Neutral Citation Number: [2017] EWHC 1876 (QB)

Case No: HQ17X00760

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice,
Strand, London, WC2A 2LL

Date: 21 7 2017

Before:

MRS JUSTICE WHIPPLE DBE

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Between:

	Mark Alexander Newson-Smith	**Applicant**
	- and -	
	Alawi Quais Abdul Mumem Al Zawawi	**Respondent**

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Mr Richard Walford (instructed by **Eversheds Sutherland LLP**) for the **Applicant**

Mr Thomas Grant QC and Mr James Kinman (instructed by **Irwin Mitchell**) for the **Respondent**

Hearing dates: 26, 27 and 28 June 2017

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Judgment Approved

Mrs Justice Whipple:

Introduction

1. The applicant is Mark Newson-Smith. He is a judgment creditor against three parties: JARZ Mozambique Holdings Ltd ("JARZ"), ZR Energies Mocambique Limitada ("ZREM") and Jason Rosamond ("Mr Rosamond"). Judgment was entered on 20 October 2014 in the amount of £3.183m plus costs and interest. The judgment debt remains unpaid and continues to accrue interest.

2. The Respondent is Alawi Al Zawawi. He was, at all times material to the creation of the judgment debt, a director and (indirectly, through intermediate companies) a shareholder of each of JARZ and ZREM.

3. After judgment was entered, the applicant initiated proceedings under CPR Part 71 in order to obtain information from JARZ and ZREM to enable him to enforce the judgment debt (these are the "CPR 71 proceedings"). As an officer of JARZ and ZREM the respondent became involved in those proceedings, and in the course of them was ordered to attend for oral examination and to produce documents.

4. The applicant alleges that during the CPR 71 proceedings, the respondent interfered with the due administration of justice by making false statements. The applicant now seeks permission pursuant to CPR 81.12 (3) to initiate committal proceedings for contempt of court against the respondent.

The Law

5. The applicant argues the respondent has interfered with the administration of justice, and is in contempt, in the three following ways:

    a) he knowingly or recklessly made false and misleading statements in purported compliance with the order for disclosure in the CPR 71 proceedings (Ground 1);

    b) he knowingly or recklessly put forward a false case in his oral and written evidence to the Court (Grounds 2 and 4);

    c) he knowingly or recklessly made false and misleading statements in witness statements attested by a statement of truth (Grounds 2 and 3).

6. The first two categories ((a) and (b)) are covered by Part III of CPR 81 (CPR 81.12-81.14). The third category (c) is covered by Part VI of CPR 81 (CPR 81.17-81.18). However, it is common ground before me that the precise categorisation is not material to the approach that I should take. As to the approach, that again is in large part agreed. The leading cases are cited in the White Book at CPR 81.18.2 and are: *KJM Superbikes Ltd v Hinton (Practice Note)* [2008] EWCA Civ 1280, *Barnes v Seabrook* [2010] EWHC 1849

(Admin), *Berry Piling Systems Ltd v Sheer Projects Ltd* [2013] EWHC 347 (TCC), and *Daltel Europe Ltd v Makki* [2005] EWHC 749 (Ch). I summarise the relevant principles as follows:

a) The question for the Court at this stage is not whether a contempt of court has in fact been committed, but whether proceedings should be brought to establish whether it has or not.

b) Because proceedings for contempt of court are public law proceedings, when considering whether to give permission the Court must have regard to the public interest alone. That involves two key considerations:

   i) Is the case one in which the public interest requires that the committal proceedings should be brought; and

   ii) Is the applicant a proper person to bring them?

c) A number of factors are likely to be relevant to the assessment of the public interest in any given case. On the one hand, there is a public interest in drawing the attention of the legal profession and potential witnesses to the dangers of making false statements to the Court. On the other hand, the Courts should guard against exercising the discretion too freely in favour of allowing proceedings to be pursued by private persons. Specifically:

   i) the court should not grant permission unless there is a strong prima facie case that the allegations will be proved to the criminal standard at a substantive hearing;

   ii) the Court must not stray into determining the merits of the case at the permission stage;

   iii) in cases where false statements are at issue, the applicant must show a strong prima facie case not only that the statement was false but also that it was known at the time to be false;

   iv) in assessing the strength of the applicant's prima facie case, the Court will take account of all the circumstances of the case, and will have regard in particular to the circumstances in which the statement was made, the state of the maker of the statement's mind, including his understanding of the likely effect of the statement, the use to which the statement was put in the proceedings, the extent to which the false statements were persisted in, and any delay in warning the respondent that he or she may have committed contempt by making a false statement at the earliest opportunity; and

   v) The court must guard against the risk of allowing vindictive litigants to use committal proceedings to harass persons against whom they have a grievance.

d) The Court must also consider whether it is proportionate to allow committal proceedings to be brought. That involves an assessment of the strength of the case against the respondent(s), the amounts in money terms which were involved in the proceedings in which the allegedly false statements were made and which were affected by those statements, the likely costs involved on both sides, and the amount of court time likely to be involved in managing and hearing the matter.

e) The Court must also consider whether contempt proceedings would further the overriding objective of the CPR to deal with cases justly.

7. I would add the following observations, specific to this application. First, to establish a contempt, the false statement must have been made with the intention that, or at least in the knowledge that it was likely that, the administration of justice would be interfered with as a result, see *Tinkler v Elliot* [2014] EWCA Civ 564 at [44]:

> *"in order for an allegation of contempt to succeed it must be shown that ... in addition to knowing that what you are saying is false, you had to have known that what you are saying was likely to interfere with the course of justice"* citing *Edward Nield v Loveday* [2011] EWHC 2324 (Admin).

8. Secondly, a false statement is one which was not true, and which when made the maker knew was not true, or did not honestly believe to be true. There is a fine dividing line between mere carelessness or negligence on the one hand, and recklessness in the making of the statement on the other. Recklessness is sufficient *mens rea* for contempt (*Berry Piling Systems Ltd* at [27]). However, a statement is made recklessly only if the maker

> *"consciously has no idea whether it is right or wrong ... Recklessness is a concept which judges can address as they do in a criminal context. Logic also suggests that a person who represents as true something which he or she consciously does not know whether it is true or not is consciously misleading the Court and that should be considered as contemptuous"* (ibid, at [28]).

Optimism or even carelessness in the making of statements will not be sufficient to establish that a party is in contempt (ibid, at [30(c)]).

9. At this point, and only in relation to this point, the parties' submissions diverge. They take different views on what recklessness means, in the context of false statements. The applicant argues that if the maker of a statement does not take sufficient steps to check whether the statement is true or not, then he makes a recklessly false statement, because he can have no honest belief in the truth of it. The respondent argues that a failure to conduct sufficient checks is insufficient, in and of itself, to render a statement false by recklessness, because the maker may still believe that statement to be true, even if he has not conducted those checks; it is only if he does not care whether it is true or not – a different and higher hurdle to surmount - that it can be said that he lacks an honest belief in the truth of the statement.

