Neutral Citation Number: [2020] EWHC 2223 (Comm)

Claim No: CL-2017-000058

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT (QBD)

The Rolls Building,
7 Rolls Building,
Fetter Lane,
London EC4A 1NL

Date of hearing: Wednesday, 24 July 2020

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Before:

THE HONOURABLE MR JUSTICE HENSHAW

GFH CAPITAL — **Claimant**
- and -
(1) DAVID LAWRENCE HAIGH
(2) THE COVE ESTATES LIMITED (FORMERLY KNOWN AS ELIA ENTERPRISES)
(3) HOTEL COVE LIMITED
(4) COVE LAMORNA LIMITED (dissolved on 22 May 2018)
(5) MONT FLEURY LIMITED
(6) CLOATLEY HOSPITALITY LIMITED
(7) SPORT CAPITAL LIMITED (dissolved on 18 May 2018)
(8) ALISON LOUISE THOMAS — **Defendants**

Daniel Benedyk & Robert Dougans (Solicitor Advocate) (instructed by Preiskel & Co LLP) for the **Claimant**
The Defendants did not appear and were not represented

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APPROVED JUDGMENT

(Remote hearing)

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MR JUSTICE HENSHAW:

1. The first defendant Mr Haigh applies by a notice dated 22nd June 2020 to vary my order of 22nd May 2020 sealed on 4th June 2020. That order followed the judgment handed down on 19th May 2020 granting the claimant's application for summary judgment on its application to enforce a judgment of the Dubai International Financial Centre Court in favour of the claimant against the first defendant, and summary judgment on various claims against other defendants. Mr Haigh has not been present or represented at the present hearing. I shall come back to that matter later.

2. My order of 22nd May 2020 contained 3 main parts:

   i) summary judgment in favour of the claimant on the DIFC judgment, the striking out of defences, monetary judgment against the first defendant, and declarations as to property held on a constructive trust for the claimant;

   ii) in paragraphs 6-8 and 12 of the order steps required to effect the transfer of real properties to the claimant; and

   iii) in paragraphs 9-11 of the order disclosure of information as to assets, supported by an affidavit. After hearing oral argument, I gave Mr Haigh 21 days to provide the information and 35 days for the supporting affidavit.

3. Mr Haigh sought permission to appeal from my 19th May judgment, which I refused. I granted a temporary stay of 21 days in relation to paragraphs 6-8 and 12, expiring on 12th June, so that Mr Haigh could seek interim relief from the Court of Appeal. I refused a stay in relation to the remainder of the 22nd May order.

4. The Court of Appeal on 10th June extended the stay in relation to paragraphs 6-8 and 12 of my order, pending the determination of Mr Haigh's application to the Court of Appeal for permission to appeal. The Court of Appeal amended that order on 3rd July to provide that the stay would lapse unless Mr Haigh filed an amended notice of appeal and skeleton argument by 3rd July. On 6th July, on Mr Haigh's application for a further extension, the Court of Appeal gave a final extension until 10th July, continuing the existing stay in the meantime. I am told that Carr LJ refused Mr Haigh's application for reconsideration of that order. I am also told that Mr Haigh filed amended grounds of appeal on 20th July, hence out of time.

5. Mr Haigh's 22nd June 2020 application to this court originally sought a stay of paragraphs 9-11 in relation to disclosure until his permission to appeal application were determined; alternatively, an additional 21 days to comply, which would have extended the deadline from 25th June to 16th July. He also sought and continues to seek certain adjustments to the order which I will come to later.

6. The claimant submitted its response to Mr Haigh's application on 1st July.

7. On 2nd July Mr Haigh revised the relief sought and asked for an extension of time until one month after his release from hospital to provide the required disclosure. He also asked for the appointment of a joint medical expert and, if appropriate, a litigation friend; an order that the claimant should not contact the defendant during his hospitalisation, nor the hospital or treating doctors, including Dr Muller-Pollard; and

certain other revisions to my order of 22nd May. Mr Haigh bases his application for this revised form of relief on his health having taken a marked turn for the worse, resulting in imminent hospitalisation as of 2nd July.

8. Turning to the evidence, Mr Haigh's 22nd June application was supported by his 29th witness statement of the same date. I have read and considered that witness statement carefully. The statement, among other things, refers to a March 2020 car accident, whose effects Mr Haigh says made written and computer work slow and uncomfortable. However, in relation to compliance with my order he says:

> "I have made good progress in compiling the information required by the order and hope to be in a position to meet the deadline for the majority of the requests and specifically where it relates to information within my sole control (9.1, 9.2, 9.4, 9.5, 9.6, 9.7, 9.10, 9.11) and 9.3 as it relates to the time that I was a director, 9.8 as it relates to myself, 9.9 as it relates to me and will endeavour to do so. However, to ensure I do not miss the deadline I would request an extension to the provision of these clauses of 14 days."

