



[2024] JMCC Comm 10

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

COMMERCIAL DIVISION

CLAIM NO: SU2021CD00030

BETWEEN	DINSDALE WILLIAMS	APPLICANT
AND	OPAL WALLACE	1st RESPONDENT
AND	CENTURY SALES 2020 LIMITED	2nd RESPONDENT
AND	KB SITROFF FINANCIAL SERVICES LIMITED	3rd RESPONDENT
AND	DANYIELLE DONALDSON	4th RESPONDENT

IN OPEN COURT

Appearances: Mr. Lemar Neale and Chris-Ann Campbell instructed NEA | LEX Attorneys-at-Law for the Applicant

Mr. Harrington McDermott instructed by Ms. Anmarie C. Jordon for the Respondents

Heard: 15th June 2023 and 27th February 2024

Contempt of Court – Whether Order Ambiguous– Whether Order Breached – Whether Imprisonment Appropriate Sanction – Considerations for imposing Imprisonment

BROWN BECKFORD J

INTRODUCTION

[1] This application was commenced by way of Notice of Application filed 25th May 2022 as amended 17th August 2022 by the Claimant/Applicant, Dinsdale Williams against Opal Wallace, Century Sales 2020 Limited, KB Sitrof Financial Services Limited and Danyielle Donaldson, the 1st, 2nd, 3rd and 4th Defendants/Respondents respectively, for contempt of court. The Applicant contends that the Respondents breached the Orders made by Laing J on the 13th August 2021. The specific Order in question reads as follows:

The orders at paragraphs 1-4 are subject to:

- (1) The defendant closing and not continuing to operate in any manner whatsoever, the business which is the origin of the dispute between the parties in the claim, and securing the stock and equipment related thereto until the appeal is determined;*

The claim, on which the Claimant was successful, was the consequence of a failed Purchase of Business Agreement entered into between the parties on 15th June 2020. Under that agreement, the 1st Respondent purchased the business assets and stock of the Claimant which she sold through the 2nd Respondent, a company incorporated for that purpose. The business referred to in the Order of Laing J is the 2nd Respondent Century Sales 2020 Limited.

[2] Mr. Williams alleged that the Respondents breached the Order of Laing J by continuing to operate the business; selling stock which is the subject of the dispute. Consequently, he sought the following Orders:

1. A declaration that the Respondents are in contempt of court having breached the order of the Honourable Mr. Justice Laing made on August 13, 2021.
2. An order that the 1st & 4th Respondents be committed to prison for contempt of court for six (6) months or such period as the court shall determine.
3. An order that the Respondents' assets be confiscated.
4. In the alternative to paragraph (3), an order that the Respondents each pay a fine in the sum of J\$1,500,000.00 or such other amount and on such terms as the court shall determine.

5. Costs of this application be awarded to the Applicant on a full indemnity basis.
6. Such further and other relief as this Honourable Court deems just.

[3] On 16th November 2022, by the Order of Barnaby J, at the request of Mr. Williams, the application was withdrawn against the 3rd Respondent, KB Sitrof Financial Services Limited. Reference to the Respondents hereafter means the 1st, 2nd and 4th Respondents.

BACKGROUND

[4] Mr. Williams was the owner and operator of the company, Century Sales Limited. On 15th June 2020, Mr. Williams and Ms. Wallace entered into an agreement under which Mr. Williams agreed to sell the stock and assets of Century Sales Limited and the name Century Sales to Ms. Wallace for One Hundred and Ten Million Dollars (**JMD\$110,000,000.00**). This sum was to be paid in eight installments commencing on 19th June 2020 and ending 13th December 2023.

[5] Following this agreement, Ms. Wallace incorporated the company Century Sales 2020 Limited, with the share capital distribution being 70% to herself and 30% to her son, Danyielle Donaldson. The 1st and 4th Respondents are Directors of the 2nd Respondent. The company engaged in the same enterprise as Century Sales Limited. The purchased stock was to be sold by Century Sales 2020 Limited.

[6] Mr. Williams alleged that Ms. Wallace paid him the sum of One Million Three Hundred Thousand Dollars (**\$1,300,000.00**) and failed to pay the balance as agreed. As a consequence of this, he sued for the balance. On 29th April 2021, Mr. Williams filed a Notice of Application for Summary Judgment for the outstanding sum, and by the Order of Laing J on 17th June 2021, the application was granted. Subsequently, on 19th July 2021, Ms. Wallace sought leave to appeal the Orders of Laing J and for a stay of execution of said Orders. The application was considered by Laing J on 13th August 2021, at which time the Order at the centre of this application was made.

SUBMISSIONS ON BEHALF OF THE APPLICANT

[7] Counsel on behalf of the Applicant, Mr. Lemar Neale, contended that Ms. Wallace acted in contempt of the court by breaching the Order of Laing J when she continued the operation of Century Sales 2020 Limited and failed to secure the stock and equipment of said business. The 1st Respondent, he submitted was aware of the court's Orders as she was present when they were made. The 4th Respondent, as a Director of the company, is taken to have knowledge of the Orders through service on the 2nd Respondent. Counsel asserted that the Respondents ought to be punished for such an infraction. The application was grounded in **Part 53 of the Civil Procedure Rules ("CPR") 2002 (as amended on the 3rd of August 2020)** which empowers the court to punish for contempt. The contempt alleged against the 1st Respondent is pursuant to section 1 of Part 53 and against the 2nd and 4th Respondents is pursuant to section 2. Counsel relied on **Stewart (Gordon) v Sloley Sr (Noel) et al** [2011] JMCA Civ 28 to distinguish between Part 1 which deals with the power of the court to commit persons who have failed to obey an order, in which they have been enjoined, and Part 2 which deals with the more general power of the court to commit for contempt.

