

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: 28/01/2011

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION

FINANCIAL SERVICES AUTHORITY

-v-

FRANCOIS DE DIETRICH

DEENY J

[1] I have, earlier this morning, rejected the application of the defendants to set aside the Orders of the High Court of Northern Ireland of 27 October and 4 November 2010 requiring the defendants to furnish disclosure of their assets on a world wide basis. I will not repeat the matters I set out in that earlier judgment. Out of an abundance of caution I will add that I am conscious that such an order is an interference with the rights to privacy of the first defendant and indeed arguably of his rights under Article 1 of Protocol 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. However I am entirely satisfied that it is a justifiable interference by a public authority namely the FSA and by this court with his exercise of this right as it is in accordance with law and necessary in this democratic society in the interests of the economic wellbeing of the country, the prevention of crime and the protection of the rights and freedoms of others. Obviously that last category includes those who invested, perhaps unwisely, in the ventures of the first and second defendants.

[2] The court therefore has to consider what step should be taken on foot of the application by the Financial Services Authority for committal of the first defendant for his contempt of court in failing to abide by the orders of the court. I take into account the submissions I have heard from Mr Jonathan Dunlop and from Mr Madden on behalf of the first defendant. I take into account the Act of Parliament which I am applying in this instance and I have also adverted to the leading textbook of Arlidge Eadie and Smyth on Contempt and to the cases cited therein to assist me in reaching this decision (including a sentence of Neuberger J). I am satisfied, I may say beyond reasonable doubt, that this is a deliberate contempt on the part of the first

defendant who is seeking to evade his obligation to obey an order of the court and indeed in addition his statutory obligation to respond to legitimate requests for information from the Financial Services Authority.

[3] Which factors should I take into account in dealing with this matter? There are a number of factors pointing to gravity. First of all there are very large sums of money involved. The amount frozen by the order of the court exceeds some £20 million. Of course one does not know whether that is a true figure but one does not know that largely because the first defendant has failed to disclose his assets or that of the relevant company, the second defendant. What is undoubtedly clear from the monies that have been secured is that very large sums of money indeed are at stake.

I take into account that this is not a single brief refusal or failure but a refusal now lasting some months on the part of the first defendant on his own behalf and on behalf of the second defendant. That makes it a more serious contempt. As I outlined in my earlier judgment the court has now had four advocates appearing before it on behalf of this man with a variety of excuses for extensions of time. All of those individually were plausible. I make it clear that I do not attack the bona fides of the four advocates including his present solicitor. They no doubt were acting on instructions at each time. But all the arguments advanced have all in fact proven to be without substance and one is left with the picture of somebody evading his responsibilities.

[4] The court has a reasonable apprehension that many people have been defrauded of large sums of money here. The first defendant's solicitor justifiably draws to the court's attention that his client denies that and I make no finding of fraud but I am entitled to take into account that his failure to disclose his assets on a worldwide basis and to respond to the lawful requests for information from the plaintiff reduces the chances of recovery of monies for those people whether here or in the neighbouring jurisdiction who deposited money with him.

[5] It seems clear to me that in all those circumstances committal and immediate committal is the only possible appropriate sentence which could properly be passed by this court. The court is empowered to impose a sentence of up to 2 years imprisonment. The amounts involved and the extent of the delay might well point to the imposition of the maximum penalty. The solicitor for the first defendant cannot put in aid the first defendant's good character as he does not have one, the FSA having exhibited his French criminal record in an earlier affidavit with a number of convictions for offences of dishonesty in France. I do not weigh that against him but it does mean that he does not have the benefit of a good character to put before the court by way of mitigation of sentence.

[6] It seems to me there is, having taken into account all that has been said, really only one substantial point in his favour and that is that he did provide

details of his United Kingdom accounts when committal was first threatened against him and I take that into account.

[7] Mr Dunlop referred to various minor delays on his part. They would all be worthy of punishment of an appropriate kind in an appropriate case but I am taking an overall view of the matter and the delays of a day or the repeated extensions of time do not sound of importance in this case. The issues which I have identified of gravity are the issues that chiefly guide me.

[8] It seems appropriate in law that I am sentencing him for his contempt of court to today's date and as of today he is failing to comply with the order of the court to disclose his worldwide assets. As has been pointed out a person can come into court and say that they have now purged their contempt and the court is empowered to remit the rest of the sentence if that applies. However as of today I consider it is appropriate that I impose a sentence of 18 months imprisonment for contempt of court.

[9] As the first defendant is not in court I will direct the issuance of an immediate bench warrant for his arrest.