Neutral Citation Number: [2025] EWHC 283 (Comm)

Case No: CL-2009-000709

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
KING'S BENCH DIVISION
COMMERCIAL COURT

Rolls Building
Fetter Lane
London
EC4A 1NL

Before:

MRS JUSTICE COCKERILL DBE

- -

Between:

DEUTSCHE BANK AG

Applicant/Claimant

- and -

1) SEBASTIAN HOLDINGS INC

Defendant

2) ALEXANDER VIK

Respondent/
Defendant for Costs Purposes Only

- -
- -

Sonia Tolaney KC, James MacDonald KC and Andrew McLeod (instructed by **Freshfields Bruckhaus Deringer LLP)** for the **Applicant/Claimant**

Tony Beswetherick KC and Rupert Hamilton (instructed by **Brecher LLP**) for the **Respondent**

Hearing date: 15,16 January 2025

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APPROVED JUDGMENT

This judgment was handed down remotely and in private by the judge and circulated to the parties' representatives by email. The date and time for hand-down is deemed to be Wednesday 12 February 2025 at 10:30am.

Mrs Justice Cockerill:

INTRODUCTION

1. This is the latest in a very long line of hearings in the litigation between Deutsche Bank AG ("DB") and Sebastian Holdings Inc. ("SHI") and (more recently) SHI's former director Mr Alexander Vik. The proceedings commenced in 2009; and still they continue to feature on the Cause List.

2. By this application dated 29 February 2024 ("the Application") DB seeks an order under CPR 71 requiring Mr Vik, who is outside the jurisdiction, to attend court to be examined about the assets of the judgment debtor, SHI.

3. This application has a sense of *déjà vu* about it, because Mr Vik was examined under CPR 71 nearly a decade ago. At that time Mr Vik lied and withheld information. For a variety of reasons outlined in greater detail below, DB now seeks to have a further hearing for questioning. Mr Vik contends that the court cannot make the order sought, *inter alia* because he has not been and cannot be served with the application outside the jurisdiction.

4. Mr Vik therefore cross applies for:

    i. An order that the Application be struck out; and

    ii. A declaration that the Application has not been validly or properly served on him.

PROCEDURAL HISTORY

5. Although those acting for Mr Vik describe the account of the background to the proceedings in DB's Skeleton as "*highly coloured*", the essential accuracy of that account cannot be disputed, deriving as it largely does from judgments of this court, or those superior to this court.

6. Mr Vik is a Monaco-resident billionaire. He formerly carried out high-value and complex trading through SHI, which has been described by the Court of Appeal as his "*personal trading vehicle*" and by this court as his wholly-owned "*creature company*" using prime brokerage services provided by DB. In October 2008, SHI's trading became heavily loss-making and SHI was margin called by DB. SHI paid some but not all of what was due. The instant proceedings were commenced by DB against SHI in 2009 for the outstanding US$250mn. SHI (acting through Mr Vik) brought a counterclaim against DB for US$8bn.

The DB v SHI trial: 2009

7. The claim and counterclaim were heard over 14 weeks in a major Commercial Court trial before Cooke J. Cooke J substantially upheld DB's US$250 million claim. He dismissed SHI's US$8bn counterclaim in its entirety, holding that it was based on lies by Mr Vik and documents he fabricated in whole or part. On 8 November 2013, Cooke J ordered SHI to pay DB US$ 243 million (the "Judgment

Debt"). He awarded DB 85% of its costs, on the indemnity basis, The size of those costs is sufficiently indicated by the fact that the interim payment on account was £34,517,115.30.

8. SHI failed to pay any part of the Judgment Debt. It is now in excess of US$360mn including interest. The principal reason for this, as Cooke J held (in findings later adopted by the Court of Appeal), is that starting in October 2008, Mr Vik stripped SHI of over US$1bn of assets to impede DB from recovering the Judgment Debt. That was the start of what Ms Tolaney KC called *"a decade long campaign to prevent the bank recovering …[the] judgment debt"*.

9. Any reading of the judgments of this Court and the Court of Appeal in this litigation will demonstrate that the courts of this jurisdiction have come to hold Mr Vik in very low esteem, characterizing him as "*a man who will do what is necessary to prevent DB obtaining its judgment debt*" and who has attempted for years "*to avoid liability, to deceive the court and to conceal the true state of SHI's financial affairs*".

The start of the Part 71 proceedings: 2015

10. On 20 July 2015, DB applied for and obtained an order under CPR 71.2, requiring Mr Vik, as a director of SHI, to attend Court for questioning in relation to SHI's means of paying the Judgment Debt ("the 2015 Order"). Endorsed with a penal notice, it required Mr Vik to produce documents and to attend Court to provide information about the whereabouts of SHI's assets to help DB to enforce the judgment Debt.

11. Fortuitously it was possible for DB to personally serve Mr Vik with the Part 71 Order whilst he was in the jurisdiction[1].

12. Thereafter, Mr Vik took steps to try to evade the effect of the Part 71 Order. He resigned as a director of SHI, purportedly selling his shares in SHI to a connected third party (Rand AS ("Rand")) which was appointed as director in his place Rand's sole director was Mr Hans Erik Olav ("Mr Olav"), a Norwegian business associate of Mr Vik, described in media articles as Mr Vik's "*right- hand man*" and "*business representative in Norway*".

13. Mr Vik brought an application to set aside the Part 71 Order. Cooke J rejected that application in a judgment handed down in October 2015 ([2015] EWHC 2773 (QB) "*Vik 1"*), observing that Mr Vik's recent actions to divest control of SHI were "*all of a piece and…intended to impede enforcement of the judgment against SHI*".

14. It is therefore established that the 2015 Order was properly served on Mr Vik and that it conferred personal jurisdiction over Mr Vik in connection with its subject matter.

[1] As discussed further below an order under CPR 71 does not have extraterritorial effect: *Masri v Consolidated Contractors International (UK) Ltd (No 4)* [2010] 1 AC 90

15. Mr Vik attended at Court before Cooke J for questioning by DB in relation to SHI's assets on 11 December 2015 (the "Part 71 Examination"). His answers were not seen by DB as satisfactory – and it has transpired, rightly so. Moulder J has since concluded that Mr Vik lied repeatedly during the Part 71 Examination about the whereabouts and nature of SHI's current or former assets. He also deliberately failed to provide key categories of documents required by the 2015 Order.

16. At the conclusion of the Part 71 Examination, DB submitted that Mr Vik was in contempt and that it was open to Cooke J to reach a conclusion on whether that was the case that very day. It was submitted that Cooke J could otherwise either make a suspended committal order or adjourn the matter and give directions for a further hearing. As discussed further below, DB indicated its intent to pursue the option of committal and Cooke J indicated that any such application needed to be properly formulated and made on notice.

The Committal Application: 2019-2022

17. So DB made a committal application dated 7 May 2019 ("the Committal Application"). This was subsequently amended on 5 February 2021 and 28 March 2022. By it, DB sought an order that Mr Vik be held in contempt of Court for failure to produce documents and give honest answers at the Part 71 Examination.

18. Mr Vik's skeleton glosses over the seven years which elapsed before that hearing took place. In the briefest of summaries:

    i. Mr Vik challenged jurisdiction. He contended that the Court lacked jurisdiction to commit him for breaches of the 2015 Order on grounds, *inter alia*, that he was resident out of the jurisdiction. That contention, however, was firmly rejected at first instance by Teare J in 2017 ([2017] EWHC 459 (Comm)) and then by the Court of Appeal in 2018 ([2018] EWCA Civ 2011 [2019] 1 WLR 1737: *"Vik 2"*). The latter is a decision to which further reference will have to be made in the course of this judgment;

    ii. Mr Vik then made an attempt to strike out the Committal application. That application was listed for a hearing over multiple days hearing just as the country went into lockdown. After Day 1 the parties considered it must be completed in person, and so the remainder of the hearing had to await the resumption of live hearings (and the diaries of senior leading counsel on both sides). That application being eventually completed, it was dismissed by me: [2020] EWHC 3536 (Comm) ("*Vik 3"*). An attempt to appeal my decision was not successful;

    iii. The Committal Application then had to be listed for a multi-day hearing (and counsel's convenience). That took the hearing to 2022;

    iv. The net result was that there was a delay of some seven years between the Part 71 Examination and the determination of the Committal Application.

19. On 24 June 2022, following an 11-day trial, Moulder J found that Mr Vik had not complied with the 2015 Order in various respects and was in contempt of Court

([2022] EWHC 1599 (Comm): "*Vik 4*"). Moulder J held that Mr Vik had deliberately breached the 2015 Order in multiple serious respects. She held that Mr Vik deliberately gave false evidence to the Court about SHI's former assets in numerous respects. For example she found that:

i. He had told lies about:

a) US$730mn of funds and assets that he had improperly stripped from SHI and transferred to another creature company owned by him (Beatrice, Inc);

b) He had told lies about other valuable private equity interests and shareholdings of SHI (including ones known as "the Devon Park Interest" and "the IFA Shares") that he had caused it to transfer to connected parties to evade the Judgment Debt;

ii. He deliberately failed to disclose entire categories of documents required by the Part 71 Order: for example, Mr Vik had not disclosed any electronic documents relating to SHI's means of paying the Judgment Debt, despite conducting SHI's business electronically on his Blackberry/iPhone.

