

CITATION: G M Textiles v. Sidhu, 2016 ONSC 667  
COURT FILE NO.: CV-11-791  
DATE: 2016-01-27

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** G M TEXTILES INC., GURDEV SINGH GREWAL, and MOHINDER SINGH MATHAROO, Applicants

**AND:**

FATEH SINGH SIDHU, also known as FATEH SIDHU, 2119509 ONTARIO CORP. operating as "Popeyes", 2121325 ONTARIO LIMITED, operating as "Popeyes", 2209385 ONTARIO LTD. operating as "Popeyes", 2244485 ONTARIO LTD. operating as "Popeyes", 2178548 ONTARIO INC. operating as "Popeyes", 2136630 ONTARIO LTD. operating as "Popeyes", 2165077 ONTARIO CORP. operating as "Popeyes", 2168124 ONTARIO INC. operating as "Popeyes", AR-RAHEEM FOODS INC., and AR-RAZZAAQ FOODS INC., Respondents

**BEFORE:** The Honourable Mr. Justice Robert B. Reid

**COUNSEL:** M. Solmon and F. Damji, Counsel, for the Applicants

M. Simaan, Counsel, for the Respondents

**HEARD:** September 30, 2013; January 2, 3 and 28, June 30, July 2, 3, and 4, 2014; April 13, 14, 16 and 30, 2015

Corrected Decision: The text of the original judgment was corrected on March 16, 2016. The surname spelling of applicant counsel M. Solmon has been corrected in the preamble above and in paragraph 47. Further, applicant co-counsel F. Damji has been added to the preamble.

**ENDORSEMENT**

- [1] In the two motions before the court, the applicants seek an order for contempt against the respondents, and in particular against the respondent Fateh Singh Sidhu as a result of his alleged breach of eight court orders. The applicants seek a penalty including imprisonment for five years less a day and full indemnity costs.
- [2] The respondents deny breach of the court orders.
- [3] For the reasons and in the circumstances that I am about to outline, I find that Fateh Singh Sidhu is in contempt as a result of numerous failures to comply with orders of this court.

**Background facts:**

- [4] The court orders which are the subject of these motions arose during the course of litigation which resulted following loans to and investments by the applicants in the Popeye's franchise businesses. The corporate respondents were the operating companies and companies which had leasehold interests in the businesses. Mr. Fateh Singh Sidhu was the principal of the companies and was in charge of running the businesses.
- [5] On June 14, 2012, all the legal proceedings were settled and Minutes of Settlement were executed. A final judgment was granted on July 20, 2012 for approximately \$1.7 million against the respondents and in favour of the applicants. Prior to the execution of the Minutes of Settlement, a number of court orders were made, some of which continued in force.
- [6] The initial contempt motion was dated November 16, 2012 and returnable November 30, 2012. After several adjournments, and after the failure of the respondent Mr. Sidhu to attend at the scheduled examination in aid of execution on August 2, 2013, a further adjournment was granted by order dated August 12, 2013. A term of the order adjourning the motion required Mr. Sidhu to attend a judgment debtor examination and pay \$10,000 into court towards costs.
- [7] The second contempt motion was made as a result of Mr. Sidhu's failure to comply with the terms of the August 12, 2013 order.

**Context of the litigation:**

- [8] During the course of the litigation and continuing after final judgment, the applicants were concerned with protecting their interests in the eight ongoing franchise operations. The businesses were being operated under the control of Mr. Sidhu. The applicants understood that efforts were being made by Mr. Sidhu to sell the franchises.
- [9] Interim orders were made on December 2, 2011 and May 4, 2012 requiring Mr. Sidhu to provide documents, correspondence and information about the franchise operations including attempts to sell, the relationship with the franchisor and with the Canada Revenue Agency as well as the ongoing financial operation of the businesses. Pursuant to a further interim order of January 27, 2012, Mr. Sidhu was to make best efforts to provide office space at one of the restaurants for the applicants. Those orders were designed to allow the applicants access to information that could help them protect their investments in the context of the litigation.
- [10] By order, the respondents were not to further encumber the franchises.
- [11] The judgment of July 20, 2012 included terms requiring the respondents to provide updated information regarding the franchises previously ordered and proof of daily sales.
- [12] Eventually, none of the franchise businesses were sold. Instead, new purchasers entered into agreements directly with the landlords and the franchisor. Because the respondent

businesses had no value, the applicants appear unlikely to recoup any portion of their judgment against the corporate respondents.

