Neutral Citation Number: [2025] EWCA Civ 265

Case No: CA-2024-002572

**IN THE COURT OF APPEAL (CIVIL DIVISION)**
**ON APPEAL FROM THE BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES BUSINESS LIST (ChD)**
**The Hon. Mr Justice Rajah**
**[2024] EWHC 1994 (Ch)**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14/03/2025

**Before :**

**LORD JUSTICE LEWISON**
**LADY JUSTICE KING**
and
**LORD JUSTICE COULSON**

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**Between :**

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| **BARCLAYS BANK PLC** | **Claimant / Respondent** |
| **- and –** | |
| **(1) SCOTT DYLAN**<br>**(2) DAVID SAMUEL ANTROBUS**<br>**(3) JACK MASON** | **Third Defendant / Appellant** |

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**James Knott and Karl Anderson** (instructed by **Eversheds Sutherland (International) LLP**) for the **Claimant / Respondent**
**James Counsell KC and Michael Uberoi** (instructed by **Janes Solicitors**) for the **Third Defendant / Appellant**

Hearing date: 04/03/2025

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# Approved Judgment

This judgment was handed down remotely at 10.30am on 14/03/2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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**Lord Justice Lewison:**

## Introduction

1. On 31 July 2024 Rajah J, on the application of Barclays Bank plc, found that two directors of Inc & Co Group Ltd ("IGCL") were in contempt of court for having breached three freezing orders. The three orders were referred to by the judge as the FTG Freezing Order, the ITG Freezing Order and the Jack Mason Freezing Order. One of those directors was Mr Jack Mason. Mr Mason, the judge found, was in contempt of court on four counts. The judge imposed a sanction on Mr Mason of 22 months' immediate imprisonment on each of counts 1, 2 and 3; and a sanction of 12 months immediate imprisonment on count 4. Those sentences were to run concurrently. The judge's judgment on liability is at [2024] EWHC 1994 (Ch); and his judgment on sanction is at [2024] EWHC 2776 (Ch).

2. The judge reached his conclusions after a trial lasting nine days. The documents placed before him ran to thousands of pages; and he heard evidence from a number of witnesses, including Mr Mason, who gave evidence for two days.

3. Mr Mason appeals as of right. In relation to counts 1, 2 and 3, his appeal is based on challenges to the judge's findings of fact (Ground 3 in the Appellant's Notice). That challenge is repeated in relation to count 4 but he has two additional grounds of appeal in relation to that count (Grounds 1 and 2), asserting that it was procedurally unfair to permit Barclays to amend the committal application; and that the facts found by the judge do not amount to a breach of the Jack Mason Freezing Order. The question of amendment was only touched on in closing submissions; and no formulated amendment was in existence before the judge gave judgment.

## The background facts

4. I can take the background facts from the judge's judgment. Although the judge was dealing with all three Respondents, the only relevant Respondent in this appeal is Mr Mason.

5. Mr Dylan, Mr Antrobus and Mr Mason were entrepreneurs.

6. Mr Dylan and Mr Antrobus co-founded Fresh Thinking Group Ltd ("FTG") which was incorporated on 25 January 2018. The shareholders of FTG were Mr Dylan, Mr Antrobus and Gareth Dylan (Mr Dylan's partner) in equal shares. Mr Antrobus was FTG's sole director until his resignation on 22 March 2022.

7. FTG was an independent capital investment group which invested in distressed companies and companies looking to grow. It did this by acquiring them and integrating them as subsidiaries of a holding company called Inc & Co Group Ltd ("ICGL"). Such funding was channelled through a wholly owned subsidiary of FTG called FT(Ops) Ltd ("FT(Ops)"). FTG's last filed accounts (for the year ending 30 June 2020) disclosed shareholder funds of over £2.7 million, with assets including investments valued at over £3.8 million.

8. Mr Mason and FTG each owned 50% of ICGL which was incorporated in 2019. Mr Mason and Mr Antrobus were the directors of ICGL. The judge referred to the combined structure of FTG and its subsidiaries and ICGL and its subsidiaries as "the FTG/ICGL structure". By March 2022 the FTG/ICGL structure had approximately 60 companies in a complex structure of interconnected companies and shareholdings. In a witness statement served on behalf of FTG and ITG by Mr Dylan on 8 February 2022 (i.e. shortly before the transactions of which Barclays complains), it was said that the FTG/ICGL structure had a turnover of "more than £130,000,000".

9. Mr Mason was the CEO of the Inc & Co Group and on its Senior Leadership Team. There was some debate as to which companies formed part of the Inc & Co Group. Mr Mason was adamant that FTG was not part of the Inc & Co Group. The judge referred to the wholly or partially owned subsidiaries of ICGL as "the Inc & Co Group", "the Group" or "Group companies."

10. Mr Antrobus was the Group's Chief Technology Officer and on the Group's Senior Leadership Team.

11. Mr Dylan, although not a director of any company in the FTG/ICGL structure, was a significant figure in that structure. He was described by his previous solicitors as "a person of significant control of ITGL, Fresh Thinking Group Limited, and its subsidiary companies" who made "operational decisions". Mr Dylan, if not formally on the Senior Leadership Team, was consulted as if he was. Mr Mason said Mr Dylan had complete autonomy on financial transactions for the Group, including acquisitions, and the structuring and restructuring of the FTG/ICGL structure.

12. Other members of the Senior Leadership Team included the Finance Director, Chris Hatfield and Lynne Makinson-Walsh, Chief People and Culture Officer.

13. One of ICGL's wholly owned subsidiaries was Inc Travel Group Ltd ("ITG"). ITG in turn owned 100% of the shares in Baldwins Travel Agency Ltd ("Baldwins") and Inc Travel Ops Ltd ("ITOL"). Mr Mason was the sole director of ITG until his resignation on 22 March 2022. FTG held security over many Group companies. In particular it held security (in the form of a debenture and a mortgage of chattels each dated 9 September 2021) over Baldwins ("the FTG/Baldwins debenture").

14. Inc Logistics Group Ltd ("ILGL") was a subsidiary that was owned as to 36% by FTG and as to 64% by ICGL. Mr Mason and Mr Antrobus were the directors of ILGL.

15. In 2021 Barclays became the bankers to FTG and ITG and a number of Group companies.

16. On 18 November 2021 Barclays commenced two connected sets of proceedings against a number of parties including each of the Respondents, FTG and ITG ("the Proceedings"). In the Proceedings Barclays alleged that there was an unlawful conspiracy to take advantage of automated decision making at Barclays to make unauthorised borrowings through group companies which were paid away. It claims a loss of at least £13,734,716.57.

17. Barclays applied for and obtained a number of freezing orders prohibiting the respondents from disposing of, dealing with or diminishing the value of any assets within England and Wales up to the value of £13,734,716.57. The three relevant freezing orders for the purposes of the committal applications are:

    i) the freezing order against FTG, obtained without notice on 18 November 2021 and renewed on 25 November 2021 and again on 5 July 2022 ("the FTG Freezing Order"). The FTG Freezing Order specifically identified FTG's shares in ICGL as assets to which the order applied;

    ii) the freezing order against ITG, obtained without notice on 18 November 2021 and renewed on 25 November 2021 and again on 5 July 2022 ("the ITG Freezing Order**"**). The ITG Freezing Order specifically identified ITG's shares in Baldwins as assets to which the order applied; and

    iii) the freezing order against Mr Mason, obtained without notice on 18 November 2021 and renewed on 25 November 2021 and again on 5 July 2022 (**"**the Mason Freezing Order"). The Mason Freezing Order specifically identified Mr Mason's shares in ICGL as assets to which the order applied.

18. It was clear from documents Barclays had obtained from the liquidator of FTG that on 17 and 18 March 2022, Mr Dylan sought an overnight valuation of FTG and ITG from Plimsoll Publishing Ltd ("Plimsoll**"**). In the course of an email exchange Mr Dylan stated that "[w]e are looking to do an insolvency restructure", and that "[ i]ts [sic] Fresh Thinking Group Ltd and Inc Travel Group Ltd we want to put into administration, with the 50% shares of Inc & Co Group Ltd and Baldwins Travel Agency Ltd being purchased by a third party".