[8] Counsel Mr. Neale's further submission was that the Order of Laing J was clear and unambiguous and therefore there was no need for the Applicant to prove *mens rea*. This argument was supported by reference to **National Export Import Bank of Jamaica Limited v Stewart Brown Investments Limited** [2021] JMCA Civ 40 and **Victoria Mutual Wealth Management Limited v Colando Hutchinson** [2023] JMCA Civ 47. Mr. Neale stated that Laing J clearly stipulated that Ms. Wallace was to close, and not continue the operation of the business in any manner whatsoever. He submitted that he Respondents breached the Order in that when Mr. Belnavis purchased an item from a business being operated by Ms. Wallace, at the same location that the business of Century Sales 2020 was carried out from, he was issued a handwritten receipt which bore the name "Centry (sic) Sales". This he submitted was evidence that she failed to close the business and also failed to secure the stock of the business.

[9] Ms. Wallace, in her defence, explained that the receipts were pre-written receipts from the previous cashier and the cashier at the time of the occurrence was new and had no prior training. Counsel Mr. Neale asked the Court to reject Ms. Wallace's explanation. He contended that the spelling of the name of the business was incorrect, and Ms. Wallace would have clearly known the difference in spelling and would have caught such error before that day, in circumstances where she reviewed the sales record daily. On this basis, Counsel suggested that it was not reasonable for the Court to believe that at that time, the cashier still had not received the necessary training.

[10] Counsel also submitted that Ms. Wallace breached the second aspect of Laing J's Order when she failed to secure the stock of the business. Ms. Wallace would have co-mingled the stock which she received when she purchased the assets of Mr. Williams' company and the stock which she purchased to replenish said stock when it was depleted. On this basis, Counsel contended that the replenished stock formed a part of the business, and the Order stipulated that the business be closed. He further noted that the Order did not make a distinction between new stock and disputed stock therefore it was not acceptable for Ms. Wallace to say she was selling new stock she purchased and not the disputed stock.

[11] It was submitted that if the Court did find that the Order was unclear and *mens rea* on part of Ms. Wallace was required, it was clear that Ms. Wallace intentionally and wilfully disobeyed the Order of Laing J. Counsel asserted that the stock, which Ms. Wallace purchased from suppliers, was sold to Ms. Wallace at the time the business was still in operation. Hence, Ms. Wallace was in contravention of the Order.

[12] Lastly, in accordance with **Asia Islamic Trade Finance Fund v Drum Risk Management** [2015] EWHC 3748 (Comm), Counsel Mr. Neale submitted that the behaviour of the Respondents was "*wilful, deliberate and contumacious*" and in the circumstances the punishment of imprisonment would be appropriate.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

[13] Counsel on behalf of the Respondents, Mr. Harrington McDermott, vehemently denied that there was any breach of the Order of Laing J. He submitted that the Order was in relation to the disputed stock and not in relation to the new stock which Ms. Wallace purchased from third-party suppliers. To this end, Mr. McDermott further submitted that the affidavit of Mr. Williams filed in the Court of Appeal on February 4, 2022, in support of his application for a Freezing Order clearly evinced that this was also Mr. Williams' interpretation of the Order, as he references the existing stock as the disputed stock.

[14] Counsel submitted that, in accordance with **National Export Import Bank of Jamaica Limited v Stewart Brown Investments Limited (*supra*)**, the Order in question must clearly state what should or should not be done. If there was any ambiguity, it must be resolved in favour of the person charged with contempt. On this basis, Mr. McDermott averred that if the Court was to find that the Order of Laing J was open to both the interpretation of the Applicant and the Respondents, then the application for contempt should be dismissed.

[15] Further, it was Counsel's submission that Mr. Williams has failed to prove beyond a reasonable doubt that the Respondents have operated the business following the Order of Laing J. He submitted that the evidence of Mr. Belnavis lacked credibility and his affidavit had material omissions which were only established during his oral evidence. Counsel asserted that Mr. Belnavis, on his visit to the site of the business, made no mention of seeing any signs or logos associated with the business in question in his affidavit. Further, in his affidavit he failed to mention one of the occasions on which he said he purchased goods from the business and was given a receipt in the name of Century Sales.

[16] Counsel Mr. McDermott asked the Court to prefer the evidence of Ms. Wallace in that Mr. Belnavis only received the receipt dated the 2nd November 22 in the name Century Sales because on that day there was a new cashier who had not yet been trained, and who utilized a prewritten receipt bearing the name of Century Sales.

[17] Counsel also contended that Mr. Belnavis embarked on a speculative exercise when he deponed that he saw Ms. Wallace and Mr. Donaldson take stock and load them onto vehicles and left the premises with them. To this, Counsel remarked that Mr. Belnavis had failed to state what was being taken and to whom. Additionally, Mr. McDermott asked the Court to reject Mr. Belnavis' evidence that at the time of purchasing the items, he knew the business had not changed because the same items were being sold as the business in question. Counsel pointed out that the fact that the sametype of goods were being sold, does not mean they were from among the disputed stock.

