Neutral Citation Number: [2018] EWCA Civ 2011

Case No: A4/2017/1082

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

The Hon. Mr Justice Teare
[2018] EWHC 3265 (Com)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 06/09/2018

Before :

LORD JUSTICE GROSS
LORD JUSTICE LEWISON
and
LORD JUSTICE LEGGATT

- -

Between :

MR ALEXANDER VIK	**Appellant**
- and -	
DEUTSCHE BANK AG	**Respondent**

- -
- -

Duncan Matthews QC, Charlotte Tan and Alistair Wooder (instructed by Brecher LLP) for the Appellant
Sonia Tolaney QC, James MacDonald and Andrew Lodder (instructed by Freshfields Bruckhaus Deringer LLP) for the Respondent

Hearing dates: 27 and 28 June 2018

- -

Judgment Approved

LORD JUSTICE GROSS:

INTRODUCTION

1. This case highlights the tension which can exist between important interests: enforcing court orders on the one hand; keeping within the jurisdictional limits of the Court, especially as individual liberty is at risk, on the other. Both are indeed facets of the Rule of Law.

2. The reality of the matter is that the Appellant ("Mr Vik"), as found by Teare J (in one of the judgments under appeal), "…is a man who will do what is necessary to prevent DB obtaining its judgment debt". That said, whatever the underlying "merits", the Respondent ("DB") is not entitled to succeed unless its submissions are justified in terms of the jurisdictional limits of this Court.

3. The present proceedings arise out of DB's efforts to enforce a judgment debt, said now to amount to over US$320 million ("the judgment debt"), owed to DB by Sebastian Holdings. Inc. ("SHI"). Mr Vik, described by DB as "a Monaco domiciled ultra high net worth individual", was at all material times SHI's sole shareholder and director. Following a lengthy trial in the Commercial Court, Cooke J ordered SHI to pay DB the judgment debt in November 2013.

4. In his judgment dated 16th December, 2016, [2016] EWHC 3222 (Comm) ("the first judgment"), Teare J summarised the position succinctly as follows:

> "1…..[SHI]…, the Defendant, conducted substantial foreign exchange and equities trading with….[DB]…, the Claimant. This trading became loss making and when SHI failed to meet margin calls DB took proceedings to recover the debts owed to it. DB was awarded judgment in the sum of US$243m plus 85% of its costs on an indemnity basis. SHI is the creature company of Mr Vik, its former, and until April 2015, sole director and shareholder. Accordingly he has been held to be liable to pay DB £36m on account in respect of its costs. He has paid that amount on account of costs but SHI has not paid the judgment debt. It appears that Mr Vik has taken action to strip SHI of any assets…."

5. In those circumstances, on the 20th July, 2015, DB obtained an order from Teare J, pursuant to CPR 71.2 ("the CPR 71 order"), requiring Mr Vik (as Teare J continued, *ibid*):

> " …to provide documents in SHI's control relating to SHI's means of paying the judgment debt and to attend court in order to be cross-examined about SHI's means. That order was served on Mr Vik when he was within the jurisdiction. Mr Vik applied to set aside the order. That application was dismissed by Cooke J. He subsequently provided some disclosure and attended this court for cross-examination. DB contends that Mr Vik deliberately failed to disclose many documents and lied under oath….."

It is to be underlined, as Teare J recorded, that the CPR 71 order was served personally on Mr Vik while he was present, albeit briefly, in the jurisdiction.

6. Mr Vik denies any non-compliance with the CPR 71 order. The upshot, however, was that DB, again in Teare J's words (*ibid*):

> " ….issued an application seeking permission under CPR 6.38 to serve an application for a suspended committal order out of the jurisdiction, an order permitting personal service of the committal application on Mr Vik in Monaco where he resides and, in the event that he does not accept personal service, an order under CPR 81.10(5) and CPR 6.15 dispensing with personal service and permitting DB to serve the committal application via email and registered post on Mr Vik's solicitors, Taylor Vinters LLP."

7. The committal application to which Teare J referred ("the committal application") was made by DB pursuant to CPR 81.4. In broad terms, Mr Vik contended that the Court lacked jurisdiction to enforce the CPR 71 order against him.

8. In the first judgment, Teare J held as follows:

   i) The Court had jurisdiction under CPR 81.4 and/or CPR 71.8 to commit Mr Vik for breach of the CPR 71 order, even though Mr Vik had left the jurisdiction. There was no dispute that CPR 81.4 had extra-territorial effect and DB was not restricted to applying for a committal order pursuant to CPR 71.8. In any event, CPR 71.8 had extra-territorial effect.

   ii) However, the Court had no jurisdiction pursuant to PD6B 3.1(10) to grant permission to serve the CPR 81.4 committal application out of the jurisdiction. The question of alternative service fell away.

9. Subsequently, in a second judgment dated 3rd March, 2017 ("the second judgment"), [2017] EWHC 459 (Comm), Teare J held that permission to serve the committal application on Mr Vik was not required. This was so because the Court already had incidental jurisdiction over Mr Vik to enforce the CPR 71 order. Further and if need be, Teare J would have acceded to the DB submission that the DB application fell within Art. 24(5) of the *Recast Brussels Regulation* ("the Recast Regulation"). Finally, Teare J held that the committal application could be served on Mr Vik by alternative means, namely, on his solicitors.

10. Teare J made an order dated 24th March, 2017 ("the Jurisdiction Order"), reflecting both the first and second judgments. Insofar as material, it was in these terms:

> "1. The Court has subject-matter jurisdiction to hear committal proceedings against Mr Vik for alleged breaches of the CPR 71.2 Order, notwithstanding that Mr Vik is not within the jurisdiction.
>
> 2. DBAG [i.e., DB] is not entitled to permission to serve the Committal Application out of the jurisdiction in Monaco under CPR 6.38 and Practice Direction 6B 3.1(10).

> 3. Permission is not required for DBAG to serve the Committal Application on Mr Vik out of the jurisdiction in Monaco.
>
> 4. DBAG has permission under CPR 81.10(5) (and if required CPR 6.15) to dispense with personal service of the Committal Application and to serve the Committal Application on Mr Vik's solicitors…."

11. Before this Court, Mr Vik appeals against paras. 1, 3 and (consequentially) 4 of the Jurisdiction Order, while DB cross-appeals against para. 2.