10. In resolving this divergence of view, I am assisted by the Court of Appeal's judgment in *JSC BTA Bank v Ereshchenko* [2013] EWCA Civ 829. In that case, the applicant argued that the respondent, Mr Ereshchenko, was in contempt because he lacked an honest belief in his statements to the Court, based on his failure to engage with the terms of a *Norwich Pharmacal* order and his failure to make reasonable enquiries as to the truth of the position. Lloyd LJ rejected that argument, saying this:

> "[42] … What the Bank has to persuade the court of, to make out its case of contempt as regards each or any of the statements in question, is that Mr Ereshchenko's statement was not true, and that when he made it he knew it was not true or did not honestly believe it to be true. That applies to every aspect of Mr Ereshchenko's relevant statements. If Mr Ereshchenko had not in fact made all reasonable enquiries before making his statement in answer to the Disclosure Order, then in that respect the answer may be untrue, if the answer includes a statement (express or implicit) that he has made all reasonable enquiries. The Bank may be able to show that this is the case if Mr Ereshchenko has not applied his mind properly to the obligation. That is an objective question. But to prove this does not show that Mr Ereshchenko knew that his enquiries, whatever they may have been, were not all that he could and should reasonably have made. That question is subjective and depends on Mr Ereshchenko's state of mind when he made the statement. It is not to be overridden by a policy position that a respondent must not be allowed to "get away" with making an objectively inadequate compliance with the order. To show that not all reasonable enquiries have been made may be enough to justify a supplementary order designed to reinforce the original obligations. It does not by itself justify a finding of criminal contempt, based on dishonesty."

11. The Court of Appeal dismissed the appeal, upholding the Judge's refusal of permission to bring proceedings to commit Mr Ereshchenko for contempt.

12. The passage cited refers to Mr Ereschchenko 'applying his mind' to the truth or otherwise of the relevant statement. That reflects what Akenhead J said in *Berry Pilings,* namely that a false statement is made when the maker "*consciously has no idea whether it is right or wrong"* (see [28]). There must be a subjective element – that is, a conscious engagement with the issue which is the subject of the statement – before it can be said that the statement, if it turns out to be untrue, was made recklessly and thus without an honest belief in its truth. Anything less than conscious engagement is likely to amount to mere carelessness. I agree with the respondent and reject the applicant's looser approach to recklessness. (Since drafting this judgment, the applicant's counsel has sent me a copy of *Patel v Patel* [2017] EWHC 1588 (Ch). The respondent's counsel responded with a copy of *PJSC Vseukrainskyi Aktsionernyi Bank v Maksimov* [2014] EWHC 4370 (Comm). I am grateful for these, and all earlier submissions and authorities, but I do not consider that they assist me in determining the point in dispute, or indeed the wider issues raised by this application.)

The background facts

13. The current dispute arises out of the business of a corporate group known as the "Good Earth Power Group" of which both JARZ and ZREM are members. The Good Earth Power Group was founded by Mr Rosamond and the respondent. Mr Rosamond was at all material times the group's Chief Executive Officer. The respondent is from Oman, although he has a home in the United Kingdom, and spends much of his time here. He has extensive business interests in Oman and elsewhere. The respondent has invested significant amounts of money in the Good Earth Power Group.

14. The course of this dispute has been long and the issues have been many. It is not necessary or appropriate for me to set out the facts in any great detail. What is set out below is merely an overview. I will examine particular aspects of the facts in greater depth, so far as I need to, as part of my consideration of the merits of the application.

The Loans

15. The applicant was first introduced to the Good Earth Power Group by Craig Anderson, the Chief Investment Officer of the Group. The applicant and Mr Anderson were good friends from earlier times. The applicant decided to make a US$1.5 million investment in the Group. The terms of that investment are set out in a loan agreement dated 21 December 2012 ("Loan 1"). The applicant loaned US$1.5 million to JARZ, guaranteed by ZREM and Mr Rosamond. The loan term was 180 days. The return was to be 67% of the loan value (ie US$1million) payable within 180 days. Recital A recorded that *"The Company* [ie JARZ] *is raising USD1,500,000 for working capital for its group"*, and Group was defined as the JARZ and ZREM, their subsidiary undertakings, parent undertakings and the subsidiary undertakings of the parent undertakings. Loan 1 was to be paid into an account in the name of Good Earth Power Ltd held at the Royal Bank of Canada, details being given in the loan agreement.

16. On the same date, 21 December 2012, Mr Rosamond signed a side letter addressed to the applicant, on his own behalf and on behalf of JARZ and ZREM, recording that *"we have approached you for a loan to provide working capital for our agriculture project in Mozambique"* and acknowledging that he (and the companies he represented) had entered into the loan agreement of their own free will and with no requirement and no external pressure.

17. Bank statements for the Royal Bank of Canada account show that Loan 1 was received by Good Earth Power Ltd on 7 January 2013.

18. On 18 February 2013, the applicant entered into a further loan agreement ("Loan 2"). The terms were that the applicant would loan US$1 million to JARZ, guaranteed by ZREM and Mr Rosamond. Fixed interest would accrue, depending on the date of repayment of the loan: if repayment occurred before

6 March 2013, the coupon would be US$400,000; the coupon increased the longer Loan 2 remained outstanding; if the loan was repaid on or after 6 June 2013, the coupon would be US$700,000. Loan 2 was to be repaid no later than 5 July 2013. Recital A recorded that *"the Company* [JARZ] *is raising USD1,000,000 for working capital for its group"*, and Group was defined in the same way as it had been in Loan 1. Loan 2 was to be paid into a bank account in the name of Mr Rosamond with Natwest, details of which were given in the loan agreement.

19. On 20 February 2013, Mr Rosamond signed a side letter to the applicant in similar terms to that provided on 21 December 2012.

20. Bank statements for the Natwest account show that Mr Rosamond received Loan 2 in its then sterling equivalent of £650,000 on 20 February 2013.

21. In the event, none of JARZ, ZREM or Mr Rosamond was able to repay either loan when it fell due (Loan 1 was due for repayment in June 2013, and Loan 2 was due for repayment by 5 July 2013 at latest). The applicant entered into a Variation Agreement with the same counterparties, namely JARZ, ZREM and Mr Rosamond, as well as two additional companies in the Good Earth Power Group, namely ZR Energies Ltd and JARZ Technologies Ltd. The terms were that the capital outstanding under Loans 1 and 2 would be repaid within 2 business days of the date of the Variation Agreement, with the balance payable by 31 March 2014 and the applicant being given a 1% equity stake in the Group's ventures, past and present.

