Neutral Citation Number: [2024] EWHC 256 (Fam)

Case No: ZZ20D65691/ZC21P00820

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 08/02/2024

Before:

MRS JUSTICE KNOWLES

Between:

ALVINA COLLARDEAU	**Applicant**
and	
MICHAEL FUCHS	**First and**
and	**Second**
WILLIAM HARRISON	**Respondents**

Mr Stephen Trowell KC (instructed by Sears Tooth) for the Applicant
Mr Daniel Bentham (instructed by Harbottle and Lewis) for the First Respondent
Mr Ian Mill KC and Mr Stephen Jarmain (instructed by Hickman and Rose) for the Second Respondent

Hearing date: 29 January 2024

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Approved Judgment

This judgment was handed down remotely at 10.30am on 8 February 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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This judgment was delivered in public and may be published.

Mrs Justice Knowles:

1. By an application dated 31 August 2023 but issued on 1 September 2023, the Applicant, Alvina Collardeau, sought permission to bring contempt proceedings against the First Respondent, Michael Fuchs. On 29 September 2023, the Applicant issued an application to bring contempt proceedings against the Second Respondent, William Harrison. Both applications have been consolidated to be determined together and, by consent, directions were given by Peel J on 12 October 2023. Both applications were listed before me for determination on 29 January 2023.

2. The Applicant, Alvina Collardeau, is the former wife of the First Respondent, Michael Fuchs, and I will refer to her as *"the wife"* and to Mr Fuchs as *"the husband"* in this judgment. It will be apparent that the applications with which I am concerned form but a part of extensive litigation about financial and children matters following the couple's separation and divorce. The Second Respondent, William Harrison, owns a company which provides management services for the husband and he previously worked for both the wife and the husband. I will refer to him as Mr Harrison in this judgment.

3. The key issue in both applications was whether the wife could show a strong prima facie case that she could prove, beyond a reasonable doubt, that (a) a telephone conversation did not take place between the husband, Mr Harrison, and the wife's solicitor, Mr Tooth, on or around 22 April 2022 and (b) that the husband and Mr Harrison did not honestly believe such a conversation had taken place. The wife's case was that the husband and Mr Harrison invented an account of this call for the purpose of preventing the wife from instructing Mr Tooth in April 2023. Her case was based on Mr Tooth's lack of recollection or record of the call from which she invited the court to infer the culpability of the husband and Mr Harrison. In reply, the husband and Mr Harrison asserted that the call did take place and gave details of what was said during the call. They relied on their own statements; evidence of messages passing between Mr Harrison and the husband's solicitors; evidence in the form of the husband's telephone records; and a statement from the husband's personal assistant, Miss Park. They also relied on expert evidence obtained by Mr Harrison about which I shall say more later in this judgment.

4. Despite costs estimates running into many tens of thousands of pounds and the instruction of experienced and highly regarded legal teams, the preparation for this hearing was less than ideal despite the careful and consensual directions made by Peel J. The bundle was delivered a day late; no index to that bundle was served in a timely fashion on the other parties by the wife's solicitors; at least one of the position statements was unable to make reference to the bundle for the hearing; and expert evidence was adduced for which permission had not been obtained from the court in compliance with rule 25 of the Family Procedure Rules 2010 ("the FPR"). Further, the parties failed to comply with my express instruction to agree a reading list. Though Mr Harrison's team had produced a bundle of authorities, this did not find its way to Mr Trowell KC until shortly before the hearing began. The disorganised approach to this litigation continued when a supplemental bundle was lodged on behalf of Mr Harrison and this was swiftly followed by a request from the wife's legal team that I should not read it. I complied with that request but my impression was that chaos reigned until just before the parties appeared in court. As it transpired, it was unnecessary to read the supplemental bundle but, had this been required to resolve this application, court time on the day would have been taken up with reading which should have been done before

the parties came into court. I readily acknowledge that most judges have to put up with far worse most days but this was litigation conducted at considerable cost and, moreover, it concerned applications of great seriousness which might eventually result in the husband's and Mr Harrison's committal to prison for contempt of court.

5. Despite the disregard for this court's process outlined above, the advocates' written and oral submissions were of great assistance to me. I was also grateful for a comprehensive bundle of authorities prepared by Mr Harrison's legal team. I reserved my judgment for a short time.

