

CANADA / JUDGMENT

British Columbia v. B & B Barges Ltd.

2022 BCSC 870

COURT

Supreme Court of British Columbia

DECIDED

28 February 2022

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2022 BCSC 870 British Columbia v. B & B Barges Ltd.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

British Columbia v. B & B Barges Ltd.,

2022 BCSC 870

Date: 20220228

Docket: S196584

Registry: Vancouver

Admiralty Action In Rem Against:

The Ship "Colleen Z" and the Ship "Meldella"

and In Personam

Between:

Her Majesty the Queen in right of the Province of British Columbia

Plaintiff

And:

B & B Barges Ltd. and the Ship "Colleen Z" and the Ship "Meldella" and all Others Interested in those Ships and Twenty Ten Timber Products Ltd.

Defendants

And

Ivan De Bagheera

Third Party

Before: The Honourable Madam Justice Sharma

Oral Ruling Re Judgment on Penalty for Contempt

In Chambers

Counsel for the Plaintiff:

M.J. Kleisinger

K.M. Fast

Counsel for B & B Barges Ltd., William Baumel, Director for B&B Barges Ltd., and Twenty Ten Timber Products Ltd.:

S.A. Turner

Appearing on his own behalf, as Director for B&B Barges Ltd.:

M. Butler

Place and Date of Hearing:

Nanaimo, B.C.

January 5, 2022

February 28, 2022

Place and Date of Ruling:

Nanaimo, B.C.

February 28, 2022

- [1] THE COURT: This judgment addresses penalty for the defendants' contempt. The matter concerns the abandonment of the Ships "Colleen Z" and "Meldella" in Donkey Cove ("the Barges"). B & B Barges Ltd. ("B&B") and Twenty Ten Timber Products Ltd ("Twenty Ten") used the Barges to house crew while logging in the area. They had no authority to moor the Barges where they did, which was on Crown land. Trespass notices were issued and fines were levied, which I understand were never paid.
- [2] William Baumel and Mark Butler were directors of B&B and Twenty Ten. Mr. Butler represented himself. Mr. Baumel, B&B, and Twenty Ten were represented by the same counsel. Although all are defendants, their positions were not identical.

BACKGROUND

- [3] I outline the history to this litigation:

- a) On June 10, 2019, the Province filed a notice of civil claim in trespass and nuisance seeking a permanent injunction. The same day it filed an application for an interim injunction.
- b) In July 2019, B&B and the Barges filed a response to the claim, and a third-party notice and counterclaim against Ivan De Bagheera. Although his counsel filed a response to the third-party notice, neither Mr. De Bagheera nor counsel ever appeared on any matters which I heard. He did not file a response to the application for an injunction.
- c) The Province attempted to have its application for an injunction heard in October 2019, but due to lack of judicial resources, it was not able to do so. The application was eventually heard by Justice Baird on November 25, 2019.
- d) In judgment issued on December 13, 2019, Justice Baird granted an injunction requiring B&B to permanently remove the Barges and all of their component parts from the Crown land before January 31, 2020: 2019 BCSC 2160.
- e) The Barges remained in Donkey Cove despite that injunction. Thereafter the Province filed an application seeking to find the defendants in contempt of that injunction.
- f) After a hearing on November 17, 2020, and in reasons issued in February last year, this Court held the defendants in contempt of Justice Baird's order: 2021 BCSC 279 (the "Contempt Order").
- g) B&B appealed the Contempt Order. No date has been set for the appeal, and no stay of the Contempt Order has been sought nor issued.
- h) The sentencing hearing was scheduled to take place on May 10, 2021. At the last minute, B&B and Mr. Baumel sought an adjournment to prepare for the hearing. Although the same counsel who represented them at the contempt hearing appeared for the penalty hearing, that counsel had gone off the record and had only recently been retained again. In judgment granted that day, I granted the adjournment, but also made certain orders regarding disclosure. I also granted the Province's application for special costs.
- i) In doing so I stated, in part, that the Court was very concerned about a party already having been found in contempt, at the last minute having their sentencing hearing adjourned without putting evidence before me, and at the same time, making a plea that had been made before about why it needed the adjournment. The reference in that sentence to an issue raised before was the alleged inability of the parties to remove the Barges because of financial issues. That claim was raised by the defendants consistently before Justice Baird and before me.
- j) On May 10, the following orders were made:
 - i. Within 10 days, B&B was to deliver to the Province an updated list of documents, which had to include financial statements for the three years preceding B&B's dissolution;
 - ii. Within 30 days, Mr. Baumel and Mr. Butler were to attend an examination under oath;

