Neutral Citation Number: [2020] EWHC 1301 (Fam)

Case No: FD19F00024
ZC18P04081

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22/05/2020

Before:

THE HONOURABLE MR JUSTICE COBB

- -

Between:

Magali Moutreuil	**Applicant**
- and -	
Peter Andreewitch	**Respondents**
Pier Investments Company Limited	

- -

Moutreuil v Andreewitch (Contempt: No.2)

- -

James Weale (instructed by **LSGA Solicitors**) for the Applicant
Richard Thomas (instructed by **Janes Solicitors**) for the First Respondent
The Second Respondent was not separately represented

Hearing date: 18 May 2020

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HONOURABLE MR JUSTICE COBB

This judgment was delivered in public, albeit remotely.
The judge has given leave for this version of the judgment to be published.

The Honourable Mr Justice Cobb:

Introduction

1. The application before the court, dated 13 January 2020 (and in re-amended form, dated 27 April 2020), is for an order that the First Respondent ('PA') be 'sanctioned in any manner which the court may think fit' for alleged multiple breaches of an order made on 22 March 2019[1]; that order ('the freezing order') had the effect of 'freezing' the income and assets (including, therefore, the company bank account) of the Second Respondent company ('Pier') of which PA is a director.

2. This judgment follows a re-hearing of this application. The previous hearing of the application, before Lieven J on 3 February 2020 led to findings which were the subject of an appeal. Her findings were set aside by the Court of Appeal on 17 March 2020. The judgment of the Court of Appeal is reported at [2020] EWCA Civ 382. The appeal succeeded on one fundamental complaint raised by PA, namely that "as an unrepresented litigant he gave evidence without having been informed of his right to silence" ([2020] EWCA Civ 382 at [1]).

3. As counsel appearing at this hearing know, I have deliberately not read the judgment of Lieven J., but am aware of some of its contents, and her essential findings, as these are summarised in the judgment of the Court of Appeal (notably [2020] EWCA Civ 382 at [6]).

4. At this hearing, the Applicant ('MM') has been represented by Mr James Weale, and the Respondent by Mr Richard Thomas. I am grateful to them both for their skilled advocacy, and clear written representations.

Procedural issues

5. No procedural points have been taken at this hearing, but it is appropriate that I should nonetheless deal with a number of the relevant procedural issues which have inevitably arisen on this application.

6. *Open Court hearing*: The default arrangement for the conduct of most family hearings at present is by 'remote' video technology, in accordance with recently published guidance from the senior judiciary, including that issued by the Lord Chief Justice, President of the Family Division and the Master of the Rolls on 9 April 2020. As it happens, there is currently no explicit guidance in relation to the management of contempt or committal hearings.

7. At an earlier case management hearing, I made it clear that at this hearing I would consider only the disputed factual allegations underpinning this application, and if/as appropriate, make findings; I would not deal with sanction for any proven breach. This hearing was formally listed in the Royal Courts of Justice Cause List 'For Hearing in Open Court', as it should be. I personally sat, robed, in a court in the West Green Building to hear the case. The court was opened for members of the public but in fact no person attended. The parties and their legal teams all participated remotely using Skype for Business. Mr Farmer of the Press Association attended for at least

[1] per *rule 37.4 Family Procedure Rules 2010*: enforcement of an order by committal/sanction.

part of the hearing, also joining remotely. All parties were content with this arrangement. In light of my findings, thought will need to be given to the management of the hearing to deal with sanction.

8. *Application to commit/Application for variation of the freezing order*: Alongside this application in respect of the alleged contempt is an application issued by PA for variation of the freezing order. This was issued on 21 April 2020. This is the second such application, the first having been dismissed by Judd J on 14 January 2020. I indicated at the outset of this hearing that it would be inappropriate for me to consider this application to vary at the same time as the application in respect of the alleged contempt. I indicated that I would deal with the contempt aspect first; I wanted to avoid the situation in which PA may feel effectively deprived of the right of silence as he tries to field separate applications. It was recognised by all that this would be a serious procedural error[2]. This approach was agreed by all parties.

