IN THE SUPREME COURT OF GIBRALTAR

Neutral Citation Number 2025/GSC/007

2022/ORD/074

BETWEEN:

(1) MANSION (GIBRALTAR) LIMITED

(2) ONISAC LIMITED

Claimants

-and-

(1) KAREL CHRISTIAN MANASCO

(2) KM ACCOUNTANTS LIMITED

Defendants

HODGE MALEK KC with **JAMES MONTADO** and **JAMES CASTLE (**instructed by **ISOLAS LLP)** for the **Claimants**

CHRISTOPHER FINCH (instructed by **VERRALLS LEGAL LIMITED)** for the **First Defendant**

Judgment date: 11 March 2025

JUDGMENT

DUDLEY, CJ:

1. Over the course of a hearing lasting 5 days I heard two contempt applications brought by the Claimants (for the purposes of this Judgment, together "Mansion") against the First Defendant ("KM"). The first application was filed on 23 August 2023, and the second on 24 June 2024. In accordance with the provisions of CPR 81 the hearing was conducted in public.

2. By their 23 August 2023 application Mansion advanced three distinct allegations of contempt on the part of KM, namely:

   (i) that KM, in breach of undertakings dated 4 October 2022 and 10 November 2022, in the period from 4 October 2022 to 20 March 2023 made payments and withdrawals from his bank accounts in excess of the £10,000 per week permitted ("Ground 1");
   (ii) that KM made a false statement in a witness statement verified by a statement of truth in respect of part of the proceeds of sale of Villa No. 2 The Sanctuary, Maida Vale, 3 Engineer Road ("Ground 2"). The circumstances which led to Mansion not pursuing this ground are set out in my judgment of 17 October 2023 by which I granted permission to make the contempt application in respect of Ground 3, which is;
   (iii) that KM made a false statement in a witness statement verified by a statement of truth, that his expenditure during the 24 weeks covered by the undertakings set out at (i) above amounted to £258,603 when in fact it amounted to £335,490. 25 ("Ground 3").

3. By their second application Mansion allege four further grounds of contempt by KM, these are said to arise from alleged breaches of a World Wide Freezing Order dated 27 March 2023 ("the WFO") namely:

   (i) that he removed and/or diminished assets from the jurisdiction in his name to the sole name of his wife ("Ms Alvez") in an account held in Spain in breach of paragraphs 2(a), 2(b) and 6 of the WFO ("Ground 4");

(ii) that he used non-nominated accounts for the payment of *"Ordinary Living Expenses"* in breach of paragraph 9 of the WFO Order ("Ground 5");

(iii) that he made multiple transfers from the Spanish Nominated Account to Molino de Fuego after the 27 June 2023 in breach of paragraph 11 of the WFO Order ("Ground 6"); and

(iv) that he failed to notify Mansion of the various transfers of monies from the Gibraltar and Spanish Nominated Account to non-nominated accounts not specified in the WFO Order in breach of paragraph 13 of the WFO Order ("Ground 7").

Background to the Claim

4. In setting out the background to the claim I draw from earlier judgments and in particular that of 21 February 2023 *Mansion & Anor v Manasco & Anor 2023/GSC/009* from which flowed the WFO Order and that of 14 August 2024 in which, inter alia, I considered an application to amend the Defence and Counterclaim, *Mansion & Anor v Manasco & Anor 2023/GSC/026*.

5. Mansion are part of a wider group of companies ("the Mansion Group") which together comprise and operate an online gaming enterprise. KM was at all material times (for the purposes of the claim) employed by Mansion as its Chief Executive Officer and de facto Chief Financial Officer. He was also the sole director of both Claimants as well as of other companies within the Mansion Group.

6. The Second Defendant ("KM Accountants") is a company incorporated in Gibraltar in 2008. It was struck off the Register of Companies on 20 April 2016 and restored to the Register on 4 April 2019. It is the Claimants' case that KM was, at all material times, the sole director and shareholder of KM Accountants.

7. KM is a qualified accountant and Fellow of the Association of Certified Chartered Accountants. He commenced his employment with (or for)

Mansion on or around October 2010, progressing to Chief Financial Officer in August 2012. On 31 May 2016, KM was appointed as a director of the Claimants and other Mansion Group companies. Thereafter on 1 December 2016 he became the sole director of Mansion after the then Chief Executive Officer resigned. KM was appointed Chief Executive Officer ("CEO") of Mansion Gibraltar on 13 January 2017 and continued as de facto Chief Financial Officer. The Claimants' case is that in relation to the discharge of his duties, KM "reported to" Mr Mak.

8. On or around 1 April 2021, KM was informed that Christian Block ("Mr Block") would be replacing Mr Mak as the authorised representative of the shareholder and that Mr Block would be moving to Gibraltar and would be appointed a director of each of the Mansion companies so that KM would no longer be sole director. On 1 May 2021, Mr Mak was replaced by Mr Block.

9. It is Mr Block's evidence that arising from certain transactions involving Mansion Iberico Espana SL (a company within the Mansion Group) an investigation against KM was instituted on 22 September 2021 and KM was suspended from employment pending the completion of the disciplinary investigation which was led by Mr Block. Prior to the conclusion of the disciplinary investigation, by letter dated 1 December 2021 KM resigned from his employment as CEO and from his directorships.

10. The Claimants issued their Claim Form on 7 September 2022 in which they alleged that KM committed various breaches of fiduciary, non-fiduciary, and contractual duties during his time as CEO and sole director of the Claimants seeking damages / equitable compensation in the total sums of £2,339,464.18 and €2,977,003.64 as well as an order that KM account for all benefits that he (or his related parties) may have received directly or indirectly as a result of his position within Mansion. By order dated 3 July 2023 the Claimants amended their Particulars of Claim and now also advance proprietary claims in respect of some of the alleged breaches.

11. The various alleged breaches are summarised in Mr Block's First Affidavit at paragraph [27] as set out below (with existing emphasis):

> *"27.1. KM procuring the sums of* ***€327,033.28*** *and* ***£427,500*** *in bonus payments to be paid to himself for the financial years 2019 and 2020, as well as the sum of* ***£66,236.67*** *in alleged personal allowance payments to which he was not entitled - the* ***Bonus Payments & Allowance Claims****;*
>
> *27.2. KM authorising and/or approving the sums of* ***€2,508,035.36*** *and* ***£127,073.28*** *to be paid to a company known as White Wizard Media Limited* ***("WWML")****, a suspicious company incorporated in the Marshall Islands which, to the Claimants' knowledge, did not provide any services to the Claimants - the* ***WWML Claim****;*
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> *27.3. KM failing to take reasonable steps (or any steps) to comply with directions given by the regulatory authority for gaming in Gibraltar, ultimately requiring Onisac to enter into a regulatory settlement for the sum of* ***£850,000*** *- the* ***Regulatory Settlement Claim****;*
>
> *27.4. KM procuring the sum of* ***£162,000*** *to be paid to one Angela May Miller for, on his own admission during the Investigatory Meeting, personal rental expenses - the* ***Angela Miller Claim****;*
>
> *27.5. KM causing Mansion Gibraltar to purchase 4 high value vehicles for his own personal use causing loss and damage to Mansion Gibraltar amounting to* ***£192,139.97*** *- the* ***Vehicles Claim****;*
>
> *27.6. KM procuring Mansion Gibraltar to make payment of* ***£27,876*** *and* ***€91,935*** *for luxury watches which were of no benefit to Mansion Gibraltar, and for which KM has failed to account for - the* ***Watches Claim****;*
>
> *27.7. KM procuring the sum of* ***€50,000*** *to be paid by Mansion Gibraltar to a chain of Spanish jewellers and retailers of luxury watches known as 'Chocron 1948 SL' which derived no benefit to Mansion Gibraltar-the* ***Chocron Claim****;*
>
> *27.8. KM's utilisation of Mansion Gibraltar's corporate credit cards to make payments for personal expenses in the sum of* ***£249,951.31*** *- the* ***Credit Cards Claim****;*
>
> *27.9. KM utilising Mansion Gibraltar's corporate credit card to make payment of the sum of* ***£14,755.74*** *to purchase a domain name which the Claimants say was KM's own personal expenditure and/or for KM's own benefit - the* ***GoDaddy Claim****;*

> *27.10. KM causing Mansion Gibraltar to make payment of the sum of* ***£71,931.21*** *for other personal expenses such as legal fees and rent - the* ***Personal Expenses Claims****; and*
>
> *27.11. KM obtaining a (secret) personal profit by receiving a Ferrari which he valued for insurance purposes at* ***£150,000*** *as inducement for KM to act favourably towards a competitor "the* ***Ferrari Claim****."*

12. The competing positions between the parties in respect of those heads of claim are summarised (and in the context of the application then before me considered) in my Judgment of 21 February 2023. However, by their Amended Particulars of Claim, Mansion no longer advance the Ferrari Claim, on the basis that they have been compensated in full by a third party. By order dated 20 September 2023 Mansion obtained summary judgment in respect of (i) the personal allowance overpayments in the sum of £66,236.67 plus interest and (ii) the 'Go Daddy Claim' in the sum of £14,755.74 plus interest. And for the reasons set out in my Judgment of 6 September 2024 *Mansion & Anor v Manasco & Anor 2023/GSC/030,* KM having failed to comply with an Unless Order that I had made on 6 May 2024 which related to the WWML Claim, I ordered that KM's Defence and Counterclaim in relation to the WWML claim be struck out and that Mansion have judgment in the sums of €2,508,035.36 and £127,073.28 in their favour. That order is the subject of an appeal by KM.

Background to the Contempt Proceedings

13. On 30 September 2022 Mansion filed an application seeking a £5 million worldwide freezing order against KM. The application was listed for hearing on 5 October 2022. KM's then lawyers, Peter Caruana and Co ("PC&C"), requested that the application be vacated and relisted on a later date. Mansion agreed to that request on condition that KM provide an undertaking by way of a consent order.

14. The agreed consent order was made on 4 October 2022 ("the 1st Undertaking"). The undertaking in the recital to the order provided:

"(1) The First Respondent undertaking to the court, subject to paragraph (2) below, as follows:

(i) Subject to sub-paragraph (iii) below, and until the hearing of the Application the First Respondent will not:

a. remove from Gibraltar any of his assets which are in Gibraltar up to the value of £5,000,000; or

b. in any way dispose of, deal with or diminish the value of any of his assets whether they are in or outside Gibraltar up to the same value.

(ii) Paragraph (i) applies to all [KM's] assets whether or not they are in his own name and whether they are solely or jointly owned. For the purpose of this undertaking [KM's] assets include any asset which he has the power, directly or indirectly, to dispose of or deal with as if it were his own. [KM] is to be regarded as having such power if a third party holds or controls the asset in accordance with his direct or indirect instructions.

(iii) This undertaking does not prevent [KM] from spending £10,000 a week towards his ordinary living expenses, and also a reasonable sum on legal advice and representation.

(iv) [KM] may agree with [Mansions] legal representatives that the above spending limits should be increased or that this undertaking should be varied in any other respect, but any agreement must be in writing."

The order did not have a penal notice.

15. On 21 October 2022 KM filed his First Affidavit in which he responded to the world-wide freezing order application, which was heard by me on 9 and 10 November 2022. Consequent upon judgment being reserved, a second consent order was entered albeit it contains a typographical error in that it is dated 10 October 2022 rather than 10 November 2022.

16. The second consent order recorded a further undertaking from KM ("the 2nd Undertaking") on the same terms as the 1st Undertaking with the only difference being, that it was to be effective *"until the Order of the Application"*. The second consent order contained a penal notice and it made provision for personal service of it on KM to be dispensed with.

Together, the 1st Undertaking and the 2nd Undertaking are hereafter "the Undertakings".

17. Judgment on the world-wide freezing application was handed down on 21 February 2023 *[2023/GSC/009]*. At the time of the hand down the parties were not in a position to address me on the precise terms of the order and in relation to costs and the matter was adjourned to 23 March 2023. It is important to bear that date in mind when considering some of the evidence in relation to the alleged breach of the Undertakings.

18. In the context of correspondence between PC&C and Isolas in relation to disclosure and the allowance to be made in respect of KM's ordinary living expenses, by letter dated 16 March 2023 from PC&C, Mansion became aware that KM had allegedly breached the Undertakings. On 22 March 2023, KM deposed and filed his Third Affidavit. It is Mansions case that Ground 1 is made out even only on the basis of a schedule exhibited to the Third Affidavit. The allegation advanced by Ground 3 is linked, in that it is said that KM made a false and misleading statement in relation to his expenditure. I shall return in detail to these matters.