- [13] The applicants allege that the deliberate noncompliance by the respondents and in particular Mr. Sidhu with the outstanding court orders frustrated their ability to preserve their investments and allowed Mr. Sidhu to surreptitiously take money out of the businesses, thereby depleting the value of the businesses to zero.
- [14] Mr. Sidhu denies the alleged breaches of the court orders and responds that while he may have been a poor manager or may have been disorganized in the business operations, he did not enrich himself at the expense of the businesses or at the expense of the applicants.

**Applicable law:**

- [15] Underlying the remedy of contempt is the issue of respect for the rule of law. Justice Cumming identified the applicable principles as part of his decision in *Sussex Group Ltd. v. Fangeat*.<sup>1</sup>

It is integral to a free and democratic society like Canada that citizens act pursuant to and under the rule of law. Court orders in force must be respected and followed. The deliberate failure to obey a court order strikes at the very heart of the administration of justice. This includes court orders relating to commercial matters such as in the case at hand. If someone can simply ignore or finesse his way around a court order, it will tend to add uncertainties and risks, with their consequential inefficiencies and additional costs, as well as causing unfairness, with its consequential inequities in additional costs, to the commercial marketplace. It is commonly recognized that the rule of law is essential in a democratic society for the protection of civil liberties and human rights. It should be evident that the rule of law is just as essential for the protection of citizens in their commercial affairs. And just as white-collar crime is crime, white-collar contempt is contempt.

- [16] Rule 60.05 of the Rules of Civil Procedure allows for enforcement of an order requiring a person to do an act other than the payment of money by contempt order.
- [17] Rule 60.11 specifically deals with a motion for a contempt order and provides in sub-rule 60.11 (5) that in disposing of the motion for contempt, "the judge may make such order as is just, and where a finding of contempt is made, the judge may order that the person in contempt,
- a. be imprisoned for such period and on such terms as are just;
  - b. be imprisoned if the person fails to comply with a term of the order;
  - c. pay a fine;

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<sup>1</sup> [2003] O.J. No. 3348, at para, 50 (S.C.)

- d. do or refrain from doing an act;
- e. pay such costs as are just; and
- f. comply with any other order that the judge considers necessary.

and may grant leave to issue a writ of sequestration under rule 60.09 against the person's property.

[18] Three questions must be answered affirmatively before contempt is deemed proven:<sup>2</sup>

- a. Did the order that was breached state clearly and unequivocally what should and should not be done?
- b. Did the party who disobeyed the order do so deliberately and willfully?
- c. Does the evidence show contempt beyond a reasonable doubt?

[19] The Supreme Court of Canada recently reviewed the law of civil contempt.<sup>3</sup> Although that judgment was released after the final arguments in this case, counsel addressed that pending decision and made submissions accordingly. Facta presented by both the appellant and the respondent to the Supreme Court in that case were made available to this court.

[20] The law does not require that a person breach a court order contumaciously or with intent to interfere with the administration of justice in order to satisfy the elements of civil contempt. All that is required to establish civil contempt is proof beyond a reasonable doubt of an intentional act or omission that is in breach of a clear order of which the alleged contemnor has notice. Contumacious intent or lack thereof goes to the penalty to be imposed following a finding of contempt, not to liability.<sup>4</sup>

[21] In keeping with the fundamental principles applicable to matters of contempt, to which I have already made reference, I adopt the comments of Justice Shaughnessy in *Nelson Barbados Group Ltd. v. Cox*<sup>5</sup> that an order must be implicitly observed and every diligence must be exercised to observe it to the letter; the order must be obeyed, not only in the letter, but also in the spirit of the order; and knowledge of the existence of an order is sufficient to obligate persons to obey it.

#### Breaches of court orders:

[22] The court action was commenced by application on November 18, 2011. At that time, the balance of indebtedness by the respondents to the applicants was approximately \$991,000.

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<sup>2</sup> *Royal Bank of Canada v. Yates Holdings Inc.*, 2008 ONCA 474, [2008] O.J. No. 2343, at para. 3

<sup>3</sup> *Carey v. Laiken*, 2015 SCC 17, [2015] S.C.J. No. 17

<sup>4</sup> *Carey*, *supra*, at paras. 29, 38 and 47

<sup>5</sup> 2010 ONSC 569, [2010] O.J. No. 278, at para. 20.

