

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKĀURAU ROHE**

**CIV-2025-404-1403
[2025] NZHC 2182**

UNDER	the Contempt of Court Act 2019
BETWEEN	BENJAMIN BRIAN FRANCIS and GARRY CECIL WHIMP as liquidators of Maxconcrete Limited (in liquidation) Applicants
AND	RANITA HANDYMAN SERVICES & TRANSPORT LIMITED First Respondent RINISH KUNJUMON Second Respondent

Hearing:	31 July 2025
Appearances:	A Ho for Applicants No appearance for Respondents
Judgment:	5 August 2025

JUDGMENT OF O’GORMAN J

*This judgment was delivered by me on 5 August 2025 at 3 pm
pursuant to r 11.5 of the High Court Rules 2016.*

Registrar/Deputy Registrar

.....

Solicitors:
Crimson Legal Ltd, Auckland

Introduction

[1] In this proceeding the liquidators of Maxconcrete Ltd (in liquidation) are applying to have the respondents, Ranita Handyman Services & Transport Ltd (Ranita) and its sole director and shareholder, Rinish Kunjumon, held in contempt of court.

[2] The application arises from the respondents' failure to comply with court orders requiring the surrender of a company vehicle and payment of costs, following the setting aside of a transaction that transferred the vehicle from the company to the first respondent during the restricted period prior to liquidation.

Facts

[3] Maxconcrete Ltd was placed into liquidation on 22 October 2024, with the applicants appointed as liquidators.

[4] The liquidators discovered that a 2015 Hino Ranger vehicle had been transferred to Ranita on or about 16 July 2024 within the restricted period (within six months before the liquidation). Orders were sought to set aside the transaction under s 292 of the Companies Act 1993:

- (a) The vehicle was transferred from Maxconcrete Ltd to Ranita on 16 July 2024 as payment of a debt allegedly owed to Ranita as a driver and subcontractor.
- (b) A voidable transaction notice dated 24 October 2024 was served on Ranita on 29 October 2024 under s 292(3) of the Companies Act. It stated that the vehicle was made within the restricted period pursuant to s 292(4C), at a time when the company was unable to pay its due debts¹ and the transaction enabled Ranita to receive more than it would have in the liquidation.²

¹ The Commissioner's proof of debt showed that the company failed to make PAYE payments from April 2023 and GST payments from May 2023.

² A search on Trade Me indicated similar vehicles were worth around \$50,000.

(c) Ranita did not submit a notice of objection within 20 working days, so the transaction was automatically set aside under s 294(3).

[5] On 28 March 2025, the High Court determined the application, requiring the vehicle to be surrendered to the applicants and awarding costs against Ranita. The orders were sealed on 1 April 2025.

[6] The liquidators instructed Mr Mullenger (a repossession agent) to personally serve the orders on the respondents, along with an explanatory letter. The agent's instructions were to repossess the vehicle once service had occurred.

[7] Mr Mullenger went to Ranita's registered address on 7 and 8 April 2025. During the second visit, an occupant confirmed that Mr Kunjumon lived there and was due to return soon. She provided Mr Mullenger with Mr Kunjumon's mobile number.

[8] At about 6.40 pm that evening, Mr Mullenger called and spoke with Mr Kunjumon. The following is the agent's description of the conversation:

I explained to him that I was instructed by the liquidators of Maxconcrete Limited to repossess the Vehicle pursuant to a court order given on 1 April 2025 and that he is required to comply by surrendering the Vehicle.

Mr Kunjumon appeared to be co-operative at first. He agreed to meet me the next morning at Manurewa. However, he declined to provide a location and said that he would send me the address the next morning.

[9] At 12.08 pm the next day, the agent received a text from Mr Kunjumon saying he was in Silverdale and would contact him again when he was leaving. No such contact was made, and Mr Kunjumon did not answer the agent's subsequent calls.

[10] On the evening of 14 April 2025, Mr Mullenger returned to the Kelston address and met with Mr Kunjumon. The following is an extract from the agent's report:

On 14 April 2025 at 5:40pm we attended [the address in] Kelston, Auckland to serve the Debtor, Ranita Handyman Services & Transport Limited. Rinish accepted service of the documents on behalf of the company at the registered office. He spoke with the agent briefly regarding the truck. He is refusing to disclose its location. He stated that he was going to speak with a legal advisor the following day, because he believed it is his truck, and he does not have to give it up.

[11] The report contains a photo of Mr Kunjumon looking at the served documents. The vehicle was nowhere to be seen.

[12] On 23 April 2025, an email was sent to Mr Kunjumon. The email sought confirmation from Mr Kunjumon as to whether Ranita would comply with the court order. It warned that if Mr Kunjumon did not respond, proceedings would be commenced for contempt of court. There was no response to that email.

[13] On 5 May 2025, a further email was sent to Mr Kunjumon to encourage compliance. There was no response to that email either.

[14] After ongoing failure to comply, the respondents were personally served with the contempt application and supporting affidavits on 25 June 2025.

