THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

GULF WINGS FZE

Claimant

and

A AND K TRADING LIMITED

Defendant

ORDER WITH REASONS OF JUSTICE SIR JEREMY COOKE

UPON reviewing the Claimant's Application No. CFI-004-20222/ dated 27 January 2022 for a Committal order against A And K Trading Limited, Mr Ahmed Abouhashima (**"Mr Abouhashima"**) and Mr Kamel Abou Aly (**"Mr Abou Aly"**) (the **"Application"**)

AND UPON reviewing the Defendant's Application No. CFI-004-2022/4 dated 4 March 2022 requesting a stay of the proceedings (the **"Stay Application"**)

AND UPON reviewing the Claimant's Application No. CFI-004-2022/3 dated 28 February 2022 for a request to dispense with the personal service of the Application for contempt dated 27 January 2022 under RDC 52.9(1)

AND UPON the request made by the Claimant on 28 February 2022 for a Default Judgment (**"Request"**) pursuant to Rule 13.1 (1) and (2) of the Rules of the DIFC Courts (**"RDC"**)

IT IS HEREBY ORDERED THAT:

1. The Defendant's Stay Application is refused

2. The Claimant's Application is granted and service of the proceedings and applications for committal for contempt on Mr Abou Aly and Mr Abouhashima is dispensed with.

3. Default Judgment is entered against the Defendant for default of defence in the sum of USD 1,272,798.55 plus statutory interest at the rate of 9%.

4. For the reasons set out below, the Defendant, Mr Abou Aly and Mr Abouhashima are found to be in contempt of Court and are made the subject of separate orders against each individually.

5. The Claimant's costs of the Application are to be paid by the Defendant, Mr Abouhashima and Mr Abou Aly summarily assessed in the amount of USD 288,017.67 each to be liable on a joint and several basis.

Issued by:
Nour Hineidi
Registrar
Date of issue: 14 March 2022
Time: 3.30pm

SCHEDULE OF REASONS

The Claim

6. In this action, the Claimant seeks to recover a debt allegedly due from the Defendant under an Aircraft Management Agreement dated 14 March 2021 (the **"Management Agreement"**) relating to one Embraer EMB -135 -BJ Legacy 600 aircraft as more particularly described in Appendix A thereto (the **"Aircraft"**). As at the date of the Claim Form the sum allegedly owed was US $1,272,798.55, but further sums are alleged to have accrued since then, which should be the subject of set-off against the deposit of $200,000, subject to further sums becoming due and owing, whether as a result of late invoices received by the Claimant in respect of expenses incurred in management, or costs orders of the Court. Before hearing the other applications today, I gave permission for the entry of judgment in default of defence against the Defendant, with interest to run from the date of the entry of judgment at the statutory rate of 9%.

7. The Aircraft had been sold to the Defendant by an affiliated company of the Claimant, Gulf Wings Ltd, also on 14 March 2021 and the parties had entered into the Management Agreement for the Claimant to provide operational, maintenance and management services in respect of it.

8. On 14 January 2022 at an ex parte hearing, I issued a freezing order (the **"Order"**), at the behest of the Claimant, preventing the Defendant from removing from the DIFC assets to the value of $1.3 million and preventing the disposal of, or dealings with, or diminution in value of, any assets whether inside or outside the DIFC to the same value. In particular, the Aircraft was named in the Order as a specific asset which was not

to be removed from Dubai. Additionally, the usual ancillary orders were made for the provision of information by the Defendant, within forty-eight hours, relating to all of its assets worldwide exceeding $25,000 and whether solely or jointly owned and whether in its own name or not (with an affidavit to be served within three working days verifying the information supplied).

9. The Order contained a penal notice on the first page in the usual form warning that disobedience to the Order could result in a finding of contempt of court against the Defendant and its Directors and of the possibility of imprisonment, imposition of a fine or confiscation of assets as the case might be.

10. In breach of the Order, on 22 January 2022 the Aircraft which had been located at the facilities of Execujet and then at Falcon Aviation Services in Dubai, flew from Al Maktoum International Airport with an FAA Certificate of airworthiness permitting the Aircraft to go to Istanbul for "maintenance services" but, having left Dubai, it flew instead to, and landed in Cairo. The Aircraft is now said to be in Malta. There was no compliance with the terms of the Order requiring the provision of information relating to assets, whether in the DIFC or elsewhere and the suspicion is that there are no such local assets following the departure of the Aircraft.

11. On 27 January 2022, an application was issued by the Claimant in relation to the alleged contempt by the Defendant and by two individuals who were and are still the registered shareholders and directors of the Defendant, namely Mr Abou Aly and Mr Abouhashima, (and together **"the Directors"**) both of whom are said to be wealthy businessmen resident in Egypt. An order for committal was sought against each of them and a reference to the Attorney General of Dubai.

12. In essence, although Mr Abou Aly has not filed any evidence, the case put forward by the Defendant and by Mr Abouhashima was that neither of the Directors had control over the Defendant because both had sold their shares before the Order was issued and had not exercised any management functions in relation to the Defendant since March/April 2021. It was also said that the Defendant was no longer the owner of the Aircraft by reason of a sale to TVPX Aircraft Solutions Inc, a Utah Corporation, as evidenced by a Warranty Bill of Sale dated 27 December 2021 and that accordingly the Defendant did not know what had happened to the Aircraft.