- [23] As I have noted, the applicants sought court orders that would allow them closer involvement in the ongoing business operation of the corporate respondents in order to protect and ultimately allow for recovery of their investments.

*(a) Orders before Final Judgment*

December 2, 2011

- [24] On December 2, the parties consented to an adjournment of the application to January 27, 2012 on terms. Although no formal order was issued, I am satisfied that an endorsement which incorporates the terms of consent may be enforced and made subject of contempt proceedings in the same way as is the case with a formal issued order.
- [25] The respondents were represented by counsel and the consent was signed by counsel on behalf of the respondents. In evidence, Mr. Sidhu confirmed that his legal counsel acted on his instructions and with his knowledge.
- [26] That consent, reflected in the endorsement, provided:

Paragraph 2: The Respondents shall take no steps to transfer, sell, or encumber any of the subject franchises (i.e. the 8 Popeye's Chicken & Biscuits stores listed in the Notice of Application) without the prior written consent of the Applicants.

Paragraph 3: The Respondents shall confirm in writing that none of the aforesaid eight (8) franchises are for sale and that no sales or offers to buy (or sell) are pending. If a sale or offers to buy (or sell) are pending, copies of all documents relating to same (including but not limited to listing information, agreements, or proposed agreements and commission agreements) shall *forthwith* be faxed to counsel for the Applicants. [Emphasis added]

Paragraph 4: The Respondents shall *immediately* confirm in writing whether the franchisor, AFC Enterprises Inc. has suspended or given notice of termination of any of the 8 franchise agreements. If notices of suspension or termination or breach of the franchise agreement have been received by the Respondents, or any of them, in 2010 or 2011 they shall *forthwith* be faxed to counsel for the Applicants. [Emphasis added]

Paragraph 5: The Respondents shall produce for inspection all correspondence between AFC Enterprises Inc. and your clients including but not limited to copies of the franchise agreements for all 8 franchises.

Paragraph 12: All cash transactions, including deliveries, must be accounted for and deposited into the respective corporate bank accounts. The Respondent Fateh Sidhu shall identify and provide a list of all transfers from the eight (8) franchises to his personal bank accounts, including any cash transfers from the eight (8) franchises to his own person, or his spouse for the period January 1, 2010 to the present.

Paragraph 13: The Respondents shall *forthwith* provide copies of any correspondence, including statements of account, and collection notices from the Canada Revenue Agency in relation to the eight (8) franchises. [Emphasis added]

- [27] Despite the terms of paragraph 2 in the order, the respondents did not disclose the negotiations for purchase and sale with Zeeshan Shalid that took place between February 12 and March 2, 2012.
- [28] No copies of franchise agreements were provided. No copy of a notice of termination of franchise agreement dated May 3, 2011 was provided nor did the respondents disclose correspondence regarding amendments to the workout agreement dated December 14, 2011.
- [29] As to paragraphs 12 and 13 of the order, no documents or information was provided, even though documentary evidence now shows that as of March 8, 2012, two of the franchises owed almost \$243,000 in past due GST.

January 27, 2012

- [30] On January 27, 2012, a further consent was entered into by the parties through their respective solicitors and confirmed by a judicial endorsement of the same day.
- [31] That consent, reflected in the endorsement provided:

Paragraph 7: the Respondents agree to use best efforts to accommodate the Applicant's request for additional office space for the Applicants at the Highway #10 store.

- [32] As to making best efforts for additional office space, it appears that Mr. Sidhu took active steps in the opposite direction. Mr. Qasim Malik, an employee at Popeye's franchises from about 1997, was the store manager under Mr. Sidhu at the Highway #10 Brampton store. He gave evidence, confirmed by photos filed as Exhibit 36, that an office existed at the Brampton restaurant. It was designated as such by a sign on the door. Mr. Malik testified that shortly after the date of the order, the office wall was suddenly demolished on the instructions of Mr. Sidhu. Mr. Malik also testified that Mr. Sidhu instructed that, when the applicant Mr. Gurdev Singh Grewal came to the store, he should be given a hard time and treated disrespectfully with abusive language by Mr. Malik.

