

**EASTERN CARIBBEAN SUPREME COURT
BRITISH VIRGIN ISLANDS**

**IN THE HIGH COURT OF JUSTICE
(COMMERCIAL DIVISION)**

CLAIM NO. BVIHC (COM) NO. 58 of 2019

BETWEEN:

SANG CHEOL WOO

Applicant/Judgment Creditor

and

**CHARLES C. SPACKMAN
(AKA YOO SHIN CHOI)**

Respondent/Judgment Debtor

Appearances:

Mr. Merrick Ricardo Watson, with him Mr. Timothy de Swardt, for the Applicant.
No appearance was entered on behalf of the Respondent.

2021: March 3

JUDGMENT

Judgment Enforcement – Committal Order made against personal judgment debtor which included provisions suspending the effect of the Order upon judgment debtor meeting certain conditions designed to allow him the opportunity to purge his contempt of Court – judgment debtor who is resident outside of the jurisdiction was previously ordered to attend Court to be examined but failed to obey examination order endorsed with a penal notice – judgment debtor committed to prison for a period of 12 months for breaching examination order – whether Court has power to issue a bench warrant for the arrest of judgment debtor should he enter the borders of the Territory of the Virgin Islands (the 'BVI') - whether judgment creditor can move the Court to exercise its power by a notice of application for the issue of a bench warrant.

The judgment creditor obtained an order committing the judgment debtor to prison for a period of 12 months. The judgment creditor applied for an order that the Court issue a

bench warrant commanding the Royal Virgin Islands Police Force to arrest and bring the judgment debtor to Court should he enter the borders of the BVI – the Court’s inherent jurisdiction to punish for civil contempt of court and to make an order to secure compliance with its earlier orders – CPR 53.11.

Held:

1. The Court has inherent power, supplemental to its power to punish for civil contempt, to issue a bench warrant for the arrest of an individual against whom the Court has made earlier orders such as an examination order and a committal order. This is especially so where an earlier committal order includes a provision suspending its immediate enforcement and providing the individual a reasonable opportunity to purge his contempt of court, but he has either failed or refused to do so;
2. The Court generally issues a bench warrant on its own motion in circumstances where it seeks to secure the attendance of a respondent to Court in relation to committal proceedings or more widely to secure the attendance of a witness to give evidence in other types of civil proceedings before the Court. However, the Court is not prevented from issuing a bench warrant at the request of an applicant who seeks the assistance of the Court to police a committal order which contains conditions that have not been complied with by the respondent;
3. CPR 53.11 permits a judgment creditor to apply to the Court for the enforcement of a committal order where the Court sets conditions in the committal order which the judgment debtor fails to comply with. In giving full effect to the committal order, the Court takes further steps such as issuing a bench warrant for the arrest of the judgment debtor;
4. In matters concerning committal orders made against a contemnor over whom the Court has established personal jurisdiction, but who resides outside of the jurisdiction, the bench warrant serves a useful purpose in directing the police to arrest and bring a contemnor to Court for sentencing, should he enter the jurisdiction. Otherwise, there is a real risk that the contemnor could enter the jurisdiction unbeknownst to the Court and escape the coercive reach of the Court; and
5. A bench warrant providing for the arrest and attendance of a contemnor to Court for sentencing inherently provides a last minute opportunity for a contemnor to seek the Court’s mercy and to comply with the breached order in the eleventh

hour. Such compliance, albeit late in the day, can be taken into consideration by the Court when it contemplates whether and to what extent to show leniency.

- [1] **Wallbank, J [Ag.]:** This ruling concerns an application (the 'Bench Warrant Application') brought by the Applicant, Mr. Woo, asking the Court to issue a bench warrant for the Respondent, Mr. Spackman, to be arrested and brought to Court for sentencing should he enter the borders of the BVI.

BRIEF FACTUAL BACKGROUND

- [2] The factual background leading up to the Bench Warrant Application is set out in detail in my judgment dated 12th January 2021 delivered in these proceedings: **Sang Cheol Woo v Charles C. Spackman (AKA Yoo Shin Choi)**¹ (the 'Committal Judgment').
- [3] For that reason, I do not intend to rehearse the factual background in any great detail in this judgment. It suffices to point out that the Applicant applied for a declaration of contempt and an order committing the Respondent to prison for failure to comply with an order made by the Court on 20th August 2020 commanding the Respondent to appear before the Court on 16th September 2020 to be examined under an examination order (the 'Examination Order').
- [4] I granted the application (the 'Committal Application') and made an order dated 12th January 2021 committing the Respondent to prison for a period of 12 months because of his failure to comply with the Examination Order. The Committal Judgment sets out my reasons for making the Order committing the Respondent to prison (the 'Committal Order'). It is not necessary for me to go into those reasons in any great detail in this judgment.
- [5] Even so, for the purposes of this decision it is important to point out at the outset that paragraph 2 of the Committal Order suspended the effects of the Order if the

¹ Sang Cheol Woo v Charles C. Spackman (AKA Yoo Shin Choi), BVIHCM2019/0058 (unreported, decided dated 12th January 2021).

