In The Supreme Court of Bermuda

CIVIL JURISDICTION
(COMMERCIAL COURT)
2020 No: 262

BETWEEN:

GRIFFIN LINE GENERAL TRADING LLC

Plaintiff/Respondent

And

CENTAUR VENTURES LTD

First Defendant

TEMPLAR CAPITAL LTD

Second Defendant /
First Alleged Contemnor

DANIEL JAMES MCGOWAN

Second Alleged Contemnor

RULING

Dates of Hearing:	Thursday 14 May 2026
Date of Judgment:	Tuesday 7 July 2026
Plaintiff/Respondent:	Mr. Lewis Preston and Mr. Dantae Williams (Marshall Diel & Myers Limited)

First Defendant:
(In liquidation)
Second Defendant/
First Alleged Contemnor
And
Second Alleged Contemnor Mr. Henry Tucker (Harneys Bermuda Limited)

Applications to Strike Out Amended Notice of Motion for Contempt of Court Proceedings – Duties of parties and persons with knowledge of Freezing Order of the Court – Defence of Res Judicata/Issue Estoppel

RULING of Shade Subair Williams J

Introduction

1. The relevant factual and procedural background is stated in my previous Ruling in *Griffin Line Trading LLC v Centaur Ventures Ltd and Templar Capital Ltd and Daniel James Mcgowan* [2026] SC (Bda) 4 Civ (my "19 January 2026 Ruling"). In my 19 January 2026 Ruling I concluded that the Court would need to be addressed on the question as to whether it is now abusive for the Alleged Contemnors to proceed with the strike-out summonses having regard to my findings on the Plaintiff's application to amend the Notice of Motion.

2. Notwithstanding, the Court heard arguments on 14 May 2026 on the following three strike out summonses filed on behalf of the Second Defendant:

   (i) Summons dated 4 July 2025 filed on 2 July 2025 (the "First Strike Out Summons");
   (ii) Undated Summons filed on 25 September 2025 (the "Second Strike Out Summons");
   (iii) Summons dated 3 December 2025 and filed on 25 September 2025 (the "Third Strike Out Summons");

3. At the close of the hearing, I reserved my decision as to whether the contempt allegations pleaded on the Amended Notice of Motion, are liable to be struck out as a whole or in part. This is my Ruling on the three strike-out summonses.

Summary of Relevant Background

4. These proceedings were commenced by the Plaintiff in effort to preserve the claim (the "OCM Claim") arising out of the indebtedness of the South African coal mining company, Optimum Coal Mine (Pty) Limited ("OCM") to the First Defendant, Centaur Ventures Ltd ("Centaur"). As is explained in my 19 January 2026 Ruling, Centaur was a Bermuda exempted company which traded coal in South Africa and is now insolvent and in liquidation. The OCM Claim, was Centaur's only significant asset.

5. The Plaintiff, Griffin Line General Trading LLC ("Griffin Line"), asserted itself as an eligible creditor of Centaur and its case was that the OCM Claim was its only real prospect of repayment by Centaur. More recently, Griffin Line creditor's claim against Centaur was settled as between Griffin Line and Centaur's JPLs. That settlement formed the basis of a challenge to the Plaintiff's standing to continue in this litigation, a point which is decided in this Ruling further below.

6. In June 2020, the Plaintiff sought to injunct Centaur's sale of the OCM Claim on the premise that the purchaser was LURCO Group South Africa Proprietary Limited. It was envisaged under the "Lurco Agreement" that Centaur was to transfer the OCM Claim to Lurco in exchange for the sum of $73,359,323.46 (the "Lurco Agreement"). However, the Lurco Agreement fell through and was never executed.

7. On 15 June 2020, 12.45 days after the Lurco Agreement had collapsed, Centaur and Templar signed a cession agreement (the "Centaur-Templar Agreement"), the effect of which was that Centaur sold and/or assigned its interest, rights, options, and/or claims in and over OCM to the Second Defendant, Templar Capital Limited ("Templar"), an affiliate company of Centaur. Controversially, it was Mr. McGowan alone who signed the Centaur-Templar Agreement. As a director of both companies, he acted as signatory for both Centaur on the one side and for Templar on the other side.

8. Notwithstanding, the impetus for the injunctive relief first sought by the Plaintiff on its *ex parte* summons application of 16 June 2020 (Case No. 185 of 2020) was the Lurco Agreement. The Plaintiff was focused on threat of dissipation by the Lurco Agreement because it was not yet aware of its cancellation and the signing of the 15 June 2020 Centaur-Templar Agreement. So, on 16 June 2020 when the Plaintiff filed its *ex parte* summons application for a worldwide freezing order to prevent Centaur and Mr. McGowan from dissipating Centaur's assets up to the value of $104,100,000.00, the *ex parte* freezing order granted in Hargun CJ's 22 June 2020 *ex parte* Ruling, *Griffin Line Trading LLC v Centaur Ventures Ltd* [2020] SC (Bda) 29 Com (the "22 June 2020 *ex parte* Ruling"), was made on

the Court's understanding that the Lurco Agreement was the means by which centaur sought to dissipate its only significant asset.

9. Centaur subsequently applied to discharge the *ex parte* freezing order. On behalf of Centaur, Mr. McGowan filed an affidavit dated 2 July 2020 stating that "*on 15 June 2020 CVL disposed of its creditor claim in OCM on an arm's-length commercial basis*". This was met with the Court's making of an Order dated 6 July 2020, whereby it ordered Centaur to produce within 24 hours an affidavit disclosing all of the detail relating to the payments made to Centaur in consideration for its transfer of the OCM Claim.

10. On 7 July 2020 an affidavit sworn by Mr. McGowan was filed. That affidavit to the Court only stated the information concerning the consideration received under the Lurco Agreement. Mr. McGowan's evidence stated nothing of the Centaur-Templar Agreement or the consideration promised under its terms. As it turned out, on that same day, 7 July 2020, the Plaintiff came to discover the contents of a letter from Templar's attorneys to OCM's creditors informing them of the Centaur-Templar Agreement. The Plaintiff brought to this letter to the attention of the Court and produced with it a copy of Templar's register of directors and officers confirming that Mr. McGowan was a director of Templar.

11. In response, Mr. McGowan filed an affidavit sworn on 9 July 2020 explaining that Centaur had voluntarily disclosed this information. Mr. McGowan stated that Centaur was under no obligation to do so, nor was it under any obligation to identify the party who acquired the claim. His evidence was that these were private commercial matters which were confidential to Centaur and that neither Griffin Line nor any other Centaur creditor was entitled to that information as of right.

12. Having subsequently heard the parties on an *inter partes* basis, the Court refused to discharge the interim freezing injunction or the ancillary disclosure order. That decision is reported in *Griffin Line Trading LLC v Centaur Ventures Ltd* [2020] SC (Bda) 31 Com (the "24 July 2020 *inter partes* Ruling"). In the 24 July 2020 *inter partes* Ruling the Court was expressly perturbed by the Mr. McGowan's refusal to identify the purchaser of the OCM Claim and the allegation that the OCM claim had been passed on to a company wholly owned by Mr. McGowan. The Court also expressed its concern for the reluctance shown by Mr. McGowan and his legal advisors to provide the information needed to examine the disposal of the OCM Claim on an objective basis. A stated example of that reluctance was their refusal to disclose the identity of the valuer and the details of the consideration agreed for the disposal of the OCM Claim.

13. Three days later, on 13 July 2020, Centaur Group Finance Limited ("Centaur Group") served a statutory demand on Centaur. As previously noted by the Court in *Griffin Line Trading*

LLC v Centaur Ventures Ltd and Templar Capital Ltd [2022] SC (Bda) 15 Civ (the "22 March 2022 Ruling"), Centaur Group is an associate company of Centaur and Mr. McGowan is the sole registered director of Centaur Group.

14. I now come to the 8 August 2020 email (the "8 August 2020 email") from Centaur's previous attorneys of Wakefield Quin Limited ("WQ"). That email was sent to Cox Hallet Wilkinson ("CHW") who were representing Mr. Deepak Raswant as a 50% shareholder of Centaur. (Centaur was otherwise owned by another Bermuda incorporated company known as "CGL", in respect of which Mr. McGowan is/was the sole director.) The correspondence is said to have been triggered by Mr. Raswant's concerns about the proposal to dispossess Centaur of the OCM Claim without Mr. Raswant's agreement. Of note, in the 8 August 2020 email, WQ described Centaur as "*hopelessly insolvent*", a position which Hargun CJ considered to be in direct conflict with Mr. McGowan's first affidavit filed in Case No. 185 of 2020 whereby he stated: "*It is also CVL's position that it is not balance sheet insolvent as it has claims against all third parties involved which would be equal to or greater than the loan receivables and/or the amounts due to CVL creditors*". That is the affidavit evidence which was put before the Court in the *inter partes* proceedings resulting in the 24 July 2020 *inter partes* Ruling.

15. On 11 August 2020 the Plaintiff filed a Generally Endorsed Writ of Summons ("the Writ") commencing these proceedings against Centaur and Templar to set aside the Centaur-Templar Transaction pursuant to sections 36A-E of the Conveyancing Act 1983 on the basis that it was a disposition of property made with the requisite intention and made at an undervalue, thereby rendering it void. This narrative advanced on the Plaintiff's case continues to be denied and disputed by Templar.

16. Nine days later, on 20 August 2020, the Centaur Group filed a creditor's petition against Centaur grounded on claims exceeding US$14,700,000.

17. On 24 August 2020, a media outlet known as "Mining Weekly" published an article quoting Mr. McGowan's proposals to convert the OCM Claim into R1.3 billion of equity in "NewCo", said to be the equivalent of $90,454,024.50. It is undisputed between the parties that NewCo (also referred to as "New OCM") is Liberty Coal, a wholly owned subsidiary of Templar. I shall refer to that entity as "New OCM/Liberty Coal".

18. New OCM/Liberty Coal was established pursuant to the terms of a business rescue plan (the "Rescue Plan") published on 11 September 2020 by the business rescue practitioners (the "BRPs") in OCM's South African business rescue proceedings.

19. The effect of the Rescue Plan was such that Templar, by a debt-to-equity swap proposed at paragraphs 13.2-13.2.1.2 of the Rescue Plan, released its ownership of the OCM Claim. Pursuant to the Rescue Plan, Templar is said to have taken steps to incorporate New OCM/Liberty Coal. The Rescue Plan entailed New OCM's /Liberty Coal's acquisition of OCM's business and its assets and the assumption of the eligible claims against OCM. That included New OCM's/Liberty Coal's assumption of the OCM Claim. As a voting creditor in favour of the Rescue Plan, which was approved by 87.79% by value of OCM's eligible voting creditors, Templar agreed to the discharge of the OCM Claim on terms that New OCM/Liberty Coal would issue its Class V shares to Liberty Energy in simultaneous exchange for extinguishing the OCM Claim. The Rescue Plan also entailed the discharge of the eligible claim of other OCM creditors at various compromised values.