19. Mansion issued the Contempt Application in respect of the Undertakings on 23 August 2023 ("the First Contempt Application"). Ground 3 being an allegation that KM made a false statement in a document verified by a statement of truth, pursuant to CPR 81.3(5) permission was required and for the reasons set out in my judgment of 17 October 2023, *Mansion & Anor v Manasco & Anor 2023/GSC/074* granted.

20. On 6 March 2024 I fixed the hearing of the First Contempt Application for the week commencing Monday 13 May 2024. By that stage KM had changed lawyers and instructed Verralls. Given that by then the case advanced by KM constituted a partial waiver of legal professional privilege, I made an order for Mr Christopher Allan ("Mr Allan") a partner at PC&C, to make himself available to give evidence, and if necessary, Mansion were at liberty to obtain a witness summons to compel his attendance.

21. On 13 May 2024, having dealt with other applications in these proceedings during the course of the week commencing 6 May 2024, and aware of professional and personal challenges that Mr Finch was operating under, I indicated that I would consider an application by him for an adjournment sympathetically. In the event, I adjourned the trial of the First Contempt Application to the 24 June 2024. However, before doing so, KM having made a formal appearance for the purposes of the contempt trial, the then two charges were put and denied by him. Thereafter and before adjourning the trial, Mr Allan gave evidence. At the conclusion of that adjourned hearing I gave further directions which as regards Mr Allan provided:

> *"[KM] having waived legal professional privilege in respect of the same, Christopher Allan shall provide specific disclosure of any attendance and file notes of meetings or any discussions with [KM] and/or those representing him on possible or potential breaches of the undertakings as to spending limits contained in [KM's] undertakings to the Court incorporated into the orders made on 4th October 2022 and 10th November 2022. Mr Allan may redact such parts of the notes which deal with other matters."*

22. On the 5 June 2024 Mansion issued the Second Contempt Application. It is Mansion's case that this came about as a consequence of an order dated 7 May 2024 pursuant to which KM provided disclosure of his bank statements in respect of the "Gibraltar Nominated Account", the "Spanish Nominated Account" (as defined in the WFO) and a sterling account with Bank Inter in Spain purportedly opened by KM but which Mansion assert is a standalone account in Ms Alvez's sole name. The Second Contempt Application was also listed for hearing on 24 June 2024.

23. In the event, on 24 June 2024 Mr Finch was indisposed and it was not possible to proceed with the hearing of the applications which were re-scheduled for the week commencing Monday 18 November 2024.

Other Matters

24. The procedural requirement found in CPR 81 are aimed at ensuring fairness to the subject of contempt proceedings, evidently because an adverse finding against the individual can result in an order of committal or other significant sanction.

25. CPR 81.5 deals with service of a contempt application. It provides that the application and evidence in support must generally be served on the defendant personally, although by virtue of CPR81.5(2):

> *"Where a legal representative for the defendant is on the record in the proceedings in which, or in connection with which, an alleged contempt is committed— (a) the contempt application and evidence in support may be served on the representative for the defendant unless the representative objects in writing within seven days of receipt of the application and evidence in support."*

Both applications were served on KM's lawyers and no objection was raised either within seven days or at all.

26. CPR 81.4 sets out the requirements as to the contents of the application which includes notifying a defendant of his rights. Form N600 having been used, the notification of rights has been complied with. They include the following right:

> *"You have the right to remain silent and may not be compelled to answer any question the answer to which may incriminate you."*

At the hearing I reminded KM of his right to remain silent, but also that adverse inferences could be drawn from his failure to give evidence.

27. The First Contempt Application properly reflects that the order dated 4 October 2022, which contained the First Undertaking, did not contain a Penal Notice and was not served on KM personally. In my view, having been entered into by consent between the parties, no service was required.

In that regard I accept the submission advanced by Mr Malek that it would be nonsensical to suggest that Mansion would have to personally serve KM with a copy of an agreed order which simply recorded the details of an undertaking which KM personally gave to the Court and of which he clearly had knowledge.

28. The order of 10 November 2022 which contained the Second Undertaking contained a Penal Notice and formally dispensed with personal service.

29. The Second Contempt Application reflects that the WFO included a penal notice. The WFO was not served personally on KM and out of an abundance of caution, Mansion filed an application for the dispensation of Personal Service in respect of it, requesting that the application be determined during the contempt hearing. Also stated in the Second Contempt Application is the accurate assertion that KM in his Fourth Affidavit dated 12 April 2023 at paragraph [5] confirmed that he *"was served (via my solicitors) with the approved Order on 30 March 2023."*

30. Sensibly Mr Finch does not take any point as regards the absence of a penal notice in the 4 October 2022 order or as to personal service upon KM of the various orders. To the extent that it is required I order that personal service of the WFO upon KM be dispensed with.

31. In my judgment the procedural requirements underpinning the contempt applications have been complied with.

The Law

32. Subject to one issue to which I shall turn to later there is no dispute as to the applicable principles.

33. In this jurisdiction the principles underpinning the law of contempt were summarised by Kneller CJ in *in the Matter of Guzman and Others [1995-96 GibLR 217]* at [226]:

> *"The power of the courts of record to punish contempt is part of their inherent jurisdiction: see Borrie & Lowe's Law of Contempt, 2nd ed, at 314 (1983). It is part of the authority of the judiciary to uphold, to protect and to fulfil the judicial function of administering justice according to law in a regular; ordinary and effective manner: It flows from the concept of a court of law, not from statute or common law, and so courts should be slow to find it has been cut down by the legislature unless it is in the clearest of terms. Technicalities should not be allowed to emasculate it: see Jacob, The Inherent Jurisdiction of the Court, 23 Current Legal Problems, at 28 (1970).*
>
> *There are two types of contempt: first, civil contempt, which is disobedience to an order of the court committed by a party to the proceedings and, secondly, criminal contempt, committed by any person in facie curiae by hurling abuse or an object at the court or outside the courts or by conduct obstructing or calculated to prejudice the due administration of justice."*

Burden and Standard of Proof

34. The present allegations of contempt are evidently civil in nature but the standard of proof to be satisfied is the criminal standard. Each allegation must be considered distinctly and it is for Mansion to prove them to the criminal standard. That is to say what used to be termed *"beyond a reasonable doubt"* but is now referred to as the *"being sure"* test. That is not to say that every single aspect of the application has to be proved to the criminal standard, although each of the necessary elements of each of the alleged complaints has to be: *SC BIA Bank v Ablyazov [2012] EWCA Civ 1411 per Rix LJ at [51]*.

The Evidential Burden

35. By his Witness Statement of 4 June 2024 KM has implicitly retracted certain concessions made in his Third Affidavit of 22 March 2023. In his Third Affidavit KM had implicitly accepted that he may have breached the terms of the Undertaking on the basis that he had understood that he could aggregate the £10,000 per week so that he was entitled to make payments on particular weeks which would be higher than £10,000 and in others it

would be lower than £10,000, provided it averaged at £10,000. KM also accepted making a payment of £65,000 in respect of the acquisition of a Range Rover ("the Range Rover"). Taking account of the £65,000 paid towards the Range Rover he accepted that on the basis of aggregation the average weekly spending amounted to £10,775. By his Witness Statement of 4 June 2024 KM asserts that the Range Rover was purchased by Ms Alvez and that *"it cannot be demonstrated that I personally exceeded any spending limit on aggregate."* He now also advances other positive defences that I shall turn to later.

36. Mr Malek submits and I accept, that to the extent that KM now advances positive defences, he carries the evidential burden of proving any such point. However, Mansion retains the overall burden of proving each allegation of contempt to the requisite standard.

Undertakings

37. It is not in dispute that undertakings are equivalent to injunctions and that accordingly breaches of undertakings involve the same consequences as breaches of orders. In *Hussain v Hussain [1986] Fam. 134* Sir John Donaldson M.R at page 139 put it as follows:

> *"Let it be stated in the clearest possible terms that an undertaking to the court is as solemn, binding and effective as an order of the court in the like terms and that the contrary has never been suggested."*

The Necessary Elements of Contempt

Grounds 1 and 4 to 7

38. Liability for civil contempt by breaching an undertaking or an injunction is strict in that no intention to breach the undertaking or injunction has to be proved. *In Atkinson v Varma [2021] Ch.180* Rose LJ at [54] put it as follows:

> *"...once knowledge of the order is proved, and once it is proved that the contemnor knew that he was doing or omitting to do certain things, then it is not necessary for the contemnor to know that his actions put him in breach of the order; it is enough that as a matter of fact and law, they do so put him in breach."*

Therefore, in respect of each of these grounds Mansion must prove to the requisite standard that:

(i) KM was on notice of the terms of the Undertakings or WFO, as the case may be;
(ii) KM acted in a manner which involved the breach of the Undertakings or WFO, as the case may be; and
(iii) KM had knowledge of the facts which make the conduct a breach.

The third element does not require Mansion to prove that KM knew that his conduct constituted a breach although it may be a relevant factor in mitigation.

Ground 3 - Knowingly making a false statement in a document verified by a statement of truth [or in an affidavit].

39. CPR 32.14(1) provides that:

> *"Proceedings for contempt of court may be brought against a person if he 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."*

An outline of what is to be proved to establish this type of contempt was provided by Stewart J. in *Axa Insurance UK plc v Julie Rossiter [2013] EWHC 3805 (QB)* at [9]:

> *"It is common ground that for the Claimants to establish each contempt alleged they must prove beyond reasonable doubt in respect of each statement:*
>
> *(a) The falsity of the statement in question;*

> *(b) That the statement has, or if persisted in would be likely to have interfered with the course of justice in some material respects;*
> *(c) That at the time it was made, the maker of the statement had no honest belief in the truth of the statement and knew of its likelihood to interfere with the course of justice."*

Therefore, as regards Ground 3, Mansion must prove to the requisite standard that:

(i) the statement made by KM was false;
(ii) the statement would be likely to have interfered with the course of justice in some material respects; and
(iii) that at the time the statement was made, KM had no honest belief in its truth and knew of its likelihood to interfere with the course of justice.

Mansion's Motivations

40. A matter of law upon which there is no agreement is the relevance or otherwise of Mansion's motivations in bringing the contempt applications.

41. As I understand it, Mr Finch submits that there are improper motives behind Mansion's contempt applications. The thrust of that assertion, which is not supported by reference to a chronology or an analysis of the basis and outcome of the many interlocutory applications made by Mansion, is possibly best understood by reference to paragraph 15 of his skeleton entitled *"Submissions For Contempt Application 2":*

> *"Further, the conduct of the Claimants in this regard has been petty, vindictive and unnecessary. They have conducted this litigation as if they were at war and the object was to destroy the enemy. This is not how civil litigation is to be conducted, no matter how anxious legal representatives are to satisfy their clients, or what view a court takes of the 'modern civil litigation industry."*

In his oral submissions Mr Finch placed particular reliance upon the Judgment of Snowden J. (as he then was) in *Pharmgona Ltd v Mr Sayed*

Mostafa Taheri, Mrs Bahereh Mohammadi [2021] EWHC 2537 (Ch) in support of the proposition that, where contempt proceedings are not pursued for legitimate ends, it amounts to an abuse of process and any such application should be dismissed.

