No: HC2015002185

Neutral Citation Number: [2016] EWHC 85 (Ch)
**IN THE HIGH COURT OF JUSTICE**
**CHANCERY DIVISION**

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 22/01/2016

**Before**:

**THE HONOURABLE MR JUSTICE PETER SMITH**

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**Between:**

| | |
|---|---|
| **Sports Direct International Plc** | **Claimant** |
| **- and -** | |
| **Rangers International Football Club Plc** | **Defendant** |
| **- and –** | |
| **David King** | **Additional Respondent** |

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**Mr David Quest QC and Mr Nathaniel Bird** (instructed by **Reynolds Porter Chamberlain LLP**) for the **Claimant**
**Mr McCormick and Mr Ali Reza Sinai** (instructed by **Kingsley Napley LLP**) for the **Defendant**

Hearing dates: 10th and 11th December 2015

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# Judgment

**Peter Smith J:**

INTRODUCTION

1. On Thursday 10th December 2015 I had before me 3 applications in this matter namely:-

    1) The Claimant Sports Direct International Plc's ("SDI") application by Notice dated 7th September 2015 inviting the court to find the Defendan ("Rangers") in contempt of court for breaching the order made by Asplin J on 11th June 2015 ("the Order") when sitting as the Applications Judge (as set out below further in this judgment). SDI also sought the committal of the Second Respondent David King the chairman of Rangers for breaching the June Order by reason of an interview he gave to Sky Sports News in July 2015 ("the Interview") and to commit him to prison and fine Rangers in punishment for that contempt.

    2) Rangers' application by Notice dated 30th October 2015 seeking an order discharging or varying the June Order.

    3) SDI's application by Notice dated 20th November 2015 for summary judgment on its claim for a permanent injunction against Rangers.

2. The committal application naturally has precedence and I dealt with that first.

3. Mr David Quest QC assisted by Mr Nathaniel Bird appeared for SDI. At the conclusion of his submissions on the committal application on behalf of SDI I indicated that I did not require any submissions from Mr William McCormick QC who appeared for the Respondents with Mr Ali Reza Sinai and I dismissed SDI's application for reasons to be given later.

4. In this judgment I set out the reasons why I dismissed that application.

OTHER APPLICATIONS

5. I indicated at the close of that part of the applications before me that the issues in relation to the underlying Confidentiality Undertaking ("the Confidentiality Undertaking") which was the subject matter of the cross applications ought to be dealt with by a speedy trial. The parties agreed with that stance and on Friday 11th December 2015 with some assistance from me they agreed directions for a speedy trial commencing on 25th January 2016 with variations of the June Order in the interim. The terms of and the enforceability of the Confidentiality Undertaking remain therefore for consideration at trial which is now to start on 8th February 2016. It follows that at this stage I should say very little about issues which will be fully argued at that trial.

BACKGROUND

6. The issue relates to a written Confidentiality Undertaking dated 5th September 2014 given to the SDI Group (comprising SDI and its subsidiaries). It relates to the well known Glasgow football team Glasgow Rangers. The Background to the

Confidentiality Undertaking is set out in Mr Forsey's witness statement provided in support of SDI's application for the June Order.

7. In summary in or around 2012 SDI was approached by The Rangers Football Club Ltd ("the Club") which is now a wholly owned subsidiary of Rangers to explore potential commercial opportunities.

8. As a result of those discussions members of the SDI Group entered into a number of written agreements with the Club as follows:-

    1) A shareholders agreement dated 31st July 2012 ("the SHA") between SDI Retail Services Ltd ("SDR") a member of the SDI Group and the Club relating to the establishment and operation of a joint venture company named Rangers Retail Ltd ("RRL"). Its shareholders were SDR and the Club.

    2) Further to the joint venture RRL and the Club entered into an Intellectual Property Licence Agreement ("the IPLA") granting RRL certain rights to exploit the Club's brand.

    3) On 31st October 2012 the Sponsorship Agreement ("SA") between SportsDirect.com Retail Ltd ("SD.com") a further member of the SDI Group and the Club was entered into relating to certain sponsorship and marketing rights for the Sports Direct brand at the Rangers Football Stadium.

9. The main mover behind the SDI Group is the well known businessman Mr Michael Ashley.

10. In the autumn of 2014 SDI and Rangers entered into negotiations concerning the potential extension of finance by the SDI Group and the renegotiation of its agreements with the Club. These matters (like everything in football) are of great interest to the sporting press and the Club's fans. Accordingly it is contended on behalf of SDI that it obtained the Confidentiality Undertaking from Rangers. In fact the financing was not then provided to the Club. However on 12th November 2014 SD.com entered into a written partnership marketing agreement with the Club. In that agreement the most significant provision is clause 2 which provides that the agreement shall continue ***"until terminated by either party given to the other party no less than 7 years notice in writing…."*** That is a very long period of notice in a commercial agreement.

11. In early 2015 the SDI and Rangers Groups again entered into discussions for further financing. As a result of that on 27th January 2015 the following arrangements were entered into:-

    1) SD.com agreed to make an interest free loan of up to £10m available to the Club pursuant to the terms of a written Facility Agreement ("the Facility Agreement").

    2) As security for the sums lent under the Facility Agreement the Club transferred shares representing 26% of the issued shares in RRL to SD.com pursuant to a legal mortgage. SDR which is a wholly owned subsidiary of SD.com already owned 49% of the shares in RRL in its own right. SD.com

and SDR entered into a written agreement entitling the Club to repurchase those shares in specified circumstances the shares transferred to SD.com as security for the loan.

3) RRL and the Club entered into a written Intellectual Property Licence in relation to the IP rights which replaced the IPLA.

4) SD.com provided £5m of that facility. On the first day of the hearing before me Mr McCormick informed me that the Club had repaid that £5m. On the second day I was informed by Mr Quest QC that the £5m had not been repaid. Repayment was in fact made on 24 December 2015.

12. In respect of the present application before me those various agreements are background material only; there is no argument for present purposes over any of those agreements. They are confidential agreements and when I hand down this judgment provisions will have to be made for protection of both parties' confidentiality akinto the order I made on the 10th December 2015.