20. In addition to the establishment of New OCM/Liberty Coal and Liberty Energy, the Rescue plan contained various other suspensive conditions which were required to be fulfilled by Templar (directly or indirectly) in order for the Rescue Plan to be implemented.

The Freezing Injunctions

The 16 September 2020 Freezing Order

21. Having filed the Writ against Centaur and Templar on 11 August 2020 to set aside the OCM Transaction, on 16 September 2020, Griffin Line sought the freezing injunction I granted against Templar (only) on the same date (the "Freezing Order"), which in its material terms restrained Templar from dissipating its assets in Bermuda and worldwide up to the value of USD$74,577,285. On the terms of my 16 September 2020, Templar was nevertheless free to dispose of its assets so long as the total unencumbered value of Templar's assets in Bermuda exceeded USD$74,577,285 and its total unencumbered value of assets held in Bermuda remained above the said sum.

22. Paragraphs 4 and 5 of the Freezing Order provided as follows:

4. Until further Order of the court, the Second Respondent must not-

"*(1) Remove from Bermuda any of its assets which are in Bermuda up to the value of $74,577,285; or*

(2) In any way dispose of, deal with or diminish the value of his assets whether they are in or outside of Bermuda up to the same value.

5. Paragraph 4 applies to all the Second Respondent's assets whether or not they are in his own name or whether they are solely or jointly owned. For the purpose of this order the Second Respondent's assets include any asset which he has the power, directly or indirectly, to dispose of or deal with as if it were his own. The Second Respondent is to be regarded as having such power if a third party holds or controls the asset in accordance with his direct or indirect instructions."

23. Paragraphs 6(1) and 6(2) specified that paragraph 4 applied to the OCM Claim as follows:

"*6. The prohibition in paragraph 4 in relation to the Second Respondent's assets extends to the following assets in particular-*

*(1) TCL's interest, rights, options and/or claims in an over Optimum Coal Mine (Pty) Ltd in business rescue proceedings in South Africa (**OCM Claim**);*

(2) *Any shares or any other interest whether held directly or indirectly by the Second Respondent in respect of any debt to equity conversion of the OCM Claim within the business rescue proceedings in South Africa and/or distribution related thereto including but not limited to shares in New OCM*…"

24. Additionally, paragraph 9 of the Freezing Order compelled Templar to provide full disclosure of its assets and to provide full disclosure of any proposals to deal with the OCM Claim and/or updated proposals in the OCM Business Rescue Proceedings which were material to the OCM Claim.

25. Paragraphs 9 and 10 read:

"*9. The Second Respondent shall forthwith and no later than 24 hours from the date of this Order to the best of his ability disclose in writing to the Applicant's attorneys the information to be produced in paragraphs 9(1) and (92) below. The obligation in 9(3) is a continuing obligation which continue for the duration of this Order:*

(1) Full details of all his assets worldwide whether in his own name or not and whether solely or jointly owned, giving the value, location and details of all such assets.

(2) Full details of any proposals to deal with the OCM Claim within or related to the business rescue proceedings in South Africa;

(3) All updated, varied, modified and/or amended such proposals as specified in paragraph 9(2) that may be sent r received by TCL in the business rescue proceedings in South

Africa, which are material to the OCM Claim, within 24 hours of such proposal being sent or received by TCL.

10. The information must be confirmed in an Affidavit which must e served on the Applicant's attorneys within 4 days of this Order being served on the Second Respondent."

26. Under paragraph 18 of the Freezing Order it stated:

"*It is a contempt of Court for any person notified of this Order knowingly to assist or permit a breach of the Order. Any person doing so may be sent to prison, fined or have his assets seized*."

27. Paragraph 21 provided:

"*The terms of this Order will affect the following persons in a country or state outside the jurisdiction of this court;*

(i) [The First Alleged Contemnor] *or* [its] *officer*…[the Second Alleged Contemnor]"

28. The Freezing Order also contained a penal notice providing:

"*PENAL NOTICE*

IF YOU TEMPLAR CAPITAL LIMITED DISPOBEY THIS ORDER YOU MAY BE HELD IN CONTEMPT OF COURT AND MAY BE FINED OR HAVE YOUR ASSETS SEIZED.

ANY OTHER PERSON WHO KNOW OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS THE SECOND RESPONDENT TO BREACH THE TERMS OF THIS ORDER MAY ALSO BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED."

The 6 August 2021 Amended Freezing Order

29. By summons dated 24 June 2021, the Plaintiff sought a variation of the Freezing Order to the extent that the Freezing Order did not prohibit Templar from taking steps to advance and/or implement the Rescue Plan. That application was approved by Hargun CJ in the 2 August 2021 Ruling and those amendments were put in effect by way of a Court Order dated 6 August 2021 (the "Amended Freezing Order").

30. Paragraphs 4 – 8 of the Freezing Order remained undisturbed by the Amended Freezing Order. However, the Amended Freezing Order introduced a new paragraph 9 which expressly restrained Templar from taking any further steps to implement the Rescue Plan without prior approval of the Court. It specified: "*Such "steps to implement the Rescue Plan" include any steps designed to convert TCL's claim against OCM into fixed equity in exchange for New OCM Class V Shares*."

31. The terms of Templar's disclosure obligations were also amended in the form of new paragraphs 10, 11 and 12 which provided as follows:

"*10. The Second Respondent shall within 21 days from the date of this Order and to the best of his ability, disclose:*

(1) Full information in relation to the debt to equity conversion contemplated in relation to the OCM Claim;
(2) the value placed upon the OCM Claim for the purpose of the debt to equity conversion;
(3) the corporate or other structure contemplated to own TCL's rights to the shares in New OCM;
(4) the breakdown of the composition of the shareholders of New OCM; and
(5) the composition of the Board of Directors of New OCM.

11. The Second Respondent is obligated for the duration of this Order to provide in writing to the Applicant's attorneys all updated, varied, modified and/or amended such proposals to deal with the OCM Claim within or related to the business rescue proceedings in South Africa, which are material to the OCM Claim, within 24 hours of such proposal being sent or received by TCL.

12. The information in paragraphs 10 and 11 must be confirmed in an Affidavit which must be served on the Applicant's attorneys with the required time periods."

32. The penal notice and the substance of paragraph 18 (provision stating that it is a contempt to knowingly assist or permit a breach…) and paragraph 21 (the application of the Freezing Order to the Alleged Contemnors whether they be located in or outside of Bermuda) were also included in the Amended Freezing Order.

The 31 March 2022 Further Amended Freezing Order

33. On 31 March 2022, the Amended Freezing Order was further amended (the "Further Amended Freezing Order")." The material aspects of the further amendments relate only to the undertakings given to the Court by the Plaintiff which are irrelevant for present purposes.

The Previous Notices of Motion for Contempt

The First Contempt Application

34. On 15 October 2020 Templar and Mr. McGowan were found to be in contempt of Court for failure to disclose information ordered by the Freezing Order.

35. The penalty imposed was made in the following terms:

> (1) Templar was required to pay into court forthwith a fine of $100,000.
> (2) Mr. McGowan was required to pay into court forthwith a fine of $50,000.
> (3) Both Templar and Mr. McGowan were required to pay a penalty of $10,000 each per day they continue to be in breach of the terms of the injunction Order dated 16 September 2020

The Second Contempt Application

36. On 5 July 2021 the Notice of Motion dated 10 May 2021 alleging contempt against Templar and Mr. McGowan was heard before Hargun CJ. On that application Griffin Line argued that Templar and Mr. McGowan, as the sole director of Templar, had not purged their previous contempt and therefore could not make representations. Griffin Line also sought an order that Mr. McGowan be committed to prison for his contempt in failing to comply with my original directions.

37. Griffin Line relied on paragraph 9(3) of the Freezing Order which imposed a disclosure obligation on Templar to provide the following information "*(3) All updated, varied, modified and/or amended such proposals as specified in paragraph 9 (2) that may be sent or received by TCL in the business rescue proceedings in South Africa, which are material to the OCM claim, within 24 hours of such proposal being sent or received by TCL*".

38. The impugned conduct on the part of Templar and Mr. McGowan related to Templar's vote of approval of the Rescue Plan and its receipt of status reports said to contain updated and material information about the Rescue Plan. However, no finding of contempt was made against Templar or Mr. McGowan as the Court was not satisfied that it was properly positioned to find that the terms of the Freezing Order were sufficiently clear, certain and unambiguous in prohibiting Templar from participating and/or taking steps in the Rescue Plan. See paras [33]-[40] of Hargun CJ's 2 August 2021 Ruling.

The 18 February 2026 Amended Notice of Motion

39. The relief sought on the Amended Notice of Motion is set out in paragraphs 1-5 as follows:

"…

1. *a finding and a declaration that the First Alleged Contemnor is and continues to be in breach of an Order of this Court made on 16 September 2020, as amended, and/or in contempt of that Order;*

2. *a finding and a declaration that the Second Alleged Contemnor, acting at all material times as sole director and 100% shareholder of the First Alleged Contemnor and someone on notice of the terms of the Order, is and continues to be in contempt of court by assisting the First Alleged Contemnor in its breach and/or contempt;*

3. *a Writ of Sequestration in respect of the Alleged Contemnors' assets securing the OCM Claim…its proceeds, the value of the same, or $74,577,285 as the Court thinks fit;*

4. *in the alternative to paragraph 3, a mandatory injunction ordering the Alleged Contemnors within 21 days to effect the return and restoration of the OCAM Claim or its proceeds as the Court thinks fit to the First Alleged Contemnor in rectification of the breach(es) and/or contempt;*

5. *further to paragraphs 3 and 4, either in combination with the Writ of Sequestration, or alternatively, a mandatory injunction, an Unless Order that the Alleged Contemnors shall, within 21 days, effect the return and restoration of the OCM Claim…or its proceeds to the First Alleged Contemnor in rectification of the breach(es) and/or contempt, or pay the value of the same or $74,577,285 into Court in its place as security for the outcome of the proceedings, failing which the First Alleged Contemnor's Defence shall be struck out and Judgment entered in favour of the Plaintiff…*"

40. Under the heading 'Particulars of Breach', paragraphs 9-10 provide:

"…

9. …the Second Alleged Contemnor, acting at all material times as sole director and 100% shareholder of the First Alleged Contemnor, has knowingly assisted and/or deliberately caused the First Alleged Contemnor to breach the terms f the injunctions…, and/or being aware of the Order, as amended, and under a duty to take reasonable steps to ensure it was obeyed, willfully failed to take those steps, and is therefore in contempt of court.