20. Moulder J further held that Mr Vik was a dishonest witness who had "*lied*", given answers that were *"wholly incredible", "clearly absurd", "disingenuous", "clearly a lie"* and *"trying to obfuscate"*; and who treated cross-examination *"as an intellectual challenge"*.

Sentencing: July 2022

21. On 15 July 2022, following a further 1-day hearing, Moulder J gave judgment on sentencing ([2022] EWHC 2057 (Comm)) and made an order ("the Committal Order"), sentencing Mr Vik for his breaches of the 2015 Order. The Committal Order imposed a sentence of 20 months imprisonment, which reflected the serious and potentially irremediable harm suffered by DB from Mr Vik's breaches, the deliberate nature of Mr Vik's lies and conduct and the total lack of any mitigating factors. The Judge concluded that Mr Vik's actions were "*very likely to have been designed to keep DBAG out of its money*", that his breaches were "*of themselves significant and in addition have caused significant harm*" and that Mr Vik *"continues to do what he can to thwart"* DB's enforcement efforts. That sentence was however suspended for six months; a fact which has had a considerable impact on subsequent events.

22. At the time of making the Committal Application the draft order posited a suspended sentence (six months suspended for six months), reflecting the authorities as to the role of such a sentence in enforcing compliance as well as punishing for past breach and the default position under CPR 71.8. By the time of the hearing DB was advocating immediate imprisonment instead, and a considerable debate ensued as to whether the sentence should or should not be suspended. Leading Counsel for Mr Vik, supported by evidence sworn by Mr Vik, urged strongly his belated desire to comply and his willingness to engage with an order suspending committal on condition of further attendance and answering of questions.

23. Moulder J was – despite her concerns that Mr Vik's word was worth less than the paper on which it was written - ultimately persuaded to make that sentence of imprisonment one which was suspended.

24. It will inevitably have formed part of the matrix influencing that decision that:

    i. Mr Vik represented that he would comply with the terms of any conditions imposed;

    ii. His sworn evidence was that he was "*doing all that I can to assist and comply with any further order that may be made against me*";

    iii. He told the Court (through counsel) that he "*has certainly every intention of providing the missing information*", that he "*ha[d] already started that process"* and that he had demonstrated *"compliance*", *"cooperation"* and *"commitment to the process"*.

25. However instead of the original formulation of six months suspended for six months, the order made was that:

    i. Mr Vik be committed to HMP Pentonville for a period of 20 months from the date of his apprehension;

    ii. The committal be suspended:

> "…until whichever is the later of (i) a period of the date six months from the latest date by which any notice of appeal from this Order must be filed, or (ii) in the event of such notice of appeal being so filed, the date six months from the final determination of any appeal from this Order, and the warrant of committal remain in the Court Office at the Royal Courts of Justice, on the condition that Mr Vik complies with the terms set out in Schedule B to this Order, after which paragraph 1 of this Order and the Warrant of Committal shall be discharged unless prior to that date an application has been made by DB to lift said suspension."

26. The conditions were so far as relevant:

    i. By paragraphs 1 and 2 of Schedule B, provision was made for the Further Examination as a condition of Mr Vik's suspension as follows ("the Further Examination Condition"):

> "Attendance at Court for further examination as to SHI's means of paying the Judgment Debt
>
> 1. Mr Vik is to attend Court to be examined by DB on the matters listed in paragraph 3 below (the Specified Matters) on a date or dates to be fixed,

to be no less than 9 weeks from the date in paragraph 1.1 below.

1.1 That date is whichever is the later of:

(a) 14 November 2022; or

(b) in the event that an appeal is filed, the date of final determination of any such appeal.

2. Upon attending Court on the dates referred to in paragraph 1 above, Mr Vik is required to provide accurate answers, to the best of his knowledge and belief, to any questions as may be asked of him by DB or the Court in relation to the Specified Matters."

ii. Under paragraph 5 of Schedule B, Mr Vik was required – by no later than four weeks after the date by reference to which the Further Examination was to be fixed – to give remedial disclosure to DB of certain "Specified Documents" (the Remedial Disclosure Condition). These comprised categories of documents that Mr Vik should have disclosed, but failed to disclose, pursuant to the 2015 Order;

iii. Under paragraph 6 of Schedule B, Mr Vik was required – by no later than five weeks after the date by reference to which the Further Examination was to be fixed – to serve a witness statement setting out full details of the steps he had taken to comply with the Remedial Disclosure Condition ("the WS Condition").

27. The Committal Order therefore plainly envisaged by its terms the examination taking place within 6 months of the latest of 14 November 2022 or the final determination of the appeal. It also envisaged the committal being discharged in the event of compliance by Mr Vik.

28. The list of conditions in the Committal Order had been agreed to by Mr Vik via his counsel's skeleton argument. The Judge held that Mr Vik must "do his utmost" to "comply with the conditions".

29. Mr Vik appealed against the findings of contempt and against the Committal Order. So the 14 November 2022 date passed. That appeal was ultimately dismissed by the Court of Appeal by a judgment dated 24 February 2023 ([2023] EWCA Civ 191 [2023] 1 WLR 1605). They also awarded DB indemnity costs against Mr Vik and refused Mr Vik's application for permission to appeal to the Supreme Court.

30. Six months from the Court of Appeal's order expired on 24 August 2023.

Events subsequent to the Committal Application

31. On 1 March 2023, DB's solicitors wrote to Mr Vik's solicitors, to arrange the listing of the Further Examination on an expedited basis. Freshfields invited them to confirm that Mr Vik would support DB's request for expedition.

32. Over a week later, on 10 March 2023, Mr Vik's solicitors responded, asserting that there was "no obvious urgency" in listing the Further Examination such that (they claimed) "*expedition hardly seems justified*". They stated that Mr Vik would oppose any request for expedition unless DB agreed that the Further Examination be fixed *"by reference to counsel's availability"* and that Mr Vik *"may attend via video link"*.

33. On 15 March 2023, clerks to DB's and Mr Vik's counsel attended an Appointment to Fix the Further Examination. At the appointment, the clerk to Mr Vik's counsel explained that he was instructed to resist expedition unless Mr Vik's two conditions were satisfied. In the absence of agreement to Mr Vik's (unilaterally imposed) conditions, his counsels' clerk indicated that his instructions were to secure a date for which Mr Vik's leading counsel was available. The appointment concluded without a listing decision.

34. By letter dated 16 March 2023, DB's solicitors rejected Mr Vik's conditions. They said that DB would not agree to Mr Vik giving evidence remotely, since "*the prospect of the prison sentence being given effect immediately*" was important to compel him to provide truthful evidence. They sought confirmation by 20 March 2023 that Mr Vik would attend the Further Examination in person, failing which DB would apply to the Court for an order that he was required to do so.

35. On 17 March 2023, Mr Vik's solicitors responded, refusing to provide the confirmation requested. They asserted instead that, given that DB's solicitors' letter indicated that DB "*may seek immediate activation of the sentence*", it was *"of paramount importance"* that Mr Vik was represented at the Further Examination *"by his chosen counsel"*.

36. On 22 March 2023, Mr Vik's instructions changed. He offered to fix the Further Hearing for one of two windows in September 2023, either between 12 and 15 September or 18 and 20 September. Both parties preferred the latter window and accordingly, the Court fixed the Further Examination for 19-20 September 2023.

37. On 21 March 2023, Mr Vik's solicitors wrote asserting that Mr Vik required "*further time to complete his investigations and to produce Specified Documents*". They sought DB's agreement to extend the deadlines for the Remedial Disclosure and WS Conditions by 28 days (to 21 and 28 April 2023).

38. Further correspondence ensued over the next couple of days, without agreement being reached. On 24 March 2023, Mr Vik applied to extend the deadlines for the Remedial Disclosure and WS Conditions by 28 days (the "Variation Application"), asserting that this variation would still result in the production of documents and evidence "*well in advance of [Mr Vik's] attendance for further examination*".

39. It was thereafter agreed that "*the Variation Application should be determined at the Vik Evidence Hearing [i.e. the Further Examination]*".

40. On 24 March and 23 April 2023, Mr Vik produced additional documents pursuant to the conditions of suspension under the Committal Order. Criticism has been made of the disclosure given by Mr Vik, but DB did not apply to activate the sentence under the Committal Order and DB does not now seek any order for Mr Vik to give further disclosure.

41. Mr Vik's solicitors wrote on 12 April 2023 stating that Mr Vik considered it "*premature*" to determine whether he should be required to attend the Further Examination in person.

42. DB applied on 19 May 2023 for directions confirming that Mr Vik was required to attend the Further Examination in person. Mr Vik served responsive evidence by the agreed deadline (23 June 2023). However, on the same date – and without any prior notice – Mr Vik also issued an application seeking permission to attend the Further Examination remotely by video-link from Connecticut, USA, purportedly on the basis of a range of alleged commitments in the USA - none of which had been mentioned when the Further Examination was listed.