THE CONFIDENTIALITY UNDERTAKING

13. The relevant provision which has led to the present application is clause 1.1 of the Confidentiality Undertaking which provides as follows:-

> ***"1. Confidentiality***
>
> ***1.1 In connection with the commercial arrangements entered into between SDI and its subsidiary undertakings, on the one hand (together, the SD Group), and Rangers International Football Club plc (Rangers Plc) and its subsidiary undertakings, on the other hand (together, the Rangers Group), and in consideration of the SD Group and/or its representatives continuing discussions with the Rangers Group in connection with its existing and future commercial arrangements, Rangers Plc and Alexander Easdale (the Undertakers) shall treat as private and confidential, on the terms of this letter, (i) the existence of any discussions between the SD Group (and its representatives) and the Rangers Group (ii) the contents of any such discussions and/or any agreements entered into in relation to any such discussions and/or arrangements entered into, and (iii) any information provided by or on behalf of any member of the SD Group to Rangers Group and/or Alexander Easdale (save to the extent that such existing arrangements are covered by existing confidentiality provisions, which shall continue in full force and effect, notwithstanding this letter).***
>
> ***1.2 For the avoidance of doubt, Rangers Plc shall be responsible for the compliance by its directors, officers, employees and consultants with this letter.***

***1.3 The restrictions on the Undertakers in this letter shall not apply to any information which the Undertakers are required to disclose by law or the rules of any legal, regulatory or governmental authority to which the Undertakers are subject, but only to the extent required by, for the purpose of, and strictly in accordance with, the relevant law or rules and provided that to the extent it is legally permitted to do so and practicable within the time available, the Undertakers gives SDI notice of such disclosure, and takes into account the reasonable requests of SDI in relation to the content of the disclosure."***

14. There are a number of features about the Confidentiality Undertaking which are unusual.

15. First the obligations as regards confidentiality are unilateral i.e. Rangers is bound by the Confidentiality Undertaking set out in clause 1 (and is responsible for any breaches thereof by its subsidiaries or any officer or employee of it or any subsidiary). However it is a unilateral obligation in the sense that the SD Group does not give any reciprocal undertakings regards confidentiality.

16. This can lead to surprising results. During the course of argument I asked Mr Quest QC what would be the position if the SD Group gave statements to the press about matters the subject matter of the Confidentiality Undertaking which were misleading. I asked whether or not Rangers could reply and correct such misleading statements and he submitted that if they did they would break the Confidentiality Undertaking. A second surprising feature of the Confidentiality Undertaking is that it is unlimited in time. It may be terminable presumably on reasonable notice but that will depend on the circumstance in which the undertaking was given.

17. Third SDI contends that the Confidentiality Undertaking affects both agreements that were entered into before the Confidentiality Undertaking and afterwards. There is clearly an argument that the Confidentiality Undertaking was entered into during a period of discussions to preserve confidential matters that then might have merged into the agreements which achieve finality after such discussions. Some (but not all) of the agreements referred to earlier in this judgment contain their own confidentiality clauses.

18. Finally there is an issue as to what consideration has been provided by the SDI Group for this Confidentiality Undertaking.

19. I merely observe the above matters as being potential issues but say no more. I do not say at this stage bearing in mind the trial in February whether or not any of those points is arguable or is unarguable; that is for the trial when all the evidence is in. I merely make the observation that those factors may appear at first blush at this stage to be surprising.

20. None of this actually matters in my view because the hearing before me is not of course to enforce the provisions of the Confidentiality Undertaking. It is to enforce by committal proceedings the June. It is well established that an order must be complied with even if it ought not to have been made until it is discharged. As can be seen

from the extract above the parties apparently agree that 3 items are ***"[treated] as private and confidential"***. Those are ***"(i) the existence of any discussions between the SD Group (and its representatives) and the Rangers Group (ii) the contents of any such discussions and/or agreements entered into in relation to any such discussions and/or arrangements entered into and (iii) any information provided by or on behalf of any member of the SD Group to the Rangers Group….. (save to the extent that such existing arrangements are covered by existing confidentiality provisions which shall continue in full force in effect not withstanding this letter)."***

21. There is an exception in clause 1.3 whereby the restrictions on the Undertakers do not apply to any information which the Undertakers are required to disclose by law or the rules of any legal, regulatory or government authority to which the Undertakers are subject but only to the extent required by for the purpose of and strictly in accordance with the relevant law or rules and provided that the extent is legally permitted to do so and practicable within the time available the Undertakers are required to give notice of such disclosure to SDI and to take into account the reasonable requests that it might make in relation to the contents of such disclosure.

22. Paragraph 2 has an express statement that the Undertakers agree ***"that monetary damages may not be adequate compensation…. and accordingly any member of the SD Group shall be entitled to seek equitable relief including interdict, injunction and specific performance in the event of any actual or threatened breach to the provisions of this letter."***

23. I pause to observe that that self serving clause cannot in my view be used to override the principles which the courts apply when asked to grant such relief.

24. The breadth of the Confidentiality Undertaking is accordingly very wide. Item (i) prohibits the revelation of any discussions (note not the terms but the existence). All of the matters set out in paragraph 1.1 are deemed to be confidential.

CONFIDENTIALITY

25. Merely because the parties label matters as being confidential does not necessarily make it so. The principles of confidentiality are more restrictive than that. They were recently summarised by Hildyard J in ***CF Partners (UK) LLP v Barclays Bank Plc & Ors [2014] EWHC 3049 (Ch)*** at paragraphs 119-134:-

> ***"Duty of confidence: law and equity***
>
> ***119 The legal principles defining the duty of confidence are well established and there was a large measure of common ground both as to their content and as to their application.***
>
> ***120 Even in the absence of a contractual relationship and stipulation, and in the absence too of an initial confidential relationship, the law imposes a "duty of confidence" whenever a person receives information he knows or ought to know is fairly and reasonably to be regarded as confidential: see per Lord Nicholls (dissenting on the result, but not on this***

*issue) in Campbell v MGN Ltd [2004] UKHL 22; [2004] 2 AC 457 at [14].*

*121 The subject matter must be "information", and that information must be clear and identifiable: see Amway Corp v Eurway International Ltd (1974) RPC 82 at 86-87.*

*122 To warrant equitable protection, the information must have the "'"necessary quality of confidence about it"'": per Lord Greene MR in Saltman Engineering Co Ltd v Campbell Engineering Co Ltd (1948) 65 RPC 203 at 215.*

*123 Confidentiality does not attach to trivial or useless information: but the measure is not its commercial value; it is whether the preservation of its confidentiality is of substantial concern to the claimant, and the threshold in this regard is not a high one: Force India Formula One Team Limited [2012] ROC 29 at [223] in Arnold J's judgment at first instance.*

*124 The basic attribute or quality which must be shown to attach to the information for it to be treated as confidential is inaccessibility: the information cannot be treated as confidential if it is common knowledge or generally accessible and in the public domain. Whether the information is so generally accessible is a question of degree depending on the particular case. It is not necessary for a claimant to show that no one else knew of or had access to the information.*

*125 A special collation and presentation of information, the individual components of which are not of themselves or individually confidential, may have the quality of confidence: for example, a customer list may be composed of particular names all of which are publicly available, but the list will nevertheless be confidential. In the Saltman case (supra) Lord Greene MR said:*

*"…it is perfectly possible to have a confidential document, be it a formula, a plan, a sketch, or something of that kind, which is the result of work done by the maker on materials which may be available for the use of anybody; but what makes it confidential is the fact that the maker of the document has used his brain and thus produced a result which can only be produced by somebody who goes through the same process."*