13. On 21 April 2021, the Defendant had written to the Claimant, referring to clause 5.4 (d) of the Management Agreement, notifying the latter that the "Permitted Individuals" were to be the shareholders of the Defendant who were Mr Abouhashima, Mr Namir El Akabi and Aviation House Investments LLC, as owned and represented by Mr Fares Deeb (**"Mr Deeb"**). The letter also referred to clause 18.6 which related to notices to be given under the Management Agreement. In addition to the above-named, it was said that Mr Deeb would be the Owner's representative under the said Agreement and all communications and notifications addressed to the Owner should be addressed to him, with his contact details which were provided therein.

The History of the Proceedings

14. Following the grant of the Order, and in accordance with undertakings given, a Claim Form with Particulars of Claim was filed and served on the Defendant's registered office which was in fact the offices of its Registered Agent, Al Jallaff Advocates at: The Rolex Tower, Sheikh Zayed Road in Dubai. Also served then was the affidavit of Oliver Tebbit, dated 14 January 2022, and the first affidavit of Mr Al Ghalayini of 21 January 2022 was later served, which contained additional information which had been given to the court orally. In circumstances described more fully later, the Order and accompanying documents were made known to both Mr Abou Aly and Mr Abouhashima, although there is dispute about service in the formal sense. As I was persuaded at the hearing that both had received adequate notice of the injunction and the proceedings for committal, and had deliberately avoided service, I made an order dispensing with service on them.

15. On 19 January 2022, Clyde & Co sent an email to Watson Farley & Williams (**"WFW"**), the Claimant's solicitors referring to the email of 14 January 2022 which had sent a copy of the Order and the accompanying materials to the Defendant, Mr Abouhashima, Mr Shendy and Mr Deeb. The title to the email referred specifically to CFI-004-2022 and stated that "we have only just been instructed by Mr Ahmed Abouhashima, Mr Kamel Abou Aly and Mr Amr Shendy to act as their legal representatives in relation to this matter". On 21 January 2022, WFW received a letter from Clyde & Co stating that they acted for Mr Shendy (who was the representative of the Defendant named in the Management Agreement) and Mr Abouhashima. In the letter it was said, on instructions, that Mr Abou Aly and Mr Abouhashima were currently listed as its shareholders and that the two of them, with Mr Shendy were listed as its directors, but that Mr Shendy had never been a shareholder. It was also said that, pursuant to a series of transactions between August 2020 and October 2021, Mr Abouhashima had sold his shares in the Defendant to Dr Karrar and Mr El Akabi, although it was understood that the former had subsequently assigned his shares to Aviation House Investments LLC (**"Aviation House"**). It was said that the current owners of the Defendants were therefore Mr El Akabi and Aviation House and that they had taken over the management of the Defendant from April 2021. Mr Shendy was also said to have resigned as a director with effect from 21 April 2021. Attention was drawn by Clyde & Co to the letter of 21 April 2021 referred to above.

16. The Defendant was represented at an inter parties hearing on 24 January 2022 by the firm of Al Jallaff Advocates which was authorised to act for it by a Power of Attorney dated 22 January 2022 issued by Mr Abouhashima "in my capacity as a member of the Board Director of A and K Trading Limited, Offshore Company, registered under No. 19278, a company organised and incorporated in accordance with the laws of Offshore Companies - Jebel Ali Free Zone" (**"JAFZA"**). Ms Al Jallaff, when asked, said that she received instructions from Mr Abouhashima but was coy about the identity of shareholders and directors and reluctant to impart details. I commented on this because Al Jallaff were the Registered Agents for the Defendant and therefore had to know exactly what the state of play was with the Registry.I made various orders requiring such details to be provided and for inspection of the Register. I ordered that details be furnished by the Defendant itself and for evidence to be filed in relation to the events which had occurred since the granting of the Order, including in particular the movements of the Aircraft which had, by this time, flown to Cairo. A further hearing was to be fixed.

17. An Acknowledgement of Service was filed by the Defendant on 24 January 2022, with no reservation of the right to challenge the DIFC Court's jurisdiction and the requisite fourteen-day period elapsed for any challenge to take place without such a challenge being mounted. On 26 January 2022, Clyde & Co stated that they were no longer instructed by Mr Shendy or Mr Abouhashima who should both be contacted direct. (On 14 February 2022, they said that Mr Abou Aly was "never on boarded as a client of this firm").

18. A further hearing did take place on 27 January 2022, prior to which Al Jallaff served written submissions dated 26 January 2022 to which

were exhibited a Certificate of Registration of the Aircraft with the FAA in the USA on 29 December 2021, naming TVPX Aircraft Solutions Inc (**"TVPX"**) as the recipient of the registration certificate. A series of points were taken by the Defendant as to the invalidity of the Order and its absence of enforceability outside the DIFC and allegations made of breaches of the Management Agreement by the Claimant. The essence of what was said however was that Mr Abouhashima had ceased to be a shareholder in the Defendant as from 5 October 2021 and had ceased to have any part in management from April 2021, that Mr Abou Aly had ceased to be a shareholder and director at some undisclosed point in time, and that Mr Shendy had ceased to be a director with effect from 21 April 2021. The "new owners" were said to be Aviation House and Mr El Akabi, who had controlled the Defendant since April 2021. It was said that the Defendant was in no position to advise the Court on the relevant events which occurred since the grant of the Order on 14 January 2022 or to advise on the movements of the Aircraft because the current owner of the Aircraft was TVPX.

