

COMMONWEALTH OF THE BAHAMS
IN THE SUPREME COURT
Commercial Division
CLAIM NO. 00715 OF 2023

BETWEEN

CEM OKULLU'NUN YEMINLI BEYANI

Claimant

AND

(1) WEISER GLOBAL CAPITAL MARKETS LTD.
(2) KEITH KELTY
(3) SHELBY BRICE

Defendants

Before: The Honourable Madam Justice Camille Darville Gomez

Appearances: Mr. Sean Moree, KC and Mrs. Erin Hill and Mrs. Peteche Mitchell with him
for the Claimant

Mr. Philip McKenzie, KC and Miss Glenda Roker for the Defendants

Hearing Date: March 27, 2024

JUDGEMENT

Darville Gomez, J

- [1.] I have already delivered my decision in relation to the application by the Claimant for committal of the Defendants for their failure to comply with the Order of Justice Neil Braithwaite dated June 30, 2023 and filed on July 4, 2023, which I will hereafter refer to as the Disclosure Order. I promised to put my reasons in writing which I now do.
- [2.] The Claimant applied by Originating Application filed on August 23, 2023 for inter alia, an order that:
- (a) the Disclosure Order is enforced pursuant to the Supreme Court Civil Procedure Rules (CPR) 50.4;
 - (b) the First Defendant is to be held in contempt of court pursuant to CPR 26.7(2);
 - (c) the 2nd and 3rd Defendants be committed pursuant to CPR 26.7(2), 50.3(1)(iii) and 51.1, specifically that they be imprisoned at the Bahamas Department of Correctional Facilities for a period to be determined by the Court; and

- (d) the First Defendant be fined pursuant to CPR 26.7(2) and/or 26.1(2)(v) and/or the Court's inherent jurisdiction; and
- (e) a Writ of sequestration seizing the First Defendant's assets relevant or pertaining to the evidence sought by ancillary disclosure at paragraph 2 of the Order pursuant to CPR 50.3(1)(ii), 26.7(2), and/or 26.1(2)(v) and/or the Court's inherent jurisdiction.

- [3.] It is supported by an affidavit of Demi Pindling also filed on August, 23, 2023.
- [4.] The Defendants relied on the Affidavits of Shelby Brice filed on September 1, 2023 and September 21, 2023.
- [5.] The Court was also referred to the following documents:
 - (i) Affidavit of Devaughn F. A. Rolle filed on July 31, 2023;
 - (ii) Notice of Application by the Defendants for relief from sanctions filed on September 1, 2023 (in action 00452 of 2023);
 - (ii) Affidavit of Andrew Edwards filed on January 17, 2024;
 - (iii) Supplemental Affidavit of Demi Pindling filed on January 17, 2024;
- [6.] The standard of proof required for civil contempt is well established as beyond reasonable doubt. Both Counsels for the respective parties cited authorities in support of this including: **Fidenas International Bank Ltd. v First Mercantile Bank Ltd.** [1991] BHS J. No. 9 and more recent the case of **Cummings & Myeran v Sumner Point Properties** SCCiv App. No. 170 of 2018.
- [7.] I refer to paragraphs 72-74 in **Cummings** where the Court confirmed the standard of proof required for committal proceedings.

“Contempt of Court is a grave matter.....other than a manifest and clear contempt in the face of the Court, contempt of Court is not to be inferred or assumed. It must be established by clear evidence so as to make the Court feel sure that there has been an irrefutable disobedience of its order.”
- [8.] It is undisputed that the Defendants never applied to amend or extend the deadline for disclosure. However, they did apply by Notice of Application filed on September 1, 2023 for relief from sanctions.
- [9.] The Defendants through their initial Counsel Mr. Andre Rahming sought two days prior to the deadline for an extension of six to eight weeks. This was not agreed to by the Claimant.
- [10.] About ten days after the deadline for disclosure had expired, the Defendants instructed new Counsel from Davis & Co. and yet again, communication between the respective Counsels for each of the parties continued.
- [11.] The correspondence between the parties was exhibited in the affidavit of Andrew Edwards and of Demi Pindling.

- [12.] Notwithstanding the non-agreement to the extension and the passage of the deadline for compliance, the parties through their respective Counsel communicated via email and other means. It was clear to the Court that Counsel for the Defendants understood the need to comply with the Disclosure Order from the outset and did not attempt to evade or escape compliance with the same despite the lateness of their reply.
- [13.] The final correspondence exhibited were letters dated September 15, 2023 and September 28, 2023.
- [14.] The Claimant's Counsel also complained that the Defendants failed to make the disclosures including to produce copies of all instructions and/or correspondence received from or on behalf of the BRCL relating to the Claimant's 120 million shares in Is Finansal Kiralama A.S. (the "ISFIN shares") on May 3, 2019 and to provide an accounting of all transactions by the First Defendant and identification of each and every sale of the ISFIN shares.
- [15.] The case of **Navigator Equities Ltd and another v Deripaska** [2021] EWCA civ 1799 specify the general propositions of law in relation to civil contempt. I do not intend to set them out here.
- [16.] However, I note that the Defendants sought by their supplemental affidavit to respond to the shortcomings that had been brought to their attention by the Claimant.
- [17.] I have found that the Defendants took the necessary steps to comply with the Disclosure Order from the outset. Further, that the substance of their reply and the lateness of their compliance was not contumacious or made the court "*feel that there was a manifest and clear contempt in the face of the Court*".
- [18.] For the reasons hereinbefore set out, I have not found the Defendants in contempt.
- [20.] I will hear the party on the issue of costs.

Dated this 23rd day of April, A. D., 2024



Camille Darville Gomez
Justice