iii. seven days prior to the date of their respective examinations, Mr. Baumel and Mr. Butler were to each deliver to the Province their tax returns for the immediately preceding three years, and a comprehensive list of assets, and;

iv. the parties must file their evidence and submissions seven days prior to the sentencing hearing.

[4] Subsequently, the examinations were set for July 13 and 14, 2021.

[5] On July 13, 2021, at the direction of Mr. Baumel, Robert Garret (he was the manager of B&B) showed up at Mr. Butler's examination and refused to leave, thus obstructing the Province's ability to proceed. Mr. Butler's examination was re-scheduled and ultimately proceeded on October 28, 2021. The Province submits that Mr. Butler was forthright in answering questions. In addition, he had complied with the disclosure orders.

[6] Mr. Baumel's examination took place on July 14, 2021. He admitted that his disclosure was late. Indeed, he acknowledged that he did not even seek the records until a day or two before the court-ordered deadline.

[7] The Province's position is that Mr. Baumel provided incomplete and evasive responses to the requests for information and documents. Supplementary responses were provided to questions from that examination, but not until November 4, 2021. Certain requests remain outstanding, especially about the financial disclosure of Twenty Ten and another one of Mr. Baumel's companies, Eagle West Timber. Having reviewed the transcript, I agree with the Province. I specifically find that Mr. Baumel's responses at the examination were incomplete and, at times, evasive.

[8] The sentencing hearing was adjourned to the week of September 13, 2021, and Mr. Butler and Mr. Baumel were ordered to appear in person. Due to a conflict with the court's schedule, the hearing was re-scheduled to November 26, 2021.

[9] However, on November 26, 2021, counsel for the defendants informed the court that that he needed to withdraw as counsel. Although the Province and Mr. Butler wanted to proceed, in light of Mr. Baumel not being represented and the Province's seeking of a significant jail term, the matter was adjourned again to January 5, 2022.

[10] Unfortunately, the Court's operations were significantly curtailed in early January because of the COVID pandemic, and that is what brings us to today.

FACTS

[11] In terms of the factual circumstances that led to the injunction and contempt, I rely on the facts that have been set out in the previous decisions made by Justice Baird and me.

[12] The parties did file further material in anticipation of the original November sentencing hearing, which I will briefly review.