10. The breaches are separable in two categories:

10.1 Breach of the prohibition on disposing of or dealing with the OCM Claim…(the "Dealing Prohibition"); and

10.2 Breaches of the prohibition on taking steps to implement the Rescue Plan…(the "Taking Steps Prohibition")."

41. Ten breaches are alleged on the Amended Notice of Motion. Breaches 3-10 contain conjunctive and alternative allegations.

42. At paragraph 15 of the Schedule 1, the Plaintiff refers to a 25 April 2024 letter (the "T&D Letter") from Trott & Duncan Limited ("T&D"), the former attorneys of the Alleged Contemnors. The T&D Letter is said to have confirmed the implementation of the Rescue Plan "*following the settlement of proceedings in South Africa*" on or around 30 January 2024. The Plaintiff complains that the Rescue Plan was implemented despite the promise to the Court made by the Alleged Contemnors to return to Court before implementing the Rescue Plan. Mr. Preston contends that the Rescue Plan was also implemented in spite of the twenty subsequent occasions in which the Alleged Contemnors represented to the Court that they could not implement the Rescue Plan for as long as the Amended Freezing Order remained in place.

Summary of the Allegations of Breach

43. The ultimate aim of the Court in making the Freezing Injunction on 16 September 2020 and the Amended Freezing Injunction on 6 August 2021 was to prevent Templar from disposing of the OCM Claim or dissipating its assets to the extent that it owned a lesser unencumbered monetary sum than the value of the OCM Claim.

44. The Plaintiff says that disposal of the OCM Claim in accordance with the Rescue Plan amounted to a contemptuous breach of the Court's directions under the Freezing Order and the Amended Freezing Order. So, the Plaintiff's case is that the steps taken to implement the Rescue Plan and the actual implementation of the Rescue Plan in the early part of 2024 constituted breaches of the Dealing Prohibition of the Freezing Order and the Taking Steps Prohibition of the Amended Freezing Order.

45. The Alleged Contemnors, however, invite the Court to favourably view the implementation of the Rescue Plan. Mr. Tucker submitted that it is plainly so from the Rescue Plan that if it had not been implemented, the unsecured creditors of the OCM, including Templar, would have received nothing by way of distributions in the South African liquidation proceedings. Mr. Tucker submitted at paragraph 25 of his written submissions; "*it is also worth noting an*

irony in GL's position. It claims to have obtained the Freezing Orders, and to b pursuing the actions that it is pursuing (including contempt applications), to protect CVL's alleged rights to the OCM Claim and/or to protect its ability to enforce any judgment on GL's underlying Conveyancing Act claim. But as the Plan published by the BRPs made clear, if the Plan had not been implemented, the consequences for the OCM Claim would have been disastrous- OCM would have been liquidated and unsecured creditors (including TCL) would have received nothing [footnote omitted]. As a result of the Plan, however, TCL now has an indirect interest in New OCM/Liberty Coal. By the Notice, therefore, GL is complaining about actions allegedly taken which (if taken) preserved value rather than dissipated it."

46. Each of the alleged breaches set out a suspensive condition expressly contained in the Rescue Plan. Further, these alleged breaches all refer to a status update report provided by the BRPs on 19 August 2021 (the "19 August 2021 Status Report"), post-dating the Amended Freezing Order. The 19 August 2021 Status Report sets out which of the suspensive conditions of the Rescue Plan had already been completed and which of the suspensive conditions had yet to be satisfied or fulfilled as at the date of the report. The Plaintiff also makes reference to a 19 June 2024 OCM Business Rescue Status Report (the "19 June 2024 Status Report") to mark the time frame of completion of subsequent alleged breaches.

47. In each case the allegation specifies that the suspensive condition was either (i) fulfilled on or after 2 August 2021 when the Taking Steps Prohibition was in place or (ii) that the fulfilling of the suspensive condition constituted a breach of the Dealing Prohibition.

48. At paragraphs 28A and 28B of Schedule 1 of the Amended Notice of Motion, the Plaintiff addresses its case on Breaches Two, Three and Four in answer to what has been termed the Alleged Contemnors' "Putative Subsidiary Point". The red text amendments set out in the Amended Notice of Motion are intended to establish that the "Putative Subsidiary Point" is an unsustainable defence to the allegations of breach. Those paragraphs expressly allege liability against the Alleged Contemnors for any contemptuous acts committed by any of Templar's subsidiaries acting under the direction or control of Templar and or Mr. McGowan.

49. The "Putative Subsidiary Point" is said to have surfaced by way of Mr. Tucker's passing reference at the 29 October 2025 hearing before Segal J to the "Definitions and Interpretation" section of the Rescue Plan in respect of the meaning of "TCL" [Templar]. That definition is quoted from the Rescue Plan as follows:

"*"TCL" means Templar Capital Ltd, a Bermuda exempt company…and any reference in this Business Rescue Plan to TCL shall, as the context requires, be reference to its wholly owned nominated South African subsidiary*."

50. Mr. Preston submitted that what Mr. Tucker was doing, without any full commitment to the position, was implying that Templar's wholly owned subsidiary may have carried out some or all of the suspensive conditions or other acts giving rise to the allegations of breach in the Amended Notice of Motion.

51. In the final parts of Schedule 1 of the Amended Notice of Motion, the Plaintiff addresses its case on the subject of inferences and alleges the wilful failure of Templar to take reasonable steps to ensure the Orders of the Court were obeyed. Paragraphs 46-48 provide:

"*Inferences*

46. Where and to the extent that any inferences are drawn above, those inferences are necessary and legitimate, for the following reasons, either individually or in any combination:

46.1 In each instance where the Rescue Plan required the First Alleged Contemnor to do something, and the Alleged Contemnors' position is that the Rescue Plan was binding and has been implemented, it is necessary and legitimate to infer the First Alleged Contemnor did what was required by the Rescue Plan (either directly or through an agent);

46.2 In over twenty instances in these proceedings the Alleged Contemnors have stated/averred in pleadings, evidence and submission that the Rescue Plan could not be implemented while the TCL Freezing Injunction, as amended, was in place and that they would have to return to Court before implementation. The Court is entitled to rely on these statements to draw the inference that the actions above were required to be taken specifically by the First Alleged Contemnor under the Rescue Plan but were impermissible, and known to be impermissible, under the TCL Freezing Injunction, as amended; and/or

46.3 The Alleged Contemnors have failed, despite being invited to do so, to provide a full or cogent explanation in correspondence or evidence of the exact mechanism by which the OCM Claim was extinguished and/or transferred to Liberty Coal and/or which entities took which steps in the implementation of the Rescue Plan.

<u>The Second Alleged Contemnor</u>
47. In all of the actions above the Second Alleged Contemnor, acting as a sole director and 100% shareholder of the First Alleged Contemnor, knowingly assisted and/or deliberately caused the First Alleged Contemnor to breach the Dealing Prohibition and the Taking Steps Prohibition, and/or being aware of the terms of the injunction as amended, and under a duty to take reasonable steps to ensure it was obeyed, willfully failed to take those steps, and is therefore in contempt of court.

48. The mindset of the Second Alleged Contemnor, acting as the First Alleged Contemnor's sole director and 100% shareholder, can at all material times be attributed to the First Alleged Contemnor in taking the actions above."

The Ten Allegations of Breach

Breach 1

52. Paragraphs 16 and 17 set out the first alleged breach. The Plaintiff expressly rejected the following statement lifted from the T&D Letter: "*following the Plan being put forward, voted upon and approved by a majority of a* [sic] *creditors in OCM on 28 September 2020…, there were no further steps that [the First Alleged Contemnor] was required to take to effect implementation of the Plan*".

53. On the Plaintiff's case, it is not accepted that the creditors' vote approving the Rescue Plan was the final step required of Centaur for the implementation of the Rescue Plan. This is because the suspensive conditions for implementation had not yet been fulfilled and also because Mr. McGowan confirmed in an October 2020 affidavit that Templar continued to own the OCM Claim. The Plaintiff's case is that the Alleged Contemnors must have disposed of the OCM Claim after the 28 September 2020 creditors' meeting and that they must have fulfilled the remaining requisite suspensive conditions following the vote in order for the Rescue Plan to be implemented.

54. Notwithstanding, it is the Plaintiff's case on Breach 1 that Templar, by attending the creditors' meeting and formally proposing its offer and continuing to pursue the Rescue Plan up to 28 September 2020, breached the Dealing Prohibition.

Breach 2

55. Paras 18-21 of the Amended Notice of Motion sets out Breach 2. Breach 2 alleges Templar's extinguishment or transfer of the OCM Claim to Liberty Coal in accordance with paragraph 13.2.1.2 of the Rescue Plan. The Plaintiff alleges that the said extinguishment or transfer to New OCM/Liberty Coal constituted a breach of the Dealing Prohibition. The Plaintiff further alleges that if the said extinguishment or transfer to Liberty Coal occurred after 2 August 2021, that transaction also constituted a breach of the Taking Steps Prohibition. (Of note, it is the Plaintiff's case that the OCM Transaction Agreement(s), to which the alleged facts of Breach 3 apply, was finalised on 11 June 2021).

56. Pointing back to Mr. McGowan's October 2020 affidavit deposing that Templar continued to own the OCM Claim at that time, the Plaintiff says that Breach 2 is unaffected by the Putative Subsidiary Point. That is because, by inference, Templar, as the then owner of the OCM Claim, must have transferred the OCM Claim to New OCM/Liberty Coal. (See paragraph 28B.1 of the Amended Notice of Motion).

Breach 3

57. Paras 22-25 of the Amended Notice of Motion sets out Breach 3. The Plaintiff says that the First Alleged Contemnor fulfilled the suspensive condition outlined at clause 15.3.3 of the Rescue Plan which required Templar to finalise the formal legal agreement(s) with the BRPs to give effect to Liberty Coal's acquisition of the OCM Claim. These are referred to as the "OCM Transaction Agreement(s)".

58. The Plaintiff alleges that this condition was fulfilled on 11 June 2021, as evidenced by the 19 August 2021 Status Report. So, Breach 3 is an allegation that Templar, in concluding the OCM Transaction Agreement(s), disposed of or dealt with the OCM Claim in breach of the Dealing Prohibition.