[15] The matter was first called on 30 June 2025, but the respondents did not appear or file any opposition. As recorded in a minute dated 30 June 2025, the matter was adjourned to 14 July 2025 for this formal proof hearing.

[16] On 4 July 2025, the respondents were also served with the minute dated 30 June 2025 and a further letter explaining that the matter was next due to be called on 14 July 2025 at 10 am.

[17] There was no appearance for the respondents on 14 July 2025.

Legal principles

[18] The law of contempt is now provided for in the Contempt of Court Act 2019 (the Act). This Court also retains inherent jurisdiction to resolve contempt that is not covered by the Act.³

³ Contempt of Court Act 2019, ss 3(3)(b) and 26(2).

[19] The principal purposes of the Act are to:⁴

- (a) promote and facilitate the administration of justice and uphold the rule of law;
- (b) maintain and enhance public confidence in the judicial system; and
- (c) reform the law of contempt of court.

[20] Public confidence in the administration of law, necessary for its effective administration, recognises that there is a strong expectation that those who ignore court orders are quickly brought to account.⁵

[21] Under the Act, the court must be satisfied that:

- (a) the order that is alleged to have been breached is an interim or final order of the court;⁶
- (b) other methods of enforcing the order have been considered and are inappropriate or have been tried unsuccessfully;⁷
- (c) it is proven beyond reasonable doubt (namely, the criminal standard⁸) that:⁹
 - (i) the order has been made in clear and unambiguous terms and is clearly binding on the respondents;
 - (ii) the respondents had proper knowledge or notice of the terms of the order; and

⁴ Section 3(1).

⁵ *Siemer v Solicitor-General* [2010] NZSC 54, [2010] 3 NZLR 767 at [26].

⁶ Contempt of Court Act, s 16(1)(a).

⁷ Section 16(3)(a).

⁸ Section 16(3)(b) and (4). See *Ruscoe v Cattermole* [2024] NZHC 3883 at [50]; *Smith v Smith* [2020] NZCA 556 at [30]; *Siemer v Solicitor-General* [2009] NZCA 62, [2009] 2 NZLR 556 at [62]; and *Solicitor-General v Krieger* [2014] NZHC 172 at [24]–[26].

⁹ Contempt of Court Act, s 16(3)(b).

- (iii) the respondents, without reasonable excuse, knowingly failed to comply with the order.

[22] The remedies available for a contempt are set out in s 16(4):

- (4) On finding beyond reasonable doubt that the requirements of subsection (3)(b)(i) to (iii) are met, the court may—
 - (a) do any of the following:
 - (i) issue a warrant committing the person or a director or an officer of the body corporate, as the case may be, to a term of imprisonment not exceeding 6 months:
 - (ii) impose a fine,—
 - (A) in the case of an individual, not exceeding \$25,000; or
 - (B) in the case of a body corporate, not exceeding \$100,000:
 - (iii) order the individual or a director or an officer of the body corporate, as the case may be, to do community work, not exceeding 200 hours, as the court thinks fit:
 - (b) if the court is the High Court, make a sequestration order in accordance with the rules of court.

[23] In *Young v Zhang*,¹⁰ Ms Ying was the sole director and shareholder of King David Investments Ltd. The company was required pursuant to a consent order to transfer one of its properties to Ms Zhang. While Ms Ying was not a party to the consent order, she caused the company to breach the order by transferring the property to a third party. The Court of Appeal held that a person who aids and abets the breach of an order is guilty of criminal contempt (even though the principal would be guilty of civil contempt).¹¹ This includes a director who is not personally bound by orders made against the company. The Court of Appeal upheld the order for contempt of court, but reduced the fine from \$10,000 to \$7,500 (noting that fines imposed for contempt have generally ranged between \$5,000¹² and \$25,000, but fines \$10,000¹³

¹⁰ *Young v Zhang* [2017] NZCA 622, [2018] NZAR 207; leave to appeal declined in *Ying v Zhang* [2018] NZSC 27.

¹¹ At [42].

¹² This was imposed in *Solicitor-General v Krieger*, above n 8, at [64].

¹³ This was imposed in *Grant v Grewal* [2016] NZHC 1564, with the fine apportioned as to 50 per cent each between the Crown and the liquidators (for the benefit of the creditors). This

and above have tended to be reserved for cases involving serious and sustained breaches of injunction).¹⁴

[24] If a court is satisfied it is appropriate to issue an arrest order, the court commonly directs that the order is to lie in court to provide the non-complying party with a final opportunity to comply with the underlying court order:¹⁵

- (a) In *Connolly v Eckhout*, Campbell J issued an order for the arrest of an administrator of an estate who had failed to pay out a judgment from assets under her control.¹⁶ However, the order was to lie in court for a short period, to provide Ms Eckhout with a final opportunity to make payment.
- (b) In *Burmester v Burmester*,¹⁷ a daughter was held in contempt for failing to comply with an order requiring her to appoint her mother as sole agent of a partnership. Katz J ordered that a warrant be issued for her arrest, but that it lie in court to allow time for her to purge the contempt, in which case the warrant was to be cancelled.¹⁸
- (c) In *Grant v Bhana*, liquidators obtained orders for arrest against a director and another person who had effective control over the company at material times, for deliberately frustrating the liquidation process by not providing books, records and documents.¹⁹ However, the orders were to lie in court for specified period, to provide the respondents with an opportunity to file affidavits attesting to their compliance and requesting that execution of the arrest order be varied or revoked. Costs were awarded on an actual and reasonable basis,²⁰ with any penalty to be determined at a hearing to be allocated subsequently.²¹

approach was followed in *Grant v Joseph* [2022] NZHC 142 at [26] in which a fine of \$8,000 was imposed.