[18] Lastly, Counsel submitted that Mr. Williams would be unable to prove whether the Respondents had dissipated the stock and equipment related to the business, as Mr. Williams had not taken a stock count at the time of the Order of Laing J.

ISSUES

[19] Based on the submissions of Counsel, the questions which arise are:

- (1) Whether the Order of Laing J was clear and unequivocal?
- (2) Whether there was a breach of the Order of Laing J? If yes,
- (3) Whether the appropriate sanction for the breach of the Order is a term of imprisonment or a fine?

LAW AND ANALYSIS

CONTEMPT OF COURT

[20] It is well accepted that justice cannot prevail without there being proper mechanisms in place to enforce the court's orders. Civil contempt is the means by which courts punish those who disobey its orders. There is no point in the existence of a judicial system if individuals are able to get away with not obeying the decisions of the court. The history of civil contempt of court stems from the court's need to compel compliance with

its orders and to further act as a deterrent for those who would intend to thwart the course of justice.

[21] The authorities are clear that contempt of court proceedings are quasi-criminal and as such the standard of proof which is required is the criminal standard of proof, that is beyond reasonable doubt. In **Victoria Mutual Wealth Management Limited v Colando Hutchinson** [2023] JMCA Civ 47 (“**Victoria Mutual**”), Dunbar Green JA cited the dicta of Lord Denning in **Re Bramblevale Ltd** [1969] 3 WLR 699 as follows:

A contempt of court is an offence of a criminal character. A man may be sent to prison for it. It must be satisfactorily proved. To use the time-honoured phrase, it must be proved beyond all reasonable doubt. It is not proved by showing that, when the man was asked about it, he told lies. There must be some further evidence to incriminate him. Once some evidence is given, then his lies can be thrown into the scale against him. But there must be some other evidence.

[22] In determining whether one was in contempt of court, the court ought to scrutinize the order in question to determine whether there was any ambiguity in the words. This will inform the position to be taken by the court. In **National Export Import Bank of Jamaica Limited v Stewart Brown Investments Limited** [2021] JMCA Civ 40 (“**Stewart Brown 2**”) a case on appeal, Stewart Brown Investments Limited (“**the company**”) had secured an injunction from a single judge of the Court of Appeal which restricted one of the respondent’s, National Export Import Bank of Jamaica Limited (“**the bank**”), “*from taking any steps pursuant to its purported calling of the loan and/or exercising its power of sale as mortgagee until the determination of the appeal*”. The bank sought clarification of the terms of the injunction in order to make clear that the order only applied to the Bank’s exercise of its power of sale contained in the mortgage. A notification issued by the Registrar of the court clarified that the order of the single judge which the bank interpreted as not preventing it from the enforcement of the bills of sale and proceeded to, with a bailiff and a police officer, remove one of the company’s trucks and disable another. The company applied to have the bank committed for contempt of court. The trial judge found that the bank had not intended to breach the orders of the court which were unambiguous, The Learned Judge also found that it was not necessary to show

motive for the disobedience to establish civil contempt and that the strict liability approach was to be applied.

[23] Brooks P referred to the general principles applicable to the consideration of civil contempt. He stated:¹

For there to be contempt of court, the order should clearly specify the behaviour that must, or must not, be done. Any ambiguity in the order must be resolved in favour of the person charged with contempt. Contempt of court, at common law, requires not only an act or an omission (the actus reus), but it also requires a mental element (the mens rea).

The Learned President pointed out that the cases relied on by the Learned Judge below dealt with cases where the order was unambiguous. In that case, there was no requirement to prove that the contemnor intended to breach the order. In such cases, a strict liability approach, in the sense that the absence of negligence or intention to disobey will not exempt the contemnor, should be adopted.

[24] Brooks P, with whom the other Judges of Appeal agreed, found that the trial judge erred in finding that the bank acted in contempt of court, having found that the order granting the injunction was clear on its face but was subsequently made uncertain by the notification issued. In that circumstance where it was determined that the order was unclear, the element of mens rea was necessary for a finding of contempt. Consequently, once the trial judge had found that the bank had no intention to breach the order, then there should have been no finding of contempt of court.

[25] The circumstance of **Stewart Brown 2** is in contrast to that of the recent case of **Victoria Mutual** where the Court of Appeal found that the order of the court was clear and unambiguous, and, consequently, the strict liability approach which was applied was appropriate.

¹ [2021] JMCA Civ 40, para 43

[26] In **Victoria Mutual**, the court had granted an interim injunction which prevented **Victoria Mutual Wealth Management Limited (“the bank”)** from taking, causing or permitting any “**adverse steps**” on its behalf against the defendant, Mr. Hutchinson, in connection with his employment; including termination of his employment contract or for any reasons connected with the charge letters sent from the bank. The following day, Mr. Hutchinson was sent a letter from the bank’s Group Chief Human Resources Officer which informed Mr. Hutchinson that he was placed on administrative leave. On the same day Mr. Hutchinson was locked out of his work email. Subsequently, Mr. Hutchinson’s Attorneys-at-Law wrote letters to the bank’s Attorneys-at-Law to indicate that placing of Mr. Hutchinson on paid suspension, the publication of said suspension, the locking of Mr. Hutchinson out of his work email and Mr. Hutchinson’s client account being assigned to another senior executive, were in breach of the court’s order. On hearing the application for contempt of court, the Laing J found that the bank had committed civil contempt by placing Mr. Hutchinson on paid administrative leave, the imposition of which was clearly connected to the charge letters.