*Or as it is put in Gurry on Breach of Confidence (2nd ed., 2012) para 5.16:*

*"'"Something that has been constructed solely from materials in the public domain may possess the necessary quality of*

***confidentiality: for something new and confidential may have been brought into being by the skill and ingenuity of the human brain. Novelty depends on the thing itself, and not upon the quality of its constituent parts. Indeed, often the more striking the novelty, the more commonplace its components…"""***

***126 Further, and of particular potential relevance in this case, pieces of information which individually might appear to have limited value and marginal secrecy, in combination in particular hands, might have special composite value and confer on the recipient a considerable advantage: as was noted by the New Zealand Court of Appeal in the Arklow case when at that stage (see [1998] 3 NZLR 680 at 700 in the judgment of the majority which was affirmed by the Privy Council).***

***127 The parties may by contract agree and identify specified information that is, or is as between the parties to be treated as, confidential, or protected under the terms of their agreement; or they may simply agree that information may not be used whether or not otherwise it would have the quality of confidentiality.***

***128 Thus, in Ministry of Defence v Griffin [2008] EWHC 1542 Eady J observed:***

***"A contract may embrace categories of information within the protection of confidentiality even if, without a contract, equity would not recognise such a duty."***

***129 However, that case concerned obligations to Government of a sensitive nature: and an attempt to restrain the use of information that is not confidential (e.g. because in the public domain) may risk being unenforceable on grounds of public policy as being in restraint of trade. Further, loss and damage might be impossible to establish.***

***130 Contractual obligations and equitable duties may co-exist: the one does not necessarily trump, exclude or extinguish the other: see Robb v Green [1895] 2 QB 315 and Nichrotherm Electrical Company Ltd and others v Percy [1957] RPC 207 (both in the Court of Appeal).***

***131 However, where the parties have specified the information to be treated as confidential and/or the extent and duration of the obligations in respect of it, the court will not ordinarily superimpose additional or more extensive equitable obligations: and see per Sales J in Vercoe and Pratt v Rutland Fund Management Ltd [2010] EWHC 424 (Ch), who***

***found in that case that the duty of confidence was confirmed and defined by the contract, and observed (at [329]):***

***"Where parties to a contract have negotiated and agreed the terms governing how confidential information may be used, their respective rights and obligations are then governed by the contract and in the ordinary case there is no wider set of obligations imposed by the general law of confidence: see e.g. Coco v Clark at 419."***

***132 Nevertheless, that does not preclude wider equitable duties of confidence in circumstances that are not ordinary. For example, as it seems to me, a circumstance could arise where the obligations of the parties in respect of information with the quality of confidentiality are not clearly prescribed or governed by the contractual terms but where the use of certain information would plainly excite and offend a reasonable man's conscience. In such circumstances, as it seems to me, an equitable duty not to use the information having that quality would be recognised, even if that went further than the definition, duration or restraint prescribed by the contract.***

***133 Put another way, whilst it will not usually be unconscionable to use information in conformity with, or in a manner that does not offend, the terms consensually agreed, and the contract will shape the commitment, contract does not necessarily assuage conscience, and equity may yet give force to conscience: see per Simon Brown LJ (as he then was) in R v Department of Health, Ex p Source Informatics Ltd [2001] QB 424 at [31]; see also the emphasis on conscience as being the basis of both the duty and any action for its enforcement or vindication per Lord Neuberger of Abbotsbury PSC in Vestergaard Fraudsen A/S v Bestnet Europe Ltd and others [2013] UKSC 31; [2013] 1 WLR 1556.***

***Furthermore, and again by reference to the roots of the equitable duty in conscience, it seems to me that there may be equitable reasons for declining to regard the equitable obligation as confined by a contractual restriction. An example might be if it is shown that the restriction relied on by one party as confining its equitable obligations was agreed by the other party in ignorance of a fact which, had it been disclosed, would either have caused that other party to withdraw altogether or insist upon the removal, or at least fundamental recasting, of the restriction. (I return to this aspect when considering whether in this case Barclays was in a position of conflict which it failed to disclose when the IVC/Barclays Confidentiality Agreement was made: see especially paragraphs 417 to 467 below.)"***

26. Even if a confidentiality provision is established it must be remembered that a Claimant cannot claim an injunction as of right for the breach of a negative obligation not to disclose confidential information. It will it seems to me be subject to the well known principle summarised in ***Doherty v Allman (1877-78) L.R. 3APP. CAS 709 H.L.*** where Lord Cairns LC said that injunctions will be granted in respect of negative contracts almost of right (summarised in ***Snell "Principles of Equity"*** paragraph 18-035. However even in that case the courts retain a discretion as regards the granting of an injunction see ibid 18-036. As the ensuing paragraphs set out a Claimant for various reasons might disentitle himself to relief by inequitable conduct or delay. Hardship might give grounds for refusal and indeed the public interest or the destruction of confidentiality by the time of the trial are grounds for refusing an injunction see for example the well known case of ***The Attorney General v Guardian Newspapers (No 2) [1988] 3WLR 776 H.L.***

27. When refusing to grant an injunction the court can award damages in lieu of an injunction and the assessment of those damages can be on various bases; see for example the well known case of ***Wrotham Park Estate Co Ltd v Parkside Homes Ltd [1994] 1 WLR 798*** and the cases that decision spawned thereafter.

28. In addition to the above it is a fundamental principle that a party will not generally obtain an injunction where damages are an adequate remedy. When one looks at the alleged breaches of the Confidentiality Undertaking below it is difficult to see how SDI has suffered ***any*** damage at all. I pressed Mr Quest QC very hard on this point and he was unable to give me any kind of indication as to what damage the breaches of the Confidentiality Undertaking, if established would have caused. The court generally does not grant an injunction where damages are abysmally low. In this context I note that the Claim Form with a Statement of Truth attached by a member of Reynolds Porter Chamberlainb LLP ("RPC") the Claimant's solicitor states that the Claimant expected to recover more than £200,000 for the breaches of the Confidentiality Undertaking. In the Particulars of Claim the breach alleged is an interview given to the Scottish Daily Record on 27th May 2015. That does not form part of the committal application because it predates the June Order. The Particulars of Claim gives no particulars of any special damage (not even the £200,000 referred to in the Claim Form).

29. Since the hearing SDI has produced a Schedule of Loss at slightl more than £50,000 based solely on a comparison of sales between this financial year and the previous financial year.

30. There is therefore a significant argument over the question of any loss. Once again however I will say no more because this will undoubtedly be canvassed at the subsequent trial in February.

<u>DAVID KING</u>

31. Mr King together with a Mr Murray and Mr Gilligan ousted it is said Mr Ashley's allies from Rangers' Board at an EGM on 6th March 2015. Thereafter Mr King became Rangers' Chairman. He was not therefore involved in Rangers when the Confidentiality Undertaking was given.

32. There is clearly some animosity between Mr Ashley and Mr King. I refer for example to paragraphs 12-14 of Mr King's first affidavit where he makes this point and expresses the view that Mr Ashley was driving the committal without any good faith motive.

