

**IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
MISCELLANEOUS PROCEEDINGS NO. 214 OF 2021**

IN THE MATTER OF an
application by Santa Monica Equity
Inc. (“the Applicant”) against
Christelle Fila Nzololo (“the
Respondent”) for an Order of
Committal under Order 52, Rule 1
of the Rules of the High Court
(Cap. 4A)

BETWEEN

SANTA MONICA EQUITY INC.

Applicant

AND

CHRISTELLE FILA NZOLOLO

Respondent

Before: Hon Anthony Chan J in Court

Date of Hearing: 6 January 2022

Date of Judgment: 6 January 2022

J U D G M E N T

1. This is the Applicant’s (“Santa Monica”) Originating Summons filed on 17 February 2021 seeking the Respondent’s (“Nzololo”) committal based on alleged forgery adduced in proceedings by the latter to set aside a statutory demand (“Set Aside”) served on her by the former.

2. Nzololo has been served all the relevant documents for these proceedings pursuant to an Order for substituted service dated 7 June 2021 (“Order”). She has chosen not to participate in these proceedings and has not appeared at the hearing. It was ordered by this court that the hearing should proceed in her absence.

Background

3. Santa Monica is a Marshall Islands company. It was beneficially owned by the late Mr George Catsiapis (“Deceased”) until his death on 30 September 2018. It is now so owned by the Deceased’s heirs.

4. According to Nzololo’s affidavit filed on 14 January 2020 (“Affidavit”) in support of the Set Aside, she was born in Congo. She moved to Belgium when she was 8 years old, and she was living in Hong Kong with her family. She was the Deceased’s administrative assistant before his death.

5. Following his death, the Deceased’s heirs engaged Ms Lina Adeeb, who had worked with the Deceased for “decades”, to take stock of his assets which included Santa Monica. In the course of investigation,

A Ms Adeeb discovered that on 15 August 2018, €150,000 (“Sum”) was
B transferred from Santa Monica’s bank account to that of Nzololo for a
C project that was never performed.

D 6. After Nzololo refused to return the Sum, on 27 December
E 2019 Santa Monica’s solicitors, Messrs Kobre & Kim (“K&K”), served on
F her a statutory demand. On 14 January 2020, Nzololo, acting via her
G solicitors, Messrs King & Wood Mallesons (“KWM”), applied to set aside
H the statutory demand.

I 7. Nzololo admitted in the Affidavit that she had kept the Sum,
J but alleged that she was permitted to do so by reason of a set-off because
K Santa Monica owed her €272,000 (“Debt”). The only evidence she
L adduced in support of the Debt was a one-page letter dated 20 March 2018
M (“Letter”) purportedly signed by the Deceased, allegedly the authorized
N representative of Santa Monica, stating that the company owed her a
O “credit balance” of €272,000.

P 8. Due to suspicion over the authenticity of the Letter based on,
Q *inter alia*, the mis-spelling of the Deceased’s name, Ms Adeeb
R commissioned a report by handwriting experts, Mr Khody Detwiler and
S Mr Gus Lesnevich, on the authenticity of the document and the signature
T thereon (“Report”).

U 9. The Report concluded “with the highest degree of confidence”
V that the Deceased’s signature on the Letter was a “cut-and-paste simulation,
or forgery”.

A 10. On 17 January 2020, K&K wrote to KWM contending that
B the Letter was forged and demanding that Nzololo confirms its authenticity.
C Neither Nzololo nor KWM responded to the letter. On 23 February 2020,
D Santa Monica filed an affidavit exhibiting the Report and putting forth the
E contention of forgery for purpose of the Set Aside.

F 11. On 19 March 2020, KWM conveyed that they had ceased to
G act for Nzololo appending a Notice to Act in Person (“Notice”) signed by
H Nzololo with a stated residential address in Hong Kong (“Address”) for
I service¹.

J 12. Since acting in person, Nzololo had sent no less than 8
K correspondences to the court and K&K from 25 March 2020 to 16 February
L 2021. In those correspondences, Nzololo had never commented on the
M Letter.

N 13. After repeated failure by Nzololo to prosecute the Set Aside,
O it was dismissed by the court on 16 October 2020.

P 14. On 4 February 2021, Santa Monica obtained leave to apply
Q for committal based on Nzololo’s filing of the allegedly forged Letter in
R the Set Aside.

S 15. These proceedings are supporting by, *inter alia*, an affirmation
T of Ms Adeeb filed on 23 February 2021 (“Affirmation”) exhibiting the
U Report.

V ¹ It appears that (a) the Notice has not been filed and (b) KWM have not applied to cease to act for Nzololo.

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16. All the relevant documents have been duly served on Nzololo in accordance with the Order: (1) by delivery to KWM; (2) by delivery and registered post to the Address (which was also used in Nzololo's correspondences to the court); and (3) by email to the address she had used to correspond with K&K and in correspondences with the court.