May 4, 2012

- [33] On May 4 2012, a formal order was made on consent of the parties.
- [34] That order provided in part as follows:

Paragraph 2: the Respondents through counsel shall confirm in writing *within five (5) business days* the legal status of the 8 franchises vis-à-vis the franchisor. The Respondents shall *immediately* disclose the terms of any extension agreements (and

provide copies thereof to the Applicants) for all 8 franchises for the period March 31st, 2012 and thereafter. [Emphasis added]

Paragraph 3: the Respondents shall provide the Applicants with copies of all franchise agreements, all amending agreements, all correspondence, all memos, all Emails, all notices of default, all royalty reports and all extension agreements between AFC Enterprises Inc. and the Respondents relating to all eight (8) franchises *within 10 business (10) days*. If a dispute arises as to whether all documents have been provided then the applicants are at liberty to return the motion to compel the respondents to produce the information and/or provide authorization to the franchisor AFC Enterprises Inc. to immediately provide this information on May 25th, 2012 for argument. [Emphasis added]

Paragraph 4: the Respondent shall provide the Applicants with copies of all loan documents, all agreements, all security agreements, all correspondence, all Emails, all proof of payment, all bank statements, all copies of cheques, all operating agreements, and all promissory notes, and all other documentation relating to any and all advances, loans and investments made by third parties to the Respondents or any of the eight (8) franchisees or affecting the Respondents or eight (8) franchisees (i.e. including but not limited to Mohammed Wadud, Osama Salem El-Bahnasawy, Khdiga R. Metwally, Nasima Huda) *within ten (10) business days*. [Emphasis added]

Paragraph 5: the Respondents shall provide the Applicants with copies of all notices of assessment, invoices, demand letters, notices of default, as well as correspondence to and from all taxing authorities, including the Canada Revenue Agency, the Government of Canada, the Government of Ontario, the Ministry of Finance, and local/municipal governments *within ten (10) business days*. [Emphasis added]

Paragraph 6: the Respondents shall provide the Applicants with copies of proof of current liability insurance in regard to all eight (8) franchises *within ten (10) business days*. [Emphasis added]

Paragraph 9: The Respondents shall provide the Applicants with copies of the front and back of all cheques, all bank statements, all deposit slips relating to all eight (8) franchises (and any other franchises established and therefore covered by the June 23, 2006 Joint Venture Agreement) from May 1, 2007 to the present, *within fifteen (15) business days*. [Emphasis added]

[35] As to paragraph 2, no documents or other information was provided. This was despite the fact that on May 31, 2012, correspondence from the franchisor confirmed that notwithstanding the earlier termination notices, the eight franchises would be permitted to continue operating during a probationary period on terms. Further, on June 29, 2012, the respondents entered a settlement and probationary agreement with the franchisor to continue operating on a probationary basis. That information was not provided to the applicants.

[36] Documents were not sent within the timeframe required under paragraph 3. Legal counsel for Mr. Sidhu did offer to let applicants' counsel review the contents of 70 banker's

boxes located on a skid. Counsel declined to do so on the basis that it was not realistic to comb through that volume of documents to find information relevant to the order. In submissions, counsel for Mr. Sidhu argued that the order itself was overly broad and that the applicants could not properly complain given the form in which compliance was offered.

- [37] On June 28, 2012, without notice to the applicants, the respondents secured loans for the corporate respondents in the amount of \$40,000, \$40,000 and \$30,000 to 119509 Ontario Corp., 2165077 Ontario Corp. and 2168124 Ontario Corp. respectively. No documents as described in paragraph 4 of the order were provided to the applicants.
- [38] No information was provided as regards the Canada Revenue Agency or other government authorities with the exception of a faxed inquiry to counsel for the respondents dated October 17, 2012 concerning a potential sale of the franchises. This is despite the evidence that in March, 2012, approximately \$1.8 million was owed for GST.
- [39] Proof of liability insurance required by paragraph 6 was never provided.
- [40] As to paragraph 9, on May 28, 2012, Mr. Sidhu gave the applicants online banking access for two corporations only and no copies of any documents from any of the franchises.