DAILY RECORD ARTICLE 27TH MAY 2015

33. The Daily Record carried a report about Rangers and its relationship with Mr Ashley ("the Daily Record Article"). It started by saying that ***"Rangers are ready to go to war with Mike Ashley in a bid to rip up a crippling commercial deal which includes a massive 7 year notice period. It is stated that the Ibrox club confirmed that they have agreed to Ashley's demands to stage a General Meeting and set a date for June 12th for the latest shareholder showdown".***

34. The Daily Record Article then goes on to suggest that in a counter Mr King has put forward his own counter proposals which include removing the voting rights of those who own stakes in other clubs and that he planned to use the meeting to blow the lid off secret deals of the contracts handed to Mr Ashley's retail company and ***"Record Sport can reveal the new regime are particularly outraged at discovering the length of the contractual ties to Ashley's firms".*** It then referred to the 7 year notice period and said ***"[Mr King] is now promising to provide the club's shareholders further explosive details relating to the contracts and how much Ashley is raking in from selling their jerseys – even though the Londoners lawyers are attempting to keep such details under wraps."***

35. Mr Ashley had orchestrated the calling of that meeting to propose a resolution that Rangers repay the £5m lent to it under the terms of the Facility Agreement. Mr Ashley by causing such a resolution of course puts into the public domain certain aspects of the Loan Agreement. SDI and the associated companies are of course not bound by the Confidentiality Undertaking. It is difficult to see how one could have had a meaningful discussion about that proposal if Rangers (and in particular its Board) cannot respond to questions from its shareholders. In his first witness statement dated 28th October 2015 in support of Rangers' application to vary the terms of the June Order Mr King dealt with the Daily Record Article. SDI claimed that the Daily Record Article demonstrated that the confidential information was disclosed to the Daily Record. Mr King denied that. Clearly the question of a 7 year term would be confidential information and its revelation would prima facie be a breach of the Confidentiality Undertaking. He also denied giving any interview directly with the Daily Record and in effect he denied that he gave any such exclusive statement to the Daily Record. He denied that he leaked the 7 year term obligation because at the time he was not even on the Board of Directors and did not know the terms.

36. This witness statement had a Statement of Truth and was affirmed in his affidavit. He has not been tested on that evidence and of course it is not the subject matter of the committal application.

SDI ACTS

37. Following the publication of the Daily Record Article RPC complained about its publication. Rangers through its lawyers did not accept that it was its publication and

also suggested the question of the notice period was already in the public domain. RPC found articles which suggested some material would be in the public domain (Forsey paragraph 9).

38. On 26th May 2015 SDI had become aware of the notice of a General Meeting circulated by Rangers to its shareholders stating that the Board intended to advise the shareholders on certain terms of the SHA relevant to Rangers. It also referred to RPC's reminder of the confidentiality obligations and that the meeting would have to be mindful of those confidentiality provisions.

APPLICATION TO COURT

39. SDI issued the Claim Form on 2nd June 2015 and followed it up with an Application Notice dated 5th June 2015 supported by Mr Forsey's witness statement.

40. The application was opposed by Rangers supported by a witness statement of Mr James Don Blair dated 10th June 2015 Rangers' lawyer.

41. As I said above it came before Asplin J on an Interim Application day. She granted an injunction reproducing clause 1.1 of the Confidentiality Undertaking but referred to the proviso in 1.3 and exempted any information in the Rangers AIM admission document and any information published in the financial statements of RRL. Rangers was ordered to pay £20,000 as an interim payment on account of SDI's costs.

42. Rangers did not appeal the order. It had the appropriate penal notices on the front of it.

SERVICE OF THE ORDER

43. CPR 81.4 (1) (b) provides that if a person disobeys a judgment or order not to do an act then the judgment or order may be enforced by an order for committal.

44. Sub rule (3) provides that if the person in question is a company or other corporation the committal order may be made against any director or other officer of that company or corporation.

45. CPR 81.5 provides:-

> ***"(1) unless the court dispenses with service under rule 81.8, a judgment or order may not be enforced under rule 81.4 unless a copy of it has been served on the person required….. not to do the act in question."***

46. CPR 81.6 requires personal service. Personal service is covered by CPR 6.5 (3). In the case of an individual it is effected by leaving it with that individual and in the case of a company it is effected by leaving it with a person holding a senior position within the company or corporation.

47. CPR 81.8 enables the court to dispense with personal service in the circumstances set out in that rule. I will deal with that further.

ACTUAL SERVICE

48. SDI accepts that neither Respondent was personally served as required by the above rules. This is surprising given the apparent seriousness of the issue. It is easy enough to ensure that the personal service requirement is satisfied. One asks the court to make an order that the Respondents to the order make themselves available at a time and place that is convenient (usually their lawyers' office) for personal service of the documents and that if they do not make themselves available then personal service is dispensed with. The requirement for personal service is important because it is designed to ensure that the Respondent has in his hands the relevant order which he can then read for himself.

49. Despite this importance SDI made no attempt to serve any of the potential recipients required to be personally served. No explanation has been given by it of this failing. Rangers was served by leaving a copy at its Registered Office. Messrs Murray and Gilligan had copies left at their homes. Mr King had nothing at all. The explanation given for this is poor (Elliot a partner in RPC – first affidavit paragraph 23) ***"due to Mr King's residence out of the jurisdiction, copies of the Order and the Scottish Undertaking were not served personally on Mr King".*** This was despite the fact Mr King was due to attend the EGM on 12th June 2015 so would have been available for personal service most likely. However Mr King did not attend that meeting because he simultaneously was required by Mr Ashley to attend a meeting with him at the other end of the country. No explanation has been given as to why Mr Ashley tactically chose to have Mr King attending potentially two meetings. This latter meeting is the major subject matter of SDI's application for committal.

50. The reason given for not serving him then was that it was not appropriate given the fact that the meeting was to discuss commercial matters in good faith. Mr King is not only sceptical about that but shows that he believes he was ***"lured"*** into coming to the UK for a later meeting with Mr Ashley which he cancelled and then used that to serve him with a committal application (King affidavit paragraph 14). He exhibited an article from the Scottish News which he contends was created as a result of information provided by SDI which reveals ***"we can also reveal now King was snared in a meticulous operation by Ashley's people after being welcomed to Sports Direct's HQ for what appeared to be peace talks".*** At the same time the article suggests SDI were arranging for the lawyers to pounce upon Mr King in the hours following his visit to Mr Ashley's office. This involved paying to have teams of Sheriff's Officers across Glasgow waiting for Mr King to return on a train from Chesterfield.

COMMITTAL APPLICATION

51. SDI issued its application on 7th September 2015 with a return date of 16th September 2015. Ultimately that was consensually adjourned until the application was heard before me. No directions were made as to the conduct of the committal application before me. SDI intended to have the issue of contempt tried on the witness statements and affidavits.