42. *Pharmagona* involved an application for the reconsideration of an order of HHJ Stephen Davies in which he struck out what was described as an unissued application by the Claimant to commit each of the Defendants to prison for contempt of court. As part of the reasons given by HHJ Stephen Davis he accepted, that it was at least arguable that the alleged conduct amounted to a breach of the freezing injunction, albeit *"of the most technical kind"* and he said:

> *"...I am satisfied that this is a vindictive application which is not brought for legitimate aims but solely with the intention of harassing the First Defendant and, in consequence, amounts to an abuse of process. Further or alternatively it is not in accordance with the overriding objective to allow further court time and judicial resource to be taken up by an application of such nature brought in such circumstances."*

In the intervening period between the order of HHJ Stephen Davis and the matter coming before Snowden J. the Defendants were each made bankrupt on their own petition. At [17] Snowden J. quoted with approval the judgment of Briggs J. in *Sectorguard plc v Dienne plc [2009] EWHC 2693 (Ch)* who at [44] to [47] stated:

> *"44. It is now well established, in the light of the new culture introduced by the CPR , and in particular with the requirements of proportionality referred to in CPR 1.1(2) as part of the overriding objective, that it is an abuse of process to pursue litigation where the value to the litigant of a successful outcome is so small as to make the exercise pointless, viewed against the expenditure of court time and the parties' time and money engaged by the undertaking...*
>
> *45. The concept that the disproportionate pursuit of pointless litigation is an abuse takes on added force in connection with committal applications. Such proceedings are a typical form of satellite litigation, and not infrequently give rise to a risk of the application of the parties' and the court's time and resources otherwise than for*

> *the purpose of the fair, expeditious and economic determination of the underlying dispute, and therefore contrary to the overriding objective as set out in CPR 1.1 . The court's case management powers are to be exercised so as to give effect to the overriding objective and, by CPR 1.4(2)(h) the court is required to consider whether the likely benefit of taking a particular step justifies the cost of taking it...*
>
> *...*
>
> *47. Committal proceedings are an appropriate way, albeit as a last resort, of seeking to obtain the compliance by a party with the court's order (including undertakings contained in orders), and they are also an appropriate means of bringing to the court's attention serious rather than technical, still less involuntary, breaches of them. In my judgment the court should, in the exercise of its case management powers be astute to detect cases in which contempt proceedings are not being pursued for those legitimate ends. Indications that contempt proceedings are not so being pursued include applications relating to purely technical contempt, applications not directed at the obtaining of compliance with the order in question, and applications which, on the face of the documentary evidence, have no real prospect of success. Committal proceedings of that type are properly to be regarded as an abuse of process, and the court should lose no time in putting an end to them, so that the parties may concentrate their time and resources on the resolution of the underlying dispute between them."*

At [36] Snowden J. concluded that it was not appropriate for the Claimant to use contempt proceedings as a means of enforcement of a freezing order, the continued utility or appropriateness of which was in doubt given the intervention of the bankruptcy proceedings. And at [37] as regards the relevance of the application for committal having been brought vindictively, said:

> *"Given that view, it is not necessary for me to reach any conclusions about the purpose for which the Claimant wishes to bring contempt proceedings against the Defendants. Nonetheless, I bear in mind the findings of HHJ Davies, who plainly had more immediate experience of the litigation between the parties, to the effect that the Claimant seeks to bring the application vindictively, without a legitimate aim, and solely with the intention of harassing the First Defendant. If that were right, it simply reinforces the view that after the intervention of the bankruptcy and the involvement of the trustee, as an independent insolvency officeholder, it is through that route that the assets of the*

Defendants should most appropriately be preserved for the benefit of their creditors generally."

43. More recently in *Navigator Equities Ltd and another v Deripaska [2021] EWCA Civ 1799* the English Court of Appeal considered *Sectorguard*. The main judgment was delivered by Carr LJ (as she then was) with whom Asplin and Snowden LJJ agreed. At [110] and [111] she said:

"110 ...In my judgment, for the reasons set out below, where a civil contempt application:
(i) is made in accordance with the relevant procedural requirements;
(ii) is properly arguable on the merits (by reference to the necessary constituents of a claim for contempt); and
(iii) has the effect (and so at least the objective purpose) of drawing to the attention of the court to an allegedly serious contempt, then the fact that the application is motivated, whether predominantly or even exclusively, by a personal desire for revenge on the part of the applicant is not a good reason for striking out the application as an abuse of process.
111 Sectorguard, properly understood, does not point in a different direction ..."

At [114] after stating that *Sectorguard* was primarily a case where compliance with the relevant undertaking was found to be impossible, in relation to paragraph [47] of Briggs J's judgment went on to say:

"the clear thrust of para 47 is that proceedings which are hopeless or relate to purely technical contempts are the signs to look for when searching for abuse, not questions of subjective motive."

And thereafter at [122] and [123] explaining why reliance upon motives is wrong as a matter of principle:

"122 An approach which takes subjective motive into account for the purpose of an abuse application is one fraught with difficulty and, in my judgment, wrong in principle.

123 There will nearly always be a degree of animus between applicant and respondent to a civil committal application. The temptation for respondents to counter an application by seeking to enquire into and test the subjective motive of the applicant would be strong, if not overwhelming. Moreover, the more blatant and serious the alleged

> *contempt, the more likely it would be for the applicant to be (justifiably) antagonised by the respondent's acts or omissions, thus providing further ammunition for a respondent intent on diverting attention from the allegation of contempt."*

44. In my judgment, the present case not being one where the alleged breaches are technical or de minimis, it follows that Mansion's motives in bringing the contempt applications are irrelevant.

The Hearings

45. Mr Block gave oral evidence in support of Mansions' applications. He adopted his sworn affidavits of 30 September 2022; 28 October 2022; 22 August 2023 (subject to a correction in a later affidavit) and two digitally signed unsworn affidavits dated 5 June 2024 and 18 June 2024 (each respectively "the First to the Fifth Affidavit") and was cross examined by Mr Finch.

46. As aforesaid Mr Allan first gave oral evidence on 24 June 2024 and was recalled and again gave evidence at the substantive adjourned hearing when he adopted his Witness Statement dated 1 July 2024 and was again cross examined by Mr Finch.

47. Mr Trevor Rocca ("Mr Rocca") was called as a witness for KM. Mr Rocca is or has been KM's executive coach; life coach and later also his therapist. Mr Rocca was examined in chief by Mr Finch but also adopted his Witness Statement of 27 September 2023 when cross examined by Mr Malek.

48. Although a live issue was whether certain expenditures are attributable to Ms Alvez rather than to KM, Ms Alvez who was in the public gallery throughout most of the hearing, was not called by KM to give evidence.

49. KM was present throughout the hearing and chose not to give evidence. That is not to say that there is no evidence from him before me. Indeed the First Contempt Application is in large measure predicated upon an affidavit

by KM. During the course of the hearing I indicated that in the event that KM relied upon his right to silence I would take account of the affidavits and witness statements he had filed, save that evidently his failure to give oral evidence and expose himself to cross examination could impact upon the weight to be given to that evidence. That approach is consistent with the note in the White Book at 81.7.5:

> *"In Discovery Land Co LLC v Jirehouse [2019] EWHC 1633 (Ch) at [23]-[30], it was held that notwithstanding the terms of the pre-2020 CPR r.81.28, an alleged contemnor could not be compelled to submit to cross-examination even if they had tendered an affidavit into evidence in the contempt proceedings, nor would they be put to an election as to whether to submit or forgo reliance on the affidavit."*

Whilst making the point that the foregoing is a point of law which remains live (see *Isbelen v Selman Turk & others [2024] EWHC 505(Ch)*) Mr Malek did not object or invite me to take a different approach to that which I had indicated.

50. On the final day of the hearing Mr Finch sought to adduce a bundle containing WhatsApp messages passing between KM and Mr Allan. These were not exhibited to a witness statement; the various conversations are not complete and given the stage that they were provided at, Mr Allan did not have the opportunity to comment on them. It is also of note that by his Witness Statement of 4 June 2024 entitled *"Statement for Contempt Application"* filed for the resumed hearing on 24 June 2024 after Mr Allan had first given evidence, KM exhibited other WhatsApp messages of about the same time. When provided with that first set of WhatsApp messages Mr Castle emailed Mr Finch on 12 June 2023 on the following terms:

> *"It appears, that your client has prepared Exhibit KCM1 in the same manner as the evidence prepared for the Amendment Application insofar as the Exhibit consists of extracts of the conversation, without providing context or a full picture of the events as they unfolded. To avoid the same critique, we would be grateful if full conversation logs with Mr Allan in respect of this issue could be exhibited. Further, from reading the exhibit especially those*

> *exchanges with Ms Dobbs [a solicitor with PC&C], it is evident that there have also been selective extracts provided and would be grateful for the full chain to be provided relating to the acquisition of the vehicle and KM's wife's expenditure."*

Mr Finch replied the next day as follows:

> *"James, you will have taken into account that the WhatsApp involving Mr Allen [sic] was privileged previously and selected extracts usually means that only certain screenshots were saved. Regards, Chris F"*

51. Notwithstanding the manner and circumstances in which the new Whatsapp messages were placed before the court by Mr Finch, I agreed to consider these *de benne esse*.

The Individual Grounds

52. Although I will turn to consider the elements of each ground distinctly in so far as the evidence and the submissions advanced are concerned, for ease of understanding, the two contempt applications are best considered separately.

Grounds 1 & 3 – the Evidence

53. The evidence in respect of grounds 1 & 3 needs to be understood against the terms of the Undertakings given by KM which allowed him to spend *"£10,000 a week towards his ordinary living expenses"*. The Undertakings, together covered a period of 24 weeks, from 4 October 2022 to 22 March 2023. On aggregate this meant a total expenditure of £240,000.

54. This is also a case in which it is useful to understand the sequence in which the evidence has emerged, and for it to be understood against the most recent position taken by KM in his Witness Statement of 4 June 2024. Although not articulated in the clearest way, I understand that it comes to this, namely that:

(i) the calculations and assumptions by Mr Block in his Third Affidavit to the effect that KM would have spent £335,490 thereby breaching the undertaking by £95,490 or a weekly average spend of £13,978 are wrong;

(ii) the figures in KM's Third Affidavit of 22 March 2023 ("KM's Third Affidavit") are more accurate, namely an aggregate expenditure of £258,603. From which sum is to be deducted £65,000 paid towards the Range Rover, resulting in a balance of £193,603. Also of note that the £258,603 does not include the sum of £29,583.33 said to be cash in hand held by KM;

(iii) KM did not purchase the Range Rover and that this was known by PC&C who at the time that KM's Third Affidavit was drafted acted for him; and

(iv) Mr Allan of PC&C gave inaccurate evidence (when he first testified on 24 June 2024) in that he had failed to reflect KM's instructions when drafting KM's Third Affidavit and had proceeded on the premise that spending by Ms Alvez was attributable to KM.

KM's First Explanations

55. The stated purpose of KM's Third Affidavit was to explain and inform the court about (i) his expenditure since he gave the First Undertaking and (ii) his expenditure during the preceding year, so that provision would be made in the WFO by way of exception in respect of his ordinary living and business expenses.

56. At paragraph 7 of his Third Affidavit, under the entitlement *"My understanding of the Undertaking"* KM said:

> *"The undertaking that I gave to the Court on 4th October 2022, as further recited in the Court's order dated 10 November 2022, did not prevent me from spending "£10,000 a week" towards my ordinary living expenses (and also a reasonable sum on legal advice and representation)."*

He then went on to state that most of his outgoings were not incurred weekly but rather, monthly, quarterly and annually and that he had assumed that he could aggregate the £10,000 per week over a period of time. Exhibited to the affidavit was "KM3" which included a table described by KM as showing:

> *"my total expenditure (i.e. excluding my wife's business and personal expenditure from our joint accounts, but of which I provide details in paragraph 23 below) broken down into each week since the date that I gave the undertaking." [KM's emphasis].*

That table shows that in 9 out of the 24 weeks the spending exceeded £10,000. That the total spending over the 24 weeks, amounted to £288,186.62, which on the basis of aggregation comes to £12,007 per week. The table also shows that KM had retained the precise sum of £29,583.33 as *"cash in hand"* so that the actual sum spent over the 24 weeks was said to be £258,603.29. On the basis of aggregation, an average of £10,775 per week. It is the statement that his spending during that 24 weeks period amounted to £258,603 which Mansion say is false and is the basis for Ground 3.

57. KM also accepted that the £258,603.29 included approximately £30,000 towards business expenses in relation to a fintech startup in which at the relevant time he held 47.5% of the shares. In this regard at paragraphs [17] to [18] he asserted that he had mistakenly assumed that business expenses constituted part of his ordinary living expenses and at [19] he stated:

> *"If this is a breach of my undertaking, which appears to be the case, I once more apologise to the court, it not being my intention to flout the undertaking nor to frustrate the purpose or effect of the undertaking."*

58. KM's Third Affidavit also deals with a payment in week 17 (24-30 January 2023) of £65,000 towards the purchase of the Range Rover, which as KM says, and is evident, on the basis of aggregation distorted the average weekly spending.