**(b) Final Judgment July 20, 2012:**

- [41] In addition to the consent judgment for \$1,665,000 plus \$75,000 in costs, the respondent was required to provide, at paragraph 4:
- (a) All updated information with regard to all franchises as required by the court orders dated December 2, 2011, January 27, 2012, and May 4, 2012;
  - (b) that deposits will be made on Monday, Wednesday and Friday with regard to all cash in each of the respective corporations, (and provide a copy to Michael Jaeger by fax or email, *no later than the day following the deposit*); [emphasis added]
  - (c) send a daily sales report for each day, on Monday, Wednesday and Friday. (And provide a copy to Michael Jaeger by fax or email, *no later than the day following the deposit*); [emphasis added] and
  - (d) any and all financial or other information related to the franchisees that may be required to complete any sale or transfer of the franchises.
- [42] The evidence disclosed that dozens of sales reports were never sent to Michael Jaeger as required and many others, while sent, were late. As well, on many occasions, reports of cash deposits were not sent to Michael Jaeger as required.
- [43] The respondents did not give the applicants notice of a letter received on August 8, 2012 from the franchisor terminating the settlement and probationary agreement that was dated June 29, 2012. Nor did the respondents give the applicants notice of an offer to purchase



three of the franchise stores by Zeeshan Shahid on August 21, 2012 and again on September 6, 2012. Then on August 24, 2012, correspondence was exchanged between Mr. Sidhu and the franchisor about a preapproved group of buyers, followed by correspondence on August 30, 2012 discussing a potential sale of several of the stores. That information was not passed on to the applicants. Other examples exist of sales offers in negotiations in September, 2012 that were not provided by the respondents to the applicants.

**(c) Orders following Final Judgment**

**November 30, 2012**

- [44] An order was made on November 30, 2012 adjourning the contempt motion on terms. In part the order granted judgment to the applicants against the respondents in terms of two paragraphs of the Minutes of Settlement dated June 14, 2012. Those provisions were to the effect (a) that the respondents and the spouse of Mr. Sidhu were to deliver releases to the applicants and their spouses as to any possible claims by the respondents and (b) that Mr. Sidhu was to *forthwith* deliver to the applicants a sworn declaration accepting his personal responsibility for tax claims or claims by the franchisor or others against the corporate respondents. Further, the respondents were to provide an indemnity agreement to the applicants and their spouses for third party claims against the respondent companies.
- [45] The applicants assert that no release, sworn declaration or indemnity agreement has been received to date. In cross-examination, Mr. Sidhu did not recall receiving the documents from his lawyer but supposed that if the lawyer gave them to him to sign, he must have done so and given them back. When asked whether he could recall receiving a letter from counsel for the applicants dated September 22, 2014 enclosing draft documents for signature, he indicated he was not sure.
- [46] Based on the evidence, I have no doubt that the documents were not provided as per the order.

**August 12, 2013**

- [47] Another court order was made on August 12, 2013 in which an adjournment requested by Mr. Sidhu was granted on terms. Those terms included a requirement that Mr. Sidhu and his wife attend a judgment debtor examination on August 27, 29 or 30, 2013, a date of their choice to be communicated to Mr. Solmon (counsel for the applicants) within ten days, failing which Mr. Solmon could schedule the examination on a day selected by him and serve notice on Mr. and Mrs. Sidhu by email.
- [48] Mr. Sidhu was required to pay \$10,000 into court towards costs *on or before September 3, 2013*, with said funds once deposited to be the sole property of the applicants.
- [49] On August 21, 2013, Mr. Sidhu emailed confirmation of a judgment debtor examination to take place on August 30, 2013. On August 29, 2013, at 5:15 PM, the applicants

received a facsimile letter from a lawyer stating that he had been consulted by Mr. Sidhu with respect to the examination but that he required time to meet with Mr. Sidhu to review the matter properly. He sought confirmation of the adjournment of the examination.

- [50] Mr. Sidhu did not attend as required on August 30, 2013. He deposed that he wanted to do so but that his lawyer was unavailable and told him that the lawyer would arrange a new date. There is no dispute about the failure to comply with the order to attend within the timeframe specified.
- [51] There is no dispute that the \$10,000 has not been paid. Mr. Sidhu by affidavit claimed impecuniosity.