Background

6. What follows is a background summary pertinent to the issues in this application.

7. There has been extensive litigation between the husband and wife both in relation to financial matters and to their children. Mr Harrison was not a party to any of that litigation though he supported the husband through it. Save for the wife's allegation that Mr Harrison lied in his witness statement, there was no well-founded criticism by the wife of Mr Harrison's conduct at any point during the litigation as a whole. His involvement with the Fuchs family began in 2018 when he applied for the role of chief of staff in the Fuchs family office. Initially, he worked with the wife and subsequently with both the husband and wife. In December 2020, as the marriage was breaking down, Mr Harrison told both the husband and wife that he would only work with the husband in the future. I understand that the wife has not spoken to Mr Harrison since January 2021. Mr Harrison has continued to provide services to the husband through a limited company, wholly owned by Mr Harrison and set up by him in 2021. The husband is not Mr Harrison's only source of income: I understand that less than half of Mr Harrison's income derives from services performed for the husband. Mr Harrison is funding his defence to this litigation with the assistance of the husband.

8. The wife was initially represented by Withers and then, throughout contested children and financial proceedings by Payne Hicks Beach. The husband was represented by Stewarts during the proceedings but, in April 2022, he investigated alternatives (including Sears Tooth) and moved to Harbottle and Lewis. When a change of solicitors was in contemplation, Mr Harrison spoke at the husband's request to a contact seeking recommendations for a new solicitor and received an email on 19 April 2022 with three suggestions, including Sears Tooth. Mr Harrison chose first to explore the option of Mr Tooth and, at 7.07am on 22 April 2022, he sent an email to Sears Tooth saying:

> *"I'm getting in touch on behalf of Michael Fuchs, for whom I run his private family office. I was hoping early next week we could have an exploratory chat about Michael's current divorce with a view to potentially sit down with him at the end of next week when he is in London. Please let me know if you have time to speak on Monday?"*

The email also contained Mr Harrison's mobile phone number. That this email was sent was not in dispute.

9. The husband and Mr Harrison asserted that Mr Tooth rang Mr Harrison later that same day, 22 April 2022. This is vehemently disputed by the wife. It is said that Mr Harrison spoke first to Mr Tooth and then he patched the husband into the call. In total, the call

lasted about 40 minutes. Once the call concluded, it is said that Mr Harrison and the husband discussed instructing Mr Tooth but the husband decided not to do so.

10. On 24 April 2022, Manda Green, Mr Tooth's secretary, emailed Mr Harrison as follows:

> *"Thank you for your email of 22 April. Unfortunately I could not respond because I was in court all day, I am happy to speak on Monday at any time because I am in the office and if I am on a telephone call or meeting I will ring you straight back.*
>
> *Yours sincerely*
>
> *Raymond Tooth"*

Mr Harrison asserted that he did not receive that email and that it may have gone into his spam folder. It was not disputed by either the husband or Mr Harrison that the email had been sent.

11. On 23 and 24 April 2022, Mr Harrison continued to make further enquiries of possible solicitors. He emailed Catherine Bedford of Harbottle & Lewis on 25 April and spoke to her the following day. The husband and Mr Harrison met her on 29 April and the husband decided to instruct her.

12. On 10 October 2022, the five-day final hearing in the financial remedies application began before Mostyn J. At that time, there was a WhatsApp group comprising Mr Harrison and various solicitors at Harbottle & Lewis. On 13 October 2022, Mr Harrison noticed that one of Payne Hicks Beach's team was a solicitor called Katie Parkes, and posted a message asking: *"Katie trained with Sears Tooth?"*. This was followed minutes later by a further message: *"Raymond Tooth is who MF (the husband) spoke to after Stewart's and got me on the phone – the whole practice is bizarre"*.

13. On 31 March 2023, the husband's solicitors received an email from Sears Tooth stating that they had been instructed by the wife in place of Payne Hicks Beach. On 4 April 2023, the husband's solicitors emailed Sears Tooth stating: *"…It has come to our attention that our client had a meeting with your Mr Tooth in around April 2022…during which his case in respect of both finance and children proceedings was discussed in a substantive way"*. On 5 April 2023, Mr Tooth responded stating *"Mr Harrison rang about a possible meeting, but it never occurred"*.