43. These applications were heard by Bryan J on 1 September 2023. Mr Vik argued his case on the basis that his suspended sentence was still in effect and would remain so at the date of the Further Examination. For example, Mr Vik submitted in his Skeleton Argument that he wanted the opportunity "*to continue to comply with the terms of the suspension of the Committal Order*" by attending remotely. The oral submissions made on Mr Vik's behalf before Bryan J proceeded on the same basis, namely that the suspension was in force and would remain so at the date of the Further Examination.

44. In a detailed judgment ([2023] EWHC 2234 (Comm): "*Vik 5"*), Bryan J rejected all of Mr Vik's arguments, describing his construction of the Committal Order as "*unarguable*" and his reasons for wanting to attend remotely as "*thin gruel indeed"* and not at all credible. The Judge held that he was *"very troubled"* by Mr Vik's threat to refuse to attend if ordered to do so in person, which the Judge described as "*blackmail*" and "*like a gun to the Court's head*".

45. The Judge's reasoning proceeded on the express basis – this having been common ground – that the suspended sentence was still in effect. As the Judge held (at [15]):

> "If, as it is, it is a condition of the suspension that Mr Vik attend Court for Further Examination, it is a condition that should be complied with. On any view, Mr Vik is under an obligation to attend for Further Examination (however that is done) otherwise he would be in breach of the suspension terms and liable to face an application for breach and an order for immediate imprisonment."

46. Bryan J accordingly ordered that Mr Vik was required to attend the Further Examination in person. He awarded DB indemnity costs and certified Mr Vik's application for permission to appeal to be totally without merit.

47. On 4 September 2023, DB's solicitors wrote to Mr Vik's solicitors seeking confirmation that Mr Vik would attend the Further Examination in person. The letter noted that DB's legal team "*is undertaking detailed preparation for the forthcoming hearing, (which will undoubtedly result in significant costs)*".

48. There was no immediate response. On 13 September 2023, Mr Vik's solicitors wrote to DB's solicitors a letter which might justly be described as startling. It ran thus:

> "1. We refer to the proceedings commenced by your client's application notice dated 7 May 2019 (as amended on 5 February and 17 December 2021) (the "Committal Proceedings") and to the order of Mrs Justice Moulder, dated 15 July 2022 (the "Committal Order") and the warrant of committal issued pursuant to that order (the "Warrant").
>
> 2. Paragraph 2 of the Committal Order provided (in relevant part) as follows:…
>
> 3. The period of suspension of the sentence imposed by the Committal Order, namely six months from the final determination of Mr Vik's appeal from the Committal Order, ended on 24 August 2023. To the best of our knowledge, no application to lift the suspension of sentence was made by your client prior to that date. As such, the order for committal and the Warrant have now been discharged, pursuant to paragraph 2 of the Committal Order.
>
> 4. Subject to you identifying any reason to the contrary, it seems to us that the Committal Proceedings are now at an end and there is no reason for Mr Vik to attend for any further examination.
>
> 5. It appears to us that the parties should inform the Court of this fact as soon as possible so that the listing for the 19-20 September 2023, which is fast approaching, can be vacated."

49. It was then and remains unclear when Mr Vik or his team alighted on this argument. The closest we have come to a narrative on this was that it was "s*hortly after"* the hearing before Bryan J.

50. This position was maintained in a letter dated 14 September 2023, asserting that "*neither side [had previously] appreciated that the period of the suspension would come to an end on 24 August 2023*". The following day Mr Vik's solicitors wrote to the Court proposing the Further Examination be vacated.

51. In response, DB issued an application seeking declarations that that the Committal Order had not been discharged, or alternatively an order that the

Committal Order be rectified or varied so as to extend the period of the suspension and thus the life of the order and that Mr Vik was required to attend the Further Examination. That application was heard by Henshaw J on 19-20 September 2023.

52. On 16 October 2023, Henshaw J held ([2023] EWHC 2563 (Comm): *"Vik 6"*) that there was a "*communicated common understanding [between the parties] that Mr Vik remained under an obligation to attend the Further Examination, with the sentence remaining suspended in the meantime*". However, despite this finding, he concluded, with "regret", that on the true construction of the Committal Order, the period of suspension had nonetheless expired on 24 August 2023 as Mr Vik contended. Henshaw J then went on to reject also with apparent regret, a number of DB's alternative submissions which relied on the slip rule and other legal principles to argue that the suspension was still in effect, confirming that the Committal Order was discharged on 24 August 2023 and rejecting DB's application to rectify or vary the order to produce a different result.

53. Henshaw J went on to hold (in a passage much relied on by DB) that there was no reason why a further order requiring Mr Vik to attend for examination could not and should not now be made:

> "it is not immediately obvious why a fresh order could not have been made against Mr Vik pursuant to CPR 71.2. On the basis that the information he provided at the original hearing, held pursuant to Teare J's order, has been found to be wholly inadequate, it might be considered logical and just that a further examination be ordered. I do not at present see why the fact that a further examination was made a condition of the Suspended Committal Order, but became ineffective because no such examination was list[ed] during the period of that Order, would make it unjust or abusive for a further CPR 71.2 order to be made."

54. Henshaw J refused DB's application for permission to appeal.

55. DB renewed its application for leave to appeal before the Court of Appeal. Permission was refused by Males LJ by an order dated 11 January 2024.

56. In his reasons, Males LJ noted that "*[t]here was no reason why the conditions should not have been satisfied within the six-month period if [DB] had sought expedition*" or indeed if "*provisional steps to obtain a listing had been taken before the determination of [Mr Vik's] appeal, as could have been done*", and that there was no basis on which the Committal Order could have been "corrected" or varied "*merely because [DB] had misunderstood the effect of the order made by Mrs Justice Moulder*".

The Current Application

57. DB therefore made this Application seeking an order for a further examination of Mr Vik on 29 February 2024. The Application Notice summarised the history of the matter and went on to say:

> "The judgment creditor applies under the Court's inherent jurisdiction and/or CPR 71.2 for an order that Mr Vik attend court for an examination to provide information about the judgment debtor's means, which he was required but failed to provide during the hearing before Cooke J on 11 December 2015, and any other information needed to enforce the Judgment."

58. An unsealed copy of DB's Application was served on Mr Vik's solicitors, Brecher, on 1 March 2024. The sealed copy was served on 6 March 2024 (once it became available from the Court). Service was effected on Brecher in accordance with the Notice of Change of Legal Representative dated 7 February 2017 that Brecher had filed and served in these proceedings. DB's Application was also served on 6 March 2024 on Archerfield Partners LLP, solicitors who remain on the record for SHI.

59. On 5 March 2024, Brecher emailed DB's solicitors asserting that they had no instructions to accept service on behalf of Mr Vik. By an email later the same day, it was noted in response that Brecher act for Mr Vik in Case No. CL-2009-000709 (i.e. the underlying proceedings between DB and SHI in which the Part 71 Order was made) and related proceedings and had previously accepted service of applications made within them, that DB's Application was made within those existing proceedings and that there was no basis for Brecher's suggestion that they were not instructed to accept service of the application.

60. Mr Vik issued his Cross-Application on 19 April 2024 accompanied by a letter from Brecher outlining his arguments. No supporting evidence was filed or served with the Vik Cross-Application and Mr Vik has not sought to file or serve any evidence since then, either in respect of his application or DB's Application.

61. As reflected in the recital to the Consent Order, dated 10 April 2024, Mr Vik has reserved his right to dispute service at this hearing.

THE LAW

CPR 71.2

62. While DB's application is primarily on the basis of inherent jurisdiction, it plainly arises against the backdrop of the CPR 71.2 jurisdiction. This is not the first case where a determined attempt by a judgment debtor to avoid payment has directed a judgment creditor towards as thorough use of CPR 71 as is possible. Most famously in the *Masri* litigation the nature and limits of the jurisdiction were thoroughly explored and tested – in circumstances not entirely dissimilar to the present.

63. In *Masri v Consolidated Contractors* a claim was brought against a foreign company which had submitted to the jurisdiction by defending the proceedings. The claimant obtained judgment and then faced the problem of enforcing that judgment against an unwilling judgment debtor which was incorporated in Lebanon and domiciled in Greece. Indeed that judgment debtor not only failed to meet the judgment debt – they *"manifested their intention to avoid payment of*

this judgment debt at all costs". The judgment creditor took various conventional steps: the appointment of a receiver, and obtaining a freezing order, an order for the directors to co-operate with the receiver, and an order to swear an affidavit of assets. All of these steps were upheld in the face of spirited challenges by the judgment debtor[2]. All were to no avail, in terms of result. So the judgment creditor obtained without notice an order under CPR Part 71.2 for K, an officer of the company domiciled in Greece, to be examined in England in respect of the company's foreign assets. *Masri (No 4)* [2009] UKHL 43 [2010] 1 AC 90 concerned the director's ultimately successful challenge to that order.

64. CPR 71 is called: "*Orders to obtain Information from Judgment Debtors*". It is the successor to the old RSC Order 48. As Lord Mance pointed out (*Masri (4)* [5]) it is a product of Victorian *"energy and pragmatism"*, coming to us via section 60 of the Common Law Procedure Act 1854 (17 & 18 Vict c 125), as extended by the Rules of the Supreme Court 1883.