19. From those documents, it was also clear that on 21 March 2022, Plimsoll provided the valuation reports requested, and valued FTG at £0, ITG at £333,000 and FTG's 50% shareholding in ITG at £0.

20. The next day, on 22 March 2022, a number of things happened:

    i) Mr Dylan, in his capacity as a charge holder over FTG, filed a Notice of Intention to appoint an administrator of FTG.

    ii) FTG, as a charge holder over ITG, acting by Mr Antrobus, filed a Notice of Intention to appoint an administrator of ITG.

    iii) Mr Antrobus resigned as a director of FTG, as reflected in a document filed at Companies House two days later, on 24 March 2022.

    iv) Mr Mason resigned as a director of ITG.

21. The following day, on 23 March 2022:

    i) FTG's 50% shareholding in ICGL, and its 36% shareholding in ILGL was transferred to a BVI company called Investments Holdings (BVI) Ltd ("the FTG Transfer");

ii) ITG's 100% shareholding in Baldwins, and its 100% shareholding in ITOL was transferred to another BVI company, International Travel Holdings (BVI) Ltd ("the ITG Transfer"). This was apparently effected by FTG pursuant to powers conferred on it under a debenture it held over ITG.

22. The judge referred to Investments Holdings (BVI) Ltd as "Investment Holdings", International Travel Holdings (BVI) Ltd as "Travel Holdings" and the two companies together as "the BVI companies".

23. At the same time, on 23 and 24 March 2022, ICGL's shares in all the other top level Group companies (which were not the subject of a freezing order), were transferred to Investment Holdings – these were Inc & Co Property Group Ltd, Inc Retail Group Ltd, WFT Holdings Inc, Sports Group Ltd, Inc Data Group Ltd, and its share of ILGL which it co-owned with FTG.

24. Further, on 28 March 2022, Companies House was notified that Investment Holdings had taken a series of debentures dated 24 March 2022 over these subsidiaries. The debentures were all redacted so that it was not possible to identify the persons who had signed on behalf of Investment Holdings or on behalf of the subsidiaries. On 28 March 2022, Travel Holdings was registered as holding a debenture over Baldwins (also redacted) dated 24 March 2022 and forms were filed at Companies House stating that the FTG/Baldwins debenture had been satisfied in full.

25. Barclays alleged in the application notice that also on or about 23 March 2022 there was a transfer of Mr Mason's 50% shareholding in ICGL to Investment Holdings ("the Mason ICGL Share Transfer"). This was deduced from documents which were electronically filed much later, between 24 September and 30 October, at Companies House which did not identify the person who had filed them. The filings recorded that Mr Mason had ceased to be a person with significant control of ICGL on 23 March 2022 and that Investments Holdings held 100% of ICGL's shares. This allegation formed count 4, which was subsequently amended.

26. The judge referred to the FTG Transfer, the ITG Transfer, the discharge of the FTG/Baldwin debenture and the Mason ICGL Share Transfer as "the March transactions".

27. On 25 March 2022, Eversheds, who acted for Barclays, discovered the transactions from electronic filings at Companies House (which, as with all subsequent filings in respect of the FTG/ICGL structure at Companies House, failed to identify who was filing the documents). It sent a letter to the Respondents' then legal representatives (Pannone Corporate LLP for Mr Dylan, and Brabners LLP for Mr Antrobus and Mr Mason), as well as FTG and ITG, setting out its view that the FTG and ITG Transfers constituted breaches of the freezing orders and demanding a full explanation from the Respondents of their knowledge of and involvement in the transfers.

28. A response came later that day, from an anonymous email account purporting to be from FTG's Legal Department, "legal@freshthinking.group" (into which the Respondents' solicitors were copied, as well as Mr Mason personally), stating that none of the Respondents had been directors at the time of the asset sale and the FTG and ITG Transfers were part of a sale at fair value to a third party unconnected with the Respondents by new (unidentified) directors. The email concluded that any steps

taken by Barclays to reverse the transfers or bring proceedings for contempt would be "vigorously defended".

29. Both Brabners and Pannone declined to respond to Eversheds' correspondence on the basis that they were not instructed on that issue.

30. On 29 March 2022, Mr Mason emailed Barclays copying in lawyers acting for the Respondents, stating that he had not personally authorised any sale of any Group company, and that to his knowledge, "I still retain 50% of all companies and therefore have not gone against any Freezing orders". On the same date, an email from legal@freshthinking.group to Barclays and Mr Mason, said that "[w]hilst it holds no value as per the valuations, we can confirm that Mr Mason still holds 50% of his shares in Inc & Co Group".

31. In response to further correspondence from Eversheds, a letter dated 31 March 2022 in the name of FTG was sent on behalf of unidentified "defendants" and "parties". It did not identify the individual who had written it. The key points made in that letter were that (a) Mr Mason and Mr Antrobus had resigned before the asset transfers and could not therefore be in breach of the freezing orders, (b) Mr Dylan was a shareholder and had no power to effect the asset transfers and could not therefore be in breach of the freezing orders, (c) that the asset transfers had been effected by new (but unidentified) directors at a fair value having regard to (undisclosed) independent valuations that the companies were worthless, (d) that Mr Mason, Mr Antrobus and Mr Dylan were not directors or shareholders of the purchasers who were (unidentified) third parties, (e) that the purchaser had acquired the assets in good faith and without notice of the freezing orders and therefore had acquired good title, and (f) otherwise declining to respond to detailed requests for information and documentation from Eversheds.

32. In April 2022 a newly incorporated company in the State of Delaware in the United States of America, called Global Investment Management Holdings Inc ("GIMH") became the principal funder of the group companies transferred to the BVI companies in place of Investment Holdings. This was the role which had before the March transactions been performed by FTG. Some 21 companies, eleven of which had Mr Mason as sole director, granted debentures to GIMH in connection with secured lending, and debentures in favour of Investment Holdings were discharged. The filings in relation to these debentures at Companies House were again anonymous and the debentures were redacted so that the signatories could not be identified. The involvement of GIMH was discovered by Barclays in May 2022. The judge discussed GIMH later in his judgment in connection with the documents later obtained from Citibank.

33. There was in 2022 much correspondence between Eversheds and the Respondents, their lawyers, FTG and ITG, in respect of these developments but little further information was forthcoming. None of the underlying documentation giving effect to the transactions being notified to Companies House in anonymous filings was produced to Eversheds despite repeated and detailed requests. Mr Antrobus in a short email to Eversheds on 21 June 2022 dismissed Evershed's requests for information and documentation including as to the identity of the new directors, the persons who had signed the transfers, the ultimate beneficial owners of the purchasers, the person sending emails from "legal@freshthinking.group" and as to Mr Antrobus' role in

what had happened as "fishing for information that you are not entitled to". No response was received from correspondence to the BVI companies.

34. ITG was placed in administration on 8 April 2022. On 28 April 2022 FTG entered administration. On 30 October 2022 the Administrator of both companies wrote to Barclays stating that he had, since his appointment, been told by Mr Dylan of the purported sale of the assets of FTG and ITG in March 2022 but there had been no cooperation whatsoever from any of the Respondents in providing information in relation to the sale, the location of assets or the production of books and records for the Companies. He noted that the Respondents appeared to continue to have access to the IT systems of FTG but seemed unwilling to provide him with either the information relevant to the companies or the sale. That statement was apparently corrected during the course of the trial.

35. Notwithstanding the appointment of an Administrator, there continued to be anonymous filings made at Companies House in respect of FTG without the authority, knowledge or consent of the Administrator. Significantly, there were FTG electronic filings in April, May and October 2022 in relation to the purported directorship of Rea Barreau.

36. On 27 February 2023 Barclays issued the committal applications ("the Applications") by a separate Form N600 against each Respondent.

37. On the same date, Mr Mason received a loan from GIMH, in the sum of £82,472.12. Barclays had served a statutory demand on Mr Mason on 19 August 2022 in respect of an unpaid costs order made against him in July 2022 in the Proceedings and this sum was used to pay the debt due to Barclays. Mr Mason produced a loan agreement pursuant to which he agreed to pay GIMH an arrangement fee of £45000 and 3000% interest every six months.