22. In the event, no repayment of Loan 1 or 2 (as varied by the Variation Agreement) was ever made.

Substantive Proceedings

23. The applicant issued demands for payment against JARZ, ZREM and Mr Rosamond. These demands were not met. The applicant sued for repayment. Judgment was entered against JARZ, ZREM and Mr Rosamond on 20 October 2014 for a total of £3,183,865.76, comprising capital and interest outstanding to that date, together with costs of £31,204.93. Those sums have never been paid.

November-December 2014

24. On 14 November 2014, the applicant wrote directly to the respondent in the following terms:

> *"We have sufficient facts to launch proceedings against yourself, which we shall commence shortly. I am saddened by the need to do this and I suspect that this will drag the Zawawi name into the sorry saga.*
>
> …"

25. On 19 November 2014, the applicant's solicitor, Mr Byford of Eversheds, wrote to the respondent's solicitor, Mr Jonathan Sachs of Irwin Mitchell, saying this:

> *"It has come to light that your client has been receiving funds from the ZR companies. In particular, we attach a copy of the transfer indicating that your client received US$250,000 from ZR Energies Ltd. Please explain what this payment was for and detail any other payments made to or on behalf of your client by the ZR companies. Further please explain why your client thought it acceptable to be paid in preference to other creditors including our client. …*
>
> *We will therefore be commencing proceedings against your client to recover the full amount of the debt due since it is apparent that Mr Al Zawawi, as a director of the ZR companies, has been approving or entering into transactions which put the assets of the ZR companies beyond the reach of our client, including by making payments to himself, contrary to Section 423 Insolvency Act 1986. …"*

26. I interpose with three comments at this stage. First, it is not clear how the applicant came to know of a payment of US $250,000 to the respondent from ZR Energies Ltd. That payment was indeed made on 14 May 2013. Mr Grant QC, counsel for the respondent, suggests that Mr Anderson must have disclosed this information to the applicant, in breach of the confidence owed by Mr Anderson to the Good Earth Power Group, of which ZR Energies Ltd was a member. I simply record that submission, which was left unanswered by Mr Walford, counsel for the applicant. Secondly, the respondent was not, of course, a party to Loan 1, Loan 2 or the Variation Agreement. He was not contractually liable for repayment of the loan. He could not be sued on it. Thirdly, the applicant has never taken any proceedings against the respondent under the Insolvency Act, as suggested in this letter. Nor have any other proceedings been issued against the respondent which might have resulted in the recovery of the Loan Monies. The respondent's only participation, this application apart, has been in the context of the Part 71 proceedings, the purpose of which is to provide information.

27. Mr Sachs replied to this letter on 1 December 2014. He confirmed that the respondent had received US$250,000 from ZR Energies Ltd, in part payment of a debt of millions of dollars owed to the respondent, but denied that the respondent had entered into any transactions to put assets beyond the applicant's reach, and noted that anyway the Insolvency Act was inapplicable because these were not UK companies; he also reminded Mr Byford that the respondent was not a judgment debtor.

CPR 71 Proceedings

28. On 19 December 2014, Master Leslie made an ex parte order under CPR Part 71 requiring the respondent to attend for an oral examination and to produce documents. On 2 February 2015, by consent, Master Eastman varied the order. The matter was listed for hearing on 18 February 2015. On 6 February 2015 in anticipation of that hearing, Mr Sachs wrote to Mr Byford, enclosing a number

of documents. This is a letter of some importance, because it founds Ground 1 of the applicant's application for permission. For present purposes, it is sufficient merely to note that amongst the documents disclosed under cover of this letter were bank statements for the Good Earth Power Group Ltd account held at the Royal Bank of Canada in Switzerland, Mr Rosamond's sterling account at Natwest in the UK, and ZR Energies Ltd's account held at Afrasia Bank, for relevant periods.

29. The respondent was cross examined for half a day on 18 February 2015 and during his evidence confirmed the existence of further documents of possible relevance. The matter was adjourned part heard, and the parties then embarked on a discussion, which turned into a dispute, about the proper scope of any further disclosure in light of the respondent's evidence. In the event, Master Leslie decided at a contested hearing on 26 March 2015 that the applicant's preferred "wider" form of disclosure was appropriate, and ordered further disclosure accordingly.

30. The respondent was dissatisfied with the Master's order, considering that a "narrower" scope of further disclosure was appropriate, and notified the applicant that he intended to appeal, enclosing a draft appellant's notice dated 31 March 2015. The applicant responded saying that the appeal would be out of time because the date from which time to appeal ran was 18 February 2015, the date of the original hearing. The matter had to go back to the Master on 9 April 2015 for the Master to clarify that the relevant date was indeed 26 March 2015. By order dated 20 April 2015, Leggatt J declared that the appeal was in time and stayed execution of the Master's order pending the appeal. The appeal was then listed for hearing. In the event the applicant conceded the appeal on 11 May 2015, just days before the appeal hearing. The respondent's "narrower" formulation prevailed.

31. Reflecting that position, on 20 May 2015, Holgate J ordered the respondent to disclose various categories of documentation, with permission to the respondent to apply to the Court for a declaration of non-liability to disclose any documents which the respondent thought would stray beyond the agreed order. On 8 June 2015, Mr Sachs wrote a letter enclosing those documents which the respondent did not object to producing. On 12 June 2015, the respondent issued an application for an interim declaration in relation to other documents, as presaged by Holgate J's order dated 20 May 2015.

32. There then followed a series of delays, which resulted in the respondent's application for an interim declaration not being heard until 25 April 2016, almost a year later. It is clear from a review of contemporaneous correspondence that the main reason for that delay was, first, Mr Byford's holiday commitments (meaning that nothing was done to obtain a private room appointment between June and September 2015), and secondly, from September 2015 to January 2016, a delay while the applicant considered issuing his own cross-application to be heard at the same time as the respondent's application – pending receipt of that application, the parties agreed that no further action should be taken on the respondent's application. The applicant finally issued his cross-application on 13 January 2016. That

was an application for a disclosure order in apparently identical terms to that previously sought by the applicant, but now endorsed with a penal notice. Once that application had been issued, a private room appointment was fixed for 25 April 2016.

33. The suggestion that the delay from June 2015 to January 2016 was attributable in some way to professional difficulties being experienced by the respondent's then counsel is not supported by the contemporaneous correspondence. There were difficulties of that nature, but they do not appear to have had any material impact on the timing of the hearing to dispose of the respondent's application and the applicant's cross-application.

34. The hearing of both applications was then fixed for 25 April 2016. In the event, Master Eastman adjourned that hearing to 15 June 2016, because he had insufficient time to deal with the applications, or to digest the considerable evidence which had by this stage accumulated.

35. The respondent did serve a witness statement on the evening of 22 April 2016, the Friday before the hearing scheduled for the following Monday before Master Eastman. But that late service was not, apparently, the reason the Master gave for adjourning the hearing. The Master's reasons, recorded in a contemporaneous note which is not challenged, were that there was a lot of documentation to consider and he had been in Brussels the previous week, and had arrived back in the office to find all the papers on Friday night.