Breach 3A

59. The Plaintiff's case on Breach 3A is premised on Templar's 2021 extinguishment or transfer of the OCM Claim to Liberty Coal pursuant to paragraphs 13.2-13.2.1.2 of the Rescue Plan proposing a debt-to-equity swap by which Templar would either cancel or extinguish the OCM Claim or transfer the OCM Claim to Liberty Coal for its conversion into Liberty Coal shares issued to Liberty Energy. The Plaintiff's case is that both New OCM/Liberty Coal and Liberty Energy are wholly owned subsidiaries of Templar.

60. At paragraphs 28B.3 and 28B.4 the Plaintiff's alternative case to the allegation that Templar finalised the OCM Transaction Agreement(s) is that its wholly owned subsidiary, whether New OCM/Liberty Coal or Liberty Energy, did so under the control of Templar and or Mr. McGowan through Templar's direct or indirect shareholding of these subsidiaries. This is said to have amounted to a wilful failing on the part of Templar and or Mr. McGowan to prevent the extinguishment or transfer of the OCM Claim.

61. So, on the Breach 3A allegation the Plaintiff says that if Templar had in fact been alienated of the OCM Claim and the OCM Claim was under the ownership of New OCM/Liberty Coal or Liberty Energy, then Templar nevertheless acted in breached the Dealing Prohibition.

Breach 4

62. Paras 26-28 of the Amended Notice of Motion sets out Breach 4. The Breach 4 allegation is that Templar fulfilled the suspensive condition outlined at clause 15.1 of the Rescue Plan which required it to notify the BRPs of its satisfaction with the results of the studies and investigations undertaken by it as set out in paragraph 13.1 of the Rescue Plan which provided:

"*TCL has furnished the BRPs with a cession agreement whereby TCL acquired the Claims of Centaur Ventures Ltd, pursuant to which TCL has proposed to the BRPs to restructure ownership of the Business and the Claims on the basis set out below. TCL has advised the BRPs that it intends, at its own cost, to take all appropriate steps once this Business Rescue Plan has been Adopted to undertake the necessary studies that will give effect to restarting the mine and future mining operations, with the intention of refining its current projected 5-year financial model and business plan for New OCM, taking into account the capital expenditure, stay-in-business capital and working capital required to restore the Optimum Mine to full production. Such studies and investigations will include, among other, studies of opencast and underground mining, including mine planning and scheduling, processing plant and mine and mining surface-related infrastructure, conveyors, fans, siding, load out facilities, bins, transfer chutes, crusher areas and shafts, equipment engineering and logistics; updated environmental assessments, and detailed financial modelling and are anticipated to be completed by TCL within approximately 3 months after the Adoption Date. TCL has agreed to share the results of such studies and the relevant financial models and business plan with BRPs*."

63. The Plaintiffs asserts a positive case that Templar provided this notification on 14 January 2021. Additionally, or alternatively, it may be inferred, says the Plaintiff, that this suspensive condition together with the other suspensive conditions were fulfilled because the OCM Claim was ultimately transferred and its transfer was contingent on the completion of the suspensive conditions.

Breach 4A

64. Breach 4A refers to clauses 13.1 and 15.1 of the Rescue Plan and alleges that Templar breached the Dealing Prohibition by the fulfilling of the suspensive condition requiring Templar to provide notice to the BRPs that it was satisfied with the results of the studies undertaken by it. The Plaintiff's case on Breach 4A in answer to the Putative Subsidiary Point is as follows:

"*As an alternative to above Breach Four, if a wholly owned South African subsidiary (whether Liberty Energy or Liberty Coal) did provide a notification as described, TCL and/or Mr. McGowan, being in control of such wholly owned South African subsidiary through TCL's direct or indirect shareholding, wilfully failed to control so as to prevent their wholly owned subsidiary from satisfying the suspensive condition referred to in Breach Four, and thereby willfully failed to prevent the extinguishment or transfer of the OCM Claim (upon, and in combination with, the fulfillment of the other suspensive conditions and implementation), and also thereby disposed of or dealt with the OCM Claim in breach of the Dealing Prohibition (Breach 4A).*"

Breaches 5, 5A, 6 and 6A

65. Paragraphs 29 to 34 allege Breaches 5, 5A, 6 and 6A. Each of these allegations relate to the suspensive condition requiring Templar to provide proof of having concluded definitive formal financing agreements for funding facilities to be drawn down in the estimated amounts required to enable Optimum Mine to be brought into immediate production.

Breach 5

66. The Plaintiff points to the 19 August 2021 Status Report to mark the date after which the condition of definitive formal financing agreements to enable Optimum Mine to be brought into immediate production was carried out. That is because the 19 August 2021 Status Report recorded that this step had not yet been taken. The Plaintiff says that by necessary inference, these steps were taken after the Amended Freezing Order of 2 August 2021 as the Rescue Plan was subsequently implemented. That is said to have constituted a breach of the Dealing Prohibition.

Breach 5A

67. The Plaintiff's case on Breach 5A in answer to the Putative Subsidiary Point is that Templar and or Mr. McGowan is liable even if New OCM/Liberty Coal or Liberty Energy provided the proof of definitive formal financing agreements. The Plaintiff alleges that this would amount to a breach of the Dealing Prohibition, whether the said proof was provided directly by Templar itself or by New OCM/Liberty Coal or Liberty Energy.

Breach 6

68. Equally, Breach 6, premised on the factual allegations made out under Breaches 5 and 5A, alleges that the satisfaction of this suspensive condition, having been carried out after 2 August 2021, was either or also a breach of the Taking Steps Prohibition because the

provision of this information was carried out after the Court's making of the Amended Freezing Order.

Breach 6A

69. Breach 6A, as the final piece of the Plaintiff's factual case under Breaches 5 and 6 and its subparagraphs, is that further or alternatively to the provision of proof of definitive formal financing agreements constituting a breach of the Dealing Prohibition, it also constituted a breach of the Taking Steps Prohibition, even if the said proof was provided by New OCM/Liberty Coal or Liberty Energy.

Breaches 7, 7A, 8 and 8A

70. Breaches 7, 7A, 8 and 8A are alleged at paragraphs 35 to 40 of Schedule 1 of the Amended Notice of Motion. They set out the suspensive condition of Templar appointing an administrator in the implementation of the Rescue Plan, as required by clause 15.3.2 of the Rescue Plan which is said to provide for "*the appointment of the Administrator by TCL, in consultation with the BRPs, on terms mutually acceptable to the parties*."

Breach 7

71. At paragraph 36 of Schedule 1 it is said that the 19 August 2021 Status Report records that this had not been completed and at paragraphs 37 and 38 it is said that the 19 June 2024 Status Report records that an Administrator had been appointed. So, the inference invited by the Plaintiff is that Templar appointed an administrator at some point between 20 August 2021 and 19 June 2024. Breach 7 alleges that the fulfilment of this suspensive condition was a breach of the Dealing Prohibition.

Breach 7A

72. Under paragraph 39A of Schedule 1 of the Amended Notice of Motion the Plaintiff's case on Breach 7A in answer to the Putative Subsidiary Point is that Templar and or Mr. McGowan is liable even if Liberty Energy or Liberty Coal appointed an administrator pursuant to Clause 15.3.2 of the Rescue Plan. The Plaintiff alleges that this would amount to a breach of the Dealing Prohibition, whether the said appointment was made directly by Templar itself or by New OCM/Liberty Coal or Liberty Energy.

Breach 8

73. Breach 8 is a further or alternative allegation that Templar's appointment of an administrator amounted to a breach of the Taking Steps Prohibition. This allegation is stated at paragraph 40 of Schedule 1 of the Amended Notice of Motion.

Breach 8A

74. Under paragraph 40A of Schedule 1 of the Amended Notice of Motion, Breach 8A, as the final piece of the Plaintiff's factual case under Breaches 7 and 8 and its subparagraphs, is that further or alternatively to the appointment of an administrator constituting a breach of the Dealing Prohibition, it also constituted a breach of the Taking Steps Prohibition, even if the said proof was provided by New OCM/Liberty Coal or Liberty Energy.

Breaches 9, 9A, 10 and 10A

75. Breaches 9, 9A, 10 and 10A are alleged by the Plaintiff at paragraphs 41 through to 45 of Schedule 1. Those allegations of breach refer to a suspensive condition prescribed by clause 15.5.3 of the Rescue Plan requiring the replacement of the Trustees of the Optimum Mine Rehabilitation Trust with nominees acceptable to Templar "*with the approval to the extent required of the DMRE*".

Breach 9

76. At paragraph 42 of Schedule 1 it is said that the 19 August 2021 Status Report records that this had not been completed. The Plaintiff alleges that Templar fulfilled this suspensive condition by communicating its acceptance of the replacement nominees further to the implementation of the Rescue Plan, and that in doing so, in combination with the other suspensive conditions, it ultimately resulted in the transfer of the OCM Claim. On that basis, the Plaintiff alleges that this was a breach of the Dealing Prohibition.

Breach 9A

77. Under paragraph 44A of Schedule 1 of the Amended Notice of Motion the Plaintiff's case on Breach 9A in answer to the Putative Subsidiary Point is that Templar and or Mr. McGowan is liable even if New OCM/Liberty Coal or Liberty Energy communicated such acceptance pursuant to Clause 15.5.3 of the Rescue Plan. The Plaintiff alleges that this would amount to a breach of the Dealing Prohibition, whether the said communication was made directly by Templar itself or by New OCM/Liberty Coal or Liberty Energy.

Breach 10

78. Breach 10 is a further or alternative allegation that Templar's communication of its approval of the replacement nominees amounted to a breach of the Taking Steps Prohibition. This allegation is stated at paragraph 45 of Schedule 1 of the Amended Notice of Motion.

Breach 10A

79. Under paragraph 45A of Schedule 1 of the Amended Notice of Motion, Breach 10A, as the final piece of the Plaintiff's factual case under Breaches 9 and 10 and its subparagraphs, is that further or alternatively to the communication of acceptance constituting a breach of the Dealing Prohibition, it also constituted a breach of the Taking Steps Prohibition, even if the said communication was provided by New OCM/Liberty Coal or Liberty Energy.