65. CPR 71.2 provides:

> "Order to attend court
> (1) A judgment creditor may apply for an order requiring –
> (a) a judgment debtor; or
> (b) if a judgment debtor is a company or other corporation, an officer of that body,
> to attend court to provide information about –
> (i) the judgment debtor's means; or
> (ii) any other matter about which information is needed to enforce a judgment or order.
> (2) An application under paragraph (1) –
> (a) may be made without notice; and
> (b) must be issued in the court or County Court hearing centre which made the judgment or order which it is sought to enforce, except ….
> (6) A person served with an order issued under this rule must –
> (a) attend court at the time and place specified in the order;
> (b) when he does so, produce at court documents in his control which are described in the order; and
> (c) answer on oath such questions as the court may require.
> (7) An order under this rule will contain a notice in the following terms, or in terms to substantially the same effect –
> 'If you the within-named [ ] do not comply with this order you may be held to be in contempt of court and punished by a fine, imprisonment, confiscation of assets or other punishment under the law""

[2] *Masris*: (No 2) [2008] 1 All ER (Comm) 305. [2009] QB 450; (No 3) [2009] QB 503.

66. The rule therefore embodies a way in which information about the assets of the corporate defendant (which cannot be personally compelled) can be compelled from a relevant individual, in the form of a director. However, though addressed to an individual, that individual cannot be asked *"questions about his personal assets or indeed about anything which is not relevant to the enforcement of the judgment or order against the judgment debtor"*. (*Masri (4)(CA)* [12-13]).

67. When considering the question of extraterritoriality in *Masri (4)* the House of Lords noted at [12-14] that the power to compel sat alongside:

    i. The territorially limited jurisdiction to compel witnesses, which reaches back to the Statute of Elizabeth 1562 (5 Eliz 1 c 9) and has never extended beyond the United Kingdom;

    ii. The careful scheme of extraterritorial jurisdictions embodied in CPR Part 6.

68. The House of Lords at [23] considered and rejected a parallel by reference to the extraterritorial reach of insolvency legislation:

> "The category of persons embraced by CPR Pt 71 is confined to "an officer" of the company or other corporation - on the face of it probably only a current officer at the time of the application or order, whereas section 133 extended (unsurprisingly since it deals with a company being wound up) to past officers and some other closely connected persons….CPR Pt 71 is concerned with obtaining information in aid of the enforcement of a private judgment. The public interest that "those responsible for the company's state of affairs should be liable to be subjected to a process of investigation and that investigation should be in public" (In re Seagull [1993] Ch 345, 354) is absent. The universality of a winding up order, in the sense that it relates at least in theory to all assets wherever situate, is also absent. Private civil litigation is different. A fair and efficient legal system is of course a cornerstone of the rule of law, and it can also be said that there is a public interest in a court getting to the bottom of litigation and ensuring that parties have the means of obtaining full information to enable it to do so. Yet the parties have no right to ask the court to summon witnesses from abroad for that purpose. While a judgment crystallises rights and establishes an unsuccessful defendant's liability, the court is still acting in aid of private rights after judgment, and it may be questioned whether, in terms of public interest, there is a very great difference between the importance of evidence for the trial of liability and quantum and for the enforcement of a judgment."

69. The House of Lords thus concluded that, as a matter of construction of the rule, the power under CPR 71.2(1)(b) only applies to an officer of the corporate judgment debtor who is within the jurisdiction both at the time that the application is made and when the order is made: *Masri 4* at [26]. In reaching that conclusion Lord Mance said this:

> "[24]...The extreme informality of the process by which the rules enable an order for examination to be obtained continues to point towards a purely domestic focus. An application for an order may under CPR Pt 71 be made without notice, may be dealt with ministerially by a court officer and will lead to the automatic issue of an order... These considerations all tend to point against the application of CPR Pt 71 to company officers outside the jurisdiction;
>
> [26] In my view CPR Pt 71 was not conceived with officers abroad in mind, and, although it contains no express exclusion in respect of them, they are lacking in critical considerations which enabled the Court of Appeal In *Re Seagull* to hold that the presumption of territoriality was displaced …. Although CPR Pt 71 is limited to officers of the judgment debtor company, I regard the position of such officers as closer to that of ordinary witnesses than to that of officers of a company being compulsorily wound up by the court. I conclude that CPR Pt 71 does not contemplate an application and order in relation to an officer outside the jurisdiction".

70. It follows that the jurisdiction under CPR 71 is limited. However much the Court may want to ensure that its judgments are observed and satisfied, there are limits to what can be done within the rules.

71. Those limits are reflected in the number of significant formal requirements to the process which must be observed:

    i. An order under CPR 71.2(1)(b) cannot be made against someone who is not a current officer of the judgment debtor: *Vitol SA v Capri Marine Ltd* [2008] EWHC 378 (Comm) at [23], approved in *Masri* at [23] and [36].

    ii. An order under CPR 71.2(1)(b) cannot be made if the director of the judgment debtor is not within the jurisdiction at the time the application was made and at the time the order is made: *CIMC Raffles Offshore (Singapore) PTE Ltd v Schahin Holding SA* [2014] EWHC 1742 (Comm) at [21]-[23];

    iii. Under CPR 71.3 any order to attend court must "*unless the court otherwise orders*" be served personally on the person ordered to attend;

    iv. That service must be attested to by an affidavit (CPR 71.5);

    v. If there is a failure to attend, to answer or to comply with the order, the matter may be referred to a High Court Judge under the contempt of court jurisdiction (CPR 71.8);

    vi. Where such an order is made under CPR 71 any imprisonment or confiscation is to be suspended on condition of compliance with the terms of the order and the original order.

The Court's Inherent Jurisdiction

72. The Court's jurisdiction is not of course limited to the powers given by the Civil Procedure Rules. It also possesses an inherent jurisdiction, which can be extremely potent – as in the case of anti-suit injunctions.

73. Here what is in focus is the inherent jurisdiction of the court to make orders in protection of its jurisdiction and processes. This is a question which arose at stage 2 of the *Masri* litigation, in the context of post judgment receivership and freezing orders. In *Masri (No 2)* [2009] QB 450 at [92] Lawrence Collins LJ held that the court had jurisdiction to make such orders against judgment debtors and that the Court retained personal jurisdiction despite entry of judgment against them and their foreign domicile. He then explained in *Masri (No 3)* [2009] QB 503 at [26] that *"the English court has power over persons properly subject to its in personam jurisdiction to make ancillary orders in protection of its jurisdiction and its processes, including the integrity of its judgments"*.

74. All of this reaches back to the case of *A J Bekhor & Co Ltd v Bilton* [1981] QB 923. In that case what was under consideration was whether the court had power to order ancillary disclosure in support of a freezing order. Ackner LJ held at 942 that *"where the power exists to grant the remedy, there must also be inherent in that power the power to make ancillary orders to make that remedy effective"*. Similarly in *Maclaine Watson & Co Ltd v International Tin Council (No 2)* [1989] Ch 286 at 303, the Court of Appeal referred to *AJ Bekhor* as support for the proposition that "*there is an inherent power under what is now section 37(1) [of the Supreme Court Act 1981] to make any ancillary order, including an order for discovery, to ensure the effectiveness of any other order made by the court*".

75. This case itself has somewhat added to the jurisprudence in this area. One of the challenges launched by Mr Vik in this litigation was to the Committal Application. In 2016 Teare J ([2016] EWHC 3222 (Comm); [2017] 1 WLR 1842; [2017] EWHC 459 (Comm); [2017] 1 WLR 3056) decided that there was power to serve a committal application outside the jurisdiction. The issue related essentially to whether DB was confined to the CPR 71 contempt jurisdiction or could avail itself of the (plainly) extraterritorial effect of CPR 81 and whether CPR 71.8 itself had extraterritorial effect; but part of the argument was also whether the committal was "incidental" to the 2015 Order, such that no permission to serve out was needed. There as here Mr Vik relied on *Raja v Van Hoogstraten (No 9)* [2008] EWCA Civ 1444 at [78] for the proposition that the court's inherent jurisdiction cannot be exercised to arrive at a different outcome from that which would be obtained under the applicable CPR provision. Teare J held at [7] as follows:

> "An order of a court must carry with it the means to enforce that order. If it did not there would be no utility in the order for it could be disobeyed without the threat of sanction. The means to enforce an order are therefore a necessary incident of the order. An order for committal is one of the means by which court orders are enforced. For that reason an order for committal is... a necessary incident of a court order. That is clearly demonstrated by the presence of a penal notice at the

> beginning of the Part 71 order. I therefore consider that in circumstances where the court has jurisdiction to make the Part 71 order against Mr Vik the court also has jurisdiction to make a committal order against him. Permission to serve the application to commit Mr Vik for contempt out of the jurisdiction is not required because he is already subject to the jurisdiction of this court in respect of the Part 71 order and all matters which are incidents of that order, one of which is an order for committal for contempt of the Part 71 order."