59. At paragraphs [21] and [22] of his Third Affidavit KM explained what his understanding had been in relation to the acquisition of the vehicle and of the subsequent advice he had been given by PC&C as follows:

> *"21. In paying (the balance of the price for) the [Range Rover] in January 2023 I understood, believed and assumed that, because it was a previous contractual commitment incurred by me prior to my undertaking (as opposed to going out to buy an expensive new car after giving such an undertaking), this would rank as an ordinary living expense, since I had no alternative but to pay it and then incorporate it into aggregation over the next several months.*
>
> *22. I have since been advised by my lawyers that this understanding and assumption on my part was wrong and not the proper interpretation and application of my undertaking. I have been advised that the correct procedure would have been to have applied for permission to make the payment as a prior commitment. If that is the case (and I now have no reason to doubt that it is) then I have been in inadvertent and unintentional breach of the terms of my undertaking to the Court, for which I apologise to the Court. It was not my intention to flout the terms, purpose or effect of my undertaking by doing this."*

60. The position as regards the Range Rover had been foreshadowed in a letter from PC&C to Isolas dated 16 March 2023:

> *"Whilst obtaining instructions from our client in relation to his ordinary living expenses / business expenses we learnt that our client had made a payment of £65,000 to [the car dealership] on 24 January 2023 as part payment for a new vehicle [the Range Rover]."*

Thereafter, and as part of the explanation for its acquisition they said:

> *"On 23 August 2022 our client was notified by [the car dealership] that they had received the [Range Rover]. However, owing to a factory fault which [the car dealership] wished to remedy, our client*

> *did not take physical possession of the vehicle at that time, although it was registered in the name of our client's wife on 12 September 2022. Physical possession was not taken until 12 January 2023 when the defects were eventually remedied. This is the point at which our client paid the mentioned amount and exchanged [a stock vehicle he had previously acquired] in payment for the [Range Rover]. You will therefore be able to see that that represented a contractual commitment prior to our client's undertaking."*
>
> *"In purchasing the New Vehicle in January 2023 our client mistakenly understood and believed that the weekly allowance for ordinary weekly expenses was cumulative in effect and that in making the payment he was within his aggregate permitted amount. We have since advised our client that this is not the proper interpretation and application of his undertaking."*

61. It is evident that in both the Third Affidavit and the 16 March 2023 letter there is an explicit admission that KM purchased the Range Rover and that by KM incorrectly proceeding on the basis of aggregation he had breached the Undertakings.

62. KM also provided some detail of expenditure by Ms Alvez during the period covered by the Undertakings, which is described at paragraph [22] as *"personal expenditure <u>of her own</u> from the joint accounts"* [KM's emphasis] amounting to £240,235.22 made up as follows:

    (i) £63,235.22 in relation to medical treatment she received in the United Kingdom. Broken down as to £23,235.22 in relation to the medical treatment and £39,799.76 in respect of air fares/travel costs, accommodation and sustenance costs for both Ms Alvez and KM, incurred for a 4.5 week stay in London over two visits; and

    (ii) £177,000 in respect of her business expenses in relation to an equestrian business said to be owned and operated by her, known as Club Hipico Molino De Fuego ("Molino").

63. For reasons I shall turn to in due course, it is of significance, in respect of the Molino payments, that in his Third Affidavit KM identified seven bank

accounts held by him. One account with Bank Sabadell in his sole name and the remaining six accounts, including an account with Bankinter SA, held jointly with Ms Alvez.

64. Relying upon the figures provided by KM in his Third Affidavit, in respect of the 24 week period covered by the Undertakings, KM's stated expenditure of £258,603.29 together with that attributed to Ms Alvez of £240,235.22 totals £498,838.51.

Mr Block's evidence and his analysis of KM's Third Affidavit

65. It is Mr Block's evidence that having identified inconsistencies between "KM 3" and the bank accounts disclosed by KM, that Mansion considered it necessary to review each individual transaction that appeared in the bank statements. As part of that review Mansion calculated that KM or Ms Alvez had, throughout the period covered by the Undertakings, withdrawn approximately £451,641.94 from accounts disclosed by KM. This contrasts with the total in KM's Third Affidavit of £498,838.51.

66. Mr Block's analysis, which is supported by spreadsheets exhibited to his Third Affidavit, is to the effect that during the period covered by the Undertakings, the sum of £335,490.25 of the £451,641.94 is attributable to spending by KM, and which viewed from an aggregate perspective, amounts to an overspend of £95,490.

67. An aspect of Mr Block's analysis which is of particular relevance are transfers made to Molino. KM, in his Third Affidavit, and without any supporting evidence, asserted that Ms Alvez had transferred £177,000 to Molino. Mr Block's analysis is to the effect that what had in fact been transferred during the period covered by the Undertakings was less. Namely, €63,500 (or £52,916.67 at an exchange rate of 1.2) from the Bankinter SA joint account and a further €46,000 (or £38,333.33) from the Banco Sabadell account which as aforesaid is held solely by KM. Of note

that some of the transfers from the Banco Sabadell account to Molino were omitted from KM's table at "KM 3".

68. Mr Block's overarching analysis is to the effect that, premised upon a total joint expenditure of £451,641 and after deducting the expenditure which can be attributed to Ms Alvez, namely:
    (i) in respect of Molino, the payments from the joint Bankinter account in the sum of £52,916; and
    (ii) the total London Expenditure (which is challenged) in the sum of £63,235

    and which total £116,151, the balance of £335,490 is to be attributed to KM.

69. The cross examination of Mr Block as regards his analysis was relatively limited and did not undermine his evidence. Important so as to understand his evidence, that he accepted that the £335,490 included (i) the payments totalling £38,333 from the Banco Sabadell account to Molino; (ii) the £65,000 payment towards the Range Rover and (iii) the cash in hand in the sum of £29,583.33.

70. It is also Mr Block's evidence that KM breached the £10,000 weekly limit on 16 out of the 24 weeks, albeit he accepts that in reaching that conclusion he did not discount the London expenditure, because he says, it is not easy to ascertain which weeks that expenditure is to be attributed to. Given that difficulty, it is not a sound basis upon which to be satisfied so that I am sure, as to whether the limit was breached in any particular week.

71. Although as alluded to in the preceding paragraph, it is Mansion's case that it does not have an in-principle objection to KM excluding Ms Alvez's expenses in relation to her London expenses, that is in so far as it relates to her medical treatment, flights and hotel costs. However, they take issue with the *"sustenance"* element of that expenditure.

72. Mr Block's calculations are to the effect that throughout the period KM appears to have been in London, a total of £22,524.25 was spent on

accommodation in a 5* Hotel and £2,781.93 on flight costs. That consequently this would mean that £14,403.58 would have been spent on sustenance. Mansion's short point is that it is implausible for KM to allege that his wife alone had spent £14,403.58 throughout the time that they were both in London and that KM would not have spent any of his money throughout this time. In this context of note, that when Mr Rocca gave evidence, he said that during the time that Ms Alvez was in hospital he had also stayed in London, with his flights and hotel accommodation paid for by KM.

KM's Change of Position and Mr Rocca's Evidence

73. Mr Block's analysis was responded to by KM with the filing of two witness statements; one by him and the other by Mr Rocca both dated 27 September 2023. I set out the relevant parts of KM's relatively brief Witness Statement:

> *"2. Prior to the hearing of the freezing order herein, but after the agreed orders of October and November 2022 restricting my expenditure and preserving my assets, a telephone meeting was held between my then solicitor, Chris Alan (sic) of the office of Sir Peter Caruana and James Montado, of lsolas, one item on the agenda being an allegation that I had exceeded the£10.000 weekly allowance.*
>
> *3. To facilitate this meeting, I had voluntarily agreed to disclose my relevant accounts for a year, a concession which I understand was welcomed in the spirit of cooperation by Mr Montado.*
>
> *4. The alleged over-expenditure was explained as being an existing obligation to pay the balance for a family car that had been previously ordered and part-paid, totalling some £65,000.*
>
> *5. It was further explained that my wife suffers from [an illness] her treatment lasted two months. The operation cost nearly £50,000 and the stay, including temporary accommodation and living expenses cost another £30,000 approximately.*
>
> *6. My friend. Trevor Rocca, was present immediately after the said telephone meeting and both he and Chris Alan (sic) reported that it was agreed between counsel that the circumstances did not warrant any contempt proceedings. When the freezing order was heard and determined, no issue of contempt arose, and this is when it ought to*

have been raised, because of the need for promptness involving an alleged contempt.

7. It will be seen that once my present counsel raised the issue of illegality, this was the first time that the alleged contempt re overspending was raised, i.e., 23 August 2023, months after the event. It appears to be no more than a knee-jerk reaction to the raising of the illegality issue, and the beginning of a war of attrition to silence me and hamper my defence. There is, I am advised, no public interest in this unexplained delay, which represents a vindictive response to my application to amend the defence.

8. It should also be born (sic) in mind that I paid in the time between October 2022 and April 2023, no less than £132,000 in legal fees to Sir Peter Caruana's office, for which credit must also be given."

74. For his part in his Witness Statement Mr Rocca stated:

"1. Prior to the hearing of the freezing order herein, but after the agreed orders of October and November 2022 restricting the First Defendant's expenditure and preserving his assets, of which I am aware, a telephone meeting was held between his then solicitor, Chris Alan (sic) of the office of Sir Peter Caruana and James Montado, of lsolas, one item on the agenda being an allegation that the First Defendant had exceeded the agreed £ I0,000 weekly allowance.

2. To facilitate this meeting, the First Defendant voluntarily disclosed his relevant accounts for a year, a concession which was welcomed by Mr Montado in the spirit of cooperation, as reported to me by Mr Alan (sic).

...

6. I was surprised in late August when the First Defendant told me that a contempt application was being made in respect of the alleged overspending, which I honestly believe had been averted because after the said conference I attended the offices of Mr Alan (sic) who stated that the overspending issue had been resolved during the said telephone meeting by agreement. It was certainly the opinion of Chris Alan (sic)."

75. Unusually it was only when cross examined by Mr Malek that Mr Rocca adopted his Witness Statement, stating that it was true and that he had prepared it on his own. Although the similarities in language between Mr

Rocca's and KM's statements are palpable, that was not a line of questioning which was pursued.

76. As regards the alleged agreement, Mr Rocca's oral evidence was rather broad brush. In summary, it was that on more than one occasion he had attended meetings at the offices of PC&C and that the issue of overspending had been discussed, but that this was one of many issues. That according to Mr Allan, Isolas had said that if KM disclosed certain bank statements Mansion would not proceed with contempt proceedings. Taken to a PC&C file note of a meeting held on 21 March 2023 between 17:40 and 21:50 hours at which Sir Peter Caruana, Mr Allan, Ms Dobbs (a lawyer with PC&C), KM and Mr Rocca were present, Mr Rocca said he attended but could not remember what was said, because the substance of the meeting was not of importance to him, as I understood it, that his role was one of providing emotional support to KM. Notwithstanding the absence of any reference in the file note to an agreement with Isolas that contempt proceedings would go away if bank statements were provided, Mr Rocca reiterated that Mr Allan had categorically said that the issue of the overspend *"had been sorted out"*, albeit immediately before he also said that Mr Allan had said *"I will sort it out with Mr Montado"*. In similar vein, when re-examined by Mr Finch, Mr Rocca said that the *"gist"* of the conversation was that either it had been sorted out, or it would be sorted out.

77. Questioned about paragraph [6] of KM's Witness Statement which suggests that Mr Rocca, together with Mr Allan, reported the detail of the alleged conversation between Mr Allan and Mr Montado to KM, Mr Rocca said that was incorrect as he had never met with Mr Allan on his own.

78. As regards the purchase of the Range Rover it was Mr Rocca's evidence that KM disagreed with Mr Allan as to the relevance of its purchase.