19. The evidence before the Court consisted of two affidavits of Mr Oliver Tebbit and three affidavits from Mr Al Ghalayini adduced by the Claimant, and two affidavits from Amna Al Jallaff, and one affidavit each from Mr Abouhashima, Mr Shendy and the sole shareholder of Aviation House, Mr Alzaabi, adduced by the Defendant. At the hearing on 8 March 2022, Mr Al Ghalayini, in addition to the three affidavits which he had already sworn, answered various questions which I put to him on the basis that he was effectively on oath and which were to be recorded in an affidavit sworn by him thereafter, as they duly were.

20. The Claimant's lawyers, WFW, on 2 March 2022 wrote to Al Jallaff requiring the presence of Mr Abouhashima, Mr Shendy and Mr Alzaabi at the hearing scheduled for 8 March so that each could be cross-examined on his affidavit. The response from Al Jallaff was that they were seeking to communicate with the individuals but had not received any reply. The contact details were requested by WFW for each of the individuals, but no response was forthcoming.

21. On 4 March 2022, the Defendant, without issuing an application, wrote to the court seeking a stay of the proceedings on the basis that it was "unable to appear before this Court" because it had filed an action for discharge of debt before the Dubai Courts which it said was the appropriate jurisdiction to hear the merits of the claim. The request for a stay was made on the basis that this court lacked jurisdiction. The Registrar informed the Defendant of the need to make an application which was then issued on 7 March 2022, whilst stating that it did not intend to appear at any hearing which took place on 8 March 2022. I refused the application at the hearing on 8 March both on the basis of the jurisdiction clause in the Management Agreement and the failure to issue any challenge to the court's jurisdiction within the time allowed by the Rules of Court. I proceeded then to hear the application for committal in the absence of the Defendant.

22. It is obvious from this recital of events that, between the making of the Order on 14 January 2022 and the removal of the Aircraft on 22 January 2022 and between that date and 8 March 2022, at no time have Mr Deeb or Mr El Akabi on the one hand or Mr Abou Aly on the other ever come before this Court to explain how the arrangements for the transfer of shares in the Defendant or the management of the Defendant came about or why nothing appears on the JAFZA registry in relation to any of these matters; nor has any explanation been advanced in relation to the failure to comply with the Order, whether by way of professed inability to do so prior to the departure of the Aircraft or otherwise. Much the same is true in relation to the evidence which has been adduced from Ms Al Jallaff, Mr Abouhashima, Mr Shendy and Mr Alzaabi because their evidence did no more than recite a series of transactions by which it was said that shares had been transferred in the Defendant (with some supporting documents exhibited), and make assertions that management lay in the hands of Aviation House, and in the person of Mr Deeb and Mr El Akabi, who were said to be the current shareholders.

The Defendant's control of the Aircraft

23. A fundamental point, made in submissions by Al Jallaff and repeated in the second affidavit of Ms Al Jallaff dated 26 January 2022 and in an affidavit from Mr Abouhashima of 2 February 2022 was that the Defendant was in no position to advise the Court of the events which had occurred since the grant of the Order on 14 January 2022 or on the movements of the Aircraft, because the ownership of the Aircraft had been vested in TVPX since 27 December 2021. The falsity of this point is transparent because, when the documents emerged, what they showed was that TVPX was an Owner Trustee to whom the legal title in the Aircraft had been transferred by the Defendant for registration purposes in the USA, but that the beneficial interest remained with the Defendant at all times and that the Defendant was also the lessee of the Aircraft from TVPX with full control of its operations throughout.

It is therefore clear that the Defendant has acted in breach of the Order and is in contempt of court. Whatever the formalities of transfer of shares and resignations or appointment of Directors, no excuses have been advanced on behalf of the Defendant in relation to the breach of the Order. Whilst there is evidence which suggests that Mr Deeb lies behind Aviation House and that he and Mr El Akabi have a measure of control of the Defendant, there is also evidence of some continuing involvement of Mr Abouhashima after March 2021, together with Mr Shendy, the Chief Financial Officer of his company, both of whom had sought to prevail on Mr Deeb to pay sums owing under the Management Agreement but also continued to give instructions as to the operation of the Aircraft. What remained wholly unexplained was that, notwithstanding the various agreements by which Mr Abou Aly and Mr Abouhashima had purported to sell their shares, with provisions in them providing for steps to be taken for registration of shares and alteration of the Memorandum and Articles of Association, no changes were made in the JAFZA Registry relating to the shareholders or directors of the Defendant. Whilst Mr Abouhashima and Mr Abou Aly may well have considered that they no longer held any interest in the Defendant by January 2022, the fact remains that they were still the registered directors having failed to give any notice of resignation. That could not have been a mere oversight.

Liability of Directors for contempt

24. Al Jallaff Advocates were not only Counsel for the Defendant but also the Defendant's Registered Agent which was required to liaise with JAFZA with regard to all administrative duties and actions and was required to keep a copy of the company's records - see Article 132.2 of the JAFZA Companies Regulations.

25. Under Article 34 of the JAFZA Companies Regulations, a director holds office until his successor takes office or until his earlier death, resignation or removal by Resolution. The Defendant's own bylaws at paragraph 49 also provide that the office of a director is to be vacated if the director in question gives notice of resignation or if the Defendant itself passes a resolution for his removal. On 27 January 2022 there were three directors registered: Mr Abou Aly, Mr Abouhashima and Mr Shendy, but by 2 February 2022, Mr Shendy's resignation of 21 April 2021 had

been acknowledged and only the former two remained on the Register as its directors.