**Findings of contempt:**

***Do the orders that were breached state clearly and unequivocally what should be done?***

- [52] The terms of the court orders listed above are plain and obvious. They are specific as to the requirements imposed on the respondents controlled by Mr. Sidhu and the requirements against him personally.
- [53] In some of the orders, a specific timeframe is provided and in others, compliance is to be either "immediate" or "forthwith". In his evidence, Mr. Sidhu confirmed that he was aware of the meaning of those terms. Even where no specific time frame is provided, I am satisfied that compliance was to be within a reasonable time which has now long since expired. The clear purpose of most of the orders was to provide the applicants with timely access to the financial affairs of the corporations. Timely compliance was critical. I have already identified, in reviewing the applicable law, that orders must be implicitly observed and every diligence must be exercised to observe them to the letter.
- [54] I am satisfied that the orders which were breached by Mr. Sidhu or by the corporate respondents that he controlled were clear and unequivocal with respect to the requirements imposed on the respondents.

***Did the party who disobeyed the order do so deliberately and willfully?***

- [55] As noted in my review of the law applicable to civil contempt, it is not necessary to show that Mr. Sidhu stubbornly chose to disobey court orders by way of deliberate flouting of the court's authority. All that is necessary is to show that he intentionally failed to do certain things that he knew were required by a court order.
- [56] In each case, where I have found a breach of the court order to have occurred, I am satisfied that the omission was intentional. Mr. Sidhu was well aware of the efforts of the applicants to become more knowledgeable about and involved in the ongoing business operation of the eight franchises. He deliberately resisted those efforts.
- [57] It is important to note the context within which the orders were given. In virtually every case, the terms were extracted in return for an adjournment. Mr. Sidhu used every method

to avoid accountability to the applicants for his conduct of the business affairs of the corporations. Delay was his standard method of operation.

- [58] I reject the submissions made on Mr. Sidhu's behalf that he was simply disorganized and inefficient in his business operation which was reflected in his failure to comply with the court orders.
- [59] Mr. Sidhu's evidence was that he has insufficient ability to read the English language so as to understand the details of the court documents including orders. However, as I have noted, he was represented by counsel when each of the orders was made. He confirmed that he deferred to his lawyers who would read and explain relevant documents to him. It is not reasonable to believe that there was any misinterpretation on his part about the terms of the orders including the requirements to comply.
- [60] I note that Mr. Sidhu, despite his alleged language limitations, was able to acquire and operate the Popeye's franchise restaurants, deal with the franchisor and its requirements, arrange financing and investments and otherwise behave as a sophisticated businessperson at least as far back as 2006.
- [61] An example of Mr. Sidhu's pattern of behavior as regards the court process occurred while the contempt proceedings were underway. After the third day of hearing on January 3, 2014, it was anticipated that three further days would be necessary to conclude the matter. The parties agreed to re-attend on January 28, 29 and 30 for that purpose. On Monday, January 27, counsel for the applicants received a notice from Mr. Sidhu, who had been represented by counsel up to that point, to act on his own behalf. Within about an hour of the notice being served, Mr. Sidhu was apparently hospitalized or at least sought medical attention in a Brampton hospital and provided applicants' counsel with a copy of the handwritten note from a doctor whose name was not clearly identified. The note indicated that as a result of an unidentified medical condition, Mr. Sidhu should stay at home for a week. Mr. Sidhu's former counsel attended and requested an adjournment on his behalf but no dates were suggested for a continuation. The adjournment was granted and the matter was put over to the assignment court on March 20, 2014.
- [62] I made an order fixing costs thrown away in the amount of \$12,000 to be paid by the respondents into court within 90 days. No such payment was received.
- [63] I further ordered that within 15 days, Mr. Sidhu was to secure at his own expense and provide to the applicants' counsel a detailed medical report from the doctor who provided the handwritten note dated January 27, 2014 as to his diagnosis and the basis for that diagnosis including any objective test results or other physical findings in addition to and as distinct from any subjective complaints made by Mr. Sidhu. No such report was ever received.
- [64] I further ordered that within 15 days, Mr. Sidhu was to provide counsel for the applicants with all hospital records from the Brampton Civic Hospital on or as a result of his hospital attendance on January 27, 2014 including details of any medical tests conducted and the results of those tests. No such records were provided.

