

CITATION:

ONTARIO SUPERIOR COURT OF JUSTICE (TORONTO REGION)
CIVIL ENDORSEMENT FORM
(Rule 59.02(2)(c)(i))

BEFORE Judge/Associate Justice Myers J Court File Number: CV-20-649106

Title of Proceeding:
Plaintiff(s)
-v-
Defendants(s)

Case Management: [] Yes If so, by whom: X No

Participants and Non-Participants:(Rule 59.02(2)((vii))

Table with 5 columns: Party, Counsel, E-mail Address, Phone #, Participant (Y/N). Rows include Tanya Walker and Alana Spira, Daniel Rizzi, and Sige Onca.

Date Heard: (Rule 59.02(2)(c)(iii)) October 13, 2021

Nature of Hearing (mark with an "X"): (Rule 59.02(2)(c)(iv))

X Motion [] Appeal [] Case Conference [] Pre-Trial Conference [] Application

Format of Hearing (mark with an "X"): (Rule 59.02(2)(c)(iv))

[] In Writing [] Telephone [] Videoconference [] In Person

If in person, indicate courthouse address:

Relief Requested: (Rule. 59.02(2)(c)(v))

Sentencing for contempt of court.

Disposition made at hearing or conference (operative terms ordered): *(Rule 59.02(2)(c)(vi))*

Mr. Onca is sentenced to a two-week custodial sentence effective immediately. Mr. Onca is ordered to present himself at the University Avenue entrance of the 361 University Avenue courthouse in Toronto, at 10:00 a.m. on Monday, October 18, 2021 to turn himself in to the Court Officers there to begin serving his sentence.

Mr. Onca shall disclose under oath to counsel for the plaintiffs and the court a complete list of all of his assets wherever located on or before 10:00 a.m. on October 25, 2021. This includes specifically any asset controlled by Mr. Onca, in whole or in part, or in which he has a beneficial interest regardless of the name of the person or entity that may be holding the asset for him or on his behalf.

Mr. Onca shall restore the funds that he removed from his accounts at The Bank of Nova Scotia and Questrade as set out in para. 24 of the court's decision dated September 17, 2021 and keep those funds in the accounts pending further order of the court.

Mr. Onca is ordered to return to court on October 28, 2021 by videoconference from jail. If he has not rectified the acts of contempt of court rereferred to in paras. 32 to 34 of the decision dated September 17, 2021, he will be subject to further sentencing then. The court will also will also consider whether he has complied with the fresh orders made in the preceding two paragraphs.

If Mr. Onca fails to turn himself in on October 18, 2021 as ordered, then an arrest warrant shall issue. In addition, the return date of October 28, 2021 will be deferred until the day that is ten days after he first begins to serve his sentence.

Section 6 (1) of the Prisons and Reformatories Act, RSC 1985, c P-20 as incorporated into s. 28 of the Ministry of Correctional Services Act, R.S.O. 1990, c M.22 apply. That is, there shall be no remission on the sentence unless or until ordered by the court upon Mr. Onca purging his contempt satisfactorily or the full sentence being served.

Costs: On a **substantial** indemnity basis, fixed at \$ **\$59,301.55** and **\$7,733.49** are payable by **Mr. Onca** to **Ms. Walker's and Mr. Rizzi's clients respectively** [when] **Forthwith**

Brief Reasons, if any: (Rule 59.02(2)(b))

By endorsement dated September 17, 2021, reported at 2021 ONSC 6196, I found Mr Onca guilty of several counts of civil contempt of court. They all relate to Mr Onca's ongoing refusal to disclose the whereabouts of assets as ordered in a *Mareva* injunction granted by Ramsay J. on October 26, 2020 and various supplementary orders.

One interesting element of this case is that Mr Onca has admitted his liability to the plaintiffs throughout and signed a settlement agreement with them early on. In retrospect, it is apparent that he was buying time so he could secrete his assets abroad. Mr Onca has participated in this proceeding by telephone until the sentencing hearing. It is not clear whether he is in Canada at this time.

Despite being offered several opportunities to do so, Mr Onca chose to file no evidence.

Mr Onca was provided with time to purge his contempt coupled with a warning that he may be facing a jail sentence and a recommendation that he retain counsel. He has done nothing to purchase contempt. Nor has he retained counsel to appear on his behalf.

I agree with Ms. Walker that there are several aggravating factors applicable in this case.

Mr Onca's conduct and breaches of the various orders was deliberate. He offers no innocent excuse. He has been in breach of the first order for approximately one year. He has benefited financially to the tune of approximately \$365,000 by his misconduct. Even after the *Mareva* injunction was granted, he funneled approximately \$265,000 out to himself through an undisclosed bank account. He failed to provide any medical evidence to justify missing court although ordered to do so. He also failed to deposit his passport with the plaintiffs' counsel's agent as ordered.

The principal purpose of the sentence in a case of civil contempt of court is to enforce or to coerce compliance with the court's orders. It is also necessary for the court to consider the affront to the rule of law and the damage done to the court and society if a party is allowed to flout court orders.