12. The appeal and cross-appeal thus give rise to five principal issues:

    i) Whether it was open to DB to make the committal application under CPR 81.4 rather than CPR 71.8, when the complaint relates to an alleged breach of CPR 71.2? ("Issue I: Availability of CPR 81?")

    ii) If DB had made the committal application under CPR 71.8, whether it was entitled to pursue it against a respondent out of the jurisdiction (as Mr Vik was)? ("Issue II: Does CPR 71.8 have extraterritorial effect?")

    iii) Was the committal application incidental to the CPR 71 order? ("Issue III: Was the committal application incidental to the CPR 71 order?")

    iv) Was the committal application within Art. 24(5) of the Recast Regulation? ("Issue IV: The Recast Regulation?")

    v) By way of the cross-appeal, did the CPR 71 order come within the wording of CPR 6.38 and PD 6B 3.1(10)? ("Issue V: Gateway 10?")

13. In overview, should Mr Vik succeed on Issue I, then the appeal must succeed and the cross-appeal must fail. On the other hand, should Mr Vik fail on Issue I, then he would need to succeed on all of Issues III, IV and V for the appeal to be allowed and the cross-appeal (in the case of Issue V) to fail; failure on any of Issues III, IV and V would, on this hypothesis, be fatal to Mr Vik's case. As will become apparent, upon analysis, Issue II is hypothetical.

14. We were most grateful to Mr Matthews QC, for Mr Vik and Ms Tolaney QC, for DB, together with their respective teams, for the quality of their assistance.

ISSUE I: CPR 71 – AVAILABILITY OF CPR 81?

15. *(1) The CPR provisions:* It is convenient to begin with the relevant provisions of CPR Parts 71 and 81.

16. The scope of *CPR 71* appears from r. 71.1, namely, that Part 71 contains rules:

> "…which provide for a judgment debtor to be required to attend court to provide information, for the purpose of enabling a judgment creditor to enforce a judgment or order against him."

As will be recollected, the CPR 71 order was obtained pursuant to r. 71.2, which includes provision (r.71.2(1)(b)) for requiring an officer of a corporate judgment debtor to attend court to provide information about the judgment debtor's means or any other matter about which information is needed to enforce a judgment or order.

17. R. 71.2(6) provides as follows:

> "A person served with an order issued under this rule must –
>
> > (a) attend court at the time and place specified in the order;
> >
> > (b) when he does so, produce at court documents in his control which are described in the order; and
> >
> > (c) answer on oath such questions as the court may require. "

18. R. 71.2(7) provides for an order under this rule to contain a penal notice and the CPR 71 order (in this case) did contain such a notice, addressed to Mr Vik, in these terms:

> " You must obey this order. If you do not, you may be sent to prison for contempt of court."

19. R. 71.8 was introduced by amendment to the CPR in 2001. It is headed "Failure to comply with an order" and provides as follows:

> " (1) If a person against whom an order has been made under rule 71.2 –
>
> > (a) fails to attend court;
> >
> > (b) refuses at the hearing to take the oath or to answer any question;
> >
> > (c) otherwise fails to comply with the order;
>
> the court will refer the matter to a High Court Judge or Circuit Judge.
>
> (2) That judge may, subject to paragraphs (3) and (4), make a committal order against the person.
>
> …..
>
> (4) If a committal order is made, the judge will direct that –
>
> > (a) the order shall be suspended provided that the person –
> >
> > > (i) attends court at a time and place specified in the order; and

(ii) complies with all the terms of that order and the original order; and

(b) if the person fails to comply with any term on which the committal order is suspended, he shall be brought before a judge to consider whether the committal order should be discharged.

(Part 81 contains provisions in relation to committal.)"

20. Turning to *CPR 81*, its scope includes the procedure to be followed in respect of contempt of court. R. 81.2 is in these terms:

"(1) This Part is concerned only with procedure and does not itself confer upon the court the power to make an order for –

(a) committal

….

(3) Nothing in this Part affects any statutory or inherent power of the court to make a committal order of its own initiative against a person guilty of contempt of court."

21. R. 81.4 provides, *inter alia*, for the enforcement of a judgment or order:

"(1) If a person –

(a) required by a judgment or order to do an act does not do it within the time fixed by the judgment or order; or

(b) disobeys a judgment or order not to do an act,

then, subject to…..the provisions of these Rules, the judgment or order may be enforced by an order for committal.

…..

(3) If the person referred to in paragraph (1) is a company or other corporation, the committal order may be made against any director or other officer of that company or corporation."

22. R.81.10 deals with how to make the committal application. Thus:

" (1) A committal application is made by an application notice under Part 23 in the proceedings in which the judgment or order was made or the undertaking was given.

(2) Where the committal application is made against a person who is not an existing party to the proceedings, it is made against that person by an application notice under Part 23.

> (3) The application notice must –
>
> > (a) set out in full the grounds on which the committal application is made and must identify, separately and numerically, each alleged act of contempt including, if known, the date of each of the alleged acts; and
> >
> > (b) be supported by one or more affidavits containing all the evidence relied upon.
>
> ….."

23. *(2) The first judgment:* This Issue was dealt with by Teare J in the first judgment (esp., at [7] – [10]). The Judge observed that the power to commit to prison for contempt was a common law power, rather than one conferred by the CPR, applying as much to the enforcement of a judgment as it did to enforcement of a procedural order. Both CPR 71 and 81 provided the procedure to be followed when that common law power or jurisdiction was exercised.

24. The key to Teare J's reasoning was that CPR 71 provided a summary or streamlined procedure. It was to be expected that either it or the more detailed process of CPR 81 could be used, the choice depending on whether the case was appropriate for the summary or streamlined process or not. Where the alleged contempt was simple, such as a failure to attend court, the streamlined process might be appropriate. However, where the contempt alleged was more difficult to prove, "such as a failure to answer questions honestly", the more detailed process might be appropriate. That was indeed what had happened here. Mr Vik attended for examination; counsel for DB had been dissatisfied with his answers and invited Cooke J to proceed under CPR 71.8. Cooke J declined to do so and instead drew counsel's attention to the provisions of CPR 81.10. Teare J underlined that the express reference in CPR 71.8 to CPR 81 was consistent with that approach, with which he agreed. Teare J accordingly concluded that a party who alleged a breach of an order made under CPR 71.2 could proceed with a committal application under CPR 81.