Summary of the Grounds relied on for the strike out application

80. Mr. Tucker argued that the Amended Notice of Motion is liable to be struck out under RSC Order 18/19 and or as an abuse of process. The following complaints may be distilled as the grounds for striking out the Amended Notice of Motion:

    (i) That a defence of res judicata and or an issue estoppel arises in respect of the breaches which were determined in Case No. 262 of 2020 - *Griffin Line Trading LLC v Centaur Ventures Ltd and Templar Capital Ltd (Daniel James Mcgowan as Contemnor)* [2021] SC (Bda) 60 Civ (the "2 August 2021 Ruling") (the "Res judicata Issue/Issue Estoppel Issue")

    (ii) The breaches alleged lack sufficient particularity (the "Particularity Issue");

    (iii) The Amended Notice of Motion does not disclose any grounds upon which the Court may reasonably infer that the Alleged Contemnors committed the breaches alleged (the "Reasonable Inference Issue");

    (iv) The allegations of willful failure to control the Second Defendant's subsidiaries are more appropriate for a mandatory injunction rather than a prohibitory injunction (the "Mandatory vs Prohibitory Issue");

81. Mr. Tucker submitted that the Court's discretion to strike out a motion for contempt is wide in scope and is appropriately exercised in circumstances where the Amended Notice of Motion in question is not sufficiently particularised or when the pleaded case and the evidence do not disclose reasonable grounds for contempt. Relying on Arlidge, Eady and Smith on Contempt [5th Edition] [12-17]-[12-38], Mr. Tucker submitted that the Court's

contempt jurisdiction should not be invoked lightly as it is "quasi-criminal" in nature and "practically arbitrary and unlimited" and must be "most jealously and carefully watched and exercised."

(i) The Res Judicata / Issue Estoppel Issue

Summary of the Courts' Findings in the 2 August 2021 Ruling

82. On 5 July 2021 the Notice of Motion dated 10 May 2021 alleging contempt against Templar and Mr. McGowan was heard before Hargun CJ. On that application the Plaintiff sought declarations that Templar and Mr. McGowan, as the sole director of Templar, continued to be in breach of the Dealing Prohibition of the Freezing Order.

83. The impugned conduct on the part of Templar and Mr. McGowan related to their receipt on or about 15 March 2021 of a status report (the "15 March 2021 Status Report") on the Rescue Plan. The status report was said to have contained a schedule of actions to be completed by Templar by no later than 28 September 2021. The 15 March 2021 Status Report was said to have also confirmed acts completed by Templar since 16 September 2020 when the Freezing Order was made. Such acts were said to have included preparatory steps to dispose of, or deal with and/or diminish the OCM Claim. The Plaintiff also submitted that Templar failed in its duty to disclose the 15 March 2021 Status Report in breach of paragraphs 9(2) and 9(3) of the Freezing Order.

84. In the 2 August 2021 Ruling, Hargun CJ was also concerned with the Plaintiff's complaint that Templar received, in addition to the 15 March 2021 Status Report, a further status report on or about 19 April 2021 (the "19 April 2021 Status Report"). The Plaintiff's case was that the 19 April 2021 Status Report included information on post-Freezing Order steps taken or to be taken by Templar to deal with the OCM Claim. The Plaintiff thus argued that Templar breached its disclosure obligations under paragraphs 9(2) and 9(3) of the Freezing Order by having failed to provide a copy of the 19 April 2021 Status Report to the Plaintiff.

85. Under paragraph 9(3) Templar was required to provide the Plaintiff with "*(3) All updated, varied, modified and/or amended such proposals as specified in paragraph 9 (2) that may be sent or received by TCL in the business rescue proceedings in South Africa, which are material to the OCM claim, within 24 hours of such proposal being sent or received by TCL.*"

86. At the hearing before Hargun CJ, Templar argued that the status updates did not qualify as a "proposal" to "deal with" the OCM Claim or a "proposal" which was "material to" the OCM

Claim. It claimed that the status reports were mere information and that the Freezing Order did not impose any obligation to disclose the "existence" of mere information.

87. Templar also pointed out that the Plaintiff's summons to amend the Freezing Order implicitly recognised that the Freezing Order did not prevent it from "taking any steps to advance and or implement the Rescue Plan…".

88. Further, Templar's stated position was that the Freezing Order did not oblige it to disclose the "existence" of mere information. Templar's position was that if the Plaintiff considered itself entitled to the status reports, it would have sought disclosure of this material at any point from September 2020 onwards given that the Rescue Plan was approved and exhibited to Mr. Singhala's First Affirmation which was filed on 13 September 2020.

89. The limitations of the scope and reach of the Freezing Order in relation to the Alleged Contemnors' participation in the Rescue Plan and in their disposal of the OCM Claim was explained in the 2 August 2021 Ruling at paras [34]-[40] as follows:

"*34*
Whilst the Court readily accepts that Griffin Line's position that the status reports contained updated information that was material to the OCM claim is eminently arguable, it is far from clear that the terms of paragraph 9(3) can be said to be clear, certain and unambiguous requiring TCL to provide to Griffin Line any status reports received by it. It seems to me that the contrary position, contended for by Mr. Harshaw, that the status reports are merely information and do not fit the description of a "proposal" within the meaning of paragraph 9 of the Freezing Order is equally arguable.

35
In the circumstances the Court is not satisfied that it would be just or proper to hold that TCL and Mr. McGowan are in contempt of court on the basis that they have deliberately disobeyed the clear, certain and unambiguous terms of the injunction Order (paragraph 9 (3)). This is particularly so in circumstances where the Notice of Motion seeks an order that Mr. McGowan be committed to prison for his contempt in failing to comply with the terms of paragraph 9 (3) of the Freezing Order.

36
In relation to the argument that TCL's participation and steps taken in the Rescue Plan in South Africa amounted to a breach of the Freezing Order, again I can see that the contention is certainly arguable. I say that as paragraph 4(2) expressly provides that TCL must not "in any way dispose of, deal with or diminish the value of his assets whether they are in or outside of the [sic] *Bermuda up to the same value [$74,577,285]". Further,*

paragraph 6 (1) extends the prohibition contained in paragraph 4 (2) to "TCL's interest, rights, options and/or claims in and over Optimum Coal Mine (Pty) Ltd in business rescue proceedings in South Africa (OCM Claim)". However, it cannot be said that the position is clear, certain and unambiguous.

37
First, the Freezing Order does not expressly prohibit in terms that TCL is restrained from participating in the OCM Rescue Plan or from voting in relation to it.

38
Second, paragraph 9 (2) assumes that a state of affairs may arise when TCL is the owner of the shares in New OCM: " Any shares or any other interest whether held directly or indirectly by [TCL] in respect of any debt to equity conversion of the OCM claim within the business rescue proceedings in South Africa and/or distribution related thereto <u>including but not limited to shares in New OCM</u>." TCL could only become a shareholder of New OCM, by converting its OCM claim into shares of New OCM, if the Rescue Plan was implemented.

39
Third, the Summons issued by Griffin Line dated 24 June 2021 is premised on the assumption that the injunction Order may not be clear so as to prohibit TCL from taking steps in the Rescue Plan. Paragraph one of the Summons states " To the extent that paragraph 6(1) and 6(2) (as read with paragraph 4) of the injunction granted by the Honourable Judge Subair Williams on 16 September 2020 (the "Freezing Injunction") does not prohibit Templar Capital Ltd ("TCL") from taking steps to advance and/or implement the Revised Business Rescue Plan (dated 11 September 2020) (the "Rescue Plan") approved in the South African Business Rescue Proceedings (on 28 September 2021) concerning Optimum Coal Mine (Pty) ("OCM")… the Freezing Injunction be varied to prohibit the aforesaid actions." The terms of the Summons dated 24 June 2021 recognise that the Freezing Order is not clear, certain and unambiguous in prohibiting TCL from participating and/or taking steps in the Rescue Plan.

40
In the circumstances and having regard to the above matters ***<u>the Court does not consider that the Court can reasonably conclude that the terms of the Freezing Order are clear, certain and unambiguous in prohibiting TCL from participating and/or taking steps in the Rescue Plan</u>*** [my emphasis]. *Accordingly, it would not be just or appropriate to hold TCL and/or Mr. McGowan guilty of contempt of court on the basis that TCL has participated in the Rescue Plan.*"

<u>Breach 1- Res Judicata</u>

90. Breach 1 alleges that Templar breached the Dealing Prohibition by attending the creditors' meeting and formally proposing its offer and continuing to pursue the Rescue Plan up to 28 September 2020. However, on 2 August 2021 Hargun CJ found that "*the Freezing Order*

[did] *not expressly prohibit in terms that TCL* [was] *restrained from participating in the OCM Rescue Plan or from voting in relation to it.*"

91. Mr. Preston relied on the House of Lord's decision in *Arnold v National Westminster Bank plc* [1991] 2 AC 93 and accepted that issue estoppel will apply where the issue raised in the subsequent Court proceeding has already been previously determined by the Court. However, Mr. Preston argued that it does not apply where the Court in the earlier proceeding was not aware of all the relevant information and material or any new material or information of relevance. Mr. Preston's submission was that where the previously unknown material or information could not, with reasonable diligence, have been adduced in the earlier proceeding then no issue estoppel arises.

92. In my 19 January 2026 Ruling I cited *Arnold v National Westminster Bank* and quoted Lord Keith of Kinkel sitting in the House of Lords where cause of action estoppel was explained as follows:

"*It is appropriate to commence by noticing the distinction between cause of action estoppel and issue estoppel. Cause of action estoppel arises where the cause of action in the later proceedings is identical to that in the earlier proceedings, the latter having been between the same parties or their privies and having involved the same subject matter. In such a case the bar is absolute in relation to all points decided unless fraud or collusion is alleged, such as to justify setting aside the earlier judgment. The discovery of new factual matter which could not have been found out by reasonable diligence for use in the earlier proceedings does not, according to the law of England, permit the latter to be re-opened. The rule in Scotland, which recognises the doctrine of res noviter veniens ad notitiam is different. See Phospate Sewage Co. Ltd. v. Molleson (1879) 4 App.Cas. 801, per Earl Cairns L.C. at p. 814. There is no authority there, however, for the view that a change in the law can constitute res noviter. The principles upon which cause of action estoppel is based are expressed in the maxims nemo debet bis vexari pro una et eadem causa and interest rei publicae ut finis sit litium. Cause of action estoppel extends also to points which might have been but were not raised and decided in the earlier proceedings for the purpose of establishing or negativing the existence of a cause of action. In Henderson v. Henderson (1843) 3 Hare 100 at p. 114 Sir James Wigram V.-C. expressed the matter thus:*

"In trying this question, I believe I state the rule of the Court correctly, when I say, that where a given matter becomes the subject of litigation in, and of adjudication by, a court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because

they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time.'""