Mr Haigh said he preferred to provide everything in one go, in affidavit form.

9. Mr Haigh has to date, 24th July, provided none of the information which he claimed to have made good progress in compiling.

10. His witness statement purported to provide a health update, but in fact provided no new information over and above that which had been provided by the time of the 22nd May hearing. That alleged incapacity did not prevent Mr Haigh from participating fully by telephone in the 22nd May hearing, nor providing detailed correspondence leading up to that hearing, nor a 15-page witness statement with voluminous exhibits in support of his application for more time.

11. The next portion of the evidence came with Mr Haigh's 2nd July revision to his application. That was supported by Mr Haigh's 30th witness statement, a 16-page witness statement accompanied by an enormously detailed 45-page table scheduling Mr Haigh's medical evidence, along with attachments.

12. There was some new medical evidence.

13. First of all, Mr Haigh provided a letter dated 30th June 2020 from Dr Christopher Muller-Pollard, who states that he is "*the consultant psychiatrist for Mr David Haigh…who I have known since June 2017 and most recently reviewed today*." Dr Muller-Pollard refers to Mr Haigh having attributed his ill health to his involvement in a high profile missing persons case and the harassment he had suffered as a result. He says that following Mr Haigh's discharge from hospital in November 2019, he had continued to be affected by his symptoms, which fluctuate and can be severe in nature. He adds that recent additional stressors since Mr Haigh's discharge include a road traffic accident in March from which he sustained a number of injuries. Dr Muller-Pollard continues:

> "Meanwhile, on 22 May he attended a hearing via video link where he was aware (the names were displayed in full view) the proceedings were being viewed by individuals he holds responsible for his imprisonment and ill-treatment in Dubai. Subsequent to this hearing he reported having more frequent and intense flashbacks of those experiences he suffered in Dubai. Meanwhile, he reported harmful use of alcohol to cope with associated insomnia, anxiety and flashbacks."

I interpolate, however, that the hearing on 22nd May took place by Skype for Business but Mr Haigh participated by audio only. The only persons who could be "viewed" as such were the judge and the claimant's counsel.

14. After setting out the history, Dr Muller-Pollard says:

> "Ongoing legal processes involving individuals who Mr Haigh attributes responsibility for his ill-treatment has almost certainly contributed to the persistence of his mental ill health. I have strongly recommended he refrains from contact or involvement with those he attributes responsibility for his ill-treatment and subsequent mental health problems.
>
> The recent hearings and his road traffic accident have led to a deterioration in his mental health with an associated return to harmful use of alcohol. I have recommended admission to hospital as soon as possible and it is my opinion he is not currently in a fit state to give evidence or engage in legal work."

15. Mr Haigh also puts forward three other items of medical evidence:

i) a letter from Dr John Ryan, a GP, dated 24th June 2020, stating that *"Mr Haigh is still receiving quite intensive treatment for his mental health problems, is under a great deal of pressure at present and would benefit from a month's respite from his legal proceedings, including preparation of documentation"*;

ii) a statement of fitness for work of the same date from the same practice, though apparently unsigned, signing Mr Haigh off work due to PTSD for 3 months;

iii) a fairly heavily redacted medical report dated 25th May about the effects on Mr Haigh of a car accident in March; and

iv) a letter of 22nd May 2020 from Mr Haigh's therapist suggesting that Mr Haigh is not currently fit to appear in court.

16. The principles regarding the construction of medical evidence seeking adjournments were summarised by Warby J in *Decca v Hopcraft* [2015] EWHC 1170 (QB) paras 22-30 and the cases cited there. Briefly, the position so far as relevant is as follows:

(1) A court faced with an application to adjourn on medical grounds made for the first time by a litigant in person should be hesitant to refuse the application subject to a number of qualifications.

(2) The decision is always one for the court to make and is not one that can be forced upon it.

(3) The court must scrutinise carefully the evidence relied on in support of the application, including to consider whether it is an independent opinion expressed after a proper examination and giving a reasoned prognosis. Even a proper medical report falls to be considered simply as part of the material as a whole including the previous conduct of the case.