25. Rejecting the arguments advanced on behalf of Mr Vik, Teare J's conclusions on this issue were these (at [10]):

> "….. I am unable to accept that where there is a breach of an order made under Part 71 a party can only proceed in accordance with Part 71.8. It is true that Part 71.8 provides a specific procedure and only provides for a suspended committal order but the specific procedure is for applications where the summary or streamlined procedure is appropriate. If such a procedure is appropriate then the specific procedure must be followed. But if it is not then the procedure provided by Part 81 must be followed. The summary or streamlined procedure can only result in a suspended committal order whereas the longer procedure in CPR 81 is not so limited. There is no question of 'outflanking' or 'circumventing' the restrictions imposed by Part 71.8. The procedure in Part 71.8 is for one type of application, that is, the

> summary or streamlined procedure and the procedure in Part 81 is for other cases. ”

26. *(3) The rival contentions:* For Mr Vik, Mr Matthews submitted that the Judge had fallen into error; the committal application was brought in respect of alleged breaches of an order made under r.71.2; accordingly, the mandatory regime furnished by r. 71.8 applied. DB was not free, at its option, to proceed under r.81.4. The general could not override the specific and r.71.8 was the *lex specialis* dealing specifically with the consequences of alleged breaches of orders under r.71.2. Many of the provisions of CPR 81 had nothing to do with CPR 71 orders. Under r.71.8 (unlike r.81.4) any committal order could only be suspended. The limitations on the draconian power to commit, provided by r.71.8 for those such as “mere” former officers of corporate parties “at the outer reaches of the Court’s jurisdiction”, could not be circumvented by seeking to invoke the Court’s inherent jurisdiction enshrined in r.81.4. Furthermore, Mr Vik’s primary position was that r.71.8 created a “discrete form of statutory contempt”; if so, the Court’s inherent jurisdiction (under r.81.4) could not be used to obtain an order wider than or inconsistent with any order available pursuant to the specific CPR power (under r.71.8). Even if r.71.8 was not the source of the Court’s power to commit under that provision, any order could only be made in conformity with the limits of r.71.8. The Judge had posed a false dichotomy between the procedure under CPR 71 and that under CPR 81. He had postulated an exclusively summary procedure under CPR 71, to be contrasted with a detailed procedure under CPR 81. In doing so, he had ignored the sliding scale of options available under CPR 71.8. The correct analysis was that in such a case, the application must be made under CPR 71.8 but the Judge enjoyed a range of options of increasing levels of detail, depending on the circumstances of the case. It followed that if DB wished to pursue its allegations that Mr Vik breached the CPR 71 order, it “must” bring any application under and in accordance with the limitations imposed by r.71.8.

27. For DB, Ms Tolaney submitted that the Judge was right. CPR 71.8 was simply a summary and streamlined committal procedure, introduced in 2001, to enable judgment creditors to obtain a suspended committal order without the need for an application notice or a hearing. It sought to address criticisms that the more rigorous CPR 81 committal procedure was too slow. Nothing in the CPR suggested that the summary procedure was intended to replace the CPR 81 procedure, a point emphasised by the cross-reference in r.71.8 to CPR 81. CPR 81 was – and remained – the generally applicable procedure. Indeed, CPR 81 contained more protections for the contemnor than r.71.8; hence the approach taken by Cooke J. The correct analysis was that CPR 71.8 and CPR 81 were simply different and complementary procedures.

28. *(4) Discussion and conclusions:* There was a certain irony in Mr Vik contending for the (exclusive) application of CPR 71.8 rather than CPR 81, with its greater protections for an alleged contemnor. The motivation is not hard to find: as was undisputed (at least for the purposes of this appeal), CPR 81.4 has extraterritorial reach. Mr Vik’s aim was accordingly to contend for the exclusive application of CPR 71.8 (under this Issue) and then (under Issue II) to submit that CPR 71.8 lacked extraterritorial scope. The Issue, however, must be determined on the strength of the rival arguments rather than Mr Vik’s motivation.

29. In the event, I agree with the Judge's conclusion on this Issue. I am not persuaded that DB was confined to proceeding by way of CPR 71.8 in respect of Mr Vik's (alleged) breaches of the CPR 71 order. My reasons follow.

30. First, I think the Judge was right as to the history and purpose of the CPR 71 procedure: it is a simple and streamlined committal procedure, introduced in 2001, designed to address criticism that the more rigorous CPR 81 committal procedure was too slow. So much is clear from the judgment of Carnwath LJ (as he then was) in *Broomleigh Housing Association Ltd v Okonkwo* [2010] EWCA Civ 1113; [2011] HLR 5, at [28], where reference was made to the existing procedure being "too easily dragged out by the debtor". Accordingly:

> "The new Pt 71 was designed to meet these criticisms, retaining imprisonment as the last resort, but streamlining the process, subject to appropriate protections."

31. On this footing, I am unable to accept that the CPR 71 procedure supplants that available under CPR 81; in complex cases, the judgment creditor might be required to proceed by way of CPR 81; a Court might properly refuse permission to proceed under CPR 71.8. In other cases, it might be unnecessarily cumbersome to follow the CPR 81 route. But in no case can it be said that simply *because* the alleged breach in question involved a CPR 71 order, *therefore* the party alleging contempt must proceed by way of CPR 71.8.

32. Viewed in this light, no question arises of the general provisions of CPR 81.4 being used to "outflank" or "circumvent" the specific provisions of CPR 71.8 and the limitations contained in that rule. CPR 71 and CPR 81 are different and complementary provisions. As the Judge observed (at [10]), CPR 71 is appropriate for one type of application – essentially, those which are straightforward - and CPR 81 is appropriate for other types of application, essentially those which are more complex.

33. Secondly, the better view of the wording of r.71.8 is that it points to the complementary nature of the Part 81 procedure. The cross-reference to Part 81 containing "provisions in relation to committal" makes sense on the view of the two procedures set out above; the presence of such a cross-reference is more difficult to explain if instead CPR 71 is regarded as exhaustive within the sphere it covers, to the exclusion of CPR 81.

34. For Mr Vik, some reliance was placed on the wording of r. 71.8(1), providing that in the event of non-compliance with a CPR 71.2 order, "the court *will refer* the matter to a High Court Judge or Circuit Judge" (italics added). However, I agree with Ms Tolaney that this wording does not significantly advance Mr Vik's case. The reference to a High Court or Circuit Judge is mandatory, perhaps unsurprisingly – reflecting the fact that many examinations take place before a court officer or District Judge. But the permissive wording which follows in r.71.8(2) (as to the Judge making a committal order subject to the limitations contained in r.71.8(4)) does not preclude the Judge from exercising the Court's powers under CPR81.4 – where following that procedural course may be appropriate or even required.