14. On 17 April 2023, the wife's solicitors – clearly Mr Tooth himself - stated in email correspondence as follows: *"I have investigated the matter and it is quite clear what you state is wrong. I have never met your client, nor indeed have I spoken to him. If you say otherwise, you must produce the full attendance note of the date and time, and what was said"*. On 19 April 2023, the husband's solicitors responded, stating: *"I have already sent you the email from Mr Harrison dated 22 April 2022 evidencing the enquiry made by him to your firm. Mr Harrison believes that it was later that same day (Friday 22 April 2022) that you telephoned him to discuss Mr Fuchs' case. During that call, Mr Harrison joined our client to the call and discussions of a privileged nature continued for a substantial time with detail discussed which could be said to prejudice our client"*.

15. On 21 April 2023, Sears Tooth filed a Notice of Change in respect of the financial matters and did the same in respect of children matters on 12 July 2023.

16. On 20 June 2023, the husband issued an application seeking to debar Sears Tooth from acting for the wife, supported by witness statements from the husband and Mr Harrison. On 4 August 2023, the wife filed and served a witness statement from Mr Tooth in which he denied there had ever been at any time a telephone conversation between himself, the husband and Mr Harrison. Further, Mr Tooth asserted his belief that the statements made by the husband and Mr Harrison were knowingly fabricated and thus, that the debarring application was fraudulent.

17. On 16 August 2023, the husband's solicitors wrote in these terms to Sears Tooth to say that the husband did not intend to pursue his debarring application:

> *"Our client is disappointed at the approach of your firm, Mr Tooth and Ms Collardeau have taken in this matter. Mr Tooth should have immediately withdrawn, upon being notified of the conflict. However, our client is focused on trying to resolve the current issues and move on with his life. He is making every effort to meet the ongoing interim financial costs, whilst trying to raise the funds to pay Ms Collardeau the lump sum. He cannot spend further money on expensive litigation to prove that Mr Tooth is conflicted. He chooses to focus his energy and time on his children. Given the above, our client will be applying to withdraw his application, and vacate the directions hearing on 5 September. We make it clear that this does not represent acceptance of Mr Tooth's evidence in any way".*

18. On 18 August 2023, Sears Tooth wrote to the husband's solicitors as follows:

> *"Your client's situation is so bad in his attempt to justify his knowingly false statement that it amounts to a contempt of court. Accordingly, our client will only agree to your client withdrawing his application on the following conditions:*
>
> 1. *Your client to pay our client's full costs on an indemnity basis of his application;*
>
> 2. *Your client must undertake not to make any further applications in relation to this issue; and*
>
> 3. *There is a recital in the Consent Order that 'the Applicant accepts that he never should have made the application in the first place'.*
>
> *If the three conditions above are not agreed, we give you notice that our client will apply for permission to issue committal proceedings under FPR 17.6 absent the matter being referred to the Attorney General by the court".*

19. On 23 August 2023, the husband agreed to the first two of the wife's conditions (albeit the wife's reasonable costs, rather than costs on an indemnity basis) but not the third. The wife then issued her application for permission to bring committal proceedings against the husband and, on 5 September 2023, the husband and wife appeared before Arbuthnot J on the husband's application for a debarring order against Mr Tooth. Arbuthnot J gave permission to the husband to withdraw his application and was informed of the wife's application for permission to bring contempt proceedings against the husband and of her intention to make an application for the same relief in respect of

Mr Harrison. Arbuthnot J queried the wisdom of the wife's application and the costs which litigating it would incur but, as the wife's application against Mr Harrison had not been issued, she made uncontentious directions on the application concerning the husband only. Arbuthnot J adjourned the determination of the costs of the husband's debarring application until the outcome of the wife's permission applications.

The Legal Framework

20. Rule 17.6(1) of the FPR states that *"proceedings for contempt of court may be brought against a person who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth".* Rule 17.6(2) provides that proceedings under this rule may be brought only (a) by the Attorney General, or (b) with the permission of the court. Paragraph 6 of Practice Direction 17A draws attention to rule 17.6 and to the procedures set out in Chapter 5 of Part 37 and in paragraphs 4.1 to 4.7 of Practice Direction 37A (Applications and proceedings in relation to contempt of court). Rule 37.15 sets out how an application for permission to make a committal application should be made. That paragraph is supplemented by paragraphs 4.1 to 4.4 of Practice Direction 37A which concern committal applications in relation to a false statement of truth. Rule 4.2 provides that the affidavit evidence in support of the application must (a) identify the statement said to be false, (b) explain why it is false and why the maker knew the statement to be false at the time it was made, and (c) explain why contempt proceedings would be appropriate in the light of the overriding objective in Part 1 of the FPR.