(4) A person's inability to work at a particular job is not necessarily an indication of his inability to attend court to deal with legal proceedings. The court can take into account the fact that a defendant, for example, "*has been communicating with the court and with the claimants over a lengthy period in the most coherent fashion ... is plainly perfectly capable of expressing his point of view, taking decisions and advancing his case*."

(5) There may be reasonable accommodations that can be made to enable effective participation in the light of the evidence.

(6) Whether effective participation is possible depends in part on the nature of the issues before the court and what role the party concerned is called on to undertake.

(7) If the arguments lean heavily to one side or the other, participation may make little impact.

(8) More caution is needed where the court is making a final determination on the merits, but the above factors remain relevant.

17. In relation to psychiatric evidence, I note that in *R (on the application of Ahmed) v Secretary of State for the Home Department* [2010] EWHC 625 (Admin) Langstaff J said:

> "I have to make proper allowance here for the fact that inevitably the psychiatrist relies heavily on what he is told by the individual…"

18. Turning to the present case, I note, first, that two days after Dr Muller-Pollard declared Mr Haigh unfit for legal work he was able to submit the voluminous further evidence I have mentioned.

19. Secondly, as set out in my 19th May judgment at paragraphs 5-9, 115 and 118-125, there is a long history of Mr Haigh claiming to be unable to participate in parts of the litigation process on poorly substantiated medical grounds.

20. Thirdly, previous letters specifically from Dr Muller-Pollard had been at odds with objective evidence of Mr Haigh's actual ability to engage in litigation. These discrepancies were raised in letters sent on 9th December 2019, 13th December 2019

and 8th January 2020 to Dr Muller-Pollard and copied to Mr Haigh himself, but have never been answered. For example:

(1) On 3rd July 2018 Dr Muller-Pollard wrote a "*To Whom It May Concern*" letter stating that Mr Haigh was admitted "*as an emergency as there was no safe community alternative*" to the Nightingale Hospital on Saturday 30th June 2018.

(2) That was the day before the DIFC trial began. Mr Haigh relied on Dr Muller-Pollard's letter to say that he was in hospital at the time the trial began.

(3) However, it later emerged from emails that Mr Haigh travelled to London from Cornwall to attend the Nightingale Hospital on 30th June 2018, but was refused admission. He returned to Cornwall and then came back to London on Tuesday 3rd July 2018, when he again sought admission.

(4) Thus, the statement that Mr Haigh had been admitted to hospital on 30th June 2018 was wrong, and it is also hard to see how the situation can have been an emergency, given that Mr Haigh was refused admission.

(5) The discrepancy was pointed out in the claimant's solicitors' letter of 8th January 2020 to Dr Muller-Pollard, copied to Mr Haigh, but never explained.

(6) It remains unexplained in Dr Muller-Pollard's latest report dated 30th June 2020, which now says Mr Haigh was admitted to hospital on 3rd July 2018.

(7) Instead of seeking to explain these points, Mr Haigh complains that it was improper for the claimant's solicitors to write to his doctor in this case and is currently seeking an order restraining them from communicating with those alleged to be treating him.

21. Fourthly, the other items of medical evidence are also unpersuasive.

(1) Dr Ryan has written similar letters in the past at times when it has turned out that Mr Haigh was well able to participate in the litigation process. For example, his letter of 5th February 2020 was in very similar terms to the present one, and yet Mr Haigh participated very fully in the hearing before me on 10th and 14th February 2020 and the ensuing written submissions. Another letter of 20th May 2020 from Dr Reid of the same practice was in similar terms, and yet Mr Haigh took part fully in the telephone hearing before me on 22nd May 2020.

(2) As the claimant points out, Mr Haigh has had fit notes covering the whole time since his return to the UK in March 2016, and yet has produced voluminous documentation for this court, the Court of Appeal and on occasion the DIFC court, as well as taking part in hearings before me.

(3) The 25th May 2020 medical report redacts Mr Haigh's occupation, instructing solicitors/agents, and refers to him appearing well and not showing the appearance of having depression or anxiety.

(4) The therapist's report refers to a session with Mr Haigh on 19th May 2020 and states that Mr Haigh was not fit to appear in court. However, (a) he did three days

later participate in a court hearing by telephone, and (b) he is not currently being asked to appear in court, but rather to provide the disclosure ordered on 22nd May.

22. Fifthly, the suggestion that Mr Haigh is currently incapacitated is hard to square not only with his recent activity in this case, but also with his recent social media output to which the claimant's solicitors have drawn attention, including regular postings on more than one Twitter account, and videos of his recent appearance in late June at a conference.