9. *Particularised complaint*: The allegations which form the core of this contempt application have recently been re-particularised in an amended notice (using the *Part 18* procedure) dated 27 April 2020 with schedule. PA was satisfied that the claim was sufficiently particularised. For my part, I too was satisfied that the alleged contempt was sufficiently clearly set out in the amended application, and complied with *rule 37* of the *Family Procedure Rules 2010*.

10. *PA evidence*. For this hearing, PA had filed and served two signed witness statements. At the outset of the hearing, Mr Thomas told me that PA wished to give oral evidence. Given the circumstances in which this case has required a re-hearing (see [2] above), I nonetheless explicitly advised PA that he was not obliged to give oral evidence, acknowledging that "[t]he right to silence is a core element in criminal proceedings and proceedings of a criminal character" [2020] EWCA Civ 382 at [17]; I further warned him of the potential for adverse consequences or inferences from exercising that right to silence[3].

11. PA willingly gave oral evidence on affirmation at this hearing, and was cross-examined.

12. *Self-incrimination*: At the outset of PA's oral evidence I advised him that he was not bound to answer questions which may tend to incriminate him, to expose him to any criminal charge, penalty, or forfeiture which is reasonably likely to be preferred or sued for (per Goddard LJ in *Blunt v Park Lane Hotels* [1942] 2 KB 253).

13. I asked the advocates to be vigilant to ensure that PA was reminded of this right prior to answering any specific question to which the answer may tend to self-incrimination. This did not in fact arise.

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[2] It is well-recognised that if a committal/contempt application is heard at the same time as other issues about which the alleged contemnor needs to give evidence, he is placed in the position where he is effectively deprived of the right of silence. That is a serious procedural error: see *Hammerton v Hammerton* [2007] EWCA Civ 248.

[3] *Rule 37.27(2)* of the *Family Procedure Rules 2010*, and *CPR 81.28* provide that at a committal/contempt hearing the respondent is ***entitled*** to give oral evidence, whether or not s/he has filed or served written evidence and, if doing so, may be cross-examined: [2020] EWCA Civ 382 at [9] and [16].

14. *Burden and standard of proof*: In reaching my conclusions on the facts, I have applied the criminal standard of proof[4]. I have further borne closely in mind that the burden of proving the matters alleged falls squarely on MM. I am satisfied that it is not a requirement to demonstrate that PA intended to and/or believed that the conduct in question constituted a breach of the freezing order. Rather, it would be sufficient for MM to show that PA deliberately intended to commit the act/omission in question. The parties agree that the approach to be adopted is that set out by Flaux LJ (giving the leading judgment) in *Pan Petroleum AJE Limited v Yinka Folawiyo Petroleum Co Ltd* [2017] EWCA Civ 1525 ('*Pan Petroleum*') as follows at [43]-[44]:

> "I have already indicated that it is not contended on behalf of Pan Petroleum that the appellants wilfully breached the Order, but that does not preclude a finding of contempt. Where the Court concludes that the party in contempt has acted on the basis of an interpretation of the Order which was not reasonably arguable, it is not necessary for an applicant to also show that the breach of the Order was committed with actual knowledge. Christopher Clarke J put this point clearly in *Masri v Consolidated Contractors* [2011] EWHC 1024 (Comm) at [155]:
>
> "In my judgment the power of the court to ensure obedience to its orders for the benefit of those in whose favour they are made would be inappropriately curtailed if, in addition to having to show that a defendant had breached the order, it was also necessary to establish, and to the criminal standard, that he had done so in the belief that what he did was a breach of the order – particularly when a belief that it was not a breach may have rested on the slenderest of foundations or on convenient advice which was plainly wrong."
>
> As that passage demonstrates, equally it is no defence for the party in breach to show that it acted on the basis of legal advice. That will only go to issues of mitigation, not to whether there was a contempt: see the judgment of the Restrictive Practices Court (Megaw J President) in *The Tyre Manufacturers' Conference Ltd's Agreement* [1966] 1 WLR 1137 at 1162D-H."

Brief background

15. The parties never married; they have five children. They lived together for approximately 20 years and separated in 2018.