76. That decision was appealed by Mr Vik, but upheld by the Court of Appeal [2018] EWCA Civ 2011 [2019] 1 WLR 1737 (*Vik (1&2)*). In giving the judgment of the Court, Gross LJ explicitly considered the question of whether the Committal Application was "incidental to" the 2015 Order and said as follows:

> "In principle and as is common ground, jurisdiction over a person in respect of a claim or order includes jurisdiction in respect of matters incidental to that claim or order. Accordingly, the sole question here is whether the committal application was incidental to the CPR Pt 71 order. To my mind, the judge's reasoning was impeccable: (i) an order of a court must carry with it the means to enforce that order; (ii) the means to enforce an order are therefore a necessary incident of that order; (iii) an order for committal is one of the means of enforcing court orders; (iv) accordingly, the committal application is incidental to the CPR Pt 71 order. On this view, it would follow that DB does not require permission to serve the committal application out of the jurisdiction."

77. The precise scope of the argument is thus delimited by these authorities, including on one side the passages in *Vik (1&2)* where Gross LJ emphasised the importance of the need for a court order to carry with it the means of enforcing an order and on the other the authorities such as *Raja v Van Hoogstraten (No 9)* (accepted by Gross LJ at [36] of *Vik (1&2)*) where it was said at [78]:

> "where the subject-matter of an application is governed by rules in the CPR, it should be dealt with by the court in accordance with the rules and not by exercising the court's inherent jurisdiction … it would be wrong to exercise the inherent jurisdiction of the court to adopt a different approach and arrive at a different outcome from that which would result from an application of the rules."

THE JURISDICTION TO MAKE THE ORDER SOUGHT

The Submissions

78. The way DB's case was put is that, reduced to essentials, this is simply a case of making an order to ensure compliance with the Court's own order. It is said that there is an inherent power to make the order sought because, once an order is made against a person over whom the Court has validly assumed personal

jurisdiction, the Court has an inherent power to make further incidental or ancillary orders to ensure the original order is effective and thereby to protect the integrity of its processes and judgments. DB says that the making of the 2015 Order must carry with it the power to make further orders necessary to ensure the original order is effective – including the making of the further proposed Part 71 Order. Since Mr Vik has never properly complied with the 2015 Order (but instead lied at the Part 71 Examination as described above), the Court retains the power to make further orders against Mr Vik designed to render the 2015 Order effective and ensure the integrity of its procedures are upheld. That includes the power to make an order that Mr Vik attends for a further examination enabling DB to obtain the information Mr Vik should have, but did not, provide, at the Part 71 Examination. DB says that the falling away of the Committal Order is nothing to the point because it itself was incidental to the 2015 Order and what is sought now is incidental not to the Committal Order but to the original 2015 Order.

79. DB have repeatedly emphasised in submissions the undesirability of Mr Vik *"a convicted, unrepentant contemnor and a thoroughly dishonest individual"* being allowed to thumb his nose at the Court's judgment – and that its position aligned with the reactions of previous judges. Or, as Ms Tolaney put it:

> "Whatever doubts one has, it is better than the alternative of just letting him evade it through happenstance and that is certainly why Mr Justice Henshaw and Lord Justice Males made the comments they did."

80. For Mr Vik it was submitted that even leaving aside the question of whether the proposed order is in fact ancillary to the 2015 Order, DB's argument starts from a mistaken premise that the Court's inherent powers are boundless and can allow the Court to grant relief that would be impossible under the CPR. Citing *AJ Bekhor & Co v Bilton*:

> "In so far as Mr. Stamler contends that there is inherent jurisdiction in the court to make effective the remedies that it grants, this seems to me merely another way of submitting that, where the power exists to grant the remedy, there must also be inherent in that power the power to make ancillary orders to make that remedy effective. This I have accepted. However, if and in so far as he contends that the courts have a general residual discretion to make any order necessary to ensure that justice be done between the parties, then in my judgment that is too wide and sweeping a contention to be acceptable."

81. Mr Vik's submission is that the Court can only make such ancillary orders as are within its power to make, so if the CPR does not permit the Court to make an order under CPR 71.2, because Part 71 is not intended to encompass someone who is not an officer or an officer who is not within the jurisdiction, then it cannot be legitimate to obtain such an order via the inherent jurisdiction.

Can a *de novo* order be made under CPR 71.2?

82. This is not strictly speaking an issue between the parties, but it forms relevant background to the issues which do exist and is the basis of the *Van Hoogstraten* point advanced by Mr Vik.

83. As a result of the principles outlined, it is essentially not in issue that the answer to this question is "No". That is for three reasons.

    i. The first is that there is no evidence that Mr Vik is a current officer of SHI. The evidence suggests that Mr Vik ceased to be a director of SHI in July 2015;

    ii. The second is that Mr Vik was not in the jurisdiction on 29 February 2024, when the Application was issued. As DB's evidence and skeleton say, Mr Vik is resident in Monaco and there is no evidence to suggest that he was present in the jurisdiction on 29 February 2024;

    iii. The third is that similarly there is no evidence to suggest that Mr Vik would be present in the jurisdiction at the date on which any order might be made;

84. For the same reason, Mr Vik could not be served with any *de novo* application.

85. In consequence, the Court has no power under CPR 71.2 to make an order *de novo*.

Is what is being sought an Ancillary Order?

86. Against this background, the issue must be whether the order sought truly is ancillary. If that is the case it is not a matter of (in the words of the Court of Appeal in *Van Hoogstraten*) relying on "*a different approach [arriving] at a different outcome from that which would result from an application of the rules [i.e., CPR 71.2]*".

87. There are two aspects to consider here. The first is the Application as originally drafted. However during the course of the hearing DB slightly shifted tack on the scope of the order sought (it would say simply clarifying the intent which did not find expression in the original drafting) and invited me to make a narrower and more particular order. That possibility requires separate consideration.

<u>The original formulation</u>

88. On the key question of whether the order as originally sought is ancillary, I conclude without any real difficulty that it is not.

89. DB's skeleton is markedly light when it comes to explaining how the order is ancillary and/or incidental to the original order. It simply says that "*the order sought in these proceedings is a further exercise of the power conferred by that existing personal jurisdiction*". To similar effect were the oral submissions of Ms Tolaney who contended that *"seeking a further examination to enforce that order is plainly ancillary to and does not require new jurisdiction to be established"*. The high watermark of the submission was really that:

> "the purpose of the further examination, …, is to secure compliance with and ensure effectiveness of the Part 71 Order made by Mr Justice Teare, because the purpose remains to require Mr Vik to give the information he should have given when he was initially examined and has failed to do so. That is a purpose incidental or ancillary to the Part 71 Order."

90. The first point to make is that the Application does not look like an application for an ancillary or incidental order. Those words are not used in the Application, and found no expression until the skeleton argument.

91. The words "incidental" and "ancillary" themselves deserve consideration. Even without looking at dictionary definitions, they indicate something that exists by reference to something else – something which is secondary to or merely supportive of something else, or that has no function or purpose without the thing to which it is incidental or ancillary. Dictionary definitions merely reinforce this point. The Oxford English Dictionary offers this:

> "Incidental..: Occurring or liable to occur in fortuitous or subordinate conjunction with something else of which it forms no essential part.
> Ancillary…: Subordinate, subsidiary…"

92. That reflects what can be seen in the cases which have considered incidental or ancillary orders:

    i. As noted above, in *Bekhor* and *Maclaine Watson* what was in issue was the ability to grant an order for disclosure to give teeth to the freezing order. Plainly that was not the same as the relief granted by the freezing order. It was something of a different nature, and it was something which plainly facilitated the operation of the freezing order;

    ii. In *Masri* the incidental orders were similar: post-judgment receivership and freezing orders;

    iii. In the earlier *Vik* cases it was the Committal Order's relationship with the 2015 Order which was in issue. Although there was a closer nexus of content and although the application was made under CPR 81 rather than under CPR 71.8, it is plain that the scope of what was being sought was (i) not identical to the 2015 Order and (ii) essentially the same as what is specifically provided for in the rules in CPR 71.8 as a follow on or adjunct to a CPR 71.2 order. In that context the order was plainly ancillary.

93. Aside from the absence of the relevant words, the Application is not drafted in a way which even suggests it is incidental or ancillary to the 2015 Order. The Application is drafted as one would for a *de novo* application. There is no mention of the original order as the justification for the application, as opposed to as part of the backdrop. Nor is there any mention of the need to make such an order to make any other order (particularly that one, key, earlier order) effective; rather the reference is to making the Judgment effective *("examination to provide information about the judgment debtor's means, …, and any other information needed to enforce the Judgment."*).

94. Similarly, panning out to the evidence filed in support of DB's Application this too makes no reference to its supposed purpose being to enforce the 2015 Order, nor to the Application being incidental or ancillary to that original order. On the contrary, the evidence fairly clearly envisages that any order made on the Application would permit Mr Vik to be examined not only in relation to SHI's means of paying the Judgment Debt (which was the subject of the 2015 Order) but also as to the steps that Mr Vik took to comply with the conditions of suspension of sentence under the Committal Order. The latter is obviously not only not ancillary to, but beyond the scope of any questioning that could have been ordered or carried out under the 2015 Order (as it has no connection to DB enforcing the Judgment Debt against SHI).