23. In these circumstances, I regret to say I am unable to accept either Mr Haigh's evidence or Dr Muller-Pollard's letter of 30th June, or any of the other items proffered, as sufficient or persuasive evidence of Mr Haigh's inability to fulfil his current obligations in relation to this litigation.

24. I also note that Flaux LJ in his order of 6th July 2020 granting Mr Haigh a final extension of time expressed himself to be unconvinced by the medical evidence Mr Haigh had filed "*for the reasons set out in the letter of 3rd July 2020 from the claimant's solicitors which I accept and adopt*". The medical evidence Mr Haigh had put forward was the same five items I have considered in this judgment, including the 30th June 2020 report from Dr Muller-Pollard, and the reasons set out in the claimant's solicitors' letter were substantially in line with the reasons I have given for not accepting that evidence now.

25. My disclosure order was made on 22nd May and sealed on 4th June after various arguments about its terms. It gave Mr Haigh 21 days to comply, the claimant having sought a shorter time. Even counting only the time since 4th June, Mr Haigh has now had, I think, about 6 weeks to provide the disclosure. Despite claiming on 22nd June to have made good progress, he has still a month later provided nothing.

26. I do not believe this is due to incapacity. I consider Mr Haigh to be deliberately choosing to evade his obligations and to obstruct the claimant's attempts to recover the sums he has misappropriated.

27. I turn now to more recent events leading up to this hearing.

(1) In an email of 11th July 2020 I said this:

> "I am not sitting in the Commercial Court this term. However, Mr Haigh's application dated 22 June, and his revised application of 2 July (in the form of his 30th witness statement and replacement draft order), have been referred to me because they arise from my judgment of 19 May and consequential order of 22 May.
>
> Mr Haigh's application notice dated 22 June appears to envisage his application being dealt with at a 1-hour hearing. So far as I know, no steps have been taken by the parties to list a hearing. I have considered enquiring whether both sides would be content for the application to be dealt with on the papers without a hearing. However, the matters in issue now include the proposal from the Claimant that I should make a

> further order including a penal notice. In the circumstances, it seems to me that a short hearing would be appropriate.
>
> I would therefore be grateful if the parties would indicate their availability for a 1 hour hearing by telephone or Skype for Business on 14, 15 or 16 July."

(2) In response, the claimants indicated availability on Friday 17th July or the following week.

(3) Mr Haigh replied on 14th July by email stating, among other things, that

> "I will be in hospital on Friday and will not be permitted nor have facilities to engage in this process as per the medical evidence in my application and the report attached."

Mr Haigh was thus stating that he would be in hospital on Friday 17th July. He also asked for the hearing, when it occurred, to take place in person or by telephone, but not to be a virtual hearing where parties outside the jurisdiction could dial in. He referred to Dr Muller-Pollard's report and said:

> "I made submission prior to the last hearing about a virtual hearing and my concerns that parties in the middle east that have abused an[d] harassed me would join that hearing and record and disseminate details and use these to harass me, which they could not do if it was in the UK unless they travelled."

(4) In the light of those responses, I indicated on 14th July that rather than risking further slippage I was minded to direct that the hearing would take place on Friday 24th July, and that

> "Mr Haigh must, by 4 pm on Friday 17th July file and serve independent evidence verifying that he is in hospital as an inpatient, the treatment being undertaken, the scheduled or expected duration of his admission as an inpatient, and his ability to use computers and the internet while in hospital."

I invited the parties' submissions by the following day, as well as the claimant's submissions on Mr Haigh's proposal about the form of the hearing.

(5) The claimant replied on 15th July confirming availability on 24th July and opposing Mr Haigh's proposals about the form of the hearing.

(6) Also on 15th July Mr Haigh said:

> "I have asked my hospital for a report. Usually it takes a few days, not least given restrictions on their working with Covid. I hope to have it by Friday. If it is to be any later, e.g. Monday, I will advise and have it sent direct to the judge from the hospital or from my partner."

(7) In the light of these responses, on 17th July I directed as follows:

> "I am grateful for the parties' responses by emails dated 15th July 2020.
>
> The hearing of Mr Haigh's application will take place next Friday, 24th July 2020, at 2 pm remotely. For the avoidance of doubt, that hearing will also consider whether I should make a further order endorsed with a penal notice.
>
> Mr Haigh must by 6 pm on Monday 20th July 2020 file and serve independent evidence verifying that he is in hospital as an inpatient, the treatment being undertaken, the scheduled or expected duration of his admission as an inpatient, and his ability to use computers and the internet while in hospital.
>
> I await Mr Haigh's response to the claimant's submissions as to whether or not the hearing should take place in private."