- [65] When cross-examined on his failure to comply with the order in any respect, Mr. Sidhu was typically vague. He acknowledged that the order had been sent to him by his previous counsel but then debated whether he had actually received the subsequent motion material from counsel for the applicants because of a change of address. He acknowledged receiving an email from counsel for the applicants (which the applicants swore contained a copy of my endorsement), but stated that he was not able to fully understand it. He then indicated that he did not remember whether he had received a specific email about the January 28 order, although he did confirm the accuracy of the email address used. Eventually, he testified to his understanding that his former counsel had spoken to counsel for the applicants and had given answers to all the required questions, or that his counsel had facilitated contact by applicants; counsel with the hospital directly. Finally, he just relied on his lack of funds to explain why he could no longer retain lawyers to assist him. Presumably that was the reason for his failure to pay the costs portion of the order.
- [66] This vignette and the accompanying failure to comply in any respect with the court order made by me on January 28, 2014 is a typical example of how Mr. Sidhu simply ignores requirements set out in court orders and then attempts to explain away his failure to comply through a combination of his own lack of understanding, reliance on counsel to satisfy his obligations and denial of knowledge, for example by blaming his lack of information on an address change.
- [67] The most blatant example of wilful failure to comply with a term of the order is found in the evidence of Qasim Malik, to which I have already referred. Despite paragraph 7 of the order dated January 27, 2012, providing that the respondents agree to use best efforts to accommodate the applicants' request for additional office space for the applicants at the Highway #10 store, Mr. Malik testified that the office wall was suddenly demolished on the instructions of Mr. Sidhu shortly after the date of the order.
- [68] Making the matter worse, Mr. Malik testified that he was instructed by Mr. Sidhu or his bookkeeper to write a false complaint email about Mr. Grewal's conduct while at the restaurant so it could be passed on to the lawyer for the applicants.
- [69] When faced with a contradiction between evidence given by Mr. Sidhu and that of witnesses for the applicants, which was often supported by documents, I prefer the evidence of the applicants. I have no hesitation in finding that Mr. Sidhu deliberately and wilfully disobeyed the court orders where I have noted noncompliance.

*Does the evidence show contempt beyond a reasonable doubt?*

- [70] I am satisfied that Mr. Sidhu was well aware of the terms of each and every one of the orders noted above. He was always represented by counsel when the orders were made. All of the orders were either on consent or incorporated terms of prior agreements.
- [71] I have already referred to Mr. Sidhu's pattern of behavior demonstrated through his response to the court orders and also in the dealings with other individuals through the business operation.

- [72] Mr. Sidhu's credibility was negatively affected by two witnesses who testified that he had specifically instructed them not to testify against him in the contempt proceeding.
- [73] Nasima Huda worked in a Popeye's franchise from 2001 and had aspirations to become a franchise owner. She loaned approximately \$283,000 to two of the respondent corporations and received in return a general security agreement signed by Mr. Sidhu on behalf of the companies. That money remains outstanding. She testified that some three weeks before her testimony was given on September 30, 2013, Mr. Sidhu had a lengthy telephone conversation with her in which he told her not to come to court. Later, he persisted and she responded by text message on September 13, 2013 advising him not to threaten her about giving evidence.
- [74] Qasim Malik testified that before his evidence began on July 2, 2014, Mr. Sidhu spoke to him and asked him not to testify about the management office issue to which I have already made reference. I note that when the businesses collapsed, Mr. Malik was owed \$9,000 in back wages.
- [75] Although both Ms. Huda and Mr. Malik are owed money by the respondents, and to that extent are not on good terms with Mr. Sidhu, they both testified under oath that Mr. Sidhu made efforts to influence their evidence to be given in the contempt proceeding. I found both of them to be credible in the sense that they presented their evidence directly and with the apparent candor. Ms. Huda's evidence was confirmed by an exhibited copy of the text message. In accepting their evidence, I consider that it has a negative effect on Mr. Sidhu's credibility.
- [76] I have directed myself to apply the same consideration given in a criminal case to the evidence of an accused as directed by the Supreme Court of Canada in the well-known decision in *R. v. W.D.*<sup>6</sup> I have considered first whether I accept the evidence of Mr. Sidhu that he did not deliberately and wilfully breach the court orders since, if I accept that evidence, proof of contempt would not have been established by the applicants beyond a reasonable doubt. In this case and for the reasons indicated, I do not accept the evidence of Mr. Sidhu to that effect. I have then proceeded to ask myself whether, despite not accepting Mr. Sidhu's evidence, it leaves me with a reasonable doubt of his liability for contempt because, if it does, I must find that proof of contempt has not been established beyond a reasonable doubt. However, I have not been left with a reasonable doubt arising from Mr. Sidhu's evidence. Finally, I have directed myself to consider Mr. Sidhu's evidence in conjunction with all the evidence offered in the matter to determine whether I am left with a reasonable doubt as to his liability for contempt. I have concluded with one exception that all the evidence in the matter does not leave me with a reasonable doubt.
- [77] The exception related to compliance with paragraphs 3 and 4 of the order of May 4, 2012 in response to which the respondents made the 70 banker's boxes of documents available for review.