THE BREACH

52. The only breach identified within the four corners of the application is as follows:-

> ***"4.1 At some point in July 2015, the Second Respondent gave an interview (the Interview) to Mr Jim White, a journalist at Sky Sports, in Johannesburg, South Africa. During this Interview, the Second Respondent disclosed and/or communicated to Mr White:***
>
> ***4.1.1 The existence of discussions between the Appellant and the Defendant/Respondent (which was represented in those discussions by the Second Respondent) which took place at a meeting between those parties on 12 June 2015 (the Meeting).***
>
> ***4.1.2 The contents of certain discussions at the Meeting.***
>
> ***4.1.3 The existence of planned future discussions between the Applicant and the Defendant/Respondent.***
>
> ***4.1.4 The anticipated contents of those future discussions between the Applicant and the Defendant/Respondent."***

53. The allegation is that Mr King gave an interview to a Mr Jim White a journalist at Sky Sports in Johannesburg in South Africa ("the Interview"). It is alleged that during the Interview Mr King disclosed the four matters. Three of them relate to the existence of the meeting on 12th June 2015, the existence of planned future discussions between SDI and Rangers and the anticipated contents of those future discussions between SDI and the Respondents. The final complaint was a complaint in 4.1.2 ***"contents of certain discussions at the Meeting".***

54. On 22nd July 2015 it is said that a video recording of extracts of the Interview was broadcast on Sky Sports and that further extracts of the Interview were published in a written article on that website ("the Sky Article").

THE EVIDENCE

55. It is important to distinguish between what is there to be seen in the video with that which is reported to have taken place in the Sky Article. It is said that a camera does not lie and the picture is worth a thousand words. Whether this still holds true in the modern world is open to debate but I have reviewed the video. In it Mr King does not refer to the meeting that took place on 12th June 2015 or to the fact of discussions or to the fact of a prospective meeting. He says nothing at all about the contents of any meetings. Mr Blair (Rangers' solicitor) on 4th August 2015 wrote to Geraldine Elliott the relevant partner in RPC (following her letter of complaint of the same date) as follows:-

> ***"Geraldine is there a way of resolving this other than as proposed in your letter [i.e. committal] I have not spoken to Mr King yet and this matter seems to have arisen when I was away on holiday.***

> ***I think based on what limited web enquiries I have just made that this was an interview with Mr King in a private capacity which took place in South Africa. I would obviously need to enquire of Mr King himself to ascertain anything definitively.***
>
> ***The comments seem to reflect well on your client. I appreciate all the other points you will no doubt make in return but is there another way of resolving?"***

56. Pausing there it is quite plain in my view that it is a ***"lifestyle"*** interview that took place at Mr King's house in South Africa. Many things were discussed beyond Rangers Football Club. I do not accept that it can be established beyond reasonable doubt (the necessary test) that in giving the interview Mr King was acting as a director of Rangers. Mr Blair raised that right from the start in his email of 4th August 2015 and I agree with his analysis. For the purposes of a committal application of course it is not necessary for a Respondent to prove his or its innocence; the Applicant must prove to the criminal standard that Mr King was acting on behalf of Rangers. No other allegation of contempt is made against it. I was and remain completely un-persuaded that Mr King was making the statement on behalf of Rangers.

57. Further although he is the Chairman of Rangers he has no authority in that capacity to make statements. Given the nature of the injunction a decision to give a statement on Rangers' behalf to the press about matters the discussion of which was (to put it mildly) severely restricted is to my mind something which arguably cannot be carried out below Board level. There is no evidence to show the Board authorised Mr King to make these statements on behalf of Rangers. Even though he is Chairman it would not be usual for somebody in that capacity to have usual authority to make these statements. A single director generally has no authority to bind the company see ***Rama v Proved Tin [1952] 2 QB 147*** and ***Healy-Hutchinson v Bray Head Ltd [1968] 1QB 549 C.A.***

58. There is no evidence to show that Rangers held Mr King out as having authority to make these statements on its behalf.

59. As I have said the burden is on SDI to prove to the criminal standard that the above is not correct. The fundamental failing in its application is that it chose to have the case tried on the affidavits rather than (as is more usual) in committal applications to have the Deponents attend for cross examination.

60. Mr King in paragraph 16 of his witness statement said:-

> ***"I did not speak to any of the other Board Members about the planned interview with Jim White or seek their views or authorisation, as I did not see the interview as being done with my "RIFC Chairman hat" on."***

61. SDI have failed to prove beyond reasonable doubt that what Mr King says is untrue which is an essential requirement to fasten Rangers with liability for what he said.

62. Irrespective of the issues as to service (see below) that is the end of SDI's application against Rangers and (in addition to the matters that I set out below) I dismiss the application accordingly.

63. I detail the alleged contempts.

REVEALING THE EXISTENCE OF THE MEETING OF 12TH JUNE 2015

64. It is at least arguable that the existence of that meeting was in the public domain. I refer to paragraph 12 of Mr King's witness statement where he refers to various reports of the purported meeting which had apparently been leaked to the press. He denied that he was responsible for any of the leaks. That then leaves it to journalist invention or leaks from somebody else. Mr King contacted SDI's Mr Barnes to see if a common front could be put forward to deal with this misreporting but that suggestion was rejected. The evidence therefore shows as regards this allegation that it is at least arguable again that Mr King said nothing more than was already in the public domain namely that he and Mr Ashley had had a meeting on 12th June 2015. That is a factor that could be prayed in aid in resisting an injunction for breach of confidence. However the court order does not admit of such an exception. It follows that, to the extent that Mr King may be proved to the necessary standard to have revealed the fact of the meeting of 12th June 2015, there may have been a breach of the June Order but, even if there was such a breach, it is of the most technical nature given the fact that the meting of 12th June 2015 was already in the public domain.

BREACHES 3 AND 4 NAMELY THE EXISTENCE OF A PLANNED FUTURE MEETING AND THE ANTICIPATED CONTENTS OF THOSE FUTURE DISCUSSIONS

65. The video did not refer to the existence or contents of any meetings or prospective meetings. Any reference that Mr King might be proved to have made to any prospective meeting would for the same reason that I have set out above, be a technical breach of the June Order.

CONTENTS OF MEETINGS AND TERMS

66. This of course is more serious and can, if established, be something which SDI might be concerned about. However the source of the allegations against Mr King is not the video but the Sky Article, published without any reporter's byline, on the Sky Sports website. The Author(s) of the Sky Article is/are unknown. It emerged in argument that SDI had not contacted Mr White. It had not asked him to provide any notes of the meeting and had not discussed the Interview with him at all. SDI bases its claim entirely on the contents of the Sky Article and requires me to assume that it is beyond reasonable doubt that Mr King made the statements as reported by Mr White.