36. The matter resumed before Master Leslie on 15 June 2016. The applicant had by then filed further written evidence. The Master heard argument about the admissibility of the respondent's witness statement filed on 22 April 2016 and the further witness statements filed by the applicant. He decided to admit all that evidence. He had insufficient time to deal with the two applications and those were adjourned to be dealt with at the resumption of the cross examination of the respondent, which was fixed for two days on 31 October and 1 November 2016.

37. The respondent made further disclosure of documents under cover of a letter from Irwin Mitchell dated 22 September 2016.

38. The respondent was dissatisfied with certain comments made by Master Leslie at the hearing on 15 June 2016. The respondent issued an application for Master Leslie to recuse himself from the case on grounds of actual or apparent bias. Master Leslie refused that application on 30 September 2016. Morris J refused the respondent's appeal on 27 October 2016.

39. The matter proceeded before Master Leslie and oral examination resumed on 31 October 2016 and lasted two days. Neither application was determined at that hearing, which was adjourned for submissions to 14 November 2016 before Master Leslie.

40. On 11 November 2016, Irwin Mitchell (by Mr Sachs) wrote to Eversheds (Mr Byford) who had throughout acted for the applicant, abandoning the respondent's application for an interim declaration of non-liability to produce

documents. That application had been issued as long ago as 12 June 2015 and was still unresolved. By default, that meant that the applicant's cross-application succeeded. The order was to be subject to a penal notice (Holgate J's production order dated 20 May 2015 had been endorsed with a penal notice, so this was not a new development).

The 14 November 2016 Hearing

41. When the matter came back before Master Leslie on 14 November 2016, Master Leslie ordered disclosure in relation to each category of documents in the production order. At this hearing, the applicant's counsel said this:

> "In addition, Master, we say that it may be appropriate on the receipt of further information to contact the United States authorities. You will recall that the timber project in Arizona was obtained, it seems admittedly, through the use and with the assistance of fictional accounts, or at least where many of the entries were agreed to be fictional. That is quarter 1 of the 2013 accounts.
>
> If there is no repayment from the companies Mr Newton-Smith may have the opportunity to use the United States, I think it is called, whistleblowing legislation. In other words you inform the United States government that it has been defrauded or misled in some way then you obtain a reward for providing that information to the United States government which may be an alternative way for the judgment debt to be, effectively, discharged from a different source.
>
> Now, of course work remains to be done as to whether or not that is permitted but it would remain our intention to notify [AZ] of that intention before doing so, so that he can seek an injunction to restrain [MNS] if that is what he thinks he is entitled to do."

42. The main issue for resolution at that hearing was costs. Having heard argument, the Master ordered the respondent to pay indemnity costs for all hearings from 24 April 2016 to date (there was no order for costs in relation to the hearings on 26 March 2015, 27 April 2015 and 20 May 2015), £90,000 of which were to be paid on account.

43. The Master gave a judgment on which the applicant relies heavily. I set out a lengthy passage from this judgment, given the reliance the applicant places on it:

> "[4] In an attempt to find out where the defendant companies' assets are, I (or Master Eastman) made an order in late 2014 for Mr Al Zawawi as a director to attend court and give information and produce documents about the assets of his companies. I have been criticised in an application that I should recuse myself and in an application for permission to appeal to the Judge for using the words 'wriggle' and 'squirm' in respect of the director, Mr Al Zawawi. It is perfectly plain that until last Friday, in my judgment, that is what he has been doing. I have been invited to make findings about him, his probity and integrity and I have been invited to find that he has lied or told untruths to the court. It is plain that from time to time he has

> not told the whole truth. He may indeed have told some untruths but I am not prepared to find at the moment that that is the case.
>
> [5] What I am prepared to say – and it is very clear to me, and I am as satisfied as I need to be – is that his whole attitude to the running of his companies and to these proceedings has hitherto been cavalier in the extreme. In my judgment, he has not taken this investigation and this matter at all seriously or seriously enough. Right at the end, on the third day of his examination, some 18 months after it had started, he acknowledged that there were documents and there were computerised records of one sort or another that he had not searched for or had not produced. That is, in my judgment, quite enough for me to say that he has simply not focused on or taken seriously enough these proceedings.
>
> [6] I am not going to say anything more about him because I suspect that there will be more examination of him on the documents that were finally produced at the end of last week, some 20 months after the first order was made by me that he should produce them, although it is right to say that that order was, as it were, suspended at least in part by an order of the Judge in May of 2015 and applications were made in respect of it.
>
> [7] But the application for a declaration that Mr Al Zawawi made was abandoned at the very last minute. That must show, in my judgment, that for a long time he was stonewalling, was attempting to avoid having to produce the documents. I do not know why: it may be that it was because he was not taking the matter seriously enough or that he just could not be bothered; or, given the businessman with such multifarious interests that he is, that he was too busy to give these proceedings the priority which they deserve and should receive.
>
> [8] I now have to make a series of orders in connection with the costs of these very protracted proceedings which, as I have said from the beginning, have got completely out of control. The principal reason that they have got completely out of control is, in my judgment, very clear: that is the fact that until last Friday, Mr Al Zawawi has failed to produce the documents and for a long time failed to take the necessary steps to get the documents from his erstwhile colleague, Mr Rosamond, the third defendant. It is very plain that he had control of these documents as the principal shareholder and director of the company, even though the documents may have been in the physical possession of Mr Rosamond."

44. Following this hearing, the Master invited both counsel to meet him in the Bear Garden of the Royal Courts of Justice. He expressed concern about whether the applicant was threatening to blackmail the respondent, by suggesting that the US authorities might become involved.

24 January 2017

45. A further hearing took place before Master Leslie on 24 January 2017. The applicant filed a skeleton argument which stated this at [7]:

> "The Judgment Creditor is still reviewing the latest batch of documents to be disclosed, and no decisions have been taken as to the next steps. In the interests of keeping the Court informed, the Judgment Creditor's options are perceived to include some or all of the following:
>
> (1) Commencing contempt proceedings against Mr Al Zawawi;
>
> (2) Continuing with the cross-examination presently listed for March 2017;
>
> (3) taking the steps (previously referred to as "whistle-blowing") under the US False Claims Act;
>
> (4) Referring the mater to the Director of Public Prosecutions with a view to United Kingdom criminal proceedings against Mr Al Zawawi for perjury.
>
> (5) Other steps yet to be thought of."

Summary of CPR 71 Proceedings

46. That, I understand, was the last hearing in the course of the CPR 71 proceedings.

47. The consequence of the CPR 71 proceedings, so far, is that a significant number of documents have been disclosed by the respondent. I am told that 125 lever arch files have been so far produced, the product of extensive electronic searches. Mr Walford complains that the respondent's disclosure still has gaps, he says that the respondent has admitted that some searches have not yet been carried out, and that there may yet be further applications seeking further disclosure from the respondent.