16. There are currently three sets of substantive proceedings before the Family Court:

[4] If authority is needed for this proposition, see *Re L-W (Enforcement and Committal: Contact); CPL v CH-W and Others* [2010] EWCA Civ 1253.

i) 'Welfare' proceedings under *Part II* of the *Children Act 1989* ('*CA 1989*') concerning the living and contact arrangements for the younger four children;

ii) *Schedule 1 CA 1989* proceedings in relation to financial provision for the children;

iii) 'Ownership proceedings' in relation to shares in Pier, a holding company which has as its main or sole asset the former family home.

A final hearing is listed before me in just under 4 weeks' time for me to resolve all the issues arising on these linked applications.

17. I take the summary of the background to this application from the judgment of Jackson LJ at [2020] EWCA Civ 382 at [2]:-

> "The parties are in dispute, amongst other things, about the beneficial ownership of a valuable property in which they lived before their separation. The property is owned by a company of which PA is the sole director and MM the sole shareholder. On 22 March 2019, a freezing order was made, restraining the parties from disposing of or dealing with the company income or assets except to enable the company to meet its tax or other liabilities. In November 2019, a further order required PA to produce the company bank statements. These showed that he had used the company bank account to make payments amounting to over £25,000 in respect of his personal living expenses and legal fees, some £18,000 of which post-dated the freezing order. PA did not dispute that he had caused the company to make the payments but claimed that they were made in respect of the company's liabilities, namely in paying him a salary, in repaying loans he said he had made to it, and in discharging the company's alleged liability for legal fees."

Freezing Order: March 2019

18. The freezing order made by Deputy District Judge Hodson dated 22 March 2019 was expressed in these terms:

> "Until such time as the parties' respective claims in these proceedings and in case number FD19F00024 have been finally determined by the court, the applicant and the respondent must not in any way dispose of, deal with or diminish the value of the following assets whether they are in or outside England and Wales, namely:-
>
> (i) The shares of Pier Investment;
>
> (ii) [The property];

> (iii) Any other income or assets of Pier Investments except insofar as is necessary for Pier Investment to meet its tax or other liabilities".

The order was adorned (in bold and capital font) with the relevant penal notice spelling out in the clearest terms the warning to PA of the consequences of disobedience to the order.

19. As Jackson LJ observed at [2020] EWCA Civ 382 ([18]):-

> "The injunction allowed for proper payments to be made from the company account, so the mere making of payments did not establish the alleged breaches. MM had to prove that PA made the payments knowing that they were not proper liabilities of the company."

20. MM explains that the application for this freezing order had been provoked by PA's transfer (or purported transfer) of title in the entirety of the shares in Pier from MM into the name of the 15-year old son of the parties (who was living with PA, separate from MM) which had taken place within 48 hours of her solicitors' detailed letter before action in the 'ownership' proceedings, setting out her claim to own the shares. Inevitably MM's case is that this transfer represented a cynical attempt to obstruct/frustrate MM's claim to the shares:

> "… there is no conceivable legitimate or commercial purpose that would have been served by the transfer of the shares into the name of our … son."

The alleged breaches

21. MM's case is that PA has clearly and flagrantly breached the order in a "systematic" way without any justification or excuse. She points to the fact that PA has had sole control over the relevant bank account held by Pier, and has used it as his "personal piggy bank". Consistent with this she refers to the fact that within three days of the freezing order, PA used Pier's 'frozen' account, evidently (having regard to the nature of the payment) for personal use (i.e. a supermarket purchase). Over the course of the following months, PA made altogether 562 further withdrawals and/or payments from Pier's account; it is evident (again, having regard to the nature of the payments) that the vast majority were for his personal use. A schedule of the payments from the account has been presented, and is agreed. This activity in the account was only revealed after I had ordered PA, at a case management hearing in the 'Ownership Proceedings' in December 2019, to produce the Pier bank statements.

22. It is accepted by the parties that PA had withdrawn £28,599.56 from the frozen account. In relation to that sum:

    i) MM accepts, through counsel, that £961.90 can be said to have been withdrawn properly to meet company liabilities;

    ii) £2,041.72 paid into the account in this period reflected the payment of child benefit to PA, to which he was entitled as he cares for one of the children. MM

contends that this sum should not then have been withdrawn from the account, given the terms of the order, but the depletion of the account in this sum (it is conceded by Mr Weale) is more in the nature of a technical breach;

iii) As soon as PA's former solicitors, namely Sinclair Gibson and Clyde & Co., were advised that their invoices had been satisfied by monies from a frozen account, they have returned these payments.