Mr Allan's evidence and KM's evolving case

79. Mansion's primary purpose in having Mr Allan give evidence on 13 May 2024 was to challenge KM's assertion in respect of the alleged agreement between Mr Allan and Mr Montado that contempt proceedings would not be pursued if KM provided certain disclosure. With the advantage of a transcript, Mr Allan's evidence is best understood by reference to answers he gave when cross-examined by Mr Finch:

> *"MR MARSH-FINCH: Can you remember coming to an agreement with Mr Montado […] concerning the provision of bank account details. Do you remember that?*
>
> *MR ALLAN: We discussed disclosure of bank statements certainly and I'm happy to explain the context of that. You may be aware that the original application for the [WFO] and, indeed, disclosure, was for disclosure of bank statements from… I think it was in September of the previous year. So, they were seeking disclosure, I think of about 16 or 17 months' worth of bank statements. And so, as part of our discussions, what we, once the court handed down its judgment, we considered that, certainly in the context of policing the undertaking, the court was likely to order disclosure. So that was at least three months or four months' worth of bank statements.*
>
> *Then we also considered, especially once we learned of the purchase of the vehicle that the court was likely to order even more disclosure going back further. To boot, we were also at the time going to have to argue, as we eventually went onto do, put before the court evidence to justify the spending in terms of both ordinary and business expenses. To support that application, it would have been necessary to support with evidence and the evidence was going to be the bank statements as well.*
>
> *So as part of discussions with Isolas, it was put over a series of -- I think [we] had two conversations about disclosure of bank statements, but they were in the context of if I provide you with three months' worth of bank statements, I think we started at, would Isolas agree to not pursuing the wider disclosure and also seeking, and also agreeing that costs be reserved in the application. Those were the conversations I had at the time with Isolas, but there was certainly no conversations at all about contempt, not at least because Isolas didn't know about the breach yet."*

80. During the course of that first cross-examination it was specifically suggested to Mr Allan that the Range Rover had in fact been purchased by

Ms Alvez. That suggestion had not been foreshadowed in any of KM's affidavits or witness statements. The closest that KM had possibly got to any such assertion is what with hindsight may be considered as a somewhat ambiguous statement at paragraph [4] of his Witness Statement of 27 September 2023 set out at [81] below.

81. The relevant parts of the exchange between Mr Finch and Mr Allan in relation to the Range Rover went as follows:

> *"MR MARSH-FINCH: Were you made aware that the overspend was by Mr Manasco's wife in purchasing a car which had been preordered prior to the undertaking? In other words, she had a contractual obligation to pay for it herself.*
> *...*
> *MR MARSH-FINCH: ... Was it made clear to you by Mr Manasco that the £65,000 I think it was, was a car not for him, which was for his wife?*
>
> *MR ALLAN: No. That wasn't made clear to us by Mr Manasco. We had learned about the car as you do in Gibraltar through third parties, I think, seeing him in Gibraltar and we heard that way when we heard that news…When we discovered that, I asked Mr Manasco about it. He confirmed that it was a car which was on order, which he had put the order in for well before the undertaking was given but that car was intended for his wife, certainly. But the way it was explained to us was that the payment was made by him.*
>
> *MR MARSH-FINCH: Are you saying that you remember him saying he made the payment?*
>
> *MR ALLAN: Yes. These things were discussed."*

82. Following that adjourned hearing KM filed a Witness Statement dated 4 June 2024 entitled *"Statement for Contempt Application"* evidently to be relied upon at the adjourned contempt hearing which at that stage was set down for hearing on 24 June 2024. It is a short seven paragraph Witness Statement which other than for the introductory first paragraph I set out in full:

> *"2. I am facing two grounds of alleged contempt, namely, an aggregate overall spend within a prescribed period of 24 weeks of an alleged £335,490.25 instead of £240,000 and an alleged false statement*

claiming £288,186.62, which figure should be reduced by the figure representing cash in hand, (including the car), about the said overspend in that time. Both allegations are incorrect.

3. *Mr. Allen (sic). gave inaccurate evidence relying in part upon his inaccurate advice and failure to reflect my instructions. The Claimants have it right when they state that my wife was not bound by the personal undertaking which I gave, which means that she was entitled to spend a half of the total in the relevant accounts in her own right. Her actual expenditure is not meticulously itemised, but she was free to spend up to £225,000 in her own right. Accordingly, it cannot be demonstrated that I personally exceeded any spending limit on aggregate.*

4. *Firstly, I did not pay the balance of £65.000 on the car, my wife did. The evidence of this is at KCM I. This information was provided to Mr Allen prior to his drafting of my statement, which conveys a contrary position. This is because Mr. Allen believed that even if my wife used the money for purchases, that I was liable. This case all turns on who paid for the car. apart from the Claimants getting the arithmetic right.*

5. *The figure of £335,490.25 is inaccurate and the result of poor arithmetic. The figure produced by Caruana & Co is more accurate, save that it includes the car expenditure, which I did not pay for. Mr. Allen's evidence before the court is clearly inaccurate and cannot be relied upon because the instructions in writing given at the time must be right.*

6. *If the car is subtracted from the aggregate then I have attributed to me less that the £240,000 permitted, so no overspend occurred and no false statement was made.*

7. *The conduct of the Claimants in this regard has been petty, vindictive and unnecessary."*

83. *"KCM 1"* exhibits a partial copy of an email sent from KM's mobile to someone at PC&C (at the bottom of the thread there is a reply by Ms Dobbs dated 20 March 2023 at 10:03). The passage in KM's email relied upon reads:

"Was discussing with [Ms Alvez] over the weekend and she agrees that Vogue [the Vehicle] was always intended for her, she bought and she paid during the 40k monthly undertaking and not I"

Although it concludes:

> *"Thought it was important to include these weekend thoughts for now to start to consider"*

Also exhibited are incomplete WhatsApp exchanges dated 20 and 21 March 2023 passing between KM and Mr Allan in which KM states that Ms Alvez gave the bank instructions to pay for the car, and according to KM's messages *"I do not have access to any bank accounts"*; *"I only use my card"* and also *"we each chose a car in January and committed to them"*.

84. Following on from KM's *"Statement for Contempt Application"* Mr Allan filed a responsive Witness Statement dated 1 July 2024. At the adjourned hearing he again gave evidence on oath, adopted his Witness Statement and was cross-examined.

85. Mr Allan's additional evidence can be summarised as follows.

86. Mr Allan refutes KM's allegation that PC&C failed to act upon his instructions. His evidence is that they did not on any occasion refuse or omit to act upon KM's proper and lawful instructions. Albeit, there were occasions when for those precise reasons they were unable to act upon his instructions and the position being carefully explained to KM. According to Mr Allan, and by way of example, he recalls going through section 414 of the Crimes Act (the offence of blackmail) and advising KM on its elements. According to Mr Allan on each such occasion KM understood and freely accepted PC&C's advice and issued instructions that PC&C could properly act upon.

87. As regards the letter of 16 March 2023, according to Mr Allan, as set out at paragraph [8.3] of his Witness Statement:

> *"The letter had been drafted by us (Sir Peter Caruana and me) on instructions provided to us by [KM] in a WhatsApp to me dated 6*

> *March 2023 [CJA/25] and during our meetings on 7 (attended by me and Mrs Dobbs), 10 and 13 March 2023 (both attended by Sir Peter Caruana, Mrs Dobbs and me), following very detailed and lengthy discussion of the issue, in which we advised [KM] that the best thing to do was to 'come clean' with the court on the basis of a full explanation of the facts and his misunderstanding of the effect of the undertaking."*

It is also Mr Allan's evidence, supported by contemporaneous emails that before the 16 March 2023 letter was sent to Isolas, Mr Allan asked KM to approve it. By email dated 16 March 2023 timed at 10:04, KM confirmed that he had *"[r]eviewed and approved"* the draft letter.

88. Also, according to Mr Allan, thereafter, in the context of obtaining instruction for the purposes of drafting KM's Third Affidavit by a WhatsApp from KM to Mr Allan sent on 17 March 2024, KM said that he had *"proof"* of how the car was ordered January 2022 *"under his wife's name"* and that he (KM) *"found it normal to have one car under my name and another under hers for family use"*. It is Mr Allan's evidence that he replied by asking KM for that *"proof"* and for a copy of the logbook but that KM never supplied PC&C with the *"proof"* and only with a partial copy of the logbook. The partial copy of the logbook which is exhibited to Mr Allan's Witness Statement shows that part which contains the vehicle's details including the model type, namely a Range Rover and registration mark, but not that part which identifies in whose name the vehicle was registered.

89. As regards the Range Rover's documentation, it is instructive that at exhibit "KM 3" to KM's Affidavit of 22 March 2023 he exhibited the Motor Policy Schedule which reflects an estimated value of £145,000; the policy holder is stated to be KM and the permitted driver is also KM and any person over 30 driving with his permission.

90. Also Mr Allan's evidence, that thereafter as part of the exchange of emails that followed, Ms Dobbs received the email from KM dated 20 March 2023.

91. Thereafter the thrust of Mr Allan's evidence is to the effect that KM's reluctance to provide clear and consistent information was dealt with by Sir Peter during a telephone call with KM. That on 21 March 2023, Sir Peter, Mrs Dobbs and Mr Allan met with KM and Mr Rocca to finalise KM's Third Affidavit. That the meeting lasted over four hours and that they conducted a thorough and careful review, paragraph by paragraph of the draft affidavit. That the vehicle issue was discussed and that the final draft of that affidavit reflected KM's instructions to them. An unredacted part of a PC&C file note of that meeting reads:

> *"... In addition the difficulty - you have committed some flagrant breaches of undertaking - go through them - see how we have tried to deal with them [in the draft affidavit] to put your breaches in best possible light.*
>
> *Breaches*
> *1. CA came to help formed- but 10k per week- means per week, not concerned over what not spent.*
> *2. Paid for car.*
> *3. Incurred business expenses when only exception had been living*
> *4. Joint account holder clearly had business & personal expenses.*
> *Breaches of which court could take serious view. Ultimately, could bring cause of action for you for contempt of court- ultimately could result in jail time- not going to happen here so please don't worry.*
> *My advice to you to come clean now- let's not keep anything back in case get away with it- going to find court later orders bank statements &... we could have come clean... & didn't".*

According to Mr Allan the next day KM attended their offices to swear the affidavit when they insisted that KM read the draft a final time by himself, for the purpose of ensuring that it was factually accurate. With KM having been informed of the importance that the factual statements had to be his and not PC&C's. That afternoon KM sent Mr Allan a WhatsApp in which he said:

> *"Thanks for all the hard work and patience during the build up."*

92. Premised upon the foregoing, Mr Allan refutes the allegation now advanced on behalf of KM that his affidavit does not fully reflect his then latest instructions to PC&C. And as regards the suggestion that Mr Allan's view

was that Ms Alvez's expenditure was attributable to KM, in the final paragraph of his Witness Statement he provides a cogent exposition of that issue and how he had approached it:

> *"Additionally, the content of the affidavit in relation to the new vehicle does not reflect any belief by me 'that even if [KM]' s wife used the money for purchases that he was liable'. Indeed, I never held such a view nor expressed it to [KM]. Nor can what [KM] says logically be true. Spending by [Ms Alvez] from the joint account in relation to her medical expenses and her business expenses was not attributed to [KM] in the affidavit. If I believed that [KM] was 'liable' for this spending by his wife it would have been attributed to his spending. It was not. The same treatment would have been applied to the car, if that had been his instructions."*

93. Mr Finch's cross examination of Mr Allan did not in any way undermine his evidence. He was questioned more generally about his failing to take account of KM's instructions by reference to a document entitled *"The Bigger Picture"*. That document included a catalogue of allegations by KM against Mansion. Mr Allan's evidence was that the document was taken into account, that what was considered relevant was included in the Defence and what was not considered relevant was discussed with KM and not included. That the Defence was drafted based upon discussions with KM who reviewed and approved it. Questioned in relation to certain allegations of illegality by Mansion, Mr Allan said that this was not considered relevant. In the event (and subject to any further appeal to the Privy Council prospering) given my dismissal of KM's application to amend his Defence and Counterclaim and the subsequent refusal of permission to appeal by the Court of Appeal, Mr Allan's analysis on this point was correct.

