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England and Wales High Court (Admiralty Division) Decisions

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Claim No. 1441 of 2014

**IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMIRALTY AND COMMERCIAL COURT**

Fetter Lane
London
EC4A 1BY
21st July 2015

Before:

THE HONOURABLE MR JUSTICE PHILLIPS

Between:

ADM RICE INC.

Claimant

-v-

CORPORACION COMERCIALIZADORA

Defendant

DE GRANOS BASICOS SA

**andFirst
Respondent**

-and-

ENRIQUE JOSE DELGADILLO AGUIRRE

**Second
Respondent**

-and-

**VANESSA AUXILIADORA DELGADILLO
SACASA**

**Third
Respondent**

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HTML VERSION OF JUDGMENT

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JUDGMENT

MR JUSTICE PHILLIPS:

1. By application notice dated 22 May 2015, the claimant applied to commit the defendant and first respondent (abbreviated to 'CORCOSA') for contempt of court, also applying to commit the second and third respondents on the basis that they are directors and/or officers of CORCOSA and are responsible for CORCOSA's failure to comply with the relevant orders.
2. The background to the application is that the claimant obtained six awards in GAFTA arbitrations in which CORCOSA fully participated, serving both a defence and a rejoinder. After the awards CORCOSA, a company incorporated in Nicaragua, has effectively turned its back on matters completely and has refused to engage or substantively communicate with the claimant.
3. A freezing order was made by Blair J on 4 December 2014, including provisions requiring CORCOSA to provide details of its assets worldwide and to confirm them on an affidavit within 14 days of service. On 17 December 2014 I continued the freezing order and made further orders for the provision of information within 14 days, with an affidavit no later than 21 days after service. Each of the orders contained a penal notice that warned CORCOSA, its directors and officers of the consequences of non-compliance with the terms.
4. Both orders were served on email addresses as permitted in terms of the orders and there is evidence that those were delivered, read, and in certain instances documents were deleted. Copies of the orders were also served personally on each of the second and third respondents on 2 February 2015. It is entirely clear, beyond reasonable doubt, that the orders were not complied with in any respect, those orders having been served and containing the relevant penal notices.
5. I am also satisfied, on the material I have been shown today by Mr Dye for the claimant, that the second and third respondents are, indeed, directors and/or officers of CORCOSA. The second respondent is described as executive president and is on the register of directors as such. The third respondent has previously been a director and has had a power of attorney in the company. Whilst that is no longer shown on the register, she still describes herself as an executive director and an authorised manager of CORCOSA, and I am satisfied that she also is an officer within the relevant meaning of the term, capable of taking reasonable steps to ensure that CORCOSA complied with the orders. I am satisfied beyond reasonable doubt that a failure to procure that CORCOSA complied was wilful and contumacious.
6. These committal proceedings were served pursuant to the order of Andrew Smith J out of the jurisdiction. Service was permitted to be by courier and the method which was used was, retrospectively, validated by order of Leggatt J. I am therefore satisfied on the evidence, again to the requisite standard, that the application for committal for contempt has been properly served and properly proved. I therefore find that each of the respondents is in contempt of court and liable to be committed.

7. As far as sentence is concerned, Mr Dye submits that the proper sentence in this type of case is one of 18 months to two years' imprisonment, two years being the maximum. In my judgment, this is a blatant case of a complete blanket refusal to comply with court orders in the face of clear evidence that the respondents have wilfully turned their back on the dispute resolution process to which they had previously engaged and have contumaciously ignored the court's orders. In my judgment, the appropriate sentence for these contempts for the second and third respondents, Enrique Jose Delgadillo Aguirre and Vanessa Auxiliadora Delgadillo Sacasa that they each be committed to prison for 18 months.
8. I do not make an order for the issue of a writ of sequestration as I am not satisfied that it would serve any purpose at the moment, although I give liberty to the claimant to apply in due course for such a writ and reserve any such application to myself. I will therefore make an order in the terms proposed by Mr Dye, subject to the revisions that I have indicated. I will order that the respondents pay the claimant's costs of this application on the indemnity basis and I will summarily assess those costs at Mr Dye's invitation.

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