Respondent complied with any of the following conditions (the 'Committal Suspension Order'):

- a. paying into Court or to the Applicant the full amount of the Default Judgment made by the Court on 4th June 2020 (together with interest) within 7 days of the date of the Committal Order; or
- b. filing an application within 7 days of the date of the Committal Order to purge his contempt by making himself available to be examined in accordance with the terms of the Examination Order, such application to be listed before me within 7 days after it is filed.

[6] It is equally important to note that the Committal Order containing the Committal Suspension Order was served on the Respondent on 19th January 2021. The Bench Warrant Application made pursuant to the Court's inherent jurisdiction and under rule 53.11, Civil Procedure Rules 2000 ('CPR') and was served, along with the evidence in support and the Notice of Hearing, on the Respondent on 29th January 2021. The Court is therefore satisfied that the requirements of CPR 53.11 have been complied with and that the Respondent had sufficient notice of the hearing.

[7] At paragraph [5] of the Committal Judgment, I noted that the Committal Application engaged novel and complex issues of law in this jurisdiction that warranted a written judgment recording my analysis which could either be followed or possibly better tested in the future.

[8] I take a similar view here. The issue of whether this Court has jurisdiction to issue a bench warrant against the Respondent who resides outside of the jurisdiction to secure his arrest should he enter the borders of the BVI is also quite novel. By the same token, the question of whether a party involved in committal proceedings is able to move the Court to issue a bench warrant for the arrest of contemnor in breach of the Court's order or whether a bench warrant must be issued on the Court's own motion is a novel issue for the Court's consideration.

[9] Learned Counsel for the Applicant, Mr. Watson, noted to the Court that he conducted a detailed search of the previous judgments of this Court and could find no decision directly concerned with these two particular issues, although he admitted in argument that he cannot say with certainty that his search is completely exhaustive.

[10] Mr. Watson shared with the Court that when the Applicant contemplated the next possible move that could be made to secure the Respondent's compliance with the Committal Order, he was uncertain whether or not an application could be made by the Applicant moving the Court to issue a bench warrant. On that basis, he examined the case law in England and was satisfied that ultimately the Applicant had the standing to file the Bench Warrant Application.

[11] Be that as it may, the Court is mindful that it is worthwhile to record its position in this short judgment and for the future development of the law in the area in this jurisdiction.

THE APPLICANT'S SUBMISSIONS

[12] Mr. Watson quite correctly limited his written submissions to a few key arguments which I summarize as follows.

[13] First, he argued that the Court's inherent power to secure the Respondent's compliance with the Committal Order (in particular the Committal Suspension Order) and the Examination Order includes the power to issue a bench warrant for the arrest of the Respondent should he enter the borders of the BVI.

[14] Secondly, he submitted to the Court that CPR 53.11 permits the Applicant to apply for the full enforcement of the Committal Order. In that connection, he argued that since the Respondent did not comply with conditions of the Committal Suspension Order, the Court is entitled to deploy its inherent power to issue a bench warrant for the arrest of the Respondent should he enter the borders of the BVI.

- [15] Thirdly, Mr. Watson submitted that it is clear from the English case law (which he urged the Court to follow as highly persuasive and which is discussed below) that the normal use of a bench warrant in civil proceedings is to secure the attendance at Court of contemnors for sentencing as a result of their contempt of court. He notes that the courts in England have in recent times more liberally deployed bench warrants to secure the attendance of witnesses to give evidence in civil proceedings even in cases where the issue of contempt of court does not arise.
- [16] Fourthly, Mr. Watson reminds the Court of the submissions he made in relation to the Committal Application that it is not fanciful to suppose that the Respondent may need to travel to the BVI in the future.² Taking that submission further, he argued that without a bench warrant in place there is a real risk that the Respondent could enter the borders of the BVI unbeknownst to the Court and escape the coercive reach of the Court before being apprehended by the police. This is because, he added, the Committal Order on its own does not give the police the power to arrest the Respondent.
- [17] Finally, Mr. Watson argued that from a practical point of view, should the Respondent enter the BVI and be arrested and brought before the Court as a result of the bench warrant, it presents the Respondent with yet another opportunity to ask the Court for mercy and to purge his contempt.
- [18] In such circumstances, he continued, the Court may consider that if the Respondent sufficiently purges his contempt it may be minded to weigh that fact as a mitigating factor when administering sentence.