67. Mr King's response is cautious it is fair to say. In paragraph 21 of his witness statement he said ***"I cannot recall whether the exact words were attributed to me in the Sky article were said by me or not. Having watched the Sky interview for the first time recently I can see that many of the written quotes in the Sky article are not heard in the Sky interview though I accept that the Sky interview is only a short extract of what was filmed. It is my experience that most of the interviews that I have given to the print and media reflect a flavour in the reported version that is different from the lexical choice that I would typically employ and often subject to***

***much exaggeration. I think this is something that anyone who gives regular media interviews learns to live with."*** He then goes on to comment that the matters stated in the Sky Interview were positive to SDI (I agree in that regard). It is true he does not expressly deny that he said the words attributed to him in the Interview or Sky Article. However SDI wishes me to find beyond reasonable doubt based on an unverified hearsay statement of one or more unidentified reporter that Mr King is in contempt of court by the attribution of the things to him in the Sky Article. In my judgment that is not a sufficient basis for persuading me to the criminal standard that Mr King uttered the words said. This could have easily been resolved by SDI applying to have Mr King cross examined on his witness statement and affidavit. That would have given me an opportunity to see Mr King in the box and it could have put its case to him.

68. However it chose not to do so. It is not for the Respondents to suggest how the hearing should be conducted. It is up to SDI to decide how it is going to establish beyond reasonable doubt its case for seeking a fine for contempt against Rangers and a period of imprisonment for Mr King. This means that if there are any doubts or issues raised by Mr King in his evidence it failed to satisfy me to the criminal standard.

69. SDI submits in effect I should reject this evidence relying upon the principle enshrined in ***National Westminster Bank Plc v Daniel [1993] 1WLR 1453.*** However as the current edition of the White Book (paragraph 24.2.5) makes clear the court should be wary of becoming embroiled in a mini trial. That is said in the context of a summary judgment application.

70. When one is dealing with a committal application the need for the courts to be cautious is even greater. In my view Mr King in his evidence (which is not challenged) raises a serious issue as regards the accuracy and content of the Sky Article. This was reinforced somewhat ironically on day two of the hearing. Large numbers of the press misreported what I had decided on day one by stating that I had cleared Mr King of breaching the June Order. I had not decided any such thing. I also corrected mis-statements that were made in the press before the hearing that Mr King faced up to 30 days in prison whereas the true figure was up to 2 years. Mr White reported on the hearing the next day and he inaccurately produced a headline that Mr King had been cleared and reiterated that Mr King had faced up to 30 days in prison if found to be in contempt. It is SDI's case that I should commit Mr King to prison based on an unverified hearsay statement of one or more unidentified reporters when reporters make such basic mistakes as that. I do not think so.

PRINCIPLES APPLICABLE TO COMMITTAL APPLICATIONS

71. SDI referred me to the decision of Hamblen J in ***PJSC v Vseukrainskyi Aktsionernyi Bank [2014] EWHC 3771 (Comm)*** there Hamblen J summarised the principles applicable to committal applications as follows:-

> ***"Contempt of Court – the relevant principles***
>
> ***37 As I recently held in IPartner v Pancore [2014] EWHC 3608 (Comm) at [22]:***
>
> ***"The relevant principles may be summarised as follows:***

*(1) Non-compliance with a court order endorsed with a penal notice amounts to civil contempt enforceable by committal 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": CPR 81.4; Arlidge, Eady & Smith on Contempt (4th ed) 3.1 - 3.11A, 3.21-3.24, 3.69-3.72, 12.1 - 12.7.*

*(2) Contempt of court must be proved to the criminal standard of proof - i.e., beyond reasonable doubt: Masri v CCC [2011] EWHC Comm at [144].*

*(3) The claimants must prove that each Respondent (i) knew of the terms of the WFO; (ii) acted (or failed to act) in a manner which involved a breach of the WFO; and (iii) knew of the facts which made that conduct a breach: Masri at [150].*

*(4) There is contempt if an act intentionally done amounts to a breach of the WFO. It is not necessary to show that the Respondent knew or believed that those intentional acts amounted to a breach: Masri [150] - [154]; Templeton Insurance v Motorcare Warranties [2012] EWHC 795 (Comm) (Eder J.) at [17]-[20], upheld on appeal at [2013] EWCA Civ 35.*

*(5) Where a company is ordered not to do certain acts and a director of that company is aware of the order, he is under a duty to take reasonable steps to ensure that the order or undertaking is obeyed, and if he wilfully fails to take those steps and the order or undertaking is breached he can be punished for contempt. It may be otherwise if the director can reasonably believe some other director or officer is taking those steps: Templeton Insurance (Eder J.) [23]- [24] approving Arlidge Eady & Smith at 12-112 - 12-116. (And see now Arlidge, Supplement p. 126-128 at paras 12-115 - 12-115C.)*

*38 The Bank's case depends on circumstantial evidence. The proper approach to such evidence was summarized by Teare J in the context of a contempt application in JSC BTA Bank v Ablyazov [2012] EWHC 237 (Comm) as follows:*

*"8. It is notable that the Bank's case against Mr. Ablyazov, on the first two allegations of contempt, depends upon inference from such circumstantial facts and matters as the Bank is able to prove. As in any criminal trial circumstantial evidence can be relied on to establish guilt. It is however important to examine the evidence with care to see whether it reveals any other circumstances which are or may be of sufficient reliability and strength to weaken or destroy the Bank's case; see Teper v R [1952] AC 480 per Lord Norman. Further, I*

***respectfully adopt the words of David Richards J. in Daltel v Makki** [2005] EWHC 749 (Ch) **at paragraph 30: "In particular if, after considering the evidence, the court concludes that there is more than one reasonable inference to be drawn and at least one of them is inconsistent with a finding of contempt, the claimants fail." I accept the submission of Mr. Matthews QC, counsel for Mr. Ablyazov, that where a contempt application is brought on the basis of almost entirely secondary evidence the court should be particularly careful to ensure that any conclusion that a respondent is guilty is based upon cogent and reliable evidence from which a single inference of guilt, and only that inference, can be drawn.***

***9. Although there is no burden on Mr. Ablyazov to prove anything on this application he has advanced a case in relation to each of the three alleged contempts. It is a corollary of the burden of proof being upon the Bank that if, after considering the evidence, I consider that Mr. Ablyazov's case is or may be true then the Bank will have failed to establish the alleged contempt."***

***39 The Bank does not, however, have to prove beyond reasonable doubt every fact or piece of evidence which is relied upon to prove an essential element by inference - see JSC BTA Bank v Ablyazov (No 8)** [2013] 1 WLR 1331, [2012] EWCA Civ 1411 **at [51] – [52] per Rix LJ:***

***"51. …. Moreover, it is not true that every single aspect of a criminal case has to be proved to the criminal standard, although of course the elements of the offence must be.***

