business to Orama, will therefore only be part of the background to the first allegation of unfairly prejudicial conduct at trial. There is limited overlap, in other words.

24. Mr Walsh suggests, through counsel, that the contempt application is tactically motivated or made for improper purposes to try to put pressure on him to settle his claim or to intimidate him. There is, however, no evidence from Mr Walsh to substantiate that and it is not proved by anything that happened in the course of the application by the Company to strike out the petition. The only document on which Mr Frith was able to place any reliance for that argument was a letter before action dated 15 September 2020, which he says was wrongly written to Mr Walsh himself, not to his solicitors, and did not point out that permission was required for a contempt application of this kind and did not say that 2 years' imprisonment was a maximum sentence, not *the* sentence for a contempt of court. The letter may not have been a model of its kind, but I cannot accept, in the absence of better evidence, that Mr Ahmad's application is improperly motivated. In order to avoid possible contamination by the motives and prejudices that might underlie the petition where it is clear that there is a good deal of bad feeling, Mr Ahmad properly instructed a separate legal team to make the contempt application. In any event, I have found that there is a strong *prima facie* case of untruthful statements in Mr Walsh's witness statement.

25. There was a significant delay by Mr Ahmad in bringing this application. He knew of the facts alleged by Mr Walsh as long ago as the end of November 2019. So it took almost a year for the contempt application to be issued and heard. That does not amount to a bar to granting permission, though in other cases it might, if, for example, it resulted in the application being made shortly before a trial was due to take place. The delay may indicate that there was no reaction of immediate outrage at Paragraph 55, but equally it may indicate that a balanced and careful assessment was made of whether the documentary evidence supported a contempt application. There is no prejudice caused in this case by the delay. The trial will not take place until 2022 and a committal application on the relatively limited points in issue would be heard in either the Lent or the Easter Term of 2021.

26. Given that there is no significant duplication of the subject matter of the application and that of the trial and no evidence from Mr Walsh of the resources that would have to be devoted to the contempt application and any impact that might have, I do not consider that hearing a contempt application is contrary to the overriding objective. There is a strong *prima facie* case and the allegation was a highly material one. The application could, in my judgment, be heard without interfering with the progress of the substantive claim. Mr Frith argued that it would be unfair to Mr Walsh for a contempt application to be heard, because in dealing with the allegation of knowing untruthfulness in Paragraph 55 Mr Walsh would have to reveal the way in which he sought to challenge the honesty and credibility of Mr Ahmad at trial.

27. I am not persuaded that the contempt application is being brought to flush out Mr Walsh's likely challenge to Mr Ahmad at trial. Nor was I persuaded that the questions of whether Paragraph 55 was untrue and known to be untrue by Mr Walsh would involve any challenge to the honesty of Mr Ahmad that Mr Walsh may wish to make at trial. There simply is not the necessary factual foundation to support that argument. In my judgment, an exploration of what Mr Walsh knew and had been told by Mr Ahmad in 2016 and a finding one way or another on Paragraph 55 in the contempt application will not prejudice a fair trial of the much more limited issue that Mr Frith has now explained as being the first ground of unfair prejudice at trial. Nor is there any basis for saying that it will impinge unduly on the preparation for trial, in which as I understand it a first case management conference has not yet been scheduled.

28. There was one other matter relating to the honesty of Mr Ahmad that Mr Frith deployed as a reason why I should not give permission for the contempt application to proceed. That was that there would inevitably be a cross-application by Mr Walsh to seek to commit Mr Ahmad to prison based on dishonest statements alleged to have been made by him, with the result that there would be collateral litigation to a greater extent and which would plainly be undesirable. No particulars of this were given by Mr Frith, no evidence in support of the assertion was given by Mr Walsh, and no application has been issued, nor a draft application, nor even a letter threatening such an application. While the court will always be concerned to avoid collateral litigation where it can sensibly be avoided, I cannot take into account this threat to bring a further application. If it is made it will be dealt with on its merits, and the court is unlikely to be impressed by a tit-for-tat approach to contempt applications (if that is what it appears to amount to).