35. Thirdly in my judgment, the source of the Court's power to commit to prison for contempt of court is derived from its inherent jurisdiction, under both CPR 81 and CPR 71. As expressed in *Griffin v Griffin* [2000] 2 FLR 44, at p.48, by Hale LJ (as she then

was), the power to commit to prison for contempt is a "common-law power which has never been fully regulated by statute or even by rules of court". R.81.2 makes it clear, in terms, that *it* does not confer upon the Court the power to commit for contempt. There is no equivalent wording in r.71.8 but, for my part, I agree with the observations of Teare J (at [7]) and for the reasons he gave, that "both CPR 81 and CPR 71 provide for the procedure to be followed" when the common law power to commit for contempt is exercised. To my mind very clear wording would be needed for CPR 71 to constitute a contempt of statutory origin, departing from the general principle that the power to commit for contempt is a common law power. In reaching this conclusion, like the Judge (*ibid*) I recognise that it entails rejection of a note in the 2016 *White Book*, at para. 3C-21 – but equally like him, I am not deterred from doing so. It may be noted that Teare J's conclusion, namely, that the power to commit for contempt is a common law power, has been accepted without question in the commentary in the 2018 White Book, at para. 71.8.1.

36. The object of the submissions advanced by Mr Matthews as to the origin of the power to commit for contempt was to provide a basis for the proposition that the Court's inherent jurisdiction under CPR 81.4 could not be exercised to arrive at a different outcome from that which would be obtained under the applicable CPR provision – *viz.,* on his submission, CPR 71.8. The principle is not in doubt that the Court's general inherent jurisdiction cannot be used to lay down procedure contrary to or inconsistent with the CPR: *Raja v Van Hoogstraten (No. 9)* [2008] EWCA Civ 1444; [2009] 1 WLR 1143. However, on the view I take as to the origin of the power for which the procedure is furnished by CPR 71 and in light of my earlier conclusion as to the relationship between CPR 71 and CPR 81, the foundation is lacking for the application of this principle here.

37. Fourthly, I am unable to accept Mr Matthews' submission that the Judge postulated a "false dichotomy" between the CPR 71 and CPR 81 procedures. To the contrary, I think the Judge's suggested dichotomy was well-founded. The cornerstone of the submission advanced here on behalf of Mr Vik was the decision of this Court in *Broomleigh (supra)* – but I am not persuaded that that decision will bear the weight Mr Matthews sought to place on it.

38. The particular concern in *Broomleigh* (at [17]), as appears from the joint judgment of Moore-Bick LJ and Wilson LJ (as he then was), was that under the streamlined procedure it had become "routine" for suspended committal orders to be made. Such orders were tantamount to a suspended sentence of imprisonment and (*ibid*) it was undesirable:

> "…for the court to approach the making of severe orders with any degree of promiscuity just because it has an expectation, however well justified, that they are unlikely to need to be enforced. "

Instead (at [21]):

> " …Rule 71.8 gives the court power to make a committal order, but that requires the exercise of discretion, which in turn requires consideration of the circumstances of the contempt. Committing a person to prison for contempt of court is a serious step, too

> serious….to be undertaken simply as a matter of routine without enquiring into the nature of the contempt and the circumstances in which it has been committed and giving reasons, at any rate briefly, for the decision."

39. Against that background, the Court gave guidance (at [22]) as to the options available to a Judge, following reference to him under r.71(8)(1), in determining whether to make a suspended committal order under r.71(8)(2):

> " (a) if satisfied not only that the debtor was served with the order to attend but also that there is sufficient evidence before him to justify a finding to the criminal standard that the debtor's failure to attend (or refusal to take the oath and answer questions) was intentional and that in the circumstances it is appropriate to do so, he may proceed to make a suspended committal order……
>
> (b) if not satisfied of the matters necessary for the making of a suspended committal order, the judge can adjourn consideration of it and, if so, can proceed in one of two ways: either:
>
> > (i) he can give directions, supported by a penal notice, for a hearing in court, including directions for the debtor (and perhaps also for the creditor) to attend; or
> >
> > (ii) he can give directions, again supported by a penal notice, for the debtor (and perhaps also the creditor) to depose to specified matters and to file and serve the affidavit or affirmation by a specified date;
>
> (c) alternatively, the judge can decide there and then not to make a committal order and to proceed in a different way, probably by making a further order under r.71.2 for the debtor's attendance at court to provide information…..The further order will contain a penal notice in any event…."

40. The point of the guidance was to guard against the mischief of the routine imposition of suspended committal orders. Nothing, however, about the guidance undermines the dichotomy between the CPR 71 and 81 procedures contained in the Judge's analysis. At least in the first instance, CPR 71.8(4) contemplates that the committal order will be suspended only, a necessary safeguard given the summary procedure involved when that route is followed. The CPR 81 procedure, with its own stringent safeguards, means that no such limitation is necessary: the procedure itself protects the alleged contemnor. In any event, the *Broomleigh* guidance does not begin to preclude resort to the CPR 81 procedure in the case of alleged breach of a CPR 71.2 order when such a course is otherwise warranted.

41. For completeness, I have not overlooked the reference in *Broomleigh*, at [21], to r.71.8 giving the Court power to make a committal order. However, as it seems to me, that was no more than a passing (and *obiter*) reference and does not cause me to doubt the conclusion already set out: namely, that both under CPR 71 and CPR 81 the source of the Court's power to make a committal order is its inherent common law jurisdiction.

42. Fifthly, going somewhat beyond the submissions presented to the Judge, it is difficult to see how the CPR 71.8 procedure could operate in a case such as the present. At the very least, the provisions governing its detailed operation point strongly to its application in simple, summary cases only.

43. CPR 71 is accompanied by a Practice Direction – PD 71. 71PD.6 is in these terms:

> " If a judge or court officer refers to a High Court Judge or Circuit Judge the failure of a judgment debtor to comply with an order under rule 71.2, he shall certify in writing the respect in which the judgment debtor failed to comply with the order."

44. This provision is readily applicable to straightforward cases of the person against whom a CPR 71.2 order has been made failing to attend court (r.71.8(1)(a)) or attending court but refusing at the hearing to take the oath or to answer any questions (r.71.8(1)(b)). In such cases, there is no difficulty in the court officer or District Judge certifying accordingly. Indeed, the copy of the standard form for certification, shown to us, deals only with these instances of non-compliance with a CPR 71 order.