95. Nor indeed would the Application make sense as an ancillary or incidental application; it is not directed to doing something on the way to the original order, or different in quality but complementary to it. It is (as drafted) effectively a rerun of the original order. It is for the same kind of relief as would be granted on any application under CPR 71.2. The effective identity of the two orders can be seen in the following comparison:

2015 Order	**Draft 2025 Order**
"Mr Alexander Vik ….to be questioned by [DBAG] before a judge … to provide information about the judgment debtor's means and any other information needed to enforce the judgment or order … [and] … to produce to the judgment creditor 14 day prior to attending the court in accordance with para 1 above, all documents in the judgment debtor's control which relate to the judgment debtor's means of paying the amount due…"	Mr. Vik … to be questioned by DBAG before a judge … to provide the information about the judgment debtor's means, which he was required to provide on 11 December 2015, and any other information needed to enforce the judgment or order.

96. If the conditions for making a *de novo* order were satisfied (i.e., if Mr Vik were still a director of SHI and within the jurisdiction), exactly such relief could be obtained (effectively as a matter of right) even if the 2015 Order had never been made. The availability of the relief sought is therefore in no way dependent on the fact of the 2015 Order.

97. Similarly, the effect of the order if granted would not be to breathe new life into the 2015 Order or to provide some means by which that original order could be enforced. Mr Vik would be required to attend Court and DB would be entitled to ask questions by virtue of the new order; he would not be attending so that the

original Part 71 Examination could be resumed. The order sought would therefore not in any sense be secondary to or supportive of the 2015 Order.

98. Nor can it be said that this would constitute an adjourned hearing: the application is not framed that way and could not be. That is because at the close of the original Part 71 Examination Cooke J effectively put DB to their election. At the end of that hearing DB made submissions as to the lack of truthfulness of some of the answers of Mr Vik and identified three possibilities for the next steps, one of which was contempt, and another of which was adjournment. It was clear from the course of submissions which followed that DB were intent on pursuing an application for contempt, and did not seek an adjournment. At the very end of the transcript Mr Vik's counsel asked for him to be released, DB confirmed he had been released and Cooke J said:

> "His examination has been completed. If it hadn't been then there wouldn't be an application [for contempt] being made. It would be continuing with more questions to be asked."

99. DB contends that in *Vik (1&2)* the Court of Appeal found that the 2015 Order could be enforced by a committal or other means (or later in submissions *"any attempt to enforce it by any means was incidental or ancillary"*). In the first place this is not quite correct. The Court of Appeal said that committal is one of the ways of enforcing orders, not that there are a variety of ways of enforcing this order.

100. But in any event the usual means of enforcing judgments and orders are listed at paragraph 70.2.1 of the White Book (drawing on PD70A paragraph 1):

> "Writ of control or warrant of control Parts 83 and 84);
> Warrant of Control (Pts 83 and 84)
> Third party debt order (Part 72);
> Charging order, stop order or stop notice (Part 73);
> Attachment of earnings order (Part 89);
> Appointment of a receiver (see Part 69);
> Judgment summons (CCR Ord 28)
> Committal (Pt 81)
> Sequestration (Pt 81…)"

They do not include a Part 71 Order. To these various other possibilities might be added (e.g., unless orders, debarring orders). None of these are remaking the same order. Making a second order in similar terms is not a means of enforcing an order. Thus an order for disclosure of assets in aid, and to enable the claimant to police the effectiveness of a freezing order, is ancillary; a second freezing order requiring compliance with itself is not.

101. DB's key submission is that the proposed order is to secure compliance with and ensure effectiveness of the Part 71 Order. But again that is not quite right. The expressed purpose as originally drafted is *"to provide information about the judgment debtor's means … and any other information needed to enforce the judgment or order"*. That might be an order ancillary to the Judgment, but it is not ancillary to the 2015 Order.

102. To meet the point relating to the identity of the two orders DB cite *Rowland v Stanford* [2022] EWHC 2490 (Ch) as an example of one order being enforced by the making of another order in materially similar terms. But that was a very particular case, and should not be seen as laying down any useful principle. It was a case in which a contemnor was made the subject of an immediate committal order, which seems to have focused his mind wonderfully. He did what he could to comply and made a discharge application. At the time of the hearing he had not yet fully complied and could not realistically do so while in prison, but the steps he had taken made his intention to comply manifest. In essence the Court considered that he was being hampered in his efforts to comply by the fact of his having been imprisoned for the contempt (e.g., at [22], "*… he is prevented from complying further with the remainder of the order because he is incarcerated*"). In those particular circumstances, it appears that the judge re-made (at least in part) the order that the contemnor had breached so that the contemnor could be discharged yet still be subject to the obligation to provide such documents and information as he had not yet been able to provide. It plainly turned on its own particular facts; nor is it apparent that issues as to the basis of the power to make the order were in play. This may well be in part because in that case such arguments were pointless: the Court would (presumably) have had power to make a fresh order in similar terms to the order that had been breached.

103. I should also for completeness deal with the case of *Watson v Sadiq* [2015] EWHC 3403 (QB) upon which DB relied in support of the proposition that when the Court validly exercises its jurisdiction to make an order under CPR Part 71, it also obtains the power to make orders for further examinations of the subject of the order under that Part when it is appropriate to do so to ensure that the judgment creditor obtains the information it needs. The case, however, really gives no assistance to DB, and reliance on it rather tends to demonstrate the tenuousness of the argument.

104. The case is an *ex tempore* judgment (albeit by Hickinbottom J) on a referral from a decision of a district judge. It bears the hallmarks of a relatively informal judgment (with no identification of solicitors) and it arises against a rather chaotic history. An order under CPR 71.2 had been made against the claimant in relation to certain unpaid costs orders arising out of a settled dispute over a property deal and subsequent misconceived appeal proceedings (and a welter of associated disputes). The claimant attended the examination but, after an argument with the judge arising from the judge asking the claimant's son to step outside of court, left the courtroom without having been examined. The examination therefore did not proceed. The district judge overseeing the examination made an order transferring the proceedings to the High Court for an oral examination of the claimant, and two other individuals who the judge had (wrongly) joined to the order. In addition, the district judge referred the claimant's conduct to the High Court under CPR 71.8, indicating that a hearing should be listed at which the claimant should show cause why a suspended committal order should not be made against him. In the High Court, Hickinbottom J declined to investigate whether the claimant's conduct amount to a contempt, *inter alia* because by the time of the hearing before him, the claimant had indicated that he was prepared *"to engage constructively and fully with the oral examination process"*. Hickinbottom J nevertheless directed that the matter be transferred back to the

County Court for the court *"to send out a further rule 71.2 notice, with a new date for the Claimant's oral examination in it, at which the answers the Claimant has given in writing can be tested – if necessary, vigorously – by cross-examination"*.

105. It is hard to see this decision as one which establishes any principle. First it was plainly a pragmatic way of dealing with messy proceedings which should never have reached the High Court. Secondly no-one seems to have argued there was no power to do as the judge did. Third, this was a case where it is plain that a further Part 71 Order could be made *de novo* – the claimant was an individual resident in this jurisdiction.

Would some narrower order be ancillary?

106. During the course of argument I raised with the parties whether some narrower order might be regarded as ancillary to the 2015 Order.

107. In response in reply Ms Tolaney indicated that what was being sought was essentially the residue of what has not yet been truthfully answered or provided: *"It hasn't gone by the wayside because it is quite clear the order has not been complied with so there is something left, … There is something left to do, it's not over, which is why it's not a fresh order…"*

108. DB clarified that it had never anticipated against that background simply starting again, declaring "*open season*"; nor was the proposed order directed to all the findings of contempt. Rather the application was directed to completion of the exercise to the extent practical. No disclosure was sought, some disclosure having been now provided, and it had been anticipated that, as with the 2015 Order, the judge would define the ambit of the questioning via topics. In addition, in relation to some findings of contempt it was now known that certain assets (such as the Carlyle interests and Reiten interests) were long gone, and there was no point in asking further questions.

109. An amended draft order was then provided which made clear that what was being sought was effectively the "live" issues in the examination which was ordered to take place pursuant to the Order of Moulder J after the judgment on the Committal Application, which encapsulated topics on which Mr Vik had been held to be in contempt by failing to provide truthful or complete information. The topics involved can be summarised thus:

Committal Order Topics	**Proposed Order Topics**
the funds and assets held by Beatrice and the Trust;	The funds and assets held by C.M. Beatrice, Inc and the CSCSNE Trust
the Devon Park Interest;	SHI's interest in Devon Park (the Devon Park Interest)

The alleged sale of the IFA Shares and any subsequent disposals of that shareholding;	The alleged sale of SHI's shares in IFA Hotels & Touristik AG (the IFA Shares) and any subsequent disposals of that shareholding
the alleged sale and transfer of the Devon Park Interest and the IFA Shares to, and Mr Vik's connection with, Universal Logistic Matters, S.A.	The alleged sale and transfer of the Devon Park Interest and the IFA Shares to, and Mr Vik's connection with, Universal Logistic Matters, S.A
Also: (i) the transfers of the Partnership Interests, (ii) matters arising from disclosure and witness statement to be provided by Mr Vik	

110. What is sought is therefore a clear subset of what Mr Vik should have given but failed to do; on that basis it was said to be ancillary.