WhatsApp Exchanges considered De Benne Esse

94. By an email from Verralls to Isolas on Saturday 23 November 2024 at 18:19 hrs (with the final day of the trial taking place on Monday 25 November 2024) Mr Finch explained how he had come to consider new material, and what from his perspective it established, in the following terms:

> *"… going through the raw material subject to privilege, I have seen the extended contact between my client and Chris Allan on the disclosed WhatsApp chain, (see below). Apart from confirming that [Ms Alvez] paid for the car and other expenses, and that my client did not operate the online accounts, which we have seen, it also includes the basis of terms of agreement for the WWFO as understood by my client with his solicitors at the time. Mr. Allan had the other part of these messages. It proves Mr. Allan's evidence is mistaken and that the evidence of my client and Mr. Rocca is correct. Naturally, it does not extend to James Montado in context, but on the day after the affidavit was signed by my client, it shows what had been understood between him and his solicitor."*

95. In fact, some of the material provided by Mr Finch had previously been exhibited to KM's 4 June 2024 statement and/or Mr Allan's Witness Statement. The new material is an incomplete series of WhatsApp messages between KM and Mr Allan on the 17, 20, 21, 22 and 23 March 2023. To put matters in context the 22 March was the day when KM swore his Third Affidavit, with the four hours meeting at PC&C having taken place the previous day. On 23 March 2023 I heard submissions in relation to the exceptions to be made to the WFO in respect of KM's expenditure.

96. The messages of the 17th to 21st reflect KM's assertion that he had *"proof"* that Ms Alvez had ordered the Range Rover which proof it appears was never and has never been provided. And an assertion by KM that removing his wife's medical expenses; business expenses and the Range Rover made him compliant with the Undertakings. That assertion was broadly the case advanced in the Third Affidavit, with the payment for the Range Rover explained as a pre-existing contractual obligation. The messages also contained an assertion by KM, that he did not personally effect the online payments, but that they were effected by Ms Alvez. That seems to me to be of little if any evidential value, the issue is not who made the transfer but rather whose expenditure it was.

97. The first set of exchanges on 22 March 2023 start at 08:19 hours with the last full message provided timed at 08:23 hours. They read:

> *"Hey [Mr Allan] – morning*

Spoke to my wife

We agreed that in order to be able to agree a settlement we would be willing to offer bank statements - for ease of time constraints would appreciate it if it could be the statements and analysis you already have which basically covers April 1 to date

On this basis could you please advise what the full structure of the offer would look like?

Today in parallel also need to be in Gib to get legal representation for [Ms Alvez]

On this basis I suppose there is no need for all the supporting documentation?

We have a chat today to ensure there is nothing missing on my side.

I believe if no settlement [Ms Alvez's]…"

Because of the way and the stage of the proceedings at which these messages were introduced they were not put to Mr Allan. But in my judgment it is perfectly plausible to understand the reference to *"settlement"* as either relating to reaching a compromise in relation to the exceptions to the WFO or alive to the possible breaches of the Undertaking pre-emptively seeking to persuade Mansion not to take any action. In the event that was the approach that KM's Third Affidavit sought to adopt.

98. The next set of messages start at 13:11 hours and finish at 13:15 hours. KM appears to question whether details of Ms Alvez's expenditure should be included in the Affidavit with Mr Allan expressing the view that this run counter to what they had agreed the previous day and highlighting the urgent need to file the evidence if there were to be spending exceptions.

99. The final set of messages provided are of 23 March 2023. Evidently sent after the hearing that day. KM sent two messages to Mr Allan timed at 16:53 and 16:55 which read:

"1. Breaches pardoned and not materialised into contempt of court.

2. *Living expenses £24,400 monthly (£292,800 per annum)*
3. *Molino £8000 per month for the next quarter – beyond that need to make separate application.*
4. *Bitquin - separate application required to cover costs??*
5. *Nanny, Cleaner, Gardner - need to employ? And then reapply? Added to living expenses?*
6. *Costs TBD – Monday*

That's pretty much it in summary, right?"

And:

"Really appreciate the work and the result honestly"

Replying to the first message at 17:29, Mr Allan said:

"Hi Karel yes."

For present purposes it is not known whether or not that was the end of that set of communications between them.

100. In short, KM's message reflects his understanding of the outcome of the hearing. It is not evidence of any relevant dispute of fact.

Discussion

101. There are three matters upon which KM carries an evidential burden, namely:

(i) whether the Range Rover was purchased and paid for by Ms Alvez;

(ii) whether an agreement was reached by Mr Allan and Mr Montado to the effect that if disclosure was provided Mansion would not bring contempt proceedings; and

(iii) whether PC&C failed to properly reflect KM's instructions when drafting KM's Third Affidavit and whether they proceeded on the premise that spending by Ms Alvez was attributable to KM.

Although in respect of each of these matters it is strictly for KM to adduce sufficient evidence for the issue to fall to be considered, they are best dealt with taking account of all of the evidence and in particular that of Mr Allan.

102. As regards Mr Allan's evidence, Mr Finch makes the point that Mr Allan's evidence should not be accepted as true simply because he is a lawyer. In this Mr Finch is absolutely right. Every person who gives evidence in court proceedings is equally entitled to be believed irrespective of their personal circumstances or professional background. In assessing the credibility of a witness there are of course sometimes indicators of unsatisfactory evidence. There are also indicators such as consistency with admitted or incontrovertible facts which will give credence to the evidence of a witness. The statement of principle on this point is possibly best encapsulated in the judgment of Goff LJ in *The Ocean Frost [1985] 1 Lloyd's Rep 1* at page 57, where he said:

> *"… I have found it essential … when considering the credibility of witnesses, always to test their veracity by reference to the objective facts proved independently of their testimony, in particular by reference to the documents in the case …".*

In my judgment Mr Allan was both a credible and reliable witness. He provided a witness statement and gave oral evidence on two occasions and on both times was subjected to cross examination. His evidence was consistent throughout. Moreover, his evidence was consistent with the documentary evidence and also consistent with the surrounding circumstances. I accept all of his evidence.

103. For his part KM did not give oral evidence and therefore the evidential burden he carries is to be considered from the perspective of his evolving

Affidavits and Witness Statement; the documentary evidence and the evidence of Mr Rocca.

104. I deal with the three matters previously identified in reverse order.

The fidelity of KM's Third Affidavit to his instructions

105. Beyond KM's bare assertion in his Witness Statement of 4 June 2024 there is very little to support his contention that PC&C failed to reflect his instructions when drafting his Third Affidavit. At its highest there are the WhatsApps and the email of 20 March 2023 discussed above. I shall deal with the Range Rover in greater detail, but for present purposes, it is evident that KM did not provide PC&C with *"proof"* that Ms Alvez had purchased the Range Rover (nor has he since) whilst the refence to *"weekend thoughts"* suggests that this was no more than an attempt at ex post facto justification for the spending.

106. The evidence of Mr Allan and the contemporaneous documents demonstrate that PC&C acted on instructions. Indeed, in the event that the Third Affidavit did not properly reflect his instructions why did KM attest to the truthfulness of its contents? KM provides no explanation as to why on his own case he made a false sworn statement. The inference to be drawn from that failure is that the Third Affidavit properly reflected his instructions to PC&C.

107. As regards the assertion that PC&C proceeded on the premise that spending by Ms Alvez was attributable to KM, the cogent answer to that is to be found in the evidence of Mr Allan set out above at paragraph [92].

108. In my judgment not only does KM fail to discharge the evidential burden, but I am sure that KM's Affidavit was drafted and accorded with KM's instructions.

The Alleged Agreement

109. Given that no abuse or estoppel argument is advanced on behalf of KM, other than to the extent that arguably, if accepted, it undermines Mr Allan's credibility, I have to admit to failing to understand how the allegation as regards the agreement between Mr Allan and Mr Montado is relevant.

110. In any event I shall deal with it. The bare assertion by KM and to similar effect by Mr Rocca is that:

> *"[Mr Allan] reported that it was agreed by counsel that the circumstances did not warrant any contempt proceedings."*

It is said to have been made after the Undertakings but before the hearing of 23 March 2023. In terms of that time line the assertion does not make sense. There is nothing to suggest that Isolas were made aware of potential breaches of the Undertaking prior to the 16 March 2023 letter, and it must therefore follow that any alleged agreement must have come about after that letter.

111. The suggestion in KM's Witness Statement of 27 September 2023 is that Mr Montado's agreement not to pursue contempt proceedings was conditional on KM voluntarily agreeing to disclose his accounts for a year. However, one of the stated purposes of KM's Third Affidavit and his providing (some) disclosure about his expenditure for the preceding year, was to secure exceptions to the WFO. In any event it would have been very strange for Isolas to have agreed to forgo bringing contempt proceedings without having full knowledge, supported by bank statements, of the expenditure incurred by KM. And it would also be very strange, that if any such agreement was reached between Mr Allan and Mr Montado, that it was not reduced to writing with specific instructions obtained from their respective clients.

112. I do not ignore that Mr Rocca's Witness Statement is on very similar terms to KM's Witness Statement, but it is right to say that, as identified above, the totality of his evidence lacks internal consistency. It is possible that those inconsistencies arise because, as he also said, his focus when attending the meetings at PC&C was on KM's wellbeing rather than the detail of the issues. Be that as it may, in my judgment Mr Rocca was not a reliable witness.

113. It may well be that the reassurance which KM was provided by PC&C as regards possible contempt proceedings was no more than what is reflected in the file note, which with respect, was eminently good advice, that as matters were perceived at the time, it was unlikely that contempt proceedings would result in an immediate custodial sentence, but that he should *"come clean … not keep anything back"*.

114. On this issue, in my judgment, not only does KM again fail to discharge the evidential burden, but I am sure that there was no agreement between Mr Allan and Mr Montado.

The Range Rover

115. There are two issues which arise in relation to the Range Rover. The first is purely factual, namely whether the Range Rover was purchased by KM and the £65,000 balance paid by him and the second is one of mixed fact and law, namely whether the car dealership had a proprietary right to the monies in KM's bank account representing the outstanding balance of £65,000.

116. The evidence in support of the proposition that KM paid the £65,000 balance and purchased the Range Rover is to be found in:
    (i) the 16 March 2023 letter, the contents of which KM approved by email also of 16 March 2023;
    (ii) KM's Third Affidavit, by which at paragraph [21] he specifically accepted that he had paid; and

(iii) The motor policy schedule exhibited to his Third Affidavit which shows him as the policy holder.

117. Against the backdrop of that evidence, KM seeks to discharge his evidential burden relying upon his later witness statements. The first point to be made is that by his 27 September 2023 Witness Statement and in particular at his paragraph [4], he did not in unambiguous terms dissent from his earlier explanation and it was only by his Witness Statement of 4 June 2024 that he advanced his new case. Beyond the suggestion that PC&C did not act in accordance with his instructions, no explanation whatsoever is given as to why he approved the 16 March 2023 letter or why if it happened to be factually incorrect, he swore his Third Affidavit. The inconsistency between the case which KM first advanced and that which he now puts forward materially undermines his credibility.

118. Moreover, in my judgment, the WhatsApp and email exchanges now relied upon do not avail him. His assertion that he had *"proof"* that his wife had purchased the vehicle does not of itself support the contention. Rather, his failure to provide that part of the log book that would have shown Ms Alvez as the owner of the vehicle, leads to the evident inference that he did not provide it then (or subsequently) simply because Ms Alvez is not the registered owner of the Range Rover. In my view, as aforesaid, they appear to be an ex post facto attempt by KM to find a way to explain away some of his expenditure.

119. In my judgment, for these reasons, KM has failed to discharge the evidential burden in support of his contention that Ms Alvez paid for the Range Rover. Moreover, on the totality of the evidence that I have reviewed and drawing inferences from KM's failure to provide a full copy of the log book and his choosing not to testify, I am satisfied so as to be sure, that KM paid the £65,000 towards the Range Rover.

120. Mr Finch also advances an alternative argument, albeit one which is not specifically addressed in any of KM's Affidavits or witness statement and

in respect of which no documentary evidence is relied upon and/or exhibited. Without relying upon any contractual documentation between KM (and/or Ms Alvez) and the car dealership, Mr Finch, as I understood it, submits that the obligation on the part of KM (and/or Ms Alvez) to pay the £65,000 was not only a pre-existing legal obligation, but because title in the Range Rover had passed, the car dealership had a proprietary right over a sum of £65,000 standing to KM's credit in his bank account. In support of this proposition he seeks to rely upon *Irwin Mitchell (A Firm) v Revenue and Customs Prosecutions Office [2008]EWCA Crim 1741*.