38. On 1 November 2023 Investment Holdings was struck off the BVI Register of Companies.

39. On 5 December 2023 Mr Mason contacted Eversheds stating that the 50 ICGL shares had been transferred back to Mr Mason by Investment Holdings on 4 December 2023 (notwithstanding the fact that Investment Holdings had at this date been struck off). That statement appeared, contrary to the email of 29 March 2022, to confirm that a transfer of Mr Mason's shares had actually taken place.

40. At some point in 2024 Mr Mason said he sold these shares in ICGL, now an empty shell, to Mr Hatfield for £20,000 to meet his legal costs. Barclays says it consented to that sale without any admissions as to whether the shares had genuinely been returned to Mr Mason and as a matter of pragmatism.

41. In January 2024 Barclays obtained orders, opposed by GIMH, for third party disclosure from Citibank of documentation relating to GIMH. That documentation appeared to the judge to show a strong connection between GIMH and each of the Respondents, and also a connection between GIMH and the BVI companies. The documentation included:

i) an Annual Franchise Tax Report to the State of Delaware for the tax year 2022 showing that Darryl Dylan, Mr Dylan's brother, was the ostensible ultimate beneficial owner of GIMH, although it was Mr Dylan's address which was given as GIMH's principal place of business and Mr Dylan's mobile telephone number for that principal place of business.

ii) The tax report showed Shirley Kerkhove as GIMH's sole director in 2022. That was significant because she was also a director of Investment Holdings in March 2022.

iii) Minutes of a meeting of a quorate number of directors of GIMH (comprising Mr Dylan and his brother) on 6 September 2022 at FTG and ITG's offices at which it was resolved to open bank accounts with Citibank with each of the Respondents, as well as Chris Hatfield and Daryl Dylan, having full individual authority to deal with Citibank, including having individual signing rights in respect of any accounts opened.

iv) Internal emails from Citibank in relation to the opening of those bank accounts indicating that they had already performed KYC checks in relation to Mr Dylan and his brother in opening accounts for Investment Holdings, and that seed money for the GIMH accounts was Inc & Co Group funds.

v) Although initially the documents (including a structure chart) suggested that GIMH was owned as to 50% by each of Mr Dylan and his brother as a "personal holding company for Scott & Daryl Dylan's private investments", by September 2023 there were structure charts (certified by an accountant as a true representation of the beneficial ownership structure and directors) sent to Citibank by Mr Dylan showing the ownership of GIMH as owned in equal shares by Mr Dylan, Mr Mason and Mr Antrobus, and that they were the three directors of GIMH.

vi) An email chain showing that by October 2023 Citibank were the bankers for many Inc & Co Group companies and treated GIMH's account as part of that group.

42. Notwithstanding the transfer of virtually the entire business of FTG and ICGL to the BVI companies, there was no dispute that the day-to-day management and control of the Inc & Co Group remained unchanged. Mr Mason was still the CEO of the Inc & Co Group. Mr Antrobus was still the Chief Technology Officer of the Group. Mr Dylan continued to be involved with the Senior Leadership Team in making business decisions for the Group. He described himself on his personal website as a "Founder and Partner" at "Inc & Co" overseeing the strategic direction of the company.

## The allegations of contempt

43. The relevant allegations made in the application notices were:

i) Count 1: Mr Dylan, Mr Antrobus and Mr Mason breached the FTG Freezing Order by knowingly assisting or permitting the FTG Transfers. Mr Dylan admitted this breach.

ii) Count 2: Mr Dylan, Mr Antrobus and Mr Mason breached the ITG Freezing Order by knowingly assisting or permitting the ITG Transfers. Mr Dylan admitted this breach.

iii) Count 3: Mr Antrobus and Mr Mason breached the FTG Freezing Order by knowingly assisting or permitting the release of the FTG/Baldwins debenture.

iv) Count 4: Mr Mason breached the Mason Freezing Order made against him by making the Mason ICGL Share Transfer. I will return to the details of this allegation later.

## The judge's self-directions

44. At [12] the judge directed himself that the burden is on the applicant to prove the contempt to the criminal standard – beyond reasonable doubt. At [13] he referred to the decision of Christopher Clarke J in *Masri v Consolidated Contractors Co SAL* [2011] EWHC 1024. Among the points he made with reference to that judgment were:

i) In reaching its conclusions it is open to the court to draw inferences from primary facts which it finds established by evidence. A court may not, however, infer the existence of some fact which constitutes an essential element of the case unless the inference is compelling i.e. such that no reasonable man would fail to draw it. In support of that proposition the judge cited *Kwan Ping Bong v R* [1979] AC 609.

ii) Where the evidence relied on is entirely circumstantial the court must be satisfied that the facts are inconsistent with any conclusion other than that the contempt in question has been committed; and that there are no other co-existing circumstances which would weaken or destroy the inference of guilt.

iii) It may be legitimate to take into account against the alleged contemnors the fact (if it be such) that, when charged with contempt they have given no evidence or explanation of something of which they would have had knowledge and of which they could be expected to give evidence if it was true.

## Mr Mason's evidence

45. The judge heard Mr Mason give evidence and did not find him a credible witness. He gave a number of reasons for his conclusion. They included:

i) Mr Mason had sworn an affidavit in response to the application in which he made a false statement in swearing that the material in the affidavit came from his own knowledge. He was unable to stand behind that affidavit at trial, and disavowed it completely. He accepted that he had read the affidavit before he signed it; and knew he was swearing that the contents of his First Affidavit were true. The judge did not accept his excuses for having done so; and regarded his swearing of a false affidavit as a significant blow to his credibility.

ii) Mr Mason presented as a competent, confident and able businessman. He fenced with counsel for Barclays in cross examination and in doing so showed

that he was clever, at times quick thinking and on top of the documents. He did not seem to the judge to be naïve or supine or easily led. His evidence that he had naively and unquestioningly accepted important matters he was told by Mr Dylan or others, or signed important documents that were drafted for him by nameless people, strained credulity.

iii) Mr Mason maintained that the in-house legal team was responsible for communications. But he could not name a single member of the team and said that emails from legal@freshthinking.group came from this group of nameless individuals. The judge found that incredible. The judge was satisfied that the various documents ascribed to the "in house legal team" in this case, including the emails from "legal@freshthinking.group", were drafted by Mr Dylan, and Mr Mason knew full well that that was the case and approved of what he was doing.

iv) He signed three statements of case during the course of the proceedings, accompanied by a statement of truth, each of which asserted that Mr Antrobus was the sole director of FTG. These were relevant to the question of Rea Barreau's purported directorship. The judge found that his evidence that this was an oversight was incredible.

v) The Citibank documentation showed a strong connection between GIMH and each of the Respondents, and also a connection between GIMH and the BVI companies. Mr Mason gave evidence that he had no involvement or connection with the BVI companies or with GIMH. When confronted in cross examination with the Citibank disclosure he pointed out that the structure charts showing him as director and co-owner of GIMH had been prepared by Mr Dylan and he had not been copied in when he sent them to Citibank. He did not attempt to explain why Mr Dylan might have wanted to make such false representations to the apparent benefit of Mr Mason and Mr Antrobus, and to his detriment. The judge did not find his evidence on this issue credible. The judge supported his conclusion by reference to the loan that Mr Mason took out with GIMH at an interest rate of 3000% every six months. The judge did not think it credible that any businessman would enter such a transaction with an entity which they had no interest in or control over.

vi) He gave an answer in cross-examination stating that he was his own boss; but tried thereafter to go back on that answer. The judge considered that Mr Mason's instinctive response that he was his own boss correctly stated his belief, and revealed more than he wished to.

vii) As noted, on 22 March 2022 Mr Mason resigned as a director of ITG. He gave a number of different reasons for that; none of which the judge accepted.

46. Although Rea Barreau was a key witness for Mr Mason, he had made no attempt to contact her, which the judge found incredible.

47. In relation to count 4 (which I discuss further below) the judge said at [104] that "Mr Mason's evidence was teased out over two days with new information coming out as it progressed." He set out Mr Mason's changing story, each version of which he rejected as untrue; and said at [107] that Mr Mason's eventual detailed story

unravelled in the witness box. As the judge recorded, Mr Mason "was driven to admit" that the shares in ICGL had not been moved in March 2022. He concluded at [108] that:

> "passages of Mr Mason's sworn affidavit of 29 May 2024 [which he set out] and his sworn evidence in the witness box were deliberately false evidence intended to deceive the Court."