111. It is of course very tempting to take a broad view of the question in the light of Mr Vik's determined attempts to avoid complying with both a judgment of this court and also the 2015 Order. That was the course which DB effectively urged. However, despite that it is important to ensure that the Court does not take to itself an excessive jurisdiction – perhaps particularly against a background where the original jurisdiction under the 2015 Order was at the outer limits of the Part 71 jurisdiction in the sense that Mr Vik was only fortuitously in the jurisdiction at the relevant dates and where it is clear no fresh order could now be made.

112. I am not satisfied that the proposed order, even as amended, is one which can properly be called ancillary or incidental to the 2015 Order. Some of the points already made above resonate here – for example as to the nature of incidental or ancillary. Even carved down what is being sought is, as acknowledged, a sub-set of the answers which Mr Vik should have given in 2015 – because the Committal Application was itself based on a failure to give truthful or accurate answers on these self-same topics in 2015. It seeks therefore a reiteration of aspects of the 2015 Order; something which forms part of, not something which is subordinate to or not an essential part of that Order.

113. Similarly as to function: the order sought would not operate to make the 2015 Order effective in the sense of giving effect to or securing compliance with the terms of that original Order. Rather, the obligations under any new order would in part reiterate and supersede the obligations under the 2015 Order and replace them with new and different obligations. It is not directed in reality to compliance with the 2015 Order at all – it is, as the application still says, directed to securing compliance with the Judgment.

114. DB says that the answer on "incidental" can be reasoned back by reference to the Committal Order:

> "It's difficult to see, my Lady, how a committal process which resulted in a suspended order requiring Mr Vik to attend for a further hearing, to give him the opportunity to comply with the Part 71 Order, is, as the Court of Appeal held, ancillary and incidental to the Part 71 Order, but an order for a further examination now would not be."

115. But the answer is that the committal was not found to be incidental out of the thin air, or because any further order of any sort is incidental or ancillary. Committal is incidental because it is expressly woven into the Part 71 process as a means of incentivizing the reluctant. Adjournment of the original hearing is also provided for, and would be ancillary. As noted, DB opted for the committal route in this case. Further (post committal) examinations are not provided for by CPR 71.

116. The reality is that if the proposed order is incidental or ancillary to anything then it is incidental or ancillary either to the Judgment, or to the Committal Order. In some ways the revised order presents most closely as the latter, for it takes the examination ordered by Moulder J in the Committal Order and which slipped from DB's grasp, and refashions it as an order to like effect, but absent an immediate penalty.

117. However neither of these orders are ones which provide a basis for the making of such an ancillary order. That is because they both have codes for non-compliance. For the Judgment, it is in the Court's enforcement mechanisms – including Part 71. For committal, it is in the suspended sentence.

118. This latter point segues naturally into Mr Vik's point on double jeopardy, in relation to which it was submitted that:

    i. Mr Vik has already been punished, by the sentence imposed under the Committal Order, for the breaches of the 2015 Order of which Moulder J found him guilty. In that context, it makes no sense to speak of that order (or the obligations that existed under it) as continuing in existence;

    ii. If a further order were made, ancillary to the 2015 Order and for the purpose of requiring Mr Vik to do that which he has already been punished for not doing (i.e., to comply with the 2015 Part 71 Order), he could not be punished again if he continued to fail to comply with 2015 Part 71 Order.

    iii. To do so would contravene the rule, as stated in *Harris v Harris* [2001] EWCA Civ 1645 at [19], that "*no one is liable to be sentenced twice for the same contempt*".

119. DB's submission was that this was wrong and that if a further order were made requiring Mr Vik to attend a further examination and answer questions and if Mr Vik either failed to attend or failed to give complete and accurate information in response to the questions he was asked, this would be a fresh contempt and there is no principle that would preclude the court punishing him for a fresh contempt.

120. In a sense that answer illustrates the problem for DB, which is that the characterization of the order sought as ancillary or incidental (but not either the same or new) is so artificial that the line cannot be maintained. On the one hand

DB wishes to say that this order would be part and parcel of the original 2015 Order. But Mr Vik has already answered that Order (albeit inadequately/dishonestly) and he has been pursued in respect of his defaults, and given a punishment for those defaults. Unless it were the case that DB was after something different to that which they sought to ask Mr Vik about then, but truly ancillary to it, asking the same questions with a clear agenda of pursuing him again for contempt would run contrary to the double jeopardy rule. If the topics asked about are the same (as they substantially are) and Mr Vik has told lies once and been punished, it is artificial to say that the new questioning is distinct such that new lies are "*fresh contempts*".

121. On the other hand DB wishes to say that there is no double jeopardy because this would be a "*fresh contempt*"; but it would only be a "*fresh contempt*" if it were, in reality a "*fresh Order*"; and it is common ground that this court cannot make a fresh Part 71 Order.

122. On the "*fresh contempts*" argument DB relied on the case of *Jelson v Harvey* [1983] 1 WLR 1401. In that case an injunction had been granted against the defendant to restrain him from fly-tipping and causing obstruction. An application was made to commit him for contempt, but the application gave no particulars of the alleged contempts. When the point was taken, no order was made, with the judge indicating instead that the applicant could make another application, which he duly did. When the double jeopardy point was taken on the second application it was held that there was no difficulty, despite the principle being of application in the context of civil contempt. Although prayed in aid by DB, in reality the case offers little help to them, because both Cumming-Bruce LJ and Dillon LJ gave as the basis for their decision that the first time around the defendant had never been in any peril of punishment; as Dillon LJ put it at 1411D: *"I think the question is whether on a true appreciation of the circumstances the defendant here was ever in jeopardy a first time on the first notice of motion to commit him."*

123. In relation to the double jeopardy argument, DB of course says that Mr Vik has not in reality been punished; but that is not quite right. He certainly was, for the purposes of the analogy with *Jelson,* in jeopardy. And he was in jeopardy in relation to precisely the same schedule of issues upon which DB now relies.

124. As to punishment, technically Mr Vik has been sentenced and that sentence has run its course. Of course, it is a bitter pill that the coercive element of that punishment never engaged; but that is a matter which does not lie solely at Mr Vik's door. Some blame may justly be directed at him – but there are a number of "ifs" for which DB bears responsibility. If it had not been for the shifting arguments at sentencing; if DB had immediately appreciated the way in which the sentence imposed operated; if DB had made an application to expedite the hearing at once, rather than attempting to time it to its own convenience. The bottom line is that Mr Vik's sentence was imposed and expired; he has served his punishment, albeit not as fully as DB had intended. He has been punished at least to the extent that he can properly be described, as DB did in their skeleton as *"a convicted, unrepentant contemnor"*.

125. DB also submitted that the rightness of its approach was demonstrated by the wrongness of the potential results if Mr Vik could not be made subject to an order - it would mean that a director could either leave the jurisdiction when served with the order and remain outside it, or resign from the company that he or she was the director of, and then the court's orders would have no effect. Again this is not quite right. Taking the two parts of this argument in turn:

    i. Once jurisdiction is established a hearing could be scheduled, and if not attended and properly responded to, committal proceedings could result. If those too are ignored a sentence of imprisonment is likely to result, rendering it effectively impossible for the subject of the committal order to enter this jurisdiction. That is a sanction which can command attention; as it appears to have done (albeit to a rather limited extent) with Mr Vik;

    ii. As for resignation, it is quite right that if a director resigns before a Part 71 order is made they may evade the reach of the Part 71 jurisdiction. But that is simply what the rules provide. CPR Part 71 is, as noted above, a limited jurisdiction. The fact that steps may be taken to evade rules cannot change the limits of the jurisdiction.

The comments of Henshaw J and Males LJ

126. There was some attempt by DB to place reliance upon the remarks by Henshaw J and Males LJ which have been quoted above. Those afford DB no assistance on the issues before the Court, and it was ultimately not suggested that they determined the point before me.

127. However, for clarity: it does not appear from a full reading of the remarks in their context that they were made in circumstances where anyone drew the judges' attention to the peculiarities of the Part 71 jurisdiction. Neither judge was being asked to consider any application under CPR 71.2, or the scope of that rule, and no argument or submissions were made before either judge on whether this would in fact be possible. In that context, DB's initial attempt to characterise those remarks as "findings" or "conclusions" is incorrect. Even more so is the assertion that "*both Henshaw J and Males LJ have already held in these proceedings*" that this Court has power to and should grant the Application.

128. Furthermore, it is evident that both Henshaw J and Males LJ were not addressing the question before me. They plainly had in mind the possibility of a fresh application and fresh order, whereas it is now common ground that that is not possible. In other words, the Application and the relief sought are not even of the kind that Henshaw J and Males LJ suggested might, in principle, be feasible.

Conclusion and Discretion

129. It follows from the above that I conclude that the Court does not have jurisdiction to make the order sought, and the Application must therefore be refused.

130. I should however, for completeness, consider the question which would come next if the contrary conclusion were reached: if the Court had that power, should it exercise it to order Mr Vik to attend a further examination?