It is accepted by the parties that the account is still depleted by the sum of £13,015.94.

23. To compound the 'offence', MM contends that PA well knew that he was precluded from making these payments by virtue of the court order. She demonstrates this, *inter alia*, by reference to a document filed on his behalf dated 24 May 2019, in which it was said[5]:

> "… if [the freezing order] is to be maintained at all, the injunction should be varied to make clear that [PA] is entitled to spend sums legitimately earned by him as director of the Company in respect of his reasonable legal costs and living expenses, in circumstances where that is his primary source of income." (underlining added for emphasis).

It is not a coincidence, asserts MM, that very soon after I had ordered the disclosure of the Pier bank statements, PA made his first application "for clarification/variation" of the order (which was done without notice to MM, in an attempt – asserts MM – to "whitewash" his breaches). By that time, PA had substantially emptied the account.

24. The solicitors for MM wrote to PA on 23 December 2019 drawing his attention to the breaches of the freezing order and explaining that he was in contempt of court as a consequence.

PA's answer

25. PA has filed updated evidence for this hearing, and his counsel has filed a position statement on his behalf; he has, as I mentioned earlier, given lengthy oral evidence. Essentially, he denies being in breach of the freezing order. Mr Thomas contends, first, that the wording of the order was unfortunate, as it permitted:

> "…a wide discretion … to the person operating the account… There is no restriction on the nature of those 'other liabilities', nor is there any requirement to obtain permission from the Court or any other party before those payments are made" (reference position statement).

26. PA accepts that he withdrew money from the frozen Pier bank account but asserts that he did so to meet the "necessary … other liabilities" of Pier as provided for in the freezing order. He contends that the sum of £2041.72 should be excluded from consideration as it reflects the child benefit payment (see [22](ii) above). Specifically, he further argues that:-

[5] The document was signed by PA on 24 May 2019, following a formal statement of truth.

i) He paid himself a director's salary of £8,500 per annum from the account, as he was entitled to do in accordance with the Memorandum of Association (he points to the 'objects' of the company: para.3(u)). He maintains that he worked hard on renovating and maintaining the property, and undertaking a degree of management of the property while tenanted, and that this work benefited the parties as it preserved value in, and obtained income from, the most significant asset in the ongoing litigation. He contends that the director's remuneration was modest, and was used for equally modest expenditure on food and accommodation;

ii) He repaid to himself sums which he had earlier loaned to the company; he points to sums of money being paid into the Pier account back in 2005 ("to be able to buy properties in Germany") which he maintains represent the loan(s). He says that he loaned "c.€75,000 of my own money". His case is that in 2019 he had the first opportunity to seek repayment of the debt since making the loan as the company had now made a profit;

iii) Sums totalling £12,580 were used to defray legal costs incurred by Pier and owed to two law firms, Sinclair Gibson and Clyde & Co. PA later suggested at the hearing before me that only £2,000 or £3,000 of the sums paid to these firms reflected the company's share of the legal costs.

27. PA submits that if his use of the account did breach the freezing order, this was "inadvertent". In open correspondence, and "without any acknowledgment of liability or of wrongdoing, but purely on a commercial basis", PA has offered to pay back the sum of £13,015.94 over time. This offer was conditional upon MM accepting that PA was entitled to withdraw sums from Pier on the grounds alleged by PA.

Findings

28. The terms of the 22 March 2019 freezing order (above at [18]) were, in my finding, clear and unambiguous. I do not accept that PA genuinely felt that the terms of the order needed any clarification, and I am satisfied that he knew from an early stage after the order (certainly by May 2019) that he *could* have applied to the court for variation of the order. He did not in fact apply for any 'clarification/variation' until December 2019, at a time when his expenditure from the account had been, or was about to be, exposed.