26. Neither of those two had, on the evidence, ever resigned from that position as directors, nor had there been any Resolution passed by the Defendant for their removal. Whatever the position might be with regards to purported sales of shares and "effective control" of the Defendant, no new directors had been appointed either. At the time when the Aircraft left Dubai in breach of the Order, these two were still the directors of the Defendant, whatever the position might be with regard to Mr Shendy, whose name still appeared in the Register at that date, notwithstanding his resignation.

27. Whilst it may not be strictly relevant, it is also clear that none of the purported transfers of shares to Aviation House or Mr El Akabi have ever been the subject of registration either. The registered shareholders remain Mr Abou Aly and Mr Abouhashima, with 50% shareholdings each. Article 23 of the JAFZA Companies Regulations provide that "a share transfer will come into effect from the date on which the share transfer is entered in the Register". Article 24 provides that a transfer of a share must be done through an instrument of transfer in writing which must be submitted to the Registrar for approval and that transfer of a share will not be complete without payment of the applicable fee due to JAFZA. It is only after payment of the fee and approval of the transfer that the Registrar will record the transfer in the register, and it is only then that it becomes effective.

28. Transfer of a share is not complete until these steps have been taken, as is also made plain by the Implementing Regulations. In order to obtain the approval of the Registrar to the transfer of the shares in question, there must be both a resolution on the part of the buyer and a resolution on the part of the seller approving the transfer taking place (an **"Enabling Resolution"**), where each of those is a corporate body. There are particular formalities needed for attestation of such resolutions whether such an Enabling Resolution is executed in or outside the UAE.

29. There is no evidence that any of these requirements have been met, with the result that the shareholdings, as a matter of UAE law, are as they currently appear on the Register, which means that Mr Abou Aly and Mr Abouhashima are not only the only current directors but also the only current shareholders. This was the position at the time when the Order was breached.

30. In these circumstances, no purpose would be served in setting out the various sale and purchase agreements by which shares in the Defendant were purportedly sold and under which they were purportedly transferred. There were various conditions precedent and conditions subsequent in each, including inevitably payment of a price but, even on the documents put forward on the part of the Defendants, there are various gaps in the supposed chain of transactions leading to the shares currently being held by Aviation House and Mr El Akabi. There is nothing to show a sale by Doctor Karrar to Mr Deeb or Aviation House of 16%, another transfer of 16% or possibly 32% from Mr Deeb to Aviation House or a sale of 23% from Mr Abou Aly to El Akabi, apart from the say so of Ms Al Jallaff and Mr Abouhashima, expressed in their affidavits in identical terms as their "understanding".

31. There is an affidavit sworn by Mr Bader Alzaabi, as "the sole shareholder of Aviation House" in which he states that the latter and Mr Al Akabi are the owners and shareholders in the Defendant whilst this shareholding structure is "still pending final registration process". It is said that they have "not yet been reflected by Mr Abouhashima and Mr Abou Aly into JAFZA registry book as they have not received the updated incorporation documents needed for the Company to issue the relevant powers of attorney in favour of Aviation House".

32. There was a degree of speculation in the submissions made by the Claimant that the problem of registration might well lie with Mr Deeb, who is said to have a criminal record which might be a reason for a Registrar to refuse to register a transfer of shares to him. If he lies behind Aviation House in reality and has paid consideration in the form of a purchase price, it is possible that issues might well arise and all those involved in the supposed chain of transfers might well be aware of this. There is however no evidence to support the suggestion made and no good explanation has been put forward for the failure to register the purported transfer of shares, nor for the failure on the part of the existing directors to resign their position as directors, nor for the failure to appoint any new directors.

33. All of the people involved in the chain of transactions appear to be sophisticated businessmen who would know how companies operate and that formalities are required. No one who is a director could be unaware of their ability to resign by giving notice of resignation and, contrary to the evidence and submissions made on behalf of the Defendant, the sales agreements for the shares dated 31 August 2020, 11 October 2020 and 5 October 2021 which were exhibited to affidavits filed on behalf of the Defendant, each contained provisions which provided either for the transferors of the shares to procure the issue of share certificates to the transferees and to amend the Memorandum and Articles accordingly or for a Power of Attorney to be given to the transferee so that the transferee could complete the necessary formalities. The power to complete the necessary formalities for the transferors and resignations appears to have lain in the hands of the transferors, and not with Mr Deeb, Aviation House or Mr El Akabi.

34. In order to establish contempt by breach of an order of the Court, it is ordinarily necessary to show that the person concerned knew of the terms of the order, acted in a manner which involved the breach of it and knew of the facts that made their conduct a breach. Every person who is notified of the terms of an injunction must not aid or abet a breach of the injunction by another. Where a company is enjoined, a director or officer of that company may be liable in contempt if he knew of the order and was in some way responsible for the breach by the company. In *Attorney General for Tuvalu v Philatelic Distribution Corp Ltd* [1990] 1 WLR 926 at 936E-F, Woolf LJ, giving the Judgment of the Court said:

> "In our view, where a company is ordered not to do certain acts or gives an undertaking to like effect and a director of that company is aware of the order or undertaking, 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. We use the word "wilful" to distinguish the situation where the director can reasonably believe some other director or officer is taking those steps."