131. Ultimately had this question arisen I would have concluded that on balance the discretion should not in this case be exercised. Despite the instinctive unwillingness to allow Mr Vik to continue to evade his responsibilities I would conclude that any such order would almost inevitably be an empty gesture; and against a background where the jurisdiction no longer exists for afresh order and DB have already made repeated efforts to get more information from Mr Vik (without success) it is not appropriate to devote more of the Court's resources to this futile pursuit.

132. Normally the starting point for this conclusion would be the passage of time and its effects on Mr Vik's knowledge. The normal conclusion would be that with the passing of time not only will Mr Vik's memory of more distant events become minimal but also those events will be less relevant. Here, however, I cannot place any reliance on such factors given the evidence which has emerged which suggests that Mr Vik's separation from SHI may be more apparent than real.

133. I was shown documents which appear to demonstrate that Mr Vik has given instructions and directions to those with formal authority over SHI's affairs and has been closely involved in SHI's litigation strategy. Thus:

    i. In late 2019, Mr Vik was active in seeking an expert to act for SHI in proceedings brought by DB in Norway.

    ii. In June 2019 he was engaged in a WhatsApp conversation about the Norwegian litigation in which he said: *"we should asap get a Norwegian lawyer to file it…A lawyer who will do what we tell them to do"* and who *"just need[s] to file what we ask of him"*.

    iii. There is evidence that in 2020 Mr Vik was receiving formal notices in relation to and being regarded by as a key point of contact by lawyers and corporate service providers in the Turks and Caicos Islands in relation to SHI.

134. I was also shown documents which indicate that while Mr Vik has said in the Part 71 Examination that Mr Olav was not a close associate any more, there have been regular business communications between them, both at the time of that examination and through to at least 2020 (when some evidence was obtained via a without notice application against Mr Olav in Norway). For example:

    i. In August 2016, Mr Vik directed Mr Olav to sign an *"Agreement of Purchase of Shares"* in which Rand was to sell 100% of its shares in SHI to Hystor International Ltd (a company incorporated in Belize).

    ii. In a WhatsApp communication sent from Mr Vik to Mr Olav in October 2019, Mr Vik instructed*, "I have told the Courts in the US and UK that we have no business relationship. Important that Hustadnes not say that we do".*

    iii. In a WhatsApp Message sent on 5 June 2019 Mr Vik informed Mr Olav that *"Richard Zaroff will be sending you something to sign on behalf of Rand as director of SHI"*. Mr Olav simply replied "*Ok*".

135. That evidence therefore provides material which indicates that Mr Vik continues to have a real role in SHI and is likely to have information relevant to enforcement of the Judgment. That however is not enough, in my judgment, when considered against the history of this matter.

136. The purpose of an order under CPR 71.2 is to give a judgment creditor a means of obtaining information for the purpose of enabling enforcement of the judgment debt against SHI. There are a number of reasons which together suggest strongly that, even given the inference that Mr Vik has relevant information, making such an order would not achieve this purpose or even materially assist in achieving it.

137. The first lies in the obvious fact that Mr Vik has resisted providing information with a degree of determination for a decade and that these courts have had ample evidence of his willingness to lie in order to achieve that aim. The conclusions reached by the judges who have seen Mr Vik in action have been alluded to above. A fuller reading of their views emphasises the fact. So too does the passage from the October 2019 WhatsApp quoted above.

138. There have already been Part 71 proceedings, with little result. DB made an application, and pursued it with vigour, cross-examining Mr Vik over one day in 2015. As already noted, Mr Vik lied and did not give the evidence sought. In addition to the Part 71 Examination itself, DB cross-examined Mr Vik over the course of four days in May 2022 during the hearing of the Committal Application. Again, Mr Vik lied and did not give the evidence sought.

139. There is no apparent sea change suggested in terms of the material available to DB such that they might be said to have material which could effectively box Mr Vik into a corner as regards the particular topics on which it now appears examination is sought. This point was not addressed in DB's skeleton or orally, and the evidence in support of the application does not focus in on this aspect. Plainly the disclosure from Mr Olav provides material by reference to which Mr Vik would have difficulty resisting the proposition that he is a liar. But, in context, this is not news to anyone. And it does not advance matters as regards enforcement via the identified topics.

140. Nor would any Part 71 questioning itself incentivise Mr Vik by putting him in peril of imprisonment. And even if committal were to result, the 2022 Committal (where Mr Vik lied again) demonstrates that Mr Vik does not seem to be more than slightly incentivized by that peril.

141. The air of futility which surrounds this is also illustrated by:

    i. DB's own approach to disclosure. Notwithstanding DB's various criticisms of Mr Vik's compliance with the duty to produce further documents as a condition of suspension under the Committal Order, DB does not seek any further production of documents from Mr Vik.

    ii. DB's failure to seek a further Part 71 hearing before now; if DB were right on jurisdiction it could have applied for a further such order at any time since the original Part 71 Examination if it had further questions that it wished to put

to Mr Vik. A similar point arises as regards DB's election not to adjourn the original Part 71 hearing.

iii. DB's own position for much of the Committal Hearing: during the sentencing hearing DB asked for an immediate custodial sentence rather than for the sentence to be suspended on terms that Mr Vik provide further information and attend for examination precisely because:

> "suspending this order and seeking conditions, quite honestly, of him coming back to be examined again to provide the information that he should have provided not once, but potentially twice in the last hearing, may just simply be going round in circles…".

142. It follows that in terms of direct result there is nothing to suggest that a further Part 71 hearing will advance matters. DB has tried these remedies before. They have not worked. There is no evidence to suggest a second round will be more efficacious. At the same time the process is burdensome to DB and the Court. Any examination of Mr Vik will inevitably involve a multi-day hearing (with court reading and judgment time commensurate with that) and the incurring of huge costs (the interim payment on account of costs of the Committal Hearing was £1.2 million). Were a further committal application possible, that would add a further layer of time and costs – and history suggests it would do little more.

143. I therefore conclude that were such an order possible, a further order for examination of Mr Vik would be unlikely to achieve the purpose for which Part 71 is intended, and on balance, no order should be made.

SERVICE

144. In the circumstances this point is academic and can be taken very briefly indeed.

145. Mr Vik submitted that there are in effect three proceedings on foot:

i. The substantive proceedings that were commenced by DBAG's claim against SHI, which gave rise to the Judgment Debt (the "Main Proceedings");

ii. The proceedings commenced by DB's application for a third-party costs order against Mr Vik in relation to the costs of the Main Proceedings (the "Costs Proceedings"); and

iii. The proceedings that were commenced by the Committal Application (the "Committal Proceedings").

146. It is said that Mr Vik is party to the Costs Proceedings and to the Committal Proceedings and Brecher acts for him in relation to those proceedings. However, he is not party to the Main Proceedings and the fact that Mr Vik has previously been served with documents relating to the Costs and Committal Proceedings via Brecher does not mean that he may be served via Brecher with documents relating to other proceedings.

147. This argument only has any relevance if (contrary to my conclusions) the Court had jurisdiction to make a further order for a Part 71 examination incidental to the 2015 Order; and on the basis of the conclusions I have reached the arguments are an uneasy fit.

148. However while it is possible that the correct conclusion on the counterfactual (that this would be a case of an application ancillary to the 2015 Order, which itself gave rise to the Committal Application) would be that this is an overrefined approach, I prefer the arguments advanced for Mr Vik.

149. The reality of the situation is that:

    i. Mr Vik has been added to the Main Proceedings as an extra defendant "for the purposes of costs only" as CPR 46.2 puts it. In those proceedings he has instructed Brecher.

    ii. They did not appear for him in the disputes surrounding the Part 71 application in 2015;

    iii. They did act for Mr Vik in relation to the Committal which has flowed from the Part 71 application in 2015 and has nothing to do with his role as a defendant for costs purposes.

150. However the Committal has run its course. On any analysis what is sought now is part of the Part 71 exercise, and not for costs purposes. The authorities make clear that:

    i. *Masri (No.4)* at [36] makes clear that an application under CPR 71.2 is not a claim form and does not commence proceedings

    ii. *Masri (No.4)* at [26] makes clear that a Part 71 director is not a party, but akin to a witness and need not give an address for service pursuant to CPR 6.23 or have solicitors on the record.

151. Further it was not contentious that a party that has agreed to accept service via his solicitors in one set of proceedings, or for certain specified purpose, does not thereby accept that he can be served via those solicitors for all purposes.

152. It therefore follows that service via Brecher is not good service.

153. Nor would I have been inclined to accept the application made informally for alternative service. Contrary to CPR 6.15(3) it was not supported by evidence. As Mr Vik is resident in Monaco (which is party to the Hague Service Convention) any such application would be subject to the enhanced good reason/exceptional circumstances threshold.

CONCLUSION

154. For the reasons given above, I conclude that:

i. There is no power to grant the Application (as drafted or as reformulated at the hearing;

ii. If there was such power, I would not in all the circumstances of this case exercise the discretion to grant it;

iii. Further and to the extent relevant, the purported service via Brecher is not good, and service of the Application Notice falls to be set aside.

155. Accordingly, the Application is dismissed.