48. At [111] he said:

> "I cannot be sure that there was a transfer of Mr Mason's shares by Mr Mason, whether on 23 March 2022 or in October 2022."

49. He added at [112]:

> "I can be sure, and am sure, that any documentation in relation to this transfer has been deliberately suppressed and not disclosed by all of the Respondents. I can be sure, and am sure, that Mr Mason's various explanations about this alleged transfer of shares were deliberate falsehoods."

50. The judge found all four counts proved to the criminal standard against Mr Mason.

**Circumstantial evidence and drawing inferences**

51. Blackstone's Criminal Practice 2025 begins its discussion of circumstantial evidence at paragraph F.122 thus:

> "Circumstantial evidence is evidence of relevant facts, i.e. facts from which the existence or non-existence of facts in issue may be inferred. It does not necessarily follow that the weight to be attached to circumstantial evidence will be less than that to be attached to direct evidence. For example, the tribunal of fact is likely to attach more weight to a variety of individual items of circumstantial evidence, all of which lead to the same conclusion, than to direct evidence to the contrary coming from witnesses lacking in credibility."

52. The classic statement of the value of circumstantial evidence is Pollock CB's charge to the jury in *R v Exall* (1866) 4 F & F 922:

> "It has been said that circumstantial evidence is to be considered as a chain, and each piece of evidence as a link in the chain, but that is not so, for then, if any one link broke, the chain would fall. It is more like the case of a rope composed of several cords. One strand of the cord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength.
>
> Thus it may be in circumstantial evidence—there may be a combination of circumstances, no one of which would raise a reasonable conviction, or more than a mere suspicion; but the

> whole, taken together, may create a strong conclusion of guilt, that is, with as much certainty as human affairs can require or admit of."

53. Mr Counsell KC relied on the observations of Lord Diplock, giving the advice of the Privy Council in *Kwan Ping Bong v R* on appeal from Hong Kong. His Lordship said at 615:

> "The requirement of proof beyond all reasonable doubt does not prevent a jury from inferring, from the facts that have been the subject of direct evidence before them, the existence of some further fact, such as the knowledge or intent of the accused, which constitutes an essential element of the offence; but the inference must be compelling - one (and the only one) that no reasonable man could fail to draw from the direct facts proved."

54. These observations were quoted by the judge.

55. But that test has been said in the Court of Appeal in this jurisdiction to be "a somewhat artificial and over legalistic approach when the task of the jury in a particular case is to look at the evidence as a whole": *R v Peart* [2005] EWCA Crim 528. In that case, the court commended the then JSB specimen direction which was in these terms:

> "… before convicting on circumstantial evidence you should consider whether it reveals any other circumstances which are or may be of sufficient reliability and strength to weaken or destroy the prosecution case."

56. In *R v Jabber* [2006] EWCA Crim 2694 Moses LJ said:

> "The correct approach is to ask whether a reasonable jury, properly directed, would be entitled to draw an adverse inference. To draw an adverse inference from a combination of factual circumstances necessarily does involve the rejection of all realistic possibilities consistent with innocence. But that is not the same as saying that anyone considering those circumstances would be bound to reach the same conclusion. That is not an appropriate test for a judge to apply on the submission of no case. The correct test is the conventional test of what a reasonable jury would be entitled to conclude. We are not bound by the passing observation of the Privy Council in relation to a Hong Kong ordinance [i.e. *Kwan Ping Bong*], a far cry from the proper approach of a judge at the close of a prosecution case."

57. In *DPP v Varlack* [2008] UKPC 56, [2009] 4 LRC 393, Lord Carswell, giving the advice of the Privy Council, considered a number of authorities, including *R v Jabber*, which he evidently approved. He said at [24]:

> "The trial judge correctly approached the submission of no case by reference to the test whether a reasonable jury properly directed might on one view of the evidence convict. When one applies this principle, it follows that the fact that another view, consistent with innocence, could possibly be held does not mean that the case should be withdrawn from the jury. The judge was in their Lordships' opinion justified in concluding that a reasonable jury might on one view of the evidence find the case proved beyond reasonable doubt and convict the respondent."

58. Mr Counsell argued that these later cases were dealing with a submission of no case to answer at the close of the prosecution case. He suggested that the position would be different where a judge was summing up after all the evidence had been heard. That submission is, in my judgment, inconsistent with the decision of the House of Lords in *McGreevy v DPP* [1973] 1 WLR 276. In that case it was held that there was no duty on the trial judge to give the jury a special direction, telling them in express terms that before they could find the accused guilty they had to be satisfied, not only that the circumstances were consistent with his having committed the crime but also that the facts proved were such as to be inconsistent with any other reasonable conclusion. It was sufficient for him to direct the jury that they had to be satisfied of the guilt of the accused beyond reasonable doubt.

59. That decision was applied in *Kelly v R* [2015] EWCA Crim 817 in which Pitchford LJ said at [39]:

> "The risk of injustice that a circumstantial evidence direction is designed to confront is that (1) speculation might become a substitute for the drawing of a sure inference of guilt and (2) the jury will neglect to take account of evidence that, if accepted, tends to diminish or even to exclude the inference of guilt (see *R v Teper* [1952] AC 480). However, as the House of Lords explained in *McGreevy*, circumstantial evidence does not fall into any special category that requires a special direction as to the burden and standard of proof. The ultimate question for the jury is the same whether the evidence is direct or indirect: *Has the prosecution proved upon all the evidence so that the jury is sure that the defendant is guilty?* It is the task of the trial judge to consider how best to assist the jury to reach a true verdict according to the evidence." (original emphasis)

60. The current specimen direction in the Crown Court Compendium concludes thus:

> "You must decide which, if any, of these pieces of evidence you think are reliable and which, if any, you do not. You must then decide what conclusions you can fairly and reasonably draw from any pieces of evidence that you do accept, taking these pieces of evidence together. You must not however engage in guesswork or speculation about matters which have not been proved by any evidence. Finally, you must weigh up

> all of the evidence and decide whether the prosecution have made you sure that D is guilty."

61. The judge's self-direction at [13] was, if anything, more favourable to the respondents than it needed to be; and in fact Mr Counsell does not criticise the judge's self-direction. What he says, however, is that although the judge directed himself correctly, he failed to apply his own self-direction.

62. At this point it is worth noting that in *Smith New Court Securities Ltd v Citibank* [1997] AC 254, 275 Lord Steyn said:

> "The principle is well settled that where there has been no misdirection on an issue of fact by the trial judge the presumption is that his conclusion on issues of fact is correct. The Court of Appeal will only reverse the trial judge on an issue of fact when it is convinced that his view is wrong. In such a case, if the Court of Appeal is left in doubt as to the correctness of the conclusion, it will not disturb it."

63. This principle has been applied in, among other cases, *Fine & Country Ltd v Okotoks Ltd* [2013] EWCA Civ 672, [2014] FSR 11.

**Appeals on fact**

64. I have set out elsewhere an appeal court's approach to an appeal against a trial judge's findings of fact: *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5, [2014] FSR 29 at [114]; *Volpi v Volpi* [2022] EWCA Civ 464, [2022] 4 WLR 48 at [2]. That approach applies with equal force to an appeal against findings of fact made in proceedings for contempt of court: *Deutsche Bank AG v Sebastian Holdings Inc* [2023] EWCA Civ 191, [2023] 1 WLR 1605 at [53]; *Isbilen v Turk* [2024] EWCA Civ 568 at [35].

65. The hurdle facing an appellant is even higher where the judge has heard oral evidence in a case where credibility is in issue and has found a witness's evidence to have been incredible. *Cook v Thomas* [2010] EWCA Civ 227 at [48]. That point has particular resonance in this appeal, because Mr Counsell relied extensively on Mr Mason's own evidence in seeking to challenge the judge's findings of fact.