93. The Plaintiff argued that the facts underpinning Breach 1 were not fully contextualised for Hargun CJ in the hearing resulting in the 2 August 2021 Ruling. Pertinently, the OCM Transaction Agreement(s), to which the alleged facts of Breach 3 apply, is said to have already been finalised by 11 June 2021. The Plaintiff's case is that the effect of the Transaction Agreement(s) was the execution of the debt-to-equity conversion whereby New OCM/Liberty Coal acquired the OCM Claim from Templar in exchange for Templar's receipt of Class V shares in New OCM/Liberty Coal. However, at the hearing before Hargun CJ both the Plaintiff and the Court were unaware of any information giving rise to this factual allegation. This is evidenced by the relief prayed by the Plaintiff on its summons to vary the Freezing Order to prohibit Alleged Contemnors from:

    a. Acquiring OCM and its assets through newly formed company ("New OCM") by debt to equity conversion;

    b. Converting TCL's claim against OCM into a fixed equity in exchange for new OCM Class V shares;

    c. Taking any steps to advance and/or implement the Rescue Plan until further order of this Court;

    d. Concluding any form of legal agreement required to give effect to the acquisition of OCM by New OCM or any other entity, corporation or individual; and

    e. Adopting any structure or option, directly or indirectly, which takes or has the ability to take, the rights of TCL over OCM outside Bermuda or beyond the jurisdiction and control of the Bermuda Courts.

94. At the hearing before Hargun CJ, Mr. Harshaw for Templar made the Court to understand that Templar would seek the Court's leave prior to the consummation of the Transaction Agreement(s). At paras [42]-[43] Hargun CJ said:

    "*42. In relation to this application for Mr. Harshaw, on behalf of TCL, accepts that in the event all the suspensive conditions have been complied with, TCL will have to come back to the Court to have the injunction lifted or varied so that TCL is allowed to consummate*

the transaction. Mr. Harshaw accepts that prior to the exchange of debt into equity transaction is consummated TCL will have to obtain the approval of this Court. However, it is not clear to the Court, in terms of timing, when such an application will be made to the Court.

43. The concern of Griffin Line, as noted in Mr. Singhala's First Affirmation, is that the implementation of the Rescue Plan, whereby TCL's OCM Claim is exchange[d] for shares in New OCM runs a significant risk that by the time the present Set Aside Proceedings are concluded, the assets represented by the OCM Claim might be completely outside the reach of this Court or might be dissipated altogether. This is particularly so as the exchanged assets (shares in New OCM) are outside the jurisdiction and it is proposed that the shares in New OCM are held through a South African subsidiary of TCL. Griffin Line fears that it will be open to the South African subsidiary to enter into further transactions with respect to the New OCM shares making it virtually impossible for this Court to grant an effective remedy, in the event Griffin Line is successful in the Set Aside Proceedings. The Court considers that these are reasonable concerns on the part of Griffin Line and the Court should be anxious to preserve the position that an effective remedy can be provided to Griffin Line in the event it is successful in its claim to set aside the transfer of the OCM claim from CVL to TCL."

95. Paras 46-49:

"*46. Mr. Harshaw, on behalf of TCL, submits that the Court should be very slow to make an order which will have the practical effect of interfering with the workings of a legal process (OCM Rescue Plan) in a foreign land that will deprive certain creditors of a company in that foreign land of vested rights under the relevant laws.*

47. In the circumstances the Court will not presently rule on the substantive relief sought in the Summons. However, the Court is anxious to preserve the position that the OCM Claim and any assets acquired by its exchange (New OCM shares or any other asset) remain within the control of this Court pending the outcome of the Set Aside Proceeding. With the aim of achieving this object the Court orders, on a temporary basis, that TCL and any of its subsidiaries or any affiliated company are, with effect from 2 August 2021, restrained from taking any further steps to implement the Rescue Plan without prior approval of this Court in relation to such steps, pending the determination by this Court of any additional measures to preserve the assets of TCL and in particular the OCM Claim or any other asset acquired in exchange of the OCM claim. "Steps to implement the Rescue Plan" include any steps designed to convert TCL's claim against OCM into fixed equity in exchange for New OCM Class V shares [my emphasis].

48. For the purposes of considering what further steps the Court should take to preserve the OCM Claim, TCL is ordered to file an affidavit, within the next 21 days, setting out (i) full information in relation to the debt to equity conversion ***contemplated*** [my emphasis] *in relation to the OCM Claim; (ii) value placed upon the OCM Claim for the purposes of the debt to equity conversion; (iii) the corporate or other structure contemplated to own TCL's rights to the shares in New OCM; (iv) breakdown of the composition of the shareholders of New OCM; and (v) the composition of the Board of Directors of New OCM.*

49. The Court directs that the Summons be adjourned to a date to be fixed by the Registrar at which time the Court will consider the evidence filed by TCL and any additional evidence filed by Griffin Line and will consider whether and if so what additional relief should be 20 granted to Griffin Line in order to preserve the assets of TCL pending the determination of the Set Aside Proceedings."

96. It is not the fact that the Rescue Plan was subsequently implemented in 2024 which defeats the Alleged Contemnors' plea of res judicata in respect of Breach 1. It is the fact that when Hargun CJ was adjudicating the issue as to whether the Freezing Order was breached by Templar's support of the creditors' vote and its receipt of the BRP's status reports, the Court was not told that Templar had gone so far as to complete the Transaction Agreement(s) before the July hearing and the 2 August 2021 Ruling. That material and relevant fact, which was not denied at the hearing before me, was kept from the previous Court, notwithstanding Templar's disclosure obligations and Hargun CJ's directions for "*full information in relation to the debt to equity conversion contemplated*". This is particularly disturbing because the very aim of the Court's decision to proceed with the temporary measure of prohibiting the Alleged Contemnors from taking further steps in the Rescue Plan was to bar Templar from carrying out what it had already done: converting its claim against OCM into fixed equity in exchange for New OCM Class V shares.

97. For these reasons, I have no reservations in finding that Templar fails on its plea for Breach 1 to be struck out as an abuse of process.

Breaches 3 and 3A- Issue Estoppel

98. Templar argued that Breach 3 ought to be struck out. On Breach 3 the Plaintiff alleges that the Dealing Prohibition was breached contrary to paragraph 4 of the Freezing Order. The factual allegation underpinning Breach 3 applies to Templar's finalising of the OCM Transaction Agreement(s) with the BRPs to give effect to New OCM's/Liberty Coal's acquisition of the OCM Claim. This condition is said to have been fulfilled on 11 June 2021, as evidenced by the 19 August 2021 Status Report.

99. On the basis that the OCM Transaction Agreement(s) was/were part of the suspensive conditions giving effect to the Rescue Plan, the Alleged Contemnors argue that an issue estoppel was formed by the 2 August 2021 Ruling by which the Court held that the Dealing Prohibition did not clearly or unambiguously prohibit Templar from participating in the Rescue Plan. However, I have found that the Hargun CJ, having heard the parties in July 2021 and ruled in August 2021, was not made aware of the 11 June 2021 finalisation of the Transaction Agreement(s) disposing of the OCM Claim to Liberty Coal, a material and relevant fact.

100. Hargun CJ was only concerned with allegations that Templar's voting activity and its receipt of status reports were contemptuous merely because it established participation in the Rescue Plan. The Plaintiff's bottom-line position was that such participation was contemptuous because the Rescue Plan was ultimately fashioned to convert the OCM Claim to shares in New OCM/Liberty Coal with Templar owning the shares in New OCM/Liberty Coal. So, had Hargun CJ been informed that the debt to equity conversion had already been completed, it is more than plausible that he would have adjudicated the question of breach differently.

101. The Plaintiff's case was that the Alleged Contemnors had offended paragraph 4 of the Freezing Order which provided:

4. Until further Order of the court, the Second Respondent must not-

"*(1) Remove from Bermuda any of its assets which are in Bermuda up to the value of $74,577,285; or*

(3) In any way dispose of, deal with or diminish the value of his assets whether they are in or outside of Bermuda up to the same value.

102. The fact that Hargun CJ found that paragraph 9(2) of the Freezing Order contemplated the debt to equity conversion within the Rescue Plan is of no assistance to the Alleged Contemnors because his decision to prohibit further steps from being taken to implement the Rescue Plan was driven by the Court's aim to prevent the debt to equity conversion, so to keep the value of the OCM Claim within the reach of this jurisdiction of Court.

103. While Hargun CJ effectively found that mere participation in the Rescue Plan did not clearly constitute a breach of the Dealing Prohibition, it is doubtful, at the least, that he would have equated the gravity of Templar's finalisation of the Transaction Agreement(s) with its voting participation and receipt of status update reports. For that reason, Templar's application for the Plaintiff to be estopped from prosecuting its claims under Breach 3 and 3A is refused.

Breaches 4, 4A, 5, 5A, 7, 7A, 9, and 9A – Issue Estoppel

104. Breaches 4 and 4A, (notification of satisfaction with the results of the studies), 5 and 5A (proof of Liberty Coal's financing agreements), 7, 7A, (Templar's appointment of an Administrator) 9, and 9A (Templar's approval of nominee trustees of the Optimum Mine Rehabilitation Trust) each allege a breach of the Dealing Prohibition by reference to Templar's direct or indirect participation in the Rescue Plan.

105. Where the Plaintiff's allegations of breach of the Dealing Prohibition are all factually based on Templar's mere participation in the Rescue Plan prior to the Transaction Agreement(s), contempt cannot be clearly established. That was the effect of the findings made in the 2 August 2021 Ruling. So, on that reasoning, I deem it only fair that the Plaintiff is estopped from prosecuting Breaches 4 and 4A because those allegations apply to Templar or the subsidiaries acting under its control providing notification on 14 January 2021 of Templar's satisfaction with study results.

106. Breaches 5 and 5A are said to have been carried out after the Transaction Agreements and are thus arguably constituent to the 11 June 2021 disposal. The same is so for Breaches 7 and 7A and 9 and 9A. The Plaintiff is thus exempted from the rule against issue estoppel on these allegations because it cannot be said that on Hargun CJ's reasoning in the 2 August 2021 Ruling that he would have treated these alleged acts as mere participation in the Rescue Plan as opposed to acts forming part of a disposal of the OCM Claim contrary to paragraph 4 of the Dealing Prohibition. Again, Hargun CJ's finding that the Dealing Prohibition could not be construed as a prohibition on Templar's participation in the Rescue Plan must be taken in the context of the Court's misinformation that the Transaction Agreement(s) were afoot, not that they had already been completed.

(ii) The Particularity Issue and (iii) the Reasonable Inference Issue

107. Mr. Tucker argued that Breaches 1 - 10 are speculative and unparticularised. As I have found that Breaches 4 and 4A are bound to fail on the grounds of res judicata and/or issue estoppel, I will address the Particularity Issue and the Reasonable Inference Issue in respect of all the remaining grounds.