45. By contrast, in a case such as the present, arising under r.71.8(1)(c), where the matter is altogether more complex – going to alleged, disputed non-disclosure and lying under oath – the certification procedure appears singularly inappropriate. It is one thing, for example, for a court officer to certify that the alleged contemnor has not attended – a straightforward matter of fact. It would be quite another for a court officer to certify as to the truth of answers given under oath. It may be noted that the Court's guidance in *Broomleigh* (at [22(a)]) made reference only to matters falling within r.71.8(1)(a) and (b) – but not to those within r.71.8(1)(c).

46. In this case, no certificate has been given under 71PD6. Nor, in the light of the view taken by Cooke J at the time of Mr Vik's examination, could one have been given. As such certification appears integral to the operation of the r.71.8 procedure, the absence of any certificate may itself be fatal to the contention that DB was confined to following the r.71.8 route in the present case. If, however, matters rested there, I might have been reluctant to rest my decision on questions of compliance with a Practice Direction alone. But they do not. The very requirement of such certification points and to my mind, points overwhelmingly, to this procedure being geared to simple, straightforward cases. For completeness, much the same can be said of the certification requirements in 71PD.8 for breach of the terms on which a committal order is suspended under r.71.8(4)(b). Viewed in this light, it is implausible to submit that CPR 71.8 provides the sole recourse in the event of breach of a CPR 71 order, to the exclusion of the CPR 81 procedure. For this additional reason too, I would conclude that the Judge's decision on Issue I was correct.

47. It follows that DB was entitled to invoke the CPR 81 procedure, with its extraterritorial reach undisputed before us, in respect of Mr Vik's (alleged) breach of the CPR 71 order. Subject-matter jurisdiction is accordingly established. The remaining question is whether DB can establish personal jurisdiction over Mr Vik or whether Mr Vik's contention is correct that there is no means of proceeding with the committal application against him. On the view which I take, it is convenient to deal next with Issue III, where the conflicting interests outlined at the very beginning of the judgment come into sharp focus.

ISSUE III: WAS THE COMMITTAL APPLICATION INCIDENTAL TO THE CPR 71 ORDER?

48. *(1) Introduction:* Mr Vik's case was that, even if DB was entitled to proceed by way of CPR 81 when seeking a committal order against him, there was no applicable jurisdictional gateway (as Teare J held in the first judgment) and therefore its application was to be dismissed. Putting to one side its cross-appeal, DB's case was that permission to serve the committal application out of the jurisdiction was not required for a number of reasons, the first being that committal application was an ordinary incident of the CPR 71 order which had been validly made and served on Mr Vik within the jurisdiction. Mr Vik's response was that the existence of jurisdiction in respect of the CPR 71 order could not found jurisdiction in respect of the application to commit an individual now out of the jurisdiction, which constituted a new claim. Teare J dealt with this issue at [4] and following of the second judgment.

49. *(2) The second judgment:* As recorded by Teare J (at [6]) it was not in dispute as a matter of principle that:

> "…where jurisdiction in respect of a claim or an order is established over a person the jurisdiction which is established must include…jurisdiction in respect of matters which are incidental to that claim or order. "

An example was an order for costs, incidental to the claim in respect of which the Court had jurisdiction over the defendant. The question here was whether an order for committal was incidental to the CPR 71 order.

50. In Teare J's view (at [7]) it was:

> "An order of a court must carry with it the means to enforce that order. If it did not there would be no utility in the order for it could be disobeyed without the threat of sanction. The means to enforce an order are therefore a necessary incident of the order. An order for committal is one of the means by which court orders are enforced. For that reason an order for committal is….a necessary incident of a court order. That is clearly demonstrated by the presence of a penal notice at the beginning of the Part 71 order. I therefore consider that in circumstances where the court has jurisdiction to make the Part 71 order against Mr Vik the court also has jurisdiction to make a committal order against him. Permission to serve the application to commit Mr Vik for contempt out of the jurisdiction is not required because he is already subject to the jurisdiction of this court in respect of the Part 71 order and all matters which are incidents of that order, one of which is an order for committal for contempt of the Part 71 order….. If that is so for the summary contempt procedure provided by CPR 71.8 it must also be for the longer procedure provided by CPR 81…. "

51. After considering and distinguishing the decision of this Court in *Dar Al Arkan Real Estate Development Co v Refai* [2014] EWCA Civ 715; [2015] 1 WLR 135, to which I shall return, Teare J observed (at [11]):

> " I accept that an application to commit for contempt is an application to commence 'proceedings' for contempt and that such proceedings can fairly be described as 'new'. However, I am unable to accept that such an application cannot also be described as 'incidental' to an order which has been validly made against a person whilst he was within the jurisdiction of the court and in respect of which it is said that he has acted in contempt..."

52. Teare J accepted (at [12]) that there was a public interest in ensuring that the English Court did not overstep its territorial reach. In this case, however, the Court had jurisdiction to make the CPR 71 order against Mr Vik because he was physically present within the jurisdiction. Accordingly, the territorial reach of this Court had not been overstepped and:

> "….when an application incidental to the Part 71 order is issued DB does not need to establish jurisdiction again simply because Mr Vik is now outside the jurisdiction…"

53. *(3) The rival contentions:* Mr Matthews forcefully submitted that, on a correct analysis, all committal applications were "new claims". As such, jurisdiction could not be founded on the jurisdiction established for the CPR 71 order; it had to be separately established. The Judge had erred in his attempt to distinguish the decision in *Dar.* It was important to keep the Court's jurisdiction within proper bounds, especially where liberty was at risk. The reasoning that an order must carry with it the means of enforcement did not resolve the present issue; consider, for example, a money judgment where no assets were within the jurisdiction. Nor did the penal notice provide the answer to the question at hand; it merely contemplated that a claim for committal might in the future be made. An application for committal was very different from truly incidental orders for costs or disclosure.

54. Ms Tolaney's response was equally robust. The Court had already established jurisdiction over Mr Vik in respect of the CPR 71 order; it did not need to re-establish jurisdiction. Mr Vik could not evade the complaint by leaving the jurisdiction. Were the submissions on his behalf well-founded, they would undermine the authority of the Court and be contrary to the public interest. The Court's jurisdiction incidental to the CPR 71 order extended not only to matters such as costs and disclosure (which were common ground) but also to its enforcement. The penal notice had a significance well beyond that accepted by Mr Vik. The Judge had correctly distinguished the decision in *Dar* and he was entirely right to treat the application for committal, a matter of policing the CPR 71 order, as incidental to it.