66. In *Fage* I warned against what I called "island hopping" (i.e. relying on selected parts of the evidence in order to undermine a judge's findings of fact, where the judge had been immersed in the whole sea of evidence in the course of a trial). That applies equally to cases where the issue is contempt of court. As Nugee LJ put it in *Business Mortgage Finance 4 plc v Hussain* [2022] EWCA Civ 1264, [2023] 1 WLR 396 (a contempt of court case) at [99]:

> "What cannot be done in practice is to invite the appellate court to review all the evidence below with a view to substituting its own view of the facts. Duplicating the role of the trial judge is not the function of the appellate court, and cannot be done."

67. Mr Counsell also accused the judge of ignoring parts of Mr Mason's evidence. It is pertinent, however, to recall that an appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration: *Henderson v Foxworth Investments Ltd* [2014] UKSC 41, [2014] 1 W.L.R. 2600 at [48] and [57]. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it: *Volpi* at [2].

68. Even where the appeal is an appeal against the inferences drawn by the trial judge from circumstantial evidence the hurdle remains a high one. Males LJ put it thus in *Deutsche Bank* at [55] (another case of contempt of court):

> "Mr Matthews submitted on behalf of Mr Vik that, in a case based on inferences, any material error made by the judge would undermine her conclusion as to Mr Vik's credibility. Developing the "net from which there is no escape" metaphor from *Ablyazov* [2013] 1 WLR 1331, para 52 which I have already cited, he submitted that if any material aspect of the judge's reasoning was shown to be unsound, the consequence would be that the net would not close and the inferences in question could not safely be drawn. However, it must be borne in mind that the judge's assessment of the credibility of a witness, particularly in a complex and document-heavy case where there has been extensive cross-examination, will be based upon the cumulative effect of a whole range of factors, not all of which are easily articulated or readily discernible from a transcript. Even if an appellant is able to point to individual errors which the judge has made, for example that a particular piece of evidence has been misunderstood, that will not necessarily vitiate the judge's overall conclusion. Whether it does so will depend upon the importance of the error in question in the context of the case as a whole, including the nature and force of other factors for and against the judge's conclusion."

69. This was, indeed, a complex and document-heavy case where there was extensive cross-examination. Throughout his judgment, when making findings of fact, the judge was acutely conscious of the heightened standard of proof; and he made it clear that his findings were findings of which he was sure. That is the correct approach to fact-finding; and I can detect no fault in the way that the judge approached his task. In particular, I can find no traction in the judgment to support Mr Counsell's submission that the judge started from the premise that Mr Mason was lying and worked backwards from there.

70. I turn now to the particular points that Mr Counsell emphasised, even though they are in the nature of "island hopping".

## Mr Mason's first affidavit

71. Mr Mason accepted that he could not stand behind his first affidavit (which he disavowed at trial); and that he had made a false statement in swearing that its contents came from his own knowledge. The judge described Mr Mason's first

affidavit as a significant blow to his credibility. Mr Counsell said that he was wrong to have done so; and that he should have analysed Mr Mason's stated reasons for having sworn to the truth of that affidavit in greater detail than he did. I reject that criticism. The judge considered at [64] the "excuses" proffered for why he signed that affidavit; and rejected them. He described Mr Mason at [65] as not being naïve or easily led; and at [66] referred to a letter dated 2 February 2023 and signed by Mr Mason which told much the same story. Since the judge heard Mr Mason give evidence on that topic, he was not required to say more than that. He was also entitled to find that in circumstances in which Mr Mason admitted having lied in sworn evidence it was a significant blow to his credibility.

## Rea Barreau

72. The judge introduced the topic of Rea Barreau at [70]:

> "In the First Affidavits, the Respondents presented a united front that the transfers by FTG and ITG had been effected by Rea Barreau. She was said to be a Seychellois national and resident, and professional corporate administrator, who had been appointed as a director of FTG on 22 February 2022. It was said that the FTG and ITG Transfers were arms' length sales to independent companies."

73. Although Mr Counsell said that Mr Mason had nothing to do with FTG, and that therefore Ms Barreau was irrelevant to his defence, that overlooks the assertion that Ms Barreau effected the ITG transfers as well. The judge recorded, however, that Mr Mason in his evidence in the witness box sought to distance himself from the previously united front of the Respondents that the FTG Transfer and the ITG Transfer were carried out by Rea Barreau. His evidence was that he was told of the FTG and ITG Transfers on 24 March 2022 after they had happened and he was not involved in them. He said in evidence there was no mention of Rea Barreau at the time, and the first time he came across her name was when she was mentioned in correspondence from Barclays.

74. Nevertheless, in January 2024 Mr Mason was given permission by Meade J to call her as a witness by live video link from the Seychelles. This was months before Mr Mason's second affidavit in which he began to distance himself from Ms Barreau. It was in that context that the judge found it incredible that Mr Mason had made no attempt to contact her. The judge then set out detailed reasons for concluding that the Rea Barreau story was a deliberate lie; and that it was evidence of a joint enterprise by all three respondents.

75. Mr Counsell's point is that it was wrong for the judge to have drawn any adverse inference against Mr Mason from the evidence he heard about Rea Barreau or the failure to call her, given that the Rea Barreau story formed no part of his defence at trial. I disagree. At the very least, it showed that Mr Mason had given false evidence to the court in his first affidavit; and that was a factor which the judge was entitled to take into account in his overall assessment of Mr Mason's credibility. Moreover, the judge's observation that no attempt had been made to contact Rea Barreau was made in relation to a period in which the Rea Barreau story *was* part of Mr Mason's

defence. He did not in terms draw any adverse inference against Mr Mason from his failure to call her at the trial itself.

## The Citibank documentation

76. The judge found at [83] that the Citibank documentation showed a strong connection between GIMH and each of the Respondents, and also a connection between GIMH and the BVI companies. I have set out his findings earlier. Mr Counsell says that the judge was wrong in making that finding. In oral submissions, however, he accepted that on their face those documents did show a strong connection between GIMH and Mr Mason. In reality, his point was not that the judge was wrong in his assessment of what the documents showed, but in his assessment that, as against Mr Mason, they presented a true picture.

77. He argued that the only mention of Mr Mason in the "Citibank documentation" was to be found in documents which were written by Scott Dylan for his own purposes, and to which Mr Mason was not copied in. There was an obvious inference to be drawn from the fact that Mr Dylan did not copy Mr Mason into such documentation, namely that Mr Mason was not involved in the GIMH matters referred to in the "Citibank documentation", rather than the inference that the judge drew, that he was. This alternative inference was not considered by the judge at all.

78. In my judgment the suggestion that the judge did not consider the alternative inference is incorrect. What he said at [83] was this:

> "Both Mr Mason and Mr Antrobus gave evidence that they had no involvement or connection with the BVI companies or with GIMH. When confronted in cross examination with the Citibank disclosure they both pointed out that the structure charts showing them as directors and co-owners of GIMH had been prepared by Mr Dylan and they had not been copied in when he sent them to Citibank. Neither attempted to explain why Mr Dylan might have wanted to make such false representations to the apparent benefit of Mr Mason and Mr Antrobus, and to his detriment. I did not find their evidence on this issue credible."

79. It is clear from this passage that the judge did consider whether Mr Mason's explanation was true and he decided that it was not. The reason he gave for rejecting the inference was one that was plainly open to him, namely that there was no explanation of why Mr Dylan might have wanted to make false representations to his own detriment and to Mr Mason's benefit.

80. But that is not all. In the following paragraph the judge reinforced his conclusion by considering the loan that Mr Mason had taken from GIMH at an interest rate of 3000% every six months. He decided that it was simply not credible that any businessman would enter such a transaction with an entity which they had no interest in or control over. In addition he took into account Mr Mason's answer in cross-examination that he was his own boss (an answer that he later sought to retract). All these points are ample justification for the judge's finding of fact.

## Timing of resignation

81. The judge found at [90] that Mr Mason resigned as a director of ITG the day before the transfers took place. He did so in anticipation of those transfers, to assist the companies to move out of the jurisdiction and to conceal his own involvement.

82. Mr Counsell accepted that an explanation was called for, but submits that Mr Mason gave an explanation. In the passage from Mr Mason's evidence on which Mr Counsell relied, Mr Mason said that his resignation had not been an out of the blue decision but had been taken weeks before. It was a complete coincidence that it took effect on the day before the transfers. It was his foreknowledge that Mr Mason would resign that enabled Mr Dylan to arrange the transfer of shares on the very next day.