In a recent case, *Duncan v. Buckles*, 2021 ONSC 5567, Goldstein J. described the sentencing principles in a case of contempt of court as follows:

[44] The whole point of punishing a contemnor is to maintain the rule of law: *United Nurses of Alberta v. Alberta*, 1992 CanLII 99 (SCC), 1992 1 S.C.R. 901 at p. 931. As Justice Watt put it in *College of Optometrists of Ontario v. SHS Optical*, 2008 ONCA 685 at para. 106: "The underlying purpose of contempt orders is to compel obedience and punish disobedience." In *Astley v. Verdun*, 2013 ONSC 6734 (affirmed 2014 ONCA 668) at para. 16 I attempted to summarize the principles of sentencing in contempt cases:

- A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender: Criminal Code, s. 718.1; *Chiang*, para. 86; *Mercedes-Benz Financial v. Kovacevic*, 2009 CanLII 9423 (ON SC), [2009] O.J. No. 888, 308

D.L.R. (4th) 562, 74 C.P.C. (6th) 326 (Ont. S.C.J.) at para. 12.

- A sentence should be increased or reduced to account for aggravating or mitigating factors surrounding the contempt or the contemnor: *Criminal Code*, s. 718.2(a); *Chiang*, para. 24; *Sussex Group Ltd. v. Fangeat*, [2003] O.J. No. 3348, 42 C.P.C. (5th) 274 (Ont. S.C.J.) at para. 67.
- A sentence should be similar to sentences imposed on similar contemnors for similar contempts committed in similar circumstances: *Criminal Code*, s. 718.2(b); *Chiang*, para. 24.
- Sentences should denounce unlawful conduct, promote a sense of responsibility in the contemnor, and deter the contemnor and others from defying court orders: *Criminal Code*, s. 718; *Sussex Group Ltd.* at para. 67; *Chiang* at para. 24.
- The Court should consider sanctions other than jail: *Criminal Code*, s. 718(2) (d) and (e); *Sussex Group Ltd. v. Sylvester*, 2002 CanLII 27188 (ON SC), [2002] O.J. No. 4350, 62 O.R. (3d) 123 (Ont. S.C.J. [Commercial List]) at paras. 80-82.

This is not a case where a monetary fine would be of any significance . Mr. Onca has moved his assets already and refuses to disclose any that remain here or anywhere for that matter. Nor is there a basis for a conditional sentence or one of probation given that Mr. Onca's whereabouts is unknown and he has shown that he cannot be trusted to comply with court orders even when he promises to do so .

In light of the deliberate nature of the contempt, the very significant amounts involved, the lengthy period of time tis contempt has continued, and the complete lack of contrition demonstrated by Mr Onca, this is a case calling for a short first period of incarceration. In my view the facts are similar to the case of *Borer v. Nelson*, 2020 ONSC 4259, and I adopt the sentence imposed in that case as submitted by Ms. Walker.

I hereby sentence Mr. Onca to a two-week custodial sentence effective immediately. Mr. Onca is ordered to present himself at the University Avenue entrance of the 361 University Avenue courthouse in Toronto, at 10:00 a.m. on Monday, October 18, 2021 to turn himself in to the Court Officers there to begin serving his sentence. I have signed a Warrant of Committal.

Under Rule 60.11 (5)(f) I grant a further and fresh order that Mr. Onca disclose under oath to counsel for the plaintiffs and the court a complete list of all of his assets wherever located on or before 10:00 a.m. on October 25, 2021. This includes specifically any asset controlled by Mr. Onca, in whole or in part, or in which he has a beneficial interest regardless of the name of the person or entity that may be holding the asset for him or on his behalf.

I order Mr. Onca to restore the funds that he removed from his accounts at The Bank of Nova Scotia and Questrade as set out in para. 24 of my decision dated September 17, 2021 and to keep those funds in the accounts pending further order of the court.

Mr. Onca is ordered to return to court on October 28, 2021 by videoconference from jail. If he has not rectified the acts of contempt of court rereferred to in paras. 32 to 34 of my decision dated September 17, 2021, he will be subject to further sentencing then. I will also consider whether he has complied with the orders made in the preceding two paragraphs.

If Mr. Onca fails to turn himself in on October 18, 2021 as ordered, then an arrest warrant shall issue. In addition, the return date of October 28, 2021 will be deferred until the day that is ten days after he first begins to serve his sentence.

Section 6 (1) of the Prisons and Reformatories Act, RSC 1985, c P-20 as incorporated into s. 28 of the Ministry of Correctional Services Act, R.S.O. 1990, c M.22 apply. That is, there shall be no remission on the sentence unless or until ordered by the court upon Mr. Onca purging his contempt satisfactorily or the full sentence being served.

Ms. Walker has had principal carriage of this motion. Her client seeks costs of \$59,301.55 on a substantial indemnity basis. Mr. Rizzi's clients seek \$7,733.49 on a substantial indemnity basis. I have reviewed the costs outlines and find them reasonable in hours worked and rates charged. Despite his seeming cooperation, Mr. Onca admitted nothing and put the plaintiffs to the full burden of proof including, for example, needing affidavits from bank staff to prove bank account documents using identification documents submitted to the banks by Mr. Onca when he opened his accounts. Mr. Onca's delays and breaches of numerous orders renders his conduct of this motion reprehensible and deserving of a costs award on a substantial indemnity basis.

Additional pages attached: Yes No

2021.10.1

A. L. Myers J. 4 16:15:28

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October 14, 20 21

Date of Endorsement (Rule 59.02(2)(c)(ii))

Signature of Judge/Associate Justice (Rule 59.02(2)(c)(i))