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<sup>6</sup> [1991] 1 S.C.R. 742

[78] Given the high standard of proof required for a contempt finding, I have a reasonable doubt that the respondents were in breach of paragraph 3 and 4 of the order having offered the mass disclosure. This is as distinct from the more specific and limited delivery requirements contained in the balance of the order and also distinct from documents that had not yet been created. My finding of reasonable doubt is supported by the term of the order that specifically allowed the applicants to return to court if they considered that compliance was not sufficient.

[79] Therefore, I am satisfied that the applicants have proven the contempt alleged against Mr. Sidhu beyond a reasonable doubt as to all of the breaches of court orders that I have identified.

**Procedural issues:**

[80] Motions for civil contempt are quasi-criminal in nature. This is obvious in cases, such as this one, where the requested remedy is a period of incarceration.

[81] I am satisfied that reasonable procedural safeguards were put into place in this case to ensure a fair process for Mr. Sidhu. As observed by Justice Gordon and the *Vale Inco* case<sup>7</sup>, those safeguards include:

- a. the right to be provided with particularized allegations of the contempt;
- b. the right to a hearing;
- c. the right to be presumed innocent until such time as guilt is proved beyond a reasonable doubt;
- d. the right to make full answer and defense, including the right to retain and instruct counsel, the right to cross examine witnesses and the right to submit or call evidence;
- e. the right not to be compelled to testify at the hearing.

[82] The allegations of contempt were made in writing and in detail in the notices of motion and confirmed in subsequent facts filed by the applicants. The hearing extended over the course of 12 days. Adjournments were granted to accommodate Mr. Sidhu's schedule, his various requests to be self-represented or represented by counsel, and his alleged ill-health. He was offered the choice of whether to call evidence and he chose to testify. At his request, interpreters were made available to assist him when he was under cross-examination by the applicants' counsel.

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<sup>7</sup> *Vale Inco. Ltd. v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers, Local 6500*, 2010 ONSC 3039, [2010] O.J. No. 2164, at para. 3

- [83] The presumption of innocence accompanies the applicants' obligation to prove the allegations beyond a reasonable doubt which, as I have already indicated, is one of the three fundamental requirements for proof of contempt.
- [84] Typically, a contempt hearing proceeds in two phases. The first deals with the evidence of contempt and if a finding of contempt is made, the matter is adjourned for a contempt hearing to deal with penalty. This gives the respondent an opportunity to purge his or her contempt which may be relevant to penalty. The bifurcated procedure is in part in recognition of the distinction between a sentencing for criminal contempt where the purpose is punitive and the sentencing for civil contempt where the purpose is primarily coercive or persuasive, designed to enforce the rights of a private party.
- [85] In this case, the applicants submit that no bifurcated procedure is needed because it is not possible for the respondents to purge their contempt. The orders were time sensitive and designed to prevent the prejudice which has now occurred: the complete erosion of any value that existed in the respondents' businesses.
- [86] The applicants made full submissions as to the issue of penalty by way of written and oral submissions when the matter last appeared in court. I note that on behalf of Mr. Sidhu, no submissions of any kind were made as to penalty and that all of his counsel's submissions were focused on denying the allegations of contempt.
- [87] Although Mr. Sidhu has not been forthcoming with any funds, even in compliance with the outstanding costs orders made against him, it is possible that money might be available from some source that could be offered to the applicants in mitigation of penalty.
- [88] More importantly, however, given the quasi-criminal nature of the proceedings and the significant likelihood of incarceration as a result, I am inclined to maintain the normal bifurcated process and either continue or adjourn today's proceeding to give Mr. Sidhu a full opportunity for submissions on the issue of penalty.
- [89] Likewise, although the applicants have been clear in their request for substantial indemnity costs, I will defer ruling on that matter until costs submissions are made by the parties on the next occasion. In the meantime, I suggest that costs outlines be exchanged.



Reid J.

Date: January 27, 2016