108. Grounds 1, 3, 3A, 5, 5A, 7, 7A and 9 and 9A allege breaches of the Dealing Prohibition. I have recited the Dealing Prohibition provision which has remained in place since the Freezing Order.

109. Grounds 2 and 6, 6A, 8, 8A,10 and 10A, all of which assert a breach of the Taking Steps Prohibition. The Taking Steps Prohibition was introduced by paragraph 9 of the Amended Freezing Order. Paragraph 9 provided:

"*The Second Respondent and any of its subsidiaries or any affiliated company are restrained from taking any further steps to implement the Revised Business Rescue Plan dated 11 September 2020…approved in South African Business Rescue Proceedings on 28 September 2020, without prior approval of the Court in relation to such steps, pending the determination by the Court of any additional measures required to preserve the assets of TCL and in particular the OCM Claim or any other asset acquired in exchange of the OCM claim. Such "steps to implement the Rescue Plan" include any steps designed to convert TCL's claim against OCM into fixed equity in exchange for New OCM Class V Shares*."

110. Mr. Tucker argued that the terms of the injunction and the action prohibited must be clearly and unequivocally stated, allowing for prohibitions to be strictly construed. He submitted at paragraph 28 of his written submissions: "*As a consequence, a respondent cannot be held in contempt for doing something which, although not prohibited by the injunction, is said to be contrary to an undefined "spirit" or "purpose"…*".

111. Both Mr. Tucker and Mr. Preston referred to the T&D letter where it was confirmed that the Rescue Plan had been implemented. Mr. Duncan KC stated that Templar was not required to take any further steps towards the implementation of the Rescue Plan following the 28 September 2020 creditors' vote on its approval. Mr. Duncan KC also flagged that the Freezing Injunction, being an interim Order of the Court, was not enforceable in South Africa and that the approved Rescue Plan was binding on OCM and its creditors and shareholders under South African law. To that, he added that OCM and the business rescue practitioners were under a statutory duty to implement the Plan once it had been adopted.

112. In the T&D letter Mr. Duncan KC also stated that it was always Templar's position that a failure to implement the Rescue Plan would diminish the value of the OCM Claim. He pointed out that as a result of the Rescue Plan, Templar held a valuable interest in New OCM/Liberty Coal and that the Plaintiff had no cause to claim any suffering of prejudice.

113. In concluding the said letter Mr. Duncan KC called on the Plaintiff to particularise the allegations of contempt. He stated as follows:

"*Conclusion*

For the avoidance of doubt, our client rejects that it has breached the Freezing Injunction. As stated at the outset, we are instructed that our client did not take any steps to implement

the Plan or otherwise deal with its assets in breach of the Freezing Injunction. Our client will continue to comply with the Freezing Injunction.

Contempt of court is a very serious accusation. Despite this, your letter simply recites the terms of the Freezing Injunction and certain media articles/reports concerned with OCM. Should your client really believe our client is in contempt of court, your client must detail precise allegations of what it is said our client has done to be in contempt of court. Your client has been unable to do this…"

114. In my 19 January 2026 Ruling, I granted leave to the Plaintiff to amend the Notice of Motion, by which the allegations of contempt were amended to address the putative point raised by the Alleged Contemnors.

115. As it relates to the alleged actions of Templar's subsidiaries, Mr. Tucker emphasised that non-parties to an injunction cannot be properly held liable for civil contempt in relation to an Order. He pointed out that Templar's subsidiaries and affiliates were not party to the Freezing Order, nor were they joined as parties to the Amended Freezing Order. He further highlighted that the Plaintiff never attempted to make the Orders of this Court enforceable in South Africa, a point more fully expounded by Mr. Duncan KC in the T&D letter. Mr. Tucker also put a marker on paragraphs 21(1) and 22(1) of the Amended Freezing Order which provide:

"*21. Persons outside Bermuda*
(1) Except as provided in paragraph (2) below, the terms of this Order do not affect or concern anyone outside the jurisdiction of this Court.
…
22. Assets located outside of Bermuda
Nothing in this Order shall, in respect of assets located outside Bermuda, prevent any third party from complying with-

(1) What it reasonably believes to be its obligations, contractual or otherwise, under the laws and obligation of the country or state in which those assets are situation or under the proper law of any contract between itself and the Second Respondent…"

116. Doubling down on the binding point made in the T&D letter, Mr. Tucker also argued that when the Rescue Plan was approved by Templar and the other eligible voting creditors on 28 September 2020, the Rescue Plan became "*binding on the company, and on each of the creditors of the company and every holder of the company's securities*" pursuant to section 152(4) of the Companies Act, No. 71 of 2008 (as amended) of South Africa (the "South Africa Act").

117. Mr. Tucker submitted that real caution is warranted on the part of a Court seeking to exercise its contempt jurisdiction on the strength of a case requiring inferences to be drawn. He argued that the Court ought not to infer facts on essential elements of contempt unless the inferences invited are not only compelling but also such that no reasonable person would fail to draw it. Otherwise put, an inference of guilt must be the only inference which can be reasonably drawn.

118. At paragraph 32 of Mr. Tucker's written submissions he stated [footnotes omitted]:

"…

(a) The test for the sufficiency of the particulars is, in general terms, whether the notice gives the person alleged to be in contempt enough information to meet the charge.

(b) The sufficiency of the particulars depends on the terms of the injunction and the breaches alleged. A notice stating simply that there has been a breach may be sufficiently particularised if that injunction is one that can only be breached one way but might leave the respondent in doubt as to what breach is alleged if the injunction is "not in such a simple form".

(c) *The requisite level of particularisation must be contained "within the four corners" of the notice to commit itself. It is not permissible to refer in the notice to a separate document for particulars that ought to be in the notice itself. This rule is one of the procedural safeguards that are essential in a contempt application. A respondent to such an application cannot be expected to trawl through evidence to ascertain exactly what the case against him, her or it is. Moreover, "the very process of requiring the respondent to look beyond the 'notice' of the case against him or her is liable to introduce uncertainties in terms of what the case against the respondent really is." As additional documents are introduced and the case against the respondent develops, he, she or it risks having to respond to a "moving target"*."

119. Mr. Tucker submitted that the Plaintiff's allegation of what Templar "must have" done is illegitimate and unsustainable as a charge of contempt. He pointed to Hargun CJ's findings that the Freezing Order expressly contemplated the conversion of the OCM Claim; so, the conversion of the OCM Claim itself cannot establish a breach of the Dealing Prohibition. At para 39(c) of his written submissions, Mr. Tucker stated [footnotes omitted]:

"*Even if Liberty Coal assumed the OCM Claim, that is consistent with TCL doing nothing. GL itself has previously recognised this. On its previous contempt application, it claimed that one possible inference to be drawn from the evidence was that TCL "allowed the OCM Claim to be converted.". That is consistent with TCL doing nothing, which is insufficient for GL's purposes*."

120. Paragraph 4 of the Freezing Order sets out the Dealing Prohibition which barred the Alleged Contemnors from disposing of, dealing with or diminishing the value of Templar's assets, whether they were in or outside of Bermuda up to the value of $74,577,285. Such assets expressly applied to the OCM Claim. Paragraph 9 clearly prohibits Templar from using any subsidiary or affiliated company under its control to carry out the requisite steps for the implementation of the Rescue Plan. The Amended Freezing Order, having been made on 6 August 2021, preceded the implementation of the Rescue Plan. The obvious purpose of the amendment to the Freezing Order was to bar Templar from taking any further direct or indirect steps to bring about the implementation of the Rescue Plan, meaning neither Templar nor the subsidiaries acting under the control of Templar or Mr. McGowan was permitted to take any further action in pursuance of the Rescue Plan.

121. In Mr. McGowan's Third Affidavit it is stated that he owns all of the shareholding in Templar and that Templar owns 100% of Liberty Ventures (Singapore) which wholly owns Liberty Energy (South Africa). Liberty Energy (South Africa) was said to fully own Liberty Coal (South Africa) but that shareholding was to be reduced to 70% following the implementation of the Plan at which point the remaining 30% would be shared with national interest groups in South Africa. In this structure, the Plaintiff's emphasis was that Mr. McGowan was at all material times the controlling director and 100% ultimate shareholder of each company with the power to replace any director who disagreed with him on any corporate decisions or transactions.

122. The Plaintiff's case is that the Rescue Plan could have only be implemented by the fulfilment of steps taken by Templar or by the subsidiaries under its control. More specifically, the Plaintiff says that the Rescue Plan could not have been implemented without the participation of Mr. McGowan acting as an officer of Templar, or by Liberty Coal or Liberty Energy acting under Templar's control. The Plaintiff claims that not only is that a necessary inference but that it is also the only inference which can be reasonably drawn. Moreso, the Plaintiff's case is that Templar is liable in each of those scenarios, whether steps were taken by Templar directly or by New OCM/Liberty Coal or Liberty Energy under Templar's direction.

123. As for the argument that Templar was bound by the Rescue Plan under South African law, it is to be noted that Templar voted in approval of the Rescue Plan after the Freezing Order was already in place. The Freezing Order made it plainly evident that the Court was fixed on preserving the value of the OCM Claim and keeping it within the reach of this jurisdiction pending the main underlying set aside action under the Conveyancing Act 1983. So, it was well understood by Templar that it was binding itself to the Rescue Plan which, if implemented, would constitute a clear breach of the Dealing Prohibition under the Freezing

Order. Nearly one year after the creditors' approval of the Rescue Plan, Hargun CJ saw fit to amend the Freezing Order to prohibit Templar from taking any further steps to implement the Rescue Plan, so to preserve the status quo. That made it incumbent on the Templar to remedy its position under South African law by seeking a stay or adjournment of the Rescue Plan proceedings, so not to find itself in breach of the Amended Freezing Order.

124. More to the point, this Court has not taken on any role of reviewing whether the Amended Freezing Order ought to have been made in light of the Templar's position as a matter of South African law. The question for this Court is the viability of the Plaintiff's allegations that the Dealing Prohibition and Taking Steps Prohibition were contemptuously breached or whether any part or all of those allegations ought to be struck out for lack of particularity.