35. In *Sectorguard plc v Dienne plc* [2009] EWHC 2693 (CH) Briggs J (as he then was) said that directors would be liable in contempt where, being aware of the order or undertaking, they actively assisted in the breach or wilfully failed to take reasonable steps to ensure that the order or undertaking was obeyed.

36. For the reasons which appear below, I am left in no doubt that both Mr Abou Aly and Mr Abouhashima were well aware of the Order, and it is clear, on the evidence, that they did nothing at all to ensure compliance with that Order. They were obviously aware that they remained the

directors and shareholders on the Register. As such, they must have appreciated, even if they did not know that the share transfers were ineffective until registered, that as directors they retained responsibility for the actions of the Defendant. If they had effectively passed control of the Defendant to the "new owners", Aviation House and Mr El Akabi, the very least one might expect them to do would be to make contact with them to exert pressure on them to comply with the Order and to communicate with the Claimant and the court to explain the position and to make it clear that they were doing all they could. That did not happen.

37. As directors, moreover, they had the legal authority to act for the Defendant where the "new owners" did not. They were in a position to give instructions to all those concerned in the potential removal of the Aircraft and to exert their authority as directors over that of Mr Deeb, or the "new owners" who were not directors, who may have given direct orders for its departure, and thus prevent the Aircraft leaving, whatever the terms of the arrangements they had made for the sale of their shares. The very fact that Mr Abouhashima felt able to grant a power of attorney to Al Jallaff to act on behalf of the Defendant illustrates his awareness of the authority which he carried as a director of the Defendant.

38. There is no evidence of any attempt to exert this authority, nor to come to this Court to explain the alleged predicament in which they supposedly found themselves.

Service of the Orders and Knowledge thereof

39. Following the grant of the Order, the Claimant's solicitors notified the Defendant at its registered office in the UAE and in Egypt; Mr Abouhashima by email; Mr Shendy by email and courier; Mr Fares Deb by email and courier; the GCAA via email, TVPX by email; Falcon Aviation Services by email and Clyde & Co via email. Each of these received the Part 7 Claim with the Particulars of Claim, the affidavits of Mr Tebbit and Mr Ghalayini with exhibits, the application notice and the Order form.

40. Mr Ghalayini's evidence was that he spoke to Mr Abouhashima and Mr Shendy about the terms of the Order right up to the point that the Aircraft left Dubai and that both had contacted him shortly after they received copies of the Order. They either said that they were no longer involved with, or responsible for, the Defendant and asked him to direct proceedings against the "new owners" or offered to settle the debt in part or to seek to mediate in some way with the "new owners".

41. In circumstances where Al Jallaff was the Defendant's Registered Agent, it is inconceivable that, on service upon it of the Order and other materials, it would not have immediately contacted the registered shareholders and directors. It is uncertain whether Al Jallaff was aware of the various purported transfers of shares and who was in practice exercising control over the only known asset, the Aircraft, but it certainly knew who appeared on the Register as shareholders and directors. The Claimant had been in touch with Mr Deeb since April 2021 in relation to the debt which was building up but there can be little doubt that any lawyers who were Registered Agents would, on receipt of an injunction, immediately inform all those who appeared on the register as directors and shareholders and anyone else who was known to be in control of the day-to-day dealings of the company.

42. Mr Abouhashima is, according to Mr Ghalayini a "celebrity business executive", a self-made Egyptian entrepreneur who leads one of the biggest industrial companies in the entire Middle East. He is the founder of multiple ventures including Egyptian Steel, Egyptian Cement, Egyptian Contracting and Egyptian Media Group. He was listed in Arabian Business as "one of the most powerful Arabs in 2019". Mr Abou Aly is Mr Abouhashima's business partner in Egyptian Media Group, following his acquisition of a 50% stake in it. He is referred to in the Egyptian press as a "business tycoon" and was honoured by "Business Today" magazine in its fifteenth Annual BT 100 Awards. Whilst there is no evidence that he ever instructed Al Jallaff or Clyde & Co or was ever served formally with the Order, his conversations with Mr Ghalayini satisfy me that he was well aware of the injunction and must have received the materials from Al Jallaff before contacting Clyde & Co. On 25/26 January 2022, he contacted Mr Ghalyini asking for the exact details of the invoice which was said to be owing with a potential offer to settle the amount owing.

43. Mr Shendy was said to be employed as the Treasury Manager (CFO) of Egyptian Steel working under the supervision of Mr Abouhashima and when Mr Ghalayini heard, on 22 January 2022 that the Aircraft was being prepared for departure, he called Mr Shendy hoping he would do something to stop the Aircraft leaving. He said he would call Mr Fares Deeb and later called back to say that he had spoken to him and had been told there was no intention for the Aircraft to leave. Within the next ten minutes or so, the flight radar showed to Mr Ghalayini that the Aircraft had in fact left. That information was passed on to Mr Shendy by WhatsApp who rang back to say, in words along the following lines, having spoken to Mr Deeb that: "Fares took the aircraft out because he didn't want it to be grounded and lose money on it; he wants it to be operational. He thinks the courts would take a long time to settle and Fares believes we could just resolve the issue amicably and so it is for the better". He went on to assure him that Mr Deeb would pay the debt, whether or not the Aircraft was in the UAE. That was no more than he and Mr Abouhashima had said many times in the past in relation to the outstanding debt but demonstrates that a deliberate decision was taken to flout the Court's Order.