21. The test to be applied is not set out in the rules but is addressed in detail in the jurisprudence. A summary of the applicable principles, drawing on the leading cases of KJM Superbikes Ltd v Hinton (Practice Note) [2008] EWCA Civ 1280, Barnes v Seabrook [2010] EWHC 1849 (Admin), Berry Piling Systems Ltd v Sheer Projects Ltd [2013] EWHC 347 (TCC) and Daltel Europe Ltd v Makki [2005] EWHC 749 (Ch) was set out by Whipple J (as she then was) in paragraph 6 of Newson-Smith v Al Zawawi [2017] EWHC 1876 (QB). Whipple J's summary is as follows:

"a) The question for the Court at this stage is not whether a contempt of court has in fact been committed, but whether proceedings should be brought to establish whether it has or not.

b) Because proceedings for contempt of court are public law proceedings, when considering whether to give permission the Court must have regard to the public interest alone. That involves two key considerations:

i) Is the case one in which the public interest requires that the committal proceedings should be brought; and

ii) Is the applicant a proper person to bring them?

c) A number of factors are likely to be relevant to the assessment of the public interest in any given case. On the one hand, there is a public interest in drawing the attention of the legal profession and potential witnesses to the dangers of making false statements to the Court. On the other hand, the Courts should guard against exercising the discretion too freely in favour of allowing proceedings to be pursued by private persons. Specifically:

i) the court should not grant permission unless there is a strong prima facie case that the allegations will be proved to the criminal standard at a substantive hearing;

ii) the Court must not stray into determining the merits of the case at the permission stage;

iii) in cases where false statements are at issue, the applicant must show a strong prima facie case not only that the statement was false but also that it was known at the time to be false;

iv) in assessing the strength of the applicant's prima facie case, the Court will take account of all the circumstances of the case, and will have regard in particular to the circumstances in which the statement was made, the state of the maker of the statement's mind, including his understanding of the likely effect of the statement, the use to which the statement was put in the proceedings, the extent to which the false statements were persisted in, and any delay in warning the respondent that he or she may have committed contempt by making a false statement at the earliest opportunity; and

v) The court must guard against the risk of allowing vindictive litigants to use committal proceedings to harass persons against whom they have a grievance.

d) The Court must also consider whether it is proportionate to allow committal proceedings to be brought. That involves an assessment of the strength of the case against the respondent(s), the amounts in money terms which were involved in the proceedings in which the allegedly false statements were made and which were affected by those statements, the likely costs involved on both sides, and the amount of court time likely to be involved in managing and hearing the matter.

e) The Court must also consider whether contempt proceedings would further the overriding objective of the CPR to deal with cases justly."

To this list of principles, I would add that, in accordance with paragraph 44 of Tinkler and Elliott [2014] EWCA Civ 564, the burden of proof is on the party alleging the contempt who must prove each element identified in (c)(iii) above beyond reasonable doubt.

22. In Green v Hurst [2020] EWHC 937 (Ch), Zacaroli J refusing permission said:

"30 As I have already noted, committal proceedings of this nature may be brought only with the permission of the court. This reflects the fact that this species of contempt involves an allegation of a public wrong (namely interference with the administration of justice). A private person, in bringing such proceedings, is not acting in a private role, but is acting in pursuance of the public interest. Accordingly, there should be an element of public control over the bringing of such proceedings: Barnes (trading as Pool Motors) v Seabrook [2010] EWHC 1849 (Admin) at [6].

43 In considering whether committal proceedings would be in the public interest, an important factor is the materiality of the statements to the proceedings in which they were made. Mr Hurst submitted that it must always be in the public interest

> *to punish those who have knowingly made false statements in evidence. It is clearly established, however (see, for example, the passage from Tinkler and Elliott quoted above), that the use to which the false statement was put and its materiality to the proceedings are important considerations in determining whether it is in the public interest to permit a private individual to bring proceedings of a criminal nature against a litigant.*
>
> *48 These submissions demonstrate a misunderstanding of the nature and purpose of applications for committal. As I have already pointed out, such application should only be brought where (amongst other things) they serve the public interest. What Mr Hurst really wants is a simple declaration that the claimants are in contempt of court so that he can make a further application to annul his bankruptcy order.*
>
> *49 In my judgment, that is not a proper use of the court's jurisdiction in respect of committal for contempt of court. Permission is not granted to enable a private individual to pursue a private grievance.*
>
> *53 The discretion to grant permission to bring contempt proceedings should be "exercised with great caution" (See Barnes (above) per Hooper LJ at [39]).*