55. *(4) Discussion and conclusions:* Unless compelled by binding authority to take a different view, I would have a clear preference for Ms Tolaney's submissions. In principle and as is common ground, jurisdiction over a person in respect of a claim or order includes jurisdiction in respect of matters incidental to that claim or order. Accordingly, the sole question here is whether the committal application was incidental to the CPR 71 order. To my mind, the Judge's reasoning was impeccable:

i) an order of a court must carry with it the means to enforce that order;

ii) the means to enforce an order are therefore a necessary incident of that order;

iii) an order for committal is one of the means of enforcing court orders;

iv) accordingly, the committal application is incidental to the CPR 71 order.

On this view, it would follow that DB does not require permission to serve the committal application out of the jurisdiction.

56. The penal notice, contained in the CPR 71 order, augments this reasoning, by making plain from the outset the consequences of non-compliance with the CPR 71 order. It is difficult to read the notice as anything other than an assertion of jurisdiction over Mr Vik to enforce the CPR 71 order, in the event that he failed to comply with it.

57. The alternative conclusion advocated on behalf of Mr Vik seems to me beset with difficulties. First, there is a very strong *public* interest, as an aspect of the rule of law, in upholding the authority of the Court and in the enforcement of Court orders. As explained in *Dar (supra)*, at [42] and following, at this stage in the proceedings the interests involved are very different from the *private* interests at stake in *Masri v Consolidated Contractors Int (UK) Ltd (No. 4)* [2009] UKHL 43; [2010] 1 AC 90, dealing with the position when a CPR 71 order is first sought. However, if Mr Vik's case is soundly based, the sanction for non-compliance with a CPR 71 order – whether regarding attendance, production of documents or truthful answers – is significantly undermined, simply because the alleged contemnor has left the jurisdiction. It is difficult to discern the policy interest thus served. Secondly, the case for Mr Vik risks encouraging an unseemly race between a foreign based alleged contemnor seeking to leave the jurisdiction immediately following a CPR 71 hearing (for which there was undoubted jurisdiction) and the judgment creditor launching a committal application before the alleged contemnor could do so – a risk which I do not regard as "forensic" or theoretical. That would be a baleful outcome, which I would not wish to accept unless driven to do so. By contrast, the DB case avoids any need to re-establish, for the purposes of the committal application, the already established jurisdiction. Thirdly, I am content to go some way with Mr Matthews in accepting the force of his submissions as to confining the jurisdiction of this Court within proper bounds – especially where individual liberty is at risk – even having regard to the observations of Lord Sumption JSC in *Abela v Baadarani* [2013] UKSC 44; [2013] 1 WLR 2043, esp. at [53]. That said, I see no sign of any "exorbitant" jurisdiction being exercised in this case, keeping well in mind the indisputable jurisdiction over Mr Vik in respect of the CPR 71 order. Accordingly, the balance of the argument here between the conflicting interests outlined earlier, appears to me to come down decisively in favour of the enforcement of court orders. It would, at the least, be curious for the Court to have jurisdiction to make the CPR 71 order but to lack jurisdiction to enforce compliance with it. That there may be other occasions (Mr Matthews' example of a money judgment, where there are no assets in the jurisdiction) where there are mis-matches between jurisdiction to make an order and the ability to enforce it, seems to me to be neither here nor there; certainly, there is no attraction in shaping a policy to increase the number of such examples.

58. For completeness, I see no significance in Mr Vik having been "released" (as recorded on the transcript) at the conclusion of the CPR 71 hearing. The context was that Cooke J had declined to proceed under the summary CPR 71 procedure. Mr Vik's then legal representatives wished to speak to him and needed him "released from being on oath" (Transcript, 11th December, 2015, p.237). Any such release has no effect one way or another on the jurisdiction of the English Court to entertain the committal application.

59. It remains to consider whether binding authority requires me to reach a different conclusion from that to which I am attracted. I do not think it does.

60. If anything, *KJM Superbikes Ltd v Hinton* [2008] EWCA Civ 1280; [2009] 1 WLR 2406 lends support to DB's case. This decision concerned the question of granting permission to a private individual to bring committal proceedings arising from the giving of false evidence by a witness who had not been a party to the underlying proceedings. The Judge refused permission to do so; this Court allowed the appeal. At no prior stage had the witness been personally made subject to the English jurisdiction and he was by the time of the Court of Appeal judgment living in Australia.

61. Against this background, Moore-Bick LJ said the following(at [25]):

> "….He [i.e., Mr Hinton, the witness] could not be required to come to this country to answer a charge of contempt;…. The court….will not be able to impose any practical sanction on him while he remains outside the jurisdiction. Of course, his presence in the country was one reason for making the application as soon as he had completed his evidence. ….these factors ….inevitably raise the question whether anything is now to be gained by giving KJM permission to bring proceedings against him."

Moore-Bick LJ continued (at [26]):

> " I can see that there may be some cases in which considerations of this kind might tip the balance against granting permission, but in general I do not think that they should weigh significantly against doing so. The international business community conducts a large amount of litigation in this country and it is common for statements to be provided by witnesses from abroad for use in procedural hearings. This case is a good example. The integrity of the system as a whole would be undermined if it were thought that foreign witnesses were not subject to the same discipline as witnesses from this country."

62. Moore-Bick LJ's concluding observations at [26] emphasise the policy interest in the Court's disciplinary reach extending to foreign witnesses. They seem to me to lend some support to the DB case on the present Issue – a case which (unlike Mr Vik's) facilitates rather than hinders the exercise of such disciplinary powers, to the benefit of the integrity of the justice system as a whole.

63. In reality, Mr Matthews' submissions hinge on certain observations in the judgment of Beatson LJ in *Dar (supra)* as to applications for committal constituting new or separate proceedings. However, essential to a proper understanding of *Dar*, is its factual context.

Once that is understood, there is much in *Dar* pointing in favour of the DB case and seriously weakening the foundation on which Mr Matthews needs to place such reliance.

64. The facts in *Dar* were these. The claimants - foreign companies - brought proceedings in England against the defendants. The second defendant sought permission to serve a notice of application for committal on the managing director of the claimants, who was domiciled and resident in Saudi Arabia. The ground was that the claimant companies were in contempt of court because they had failed to comply with an undertaking to preserve two computer hard drives and an order to deliver them to their solicitors. The Judge granted permission for service of the notice and supporting documents on the managing director in Saudi Arabia, holding that the court's power under CPR r.81.4(3) to order that a director be imprisoned for a company's contempt had extraterritorial effect, so as to apply to the managing director as a foreign director or officer of a company not within the jurisdiction. The Judge further held that service of the committal proceedings on the managing director out of the jurisdiction was authorised by CPR r.6.36 and para. 3.1(3) of Practice Direction 6B. This Court dismissed the managing director's appeal.