[27] On appeal, Dunbar Green JA upheld the decision of Laing J in that the terms of the order were unambiguous, and so the Judge correctly applied the strict liability approach. She clarified that the seemingly inconsistent position within and with **Stewart Brown** stemmed from the consideration of whether the order was ambiguous or unambiguous. In that regard, there was no inconsistency.

[28] Counsel for the Respondents argue that the Order of Laing J was ambiguous, being susceptible to two different interpretations. For ease of reference the terms of the Order are repeated as follows:

The orders at paragraphs 1-4 are subject to:

- (1) *The defendant closing and not continuing to operate in any manner whatsoever, the business which is the origin of the dispute between the parties in the claim, and securing the stock and equipment related thereto until the appeal is determined;*

Counsel agreed that the business referred to was Century Sales 2020 Limited. It is the phrase “*securing this stock and equipment related thereto*” which is in contention as ambiguous.

[29] These proceedings are rooted in the failed Purchase of Business Agreement wherein Ms. Wallace purchased the stock of Century Sales Limited from Mr. Williams. At the centre of the Respondents’ argument is the question of whether the stock which Laing J referred to was the stock purchased from the Applicant, or the stock purchased from the Applicant as well as the stock which the Respondents purchased to replenish the business.

[30] Counsel Mr. McDermott submitted that, as the Applicant averred in his affidavits, and in keeping with the conduct of the parties in their respective statements of case, the Order of Laing J referred to the stock that was purchased under the agreement and that central to the dispute was the amount of stock sold. The accounting of stock is a central issue to Ms. Wallace’s claim that Mr. Williams misrepresented the quantum and value of the stock she was sold pursuant to the Purchase of Business Agreement. The resolution of this issue will play a crucial role in the appeal. All this, he argued, gives strength to the view that the purpose of the Order of Laing J was for the preservation of stock that was purchased from the Applicant.

[31] This distinction however has no merit. At the date of the Order, any otherwise acquired stock would have been comingled with the original stock. Closing the business would mean that that stock could not be sold. The Order of “*closing and not continuing to operate*” could not be interpreted as disjunctive orders but had to be conjunctive.

[32] Notably, Ms. Williams, being present when the Order was made, would have appreciated the meaning of the Order and the context in which it was made. Further In Ms. Wallace’s affidavit in opposition of Freezing Orders dated and filed August 25th 2021, she did not pose the argument that Laing J was only referring to the stock purchased from the Applicant. She instead asserted that she had secured the stock purchased from the Applicant as well as the additional stock which she had purchased to supplement the

stock in the business.² This shows that Ms. Wallace understood that the Order of Laing J not only encapsulated the stock purchased from Mr. Williams but also all stock purchased by her from third-party suppliers prior to the date of the Order, August 13th 2021.

[33] Interestingly, Ms Wallace's Affidavit dated August 25th 2021 is in direct conflict with that of Ms. Wallace's affidavit dated January 31st 2023, in that she began to distinguish between the stock purchased from the Applicant, referred to as disputed stock, and items purchased from other suppliers, referred to as new stock. Prior to this there was no such distinction. This distinction is disingenuous, as it is evident from the affidavit of August 25th 2021 that Ms. Wallace had understood and accepted that the Order of Laing J intended for **all** of the stock then in business to be secured.

[34] As an aside, were the Court to accept the argument that the replenished stock did not form part of the ongoing business operations of the company, then this would lead to commercial absurdity. To accept such an interpretation would mean that once the original purchased stock of the business was depleted, the business would have no need to continue its operation.

[35] Upon close review of the Order of Laing J and the history of the claim, I find that the terms of the Order were unambiguous in its meaning to shutter the business and not to sell any stock from it. Under cross-examination Ms. Wallace said that she recalled that the Order of Laing J was to close the business and further asserted that she did not act contrary to the Order, bearing in mind that her evidence was that she was operating a different company. The strict liability approach is to be followed and the Applicant is not then required to prove an intention on the part of the Respondents to disobey the order.

[36] The next question then for the Court is whether the actions of Respondents breached this Order.

² Affidavit of Opal Wallace in Opposition to the Claimant's Without Notice Application for Court Orders dated August 25th 2021, para 13

[37] Ms. Wallace admitted in her affidavit dated January 31st 2023, that Mr. Belnavis was sold new stock which was purchased between April 13th 2021 - June 22nd 2021 and May 31st 2021.³ This would have been the same stock which Ms. Wallace had represented to the court in her affidavit dated August 25th 2021 that she had secured, and would have formed part of the stock listing exhibited to the affidavit, stock purchased from Mr. Williams as well as stock purchased prior to the Order of Laing J.

[38] On a totality of the evidence, the Court finds beyond reasonable doubt that the Respondents were in breach of the Order of Laing J to secure the stock and are therefore in contempt of court.

[39] Despite the Court having already found that the Respondents had breached one aspect of Laing J's Order having, by selling the items to Mr Belnavis, failed to secure the stock of the business, for completeness I will now turn my attention to the issue of whether the business continued its operation.

[40] The Order was clear in that the business should be closed and discontinued from operation in any manner *whatsoever*. Synonyms for *whatsoever* include 'anything', 'everything', 'no matter what', 'whatever'. Collins Caribbean Student Dictionary defines it as "at all" and describes it as an adjective used for emphasis after words such as "none" or "any". These definitions accord with the common and ordinary understanding of the word. Therefore, the Order of Laing J meant the complete closure and non-operation of the business.