(8) On Monday 20th July Mr Haigh provided by email what he described as a "*report from the hospital responding to the request of the judge*". This was a letter from Dr Muller-Pollard dated 16th July confirming that Mr Haigh was "*due to be admitted to Nightingale Hospital on Sunday 19th July.*" The letter added that as part of standard risk management processes charging cables would be held by nursing staff. Mr Haigh would be allowed to bring internet-enabled devices and have access to hospital Wi-fi. However, as an inpatient Mr Haigh would be required to attend timetabled treatment sessions and therefore should not be expected to meet professional or other responsibilities following his admission. Dr Muller-Pollard added that "*While it is too early to predict either the duration of his admission or state of mind at the point of his discharge, I anticipate Mr Haigh will be an inpatient for between two and four weeks duration*."

(9) It will be noted that whereas Mr Haigh on 14th July said he would be in hospital on 17th June, when asked for evidence of that he produced a letter indicating that he was not yet in hospital but "*due*" to be admitted on 19th July. Moreover, Mr Haigh's email of 20th July indicated that he was not in fact admitted on 19th July because his admission was delayed by various factors relating to his parents' health, insurance approval and his work on the appeal. Mr Haigh stated that he was now due in hospital "*tomorrow*", i.e. 21st July. He stated that he would have no computer in hospital because it could not be charged, as indicated in Dr Muller-Pollard's letter. I do not accept that the letter bears that out. The letter states that, "*In order to charge any device patients are required to leave it in a dedicated locker or with nursing staff.*" It therefore contradicts Mr Haigh's assertion that he would be unable to use his computer while in hospital. Mr Haigh also claimed that though he would be able to have his phone charged at a nursing station, he could not use it during treatment sessions, and that due to Covid restrictions he would be confined to his room and unable to use his phone charging cable. However, Dr Muller-Pollard's letter made no suggestion that Mr Haigh would be unable to use his phone, save during actual treatment sessions.

(10) In any event, as I noted in my further direction to the parties at 9.33 am yesterday, 23rd July, Mr Haigh had to date not complied with my direction to file and serve independent evidence verifying that he was in hospital as an inpatient. He had provided an email from himself and a letter from Dr Muller-Pollard, each indicating that he was "*due*" to be in hospital on two different dates, only for it to emerge that he was not in fact admitted to hospital on either date. No independent evidence has been provided that he is now in hospital as an inpatient.

(11) My 23rd July direction therefore concluded

> "In the absence of the evidence directed, the hearing will be listed for 2 pm on Friday 24 July, as indicated in my email of 17 July. If Mr Haigh is not present or represented, I shall hear submissions as to whether to proceed in his absence."

(12) Since then nothing further has been heard from Mr Haigh.

28. In the light of this history, I do not accept Mr Haigh's assertion that he is in hospital unable to participate in this hearing by any method. I consider that he has chosen not to participate. He has failed to comply with a specific direction made on 17th July and repeated yesterday that he must provide independent evidence that he is actually in hospital as an inpatient. No such evidence has been put forward.

29. I have considered whether or not to proceed with the hearing in Mr Haigh's absence today pursuant to CPR 23.11, and in doing so I have taken account by analogy of the factors identified by the Court of Appeal in *R v Hayward, Jones and Purvis* [2001] EWCA (Crim) 168 at para 22.5. Having considered those factors, it is clear to me that Mr Haigh has made a conscious decision not to participate in the present hearing, and that although matters of some seriousness fall to be decided at this hearing, justice requires that I should proceed and deal with this matter without further delay. I am satisfied that Mr Haigh has voluntarily waived his right to appear or to be represented at this hearing. For those reasons I decided that the hearing of Mr Haigh's application and of the claimant's application for a penal order should proceed.

30. As to the form of the hearing, the presumption is that a hearing should be in public in accordance with the open justice principle, unless specific grounds justify taking a different approach. This policy is reflected in CPR 39.2 and the limited exceptions it sets out. As the claimant points out, Mr Haigh was able to participate in a hearing in open court on 10th and 14th February 2020 and a Skype hearing on 22nd May open for public attendance in accordance with the court's Covid protocols. Those protocols aim to preserve the open justice principle in the current circumstances where few hearings can be held in person. The present hearing does not fall within any of the exceptions set out in CPR 39.4. Focusing in particular on limbs (c) and (g), it does not involve the disclosure during the hearing of confidential information. The substantive hearing and the consequential hearing on 22nd May were public hearings and the present hearing relates in substance to variations of the relief granted on the last occasion. It does not involve the canvassing of any confidential details. Nor, in my judgment, is it necessary for the hearing to be in private to secure the proper administration of justice. I do not accept Mr Haigh's medical evidence to the effect that the audibility of the hearing to a representative of the claimant, who Mr Haigh alleges was involved in bringing about his abuse in Dubai, was or would be dangerous