17. Nzololo has failed to acknowledge service of the Originating Summons or to attend the call-over and PTR hearings on 23 July and 15 November 2021 or to file any opposing evidence.

Issues

18. There are three issues for determination:

- (1) Authenticity Issue – whether the Letter is authentic;
- (2) Interference Issue – whether the filing of the Letter was likely to interfere with the course of justice; and
- (3) Knowledge Issue – whether Nzololo knew or was reckless to the possibility that the Letter was forged and would likely interfere with the course of justice.

Applicable principles

19. Contempt proceedings of the present nature serve the public interest of promoting the integrity of the legal process and respect for it. They underscore the importance of honesty in making statements or affidavits and in adducing evidence: *Chu Kong v Sun Min* [2020] HKCFI 2022, §101.

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20. It had been established that “misleading the court by the use of forged documents or by presenting a false case is capable of amounting to an act of contempt”: *Neil v Henderson* [2018] EWHC 90 (Ch), §70. See also *Hydropool Hot Tubs Ltd v John Roberjot* [2011] EWHC 121, §59.

21. The applicant for committal must prove beyond reasonable doubt: (1) the falsity of the statement; (2) the statement would likely have interfered with the course of justice; and (3) the maker had knowledge that it was false and would likely have interfered with the course of justice: see *La Dolce Vita Fine Dining Group Holdings Ltd v Zhang Lan* [2018] HKCFI 548, §98.

22. For purpose of committal arising from the filing a forged document or making a false statement, the applicant only needs to show that the false document or statement was “likely” to interfere with the administrative of justice. It is unnecessary to show that the forged document or statement had any actual impact: *Neil v Henderson (supra)*, §§72 and 75.

23. Where an act of contempt consists of filing forged documents, an “overwhelming probability” of interference with justice is established because the court (and other parties) is “misled into believing that the documents are being put forward as genuine”: *Neil v Henderson*, §252.

24. It is sufficient to show that the maker of the false statement was reckless as to the possibility that the statement was false: *Aviareps Plc v Parivash Kiani* [2021] EWHC 2420, §37.

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25. The maker’s knowledge of the falsity of the evidence and its likely interference with the course of justice or recklessness as to those possibilities can be proven circumstantially: *Saif Partners II LP v Joe Zhixiong Zhou* [2020] HKCFI 727, §51.

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26. When statements are “deliberately false”, it may be said that there is a presumption, or it is obvious, that the respondent knew that they would likely interfere with the course of justice: *Daltel Europe Ltd v Makki* [2005] EWHC 749 (Ch), §81.

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Authenticity

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27. Santa Monica relies on the Affirmation and the Report on this issue. The evidence of Ms Adeeb, who had worked with the Deceased for decades and was tasked to look into the Deceased’s assets, is that :

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(1) Santa Monica’s records, to which Ms Adeeb had access, did not show any debt owed to Nzololo as alleged in the Letter;
(2) The Deceased was not an authorized signatory for Santa Monica as stated in the Letter;
(3) The Deceased’s surname was mis-spelled in the Letter.

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28. Further, the Deceased was concerned with his privacy. It was Ms Adeeb’s experience that the Deceased would not sign a document such as the Letter. This is a point echoed in the Affidavit (eg, §20).

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29. Ms Adeeb’s evidence has not been challenged by Nzololo, nor has she indicated any wish to cross-examine Ms Adeeb (see para 3 of the Order dated 15 November 2021).

A 30. The authors of the Report are highly-qualified and vastly
B experienced forensic examiners. The analysis was done in accordance
C with established professional standards. One of the authors, Mr Detwiler
D gave evidence at the hearing during which he illustrated the analysis with
E slides that had been provided to the court in paper form, and served on
F Nzololo the day before the hearing in the manner provided in the Order.
The slides were produced and marked as exhibit “A”.

G 31. Based on authoritative literature, the Report stated that “no
H individual can produce a signature or writing that is exactly the same on
I multiple occasions (i.e. with machine-like precision)”.

J 32. The focus of the Report was the comparison of the Letter
K (marked “Q2” in the Report) with a corporate chart previously provided by
L Nzololo to the Deceased’s family which also contained a purported
M signature of the Deceased (marked “Q1”). The unchallenged Report
confirmed :

- N (1) With the “highest degree of confidence”², the Deceased’s
O purported signature on the Letter is “the product of
P transposition fabrication; more commonly referred to as a
“cut-and-paste” simulation, or forgery”;
- Q (2) The Letter contained “artifacts” which suggest that it and the
R Deceased’s signature on it are forgeries: (a) an abnormal
S “cross-hair” mark on the Letter; (b) an anomalous, machine
printed ‘y’ that appeared in the Letter at the upper left-hand
corner of the signature, which also appeared on Q1 dated

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U ² In his evidence, Mr Detwiler described the evidence of forgery as overwhelming.
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4 years before the Letter; and (c) mis-alignment of a number of line text on the Letter.