29. PA has a firm and unshakeable belief in his own narrative relating to the use of the frozen Pier account, but his narrative is simply implausible. His explanations for his use of the account over the months following the 22 March 2019 order are, in my judgment, contrived and disingenuous; this is demonstrated in part by the internal inconsistency of his narrative, the inconsistency between his narrative and the disclosed documentation, and imprecision (indeed, even confusion) on key aspects. I found PA to be evasive when challenged in cross-examination, and prevaricated when asked questions which called for simple answers. He sought to brush off apparent flaws in his case by pleading 'laziness' in preparation for the hearing, a lack of time to prepare his response (by way of reminder, the application for 'sanction' was made in January 2020, five months before the hearing, and indeed this was the second such hearing), a lack of "care" while "under strain", and "inadvertent" omission of relevant information. He attributed his conduct in using the Pier account (rather than using his

own account for his personal expenses) as "laziness", adding "I slipped into bad habits"[6]. Yet in contrast to this, in so much of his presentation, he appears to be a man who is meticulous to the point of pedantry.

30. I am satisfied, to the required standard, and applying the guidance of Flaux LJ in the *Pan Petroleum* case (see [14] above) on the evidence which I have read and heard that PA deliberately removed sums from the frozen Pier account after the order of 22 March 2019, at all times intending to use the withdrawn sums for his own benefit. I find that he treated the account as his personal account. It is obvious that he used the funds for his own ends. He used it repeatedly for his grocery shopping and for local travel; he purports to have paid "rent" to his new partner under a "lodger's agreement", and made "repayments" of a loan for his personal legal fees provided by his new partner. In the paragraphs which follow, I explain in more detail why I find that PA has deliberately contrived his explanations to fit his behaviour, and why I reject his narrative.

31. *Director's salary*: In relation to PA's claim that he was effectively drawing down a director's salary from the account in the relevant period, my findings are as follows:

    i) I am satisfied that there was no legally recognised obligation or contractual basis for Pier to pay PA a director's salary; there is no written evidence of such obligation. Materially, a director's salary was *not* referred to in the 2018-2019 accounts, i.e. in the year immediately prior to the year under review;

    ii) Thus, it is wholly unclear from PA's evidence *when* the obligation on Pier to pay the director's salary arose, or indeed *how* the figure of £8,500 was set. PA declared (in completing his Schedule of Deficiencies response: 5 January 2020) that there was no "formal agreement with myself about the dividend policy" adding (without offering any further clarity) "… and take only the minimum £8,500 per annum director's salary";

    iii) He claimed in his evidence to have first drawn a salary of £8,500 in late-2018, but retreated under challenge in cross-examination in confirming that he had *never* drawn a salary as such, but had "used the [Pier] account up to that amount [£8,500] for food and rent" from that time. Quite apart from the fact that (as I have mentioned in (ii) above) there is no reference to the director's salary in the 2018-2019 accounts, it is equally notable that in a statement of account prepared by PA in March 2019 (i.e. after the time at which he said that he had started to draw a salary) setting out Pier's net income[7], PA made no reference to, or deduction for, the payment of any director's salary. PA's version of the same document for the period up to January 2020 (prepared 2.1.20) unsurprisingly *does* make reference to a salary, but by then he knew[8] that contempt proceedings were signalled;

    iv) PA accepted that the first time he has ever raised the existence of the director's salary was at the case management hearing before me on 9 December 2019;

[6] Re-examination
[7] i.e. after payment of expenses, including utilities, insurances, maintenance repairs etc.
[8] It is likely that he will have received the letter from LSGA, MM's solicitors, dated 23 December 2019 warning of the contempt proceedings.

v) In fact, of course, the sums which PA withdrew greatly exceeded the sum of £8,500; hence his need to invent the loan;

vi) As I have mentioned above, ([23]) PA has known and understood for some time that the freezing order did not allow him to draw down a salary from the Pier account: see his Defence document dated 24 May 2019.