121. In *Irwin Mitchell* solicitors were instructed by a client to advise and act for him in connection with a Revenue and Customs investigation. They were paid money on account of their fees. Subsequently a restraint order was made against the client. By the time that the solicitors received notice of the order their fees exceeded the amount which they had been paid on account. The issue in that case was whether the funds held by the solicitors could be applied in part satisfaction of their fees. In short, the English Court of Appeal (Criminal Division) held that the solicitors could retain the sum without first requiring any variation of the restraint order, or risking being in contempt. The core reasoning is to be found at paragraph [31] of the judgment of Toulson LJ:

> *"When Mr Allad instructed Irwin Mitchell they entered into a contract under which they would be entitled to proper payment for the work done by them. To secure performance of that obligation by Mr Allad they took the sum of £5,000 on account. When they paid the money into their client account two sets of contractual relationships were involved. As between the bank and Irwin Mitchell, there was a relationship of debtor and creditor. As between Irwin Mitchell and Mr Allad, there was the contractual relationship already described. But the relationship between a solicitor and client is not merely contractual; it may involve fiduciary obligations. Equity regards funds placed by a client with a solicitor as subject to a trust; see Twinsectra cited above. So if Irwin Mitchell had become insolvent before doing any work for Mr Allad, the £5,000 would not have gone to the firm's general creditors. But in the case of a contractual fiduciary the terms of the contract are important in determining the scope of his equitable as well as his legal obligations."*

122. In the present case there is no evidence whatsoever to suggest that KM owed the car dealership any fiduciary duties. In my judgment the submission advanced by Mr Finch is wholly devoid of merit. That there was, which for present purposes I accept, a contractual obligation to pay the car dealership, which came about before KM gave the Undertakings, is altogether a different point.

Further Findings of Fact

123. Before turning to deal specifically with Grounds 1 & 2, I turn to other factual disputes requiring determination. These are not matters in respect of which KM carries any evidential burden.

The London Expenditure

124. As aforesaid, Mansion take issue with the total sum of £14,403.58 in respect of KM's and Ms Alvez's sustenance in London being wholly attributable to Ms Alvez.

125. In my judgment it is reasonable to infer that KM having spent over four weeks in London some of the £14,403,38 which is said to have been spent on sustenance must be attributable to his personal expenditure. That conclusion is one which is supported by the further inference which can be drawn from KM's exercise of his right to silence. However, whilst those inferences would allow me to determine that matter on a balance of probabilities, they would of themselves not be enough to make me sure.

126. However, that is not the end of the matter. Despite the concerns I have raised about Mr Rocca's reliability as a witness in relation to the detail of what may have been said at meetings he attended at the offices of PC&C, he gave evidence, which was not challenged and which is consistent with the professional services which he provided KM, to the effect that during the time (or some of the time) Ms Alvez was in London receiving medical

treatment, as part of the professional services he provided KM, he travelled to London, with his flights and accommodation paid for by KM. Based upon the inferences that can properly be drawn, together with Mr Rocca's evidence, I am sure that some of the London expenditure attributed to Ms Alvez is in fact expenditure which is properly attributable to KM. However, it is not a sum that I can quantify.

Cash

127. As set out above, KM in his table at Exhibit KM 3, in quantifying his expenditure over the period covered by the Undertakings, in effect asserted that he had retained the precise sum of £29,583.33 as *"cash in hand"*. Mansion do not accept KM's account that he held those monies and contend that this was merely an attempt to downplay the nature and extent of his breach.

128. Given the specificity to the very last penny; the fact that it was an issue raised by Mr Block in his Third Affidavit of 22 August 2023 which KM chose not to address in subsequent witness statement; the totality of the evidence and KM choosing not to testify, it is legitimate of Mansion to invite me to draw such an inference. If it required proof to the civil standard, I would be satisfied that that £29,583.33 *"cash in hand"* was but an accounting ruse to reduce his expenditure. However, I need to be satisfied so that I am sure. Taking account of KM's lifestyle and very significant level of expenditure as reflected by the exception to the WFO which allowed him to spend £24,348 per month, it is a sum of cash that he may have held. That sum is therefore properly deducted from his overall expenditure.

Grounds 1 & 3 Conclusions and Determination

Ground 1: in breach of the Undertakings KM made numerous payments and withdrawls from his bank accounts in excess of the £10,000 per week permitted in the period from 4 October 2022 until 20 March 2023.

129. Dealing with each of the constituent parts:

(i) as considered above, it is self-evident that having voluntarily given the Undertakings, KM had knowledge and was consequently on notice of their terms;

(ii) on KM's own analysis as set out in the table at exhibit at "KM3" to his Third Affidavit, on 9 out of the 24 weeks during which the Undertakings were effective he paid or withdrew from his accounts sums in excess of £10,000. Moreover, and as identified by Mr Block, given KM's failure to include in that table all the transfers to Molino from his Sabadell account, I am sure that there were breaches on more than 9 out of the 24 weeks; and

(iii) given that they were payments and transfers in respect of his expenditure necessarily he must have had knowledge of the facts which made the conduct a breach of the Undertakings.

130. Each of the elements of this ground being made out to the requisite standard, it follows that Ground 1 is established.

131. As aforesaid, Mansion does not have to prove that KM knew that his conduct amounted to a breach of the Undertakings, although if he did not know, it would be relevant mitigation. Given the plain terms of the exception to the Undertakings namely:

> *"This undertaking does not prevent [KM] from spending £10,000 a week towards his ordinary living expenses…"*

and KM's professional background, it is difficult to understand how he failed to understand its terms. Moreover, when Mr Allan gave evidence on 13 May 2024, he confirmed that he had advised KM as to the importance of the Undertaking and the implications of not complying with it and for his part he was clear as to what the exception meant. In the circumstances I am sure that KM knew what the Undertakings required of him and that when by his own admission he exceeded the £10,000 threshold on more that 9 out

of the 24 weeks', he either knew or was reckless as to whether he was breaching the Undertakings.

132. That said, had the total expenditure in aggregate not exceeded £240,000 that would have been an important mitigating factor. But in the event, it did.

Ground 3: KM made a false statement in a witness statement verified by a statement of truth, that his expenditure during the 24 weeks covered by the Undertakings amounted to £258,603 when in fact it amounted to £335,490. 25.

133. The precise statement by KM is to be found at [11] of his Third Witness Statement of 22 March 2023, it reads:

> *"As appears from KM3/1, my expenditure during the 24 weeks since I gave the undertaking (including the 'new' car) has amounted to £258,603 which, on the basis of aggregation amounts to an average of £10.775 per week. This weekly average has been severely distorted by the 'new' car payment. Without that payment the weekly average (i.e. on the basis of aggregation) would be £8,066 per week."*

134. As I cannot be sure that KM spent the £29,583.33 cash which he said he had retained, it follows that I cannot be sure that as asserted by Mansion his expenditure during the 24 weeks amounted to £335,490.25. However, given my findings that in his analysis KM failed to account for some payments to Molino from his Sabadell account and that some of the London related expenditure was attributable to him, his statement was false.

135. As to the requirement that KM had no honest belief in the truth of his statement, I am sure that KM made the false statement deliberately and without honest belief in its truth. KM is a chartered accountant, evidently a sophisticated professional who headed a significant gaming company. In my judgment he must have known that he had not identified all the payments to Molino from his Sabadell account and that he had failed to attribute any of the London expenditure to himself. That conduct is also consistent with

his email to PC&C of 20 March 2023 which evidences an attempt to understate his expenditure and a willingness to lie.

136. If it were necessary, which it is not, I am fortified in my conclusion given KM's conduct after the falsity of his evidence was identified by Mr Block. In my judgment his attempts to justify his false statement by blaming PC&C demonstrates a clear awareness of his deception and a willingness to compound it so as to avoid taking responsibility for it.

137. As regards interference with the course of justice, I am sure that this requirement is met. The false statement was put forward by KM in order to minimise his breaches of the Undertakings and thereby seek to pre-empt a contempt application.

138. I am also sure that KM was aware of the likelihood that his statement (if accepted) could interfere with the course of justice. At the time his statement was made PC&C had advised him of his potential exposure to contempt proceedings and the Affidavit in which the statement was made was, inter alia, stated to be to explain his expenditure since giving the Undertakings, evidently because he had failed to comply with them. It follows that in making the statement he must have intended to mislead the court and consequently interfere with the course of justice.

139. Each of the elements of this contempt being made out to the requisite standard, it follows that Ground 3 is established, albeit not to the full extent contended for by Mansion.

Grounds 4 to 7 – the Evidence

140. The evidence in respect of these grounds is relatively limited. They all relate to breaches of the WFO and arise following disclosure provided by KM under an Order dated 7 May 2024 of his bank statements from the Gibraltar Nominated Account, Spanish Nominated Account and a sterling

account opened by KM which Mansion assert is a standalone account in Ms Alvez's sole name with Bank Inter.

Background

141. To properly understand these four alleged grounds of contempt it is useful to set out the material terms of the 27 March 2023 WFO:

> *"2. Until the further order of the court, the Respondent must not:*
> *a. remove from Gibraltar any of his assets which are in Gibraltar up to the value of £5,000,000; or*
> *b. in any way dispose of, deal with or diminish the value of any of his assets whether they are in or outside Gibraltar up to the same value.*
>
> *3. Paragraph 2 applies to all the Respondent's assets whether or not they are in his own name and whether they are solely or jointly owned. For the purpose of this order the Respondent's assets include any asset which he has the power, directly or indirectly, to dispose of or deal with as if it were his own. The Respondent is to be regarded as having such power if a third party holds or controls the asset in accordance with his direct or indirect instructions.*
>
> *4. This prohibition includes the following assets in particular:*
> *a. any money standing to the credit of any bank account on which the Respondent is, is named (whether jointly, solely, or otherwise) or is a beneficiary of.*
>
> *5. If the total value free of charges or other securities ('unencumbered value') of the Respondent's assets in Gibraltar exceeds £5,000,000, the Respondent may remove any of those assets from Gibraltar or may dispose of or deal with them so long as the total unencumbered value of the Respondent's assets still in Gibraltar remains above £5,000,000.*
>
> *6. If the total unencumbered value of the Respondent's assets in Gibraltar does not exceed £5,000,000, the Respondent must not remove any of those assets from Gibraltar and must not dispose of or deal with any of them. If the Respondent has other assets outside Gibraltar, he may dispose of or deal with those assets outside Gibraltar so long as the total unencumbered value of all his assets whether in or outside Gibraltar remains above £5,000,000.*
>
> *...*
>
> *Exceptions To This Order*

9. *This order does not prohibit the Respondent from spending £24,348 per month towards his ordinary living expenses to be drawn from account numbers [xxxxxxx].0001 (the Gibraltar Nominated Account") and ES [xxxx] 632 ('the Spanish Nominated Account') (together 'the Nominated Accounts') provided that in every 12-month period commencing from the date of this Order, if and to the extent that the Respondent does not spend the said sum of £24,348 in any month (hereafter 'Underspend') he may spend such underspend, on an aggregated basis in any future month within that 12-month period (hereafter 'Aggregation') save that where the Respondent wishes to incur an expense in a sum greater than £10,000 from any Underspend he must inform the Applicants' solicitors 3 working days prior to any such expenditure being incurred.*

10. *This order does not prohibit the Respondent from spending a reasonable sum on legal advice and representation. But before spending any money the Respondent must tell the Applicants' legal representatives where the money is to come from unless the payment is made from the Gibraltar Nominated Account.*

11. *This order does not prohibit Ms Cheryl Alvez, the Respondent's wife, from spending £8,000 per month for the next three months to be drawn from the Spanish Nominated Account towards her business expenses in relation to a business carried on by her, known as Club Hipico Molino de Fuego, through her Spanish Company, Molino de Fuego SL.*

12. *The Respondent shall be at liberty to move money from one bank account captured by this order to another.*

13. *The Respondent will inform the Applicants monthly, within seven days from the end of each month, of the any sums transferred from one bank account to another, specifying both accounts where the transfer is not to a Nominated Account.*

14. *The Respondent may agree with the Applicants' legal representatives that the above spending limits should be increased or that this order should be varied in any other respect, but any agreement must be in writing.*

...

19. *Effect of this order:*
a. It is a contempt of court for any person notified of this order knowingly to assist in a permit a breach of this order. Any person doing so, maybe imprisoned, find or have their assets seized."

142. On 7 May 2024, Mansion obtained an ancillary WFO disclosure Order against KM, which required KM to provide an Affidavit by 28 May 2024 stating with appropriate evidence the circumstances leading to the closure of the Gibraltar Nominated Account and details of KM's new banking arrangements and account statements in respect of all accounts subject to the WFO from the making of the WFO until 7 May 2024.