44. The material exhibited to the third affidavit of Mr Ghalayini evidences the conversations which he had with Mr Abouhashima in which the latter maintained that those in charge of the Defendant were "an Emirati guy and the brother of Faris [Deeb]" and that he and Mr Abou Aly knew nothing of any attempts to move the Aircraft. He said that he would try, with Mr Abou Aly, Mr El Akabi and Mr Deeb to get matters resolved on a friendly basis rather than by litigation but there is no evidence that he ever made any attempt to do anything of the kind. Mr Ghalayini had similar conversations with Mr Abou Aly and Mr Shendy but the end result of each was little more than the suggestion that Mr Ghalayini should resolve matters with those who were allegedly controlling the Defendant, where different individuals were mentioned as being in control, including Mr Deeb.

45. Not only is it inconceivable that Al Jallaff would not have passed on the details of the Order and supporting evidence to Mr Abouhashima and Mr Abou Aly, but a clear inference can be drawn that, between 19 January 2022 and 22 January 2022 that Mr Abouhashima and Mr Abou Aly must have received advice from either Clyde & Co or Al Jallaff, or both as to their responsibility, as the registered directors of the Defendant, for its actions. No lawyers, on notice of the terms of the Order, and in the position of Al Jallaff as the Registered Agents and lawyers for the Defendant, or in the position of Clyde & Co, who were instructed following receipt of the Order and supporting evidence, could leave the registered directors in any doubt of the need to comply with the Order or to come before the Court immediately to explain if there was any difficulty in doing so.

46. The only possible inference to be drawn is that they were so advised and did neither of those things whilst making some contact with the

Claimant and Mr Deeb and whilst seeking to put the responsibility on the latter.

47. The Second Affidavit of Oliver Tebitt seeking an order from the Court dispensing with the requirement for service on the Directors is sufficient to satisfy me that they are on notice as to the application to commit. And have received by email the documents necessary to avail themselves of legal advice and to appear, should they so wish. As to notice of this hearing today, it is also clear that the defendant, and each of Mr Abouhashima and Mr Abou Aly must have been put on notice by Al Jallaff and by the various emails sent by WFW. It was in the circumstances that I was prepared to make an order dispensing with the need for service upon them.

Responsibility for the removal of the Aircraft

48. There are no real reasons or excuses put forward by the Defendant, Mr Alzaabi or Mr Abouhashima to justify the removal of the Aircraft. Nothing has been said by way of explanation by Mr Abou Aly, Mr Deeb or Mr El Akabi. Mr Alzaabi for the Defendant put forward, as some sort of justification the contention that there had been violations by the Claimant of the Management Agreement specifically in relation to the removal of the registration of the Aircraft by the GCAA. It is said that this was due to breaches of contract committed by the Claimant and the former owner of the Aircraft, its affiliated company Gulf Wings Ltd, that sold the Aircraft to the Defendant on 11 April 2021 without informing the GCA a in accordance with local law and regulations. This is perverse in the light of the evidence adduced by the Claimant in the third affidavit of Mr Ghalayini, as appears below, but it is said that the breaches by the Claimant and Gulf Wings Ltd had "risked the aircraft and its value" and that the Defendant "had to secure its asset by taking all necessary measures to protect such asset as an aircraft must be registered as per international laws and treaties with a certain registry to obtain a nationality to allow it to fly and to mitigate the failures the Claimant and Gulf Wings Ltd". Once again it is being made plain that the decision to remove the Aircraft was a deliberate decision regardless of the terms of the Order.

49. Mr Alzaabi goes on in his affidavit to repeat the same points made by others that, because the Defendant is not the current owner of the Aircraft which is now owned by TVPX, Aviation House is in no position to advise the court on the relevant events which have occurred since the grant of the Order on 14 January 2022 or to advise about the new owner' decision to move its US registered Aircraft. That is obviously absurd for the reasons I have already given.

50. Moreover, the inconsistency in this evidence is obvious. On the one hand it is said that the Defendant had to protect its asset, the Aircraft, and therefore had to allow it to fly to mitigate the failures of the Claimant and its affiliated company whilst on the other hand it is said that it is in no position to advise the Court on what has taken place since the 14 January 2022 Order or about the decision to move the Aircraft.

51. The only inference that can be drawn from this is that those who were responsible for running the Defendant, made a decision to ignore the terms of the Order and, having obtained registration of the Aircraft with the FAA in the USA, deliberately decided to fly the Aircraft out of Dubai in order to avoid the effects of the Order. No justification is put forward for breaching the Order other than the allegation of the Claimant's prior breaches, which are nothing to the point when the Court has made an order preventing the removal of the Aircraft. If there is any objection to the Order, whether a valid objection or not, a person who is subject to the injunction should take the opportunity presented by the Court on the return date to appear and argue that the injunction should be discharged or varied. The Court made an order on the basis of the good arguable case presented to it as to the debt due from the Defendant to the Claimant and the circumstances in which the GCAA registration was lost and the FAA registration acquired. It was open to the Defendant and/or others notified to come before the Court to argue that there was no such debt, that the injunction was not justified or to seek a release of the Aircraft from the Order or at least to say why they could not comply with its terms, but they chose not to do so before removing the Aircraft and acted in clear contempt of the Court in flying the Aircraft, ostensibly to Istanbul but, in fact, to Cairo. There can be no excuse for such behaviour and the Court is bound to condemn it and make it plain that disobedience to its orders is not be countenanced.