***52. It is, however, the essence of a successful case of circumstantial evidence that the whole is stronger than individual parts. It becomes a net from which there is no escape. That is why a jury is often directed to avoid piecemeal consideration of a circumstantial case …. as Lord Simon of Glaisdale put it in R v Kilbourne [1973] AC 729 , 758, "Circumstantial evidence … works by cumulatively, in geometrical progression, eliminating other possibilities". The matter is well put by Dawson J in Shepherd v The Queen (1990) 170 CLR 573, 579–580 (but also passim):***

***"the prosecution bears the burden of proving all the elements of the crime beyond reasonable doubt. That means that the essential ingredients of each element must be so proved. It does not mean that every fact—every piece of evidence—relied upon to prove an element by inference must itself be proved beyond reasonable doubt. Intent, for example, is, save for statutory exceptions, an element of every crime. It is something which, apart from admissions, must be proved by inference. But the jury may quite properly draw the necessary***

***inference having regard to the whole of the evidence, whether or not each individual piece of evidence relied upon is proved beyond reasonable doubt, provided they reach their conclusion upon the criminal standard of proof. Indeed, the probative force of a mass of evidence may be cumulative, making it pointless to consider the degree of probability of each item of evidence separately."”***

72. I refer in particular to the need to be careful in respect of circumstantial evidence identified by Mr Justice David Richards in the extracted judgment and the need to prove the essential elements to the criminal standard. The evidence put forward by SDI fails to overcome those significant requirements.

REPORTING CONTENTS OF MEETING

73. This is the second complaint in the Application Notice ***“the contents of certain discussions at the Meeting [i.e. 12th June 2015]”.***

74. In my view this alleged breach is fundamentally flawed because it fails to identify in what way it is alleged the Respondents are in breach. It is necessary to identify with full particularity all the breaches relied upon and that identification must be within the four corners of the Application Notice. It cannot be supplemented by evidence in support. That has long been established and I refer for example to the summary of Males J in the decision of ***The Lord Mayor and Citizens of Westminster v Addbins & ors [2012] EWHC 3716 (QB)*** at paragraphs [40] – [44] as follows:-

***“The need for particulars of the conduct alleged to constitute contempt***

***38 The procedural rules which govern committal applications are now to be found in CPR Part 81 which came into force on 1 October 2012. Before then, and at the time relevant to the present application, the applicable rules were contained in RSC Order 52, the Practice Direction to which provided:***

***"2.6 If a committal application is commenced by the filing of an application notice, CPR Part 23 shall ... apply, but:***

***...***

***(2) the application notice must set out in full the grounds on which the committal application is made and must identify, separately and numerically, each alleged act of contempt ...***

***...***

***4.5 In dealing with any committal application, the court will have regard to the need for the respondent to have details of the alleged acts of contempt and the opportunity to respond to the committal application."***

*39 Equivalent provisions are now contained in CPR 81.10(3)(a) and paragraph 15.5 of the Practice Direction to Part 81.*

*40 The importance of such provisions was underlined by Cross J in Re B (JA) (an Infant) [1965] Ch 1112 at 1117:*

*"Committal is a very serious matter. The courts must proceed very carefully before they make an order to commit to prison; and rules have been laid down to secure that the alleged contemnor knows clearly what is being alleged against him and has every opportunity to meet the allegations."*

*41 In Harmsworth v. Harmsworth [1987] 1 WLR 1676 the county court judge had held that although the application notice did not contain sufficient particularity, that defect was cured by the supporting affidavit. The Court of Appeal took a different view, holding that the allegations must be set out with sufficient particularity in the application notice itself and could not be supplemented by reference to some other document such as a supporting affidavit, but that on the facts the notice did satisfy the applicable requirement. That requirement was described by Nicholls LJ in the following terms at 1683 after citing from the judgment of Sir John Donaldson MR in Chiltern District Council v. Keane [1985] 1 WLR 1401:*

*"So the test is, does the notice give the person alleged to be in contempt enough information to enable him to meet the charge? In satisfying this test it is clear that in a suitable case if lengthy particulars are needed they may be included in a schedule or other addendum either at the foot of the notice or attached to the notice so as to form part of the notice rather than being set out in the body of the notice itself. But a reference in the notice to a wholly separate document for particulars that ought to be in the notice seems to me to be a quite different matter. I do not see how such a reference can cure what otherwise would be a deficiency in the notice. As I read the Rules and as I understand the decision in Chiltern District Council v. Keane, the Rules require that the notice itself must contain certain basic information. That information is required to be available to the respondent to the application from within the four corners of the notice itself. From the notice itself the person alleged to be in contempt should know with sufficient particularity what are the breaches alleged ..."*

*42 Woolf LJ agreed, adding at 1685-1686 that what matters is that the alleged contemnor is "given particulars sufficient to let him know the subject matter of the breach which is alleged" and warning that proper emphasis on the*

*involvement of the liberty of the subject must not be allowed "to produce a result which unnecessarily makes a mockery of justice". Woolf LJ returned to this topic in Attorney-General for Tuvalu v. Philatelic Distribution Corporation Ltd [1990] 1 WLR 926 at 934-935:*

*"The essential point which the cases establish is that an alleged contemnor should be told, with sufficient particularity to enable him to defend himself, what exactly he is said to have done or omitted to do which constitutes contempt of court. The cases make clear that compliance with this rule will be strictly insisted upon since the liberty of the subject is at stake, but they also show the nature or background of the case is important. Where, for example, a non-molestation order is said to have been breached the complainant will in all probability have witnessed the act complained of personally and in such a case it is not unreasonable to require a particularised summary of the act relied on. It would not, however, be reasonable and would stultify this branch of the law if the same degree of particularity were required in a case where the complainant has not personally witnessed the act complained of and must rely on inference to establish that non-compliance with a court order was caused by the act or omission of the alleged contemnor. In such a case the complainant must make clear the thrust of the case he will present to the court. The alleged contemnor can then prepare to meet that case."*

*43 In summary, therefore, the application notice must contain sufficient detail of what is alleged to enable the alleged contemnor to meet the case against him, but that requirement must be applied sensibly and the level of detail required to be included in order to satisfy this test will depend on the circumstances of the particular case, including the nature of the acts or omissions alleged.*

*44 Related to the requirement for particulars of the conduct alleged to constitute the contempt is the further principle that an alleged contemnor is only required to meet the specified allegations of contempt made against him, which must be determined as at the date of the application notice. This appears from Tankaria v. Morgan [2005] EWHC 3282 (Ch) at [27], where Laddie J said:*

*"Applications for committal or punishment for contempt of Court are treated with particular care. They are quasi criminal in nature. The applicant must prove the breach beyond reasonable doubt; furthermore, there are strict formal requirements as to the service and content of the order which is alleged to have been breached, and the content of the application notice. Perhaps of greatest significance in this*

***case is the importance of the date and content of the application notice. The respondent is only obliged to meet the "charges" set out in the application notice. In other words, the charges are those specified in the application notice. The question of whether there has been contempt has to be determined as of the date of the application notice. Subsequent behaviour of the respondent may be highly relevant to whether he or she has purged or mitigated the alleged contempt. It may also throw light on the accuracy or otherwise of any evidence served. However, it seems to me that actions or inactions after, and therefore not encompassed within the application, cannot themselves be considered as part of the charges against the respondent."***"

75. The Respondents are entitled to know what part or parts of the meeting it is alleged that they revealed. This is especially important in the present case given the number of apparent leaks of the meeting that were taking place in the press. The Application Notice fails to do so. Further when one looks at the Sky Article that provides no particulars either. This fatally flaws SDI's application under that head also and I would dismiss it for that reason alone.