to Mr Haigh's mental health. Bearing in mind the history I have already outlined, together with the substantial engagement Mr Haigh has had during and since the 22nd May Skype hearing, I do not consider the evidence Mr Haigh has put forward on this point to be credible. Further and in any event, as a matter of fact there is no representative of the claimant, as opposed to its London solicitor and barrister, connected to the Skype hearing currently taking place, and as matters have turned out Mr Haigh is not present at the current hearing.

31. I turn now to the applications themselves. I do not accept the grounds Mr Haigh has put forward for seeking further time to comply with the 22nd May order. I have already explained why I reject his medical explanation. Moreover, Mr Haigh claimed on 22nd June in his application that he had made progress on many if not most aspects of the disclosure required, yet today, more than a month later, nothing has been produced. Whilst Mr Haigh will no doubt have spent some time on his proposed appeal, it is now more than 2 months since my substantive judgment of 19th May from which he seeks to appeal. I consider the real situation to be that Mr Haigh is seeking to evade his obligations.

32. At the hearing on 22nd May I considered it premature to endorse my order with a penal notice as the claimant sought. It is now appropriate to revisit that matter. In doing so, I have had regard to the Note at 81.9.1 of the White Book which points out that whether or not a judgment or order prohibiting a person from doing an act or requiring a person to do an act within a fixed time will have a penal notice included within it will depend on the nature of the judgment or order and the circumstances in which it was given or made. The Note goes on to say that "*Penal notices are routinely included in freezing orders and search orders and are commonly included in 'unless' orders*": the latter providing a good analogy for the present case.

33. Insofar as the note refers to the nature of the order, it may also contemplate that some types of order may be more suitable than others for penal notices in terms of the ability for the court to assess whether or not there has been compliance with the order. The present order is essentially an order for disclosure, and I see no reason why it should not be an order which the court can later confidently assess as to Mr Haigh's compliance or non-compliance.

34. I also take into account the history of the litigation as a whole, and I note that Mr Haigh has during these proceedings issued a great number of appeals and applications. Flaux LJ collated these applications, or at least the applications to the Court of Appeal, in his order of 15th October 2019, and marked them all as being "*totally without merit*". That followed the certification of another of Mr Haigh's applications as "*totally without merit*" by Leggatt J in an order of 8th December 2017 and the certification of two further applications by Mr Haigh as "*totally without merit*" by Bryan J on 11th April 2018. One of the latter orders had sought to commit the claimant's legal advisers and officers for contempt.

35. I also take account of the failure by Mr Haigh to give any of the disclosure sought notwithstanding the considerable time that has elapsed since my 22nd May order, and notwithstanding the fact that he claimed to have collated a large amount of the material already.

36. My clerk has drawn to my attention the fact that I need to break off for a moment. I am going to interrupt the judgment for a short time simply to see what needs to be dealt with, so please stay on the line.

(The hearing was briefly adjourned)

37. I am going to complete the judgment, and I will then come back at the end and explain the reason for the interruption, because I will need to raise something before an order is made.

38. In all of the circumstances I have outlined, I have concluded that it is now appropriate to endorse my order with a penal order. It seems to me there is no other way in which to ensure compliance with the order in the context of the history of this matter; and, as the claimant points out, part of the context of this matter is also the finding by the DIFC court, whose judgment I have recognised, that Mr Haigh committed fraud.

39. The claimant sought an order that Mr Haigh now comply with my 22nd May order within 48 hours from now. Although I well understand the claimant's concern arising from the lapse of time which has already arisen and the delay and frustration of their efforts to enforce the judgment they have obtained, I do not think it appropriate to make a further order endorsed with a penal order but giving such a short period for compliance. The claimant's alternative submission today was that I should allow 5 days, but even that I consider runs the risk (as I put it colloquially during oral argument) of setting Mr Haigh up to fail. I shall therefore give Mr Haigh a further 14 days from today, and I emphasise *today* and not the date on which the order is drawn up, to provide the disclosure set out in paragraphs 9-11 of my order of 22nd May sealed on 4th June. If he does not do so, he will, as the penal notice explains, be liable to be committed for contempt of court.