52. In the third affidavit of Mr Ghalayini, reference is made to a call made by Mr Abouhashima on 28 January 2022 to the Chief Executive Officer of the Claimant to whom Mr Ghalayini reported. Mr Abouhashima offered to settle the debt owed by the Defendant by immediately transferring $500,000 to the Claimant, saying that he was making such a proposal on the basis that Mr Deeb had informed him that the Claimant had illegally removed $400,000 worth of equipment from the Aircraft. The Claimant's response was to ask for this offer to be put in writing for consideration, which was never done. Mr Abou Aly, similarly, on 25/26 January 2022 left a WhatsApp voice note with Mr Ghalayini, asking for details of the amount owing with a statement of account, offering to settle it. Belatedly, after the Aircraft had left, these two individuals appeared to be prepared to take some responsibility for the Defendant.

53. Although both GCAA and Falcon Aviation Service were notified of the issue of the Order, there can be little doubt that, if the registered directors of the Defendant had contacted them and countermanded any orders made by Mr Deeb to remove the Aircraft, that would have prevented its outward flight taking place. Without that, GCAA and Falcon, for whatever reason, do not appear to have considered that they were bound by the Order to prevent it leaving. As Directors of the company which beneficially owned the Aircraft and was lessee of it, Mr Abouhashima and Mr Abou Aly were in a position to give instructions to the flight crew and ground staff at the airport and all those responsible for the actions which were required for the flight to take place, including those responsible for obtaining the necessary authorisations, filing the flight plans, ordering the fuel and preparing the Aircraft for departure. Mr Ghalayini was able to see that these preparations were taking place and, as expressed in his affidavit, in his considerable experience within the aviation industry in the UAE, he knew that, as an aircraft owner it was within the Directors' powers to stop the Aircraft leaving by simply notifying any of the relevant bodies and authorities. Moreover, even since the departure of the Aircraft, the Directors have failed to give any instructions for its return, which as directors they are in a position to do.

54. As to the alleged violations of contract which is which have been asserted as some form of excuse for removal of the Aircraft, the true facts appear from Mr Ghalayini's third affidavit. The Aircraft was originally owned by the Claimant's affiliate Health Wings Ltd but was sold to the Defendant on 14 March 2021 when part of the purchase price in the sum of AED 5,657,964 was directly paid by Aviation House to the Claimant. The explanation given for Aviation House making this payment was that "Aviation House. will be acquiring a portion of the shares in [the Defendant] and so it has an interest in the purchase of the Aircraft in the name of [the Defendant]. It is to be noted that said partial acquisition of [the Defendant] by Aviation House. is expected to be concluded within thirty days from the date of today". It was one month later that the letter of 21 April 2021, referred to earlier in this judgment, was received in which notification was given of the new shareholders of the Defendant. Mr Ghalayini had no reason to believe that what he was being told about a change in ownership was untrue but could not obtain details of the ultimate

beneficial ownership in order to effect the necessary formalities for the change in ownership to be registered with the GCAA. On checking the licence of Aviation House, he discovered that Mr Alzaabi was listed as the sole shareholder. As the manager and operator of the Aircraft, the Claimant was obliged, by law, to notify the GCAA of the change and to register it with them. In order to do so and to obtain a new Certificate of Registration, it was necessary to provide certified copies of the constitutional documents and board resolutions which identified the owners, directors or legal representatives of the new owners and confirmation letters relating to all the existing contracts mortgages and the like.

55. On 26 May 2021, Mr Ghalayini's colleague sent an email to the GCAA notifying them of the change in the ownership of the Aircraft confirming that the Claimant has asked the Defendants to the relevant information of the ownership of the Defendant itself and would revert once that information was received. Despite persistent requests of the Defendant, the latter failed to provide the Claimant with the requested information and documentation. Attempts were made to contact Mr Deeb on the subject but without success, including emails of 21 June and 1 July 2021. Shortly after this, he received a call from Mr Abouhashima explaining that the Defendant was seeking legal advice with regard to registering the new ownership structure and on the following day he received an email from MrDeeb saying that, as discussed with Mr Abouhashima, an evaluation was taking place with legal advice and "private registry options" were being explored. Despite further requests no more information was forthcoming from the Defendant or anybody purporting to represent it.

56. On 23 November 2021, the Claimant received a notice from the GCAA notifying it that unless the outstanding information on ownership was provided within five working days, the Aircraft would be de-registered. On 25 November 2021, WFW informed Mr Deeb, Mr Abouhashima and Mr Shendy (inter alia) of the notice received from the GCAA and urging them to provide the outstanding documents as soon as possible. The requested information was not provided and on 29 November 2021, the GCAA revoked the registration of the Aircraft "under the provisions of Article 68 for violating Article 5 of the Civil Aviation Laws, by transferring the ownership of the aircraft without approval of the GCAA". The Claimant could not obtain the necessary consent from the GCAA because the Defendant had failed to provide it with the requisite information of its new ownership structure.

57. Clause 10.3 of the Management Agreement makes it clear that the obligation to ensure that the Aircraft is registered with the GCAA is dependent upon the Defendant providing the required documentation. It provides as follows: "The operator shall (at owner's expense and provided that Owner has provided all necessary documents and information unless any such document is required to be provided by the Operator or is in the Operator's possession) register and maintain registration of the aircraft on the aircraft register maintained by the Aviation Authority."