SERVICE

76. As I have said above SDI has failed to comply with the requirements as to personal service. It submits that I ought to exercise my discretion and dispense with personal service. It relies on the presence of Counsel in court on behalf of Rangers (as opposed to Mr King) at the hearing where Asplin J made the June Order. Further on the same day Mr Blair emailed a number of Rangers' directors including Mr King stating that the terms of the order granted are attached and ***"you should read carefully and please do be scrupulous in observing it. The penalties for breach are severe".*** He then produced the penal notice and added the observation ***"the terms of the order are very wide but unless we appeal we must comply"*** he then reproduced the body of the injunction and the order was attached to the email.

77. There was of course no appeal. He also confirmed that his clients were aware of the terms of the June Order.

78. Mr King in his witness statement (paragraph 9) said ***"I recall receiving the email. I receive and respond to a large amount of emails everyday in connection with my business affairs. I did not review the injunction in detail at that time as James Blair had kindly incorporated the injunction restriction in the body of the email to me. I also anticipated that the injunction would be served on me in South Africa in due course. I understood the order to mean that I could not disclose any details of discussions or meetings between RIFC and SDI but did not believe that applied to information that was already publicly known such as the fact that I had previously publicly called for a meeting with SDI and had said that RIFC and SDI should work together for their mutual benefit…."***.

79. Under CPR 81.8 the court ***may*** dispense with the requirement of service of a copy of a judgment or order ….. if it is satisfied that the person has had notice of it…..(b) by being notified of its terms by telephone, email or otherwise. The Court's discretion is very wide (for example) see Arnold J in ***Hydropool Hot Tubs Ltd v John Roberjot [2011] EWHC 121 (Ch)*** at paragraphs 33-36. He dispensed with the obligation to effect personal service ***"with some hesitation"*** because the Defendants were represented by solicitors and Counsel, the applications were made on notice, the Defendants did not oppose the making of the order and they were clearly aware of the orders which bore penal notices on the first page.

80. It is always dangerous to exercise a discretion by reference to other decisions involving an exercise of discretion in those cases. It is fair to say that all of those matters are made out in the present case in my view save the following. First there is a doubt as to whether or not Mr King read the order in detail sent to him by Mr Blair (see his witness statement which once again has not been challenged). Second Mr King was not present in court. Third Rangers opposed the making of the orders. The final factor however is that the failure to serve personally in the ***Hydropool*** case was an oversight (paragraph 34). In the present case the omission to serve Mr King in particular was deliberate apparently because of the difficulty of service in South Africa. As Arnold J said the purpose of the requirement for personal service is to ensure that the recipient of the order is aware of the contents of the order and the consequence of non compliance. It is easy to achieve as I have set out above. In this case the SDI's solicitor appears to have left it to Rangers' solicitors in effect to make the service on behalf of SDI. I have had no explanation (beyond the South African service point) in particular as to why personal service was not effected. As I have said it appears to me to have been a deliberate decision absent any other explanation. Certainly that was the position as regards Mr King.

81. I am not therefore persuaded that I should exercise my discretion and dispense with the requirements of personal service retrospectively. The main reasons are that the decision not to serve personally appears to have been a deliberate act on the part of SDI and second there is a doubt (although I accept a faint one given the tentative nature of Mr King's statement) that he did not read the order. Misunderstanding the order is of course no defence.

82. Finally I note again that this matter could possibly have been clarified by cross examination of Mr King. SDI again by the procedure it adopted takes the risk of Mr King's evidence being unchallenged and therefore pointing to difficulties in its procedure.

83. This too is fatal to SDI's application on all grounds because no order has been served personally and I decline to exercise the discretion under CPR 81.8.

ABUSE

84. The above failings on the part of SDI might be said to be technical but committal applications are highly technical. The reason of course is because an application if established can lead to a visitation of periods of imprisonment. It is regularly the case that the court is driven to commit a person to prison for contempt because it is the only way in which the court can demonstrate that interlocutory orders that are made are meant to be obeyed. If the court does not enforce breaches of those interlocutory

orders the whole system will be weakened and it is likely that the ability of the court to provide interim protection will be correspondingly weakened.

85. Against that the procedures for establishing liability are set with a number of clear and well established requirements designed to protect the recipient from oppressive conduct on the part of an applicant.

86. In ***Sectorguard Plc v Dienne Plc [2009] EWHC 2693 (Ch)*** Mr Justice Briggs (as he then was) set out the fact that the CPR introduced a new concept of proportionality and as part of the overriding objective it was an abuse of process to pursue litigation where the value to the litigant of a successful outcome was so small as to make the exercise pointless viewed against the expenditure of court time (see generally paragraphs 44 – 47). As he said in paragraph 47 ***"committal proceedings are an appropriate way as a last resort of seeking to obtain compliance with the court's order".***

87. I have referred to Mr King's evidence which is unchallenged that Mr Ashley is pursuing a vendetta against him. Further, I questioned what damage was being sustained by SDI even if it established the breaches. I cannot see what disadvantage sustained by reason of the revelation that meetings had taken place and would take place in the future to discuss the continuing relationship when it is clear that it is at least arguable that the existence of that passed meeting and future meeting was in the public domain or was being leaked to the press by SDI.

88. Equally the evidence has shown no details of the contents that were allegedly disclosed has been identified either in the video or in the Sky Article. Once again this seems to me to be a very slender basis for committal proceedings.

89. There is then the question of costs. I was presented with schedules of costs for the parties totalling over £300,000. That was not limited to the committal application it is true to say but nevertheless significant amounts of money and court time were being spent on this application. It seems to me that SDI regards the committal application as merely another method of enforcing bargains. I refer in this context to Mr King's very reasonable letter on 4th August 2015 seeking a way forward. Mr Blair's letter was equally pacific. The response of SDI was to issue the present application which had the flaws in it which I have identified above and appears to me to be utterly disproportionate compared with what benefits would ensue.

90. It is therefore in my view undoubtedly the case that SDI's whole procedure is an abuse and it should be dismissed for that reason in addition to the various failings that I have identified above. That is not to say that Mr King may not be found to have made the disclosures upon which SDI relies when this matter is tried, but even assuming that he did breach the June Order as alleged it is inappropriate to police those breaches with the heavy hand of committal proceedings. These are my reasons for dismissing SDI's committal application.