65. The only substantive judgment was given by Beatson LJ. The first issue concerned the extraterritorial effect of CPR r.81.4(3). As already foreshadowed, that extraterritorial reach is not in dispute here (not least, in the light of the decision in *Dar*). However, some brief reference is appropriate to the judgment of Beatson LJ on this issue, given the tenor of his observations and their relevance to the present Issue.

66. In holding that CPR 81.3 and 81.4(3) did have extraterritorial effect, Beatson LJ highlighted (at [32]) that they were not provisions in a criminal statute or regulation but were "…a vehicle and a mechanism for the court's disciplinary powers over corporate contemnors which are undoubtedly subject to its jurisdiction" – in *Dar*, because the foreign companies had instituted proceedings here. As such and notwithstanding the risk of penal consequences, there was a pointer that the presumption against extraterritoriality was diluted or negated; thus (at [35]):

> " ….the fact that Part 81 is only engaged if the underlying proceedings are properly before the English courts, i.e., that there is a sufficient connection between the subject matter of the proceedings and this country is factor pointing the other way [i.e., towards extraterritorial effect]. The court has an interest in being able to control the participants in such proceedings and to have a means of disciplining a company, which is in contempt because of the actions of its directors. That need exists whether the company is registered in this jurisdiction or is a foreign company. That need is thus a pointer to the dilution or negation of the force of the presumption."

As Beatson LJ went on to underline (at [39]), amongst the anomalies that would result if CPR r.81.4(3) did not apply to foreign directors of a company who are responsible for its contempt would be that a person outside the jurisdiction, not a party to existing litigation but who had signed a false statement of truth to a witness statement or pleading would be immune from the sanction of committal proceedings – contrary to *KJM Superbikes (supra)*. Moreover (at [40]):

> " The negative impact on the court's disciplinary powers is likely to be particularly marked in the case of a foreign registered company with no assets in this jurisdiction but which has chosen to institute proceedings here or is properly sued here. In the light of the extent to which commercial litigation in this jurisdiction is of an international character and involves foreign companies, and has done so over the last century, if the director's submissions are correct, the problems would not be theoretical or marginal."

67. The second issue concerned service out of the jurisdiction and whether the committal application came within CPR Part 6 and gateway (3) of PD6B 3.1. So far as here relevant, counsel for the managing director submitted that the application notice could not qualify as a "claim form" within the meaning of CPR r.6.2(c), which is in these terms:

> " 'claim' includes petition and any application made before action or to commence proceedings and 'claim form', 'claimant' and 'defendant' are to be construed accordingly."

To qualify, it was submitted, the application notice must be for relevant "proceedings" – which were said to be the substantive proceedings rather than the committal proceedings. Many but not all committal proceedings involved separate proceedings.

68. Beatson LJ rejected these submissions in a passage central to Mr Matthews' submissions on this Issue before us:

> "55. …..The essential question is whether 'proceedings' within CPR r 6.2 include an application for committal. That involves determining whether such an application is made on a 'claim form' which is defined by reference to 'claim' which 'includes petition and any application made before action or to commence proceedings'. It is, in my view, clear that an application for committal is the commencement of proceedings…..
>
> 56. I also reject the argument that not all contempt applications involve separate proceedings…..I accept [counsel for the second defendant's] submissions that one of the reasons that CPR r.81.10(3)(a) requires the grounds on which a committal application is made to be set out in full is that an application made under CPR r.81.10(2) involves new proceedings. "

69. The third issue in *Dar* concerned the Recast Regulation, which it is convenient to defer until later.

70. As to the characterisation of applications for committal as "separate" or "new" proceedings in *Dar*, the first point to note is that the decision was designed to facilitate the bringing of proceedings in this country by way of CPR 6.2 and thus to support the Court's disciplinary powers. It was in this context that the Court in *Dar* treated a committal application as a "claim" or "claim form", commencing proceedings. It is of course possible but might perhaps be surprising if the Court's reasoning in *Dar*, by a

sidewind, served to undermine the practical and principled approach of treating the committal application as incidental to the CPR 71 order here. Secondly, the key distinction between *Dar* and the present case is that in *Dar* jurisdiction had not already been established against the *managing director*, whereas it has here in respect of Mr Vik, by way of the CPR 71 order. In consequence, as Teare J observed (at [10]):

> "The court [in *Dar*] did not therefore consider whether the jurisdiction so established extended to and included orders which were incidental to the order in respect of which jurisdiction existed."

Thirdly, like Teare J (in the passage at [11], already set out), I can see no reason why committal applications cannot both be "new" or "separate" but yet still incidental to "an order ….validly made against a person whilst he was within the jurisdiction of the court and in respect of which it is said that he has acted in contempt". All must depend on the factual context. For my part, it simply does not follow from the decision in *Dar* (on markedly different facts) that the committal application on the facts of the present case cannot be and was not incidental to the CPR 71 order.

71. For completeness, Ms Tolaney drew our attention to two further authorities, *Marketmaker Technology Limited & Others v CMC Group PLC & Others* [2008] EWHC 1556 (QB) and *VIS Trading Co Ltd v Nazarov* [2015] EWHC 3327 (QB); [2016] 4 WLR 1 but, as neither significantly assists the argument either way, I propose to say nothing about them.

72. For the reasons given, I would decide Issue III in DB's favour and conclude that the committal application was incidental to the CPR 71 order.

73. That conclusion, together with my conclusion on Issue I, is sufficient to decide the appeal and means that Mr Vik's appeal must fail. Issues II, IV and V are, accordingly, academic. I do not think it right to express a final view on any of those Issues; each is best left for decision to a case where such a decision is material to the outcome. I confine myself to a few words on each of those Issues, largely out of deference to the full arguments advanced and, in the case of Issue V, because the matter may benefit from the consideration of the Rules Committee.

ISSUE II: DOES CPR 71.8 HAVE EXTRATERRITORIAL EFFECT?