[41] The evidence of the Applicant's witness, Mr. Kevin Belnavis, is that the business Century Sales 2020 Limited closed in September 2021 and reopened in October 2021. He did not state by what means he came to this knowledge except for a sign he observed and that he made purchases in October and he was working on the other side of the

³ Affidavit of Opal Wallace in Opposition to Applicant's Notice of Application for Court Orders dated January 31st 2023, para 22 (i) & (ii)

compound as a security Guard. In an attempt to refute this evidence, Counsel Mr. McDermott asked Mr. Belnavis how he knew the business from which he purchased was the same business as Century Sales 2020 Limited. The evidence adduced from Mr. Belnavis was to the effect that on his first visit to the business on 2nd November 2021 he received a handwritten receipt with the words '**Centry Sales**', (which I accept to be a spelling error and was intended to have read ('**Century Sales**')), and that he saw the sign Century Sales affixed to the building.

[42] Attempting to rebut this evidence, Ms. Wallace explained that at the time of Mr. Belnavis' purchase on 2nd November 2021, she was operating the business KB Sitroff Financial Services which was engaged in the business of selling nuts and bolts. She further stated that the receipts made out to Mr. Belnavis were pre-written receipts, done by a previous cashier, and were issued in error by a new cashier, who had not yet received the requisite training. She explained that upon review of her daily sales record, she discovered the error on the same day (2nd November 2021) on which Mr. Belnavis purchased the items and advised Ms. Malcom that going forward she should write the name "**KB Sitroff**" on all receipts. However, Mr. Belnavis had also stated that he had previously seen Ms. Malcom at the business prior to his purchases on November 2nd 2021.

[43] The Court has to consider the credibility of these two witnesses as there is no corroborating evidence of either assertion. In cross-examination, Counsel Mr. McDermott put it to Mr. Belnavis that he was untruthful in saying that the business of Century Sales was still being operated. It was during this line of questioning that Mr. Belnavis stated that he knew the business was still in operation at that time because upon his visit he saw the sign and logo of Century Sales displayed and he received receipts bearing the name Century Sales. Counsel Mr. McDermott then proceeded to dispute this evidence on the basis that Mr. Belnavis did not state in his affidavit that he observed the sign and logo of Century Sales or that he had received other receipts in the name of Century Sales. Mr. Belnavis insisted that the signs existed, even up to the time he was giving evidence. Interestingly, Ms. Wallace, who gave evidence after Mr. Belnavis, did not give evidence

contesting this assertion. The Court is of the view that the failure to state this observation in his affidavit is not detrimental to the credibility of Mr. Belnavis and therefore accepts his evidence. The question posed to Mr. Belnavis was meant to challenge his credibility, however, from his demeanor as he responded to Counsel, which was insistent and not belligerent, he satisfied the Court that he was telling the truth. There was an instinctiveness in the way in which Mr. Belnavis responded to Counsel Mr. McDermott which conveyed sincerity. In my estimation, Mr. Belnavis obviously did not think much of that observation to share it until Counsel for the Respondent attempted to paint him as an untruthful witness.

[44] Further from the evidence it is clear that he made the purchase on November 2nd at the behest of Mr. Williams in order to obtain proof of the company's operations. His prior purchase were clearly unrelated. The absence of this information in his affidavit is therefore understandable. Again, the information came out when his veracity was challenged.

[45] Counsel Mr. Neale attempted to support the evidence of Mr. Belnavis by indicating that the business which Ms. Wallace claimed to have been operating at the time of Mr. Belnavis' purchases, KB Sitrof Nuts and Bolts, was not a registered business at the Companies Office. Ms. Wallace had explained under cross-examination that she was operating the business under the investment arm of a company that she had incorporated in 2019, KB Sitrof Financial Services Limited. Though the Court formed a view as to the operation of this business, (see para 45), in general, there would have been no barrier to Ms. Wallace operating a different business from Century Sales 2020.

[46] Ms. Wallace indicated that she closed Century Sales 2020 Limited after the Order of Laing J in August and commenced a new business in November of the same year. Stock purchased from third-party suppliers was sold by this new company. Ms. Wallace as a businesswoman must have been aware that by virtue of not removing the Century Sales signs, patrons of the establishment would likely conclude that the business being operated was Century Sales 2020, as the same type of products were being sold. Indeed it was Mr Belnavis' evidence, which I accept, that persons asked for the business Century

Sales and were directed to that establishment with the sign. The Court finds beyond a reasonable doubt, with the combination of the premises being the location for Century Sales, the signs of Century Sales on display and receipts bearing the name Century Sales, that the business being operated on November 2nd 2021 was indeed Century Sales 2020, and issuing receipts in the name of KB Sitroff was a façade intended to evade the letter and spirit of the Order of Laing J.

[47] Consequently, the Respondents were in breach of the Order of Laing J. to close and discontinue the operation of the business.

THE APPROPRIATE SANCTION

[48] Having found that the Respondents disobeyed the Order of Laing J and were therefore in contempt of court, the Court now turns its attention to the appropriate sanction.