23. Finally, and of relevance on the facts of this case, Kea Investments Ltd v Watson [2020] EWHC 2599 (Ch) sets out the approach where the court is being asked to draw inferences in order to prove contempt. In paragraph 13(iii), Nugee LJ referred with approval to Rose J's judgment in JS Mezhdunarodniy Promyshelnniy Bank v Pugachev [2016] EWHC 192 (Ch) as follows:

> *"The court needs to exercise care when it is asked to draw inferences in order to prove contempt. The law in this respect is summarised in a passage in the judgement of Teare LJ in JSC BTA Bank v Ablyazov [2012] EWHC 237 (Comm). Circumstantial evidence can be relied on to establish guilt. It is however important to examine the evidence with care to see whether it reveals any other circumstances which are or may be of sufficient reliability and strength to weaken or destroy the Bank's case. If, after considering the evidence, the court concludes that there is more than one reasonable inference to be drawn and at least one of them is inconsistent with a finding of contempt, the claimants fail. Where a contempt application is brought on the basis of almost entirely secondary evidence, the court should be particularly careful to ensure that any conclusion that a respondent is guilty is based upon cogent and reliable evidence from which a single inference of guilt and only that inference can be drawn."*

The Parties' Positions

24. What follows is a summary of the parties' positions. It does not identify each and every submission made but distils the essence of their respective cases.

25. Mr Trowell KC explained that the reason the wife made the application was because the statements of the husband and Mr Harrison were deliberately false and part of an ongoing campaign to control her. By seeking to control who could act for the wife, the husband's debarring application was an attempt to interfere with the administration of

justice. Additionally, giving a statement of truth was a matter of importance to allow the courts to function. Mr Trowell KC referred me to case law emphasising the importance of telling the truth and the seriousness with which the court regarded false statements verified by a statement of truth.

26. According to Mr Trowell KC, the key event was the email sent by Manda Green on behalf of Mr Tooth on 24 April 2022. The content demonstrated that Mr Tooth had not spoken to Mr Harrison and the husband on Friday otherwise the content of this email made no sense. Mr Tooth's telephone records showed no record of a call to Mr Harrison's mobile number on Friday 22 April 2022. Further, Mr Tooth had made no attendance note of the alleged discussion in circumstances where this would be standard practice for calls of this nature, not least because of the possibility of conflicts of interest arising in the future. Mr Trowell KC also drew attention to a discrepancy between the husband and Mr Harrison as to the time of day the call is said to have taken place: the husband's phone records showed a 35 minute call with Mr Harrison at 15.05 on 22 April 2022 whereas Mr Harrison's statement suggested the call had been made when his wife was preparing dinner. There was no evidence that the call had been made via a messaging app such as WhatsApp and no records had been produced by either the husband or Mr Harrison to suggest that this had occurred.

27. Mr Bentham on behalf of the husband submitted that the wife could not show a strong prima facie case that the husband and Mr Harrison knew or were indifferent as to whether their witness statements were false and that such statements were likely to interfere with the course of justice. There was plausible evidence that a call had taken place together with a conspicuous lack of motive for the alleged lie. He pointed to the detailed account given by Mr Harrison as to the discussion which had allegedly taken place between the husband and Mr Tooth during the disputed phone call on 22 April 2022. Particular reliance was placed on the WhatsApp group chat in October 2022, months before the wife first consulted Mr Tooth. Mr Bentham pointed out that the wife's evidence all emanated from Mr Tooth who said he did not remember any call. He drew my attention to a case in which the court had in fact found a meeting took place which Mr Tooth could not remember (ZS v FS (Application to Prevent Solicitor Acting) [2017] EWHC 2660 (Fam)). The fact that Mr Tooth said he was occupied all day on 22 April 2022 in attending a private FDR in no way precluded Mr Tooth from calling Mr Harrison given the often quite lengthy periods of "downtime" when the other side are considering a proposal. The email sent by Manda Green on 24 April 2022 was explicable on the basis that she had been given instructions to write a holding email on the assumption that Mr Tooth could not make a call on 22 April 2022 and sent the email unaware that Mr Tooth had actually found time to make the call. The fact that Mr Tooth's phone records did not show Mr Harrison's number was not decisive as a call could have been made via the internet or Mr Tooth could have used the telephone of an assistant.