² See paras. [58], [106] & [107] of *Sang Cheol Woo v Charles C. Spackman (AKA Yoo Shin Choi)*, BVIHCM2019/0058 (unreported, decided 12th January 2021) (Wallbank J (Ag.)).

DISCUSSION

The Court's power to issue a bench warrant

- [19] At paragraph [70] of the Committal Judgment, I applied the instructive decision in **Griffin v Griffin**³ where Hale LJ (as she then was) noted that the power to commit to prison for contempt is a 'common-law power which has never been fully regulated by statute or even the rules of court.'
- [20] It is my considered view that that principle applies equally to the question of whether the Court has jurisdiction to issue a bench warrant for the arrest of the Respondent should he enter the borders of the BVI.
- [21] At paragraph [84] of the Committal Judgment, I also referred to the decision of the English Court of Appeal in **Vik v Deutsche Bank AG**.⁴ Gross LJ held at paragraph [55] of **Vik** that an order of a court must carry with it the means to enforce that order, and the means to enforce an order are therefore a necessary incident of that order.
- [22] The Court's power to administer justice includes the inherent power to imprison a contemnor for breach of an order of the Court. The English authorities make it clear that the power to issue a bench warrant applies even to cases where contempt of court is not in issue.
- [23] In this connection, Mr. Watson relied on the decision in **Zakharov and others v White and others**⁵ where Evans J considering the issue of whether he had the jurisdiction to issue a bench warrant to secure the attendance of a defendant before the court in proceedings not related to contempt of court resolves the issue in this way:

³ Griffin v Griffin [2000] 2 FLR 44, at p. 48 per Hale LJ.

⁴ Vik v Deutsche Bank AG [2018] EWCA Civ. 2011.

⁵ Zakharov and others v White and others [2003] EWHC 2463 (Ch), at para. 35 per Evans J; see also the headnote of the judgment.

“The High Court is one court albeit comprising of different divisions. It has inherent power, supplemental to its other powers, to secure compliance with its orders. These powers include the power to issue when necessary a bench warrant for the arrest of an individual to whom an earlier order has been addressed and with which there appears to be no compliance...In the Chancery Division the cases reveal that the exercise of the power to issue a bench warrant is an established part of the court’s armoury for ensuring compliance with its orders and controlling its procedures. I hold, therefore that in the present case Etherton J had power to issue a bench warrant on 15th August and that there is no basis for limiting the power to circumstances where the court has already made a finding of contempt.” (Emphasis supplied).

- [24] Mr. Watson also relied on the decision of Birss J, fortifying the position 16 years later, in **Hanson and others v Carlino and another**⁶ where the judge remarked:

“I am satisfied that this summary of the principles from the cases is correct. The important and fundamental point from the summary is that the court’s power to issue [a] bench warrant is not limited to circumstances where there has been a finding of contempt but can in a proper case be used to ensure compliance with court orders...”

- [25] Distilling the principles from these cases, I am satisfied that this Court has the power to issue a bench warrant for the arrest of the Respondent should the Respondent enter the borders of the BVI.
- [26] This power is incidental to the issuance of a committal order, and a necessary part of the Court’s armoury to ensure compliance with its orders and exercise control over the administration of justice.
- [27] That being the case, there is no justifiable reason for this Court to shy away from having resort to this very formidable tool in its arsenal to secure compliance with its orders.

Standing to move the Court to issue bench warrant

- [28] Mr. Watson reminded me that at the 12th January 2021 hearing of the Committal Application he relied on the decision in **Frejek v Frejek and Another**⁷. There Roth

⁶ Hanson and others v Carlino and another [2019] EWHC 1366 (Ch) at para. 11 per Birss J. Birss J applied the decision in Zakharov and others v White and others [2003] EWHC 2463 (Ch).

J, after hearing a committal application in the respondent's absence, issued a bench warrant on his own motion for the arrest of the respondent who was within the jurisdiction of England so that the respondent could be taken to court on a specific date and at a specific time for sentencing.