125. In the 22 March 2022 Ruling, Hargun CJ rejected Templar's application to vary the injunction so as to allow it to take the steps needed to implement the Rescue Plan. Nine months thereafter, on 6 January 2023, Templar sought to stay the Bermuda proceedings ("Templar's stay application") pending the final disposition of the South African proceedings. The Court's ruling rejecting Templar's stay application was recorded in *Griffin Line Trading LLC v Centaur Ventures Ltd and Templar Capital Ltd (Daniel James McGowan as Contemnor)* [2023] SC (Bda) 24 Civ (the "31 March 2023 Ruling"). At paragraph 53, Hargun CJ held:

"*The Court did not ignore the authorities and the principles relied upon by TCL in support of its proposition that the Freezing Order should not be varied to allow TCL to proceed with the proposed arrangement. In particular:*

(1) That there was a serious risk that the implementation of the proposed structure would be to place assets beyond the reach of the Cout. See: (i) "Having regard to the conduct of Mr. McGown as set out at [6] to [22]] above, the Court considers that if the Plan is implemented through the proposed corporate structure, there is a serious risk that Griffin Line likely will have no recourse to the assets represented by the OCM Claim in the event that it is successful in setting aside the transfer of the OCM Claim from CVL to TCL on the ground that such transfer was in breach of the Conveyancing Act 1983." (Paragraph 32); (ii) "Griffin Line contends and the Court accepts that in the event the Court varies the Freezing Order to allow implementation of the Plan, in accordance with the corporate structure outlined above, then it is likely that…will lead to TCL creating third party rights which would make it impossible to unwind the transaction." (Paragraph 34; and (iii) The Court accepts Griffin Line's submission that the reality of the corporate structure of Liberty Coal is that TCL does not have a direct or indirect or indirect interest in Liberty Coal and that once the OCM Claim is transferred to Liberty Coal, there appears to be little or no possibility of recovery."

(2) TCL elected to place itself in the present position by supporting the Plan in circumstances where it had full knowledge that the transfer of the OCM Claim was being challenged by Griffin Line on the ground that it was in breach of the Conveyancing Act 1983 (paragraph 31 of the Judgment). Indeed, the Freezing Order was in place prior to the obligations under the Business Rescue Plan.

(3) *The Freezing Order is being used for the legitimate purpose of preserving the only asset available to Griffin Line in order to satisfy its very substantial claims against CVL…*"

126. Appeal proceedings against Hargun CJ's refusal to vary the Amended Freezing Order were commenced by Templar on 10 April 2023. On one of the grounds advanced by Templar, it complained that the OCM Claim would be rendered worthless if the Rescue Plan fell short of completion. On the written submissions of Templar's previous attorneys of T&D it was argued that the Rescue Plan could not proceed with Further Amended Freezing Order in place. The following statements are said to have been made in those written submissions:

"*At present time, there are different orders preventing the Plan from going ahead: the Freezing Order in this case and the South African Orders…If the* [South African] *applications fail, the South African Orders will also fall away, and unless this* [Bermuda] *appeal in relation to the Variation and Permission Applications is allowed, the position will be that the only order preventing the Plan from going ahead will be the* [Bermuda] *Freezing Order….as long as the Freezing Order remains in its current form, the Plan cannot be implemented…*".

127. Leave was granted by Bell JA on 23 October 2023. However, on 28 February 2024 Templar withdrew its appeal and a couple of days later, it is said that the South African TCL Preservation Order was discharged. Mr. Tucker, in his written submissions to this Court, stated at paragraph [21]: "*The reason for the withdrawal, as TCL's lawyers explained, was that the Plan was implemented in early 2024 without TCL taking any steps to implement it*."

128. The implementation of the Rescue Plan was reported in the BRP's February/March 2024 status report. That being the case, neither of the Alleged Contemnors sought leave of the Court or put the Court on notice of the implementation of the Rescue Plan. In my judgment, the fact that the Rescue Plan was ultimately implemented renders it necessary for the Alleged Contemnors to answer to the Plaintiff's case alleging contemptuous breaches of the Amended Freezing Order. Barring any explanation to be put forth by the Alleged Contemnors, the Plaintiff has, on the assessment of this Court, established a *prima facie* case of breach of the Dealing Prohibition and the Taking Steps Prohibition.

129. Further, I reject the argument advanced by Mr. Tucker that the Plaintiff's case ought to have been particularised to the extent of asserting whether Mr. McGowan personally acted outside of his capacity as a director or which entity carried out which steps in furthering the Rescue Plan culminating in its implementation. Information as to who carried out the suspensive conditions and in what capacity should have been made known to the Plaintiff by the Alleged Contemnors pursuant to its obligations under both the Freezing Order and the Amended Freezing Order to disclose the full detail of Templar's assets, its proposal to deal with the OCM Claim and/or any updated proposals in the OCM Business Rescue Proceedings which were material to the OCM Claim. Plainly, the detail of who performed each suspensive condition in the Rescue Plan up to the point of its final implementation was not made known to the Plaintiff, notwithstanding the disclosure provisions of the Court Orders made in this jurisdiction. For that reason, I find that it would be grossly unfair to penalise the Plaintiff for lack of particularity on its pleaded case as to who or which entity performed each suspensive condition alleged to have constituted a breach of the Dealing Prohibition and the Taking Steps Prohibition.

(iii) The Mandatory / Prohibitory Issue

130. During Mr. Tucker's oral submissions to this Court he argued that the Freezing Orders were not mandatory injunctions and so the Plaintiff's allegations against Templar of wilful failure to prevent its subsidiaries from carrying out any steps contrary to the Dealing Prohibition and/or the Taking Steps Prohibition could not stand. He submitted that the Orders of the Bermuda Court did not impose an obligation on Templar to control its subsidiaries and that the Alleged Contemnors could not properly be held liable for any omissions to act.

131. However, in multiple Rulings of the Court, it was expressly stated that the Court's intervention was necessary to prevent a serious risk of Mr. McGowan and the corporate entities controlled by him putting the OCM Claim outside of the reach of the Court in the event that the Plaintiff succeeds on its underlying claim to set aside the OCM Claim transaction between Centaur and Templar under the Conveyancing Act 1983.

132. The Dealing Prohibition applies to all of Templar's assets and included any asset over which Templar had a direct or indirect power to dispose of or deal with as if it were Templar's own asset. At paragraph 5 of the Freezing Order it provided "…[Templar] *is to be regarded as having such power if a third party holds or controls the asset in accordance with his direct or indirect instructions*" and whether or not any such asset was in Templar's name. Paragraph 6 of the Freezing Order specified any such asset to extend to the OCM Claim and "*Any shares or any other interest whether held directly or indirectly by the Second Respondent in respect of any debt to equity conversion of the OCM Claim within the business rescue proceedings in South Africa and/or distribution related thereto including but not*

limited to shares in New OCM". Further under paragraph 16 of the Freezing Order, this Court directed "*It is a contempt of Court for any person notified of this Order knowingly to assist or permit a breach of the Order*…". Those provisions appear in the Freezing Order and the Amended Freezing Order and are in my judgment sufficiently clear to prohibit the Alleged Contemnors using any subsidiaries under its control to breach the terms of the Orders.

133. The Amended Freezing Order went further in inserting the Taking Steps Prohibition which expressly restrained Templar and any of its subsidiaries or any affiliated company from taking any further steps to implement the Rescue Plan. Again, in my judgment that language employed by the Court was sufficiently clear to prohibit the Alleged Contemnors from using any subsidiaries under its control to breach the terms of the Orders. For that reason, the Plaintiff is entitled to assert breaches of the Amended Freezing Order on its case that any one or more of Templar's subsidiaries (i) acted contrary to what was prohibited by the Dealing Prohibition and or the Taking Steps Prohibition and (ii) acted under Templar's control in so doing.

134. The applicable legal principles were correctly put by Mr. Preston. He referred to *Z Ltd v A-Z et al* [1982] QB 558. In that case, the English Court of Appeal was principally focused on the liability of banking institutions as third parties served with notice of a freezing injunction. While I am concerned with the duty of parties directly governed by the Amended and Freezing Injunctions rather than the duties of third parties served with notice, the legal principles settled by the English Court of Appeal are highly persuasive and of real assistance. As was explained in *Z Ltd v A-Z et al*, once a bank is given notice of a Mareva injunction affecting assets under its control, it must not dispose of them nor allow the defendant or anyone else to do so without leave of the Court. So, if a third party or any of its officers knowingly assist in the disposal of the assets, liability for contempt of Court will arise. That is because every person who has knowledge of the Mareva injunction must do what he reasonably can to preserve the asset as the Mareva Injunction operates *in rem* by attaching to the asset itself. That is the basis for which the Court's Mareva jurisdiction extends to cases where there is a danger that the assets will be dissipated and or removed from the jurisdiction.

135. In *Z Ltd v A-Z et al* Lord Justice Kerr notably said:

"*The original justification for the new procedure was that foreign defendants should not be able to deprive a plaintiff of the fruits of a judgment in his favour, when it appears to the court that the plaintiff is likely to succeed in his claim, by removing their assets out of the jurisdiction*."

136.Mr. Preston also relied on commentary from Gee on Commercial Injunctions, quoting the following extract at paragraph [19-034]:

"*Where the defendant can foresee the possibility that the prohibited acts may be done by someone over whom he has some control or influence but who is not a servant or agent, then where those acts would frustrate the purpose of the court in making the order, it is considered that the general principle is that he must take all reasonable steps to prevent those acts. This can be viewed as being:*

(i) *a duty on the defendant, implicit in the order which has been made against him, to take reasonable steps to prevent frustration of the order of the court by others over whom he as a measure of control or influence; or*

(ii) *depending upon the facts, the failure to take such reasonable steps can be regarded as implied consent to the non-part to do those acts on behalf of, or with the approval of, the defendant; silence is consent*."

137.In my judgment, the law is plain on the issue. A defendant's culpability is not expunged by his ability to quietly fold his arms under the spotlight while commissioning or permitting others acting under his influence or control to carry out the forbidden acts backstage.

Decision as to Standing

138.Mr. Tucker invited this Court to consider whether Griffin Line continued to have standing to prosecute its claim against Templar and Mr. McGowan following the settlement of its creditor's claim against Centaur. However, one of the terms and conditions of the settlement agreement between Griffin Line and Centaur's JPLs was Griffin Line's continued pursuit of its prosecution against Templar under sections 36A-E of the Conveyancing Act 1983 to set aside the Centaur-Templar Transaction.

139.In my judgment, that is sufficient to establish Griffin Line's interest and standing to proceed with this litigation.

Conclusion

140.The relief prayed by the Alleged Contemnors on the First, Second and Third Strike Out summonses is refused save that Breaches 4 and 4A are struck out.

Costs

141. The parties may be heard on the issue as to costs upon the filing of a Form 31TC within 14 days of the date of this Ruling. Otherwise, costs shall follow the event in favour of the Plaintiff on a standard basis to be taxed if not agreed.

Dated this 7th day of July 2026

HON. MRS JUSTICE SHADE SUBAIR WILLIAMS
PUISNE JUDGE OF THE SUPREME COURT