



SEMAPHORE

Newsletter of the Maritime Law

Association of Australia and New Zealand



Contempt Tools Clarified Where Parties “Lie Low”

Utilisation of the committal for contempt of court enforcement tool has been examined by Brian Perrott and Patrick Knox of global legal firm [Holman Fenwick Willan](#), following the recent case of *Oliver Smith v Emile Kirkegaard* [2024] EWCA Civ 698.

If a court order is endorsed with a penal notice (including those requiring the provision by a party of disclosure of documents in connection with efforts to enforce judgement debts), it means that the party may be held in contempt of court if they fail to comply. This could include a prison term for contempt, and the issue of a warrant for the arrest of that party should it set foot on British soil.

Holman Fenwick Willan says this is a powerful enforcement tool to obtain a criminal sanction for a civil wrong.

Very often an application to commit a party for contempt will be made in circumstances where the party in question is seeking to “lie low”, having already ignored at least one court order, and may be evading the court’s jurisdiction by seeking to frustrate the attempted service of court documents.

The applicant’s ability to satisfy certain threshold requirements for invoking the court’s contempt jurisdiction can be frustrated.

A recent Court of Appeal decision highlights certain key points affecting committal applications.

If contempt proceedings against a foreign national arise from a claim previously brought by that national before the English courts, there is no need for the applicant to establish jurisdiction for the contempt proceedings or to obtain permission to serve these abroad. This is because the foreign national will be treated as having submitted to the court’s contempt jurisdiction for matters incidental to its claim.

Usually, the court will require proceedings seeking to commit a party for contempt to be served on that party personally (given the potentially severe consequences of the party’s liberty being at stake).

However, where that party is seen to be taking active steps to avoid service, other methods of communication may be effective in bringing the proceedings to their attention, including E-mail or social media. In this case, the court may authorise service by some other method (a “substituted service”).

Judgment debts including costs orders generally cannot be enforced by committal to prison. Sums due under judgements and orders must instead be enforced by other means, such as by freezing orders or attachment orders affecting assets belonging to a party.

However, opportunities to commit a party for contempt can arise where there is a failure to provide relevant disclosure in the course of efforts to enforce by way of disclosure orders or freezing orders.

The conclusion is that the English courts will not permit a foreign national that has itself invoked the jurisdiction of the English courts, to seek to frustrate the exercise of enforcement remedies against that national for breach of relevant court orders or rules.

The courts will be ready to authorise service of documents by a variety of means if the party in question is seen to be taking active steps to avoid service.

September 2024