33. It can indeed be seen with naked eyes that the signature on the Letter is highly similar to that on Q1. With the benefit of enlargement of the signatures and overlaying one on top of the other after size adjustment (Exhibit A, pp 6-7), it has been demonstrated that the signatures on Q1 and Q2 are identical. The presence of an identical “y” in exactly the same position in relation to the signatures puts the matter beyond doubt.

34. The presence of the artifacts is “often hallmark feature of “Cut-and Paste” fabrications” (Report, §28).

35. Mr Detwiler’s evidence is that the presence of the “y” suggests that there was an unknown source of the signature, and that source was the “origin” from which the signatures on Q1 and Q2 came. There is a possibility that the signature on Q2 was copied from Q1 due to the higher reproduction quality of the latter. However, the point is not conclusive, and I do not believe that it is important for the present purpose.

36. Based on the expert evidence alone, I am left in no reasonable doubt that the Letter is a forgery.

Interference

37. On this limb, there is little scope for argument. I agree with Santa Monica that in circumstances where the Letter was the only evidence Nzololo adduced in support of the Debt and her evidence was given on oath, upon the finding that the Letter is a forgery, the interference with the course of justice is also established.

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Knowledge

38. I am also in agreement with Santa Monica that, at the very least, Nzololo was recklessly indifferent as to (a) whether the Letter was forged and (b) whether adducing the Letter would likely interfere with the course of justice for the following reasons.

39. First, Nzololo must have known whether she had a “credit balance” with Santa Monica. If the Letter which evidenced the credit balance was forged, she must have known that to be the case. Indeed, she used that document to prove the Debt. Put another way, it is almost inconceivable that a forged document was produced to prove a genuine debt.

40. Second, the Letter was adduced by Nzololo as the sole evidence in support of the Debt and to support the Set Aside. It was produced under oath as part of the Affidavit. Nzololo was represented by KWM at the time, who would likely have advised her of the importance of being truthful with the contents of the Affidavit.

41. In the premises, the only inference that can reasonably be drawn from the evidence before the court is that Nzololo knew that the Letter was forged and she filed it intending to influence the court on the Set Aside.

Absence of Nzololo

42. There is no doubt that the court may proceed with these proceedings in the absence of Nzololo: see *Hong Kong Civil Procedure* 2022, [52/6/4].

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43. I am satisfied that Nzololo has knowledge of these proceedings and of the hearing. She has been served with all relevant documents, and has absented herself deliberately: see *Calderdale and Huddersfield NHS Foundation Trust v Atwal* [2018] EWHC 961, §§37 and 38.

44. It should be mentioned that the evidence is that Nzololo had “accessed the files”, namely, the Originating Summons and supporting documents served on her by email on 23 June 2021 pursuant to the Order. The email address was the one she used to correspond with K&K and identified in her letters to the court.

Disposition

45. For the reasons stated above, I am satisfied beyond reasonable doubt that the contempt alleged against Nzololo is established.

46. There are authorities suggesting that unless circumstances are wholly exceptional, imprisonment is the only appropriate sentence for interference with the administration of justice: see *Arlidge, Eady & Smith on Contempt*, 4th edn, [14-10]; *Patel v Patel* [2017] EWHC 1588 (Ch), §20.

47. I agree with Santa Monica that in view of the absence of Nzololo, the appropriate course is for the court to issue a warrant to have her arrested and brought before it so that she may make submissions on the penalty: see *Navig8 Chemical Pools Inc v Inder Sharma*, unrep, HCMP 2885/2016, 14 February 2017, §43. I note from the Affidavit that Nzololo is a mother with 3 children.

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48. On the terms of the draft order before the court, para 1 should be re-formulated as follows :

“The Respondent be committed for contempt of court for :

- (a) Filing and using a forged letter dated 20 March 2018 purportedly issued by the Applicant (“the **Forged Letter**”) in her application to set aside a statutory demand in HCSD 8/2020 (“the **Set Aside Proceedings**”) to mislead the Hong Kong Court;
- (b) Making false statements in respect of the Forged Letter in the Set Aside Proceedings and exhibiting it in her Affidavit filed in those proceedings on 14 January 2020 to mislead the Hong Kong Court.”

49. It is well-established that where contempt is proved costs would normally be awarded against the respondent on indemnity basis, and I do so in this case. Save for re-formulating para 1 as above, I make an order in terms of the draft order.

50. Last but not least, I am grateful to Mr Han and his team for their assistance.

(Anthony Chan)
Judge of the Court of First Instance
High Court

Mr John Han (solicitor advocate) of Kobre & Kim, for the Applicant

The Respondent was not represented and did not appear