[29] **Frejek** not only amply illustrates the Court's power to issue bench warrants but also demonstrates that the Court often does so on its own motion. That is hardly surprising, but I would add that the Court's power to act on its own motion to further the ends of justice does not prevent litigants from moving the Court to take a particular course, such as issuing a bench warrant, in an appropriate case.

[30] I need not look any further for support for this view than at paragraph 13 of the decision in **Zakharov**⁸ where Evans J quotes from the transcript of proceedings in which the defendant was previously ordered to surrender his passport and did not comply. There, Counsel for the claimant made a request on his feet for the court to issue a bench warrant for the arrest of the defendant. The court granted the request.

[31] If any further authority is needed to illustrate the point that a party has standing to move the court to issue a bench warrant to secure the attendance at court of another party, I would rely on the decision in **Hanson**.⁹

[32] There, the court made an order for the defendant to attend court to be cross-examined as to the location of various sums of money and other matters arising from the claim before the court.¹⁰

[33] The claimants being concerned with the defendant's posture of complete non-engagement with the court, made an application for the court to issue a bench

⁷ *Frejek v Frejek and Another* [2020] EWHC 1181. This decision is cited at para. [113] of *Sang Cheol Woo v Charles C. Spackman (AKA Yoo Shin Choi)*, BVIHCM2019/0058 (unreported, decided 12th January 2021).

⁸ *Zakharov and others v White and others* [2003] EWHC 2463 (Ch).

⁹ *Hanson and others v Carlino and another* [2019] EWHC 1366 (Ch) at para. 11 per Birss J.

¹⁰ *Hanson and others v Carlino and another* [2019] EWHC 1366 (Ch) at para. 6 per Birss J.

warrant to secure the attendance of the defendant at a scheduled hearing of the court.¹¹

[34] Birss J in granting the application for the bench warrant to be issued noted that:

“In my judgment, that is a fair analysis of the position. Looking overall, I bear in mind that the issue of a bench warrant is an extreme remedy. Nevertheless I am quite satisfied that, judging Mr Carlino by his actions and by the words that were advanced in writing on his behalf which are demonstrably untrue, there is a strong case that he is not engaging with these proceedings. I have no confidence that Mr Carlino will attend on Friday unless a bench warrant is issued.”¹² (Emphasis supplied).

[35] The Learned Judge then went on to conclude:

“So in all the circumstances, what I will do is exercise the court’s power to issue a bench warrant to secure compliance with the court’s order that Mr Carlino attends court on Friday, 3 May to be cross-examined in relation to the information sought in the order of Mr Justice Fancort. That is what I order.”¹³

[36] The Court finds the decision in **Zakharov** and in **Hanson** to be highly persuasive. Applying them to the Bench Warrant Application before me, I am satisfied that the Applicant has the requisite standing to apply to move the Court to issue a bench warrant for the arrest of the Respondent should he enter the borders of the BVI. That standing runs concurrently with the Court’s power to act on its own motion to issue a bench warrant in an appropriate case.

[37] The Respondent has been given ample opportunity to remedy his contempt but has failed to do so. The Applicant has brought this to my attention and I have no hesitation in issuing the Bench Warrant.

¹¹ Hanson and others v Carlino and another [2019] EWHC 1366 (Ch) at para. 7 per Birss J.

¹² Hanson and others v Carlino and another [2019] EWHC 1366 (Ch) at para. 21.

¹³ Hanson and others v Carlino and another [2019] EWHC 1366 (Ch) at para. 24.

Respondent outside of the BVI

- [38] I turn now to the question of whether a bench warrant can be issued in a circumstance such as the case before me where the Respondent does not reside within the BVI.
- [39] In assisting the Court on this issue, Mr. Watson cited extensively from the decision of Stuart-Smith J in **ABC v Def**.¹⁴ He relied on the decision to make good his submission that without a bench warrant in place there is a real risk that the Respondent could enter the BVI undetected and escape before he could be taken into custody under the coercive reach of the Court.
- [40] He argued that **ABC** is a decision that illustrates precisely how the Court can prevent such an eventuality from occurring and in the process repel the continued attack on the administration of justice flowing from the Respondent's disregard of the Court's orders and his complete dis-engagement with the process.
- [41] I will summarize the relevant parts of the judgment in **ABC** as follows.
- [42] The claimant made an application for the defendant to be committed to prison for contempt for breaching the terms of an anti-harassment injunction order of the English court. The defendant had breached the terms of the anti-harassment injunction order whilst he was living in the United States. As a result of the breach, in August 2008 the court issued a bench warrant for the arrest of the defendant should he return to England.¹⁵
- [43] On 2nd April 2011, the defendant returned to England and was arrested at London Heathrow. He was then brought to the Royal Courts of Justice pursuant to the bench warrant that had been issued in August 2008 and on 7th April 2011 he was committed to prison for four months.¹⁶

¹⁴ ABC v Def [2014] EWHC 3346 (QB).