48. The Court time taken up on the CPR 71 proceedings and related matters has, so far, been very substantial. There have been so far 2 ½ days of cross examination of the respondent. There have been a number of applications and appeals which have detained, variously, Master Leslie, Master Eastman, and a number of High Court Judges. I am told that the respondent's costs, incurred on lawyers' fees and in meeting the disclosure orders, currently stand at £422,000, a figure which does not include those costs which have yet to be quantified which the respondent must pay to the applicant, pursuant to Master Leslie's order, or the costs of this permission application. The applicant will have irrecoverable costs as well. The total bill will be significantly higher than £422,000.

The application to commit

49. This application was commenced by Part 8 Claim Form issued on 3 March 2017. Details of Claim have been filed, which attach a Statement of Grounds setting out four grounds for committing the respondent to prison.

50. By Ground 1, the applicant asserts contempt by putting forward a false case as to the way in which Loan 1 and Loan 2 (the "Loan Monies") were used. By Master Leslie's Order dated 19 December 2014 in the CPR 71 proceedings, the respondent was required to provide documentation which demonstrated the bank account into which the Loan Monies were paid and the use to which those monies were put. He was also ordered to say what transfers of money or assets there had been from JARZ to any company within the Good Earth Power Group. Irwin Mitchell answered those questions by its letter dated 6 February 2015 in the following way (so far as relevant):

> *"No transfers of money or assets have been made from the 1st Defendant* [JARZ] *to any company within the ZRH Group structure or any company within the JARZ Group structure.*
>
> *The 1st Defendant is a dormant company with no assets and has not had a bank account…*
>
> *…*
>
> *There have been no transfers of money or assets from* [JARZ Mozambique] *or* [ZREM] *whether directly or indirectly to Jason Rosamond, Alawi Zawawi or Maya Rosamond née Minkova…".*

51. The applicant argues that these statements were untrue in two ways. The first allegation is that payments were made, in fact, to a number of other companies within the Good Earth Power Group, so that the statement to the effect that JARZ has not made any such payments is untrue. The second allegation is that US$450,050 of the Loan Monies was paid to ZR Energies Ltd, and then payments were made by that company to various individuals, including the applicant, so that the statement to the effect that there have been no direct or indirect payments to such individuals is also untrue. It is also said that Mr Rosamond used parts of Loan 2 to meet personal expenditure, and that this also made the statement untrue. In both cases, the applicant contends that the respondent knew that the statements were untrue, alternatively, he was reckless as to their truth, as demonstrated by the applicant's answer under cross examination on 1 November 2016 when he was asked about these statements and said:

> "In this case, I can't say that I would have been in the know, especially in 2015, whether any money transfers "or assets from the first or second defendants, whether directly or indirectly, to Jason Rosamond, Mr Zawawi or…[Mrs Rosamond]." I wouldn't have known that. I wouldn't have access to that knowledge."

52. By Ground 2, the applicant asserts contempt by the respondent putting forward a false case as to his knowledge of the Loans. The applicant relies on evidence given by the respondent at a hearing in the course of the CPR 71 proceedings, on 31 October 2016, when he admitted that money was used wherever it was needed in the Good Earth Power Group and that the Loans were used in the group. The first allegation is that the respondent gave untrue evidence when he said, both orally and in written evidence that he did not know about the applicant or the Loans. The applicant points to a number of emails which were

copied to the respondent, which discussed the applicant, the Loans, and related topics, such as the applicant's travel arrangements. The second allegation is that he falsely stated that when he received US$250,000 from ZR Energies Ltd, he was unaware that the first loan was soon to fall due for repayment. The applicant again points to emails copied to the respondent which, so it is said, show that he knew about the Loans.

53. By Ground 3, the applicant asserts contempt by the respondent making false and misleading statements in witness statements and oral evidence given in the course of the CPR 71 proceedings, to the effect that the Loan Monies had been applied to operating expenses and capital expenditure in Mozambique. The allegation is that these statements were untrue because the Loan Monies were paid to other companies with the group operating outside Mozambique, and to individuals (Mr Rosamond, his wife Ms Minkova, and the respondent himself). Under cross examination in the course of the CPR 71 proceedings, when various bank statements were put to him, the respondent accepted that some of the Loan Monies were deployed elsewhere.

54. By Ground 4, the applicant asserts contempt by the respondent putting forward in oral evidence a false case as to the ability to repay the Loans. The applicant argues that there is evidence that another project in Botswana, in which a different ZR Group company was involved, had yielded net proceeds of something between $33 and $40 million in 2015. The applicant argues that the respondent was not truthful when he asserted that there were insufficient funds to repay the applicant.

Discussion

Ground 1

55. The false statements which comprise Ground 1 are said to have been made in the Irwin Mitchell letter dated 6 February 2016.

56. The first allegation is that the statement that *"no transfers of money or assets have been made from the First Defendant* [JARZ] *to any company within the ZRH Group Structure or any company within the JARZ Group Structure"* was untrue. But it was true, taken literally, that JARZ had not paid out any other company in the Good Earth Group. Loan 1 had been paid into an account held at the Royal Bank of Canada in the name of Good Earth Power Ltd. This was what the agreement for Loan 1 specified. The payments out of that account were therefore not made by JARZ at all, in fact. Against this, Mr Walford makes two points, first, he argues that the respondent has effectively conceded that the Loan Monies were held in that account for, and paid out on behalf of JARZ, in evidence to Master Leslie on 16 February 2015. I was taken to the transcript of that evidence. The point made by Mr Walford and accepted by the respondent in evidence was that the Loans must have been held by the payee on trust for JARZ. But the respondent is not a lawyer, and I doubt he understood the full significance, as a matter of law, of what Mr Walford was putting to him. But in any event, that exchange arose in the context of an

exercise under Part 71 aimed at gathering information; to take his statement as an assertion of legal title to the Loan Monies for all purposes is going too far. I am not persuaded that the respondent has conceded this point, even arguably. Secondly, Mr Walford argues that even if the respondent has not conceded the point, it must still be that the payments were made by ZR Energies Ltd on behalf of JARZ, as trustee or agent, and so the Irwin Mitchell letter is indeed untrue in asserting that no payments had been made "by" JARZ to other group companies. But this is far too much to read into one line of a solicitor's letter. I remain of the view that the applicant has failed to show even a prima facie case that a false statement was made. That is the end of this allegation.