[49] In **National Highways Ltd v Heyatawin and others** [2021] EWHC 3078 (QB) (“**National Highways**”) the Court had to consider the appropriate sanction to be imposed against a group of protesters who deliberately breached an injunction barring them from protest. Lord Justice Dingemans, in delivering the decision of the court, enunciated the factors that should be considered in determining whether a custodial sentence or a fine would be an appropriate sanction for the disobedience of the order of the court. He stated:⁴

So far as is relevant to this application the relevant principles are first the purpose of imposing a sanction for contempt is to punish the breach, ensure compliance with the court orders and rehabilitate the person in contempt. Secondly the court should adopt an approach analogous to that in criminal cases where the Sentencing Council Guidelines require the court to assess the seriousness of the conduct by reference to culpability and harm caused, intended or likely to be caused. Thirdly, in light of its determination of seriousness, the court must first consider whether a fine would be a sufficient penalty. Fourthly, if the contempt is so serious that only a custodial penalty will suffice, the court must impose the shortest

⁴ EWHC 3078 (QB), para 28

period of imprisonment which properly reflects the seriousness of the contempt and is proportionate. A deliberate breach of a court order is very likely to cross the custody threshold. Fifthly, due weight should be given to matters of mitigation, such as genuine remorse, positive character and similar matters. Sixthly, due weight should be given to the impact of committal on persons other than the contemnor, such as children or vulnerable adults in their care. Seventhly, there should be a reduction for an early admission of the contempt, to be calculated consistently with the approach set out in the Sentencing Council Guidelines on reduction in sentence for guilty pleas. And, eighthly, once the appropriate term has been arrived at, consideration should be given to suspending the term of imprisonment. Usually the court will already have taken into account mitigating factors when setting the appropriate term, such that there is no powerful factor making suspension appropriate, but a serious affect on others, such as children or vulnerable adults in the contemnor's care, may justify suspension.

[50] The court in **National Highways**, in considering the rights of citizens in a democratic society, acknowledged that though there was indeed a right to peaceful assemble, which would obviously cause some degree of inconvenience, such a right had to be balanced against the rights of members of the public to use the highway. It was in balancing this right that the trial judge made an order prohibiting the defendants from obstructing, endangering, or preventing the free flow of traffic onto or along the M25 motorway for the purpose of protesting. In considering the factors as propounded by Lord Justice Dingemans, the court found that the wanton disregard for the order resulted in the following:

- (1)The inconvenience caused by the protest significantly obstructed the flow of traffic thereby causing individuals to be late to their intended destinations.
- (2)The economic damage as a result of the resources of the police having to be diverted from other police work to the policing of the protests.
- (3)The safety risk posed to the defendants and members of the community. Owing to the frustration and anger which the protest would have caused, members of the community might have tried to take matters into their own hands.
- (4)Emergency services would have been obstructed from being able to respond.

Following this, the court proceeded to consider the relevant aggravating and mitigating factors in relation to each defendant.

[51] It was held that having regard to the culpability and harm caused by the defendant's actions, the custodial threshold had been passed. Consequently, no lesser sanction than an order for imprisonment would sufficiently mark the gravity of their conduct, and further act as a deterrent for those who would attempt the same. On this basis, the defendants were sentenced to terms of imprisonment ranging between three **(3)** months and six **(6)** months.

[52] In **National Highways** the relevant authorities caught wind beforehand of the intention of the defendants to protest along the M25 roadway, as such, they obtained an injunction to prevent same. However, even after being prohibited by the court from doing so it was obvious the defendants continued to orchestrate the protest in clear defiance of the order. The defendants set out to deliberately impact as many members of society as possible so as to shed light on a cause they held dear. The court described the actions of the defendants as contumacious. The conduct of the defendants resulted in consequences that not only caused inconvenience and wastage of state resources but also could have resulted in clear pandemonium due to the unrest and anger which the protest would have caused.

[53] More recently in the case of **Jones and another v Hamilton** [2023] EWHC 2286 (Ch) which references **Asia Islamic Trade Finance Fund v Drum Risk Management** [2015] EWHC 3748 (Comm) ("**Asia Islamic**"), relied on by the Applicant, Mr. Justice Roth stated:⁵

In Attorney General v Crosland [2021] UKSC 15 the Supreme Court endorsed the general guidance as to penalty set out by the Court of Appeal in Liverpool Victoria Insurance Company Limited v Khan [2019] EWCA Civ 392 ("Khan") as applicable, also in a case of civil contempt. The approach in Khan was summarised by the Supreme Court as follows:

⁵ [2023] EWHC 2286 (Ch), para 10-12

“(1) The court should adopt an approach analogous to that in criminal cases where the Sentencing Council’s guidelines require the court to assess the seriousness of the conduct by reference to the offender’s culpability and the harm caused, intended, or likely to be caused.

(2) In determination of seriousness, the court must first consider whether a fine would be a sufficient penalty.

(3) If the contempt is so serious that only a custodial penalty will suffice, the court must impose the shortest period of imprisonment which properly reflects the seriousness of the contempt.

(4) Due weight should be given to matters of mitigation such as genuine remorse, previous positive character and similar matters.

(5) Due weight should also be given to the impact of committal on persons other than the contemnor, such as children or vulnerable adults in their care.

(6) There should be a reduction for an early admission of the contempt, to be calculated consistently with the approach set out in the Sentencing Council’s guidelines on reduction in sentence for a guilty plea.

(7) Once the appropriate term has been arrived at, consideration should be given to suspending the term of imprisonment. Usually, the court will already have taken into account mitigating factors when setting the appropriate term such that there is no powerful factor making suspension appropriate, but a serious effect on others such as children or vulnerable adults in the contemnor’s care may justify a suspension.”

