

CITATION: Ulysse v. The Agency Groupe Inc., 2021 ONSC 7072
OSHAWA COURT FILE NO.: CV-19-2985
DATE: 20211025

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Louis Mercier Ulysse a.k.a. Louis Mercier, Plaintiff/Moving Party/Judgment Creditor

AND:

The Agency Groupe Inc. and Dwayne Hines, Defendants/Judgment Debtors

BEFORE: H.K. O'Connell J.

COUNSEL: Tanya C. Walker, for the Plaintiff/Moving Party/Judgment Creditor
tanya@tcwalkerlawyers.com

No one for Respondent Debtors

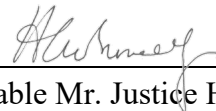
HEARD: October 4, 2021

ENDORSEMENT

- [1] This matter was before me on October 4, 2021. The moving party moved to have the court find the respondents in contempt of an earlier order of mine.
- [2] As I stated in the endorsement of October 4, 2021, based on the submissions of counsel, it certainly appeared that the respondents, the judgment debtors, knew of the date of October 4, 2021, however they had not been personally served.
- [3] Personal service of a contempt motion is required.
- [4] As a consequence, the matter was adjourned before me to October 13, 2021 for hearing via Zoom, so that service could be completed.
- [5] On that date, counsel advised the court that the respondents had been personally served with the contempt motion.
- [6] The respondents did not communicate with the moving party's counsel about the contempt motion, nor did they appear on the Zoom hearing, although counsel advised me that they were given the Zoom coordinates for the date and time of the motion.
- [7] I heard argument on the issue of contempt and whether or not it had been made out.
- [8] Counsel for the plaintiff/moving party on the motion provided concise materials, inclusive of a factum setting out the history of this action before the court and the law on contempt.

- [9] The starting point is the fact that the defendants were subject to default judgment which was obtained on January 31, 2020. The amount of the judgment is \$253,297.95 plus costs in the amount of \$1,582.50.
- [10] My colleague, Justice C. Smith, had earlier ordered that service on the defendants be validated as of November 13, 2019 and that service on the personal email address of Mr. Hines would be good and sufficient service.
- [11] No attempt has been made to set aside that judgment.
- [12] The defendants were personally served with a Notice of Examination on May 9, 2021. The notice required the defendant Mr. Hines to bring various documents to the Examination. Mr. Hines did not respond to the notice and did not attend the Examination. Subsequent to this date, counsel for the plaintiff requested of the defendant, Mr. Hines, to provide an alternative date to conduct the Examination in Aid of Execution. Once again, Mr. Hines did not respond.
- [13] A motion was brought before me when I was sitting as a motions judge in July 2021. I made an order that Mr. Hines was to attend the Examination and was to provide the documents sought in the order that I signed.
- [14] The endorsement that I crafted included a proviso that failure to abide by the order may precipitate a contempt motion, on notice. I made this comment to drive home to the defendants the need to engage the process and to have them understand that I had granted an order that required compliance. I made the comment given the radio silence of the defendants up to this date, in respect of any portion of this litigation.
- [15] Counsel for the moving party sent an email to Mr. Hines containing my order. Counsel sent it to the same email address as approved by Justice Smith. Counsel received a "read receipt" indicating that Mr. Hines had opened the email, which included my order.
- [16] Mr. Hines failed to attend the Examination date of August 3, 2021 and failed to convey to counsel for the plaintiff any information as to why he did not attend. Once again, no engagement by the defendants with counsel for the plaintiff.
- [17] I heard submissions in relation to the issue of contempt on October 13, 2021. I found that the moving party had made out its case for a finding of contempt. Counsel advised the court, irrespective of the earlier order of Smith J. in relation to service on the defendants, that Mr. Hines and his company had been personally served with the contempt motion and the return date of October 13, 2021.
- [18] My order compelling production of material and as well compelling attendance at the August 3, 2021 Examination was clear and unequivocal.
- [19] I am satisfied that Mr. Hines had knowledge of the date for his attendance. I am further satisfied that he intentionally failed to comply with my order.

- [20] My order was the first order breached in relation to this contempt motion, but the second time that Mr. Hines failed to attend an Examination.
- [21] The issue then became the method to allow for the contempt to be purged and the sanction for contempt if not so purged, as well as costs of the motion. I heard submissions from counsel for the plaintiff.
- [22] In relation to the latter, counsel were asked to send me their costs submissions and did so, as well as providing a draft order for the consideration of the court.
- [23] Based on counsel's submissions before me on October 13, 2021 and the supporting factum, I concur that if the contempt is not purged a period of incarceration should follow. There is an outstanding judgment of considerable value to the plaintiff.
- [24] Mr. Hines and his company have now twice not engaged the process for exposing themselves to Examination. They did not defend the statement of claim of the plaintiff and seem to have placed their respective heads firmly in the sand in respect of this litigation and the now required process for the plaintiff to attempt to recover his funds.
- [25] Having reviewed the draft order as emailed to my judicial assistant on October 14, 2021, and having considered the issue of costs, I find that costs that are requested on a partial indemnity basis are appropriate and are, as costs must be, reasonable and fair. Those costs are fixed as per the portion of the order that addresses that issue.
- [26] I would ask counsel to provide a newly drafted order to add to paragraph 2 therein that the purging of the contempt via scheduling of an examination in aid of execution, should be defined to say that the examination is to occur within 75 days of the order. Such a provision will make it plain to the defendants that this matter cannot continue to be ignored and that they have an onus to participate with the plaintiff in setting the date for the Examination.



The Honourable Mr. Justice H.K. O'Connell

Date: October 25, 2021