¹⁴ At [59].

¹⁵ *Grant v Bhana* [2015] NZHC 2596 at [25].

¹⁶ *Connolly v Eckhout* [2022] NZHC 293 at [10].

¹⁷ *Burmester v Burmester* [2018] NZHC 2352, [2018] NZAR 1540.

¹⁸ At [38].

¹⁹ *Grant v Bhana*, above n 15, at [2].

²⁰ At [15].

²¹ At [10] and [13].

Applicants' submissions

[25] The applicants submit that the requirements for contempt under the Act are met in that:

- (a) the order was clear and unambiguous;
- (b) the respondents had proper notice; and
- (c) they knowingly failed to comply without reasonable excuse.

[26] Although Mr Kunjumon was not personally named in the original order, the applicants argue he aided and abetted the company's breach, making him liable for criminal contempt under the principles discussed in *Young v Zhang* (which pre-dated the Act).

[27] The applicants contend that the breach is intentional, as evidenced by the respondents' acceptance of service and continued non-compliance.

[28] As to penalty, the applicants seek the issue of an arrest warrant under the High Court Rules, arguing that other enforcement methods have failed and that an arrest order is necessary to secure compliance and uphold the rule of law:

- (a) Rule 17.84 contains the power of a Judge to issue an arrest order if the requirements of r 17.84(2) are satisfied (referring to s 16(2) of the Act).
- (b) Rule 17.85 provides for the Court to impose sanctions for non-compliance, including fines and the potential for imprisonment.

[29] The applicants seek the imposition of a fine of \$7,500. They ask that it is apportioned between the Crown and the applicants.

[30] Finally, the applicants seek costs on an increased or indemnity basis due to the flagrant nature of the contempt.

Analysis

[31] Based on the facts as outlined above, which have been substantiated by affidavits, it is proven beyond reasonable doubt that:

- (a) the Court order made on 28 March 2025 requiring surrender of the vehicle was clear and unambiguous;
- (b) the respondents have had proper notice of the order, given that it was personally served on Mr Kunjumon (the sole director of Ranita), the nature of the order was explained to him by the repossession agent and in cover letters, and the nature of the order was again brought to his attention when these contempt proceedings were personally served on him;
- (c) with express knowledge about the order, Mr Kunjumon has failed to comply — he has not offered any excuse for that failure, nor has he taken any steps in this proceeding to explain his position, so the only inference currently available is that the breach is intentional; and
- (d) the applicants have exhausted their means of achieving compliance voluntarily, and the vehicle has not yet been recovered despite it being reported stolen, so it is clear that other methods of enforcing the order have been considered and are inappropriate or have been tried unsuccessfully.

[32] Although the 28 March 2025 order was only issued against Ranita, the remedies in s 16(4) of the Act are also available against a director of the body corporate named in the Court order, so long as they have the requisite responsibility. In particular, the Court has an express power to issue a warrant for imprisonment against a director of the body corporate, or to order community work. In that context, it is clear that the power to impose a fine is available against a director as well. In this case, Mr Kunjumon is Ranita's sole director and therefore is the only person responsible for Ranita's non-compliance.

[33] The applicants' primary objective is to achieve surrender of the vehicle. I consider it is appropriate to provide Mr Kunjumon with a final opportunity to comply with the Court order dated 28 March 2025, so the orders I give below provide for the arrest order to lie in Court to provide that final opportunity.

[34] I consider it premature to determine whether a penalty should be imposed, because this should take into account whether the vehicle is surrendered prior to the arrest being executed and any explanation for non-compliance to date.

[35] However, it is appropriate to award costs to date. I award those on a 50 per cent uplift basis to reflect the flagrant nature of the respondents' behaviour.

Result

[36] I hold the respondents in contempt of Court for deliberately failing to comply with the order made on 28 March 2025.

[37] A further hearing will be held to determine the next steps, including determination of an appropriate penalty, on 14 August 2025 at 10 am.

[38] I issue an order for Mr Kunjumon's arrest under r 17.84 requiring him to be brought before the Court on 14 August 2025 at 10 am in the Duty Judge list and until then he is to be kept in safe custody. The arrest order is to lie in Court until 10 am on 12 August 2025. The arrest order will be quashed if Mr Kunjumon surrenders the vehicle to the applicants prior to 10 am on 12 August 2025.

[39] I order Mr Kunjumon to pay costs on a 2B basis with a 50 per cent uplift for the applicants' costs and disbursements reasonably incurred on this application, quantified in the sum of \$20,613.75 plus disbursements of \$340.

O'Gorman J