In addition to those principles, in Solicitors Regulatory Authority v Khan [2022] EWHC 45 (Ch) at paragraph 52, Leech J recently enumerated some further points of relevance (I omit authorities cited in the quotation):

“(1) There are no formal sentencing guidelines for sentence/sanction in committal proceedings.

(2) Sentences / sanctions are fact specific.

(3) The court should bear in mind the desirability of keeping offenders, and in particular first time offenders, out of prison.

(4) Imprisonment is only appropriate where there is “serious contumacious flouting of orders of the court”.

(5) The key questions for the court are the extent of the Defendant’s culpability, and the harm caused by the contempt.

(6) Committal to prison may serve two distinct purposes: (a) punishment of past contempt and (b) securing compliance.

(7) It is good practice for the court sentence to include elements of both purposes (punishment and compliance) to make clear what period of committal is regarded as appropriate for punishment alone, i.e. what period would be regarded as just if the contemnor were promptly to comply with the order in question.

(8) Committal may be suspended (See CPR Part 81.9(2)). Suspension may be appropriate (a) as a first step with a view to securing compliance with the court's orders ... and (b) in view of cogent personal mitigation."

*In assessing the seriousness of the contempts, the courts now refer to a checklist of factors or criteria, most of which derive from the judgment of Lawrence Collins J in *Crystal Mews v Metterick* [2006] EWHC 3087 (Ch), together with a point added by Popplewell J in *Asia Islamic Trade Finance Fund Ltd v Drum Risk Management Ltd* [2015] EWHC 3748 (Comm). They have subsequently received approval of the Court of Appeal and are quoted in Ms O'Sullivan's skeleton argument for this hearing:*

"(a) Whether the claimant has been prejudiced by virtue of the contempt and whether the prejudice is capable of remedy;

(b) the extent to which the contemnor has acted under pressure;

(c) whether the breach of the order was deliberate or unintentional;

(d) the degree of culpability;

(e) whether the contemnor has been placed in breach of the order by reason of the conduct of others;

(f) whether the contemnor appreciates the seriousness of the deliberate breach;

(g) whether the contemnor has co-operated;

(h) whether there has been any acceptance of responsibility, any apology, any remorse or any reasonable excuse put forward."

[54] From the authorities cited it is clear that a custodial sentence for contempt of court is most appropriate in cases where the breach of the Order in question results in severe consequences, especially to unconnected third parties. Though the consequences in *National Highways* was widespread, this by no way means that a sentence of imprisonment for contempt of court is dependent on whether or not the public at large is

affected. However, where the consequences of the breach are felt by members of the public, it may give greater weight to a consideration for a custodial sentence but it is not determinative of same. As said by Lord Justice Dingemans in *National Highways*:⁶

... [the court must] assess the seriousness of the conduct by reference to culpability and harm caused, intended or likely to be caused...if the contempt is so serious that only a custodial penalty will suffice, the court must impose the shortest period of imprisonment which properly reflects the seriousness of the contempt and is proportionate.

[55] In the following cases, a fine was deemed an appropriate sanction.

[56] The case of **Stewart Brown Investments Limited et al v National Export Import Bank of Jamaica Ltd (t/a Exim Bank Jamaica** [2020] JMCC Comm 36 (“**Stewart Brown 1**”) is a useful starting point. Though the case was overturned on appeal in **Stewart Brown 2**, the Court of Appeal did not make any adverse comments as to the quantum of the fine. In this case, in determining the appropriate sanction Laing J took into account several mitigating factors such as, prior to the breach, the bank sought clarity as to the scope of the order, and Counsel advised the bank that it was permissible to enforce against realty. On this basis, the court opined that the bank was not wilfully disobedient to the order of the court and imposed a fine of Two Hundred and Fifty Thousand Dollars (**JMD\$250,000.00**).

[57] In **Bonus Car Rental and Services Limited v Ian Dunn** [2023] JMCC Comm 1 (“**Bonus**”), a judgement by my brother Batts J, the defendant had breached an order to deliver up the possession of the claimant company’s property. In this case the defendant had initially acted on the legal advice of Counsel, however, he failed to comply with the order of the court even after such legal advice was proved to be erroneous. In the view of my brother, this circumstance was aggravated by the fact that the defendant had transferred the ownership of some of the items to another company’s name, which

⁶ EWHC 3078 (QB), para 28

subsequently had to be retransferred to the claimant company. Further, bailiff services had to be engaged in order to recover possession of the items, thereby incurring expense.

[58] In coming to a determination as to quantum, Batts J referenced the case of **Victoria Mutual** in which he made the observation that a fine of Four Hundred Thousand Dollars (**JMD\$400,000.00**) was imposed for breach of an order which was not directly intended. In the circumstances of **Bonus**, it was held that the defendant intentionally disobeyed the order of the court, as such, a fine of Five hundred thousand dollars (**\$500,000.00**) was imposed. The court further noted that the fine would have been higher save and except for the mitigating factors that the defendant had received legal advice that he was no longer in breach of the order and that there was an application to set aside the judgment which was only refused on 27th September 2022.