¹⁵ ABC v Def [2014] EWHC 3346 (QB) at para. 8 (Stuart-Smith J).

¹⁶ ABC v Def [2014] EWHC 3346 (QB) at para. 11 (Stuart-Smith J).

- [44] On 28th April 2011, the defendant applied to court to purge his contempt. He argued before the court that he was a changed man¹⁷ and the court held that his contempt was purged.¹⁸ The defendant then returned to the United States. The anti-harassment injunction order remained in place in England but unfortunately for the defendant he began breaching it again in May 2013.¹⁹
- [45] During this period there was reasonable belief that the defendant would be traveling to England and so the court issued a further bench warrant on 18th July 2013 for his arrest should he in fact travel to England.²⁰ The court had omitted to sign the bench warrant and for that reason it was reissued.²¹
- [46] On 3rd September 2014, the defendant travelled to England and was arrested pursuant to the reissued 18th July 2013 bench warrant and brought before the court on 4th September 2013.²²
- [47] The court heard the matter at a later date and evidence was led as to the defendant's mental illness. Nonetheless, the court found that he was yet again in breach of the anti-harassment injunction order. The court noted that the breach was even more serious considering that the defendant was previously imprisoned for breaching the anti-harassment injunction order and was previously allowed to purge his contempt.²³
- [48] Ultimately, the court was sympathetic to the defendant's mental illness and sentenced him to seven months in prison suspended for two years.²⁴
- [49] In my judgment, the **ABC** decision shows squarely that the Court has the power to deploy a bench warrant against a contemnor who resides outside of the

¹⁷ ABC v Def [2014] EWHC 3346 (QB) at para. 12 (Stuart-Smith J).

¹⁸ ABC v Def [2014] EWHC 3346 (QB) at para. 13 (Stuart-Smith J).

¹⁹ ABC v Def [2014] EWHC 3346 (QB) at para. 15 (Stuart-Smith J).

²⁰ ABC v Def [2014] EWHC 3346 (QB) at para. 18 (Stuart-Smith J).

²¹ ABC v Def [2014] EWHC 3346 (QB) at para. 19 (Stuart-Smith J).

²² ABC v Def [2014] EWHC 3346 (QB) at para. 21 (Stuart-Smith J).

²³ ABC v Def [2014] EWHC 3346 (QB) at para. 46 (Stuart-Smith J).

²⁴ ABC v Def [2014] EWHC 3346 (QB) at paras. 47 to 53 (Stuart-Smith J).

jurisdiction (but over whom the Court has established personal jurisdiction) permitting the police to take him into custody upon entry into the jurisdiction.

[50] Based on the Respondent's actions, he appears to have no intention of engaging with the Court, and so putting a bench warrant in place to secure his immediate arrest should he enter the territory is necessary in all the circumstances of this case.

[51] I agree with Mr. Watson that one practical effect of the Court issuing the bench warrant is to ensure that, should the Respondent enter the territory and be arrested, his confinement to a prison cell would encourage sober reflection and prompt compliance with the Committal Suspension Order and the Examination Order.

[52] The Court is well aware that in matters of this nature, the starting point is that the Respondent is entitled to his liberty unless there is a proper and recognized legal justification for depriving him of it. Although a deliberate breach of peremptory orders of the Court provides adequate justification for depriving the Respondent of his liberty, the Court will not close the door to opportunities that allow a contemnor to atone and seek the Court's mercy even in the eleventh hour. Although late in the day, it could very well be that all that is needed to put the Respondent on the road to contrition is a 20 minute journey in a police wagon from the airport to a prison cell.

DISPOSITION

[53] Within the premises, the Court will make the following orders:

- (1) The bench warrant is issued for the arrest of the Respondent upon his entry into the BVI.
- (2) The bench warrant shall be issued in the form as attached to the draft order.

(3) The Registrar is ordered to bring a sealed copy of the bench warrant and the order upon judgment to the attention of the Commissioner of Police for further action.

(4) The costs of the Bench Warrant Application shall be costs in the claim.

[54] I take this opportunity to thank learned Counsel for the Applicant, Mr. Watson and Mr. de Swardt, for their assistance during this matter.

Gerhard Wallbank
Commercial Court Judge [Ag.]

By the Court

Registrar