28. As significant as the above evidential weaknesses in the wife's case, Mr Bentham submitted that, in the letter sent on 18 August 2023, the wife had sought to use the threat of committal proceedings to obtain concessions from the husband. This was an improper use of the court's process. He also drew attention to the manner in which the wife's case was put before Arbuthnot J – seeking to establish that, in the context of foreseeable litigation about the children and financial matters, the court could not rely on a statement of truth from either the husband or Mr Harrison. He submitted that this

was an entirely private motive unconnected to the public interest. This was a weak case brought on behalf of the wife which would be disproportionate to try in the light of the overriding objective.

29. Mr Mill KC emphasised that there was simply no motive for Mr Harrison to make a false statement about the alleged phone call on 22 April 2022 in circumstances where this risked his liberty, livelihood, and reputation. He relied on many of the evidential matters identified by Mr Bentham and emphasised the wife's lack of suitability to bring these proceedings. She was motivated by her own interests and not those of the public.

Analysis

30. My analysis is grounded by the legal principles to which I have already referred. These are proceedings of the utmost seriousness in which the court should be cautious in exercising its discretion to permit a committal application to proceed.

31. For the avoidance of doubt, I make it clear that I have approached the matter afresh and have not taken into account the remarks made by Arbuthnot J during the hearing on 5 September 2023 relating to the merits of the wife's application. I have also excluded from consideration the expert evidence about telephone records obtained by Mr Harrison without the court's permission. No party submitted that I should consider it.

32. Turning to my assessment of the wife's prima facie case, this application was made in the context of bitterly contested financial remedy and children proceedings. The precise details of the dispute relating to either children or financial matters did not form part of the evidence before me. However, I note the wife's position before Arbuthnot J in September 2023 that it was entirely foreseeable that there would be further litigation between the husband and wife and that the time to resolve the issue as to the husband's allegedly false statement was now rather than at some unspecified point in the future.

33. The burden is on the wife to show that she will prove, beyond reasonable doubt, that the husband and Mr Harrison did not honestly believe a telephone call took place between both of them and Mr Tooth on or around 22 April 2022. Her own case relies on the recollection of Mr Tooth and on inferences drawn from the evidence. There are some problems with both.

34. Mr Tooth's recollection may be questioned on the basis that it would be surprising if he could recall a telephone conversation which had taken place over a year before the wife instructed him. It was an informal enquiry which did not lead to a formal instruction and was thus unlikely to have been of significance to him. His assertion that he would have made an attendance note was apparently inconsistent with his recorded practices as detailed in the case of ZS v FS (Application to Prevent Solicitor Acting) [2017] EWHC 2660 (Fam) (paragraph 39). In that case, Mr Tooth was said to take a short note or would write a few illegible keywords. Even if he took a note, it may be that this would not have been retained or remembered. The case of ZS v FS may be persuasive in combination with other matters that Mr Tooth's evidence of his recollection may also be fallible in this particular case.

35. The wife invites the court to infer that no call took place on 22 April 2022 because Mr Tooth's telephone records did not show a call to Mr Harrison's mobile phone. It is axiomatic that reliance on the phone records produced by Mr Tooth also requires some

evidence as to how those phone records were generated and what they showed or might not show. That evidence was not present before me in a permissible form, but those technical matters are potentially matters of substance which may serve to invalidate the inference which the wife invited the court to draw from Mr Tooth's telephone records. It is equally possible that Mr Tooth used another handset - such as that belonging to an assistant – on which to call Mr Harrison.

36. The wife sought to undermine the credibility of Mr Harrison by alleging that he knowingly failed to disclose the email sent to him by Manda Green, Mr Tooth's secretary. There is, notably, no evidence from Ms Green as to the communication that passed between her and Mr Tooth in relation to this email. Mr Mill KC asserted that it was possible Ms Green had sent the email on 24 April without consulting with Mr Tooth and did not thus know about the alleged phone call on 22 April 2022. It was equally possible that Mr Tooth had given instructions to send the email before the telephone conversation took place and had not withdrawn those instructions before the email was sent. Further, these events took place from Friday and over the weekend, rendering either scenario possible.