[59] In **Garfield Sinclair & Ors v Kevin Sudeall & Ors** [2021] JMSC Civ.165 (“**Garfield Sinclair**”), Wint-Blair J imposed a fine of One Million Dollars (**\$1,000,000.00**) for the breach of an order preventing the respondent from restricting the applicants and/ or their servants from access to the common areas for the purpose of parking and delivery. In disobedience of the order, the respondent prevented access to the common area through the actions of his servant and further by erecting a gate locking out the applicants and/ or his agents and third-party suppliers. Wint-Blair J described the consequence of the foregoing actions thus:⁷

... the letters from third party suppliers show that the nature and conduct of the first respondent was such as to cause a disruption in the flow of business between the applicants and their suppliers; to cause a build-up of traffic on West Street by the parking of delivery trucks thereon which would incur traffic tickets for the drivers; inconvenience members of the public; leading to the expending of police resources; third party resources; it meant longer distances to transport goods from the main street through the common area to the warehouse by trolley, including goods which are temperature sensitive which in turn led to potentially compromised goods on the part of products from one company.

⁷ [2021] JMSC Civ. 165, para 46

[60] The court found that the respondent disregarded the injunction in a *“high-handed manner intending to wilfully disobey its terms”* and neither the police nor the applicants were capable of preventing the respondent from behaving in the contumacious manner in which he did. Wint-Blair J further noted that the actions of the respondent *“undermine[d] the authority of the court and diminish[ed] the orders of the court in the eyes of right thinking members of the public”*.⁸ In those circumstances the court pronounced that no mitigating factors existed. The decision of Wint-Blair J was upheld on appeal in **Sudeall (Kevin) and anor v Sinclair (Garfield) and anor** [2023] JMCA Civ 32.

[61] I find these cases to be highly persuasive as to the factors to be considered in the case at bar. I find that the circumstances in the case at bar are not comparable to those of **National Highways**, the disobedience of the order having no effect on third parties. There are no other peculiar particulars that would warrant a sentence of imprisonment. Notably, the conduct of the Respondents did not even compare to that of the defendant in **Garfield Sinclair**, a case in which the court held the defendant’s conduct to be contumacious but still found that a fine was an appropriate sanction. There were no adverse effects to third parties in this case and there was no evidence that there was continued flouting of the court’s orders.

[62] Though I do believe the conduct of the Respondents was intentional, the consequences were not so severe as to warrant imprisonment. Accordingly, I find that a fine would suffice as an appropriate penalty.

[63] In assessing the quantum of the fine to be imposed, the cases of **Stewart Brown 1** and **Garfield Sinclair** have aided the Court’s view of the minimum and maximum boundaries to be mindful of in the circumstances. In **Stewart Brown 1**, Laing J had made the observation that the bank did not wilfully disobey the order of the court, the bank sought to clarify the order prior to committing the breach and had relied on the advice of Counsel in proceeding. On that basis the court imposed a fine of Two Hundred and Fifty

⁸ Ibid., para 50

Thousand Dollars (**JMD\$250,000.00**). In light of this, the sanction to be imposed will not fall below this amount as it is my view that the Respondents in the case at bar were deliberate in their actions.

[64] In view of the case of **Garfield Sinclair**, as previously stated, the contumacious behaviour as described by Wint-Blair was not exhibited in the present circumstances. In **Garfield Sinclair** there was a clear resistance to the order in question where not even the actions of the police resulted in compliance by the defendant. In those circumstances the court imposed a fine One Million Dollars (**\$1,000,000.00**). The conduct of the Respondents in the present case could not be described as being done in a high-handed manner. Therefore, the fine to be imposed will not be as high as that which was imposed in **Garfield Sinclair**.

[65] **Bonus** can also be used as a marker. In that case the company was deprived of its income-earning assets causing financial loss to the company. The circumstances of this case fall short of that kind of effect.

[66] The Order of Laing J was quite clear in that the Respondents should close and not continue to operate the business. Given the evidence, Ms. Wallace deliberately contravened this Order when, on at least two occasions, she sold existing stock for the first time under the auspices of Century Sales 2020 Limited. The Court is of the view that in the present case the fine of Three Hundred and Fifty Thousand Dollars (**JMD\$350,000.00**) would be an appropriate penalty in circumstances where no mitigating circumstances have been presented. To my mind, this penalty is sufficient to punish the contemnors and remind those who would choose to flout the orders of the court that the court will act to preserve its authority in the eyes of society.

[67] Mr. Williams had requested for the fine imposed to be paid by each Respondent. These proceedings are quasi-criminal proceedings, and so it is appropriate to borrow a

principle from the criminal jurisprudence. In **Kirk Mitchell v R** [2011] JMCA Crim 1, Brooks JA(Ag)(as he then was) stated:⁹

b. Where the offences arise out of the same transaction and the appropriate sentence for each offence is a fine, only one substantial sentence should be imposed - (DPP v Stewart).

This was in the context of a single defendant but I see no reason why it cannot apply in the case at bar where the acts complained of were really the actions of Ms. Wallace. Therefore, in these circumstances, it would suffice for there to be one punishment. In **Asia Islamic** where three parties were found to be in contempt of court, only one party was punished.

[68] Accordingly, it is ordered as follows:

1. The 1st, 2nd and 4th Respondents are in contempt of court having breached the Orders of Laing J made on August 13th 2021.
2. The 1st Respondent is ordered to pay a fine in the sum of Three Hundred and Fifty Thousand Dollars (**\$350,000.00**) to the Accountant General of Jamaica within thirty (30) days of the date of this Order.
3. Cost of the Application to be the Applicant's to be taxed if not sooner agreed.
4. Claimant's Attorney-at-Law to prepare, file and serve Order.

Judge

⁹ [2011] JMCA Crim 1, para 57