57. But further and in any event, there are other reasons why I would not grant permission in relation to this allegation. The first and obvious point is that the respondent did not make this statement at all, his solicitor did. Mr Sachs has gone on affidavit (dated 25 April 2017) to say that this letter was drafted on instructions from Mr Rosamond, and not the respondent ([11] and [12]). Mr Rosamond says the same thing in his affidavit dated 24 April 2017 ([70]). In light of that evidence, to which the Court would be bound to have regard, not least because one deponent is a solicitor and an officer of the Court, the applicant's case on this ground collapses. The second point is that the evidence which disproves this statement – namely the Royal Bank of Canada bank statements - was itself disclosed at the same time and under cover of this letter. There was quite plainly no intention to mislead. The relevant evidence was all disclosed at the time the statement was made. The third point is that, in the event, the applicant was not misled by the statement: to the contrary, armed with the bank statements, Mr Walford has been able to cross examine the respondent about the transfers out of the Royal Bank of Canada bank account. There has, in fact, been no interruption to or interference with the CPR 71 proceedings.

58. I turn to the second allegation which arises out of the statement that *"there have been no transfers of money or assets ... directly or indirectly... to"* named individuals, being Mr Rosamond, his wife Maya Minkova, or the respondent. Loan 1 was paid into the account at Royal Bank of Canada. Statements for that account reveal that on 14 January 2013, US $450,050 was paid out of that account to ZR Energies Ltd. On 27 March 2013, US $50,156.58 was paid out of that account to Mr Rosamond. Loan 2 was paid into Mr Rosamond's personal bank account at Natwest. Payments went out of that account; and some would appear to have gone towards Mr Rosamond's personal expenses (Starbucks and the like), those payments occurring between 4 March 2013 and 21 March 2013, in the aggregate amount of £12,869.04. The Afrasia statements for the account in the name of ZR Energies Ltd show payments between 13 May 2013 and 28 August 2013 to the three named individuals, including the respondent, including a payment of US $250,000 on 14 May 2013 which forms the basis of Ground 2. But there is nothing to link any of those payments to the Loans. Specifically, the payment out of the Royal Bank of Canada account to ZR Energies Ltd was to a different account held by the same company; there is, in consequence, no evidence to connect Loan 1 with the payments made to individuals some months later from the Afrasia account. Indeed, the payments to individuals from the Afrasia account

in May 2013, some months after the Loans were made; and only after the Afrasia account, which was in effect empty on 9 May 2013, was replenished by a large receipt from Quest Drilling Ltd on 10 May 2013. The factual basis for this allegation is therefore weak.

59. There are further problems with this allegation. As with the first allegation under Ground 1, the respondent did not make the statement complained of at all, his solicitor did. Mr Sachs and Mr Rosamond confirm that instructions came from Mr Rosamond alone. There is no cogent evidence of any intention to mislead: the evidence which is said to disprove this statement is contained in the bank statements which were disclosed at the same time and under cover of this letter. The applicant was not misled by the statement because he has been aware since 6 February 2015 of these various payments, and has been able to cross examine the respondent about them. So there has, in fact, been no interruption to or interference with the CPR 71 proceedings.

60. It is difficult to see how the applicant's alternative case of recklessness could arise on the facts which underpin Ground 1. Either the respondent knew that the statements in the letter were false, or he did not. There is no evidence at all to suggest that the respondent knew that the statements were being made, let alone that he took a conscious decision to disregard their truth or otherwise. A mere failure to check the contents of his solicitor's letter could only realistically amount to carelessness, which would be insufficient.

61. Ground 1 discloses no strong prima facie case of wrongdoing by the respondent. I would not grant permission to proceed with it, on evidential grounds alone.

Ground 2

62. By Ground 2, the applicant asserts that the respondent made false statements that he was not aware of the applicant, or of either Loan. Specifically, he has lied in saying that he was unaware of the Loans when he received US$250,000 from ZR Energies Ltd in May 2013. The applicant points to various passages in the respondent's oral and written evidence in the CPR 71 proceedings, where the respondent asserted that he did not know about the applicant or the Loans. The background to this ground is the respondent's evidence to the Master that the group's funds were intermingled and used as and where necessary. So, it is said, a payment out by ZR Energies Ltd to the respondent, in the amount of US$250,000, impacted negatively on the group's ability to repay the applicant just a few weeks later – that money could have been made available to the applicant. The applicant's case depends on showing that the respondent was aware of the Loans at that time that he was paid this sum. The applicant relies on various emails to the respondent to establish his case under this Ground.

63. Some of the emails relate to travel arrangements made by Zahara Travel, the respondent's separately administered travel company, which organised all the travel for the Good Earth Power Group, in December 2012, and February and April 2013. There are emails detailing various arrangements for the applicant

to fly to Mozambique and back, and later to fly to Australia and back; those arrangements were connected with the applicant entering into the Loans.
Another email was sent on Christmas Eve of 2012 by Mr Rosamond to Royal Bank of Canada, copied to the respondent, attaching a copy of the agreement for Loan 1, by now signed. The email said this:

> "We have an additional investment of $1.5 million as per the attached document. Please let us know when this money arrives. This is [a] short-term loan as we convert our Mozambique timber operations into positive cash-flow. We expect the funds to arrive today or when the banks reopen later this week."

It is further asserted that the respondent knew about Loan 2 because he was told about it by Mr Anderson at a meeting in Knightsbridge in March 2013 (this assertion was not touched on in oral submissions: I am unsure whether it is still pursued).

64. The respondent has filed evidence by affidavit dated 25 April 2017. He denies knowledge of Loan 1 or Loan 2. He says that he was routinely copied into all travel arrangements made by Zahara Travel in relation to the Good Earth Power Group. He states that in December 2012, the month of the first Zahara Travel email chain, there were 82 flights booked through Zahara in relation to the Good Earth Power Group, all of which would have been the subject of email notifications copied to the respondent. He says that he does not recall seeing the emails in December 2012 relating to the applicant's travel to Mozambique and would not have paid much attention even if he had seen them ([144]). As to the Christmas Eve email, he says that he was celebrating Christmas at home with his family in London, and that

> "[150] … I have never seen, let alone opened, the attachment. It did not even receive a cursory glance, especially being received at the time and date that it was."