74. This Issue would only have arisen had Mr Vik succeeded on Issue I in contending that DB was confined to proceeding by way of CPR 71.8 and was not entitled to follow the CPR 81.4 route. In the event, Mr Vik failed on Issue I before the Judge and, as already indicated, I would reject his appeal on that ground here. However, in the event that he had had to decide Issue II, Teare J indicated (first judgment, at [14]) that he accepted DB's submissions.

75. I propose to say least of all as to this Issue. Not only is it academic (in the light of my views on Issues I and III) but it is also hypothetical, as DB made no application pursuant to CPR 71.8. Moreover, as already explained, there are real difficulties in seeking to invoke CPR 71.8 in other than straightforward cases. I accordingly express no view, even provisionally, one way or another on the outcome of Issue II.

ISSUE IV: THE RECAST REGULATION?

76. Insofar as material, Art. 24 of the Recast Regulation provides as follows:

> " The following courts of a Member State shall have exclusive jurisdiction, regardless of the domicile of the parties:
>
> …..
>
> (5) in proceedings concerned with the enforcement of judgments, the courts of the Member State in which the judgment has been or is to be enforced."

"Judgment" is defined in Art. 2(a) as follows:

> " 'judgment' means any judgment given by a court or tribunal of a Member State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as a decision on the determination of costs or expenses by an officer of the court."

77. In the second judgment, Teare J, as seen above, held that DB did not require permission to serve Mr Vik out of the jurisdiction because the committal application was incidental to the CPR 71 order in respect of which jurisdiction over Mr Vik had already been established. He nonetheless went on to deal briefly with the other bases on which DB submitted that it did not require permission to serve Mr Vik out of the jurisdiction; one such was Art. 24(5) of the Recast Regulation. In the event, Teare J (at [21] – [26]) held that, if necessary, he would have acceded to the DB submission that permission to serve out was not required by reason of Art. 24(5) of the Recast Regulation.

78. Mr Matthews challenged the Judge's decision on three grounds:

i) The CPR order was not a "judgment" within the meaning of the Recast Regulation.

ii) As correctly held in *Choudhary v Bhattar* [2009] EWCA Civ 1176; [2010] 2 All ER 1031 (CA), Art. 24(5) is inapplicable on the facts of this case because Mr Vik was not domiciled in a Member State.

iii) Committal proceedings are not concerned with the "enforcement" of judgments.

In the alternative, Mr Matthews submitted that these points should be the subject of a preliminary reference to the Court of Justice of the European Union ("the CJEU").

79. This Issue is one of some interest which, to my mind, it would be invidious and inappropriate to decide, when its resolution would be academic for the purposes of this appeal. I therefore confine myself to a provisional view, expressed in summary terms: my inclination, had it been necessary to decide Issue IV, is that I would likely have decided it in DB's favour and in accordance with Teare J's ruling.

80. First, given the width of the wording of Art. 2(a), I would have struggled to see why the CPR 71 order was not a "judgment", falling within the meaning of that wording and

would have been minded to agree with Teare J's reasoning, at [23] – [24]. I would have doubted that the CPR 71 order fell within what might be termed the *Schlosser Report* exception.

81. Secondly, the *Choudhary* decision was based on the *differently* worded predecessor to Art. 24(5). My instinct would have been that Art. 24(5) means what it says and applied regardless of Mr Vik's domicile. I would also have been much influenced by the consideration that this Court in *Dar*, at [59] – [64], albeit *obiter,* concluded that the *Choudhary* decision was *per incuriam*. In all those circumstances, my inclination would have been to follow the views expressed in *Dar* and to give effect to the wording of the current Art. 24(5).

82. Thirdly, the point that committal proceedings are not concerned with the "enforcement" of judgments was not raised before Teare J. My immediate reaction is that this submission appears improbable, sitting uneasily with the nature and wording of CPR 81.4 as well as the observations in *Dar (ibid)*.

83. With regard to the question of a Reference to the CJEU, suffice to say, provisionally, that I would have required a great deal of persuasion to agree.

ISSUE V: GATEWAY 10?

84. Under CPR r.6.36, a claimant may serve a claim form out of the jurisdiction with the permission of the Court where the claim comes within one of the "gateways" contained in PD6B. The relevant gateway for present purposes is found in PD6B, para. 3.1 (10) ("gateway 10") and is in these terms:

> "A claim is made to enforce any judgment or arbitral award."

85. Before Teare J, DB contended that if permission to serve Mr Vik out of the jurisdiction was required for the committal application, then the matter came within gateway 10. For the reasons given in the first judgment, at [19] – [21], Teare J refused the application; his essential conclusion (at [19]) was this:

> "….whilst the committal application is a 'claim to enforce' the court's order under CPR 71.2….the court's order under CPR 71.2 is not a 'judgment' within the meaning of PD6B 3.1(10)…"

As Teare J had earlier remarked (at [18]), the upshot was that:

> "….there is no specific jurisdictional gateway in PD6B permitting service out of the jurisdiction of an application to commit an officer of a company for contempt of an order made pursuant to Part 81 or Part 71 notwithstanding that the fact that the officer is out of the jurisdiction is no bar to the making of such an application."

86. Issue V thus arises before us by way of a cross-appeal brought by DB, in the event that (contrary to its primary case) it needs permission to serve the committal application out of the jurisdiction on Mr Vik.

87. Despite the clear public interest in there being such a gateway, it needs to be borne in mind (*inter alia*) that there are real difficulties in using Art. 2(a) of the Recast Regulation to interpret gateway 10 and that in *Mansour v Mansour* [1989] 1 FLR 418, Donaldson LJ (as he then was) entertained:

> " …very grave doubts whether committal proceedings to enforce a *Mareva* injunction can brought within that paragraph [i.e., the predecessor to gateway 10] on the footing that an injunctive order is the same thing as a judgment. In context, I would have thought that a judgment meant a determination of the rights of the parties, although not necessarily a final determination, in the same way as is an arbitral award….."

88. Provisionally, therefore, I would be reluctant to go further than saying, with respect, that there may well be considerable force in the view taken by Teare J on this Issue.

89. In the circumstances, it would seem to me that this is a matter where consideration by the Rules Committee would be most welcome. Putting to one side the cases in which (on the view I take) permission is not required to serve an alleged contemnor out of the jurisdiction, it must be in the public interest that there should be a specific jurisdictional gateway permitting such service on an officer of a company, where the fact that he is out of the jurisdiction is no bar to the making of a committal application. On any view, it must be desirable that uncertainty in this area is addressed.

LORD JUSTICE LEWISON:

90. I agree.

LORD JUSTICE LEGGATT:

91. I also agree.