83. This submission, does not, however, engage with the question *why* Mr Mason resigned. The judge considered the reasons that he proffered and rejected them. Moreover, having formed a very adverse view of Mr Mason's credibility, he was entitled to reject Mr Mason's evidence about the timing of his decision.

## The FTG/Baldwins debenture

84. The judge said that Baldwins' audited accounts for the financial year ending 31 October 2021 disclosed a figure of £2,688,485 as a secured debt owing to group companies, expressly including FTG; and that FTG held security in respect of that debt. The FTG/Baldwins debenture comprised a debenture and a mortgage of chattels, each dated 9 September 2021. Each of the security documents recited that FTG had agreed to provide Baldwins with loan facilities on a secured basis and that Baldwins provided, under the security documents, security to FTG. Between 23 and 28 March 2022, and in apparent breach of the FTG Freezing Order, any debt owed to FTG, and the FTG Baldwins Debenture, were released by FTG and new debentures granted by Baldwins in favour of Travel Holdings for new secured loan facilities under a facility agreement dated 24 March 2022.

85. Mr Mason first asserted in his affidavit of 29 May 2024 that there was no outstanding debt; and said that he had checked that with Mr Hatfield, the group's CFO. Barclays, however, demonstrated that £350,000 was still outstanding; and none of the respondents asserted the contrary.

86. In the course of his evidence Mr Mason departed from his pleaded case (which had been signed with a statement of truth); and said that the £350,000 had been provided by FTG to Baldwins for the purposes of an ABTA bond, but he said it was not a loan but a gift. The judge commented at [118]:

> "There was no explanation as to why FTG might want to make a gift of half of £350000 to Mr Mason as the other 50% shareholder of the Group and it is not recorded in Baldwins' accounts as an asset or capital of Baldwins. It would be uncommercial for FTG to make a gift of £350000 to a subsidiary of ICGL in respect of which it only had, indirectly, a 50% interest."

87. The judge went on to observe that Baldwins must have had the necessary documentation to be able to show what it did and did not owe FTG as at 23 March 2022 and Mr Mason as its director (and Group CEO) was able to procure that any necessary documentation was produced, as he accepted in cross-examination. Yet no documents were produced; from which the judge inferred that they would not have backed Mr Mason's evidence that the money was a gift. The judge was thus satisfied that the £350,000 was a loan rather than a gift.

88. He went on to hold that Mr Mason could and should have prevented Baldwins participating in the release and replacement of the FTG/Baldwins debt and debenture with debt and debentures in favour of Travel Holdings. He was therefore in breach of the FTG Freezing Order.

89. Mr Counsell's criticism of the judge is that he reversed the burden of proof by criticising Mr Mason for not being able definitively to answer the question whether the £350,000 was a loan or a gift. In my judgment this criticism is misplaced.

90. Mr Mason's evidence was contrary to his pleaded case and was inherently improbable. The judge was entitled to test his assertion that the money was a gift by asking whether there was anything to support Mr Mason's oral evidence. Neither a corroborative witness (i.e. Mr Hatfield) nor any documentation (which was in Mr Mason's power to obtain) was put before the judge. The judge was, in my judgment, fully entitled to reject Mr Mason's explanation.

**Conclusion on ground 3**

91. In sum, Mr Counsell pointed to wisps of evidence which might have led another judge to a different conclusion; but he did not surmount the high hurdle which faces an appeal on questions of fact. He also pointed to some pieces of evidence that the judge did not expressly mention in his judgment; but as the cases show, the fact that a trial judge does not expressly mention all the evidence cannot lead to the inference that he ignored it. In my judgment the attack on the judge's findings of fact on ground 3 (which encompasses counts 1 to 3) fails.

92. The judge imposed an immediate custodial sentence of 22 months on each of those counts, to run concurrently. It was faintly suggested in the skeleton argument that if Mr Mason were to succeed on any but not all of the grounds of appeal, that sentence might have to be revisited. No substantive argument was advanced in support of that point, and my provisional view is that there is no need to revisit the sentence on those counts. In that sense, the result of the appeal on count 4 makes no practical difference. Mr Counsell did, however, reserve the right to make short submissions relating to that point; and I am willing to permit him to do so. I note, however, that Mr Dylan's appeal against a similar sentence of 22 months failed: *Dylan v Barclays Bank plc* [2025] EWCA Civ 20.

**Count 4**

93. I begin with the procedural issues, which were argued by Mr Uberoi.

94. Count 4, as originally formulated in paragraph (12) of the Application Notice, alleged:

> "On or about 23 March 2022, Jack Mason, in breach of paragraph 3 of the Jack Mason Freezing Order and in contempt of court, transferred his 50 ordinary shares in the capital of ICGL out of the jurisdiction to a BVI registered company called Investment Holdings (BVI) Limited."

95. Paragraph 3 of the order in force at the date of the application provided:

> "Until the return date or further order of the Court, the Second Defendant must not remove from England and Wales or in any way dispose of, deal with or diminish the value of any of his assets which are in England and Wales up to the value of £13,734,716.57."

96. Paragraph 6 (2) specifically identified the ICGL shares as being caught by the prohibition. Thus the clear allegation was that there had been an actual transfer of the shares and that that transfer had taken place in March 2023.

97. At [107] the judge noted that in cross-examination Mr Mason had been:

> "… driven to admit that in fact the shares in ICGL had not been moved on 23 March 2022 at all. They had been moved in October 2022 when he was facing a bankruptcy petition by Barclays."

98. At [108] the judge found that there was no transfer of shares on 23 March 2022, which was, of course, the original allegation. At [111] he recorded the rival submissions made to him:

> "Mr Uberoi submitted that in the absence of an instrument of transfer or a register, coupled with Mr Antrobus and Mr Mason's denial that they agreed to or signed any documentation in relation to this transfer I cannot be sure that that there was a transfer of Mr Mason's shares by Mr Mason, whether on 23 March 2022 or in October 2022. Barclays say that I can infer that these steps must have taken place, thereby implicating Mr Mason and Mr Antrobus."

99. As I read paragraph [112] of the judge's judgment, particularly in the light of what he had said at [108] to [111], he was not able to conclude that count 4 as originally framed had been proved, because he could not be sure that "that Mr Dylan dotted the "i"s and crossed the "t"s in terms of compliance with company law." Nor, as I read the judgment, did he find as a fact that the shares had been moved in October 2022. But he went on to say that:

> "I can be sure that the Respondents wanted to achieve the movement of these shares out of the jurisdiction to stop them from falling into the hands of a trustee in bankruptcy who might investigate the March transactions and to give the impression that this had happened on 23 March 2022. I can be sure, and I am sure that Mr Mason and Mr Antrobus knew

> about and permitted the filing of the documents with Companies House in September and October 2022 which indicated that Investment Holdings had been the owner of his ICGL shares since 23 March 2022. As directors of ICGL they could have, but did not, correct those entries at Companies House."

100. There are in my judgment three key findings that the judge made. First Mr Mason knew about the filing of documents at Companies House in September and October 2022. Second, that Mr Mason permitted the filing of those documents. Third, that Mr Mason could have, but did not, correct those filings.

101. The "dealing" which the judge found thus did not encompass any overt act by Mr Mason. All that the judge said was that Mr Mason knew about and permitted the filing of documents; and that he took no steps to correct them. He made no finding about who actually made the filings.

102. He then considered whether that was a breach of the Mason Freezing Order. As to that, he said:

> "That is a dealing with Mr Mason's shares which is a breach of the Mason Freezing Order. To the extent that is different from the terms of the contempt alleged (which alleges that Mr Mason transferred the shares on 23 March 2022) I do not consider it material and if necessary I will allow the contempt application to be amended. These differences have arisen because of the false impression which the Respondents have sought to give Barclays, which has unravelled during the trial."

103. The order in its final form differed from the original formulation. The judge's finding, as embodied in the order, was:

> "in September and October 2022 [Mr Mason] did breach a freezing order made against him by Mr Justice Trower dated 18 November 2021, continued on 25 November 2021 by Mr Justice Adam Johnson and further continued on 5 July 2022 by HHJ Hodge QC, namely by making or attempting or permitting the purported transfer of his shares in ICGL to Investment Holdings and the filing of the documents with Companies House in September and October 2022 which indicated that Investment Holdings had been the owner of the Third Defendant's shares in ICGL since 23 March 2022 (the same being "dealings" with the Third Defendant's shares for the purposes of the relevant freezing order)."