32. *Repayment of a loan*: It was apparent that the spending far exceeded what PA had claimed he was entitled to draw by way of director's salary. In the circumstances, I find that he conjured up the obligation to repay a loan during the period under scrutiny:-

i) PA purports to establish his original loan to Pier by reference to a collection of copy credit slips and bank statement summaries (all in German) which appear to show payments being made into the Pier account in 2005; these documents of themselves do not support the existence of a loan, or a liability to repay or on what terms;

ii) PA has produced no loan agreement; nor is there any contemporaneous document which verifies the existence of any loan; there is no document which sheds any light on, for instance, the interest rate payable on the loan, or the repayment term;

iii) Materially, PA did not mention the existence of this (apparently sizeable) loan (€75,000) when he:

a) Filed his apparently "comprehensive"[9] 'Form E' on 25 November 2018; specifically, he did not mention the loan in answer to q.4.5 "Give details of any other assets. Include… any monies owed to you";

b) Filed his application for variation / clarification of the freezing order (16 December 2019);

c) Prepared the statement in support of the application for variation (December 2019).

The loan was first mentioned in January 2020 in a document prepared by PA to support his application for variation of the freezing order;

iv) The loan does not show up clearly or consistently in the company accounts for the years which follow the making of the purported loan; he implausibly explained this in oral evidence as a decision to keep the monies loaned "off the balance sheet";

v) When challenged about the earlier non-disclosure of the loan, he replied that he "had no need to" disclose it earlier; he said that he felt it was a "zero sum game", by which I understood him to mean that he did not feel that he needed to account for sums passing between his personal account and the account of the company of which he was a director. I do not accept that he truly believed

[9] Letter from Irwin Mitchell dated 17 October 2018

this, or that (if he did) it absolves him from culpability in using the business account for personal expenditure after the account had been frozen;

vi) When questioned by Mr Weale, at one point he referred to the sums paid into the Pier account in 2005 as a "long-term investment", rather than a loan; I found this answer (which he later sought to correct) revealing. It was equally revealing that PA referred to benefiting from repayment of the loan in the relevant period in the sum of €20,000 (of the €75,000 apparently owed), but he made no attempt to particularise this.

34. Even if I had reached the conclusion, which I make clear I have not, that the sums taken from the account could legitimately be said to be repayments of a loan, I am far from sure that I would have concluded that such payments were "necessary" at that point in time to meet the company's "other" liabilities.

35. *Legal costs incurred by Pier*: I turn next to deal with PA's claim (reference his witness statement dated 15 May 2020) that: "certain monies withdrawn by me from the company's account were to pay legal fees that had been incurred by the company". I reject this case too:

i) I find that PA was in no doubt that he could not use the frozen account for his own *personal* legal costs; quite apart from it being obvious from the terms of the order, this point was reinforced in a letter to him from MM's solicitors dated 20 May 2019, which PA confirmed that he had received. Notwithstanding this clear position, it is remarkable (and this is evidenced by the disclosed bank statements) that PA withdrew £5,000 on the very next day after receiving the letter (21 May 2019) to the credit of Clyde & Co;

ii) In the same document, PA avers to the fact that he had repaid his partner £2,020 to reimburse her in respect of company legal costs; this would appear to be in addition to the £12,850 which were withdrawn from the frozen account, but there is no separate statement of this additional liability; this payment finds no corroboration in the (redacted) bank statements produced by PA;

iii) In the first application issued by PA for variation/clarification (January 2020) he wished to be able to allow Pier to "defend itself against (sic.) the claim number FD19F00024"; this was long after he had withdrawn sums from the account to pay legal costs;

iv) In a document which PA produced for the contempt hearing on 3 February 2020, he asserted that "the company is the second Defendant and should be allowed to pay for reasonable legal costs to ascertain its legal position. The solicitors' invoices to me and the company clearly state for Pier Investment / ToLATA / bare trust". In fact, the solicitors' invoices were *not* sent to PA "and the company" (see below), but just to PA. In that regard, I find that:

a) The three invoices (Sinclair Gibson) and the relevant correspondence (both firms) which have been produced by PA have all been addressed to PA personally;

b) PA has produced no invoices from Clyde & Co. to support his contention that the firm was acting at any time for Pier or were billing them;