29. There is finally the issue of proportionality to consider. In that regard, the claim, i.e. Mr Walsh's shareholding, is said on behalf of Mr Ahmad to be possibly worth several

hundred thousand pounds. A 10-day trial of the petition is envisaged. In that light, a substantial increase in the costs of the litigation is an obvious concern. However, the prosecution of contempt is not merely a private matter for the parties and their funds, but a matter of balancing public interests: on the one hand in enforcing the requirements of the rules and requiring honesty in the conduct of litigation, and on the other hand in limiting where possible the cost of litigation and the amount of public resources that are devoted to a particular case.

30. It is not the case, as I see it, that a contempt application would be likely to dispose of one of the grounds of unfair prejudice at trial, and in any event there are three other substantive grounds for relief that are relied on. Mr Leonard estimated 2 to 3 days for a contempt hearing if Mr Walsh elects to give evidence in his defence, and I consider that to be a realistic estimate. The costs would therefore be far from insignificant. No-one has suggested, in oral argument at least, that it would be satisfactory for permission to be given but for the contempt application to be heard either at the trial or after the trial, and I would not have taken either of those courses. If dishonesty in a witness statement or statement of case is so serious that it merits a contempt application, the public interest is not served by delaying the disposal of that application for a year or more. It would also be unsatisfactory for it to hang over Mr Walsh for that long, and potentially impact the evidence to be given at trial. If the contempt application were still to be heard, Mr Walsh would be entitled, and perhaps advised, to rely on privilege against self-incrimination when giving evidence at trial, and subject to that would not in practical terms be able to exercise his right to remain silent when faced with a charge of contempt of court. That runs the risk of full evidence not emerging at trial and the interests of justice potentially being adversely affected.

31. The judgment I have to make is, therefore, between refusing permission on grounds of disproportionality and limited public interest, and granting permission and directing a hearing within a short timescale. A factor in this evaluation is that there does not appear to have been actual misleading as a result of Paragraph 55. This was not a case of evidence being used to support a without notice application where the court acts on the faith of the evidence in granting onerous interim relief. Nor is it a case where the other parties are in difficulty for any of various reasons in controverting what is said. It is more in the nature of setting out Mr Walsh's case in the claim. The witness statement in support of the original petition serves that purpose in a winding-up claim as well as being evidence that can be relied on at trial.

32. That does not mean, however, that a knowingly untruthful statement in such a witness statement is not serious. It means that a knowingly untruthful statement made in other circumstances is potentially more serious and may attract a greater punishment if proved. The witness statement of Mr Walsh remains evidence in the claim.

33. I have considered, finally, whether it would be more proportionate to regard the contempt application as having successfully flushed out the unsatisfactory nature of Mr Walsh's pleaded case so that if Mr Walsh were to make a further witness statement making any correction considered appropriate, and then amend his Points of Claim to make clear what his case really is, as it was explained to me, it might then be unnecessary for the matter to proceed further and a suitable order for the costs of this application could be made.

34. Tempting as it is to regard the matter in this way, in the interests of good case management, I consider that Mr Leonard was right in his reply to say that it is wholly unsatisfactory for resistance to a permission application of this kind to be made for the first time in court, unsupported by any evidence, on the basis that there has been a mishap with the pleaded case. In my judgment, the reply to the request for further information and the response to the letter before action disentitle Mr Walsh to take that approach. There has been ample time for him to admit to an error, whether in recollection or drafting, but nothing was intimated before the hearing. I would not in any event take that approach without evidence explaining, so far as it can be done without waiving privilege, how any such mistake came to be made. There will be opportunity enough for Mr Walsh to consider before the hearing of any contempt application how things may be put right even at this stage if he does not wish to stand by the content of Paragraph 55 and wishes to clarify his points of claim.

35. Accordingly, I consider that permission to proceed with a contempt application in relation to paragraph 55 should be granted. I refuse it in relation to paragraph 38, for the reasons that I have given.

_____

This judgment has been approved by Fancourt J.