104. There are a number of differences between the two. First, the count as originally framed concentrated on March 2022. The order referred to events in September and October 2022. Second, the count as originally framed alleged an actual transfer of ICGL shares. The order referred not merely to making a transfer but also to "attempting or permitting" a "purported" transfer. Moreover, the wrapped up wording

of the description of the breach goes well beyond the judge's findings of fact; and is, in itself, hard to understand.

105. Mr Mason has two grounds of appeal against that part of the order (grounds 1 and 2 in the Appellant's Notice). First, he says that the reformulation of the alleged breach was procedurally unfair. The need for any amendment was only raised in the course of closing submissions; and even then there was no application for permission to amend, and no formulated proposed amendment. Indeed, there was no formulated amendment before the judge when he handed down his judgment on liability. On the contrary, the amendment was formulated as an interpretation of what the judge had already found. Second, a "purported" transfer, still less an attempted purported transfer, (which had no legal effect) could not amount to a "dealing" in Mr Mason's shares. These two points shade into one another. These grounds, as originally formulated, did not attack the judge's findings of fact on count 4.

106. It is common ground that in an application for committal for contempt of court, the court is required to adopt a high degree of fairness.

107. Following the introduction of the CPR, the court is much less willing than heretofore to allow a late amendment to a statement of case. As Lloyd LJ put it in *Swain-Mason v Mills & Reeve LLP* [2011] EWCA Civ 14, [2011] 1 WLR 2735 at [72]:

> "… I do accept that the court is and should be less ready to allow a very late amendment than it used to be in former times, and that a heavy onus lies on a party seeking to make a very late amendment to justify it, as regards his own position, that of the other parties to the litigation, and that of other litigants in other cases before the court."

108. This was echoed by Sir Geoffrey Vos CHC in *Nesbit Law Group LLP v Acasta European Insurance Co Ltd* [2018] EWCA Civ 268 at [41]:

> "In essence, the court must, taking account of the overriding objective, balance the injustice to the party seeking to amend if it is refused permission, against the need for finality in litigation and the injustice to the other parties and other litigants, if the amendment is permitted. There is a heavy burden on the party seeking a late amendment to justify the lateness of the application and to show the strength of the new case and why justice requires him to be able to pursue it. These principles apply with even greater rigour to an amendment made after the trial and in the course of an appeal."

109. On any view this was an extremely late amendment. In *Inplayer Ltd v Thorogood* [2014] EWCA Civ 1511 Mr Thorogood was found to have committed contempt of court by making false statements. The statements that the trial judge had found which amounted to contempt had not been particularised in the application notice; but before the sentencing hearing she granted retrospective permission to amend. Mr Thorogood then prepared a witness statement for that hearing. It was contended on appeal that the evidence against Mr Thorogood was very strong, and Mr Thorogood had the

opportunity to answer the allegation in his evidence for the sentencing hearing. This court rejected that argument. Jackson LJ said at [39]:

> "I am afraid this will not do. A judge hearing a committal application should confine himself or herself to the contempts which are alleged in the application notice. If the judge considers that other alleged contempts require consideration, the correct course is to invite amendment of the application notice and then provide any necessary adjournment so that the respondent can prepare to deal with those new matters. I therefore uphold the first ground of appeal."

110. This court approved those observations in *Hewlett Packard Enterprise Co v Sage* [2017] EWCA Civ 973, [2017] 1 WLR 4599 at [35]. Likewise in *Kea Investments Ltd v Watson* [2020] EWHC 2599 (Ch) at [220] Nugee LJ said that the court must confine itself to the terms of the count as specified in the Particulars of Contempt, and that if it is sought to go outside them, it is necessary formally to apply to amend them. In *Navigator Equities Ltd v Deripaska* [2024] EWCA Civ 268, [2024] BCC 526 Males LJ referred to *Kea* and added at [48]:

> "The last of these principles is of particular importance in the present case. This principle should not be thought of pejoratively as a "pleading point". Rather, it is a necessary aspect of the "heightened standard of procedural fairness" which has to be maintained when a defendant is facing committal to prison. … Accordingly, the issue on a committal application is not whether the defendant is guilty of contempt, but whether it is proved to the criminal standard that the defendant is guilty of contempt in the respects set out in the application notice. "

111. Returning to *Swain-Mason*, immediately after the passage I have quoted Lloyd LJ went onto say at [73]:

> "A point which also seems to me to be highly pertinent is that, if a very late amendment is to be made, it is a matter of *obligation on the party amending to put forward an amended text* which itself satisfies to the full the requirements of proper pleading. It should not be acceptable for the party to say that deficiencies in the pleading can be made good from the evidence to be adduced in due course, or by way of further information if requested, or as volunteered without any request. The opponent must know from the moment that the amendment is made what is the amended case that he has to meet, with as much clarity and detail as he is entitled to under the rules." (emphasis added)

112. The need for a formal application and a formulated amendment was also stressed in *Magdeev v Gaynulin* [2019] EWCA Civ 1802 at [26] to [27] and in *Zu Sayn-Wittgenstein-Sayn v HM Juan Carlos de Borbón y Borbón* [2022] EWCA Civ 1595, [2023] 1 WLR 1162. In the latter case Simler LJ explained at [63]:

> "The judge was wrong to proceed on the basis of a promised but unarticulated amendment to the pleaded case. Unless the particular circumstances make it obviously unnecessary, a formal application to amend is ordinarily required, with a written document setting out the proposed amendments; and, again in general, there is a merits test to overcome in obtaining permission to amend. The pleading must not only be coherent and properly particularised, it must plead allegations which if true would establish a claim that has a real prospect of success. This means that the claim must carry a degree of conviction; and the pleading must be supported by evidence which establishes a factual basis which meets the merits test."

113. Both sides prepared written closing submissions at the end of the evidence. The submissions filed on behalf of Barclays continued to assert that Mr Mason's shares had actually been transferred. The submissions filed on Mr Mason's behalf concentrated on the question whether Barclays had proved to the requisite standard that the transfer did, indeed, take place.

114. The two changes to the allegation were very briefly touched on in the oral closing submissions of Mr Peto KC, then appearing for Barclays. The first related to the date. The point was in fact raised by the judge who said that he was conscious of the terms of the application "on or about 23 March". Mr Peto's answer was:

> "If in fact it had happened in October but was misdated, then I think we would say the following, that the question of whether these shares were transferred by Mr. Mason is the issue as to whether that happened. If that happened in March or whether it happened in October, either way is a contempt. So the question is, is it, first, any less of a contempt because it happened in October? No."

115. At this stage, therefore, the case was still that Mr Mason's shares *had* been transferred. The next relevant exchange very shortly afterwards was this:

> "My Lord, even if it were to be said that there had not been a transfer of the shares, we would submit in the alternative that one thing is quite clear is that there has been dealing with them. Whatever the legal analysis, one thing is clear is that the shares, Mr. Mason's shares and also the other shares, have all been dealt with, that company filings, which are prima facie evidence of their truth, were put up to put a label on them that they were now held by a BVI company and held in its name. That is dealing in an object, dealing in an asset if you are going to be putting a name on it so one is left with that really. My Lord, finally about Mr. Mason. As I said, his defence now really is he did everything or refrained from doing things because Mr. Dylan told him to.
>
> MR. JUSTICE RAJAH: Just on that point about dealing, again, notice of committal is not that there was dealing but that there

> was a transfer.
>
> MR. PETO: Correct.
>
> MR. JUSTICE RAJAH: So you make the same submission, that there is no injustice were that to be the issue.
>
> MR. PETO: Yes, my Lord, that is right."