65. Mr Walford invites me to disregard the respondent's evidence, on the basis that the respondent is an acknowledged liar. But there are a number of problems with Mr Walford's invitation. First of all, the respondent is not an acknowledged liar. Although Mr Walford rests his case significantly on the conclusions reached by Master Leslie at the hearing on 14 November 2016, relevant extracts of which are set out above, Master Leslie stops short of making any adverse credibility finding against the respondent, see [4] of his judgment. The Master said that the respondent had from time to time not told the "whole truth", and that although "he *may* have told some untruths" (my emphasis) the Master was "not prepared to find at the moment" that he had lied or told untruths to the Court. What the Master was prepared to say was that the respondent's attitude to running the companies and to the Part 71 proceedings had been cavalier, because he had not taken the Part 71 proceedings seriously, see [5]. I understand this to be a criticism of the respondent as having been careless, possibly very careless, in his preparation of evidence for the CPR 71 proceedings, but not that he was a demonstrated liar. Secondly, and in any event, whatever views the Master formed about the respondent in the course of the CPR Part 71 proceedings do not bind me in the

current application. The Master was not dealing with an application to send the respondent to prison, potentially. He was not concerned to find facts on the criminal standard. I am not persuaded that in the context of this application, the respondent's credit is so low that I can simply disregard his affidavit evidence. Thirdly, and in any event, contemporaneous evidence tends to support the respondent's case that he had no involvement in or knowledge of the Loans. There is no documentary evidence, amongst a very great deal of disclosed evidence, to show that he was involved in the negotiations for the Loans or the Variation Agreement: I have been shown no evidence that he was copied into emails about the negotiations, or asked for his views, or invited to any meeting to discuss the Loans. Further, and fourthly, other evidence filed on affidavit tends to support the respondent's version of events. Mr Rosamond confirms that the respondent played no part in the discussion or negotiation of the Loans or the Variation Agreement (affidavit dated 24 April 2017, [64]). Mr Woolf in his affidavit confirms that Mr Rosamond, not the respondent, was the primary point of contact on all instructions from the Good Earth Power Group (affidavit dated 25 April 2017, [11]). In short, the contemporaneous evidence, and the witness evidence filed by and on behalf of the respondent, explain the extent of the respondent's involvement and tend to corroborate his case that he did not know about the applicant or the Loans. There is no strong prima facie case that the respondent has lied in that regard.

66. The applicant relies on recklessness as an alternative to knowledge of these alleged false statements. He says that the respondent should have checked his emails before asserting in evidence that he was never told about the applicant or the Loans. But at this point, the Master's views are helpful to me: the Master thought that the respondent had been cavalier and had not taken the CPR 71 proceedings seriously. This is sufficient to establish that he was careless, certainly. But Master went no further. He did not suggest that the respondent simply did not care whether the statements he made were true or false, or that he consciously disregarded the need to tell the truth when he gave his evidence. Nor do I infer from all I have seen that that would be an apt characterisation of the respondent's conduct during the CPR 71 proceedings. The evidence, including the Master's conclusions, point to the respondent being careless. That was why he made statements which could readily be disproved, and volunteered further documents – which had not been searched for – in the course of his evidence. This is not the basis, even arguably, for a finding of recklessness in relation to ground 2.

67. The applicant does not present a strong prima facie case under ground 2. I would not grant permission on this ground given the state of the evidence.

Ground 3

68. By Ground 3, the applicant asserts that the respondent made false and misleading statements in witness statements filed in the CPR 71 proceedings, to the effect that the Loan Monies had been applied to operating expenses and capital expenditure in Mozambique (this has become known as the "All to Mozambique" issue). The statement was made in an Irwin Mitchell letter dated 3 December 2014 which attached a payment schedule. The Loan Monies

were not, in fact, applied exclusively to operating expenses and capital expenditure in Mozambique. The bank statements disclosed in February 2015 show that substantial proportions of both loans went elsewhere. The issue under this ground is whether the statement in the Irwin Mitchell letter of 3 December 2014 amounts to a false statement for which the applicant might be held responsible.

69. The applicant relies on two witness statements filed by the respondent by which, he says, the respondent confirmed and adopted Irwin Mitchell's mis-statement, and did so deliberately or recklessly such as to amount to a contempt of court. The relevant passage of the first witness statement dated 19 January 2015 comes under the heading "Matters occurring after the Judgment on 20 October 2014" (at [13]) and sets out background facts including the fact (for so it is) that Irwin Mitchell had written a letter to the applicant's solicitors on 3 December 2014 attaching a schedule of payments. There is no discussion of the letter or its contents. There is no assertion that what was said was true. The respondent simply stated the facts. This does not even arguably give rise to a false statement.

70. The second witness statement is dated 22 April 2016. In it, the respondent acknowledges at [13.10] that some of the money was mixed with group money. Then the respondent says this:

> *"The Third Defendant* [Mr Rosamond] *has informed me (I do not have direct knowledge myself) that money paid by the Claimant to the First and Second Defendants* [JARZ and ZREM], *although not directly traceable, was paid towards the Mozambique projects as is evidenced in the documents served on 6 February 2015 … Some money received was expended on personal expenditure but the Third Defendant was director of the First and Second Defendant".*

71. Unless the applicant could show that the respondent was lying about what he had been told by Mr Rosamond, or that he did have personal knowledge of how the money was spent and was lying in saying otherwise, there is nothing objectionable (so far as the present application is concerned) in this witness statement.

72. That is really the end of Ground 3. But the applicant persists in it, relying on certain passages of the respondent's cross examination where the respondent asserted that all the money went to Mozambique. However, the applicant's counsel quickly put the respondent right by showing him the bank statements, following which the respondent accepted that the money was used for other purposes too. These are trivial exchanges, which do not suggest any intention to mislead, or to interfere in the administration of justice. They are a long way short of being a contempt.

73. In summary, there is no strong prima facie case that the respondent has made any false statement to the effect that all Loan Monies went to Mozambique. I would refuse permission on grounds of insufficient evidence for this ground.

Ground 4

74. The applicant argues by ground 4 that the respondent has made a false statement that the Good Earth Power Group was unable to repay the Loan Moneys. This ground proceeds from the evidence given by the respondent to the effect that group monies were intermingled. It is said that one project in Botswana was sold by the group for substantial profit (of $40 or $33 million), as the respondent knew, and so there were funds available to repay the loans.

75. The applicant founds his case on evidence disclosed by the applicant in November 2016. There are documents in that disclosure which point clearly to efforts which were made in around July 2013 to sell ZR Energies Botswana ("ZR Botswana"). Another company, called Sociedade de Gestao Projectos Holdings Ltd ("SGPHL"), was appointed agent for ZR Holdings Ltd for the sale of shares in ZR Botswana. By a directors' resolution dated 19 July 2013, ZR Holdings International Ltd ("ZR Holdings") resolved to sell ZR Botswana for US$65 million. A man named Wynand Pretorius, who was connected with SGPHL, was given authority to sign the share sale agreement on behalf of ZR Holdings.