37. Whilst no one asserted Ms Green had not sent her email on 24 April 2022, the inference that Mr Harrison received it and then deliberately failed to disclose that fact might be more difficult to sustain. The email may have landed in his spam folder and been automatically deleted after a period of time; it may have been deleted in error; or it may have been deleted innocently and forgotten because the decision had already been taken not to instruct Sears Tooth. It is hard to see how those matters provide a basis for a contempt application. I observe that it is difficult to perceive how the wife can demonstrate that the inferences she seeks to rely on are the only inferences which can reasonably be drawn from either the 24 April email or from Mr Tooth's phone records.

38. The final part of the wife's case was that Mr Tooth could not have made a telephone call on 22 April 2022 because he was in an all-day FDR. There was no evidence in support of Mr Tooth's contention, such as the time the FDR concluded. It appears plausible that he could have spoken to the husband and Mr Harrison during a break in the FDR or when it had concluded.

39. Before turning to the case on behalf of the husband and Mr Harrison, the wife set considerable store by the 24 April 2022 email. I have already explained some potential alternate reasons why this email may not bear the significance the wife ascribes to it. There is another reason why this may be so. There was no dispute that Mr Harrison was searching for another firm of solicitors from about 19 April onwards until he spoke with Catherine Bedford at Harbottle and Lewis on 26 April 2022. His evidence was that, having discarded Wedlake Bell who acted for the husband in his business dealings, Sears Tooth was the much preferred candidate to replace Stewarts. The wife asserted that Mr Harrison must have received the email of 24 April 2022 but, if she is correct, it is very curious on the logic of the wife's case that Mr Harrison did not then attempt to speak with Mr Tooth first thing on Monday morning (the day Mr Harrison had suggested they speak in his email sent to Sears Tooth at 7.07 on 22 April). The fact that Mr Harrison did not might suggest that the husband had already decided against Mr Tooth and most likely may have done so on the basis that a call with Mr Tooth did take place on 22 April 2022.

40. The evidence adduced by the husband and Mr Harrison requires accounting for plausibly if the wife is to show a strong prima facie case. The WhatsApp message sent on 13 October 2022 was supported by evidence from an employee at Harbottle and Lewis. It was a message sent many months before the wife left Payne Hicks Beach and instructed Sears Tooth. It is difficult to see how such a message might have been written tactically or dishonestly and it is difficult to explain why Mr Harrison would say the husband had spoken to Mr Tooth *"after Stewarts"* if this was untrue. His comment that the manner of conducting business practised by Sears Tooth was *"bizarre"* could have been made without the reference to the husband's contact with Mr Tooth and, on its own, may probably not have required further explanation to those with whom Mr Harrison was communicating.

41. There are three witness statements corroborating the fact of the telephone call on 22 April 2022: the husband's, Mr Harrison's, and that of Ms Park, the husband's executive assistant. No evidence has been served by the wife refuting the contents of Ms Park's statement. The husband also produced phone records suggesting that he spoke with Mr Harrison at about 15.05 on 22 April 2022 for some 35 minutes. That call may have been the one with Mr Tooth but the husband's phone records would not have shown a call via WhatsApp or another messaging application. Whilst there are some discrepancies in the evidence of the husband and Mr Harrison, it is not necessary in the context of the wife's broad allegations for either to be totally accurate as to the details, for example, when during the day the call with Mr Tooth is said to have taken place.

42. The wife's case is that the husband and Mr Harrison conspired to produce false statements to prevent her instructing Mr Tooth and thereby to assert the husband's control over her during the litigation. That is an allegation of great gravity. It might be thought that, in April 2023 when the substance of the children and financial litigation appeared to have been resolved, the motivation to exercise control over the wife had little tangible benefit for the husband. It was however the husband's perception that his confidence had been breached which led him to issue his application to disbar Mr Tooth. If the wife had dropped Sears Tooth on learning of this potential conflict, no application by the husband against any new firm in an effort to control the wife would have had any traction at all.

43. In the light of the above analysis, I have concluded that the wife's prima facie case is weak and evidentially flawed.