58. Because the Aircraft had been deregistered, on 29 November 2021 the Claimant received a letter from the GCAA instructing it to collect the Original Registration Certificate to "intimate" the Owner and other stakeholders of the Aircraft, and to "remove all registration markings, Registration nameplate, ELTs code and Transponder code within two working days and confirm with evidences to this office". It was in those circumstances that the Emergency Locator Transmitters and the Transponder codes and the physical Emergency Locator Transmitters had to be removed from the Aircraft and sent to an approved organisation for decoding, as well as the Transponder which had to be removed so that it could be manually reset. The Defendant however engaged a new operator by way of a Power of Attorney and the Claimant was not allowed to remove the relevant equipment and markings in compliance with the GCAA requirements. After much to-ing and fro-ing, it was not until 20 December 2021 that authorisation was given by the GCAA, regardless of objection by the Defendant, to remove the equipment and markings and this was duly done on 21 and 23 December 2021.

59. It was following the deregistration of the Aircraft by the GCAA that the Defendant registered it with the FAA and obtained an airworthiness certificate for the Aircraft's departure to Istanbul "for maintenance purposes". Contrary to its assertion therefore, the deregistration was the result of its own failures to supply the necessary information to the Claimant about transfers of shares and the details of the ownership of the Defendant and the passing of legal title to TVPX appears to have been done for the purpose of registration with the FAA in the USA, all of which looks suspiciously like a ploy to avoid payment of debts due to the Claimant.

60. The absence of any genuine defence to the claim is illustrated by the failure of the Defendant to put in any defence and the judgment given in default at the hearing on 8 March 2022.

61. The failure to provide information about the ownership of the Defendant for the purpose of registration with the GCAA is also significant in the context of failure to register share transfers with the JAFZA Registry. There is obviously more to this than meets the eye as it was Mr Ghalayini's evidence that, following receipt of the letter of 21 April 2021, he continued to have dealings with Mr Abouhashima whilst Mr Deeb stayed in the background. Direct payments were made by Mr Abouhashima in relation to arrangements for charters with Mr Deeb supposedly standing behind in order to make other payments. Mr Ghalyini had no real dealings with Mr El Akabi or Mr Abou Aly who both likewise stayed in the background. He understood that there had been a fallout between Mr El Akabi and Mr Deeb, and that the former was taking the latter the court, as regaled to him in a conversation when the former told him that he no longer cared about the Aircraft.

62. The confusion surrounding the transfer of shares and the management of the Defendant continued throughout the period from March/April 2021 onwards and it is clear that Mr Abouhashima recognised his residual responsibilities, whilst all appeared to be losing patience with Mr Deeb who promised to make payments due to the Claimant but never did, despite pressure from the others to do so.

Conclusion

63. Whilst it seems inherently likely that it was Mr Deeb who gave the direct instructions for the Aircraft to fly from Dubai and was, behind-the-scenes, pulling the strings of Aviation House, as a supposed shareholder in the Defendant, the fact remains that both Mr Abouhashima and Mr Abou Aly were the registered directors of the Defendant and that each remained a registered shareholder also with the requisite power to prevent the removal of the Aircraft from Dubai. There is no good evidence from them as to why they chose to remain as directors rather than resign and why the share transfers were not registered and why, in such circumstances they did not exercise managerial control of the Defendant.

64. In these circumstances, both directors were under a duty to take reasonable steps, as directors of the Defendant to see that the Order was complied with. It is sufficiently clear that both must have been aware of the Order and neither has produced any evidence to show that he took any steps to ensured that it was obeyed. The only evidence that they even made contact with those to whom they purported to sell their shares comes from Mr Galayini indirectly. They could not have reasonably believed that any other person such as Mr Deeb or Mr El Akabi was taking steps to

obey in circumstances where the evidence shows that he was seeking to avoid making payment of sums due to the Claimant. They knew of their responsibilities as registered directors and did nothing to stop the Aircraft leaving, either by direct instruction as directors or by applying pressure to Mr Deeb or any other "new owner". I therefore find that they wilfully disobeyed the Order, seeking to absolve themselves of responsibility by saying that it was a matter for Mr Deeb. They are both therefore guilty, on the criminal standard of proof, of contempt of Court.

65. For these reasons condign punishment is required:

65.1. In the exercise of my powers under RDC 52.37.3, I impose a fine of $100,000 on the Defendant, payable within 21 days. Payment to the Court shall be effected by bank transfer to the DIFC Court's Bank Account at Emirates NBD.

65.2. In the exercise of my powers under RDC 52.37.1, having found both Mr Abouhashima and Mr Abou Aly guilty of contempt of Court in failing, as the registered Directors of the Defendant, to take reasonable steps to prevent the Defendant disobeying the Order, I refer the matter of their contempt to the Attorney General of Dubai for his review and consideration of committal.

65.3. It remains open to the Defendant, Mr Abouhashima and Mr Abou Aly to purge their contempt, which might well include procuring the return of the Aircraft and/or paying the Claimant's claim in full with a full indemnity for costs and/or making a full apology to this Court and paying any fines imposed.

66. Further, the Defendant and Mr Abouhashima and Mr Abou Aly are all guilty of conduct "beyond the norm" and are therefore liable for the Claimant's costs on the indemnity basis which I summarily assess in the sum claimed of US $288,017.67.