

BRITISH VIRGIN ISLANDS COMMERCIAL COURT

PT Ventures SGPS SA -v- Vidatel Ltd
(BVIHC (Com) 2015/0117) (October 2015
and June 2016)

CONTEMPT OF COURT - APPLICANT APPLIED TO HAVE RESPONDENT FOUND IN CONTEMPT OF COURT FOR BREACHING COURT ORDERS RESTRAINING DISPOSITION OF ITS ASSETS AND FAILING TO FILE SWORN EVIDENCE REGARDING SUCH DISPOSITIONS - INTERESTS OF JUSTICE REQUIRE THAT COURT CONSIDER ALL AVAILABLE EVIDENCE - EVIDENCE ESTABLISHED THAT TRANSFERS IN ISSUE WERE EFFECTED PURSUANT TO PRIOR INSTRUCTIONS PRIOR TO COURT'S ORDER - NO OPPORTUNITY TO COUNTERMAND BECAUSE TRANSFERS COMPLETED BEFORE ORDERS MADE - FOR FINDING OF CONTEMPT, ORDER NEED TO BE CLEAR AND UNEQUIVOCAL, AND NEED TO BE STRICTLY CONSTRUED

On the Application of PT Ventures SGPS SA, the Court heard the parties' submissions as to whether there was contempt of the Court's temporary worldwide freezing order on the part of the Respondents. On evidence, the transfers of assets in issue were affected and completed some seven hours before the Court's freezing order. The Court took into account the Respondent's submission that had the Respondent really intended to dissipate assets, engagement with the Applicants' legal practitioners prior to the *ex parte* hearing "would have been the last thing to undertake". Further, there was no evidence that the Respondents did anything (one way or the other) to expedite or delay the transfers. Given the way events unfolded, there was no opportunity to countermand the transfers, as such transfers were completed before the freezing order was made.

The Applicant submitted that actions taken by a person in the face of a pending injunction application to frustrate the relief sought could amount to contempt. This approach was rejected by the Court. The Court held that the decision of the House of Lords in *AG -v- Times Newspapers Ltd* [1973] 3 All ER 54, at 71, lines h-j did not appear to go so far as to support the concept that a person taking an action, which a pending application seeks to enjoin, may be found to be in civil contempt. The elements of civil contempt were summarised in *Liao Hwang Hsaing -v- Liao Chen Toh and Liao Wen Toh*, BVIHCV 2011/0222, 6 May 2013, by Ellis J as follows:

"It is necessary to show that the person sought to be held in contempt: (1) knew the terms of the order; (2) acted or failed to act in a manner which involved a breach of the order; and (3) knew the facts which made his conduct a breach of the order".

The Court further accepted the Respondent's submissions that an Order, which was alleged to have been breached, needed to tell the target of the Order what needed to be done, and that in respect of the "in detail" requirement the orders in issue were "far from clear". The relevant orders say, "setting out in detail any sale, disposition or transfer of its assets, or confirming that no such sale, disposition or transfer of its assets has taken place".

In this regard, the Court accepted that the orders could have required "details of how much, to whom and for what purpose its transfers were made". The Court rejected the Applicant's submissions that even if the "outer limit" of "in detail" was arguably unclear, the "inner limit" was clear, and that a legal or commercial person should have understood it to include details such as amount, date, to whom and purpose. The Court held that because of the penal consequences of breaching a freezing order, and by logical extension, a disclosure order in relation to a freezing order, a defendant needs to know where he, she or it stands in relation to the order. Therefore, orders in relation to disclosure need to be clear and unequivocal and need to be strictly construed.

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