44. Turning to the wider public interest, I have grave reservations that the wife is a proper person to bring committal proceedings against the husband and Mr Harrison. Her key motivation as spelled out at the hearing on 5 September 2023 was to gain a benefit in future litigation which was thought to be foreseeable. Her desire that the court should know it could not rely on a statement of truth from the husband or Mr Harrison betrayed a motive unconnected to the public interest in preventing interference with the administration of justice. That impression was reinforced by the letter sent on her behalf dated 18 August 2023. It spelled out that the wife would bring committal proceedings if the husband did not agree all her conditions in relation to the withdrawal of his debarring application. The wife did so in order to extract a settlement on her terms, a course of action which was, in my view, wholly improper. I reject Mr Trowell KC's contention that the wording of the third concession sought by the wife to which the husband would not agree constituted some form of olive branch given that she asserted the husband had fabricated the evidence relied upon in that application. The recital

sought by the wife that the husband should never have made the debarring application seemed to me more of a weapon with which to beat the husband in any future litigation. It was unnecessary and reliance placed on it in any future litigation would likely have generated endless and sterile submissions about its meaning and weight.

45. I regret to say that the intemperate language in which correspondence and affidavits on behalf of the wife was couched undermined submissions made on her behalf that she would be capable of acting dispassionately as a quasi-prosecutor in committal proceedings. In correspondence and affidavits on which the wife relied, Mr Tooth alleged that the husband and Mr Harrison had *"dreamed up"* their evidence and that it was *"a pack of lies from start to finish"*. Further, the husband and Mr Harrison were accused of being *"totally dishonest"* and having attempted to *"pervert the course of justice"*. Mr Harrison was described as being *"pernicious"*. I find myself entirely in agreement with the observations made by Andrew Baker J in Navigator Equities v Deripaska [2020] EWHC 1798 (Comm) about the manner in which contempt proceedings (which include an application for permission to bring contempt proceedings) should be conducted:

"143. A further consequence is that the claimant/applicant pursues a contempt charge as much as quasi-prosecutor serving the public interest as it does as private litigant pursuing its own interests in the underlying dispute. The claimant/applicant needs to understand that; and if it is legally represented, as here, the legal representatives need to understand that their role as officers of the court is acutely pertinent, even if (to repeat) the process is not to be equated with a private prosecution in a criminal court. Thus, it appears to have struck Teare J as obvious in the long-running Ablyazov litigation that the quasi-prosecutorial role of the claimant / applicant in pursuing a contempt charge means its proper function is to act generally dispassionately, to present the facts fairly and with balance, and then let those facts speak for themselves, assisting the court to make a fair quasi-criminal judgment: JSC BTA Bank v Ablyazov [2012] EWHC 237 (Comm) at [15]."

My impression is that what occurred in this case was an application to bring contempt proceedings which, instead of being conducted dispassionately, appears to have been pursued in exactly the same way as the litigation relating to the parties' children and finances.

46. I considered very carefully the submissions made by Mr Trowell KC about the public interest in this case in ensuring that the administration of justice is not undermined by the making of false statements by witnesses who know that what they are testifying to the truth of is, in fact, untrue – be that a lie or a fabrication. However, my assessment of the public interest is shaped by the matters in the well-established appellate case law by which I am bound. That assessment - for all the reasons set out in this judgment – simply does not bring the wife's case and the public interest into the necessary alignment.

47. Finally, an assessment of proportionality in this case does not favour the wife. Her prima facie case is evidentially weak. There is no value to the claim per se which was a debarring application in relation to one firm of solicitors. Enormous costs have already been incurred on all sides – costs estimates produced during the hearing suggest some half a million pounds – and those costs would undoubtedly rocket if permission was given. Four to five days of court time would likely be required to hear and then

possibly deal with sentence if the contempt was proved. That court time would be lost to the other business of the High Court such as protecting children or vulnerable adults. This does not strike me as a reasonable or appropriate use of the court's finite resources. Given the serious pressures on High Court Judges' time, there would be considerable delay in bringing the matter to trial – it would not be a priority listing in comparison to other more pressing applications of the type to which I have already referred.

48. Drawing the strands together, I am quite satisfied that I should refuse the wife permission to bring committal proceedings against the husband and Mr Harrison. It is simply not in the public interest to do so for all the reasons I have described.

Conclusion

49. Given my decision, the costs of this application fall to be determined. As the costs estimates were served late, I indicated to the parties that I would deal with their submissions on that issue on paper. Their submissions will be limited to two sides of A4 paper (with not less than 12 point font and 1.5 line spacing) and should be submitted on later than 4pm on 16 February 2024.

50. That is my decision.