40. I now turn to the detailed changes Mr Haigh seeks to some parts of that order. In relation to paragraphs 9.3 and 9.8 Mr Haigh had sought further time to comply, for reasons which include his reliance on the 8th Defendant for certain of the information. Mr Haigh attaches a copy of the text of a letter which he suggests was sent to the 8th Defendant's solicitors on 10th June 2020. There is no evidence before me of their response. It seems surprising that a professional firm would not have responded, and I am somewhat sceptical that there would have been an absence of response or cooperation. In the circumstances, I do not accept the inference with Mr Haigh may invite me to draw that he should be relieved of the obligation to comply with parts of that order by reason of those matters.

41. So far as time is concerned, he has already had a substantial time now over and above the time given in the original order, and I have just in effect granted a further 14-day period. There seems to be no justification for any further variation of the terms of those parts of the order.

42. In relation to paragraph 9.4 which relates to bank accounts, Mr Haigh has first of all sought either the exclusion of bank accounts held in the UAE or more time to provide evidence in relation to those. He suggests the accounts have been inactive for a long time and that it may take time to gain access to them. However, he puts forward no documentary evidence of that such as one might reasonably expect. For example, he proffers no copy correspondence with the relevant banks giving any indication of the

existence or duration of any anticipated delay in being able to provide the information.

43. Mr Haigh also seeks to be able to redact bank account entries in the sum of less than either £500 or £250 essentially on privacy grounds. I see no basis for taking that approach. It seems to me that the claimant is entitled to see the full picture in order to understand how Mr Haigh has dealt with assets including assets which I have found belong in equity to the claimant. The same applies to Mr Haigh's request in relation to paragraph 9.5 which relates to credit card statements.

44. As to paragraph 9.11.1, Mr Haigh has sought the deletion of the requirement to state the source of funds used to pay solicitors Rosenblatt Limited, who Mr Haigh instructed to issue a libel action against Miss Radha Stirling and Detained in Dubai Limited. Rosenblatt on 10th June 2020 said: "*We are not in receipt of funds from Mr Haigh.*" That does not, however, answer the point about the source from which money has in the past been paid to them.

45. Mr Haigh seeks the insertion of provisions of the kind used in interim freezing orders relating to an undertaking in damages from the claimant, the payment of third parties' costs and the notification of parties served with the order should it cease to have effect. None of those provisions is appropriate in the present order, which follows a final judgment on the merits.

46. Mr Haigh further seeks an order prohibiting the use by the claimant of information obtained pursuant to the order for purposes other than these proceedings, including a prohibition on disclosure to named persons or the media. I consider it unnecessary for any such provision to be included. I do not accept the evidential basis on which Mr Haigh seeks such provision, including the evidence of Mr O'Rourke. The claimant's solicitors and other representatives are bound by their professional obligations, and there is in any event no justification for any specific secrecy obligations to be imposed in this context.

47. For these reasons, I have come to the conclusion that Mr Haigh's application should be dismissed and that my order of 22nd May should be varied by the endorsement of a penal notice and by the granting of the further 14 days to comply which I have already indicated.

(Further discussion followed)

48. During the course of my delivering my oral judgment earlier this afternoon my clerk drew to my attention that she had found in her junk email folder two emails apparently sent on behalf of Mr Haigh.

49. One of them was sent yesterday, 23rd July, at 15.55 from an account including Mr Haigh's name but, I think, not the usual email address from which he has communicated. The text of that email said, "*Please see attached. Sent on behalf of David*." The attachment was a 6-page letter with several pages of attachments from media sources. The second email was timed at 12.25 today, 24th July, from the same email address, the text of which said: "*I am David's partner. I refer to the below email. Please can you confirm it was received. Also please send it to any others*

needed as I don't have details. Please reply to this address. Please be informed a hospital admission report is being obtained and will be sent to the judge Monday."

50. As I indicated in my earlier judgment, I decided to conclude delivering that judgment and then to consider with counsel for the claimant what course to take in the light of these emails and the attached letter. It emerged during discussions that neither the claimant's counsel nor their legal team, nor so far as I know the claimant itself, had received either email. That is not surprising, because neither email is shown as being copied to anyone on the claimant's side and, as I have read out, the second email asks my clerk to send it to any others needed.

51. After discussion with counsel I decided to adjourn the hearing for 30 minutes so that the emails and attachment could be forwarded to the claimant's legal team and considered. The hearing has therefore resumed after that 30-minute adjournment for further submissions. I have heard further submissions from counsel for the claimant and have of course also carefully read and considered the emails, the letter and the attachments myself.