143. On 28 May 2024 KM provided an Affidavit in which he explained the circumstances leading to the closure of the Gibraltar Nominated Account as follows:

> *"The closure of the Trusted Novus bank accounts held jointly by me, and my wife was at the instigation of the bank. This has previously been confirmed to the Claimants. See KCM I. The Claimants bear the responsibility for this occurrence because of the operation of the WFO."*

At "KCM 1" KM exhibited a letter from the bank dated 13 July 2023 to KM and Ms Alvez giving them 60 days' notice for closure of the bank account.

144. In this Affidavit KM also exhibited account statements and in respect of the request for details of his new banking arrangements at paragraph [5] said:

> *"i. Bank lnter 0737 Sotogrande, San Roque, Spain.*
>
> *ii. Sole account.*
>
> *iii. Signatories are [Ms Alvez] alone.*
>
> *iv. Account was opened on 1 September 2023, in anticipation of closure of Gibraltar Nominated account. This account is a sub-account of the main Euro account, which had to be opened to receive sterling.*
>
> *v. Bank was already aware of WFO and did not request a copy. The bank would only open the account in the name of my wife for that very reason. However, the account has been operated in accordance with the WFO, notwithstanding the proprietary rights my wife has."*

The bank statements provided in respect of that account confirmed the information set out at (i) to (iii) and that it had been opened on 1 September 2023.

145. The statements also showed the IBAN number for this new account (*"the Bank Inter Sterling Account"*) as:

"ES88 0128 0737 0301 5000 0573"

For reasons which will become apparent, I set out the IBAN number for the Spanish Nominated Account, namely:

"ESl4 0128 0737 0001 6000 6632"

146. Monies were transferred from the Gibraltar Nominated Account to the Bank Inter Sterling Account as follows:

(i) 01/09/2023 - £50,050.00.
(ii) 5/09/2023- £363,846.67.

Mansion do not accept KM's assertion that the Bank Inter Sterling Account is a sub-account of the Spanish Nominated Account and in his Fourth Affidavit adopted by Mr Block when giving oral evidence, he sets out his concerns in that regard. They are to the effect that it is unlikely and uncommon for sub-accounts to have different signatories and questions how KM can be a signatory for the main account but not a sub-account opened under it. It is also his evidence that having reviewed the Bank Inter website for further information on IBAN numbers, he came across an FAQ page titled *"How to check if an account number is correct?"* which provided the following explanation:

> *"In Spain we operate with 24 digits, distributed as follows: the initial two letters ES, correspond to Spanish accounts, then two check digits; four for the bank code; another four for the code of the branch where the account was opened; two corresponding to a validation*

> *code (a mathematical algorithm); and finally, ten digits corresponding to the account number."*

Premised on that explanation there appears to be no correlation in the account numbers to suggest that the Bank Inter Sterling Account is a sub-account of the Spanish Nominated Account.

147. Mr Finch did not, when cross examining Mr Block, challenge his analysis. Moreover, not only did KM opt not to give oral evidence but even though it was evidently open to KM to have provided documentary evidence from Bank Inter in support of his assertion, he has failed to do so. In those circumstances, I accept the submission advanced on behalf of Mansion and drawing inferences from KM's exercise of his right to silence, and his failure to provide documentary evidence, I am sure, and I find as fact, that the Bank Inter Sterling Account is an account held exclusively by Ms Alvez and that it is not a sub account of the Spanish Nominated Account.

148. In the context of that background and finding of fact I deal with each of the remaining grounds in turn.

Ground 4: KM removed and / or diminished assets from the Jurisdiction in the name of KM to the sole name of his wife in an account held in Spain in breach of paragraphs 2(a), 2(b) and 6 of the WFO.

149. As set out at paragraph [29], above KM has accepted that he was (through his solicitors) served with a copy of the WFO and no issue is taken as regards KM being on notice of the terms of the WFO. I am therefore sure that this element is established.

150. It is beyond dispute that the sums of £50,050.00 and £363,846.67 were transferred from the Gibraltar Nominated Account to the Bank Inter Sterling Account. The evidence as to whether the transfer was effected by KM or at his behest is to be found in his Witness Statement of 28 October 2023, where at paragraph [11] he states:

> *"I attach a copy of* ***my Spanish sterling bank statement*** *to show where the remainder of the Trusted Novus bank funds were transferred to and the dealings on that account to obviate the need to hear the 'urgent' application for the same."* [My emphasis]

The attached "statement" is preceded by an email from KM to Mr Finch dated 22 October 2023 in which he details 15 of these transfers, including the two transfers from the Nominated Gibraltar Account to the Bank Inter Sterling Account. They also detail payments to Mr Rocca and foreign exchange transactions described as *"FX conversion to fund ordinary living"*. Premised upon that evidence I am sure that KM acted in breach of paragraphs 2(a), 2(b) and 6 of the WFO.

151. Given the nature of the act was necessarily intentional, namely transferring monies from the Gibraltar Nominated Account to the Bank Inter Sterling account, in my judgment it is evident, and I am sure, that KM had knowledge of the facts which made the conduct a breach of the WFO.

152. Each of the elements of this ground being made out to the requisite standard, it follows that Ground 4 is established.

Ground 5: Utilising non-nominated accounts for the payment of Ordinary Living Expenses in breach of paragraph 9 of the WFO.

153. Ground 5 is closely related to Ground 4 as it relates to transactions and monies spent from the Bank Inter Sterling Account on *"ordinary living expenses"*.

154. Paragraph 9 of the WFO provides an exception to the freezing Order allowing KM to spend £24,348 per month towards his ordinary living expenses, albeit for the purposes of policing the Order, the monies have to be drawn from either of the Nominated Accounts. The case advanced by Mansion in respect of this ground is limited and particularised as relating to five payments made between September 2023 and December 2023 and

which are to be found in the Bank Inter Sterling Account statement exhibited to KM's 28 May 2024 Affidavit, namely:

i. £3,500 on 6.09.23 to *"M.E. Draft cca"*;
ii £3,500 on 29.09.23 to *"M.E. Draft cca"*;
iii £5,900 on 5.10.23 to *"M.E. Draft Six Limited"*;
iv £3,500 on 27.10.23 to *"M.E. Draft cca"*; and
v. £3,500 on 04.12.23 to *"M.E. Draft cca".*

155. In his email to Mr Finch 22 October 2023, exhibited to his Witness Statement dated 28 October 2023 KM identified the first two £3,500 payments as being transfers to Mr Rocca by way of payment of Mr Rocca's fees for September and October respectively. The evident inference to be drawn, and which I draw is that items (iv) and (v) relate to Mr Rocca's fees for November and December. According to KM's email the £5,900 payment is explained as *"Atlantic Suites (2 months)"* which evidently relates to the rent of an apartment. Based upon KM's own explanations, I am sure that these payments were in respect of *"ordinary living expenses"*.

156. Premised upon the foregoing and considering each of the elements in respect of this ground I am sure that:

(i) for the reasons I gave in respect of Ground 4 I am sure that KM was on notice of the terms of the WFO;
(ii) by making payments for *"ordinary living expenses"* from an account other than a Nominated Account he acted in a manner which involved the breach of the WFO;
(iii) having acknowledged that he had made those five payments, he had knowledge of the facts which made the conduct a breach.

157. Each of the elements of this ground being made out to the requisite standard, it follows that Ground 5 is established.

Ground 6: Multiple transfers from the Spanish Nominated Account to Molino de Fuego after the 27 June 2023 in breach of paragraph 11 of the WFO Order

158. As set out above, paragraph 11 of the WFO did not prohibit Ms Alvez from spending £8,000 per month, for a period of three months, from the Spanish Nominated Account towards Molino de Fuego.

159. The sixth ground relates to various payments to Molino de Fuego from the Spanish Nominated Account made after the 3-month time-limit imposed under paragraph 11 of the WFO totalling €34,000.

160. Mansion's case is that KM was aware and/or funded the transfers from his own funds from Banco Sabadell, as evidenced by various deposits into Bank Inter, on the same dates as the transfers to Molino de Fuego. It is further submitted that the transfers were made or authorised by KM, this despite KM having been expressly informed by Isolas that no variation would be permitted to the WFO to permit payments to Molino.

161. Although inferences may be drawn from the fact that transfers from Banco Sabadell to the Spanish Nominated Account coincide with dates when transfers are effected to Molino de Fuego, it is insufficient for me to conclude, so that I am sure, that those further transfers were made by or at KM's direction in circumstances in which both KM and Ms Alvez were equally entitled to access all of the money in the Spanish Nominated Account. Consequently, Ground 6 is not established.

162. It is an entirely different matter whether, in the event that Ms Alvez made the transfers, paragraphs [11] and [19] of the WFO placed her in breach of it. My tentative view is that the order is not sufficiently clear and unambiguous for it to be construed in terms of it preventing Ms Alvez access to monies held in their joint account. Moreover, Mansion would also have to establish to the requisite standard that she was on notice of the terms of the order. In any event, since Ms Alvez is not a respondent to these contempt proceedings, these issues are entirely moot.

Ground 7: Failing to notify the Claimants of the various transfers of monies from the Gibraltar and Spanish Nominated Account to non-nominated accounts not specified in the WFO or in breach of paragraph 13 of the WFO.

163. The Seventh Ground concerns seven transfers made from the Gibraltar Nominated Account to non-nominated accounts in KM and/or Ms Alvez's name in alleged breach of paragraph 13 of the WFO which requires KM to give Mansion notice of such transfers. The accounts are:

(i) a Trusted Novus account number ending .004 in their joint names (*"the 004 Account"*); and
(ii) the Bank Inter Sterling account, which as aforesaid, is only in Ms Alvez's name.

164. The transactions in respect of which Mansion say no notice has been given are as follows:

(i) 03.04.23 - £1,069.88 transferred to the 004 Account;
(ii) 03.05.23 - £2,501.47 transferred to the 004 Account;
(iii) 12.06.23 - £2503.43 transferred to the 004 Account;
(iv) 04.07.23 – £2,520.27 transferred to the 004 Account;
(v) 31.07.23 - £2,500.00 transferred to the 004 Account;
(vi) 01.09.23 - £50,050.00 transferred to the Bank Inter Sterling Account;
(vii) 15.09.23 - £363,846.47 transferred to the Bank Inter Sterling Account.

The transfers are evidenced by bank statements exhibited to KM's Affidavit of 28 May 2024. Whilst Mr Block's evidence that KM failed to inform Mansion of the transfers within seven days from the end of each month, has not been challenged.

165. Mansion's case, as advanced in their Supplemental Skeleton Argument, is that KM effected all seven transfers. Other than in respect of items (vi) and (vii) with which I have dealt with when considering Ground 4, there is no evidence to support the proposition that KM, as opposed to Ms Alvez, effected them or that they were done at his behest. But in my judgment whether or not those five transfers were done by KM or not is, as regards this ground, immaterial. Paragraph 13 of the WFO imposes a clear and unambiguous obligation on KM to inform Mansion of bank transfers from one bank account to another, where the transfer is not to a Nominated Account. The obligation is not conditional on KM being responsible for the transfer.

166. Premised upon the foregoing and considering each of the elements in respect of this ground I am sure that:
    (i) for the reasons I gave in respect of Ground 4 KM was on notice of the terms of the WFO;
    (ii) by failing to notify Mansion of the transfers, KM acted in a manner which involved the breach of the WFO;
    (iii) The Gibraltar Nominated Account being a joint account held by him he would have had knowledge of the transfers (and in respect of transfers (v) and (vi) these were at his behest) and therefore he had knowledge of the facts which made the conduct a breach.

167. Each of the elements of this ground being made out to the requisite standard, it follows that Ground 7 is established.

Conclusion

168. Accordingly, I find and declare that KM is in contempt of court in relation to Grounds 1, 3, 4, 5 and 7.

169. The matter is adjourned for sentencing on 9 April 2025, which hearing KM is ordered to attend. Although I adjourn the sentencing to afford Mr Finch the opportunity to take instructions in relation to mitigation and to afford

KM the opportunity to seek to purge aspects of his contempt (for example by bringing substantial assets within the jurisdiction) KM should be aware that breaches such as those committed by him, will normally attract an immediate custodial sentence.

A E Dudley
Chief Justice

Date: 11 March 2025