76. The applicant's case is that ZR Holdings sold its shares in ZR Botswana to SGPHL. That is not what the documents show. The only documents produced to the Court show an agency agreement between ZR Holdings Ltd and SGPHL, which appoint SGPHL as agent to sell the shares in ZR Botswana to a third party. The applicant asserts that the sale was completed, and relies on an email from Mr Rosamond to the respondent dated 23 July 2013 when Mr Rosamond wrote that *"...Documents have apparently been signed by the Purchaser..."*. However, there is no signed share sale agreement, and no evidence, other than that already touched on, that the sale was completed. Indeed, to the contrary, Mr Rosamond has provided evidence by affidavit to the Court (dated 24 April 2015) which states in terms that the sale of ZR Botswana did not happen, because Mr Pretorius did not find a buyer ([84]). This statement is corroborated to some extent by an affidavit filed by Andrew Woolf, the London solicitor who acted for the Good Earth Power Group and had been involved in drafting the agreements for the Loans and the Variation Agreement, who stated that he had little involvement in the proposed sale of ZR Botswana but that he had given comments on the draft sale documents and resolutions, but that *"to my knowledge"* the sale of ZR Botswana did not happen. (The phrasing is ambiguous and it is unclear whether Mr Woolf is saying he knows the sale did not happen; or that he does not know that it did – either way, it offers some corroboration for Mr Rosamond, because Mr Woolf might have been expected to know, as the Group's solicitor, if the sale had gone through.) Mr Rosamond's affidavit is also corroborated by emails later in 2013 which suggest that Wynand Pretorius has derailed the whole process, and that there remained a problem with the Minister in Botswana in relation to a licence for ZR Botswana's proposed business. On 13 March 2014, Mr Rosamond wrote a letter to an employee of the Good Earth Power Group named Clay Taber, in which he told Mr Taber *"Please stop talking to Wynand so you don't waste any more of anyone's time on the matter"*. The issue related to Wynand suggesting that there was money outstanding to him or

other creditors. These emails are at least consistent with the respondent's case that the sale never went through and relations with Wynand Pretorius in consequence soured.

77. The applicant finally relies on the fact that ZR Botswana is missing from a list of companies provided by a solicitor at Moore Stephens to the respondent on 15 December 2013. The list refers to the need to renew registration of the group's offshore companies; and so, the applicant infers, ZR Botswana must by that date have been sold, otherwise it would be on the list. However, as Mr Grant points out, this list seems to be a list of those group companies which are incorporated outside Africa; there are many companies in the group structure not on this list; that is at least credible as an explanation.

78. These issues were all addressed in a second affidavit filed by the respondent dated 20 June 2017. He states in terms that the sale of ZR Botswana never occurred. The applicant invites me to disregard that evidence. For reasons given above under Ground 2, I cannot do that. Indeed, the respondent provides strong and credible evidence that ZR Botswana was never sold; that evidence is consistent with the evidence of two other witnesses and contemporaneous documentary evidence. There is no cogent evidence (let alone a strong prima facie case) going the other way: the applicant's evidence, by his solicitor Mr Byford, appears to be based on a misreading of the contractual agreements which have been disclosed.

79. There is no strong prima facie case that proceeds were obtained from the sale of the Botswanan business project. This is the factual predicate on which Ground 4 proceeds. I would refuse permission for Ground 4.

Summary on Grounds 1-4

80. In summary, the applicant fails to make out a strong prima facie case under any one of his grounds. The evidence is simply insufficient to justify the grant of permission and this application is, in consequence, refused.

Wider Considerations

81. Given my conclusion on the evidence which is before me (and my decision to refuse permission), I shall address the other points raised in argument only briefly.

82. I agree with the respondent that it would, regardless of the evidential position, be disproportionate for this application to continue to a committal hearing. The CPR 71 Proceedings have already taken up a vast amount of Court time, spanning 2 years to date, with numerous hearings and applications along the way. Some of the time spent has been attributable to the respondent (for example, in the failed application for the Master to recuse himself), but the greater part of the time has been attributable to the applicant's own delays in pursuing the proceedings. Further, the litigation has been hard fought and

unyielding at every stage. This litigation has, on any view, got completely out of hand – I agree with Master Leslie about that (14 November 2016, [8]). However, for my part, and in the context of the present debate about the proportionality of bringing committal proceedings, I would be inclined to apportion blame for that situation much more equally between the parties than the Master did. I have no doubt that if the matter was to proceed to a committal hearing, the Court would be occupied for some days at least. The case has already taken up more Court time, and involved greater expenditure of costs, than is proportionate to the underlying dispute. Further satellite litigation by means of a committal application would not be proportionate.

83. Further, I doubt that committal proceedings would serve the public interest. I recognise that there is a public interest of the kind relied on by Mr Byford in his affidavit, to the effect that others should be discouraged from making false statements in the course of court proceedings. However, in this case, the respondent's failings in the course of the CPR 71 proceedings have already been met with hefty disclosure and costs orders against him. Even if there was evidence to suggest that those failings included the making of false statements, the public would, I think, be satisfied that the respondent had not been able to get away with it; he had paid, literally and heavily, for his misdemeanours.

84. Further, there is a risk (I put it no higher) that this application is brought out of a vindictive desire to harass the respondent. The applicant has on three occasions in the past threatened the respondent with further litigation if he does not pay off the Loans. Two of those threats have (so far) turned out to be hollow (namely, the threat of proceedings under the Insolvency Act and of referring matters to the US authorities under the whistleblowing legislation – see Eversheds' letter of 19 November 2014 and the extract of the transcript for 14 November 2016). The third threat was to take action of various sorts against the respondent, including seeking his committal (see the applicant's skeleton for the hearing on 24 January 2017). That threat has been carried into effect by this application. There is, in my judgment, a real possibility that the applicant's purpose in bringing this application is to pressurise the respondent into payment the judgment debt, even though the respondent is not liable for it. That would serve the applicant's private purposes, certainly. But it would risk using the court's processes oppressively to achieve an end to which the applicant is not entitled as a matter of law, and that would be contrary to the public interest.

85. Finally, I agree with the respondent that this application could (and should) have been brought much earlier than it was. The material on which the applicant relies, at least for grounds 1 and 3, was in the applicant's hands from 6 February 2015 (the date of the Irwin Mitchell letter). Nothing of any significance was added to that ground through cross-examination in October and November 2016. The foundation for ground 3 became apparent the moment the respondent filed the witness statements complained of (19 January 2015 and 22 April 2016). The delay in bringing this application is not satisfactorily explained. The applicant has meanwhile continued to press for further information through the CPR 71 proceedings, in the course of which these two grounds have been put to the respondent under cross examination,

thereby providing the applicant with further ammunition to deploy in this application. There is an unfairness to the respondent in having to face this application after such a period of delay, in relation to two at least of the grounds.

86. It follows from all that I have said that the overriding objective would not be furthered by the grant of permission.

87. If I had been convinced that the matters relied on in this application were serious and otherwise might have justified the grant of permission, I would have wished to consider carefully whether to refer this matter to the Attorney-General to consider prosecuting this case, at least to the extent that the application falls within Part VI of the rules (see CPR 81.17(6)), but in light of my conclusions set out above, I need not trouble with that referral or with considering further whether the applicant is a proper person to bring contempt proceedings.

Conclusion

88. I refuse permission and in consequence this application for committal is dismissed.