c) The letter from Sinclair Gibson to PA dated 8 January 2020 makes clear that the "vast majority" of the work related to the *welfare* proceedings (which plainly has nothing to do with Pier), and the balance was on the 'ownership' and *schedule 1* proceedings (though no reference to advising Pier let alone 'defending' Pier). The solicitors were clear that the bill was delivered to PA "personally", and that it was PA "personally" who signed the engagement letter;

d) The invoice from Sinclair Gibson, dated 1 December 2019 is marked in relation to "professional charges in relation to your personal family affairs and the ToLATA/bare trust and schedule 1 claim" (emphasis by underlining added);

v) PA has not disclosed the client care letters from either Sinclair Gibson or Clyde & Co; these letters would surely have assisted him in confirming the identity of the client, or clients, for whom the solicitors were acting. PA told me in oral evidence that he had not produced these letters as they were "so long"; given the volume of documentation he *has* produced, this explanation is ludicrous;

vi) There is no reason why Pier should incur, or have incurred, any legal costs in the substantive proceedings in any event; I would expect the company to be adopting a neutral stance in the proceedings. There is no evidence that the company sought any preliminary advice (a point tentatively volunteered by Mr Thomas) even to establish this position, and/or the potential conflict of interest with PA;

vii) As to that last point, on PA's own case (that the solicitors were working partly for him and partly for Pier), there was, as Mr Weale observed and I agree, a likely conflict of interest;

viii) In his recent witness statement, he deposed to the reasonableness of the company paying "certainly less than 50%" of the legal costs. In his oral evidence, he suggested that only £2,000 or £3,000 reflected the company's share of the legal costs, but he was unable to give any breakdown of these figures, or explain the apportionment;

ix) Sinclair Gibson and Clyde & Co have been plainly embarrassed to discover that their invoices have been settled using funds from a frozen account:

a) Sinclair Gibson wrote on 18 February 2020: "… we were not aware that the funds we had received from [PA] had come from the Pier Investment company account. [PA] had informed us that he would be meeting our fees from his personal funds and those of his girlfriend… Thank you for bringing this to our attention. We can confirm that we are no longer advising [PA] in any capacity";

b) Clyde & Co wrote on the following day (19.2.20): "… at the time that payment was received it was understood by the case handlers involved that the funds were being paid by [PA] from his personal account and not from Pier's bank account and our accounts department identified the payment as coming from [PA]".

Conclusion

36. It is notable that notwithstanding the enormous amount of documentary disclosure there has been in the case (the bundle for this hearing, for instance, exceeded 750 pages), reflecting meticulous attention to detail, PA has not been able to produce a single document which evidences the obligation to pay the director's salary either at all or during the relevant period, the existence or terms of the purported loan(s) to Pier, or Pier's *bona fide* legal costs.

37. I read the written evidence with care, and listened with particular interest to PA's oral testimony. For the reasons set out above, and on all the evidence considered, I find to the required standard, that:

i) PA breached the 'freezing order' of 22 March 2019 by making/procuring the transfers/payments set out in MM's amended Application Notice (27 April 2020);

ii) Such breaches were deliberate, that is to say that I am in fact satisfied that PA made/procured the payments knowing that they were in breach of the freezing order.

Sanction and next steps

38. It has not been possible for practical reasons to proceed at this hearing to deal with any issue of sanction following my factual determinations. I shall therefore adjourn the question of sanction to a date to be fixed before me. I note that MM has made it clear that she has no wish to see PA committed to prison for breach of the order.

39. That said, this court has made orders premised upon Pier having sufficient funds to pay for expert tax advice in order to quantify Pier's liabilities (for the purpose of the *Schedule 1* Proceedings), and yet more importantly, family therapy (relevant to the Welfare Proceedings). It appears that compliance with these orders has been materially compromised by the lack of funds in the Pier account, and I am keen that the issue of sanction is therefore listed soon.

40. I shall also deal entirely separately with PA's renewed application to vary the terms of the 22 March 2019 freezing order. In the interests of speed and cost, I have offered to deal with this on the basis of written submissions. Given the imminence of the final hearing, it may be that such an application has become somewhat academic; if there is a need to determine it, perhaps it could be addressed as an ancillary point once the ownership of the shares in Pier has been resolved.

41. That is my judgment.