52. The letter from Mr Haigh indicates at the top that it was "*Dictated 20th July 2020. Sent 23rd July 2020*." The first, second and fourth paragraphs of the letter read as follows:

> "I refer to my letter to the court of 22 June 2020 and attached application. I write in response to the email of the claimant's solicitor of 15 July 2020. However, given hospitalisation and ill health, the hearing in any even [which I think should say *event*] should be adjourned unless I am able to secure pro bono representation, which I have not managed to yet.
>
> My partner and friends have prepared and sent this letter and documents for me, I wrote it initially on 15-20 July but asked that they finish, update and submit.
>
> …
>
> The matter is quite simple. There is an order for disclosure of certain financial information. I am reliant on third parties for that over whom I have no control and have requested either (i) the order be stayed pending appeal, given that if the appeal is successful the information will not be required to be disclosed or (ii) additional time be given to comply with the order due to third party response and ill health and an undertaking of confidentiality be added. That application was filed, in time prior to the expiration of the deadline following a request, as per the directions of the judge of [insert date]. Consent was not provided."

53. The contents of the letter broadly fall into four parts.

54. First, the letter sets out more assertions in relation to Mr Haigh's medical position. However, it does not attach or refer to any new evidence. The passage I have read out

refers to Mr Haigh's "*hospitalisation*", and in paragraph 13 of the letter Mr Haigh writes that he "*will be in a psychiatric hospital*". However, the position remains that Mr Haigh has not, following my direction of 17th July, and repeated yesterday, provided any independent evidence that he is actually in hospital as an inpatient. It cannot have been anything other than clear to Mr Haigh that evidence of that kind was required if I were to accept his assertion that he is now in hospital. No evidence has been provided and I do not accept his assertion.

55. In any event, for the reasons given in my judgment of earlier this afternoon, I do not accept that Mr Haigh would be unable to fulfil the obligations imposed on him, or indeed necessarily to take part in the present hearing, even if he had been in hospital. There is, in particular, no evidence of any kind, let alone any independent evidence, that Mr Haigh was actually in receipt of treatment during the time over which the present hearing has taken place. I have already expressed the reasons for my conclusion that the true reason for Mr Haigh's non-participation in this hearing has been his deliberate choice not to do so.

56. The second of the two emails which I have quoted suggests that a hospital admission report is being obtained and will be sent to me on Monday. That, however, is a mere promise which follows other promises given in the past, and it follows the correspondence I have already mentioned in my earlier judgment in which Mr Haigh and his doctor stated that he was about to be admitted into hospital, only for it to emerge that that did not occur. As counsel for the claimant points out, there is also a resemblance with the course of events in the days leading up to the trial in the DIFC in July 2018, when a similar suggestion was made and rejected by the judge for the cogent reasons he gave. As a result, I am not prepared to accept this further promise of a further report, to be provided after the date of this hearing, as a ground on which this hearing either should be adjourned or the outcome of it should be any different.

57. The second part of Mr Haigh's letter, which in fact occupies a large part of it, relates to his claim that the present hearing should take place in private because it concerns his private financial confidential information. I have already rejected that suggestion, and nothing in the letter that has now been seen alters that conclusion. First of all, Mr Haigh cannot realistically rely on confidentiality in circumstances where it has been concluded that he has misappropriated very large sums of money from the claimant which I have found belong to the claimant in equity. Secondly and in any event, this hearing has not involved, and could never reasonably have been expected to involve, the actual disclosure or discussion of details of the purportedly confidential information in question. The purpose of this hearing has always been about the time within which Mr Haigh must comply with the directions already made, the consequences should he fail to comply, and certain limited respects in which Mr Haigh sought the adjustment of the 22nd May order.

58. The third element of the letter is a new suggestion by Mr Haigh that the hearing should take place in private for the reasons set out in CPR 39.2(3)(d) on the ground that he is a "*protected person*". It seems to me that there is no arguable case that Mr Haigh is in fact a protected person within that paragraph, and in any event even if he were, it does not seem to me, given the nature of the hearing, that it would need to take place in private for his protection.

59. The fourth element of Mr Haigh's letter is a series of attacks on the claimant, its legal team and certain third parties, none of which is in my view relevant to the matters to be decided at this hearing.

60. I therefore conclude, having looked carefully at Mr Haigh's letter and its attachment as well as the two emails provided on his behalf, that none of those matters affects the conclusions I have reached in my earlier judgment or the reasons given for it.

This Judgment has been approved by Henshaw J.