116. Mr Uberoi objected to any amendment.

117. There was no discussion of what, short of a transfer, might amount to a dealing; nor was any real consideration given to the question when, in the course of a committal application and after the close of evidence, it would be proper to allow an amendment to the application notice. Nor did Barclays proffer a formulated amendment for Mr Mason's legal team to consider, despite the fact that there had been an interval of some 11 days between the close of evidence and the closing submissions. In fact, the thrust of Mr Peto's submission was that there was no need for an amendment, which sits ill with the extensive amendments which were in fact subsequently made to the Application Notice. In my judgment, both changes to the allegation needed to be considered together; and since the change of position from an allegation of an actual transfer to a purported transfer (or even an attempt to make a purported transfer) raised a real legal question about the effect of an injunction prohibiting "dealing" with an asset, the judge ought to have granted an adjournment in order to allow Mr Mason's legal team to consider the position, in line with what Jackson LJ had said in *Inplayer*. The judge considered that the amendment was either unnecessary or permissible "because of the false impression which the Respondents have sought to give Barclays, which has unravelled during the trial." I do not consider that this is sufficient to overcome the procedural shortcomings. Even liars are entitled to know precisely what they are alleged to have done, and to answer those allegations. It was, in my judgment, wrong in principle for the judge to have made findings of fact, which went beyond the allegation contained in the Application Notice, without requiring an amendment to be made. It was also wrong in principle for the amended allegation to be formulated for the first time after the judge had already made his findings, which went beyond what had been pleaded and argued. That is to put matters back to front. Nor do I consider that it is an adequate response to say (as Barclays do) that whether something is a "dealing" is a question of law which can be (and has been) debated for the first time on this appeal. If there is scope for serious debate about what action or inaction is caught by a freezing order, that is something that should be argued and decided at trial.

118. This was not merely a case management decision. It had a direct bearing on the judge's conclusion that count 4 had been proved against Mr Mason: compare *Zu Sayn-Wittgenstein-Sayn* at [67].

119. In my judgment, it was unfair for the allegation to be expanded "on the hoof" without adequate protection for Mr Mason.

120. Mr Uberoi also sought to persuade us that the judge was wrong to have concluded at [107] that Mr Mason's evidence about the transfer of the shares covered by the Mason Freezing Order "unravelled" during the course of his cross-examination. His

submissions on the facts went far beyond the pleaded grounds of appeal. Since I would allow Mr Mason's appeal against the judge's finding on count 4 for procedural reasons, it is not necessary to go into this issue in detail. Suffice it to say that I was not persuaded that Mr Uberoi had surmounted the high hurdle necessary to reverse a judge's findings of fact, especially after having heard extensive oral evidence.

**Conclusion on grounds 1 and 2**

121. I would allow the appeal on ground 1. I would dismiss the appeal on ground 2, save to the extent that it is already encompassed within ground 1.

**Overall result**

122. I would discharge paragraphs 2 IV and 3 II of the judge's order on liability. However, subject to any short submissions Mr Counsell may make on the sentence imposed on counts 1 to 3, my provisional view is that paragraph 3 of the sanctions order (committing Mr Mason to prison for 22 months) will remain undisturbed.

**Lady Justice King:**

123. I also agree that for the reasons given by my Lord, Lord Justice Lewison, Ground 3 of the appeal should be dismissed; Ground 1 of the appeal should be allowed; and that Ground 2 should be dismissed, save to the extent that it is already encompassed in Ground 1. I also agree with the provisional view expressed by Lewison and Coulson LJJ that because Grounds 1 and 2 only went to Count 4, which was the subject of a separate and lesser concurrent sentence of imprisonment, this outcome can have no effect on the 22 month sentence of imprisonment imposed concurrently on each of Counts 1, 2 and 3.

124. I would also endorse the observations of Coulson LJ as to what are often the consequences of s.13 of the Administration of Justice Act 1960 and r.52.3(1)(a)(i) of the CPR, whereby a party is entitled to appeal as of right against a committal order.

125. In my experience, it is all too common for a contemnor to absent themselves not only from the committal hearing but also from the hearing of their appeal. Particularly 'repugnant,' to use the term used by Jackson LJ in *Thursfield v Thursfield* [2013] EWCA Civ 840, and referred to by Coulson LJ, is a situation where a contemnor joins the hearing of their appeal by way of video link from the safety of whichever country in which they have sought refuge. Unhappily as matters stand at present, the court is powerless to impose any condition requiring the attendance of the contemnor in person to the hearing of their appeal. A permission filter would at least allow such a condition to be imposed where the likelihood is that the contemnor would otherwise not attend the appeal hearing and by doing so continue (if upheld by the appeal court) to avoid serving the sentence imposed by the first instance judge.

**Lord Justice Coulson:**

126. I agree that, for the reasons given by my Lord, Lord Justice Lewison, Ground 3 of the appeal should be dismissed; Ground 1 of the appeal should be allowed; and that Ground 2 should be dismissed, save to the extent that it is already encompassed in Ground 1. Because Grounds 1 and 2 only went to Count 4, which was the subject of a

separate and lesser concurrent sentence of imprisonment, my provisional view is that this outcome can have no effect on the 22 month sentence of imprisonment imposed concurrently on each of Counts 1, 2 and 3.

127. The purpose of this short judgment is to demonstrate the way in which this appeal highlights an ongoing anomaly in the civil justice system. Mr Mason fought the committal application at a trial which lasted 9 days. It is plain from the transcripts that he was an evasive and untruthful witness. On all the critical issues, the judge rejected his evidence. Following the liability judgment, Mr Mason undertook to the court to attend the sentencing hearing, but instead he fled the jurisdiction to an undisclosed location. In breach of his undertaking, he did not return for the sentencing hearing.

128. Despite all this, by reason of s.13 of the Administration of Justice Act 1960 and r.52.3(1)(a)(i) of the CPR, Mr Mason was entitled to appeal as of right against the committal order. This meant that, in the present case, he sought, under Ground 2 and particularly Ground 3, to launch a wholesale attack on the factual findings made and inferences drawn by the trial judge. This resulted, as Lord Justice Lewison has explained, in island-hopping of the most extensive kind, sometimes by reference to documents that were not even in the bundle. The bulk of the preparation time for the appeal hearing, and the submissions made on behalf of Mr Mason, were taken up with this element of the appeal.

129. I am in no doubt that, if there had been no right to appeal, and that an application for permission to appeal had been required instead, a Lord or Lady Justice of Appeal would have granted permission on the procedural point in Ground 1. But they would definitely have refused permission to appeal on Ground 3 (and that part of Ground 2 which also trawled over the trial judge's conclusions on the facts), on the basis that it was an illegitimate attempt to open up those findings of fact, and therefore contrary to the principles identified by Lewison LJ in paragraphs 64-68 above. Moreover, in the interests of justice, the Lord or Lady Justice of Appeal considering such an application would probably have made it a condition of granting any permission to appeal at all that Mr Mason was to attend the hearing of the appeal in person.

130. In a very similar case to this one, *Thursfield v Thursfield* [2013] EWCA Civ 840, Jackson LJ said:

> "44. It is repugnant to the proper administration of justice that a contemnor can flout orders of the court, then absent himself from the committal hearing, then avoid serving whatever prison sentence is imposed and then finally avail himself of the procedures of the Court of Appeal, whilst enjoying the shelter of some safe haven overseas.
>
> 45. I respectfully suggest that this case and some other recent cases arising out of banking fraud call for the attention of law reformers. It may be thought that persons who have been committed to prison for contempt should only be entitled to appeal with permission. Even if it is not thought appropriate to impose a general requirement for permission in committal cases, I would suggest that at the very least there should be a permission requirement in cases where the appellant has refused to submit to the jurisdiction of the court."

131. This has not been a lone call for the reform of this aspect of the law of contempt: see *Al-Rawas v Hassan Khan & Co* [2022] EWCA Civ 671 at [17] – [20] and [26], a more recent case in which the same point was made.

132. I am aware that the Law Commission is currently considering wholesale reforms to the law in relation to contempt and that the possibility of introducing a permission filter is one of the specific matters that they are considering. In my judgment, the outcome of this appeal – and in particular the considerable costs and wasted resources that have been engendered by Mr Mason's right to raise the hopeless Ground 3 – makes an eloquent case for the reform of this aspect of the law.

## Postscript

133. After these judgments were circulated in draft, the court was informed that Mr Counsell did not propose to advance submissions in relation to the overall sentence on counts 1 to 3.