- [13] The Province relies on the November 17, 2021 affidavit of Dacen Brooks, who is a natural resource officer for the North Island Central Coast Field Unit of the Compliance and Enforcement Branch of the Ministry of Forests, Lands, Natural Resources Operations and Rural Development. Officer Brooks deposed as follows:
- a) On September 8, 2021, the Barges were seized on behalf of the Crown pursuant to s. 59 of the Land Act, R.S.B.C. 1996, c. 245.
 - b) The Crown seized the Barges because they had never been removed, despite the injunction and the contempt findings. Officer Brooks stated the Barges continued to pollute the area, and have continued to interfere with the Heiltsuk First Nation's use of the area.
 - c) On September 10, 2021, the Province contracted with the Heiltsuk Horizon Maritimes Services Ltd. to remove the Barges, which will cost \$175,000.
 - d) On September 15, Officer Brooks travelled to Donkey Cove. He confirmed that those Barges were the same ones observed and attested to in previous affidavits.
 - e) Officer Brooks deposed there had been no "significant change in the condition of the Barges - the cookhouse still hangs over the side of one of the Barges, the Colleen Z, which partially rests on the sea floor" and "the Medella [was] completely resting on the sea floor". Officer Brooks also observed "a small, damaged and partially sunken dock with fishing nets dumped besides the Barges" and that "the doors of the barges [were] open and it [appeared] that someone may have been inside".
- [14] The Province also adduced an affidavit filed by Diane Chen on November 12, 2021. She is the natural resources manager for the Heiltsuk Integrated Resource Management department. She deposed as follows:
- a) She observed, on November 6, 2021, the Barges sunk in Donkey Cove and one of them listing heavily. She said they remained unmoved despite the contempt order.
 - b) The presence of the Barges inhibits the First Nation's ability to use the area and prevents the annual manila clam survey, and has done so for three years. The survey is used to establish biomass estimates to set the First Nation's commercial clam harvest threshold levels for sustainable harvest. Without that data, Ms. Chen stated it is "impossible to determine sustainable harvest levels". Since that beach is one of only three areas available for that fishery, its exclusion has eliminated the possibility of a viable fishery at that location. She also noted that the barges' extended presence may impact the survival of the clams over time.
 - c) She has received, and has had to respond to, many complaints from the local community expressing concerns about the environmental impacts of the Barges' presence. She stated the failure to remove the Barges has "frustrated, angered and disappointed the local community".

- d) She also noted that the Guardian Watchman have had to spend time and resources to monitor the derelict Barges for three years.
- [15] Mr. Baumel filed evidence, both in November and today. Of particular note, he also provided information that his gross income in 2018 was over \$209,000; in 2019 it was over \$270,000, and in 2020 it was over \$260,000.
- [16] I also note from counsel's submissions as well as Mr. Baumel's affidavit that he has, now, given some explanation of the various companies that he runs and what he says has been their financial difficulties.
- [17] I note in one of his affidavits at paras. 31 and 33, he talks about his role in the community. He deposed that he feels he has been characterized as a villain and that he is concerned that people would think that he does not care about the environment. He takes exception to that.
- [18] Counsel, in referring to some of those financial records, and also in the transcript from Mr. Baume's examination, noted that one of the companies has had problems with the Canadian Revenue Agency. Apparently, its accounts have been frozen.
- [19] Mr. Baumel filed an affidavit more recently, in part to respond to the Province's wanting to rely on a decision regarding Eagle West Timber. He claims he filed that affidavit to respond to what might have been a suggestion that there was a lack of disclosure, and the Court would be asked to find that he had the resources earlier, or now has access, to pay \$175,000.
- [20] The problem with the evidence is that it comes late. And that observation is not just the Court being picky about when things are disclosed to the other side in a dispute. The examination in aid of execution was a court process. It was something that I ordered. I ordered Mr. Baumel to give complete disclosure. I do not think there was any doubt about that. To come after that process is complete, with more information and say "well, now I am disclosing everything", does not impress the Court in the least.
- [21] There is no dispute about the applicable legal principles, which stem firstly from the court's inherent jurisdiction, but also Rule 22(8) of the Rules of Court. I thank counsel for their comprehensive submissions on the applicable law.
- [22] In determining the appropriate penalty for ongoing contempt, the court must pay heed of the need for general and specific deterrence and denunciation: *Langford (City) v. dos Reis*, 2016 BCCA 460 at para. 16.
- [23] The parties also referred to *College of Physicians and Surgeons of British Columbia v. Ezzati*, 2021 BCCA 422 [Ezzati], a recent case that summarizes the applicable principles. I emphasize para. 54 of Ezzati:

- [54] Affirming the rule of law and fostering public respect for court orders are chief among the goals that animate the imposition of a sanction for civil contempt. The primary purpose of the sanction is coercive--to secure the contemnor's compliance with a court order: *Carey v. Laiken*, 2015 SCC 17 at paras. 40-41 [Carey]. But sanctions imposed for civil contempt also serve a punitive purpose. These points were made in Carey:
30. Contempt of court "rest[s] on the power of the court to uphold its dignity and process. The rule of law is directly dependent on the ability of the courts to enforce their process and maintain their dignity and respect": *United Nurses of Alberta v. Alberta (Attorney General)*, 1992 CanLII 99 (SCC), [1992] 1 S.C.R. 901, at p. 931
31. The common law has developed to recognize two forms of contempt of court: criminal contempt and civil contempt. The distinction, which the parties to this appeal accept, rests on the element of public defiance accompanying criminal contempt: See, e.g., *United Nurses*, at p. 931; *Poje v. Attorney General for British Columbia*, 1953 CanLII 34 (SCC), [1953] 1 S.C.R. 516, at p. 522. With civil contempt, where there is no element of public defiance, the matter is generally seen "primarily as coercive rather than punitive": R.J. Sharpe, *Injunctions and Specific Performance* (2nd ed. (Loose-leaf)), at para 6.100. However, one purpose of sentencing for civil contempt is punishment for breaching a court order: *Chiang (Trustee of) v. Chiang*, 2009 ONCA 3, 305 D.L.R. (4th) 655, at para. 117. Courts sometimes impose substantial fines to match the gravity of the contempt, to deter the contemnor's continuing conduct and to deter others from comparable conduct: Sharpe, at para 6.100.

[Emphasis added in Ezzati.]

- [24] This passage talks about the rule of law being affirmed and needing to foster public respect for court orders, which are the chief goals among those that animate the imposition of sanctions for civil contempt. The primary purpose of a sanction is coercive: to secure the contemnor's compliance with a court order.
- [25] However, court-imposed sanctions are also for a punitive purpose.
- [26] In Ezzati, the court also mentioned other principles are at play:
- a) Although sentencing is not constrained by s. 718 of the Criminal Code, that section does provide a useful guide (para. 55, citing *Larkin v. Glase*, 2009 BCCA 321 at para. 49).
 - b) The principle of proportionality, which dictates that a sentence must be commensurate to the gravity of the offence applies. This means a sentence should be proportionate to the gravity of the conduct and degree of responsibility of the offender (para. 56).
 - c) Both general and specific deterrence play an important role (para. 57).
 - d) There should be similar sanctions for similarly situated offenders (para. 58): *Boily v. Carleton Condominium Corp. 145*, 2014 ONCA 574 at para. 90.

- e) Incarceration is exceptional and only a last resort, especially if there is no public defiance or repeated unrepentant acts of contempt. The court should consider sanctions capable of achieving the applicable sentencing objectives short of imprisonment. However, the court of appeal added that where a term of imprisonment is required, it may be required for recalcitrant contemnors. Even in that case, though, the sentence that should be considered should be an illustration of judicial restraint (para. 59).
- [27] The defendants emphasize the court must be careful when considering overall context. The court should not conflate the severity of the harm that arises from the contemptuous behaviour or actions with the seriousness of the failure to respect the court's process: *Boily* at para. 61. In that case, the Ontario Court of Appeal noted that the redress for harm caused by the behaviour may be addressed in other ways, including other legal proceedings.
- [28] However, the Province pointed to what our Court of Appeal said in *Ezzati* at para. 62:
- [62] This is not to say, however, that the sanction can take no account of the context in which the contemptuous acts occurred. Where the conduct imperils the safety of the public, the sanction may well have to reflect the risk of harm that may be occasioned should the contemnor maintain a posture of defiance. In this respect, the protection of the public is a well-established goal in sentencing for civil contempt: *Law Society of British Columbia v. Yehia*, 2008 BCSC 1172 at para. 52; *Law Society of British Columbia v. Bryfogle*, 2012 BCSC 59 at para. 80; *College of Dental Surgeons of British Columbia v. Shapoval*, 2014 BCSC 505 at para. 51 [Shapoval]; *College of Dental Surgeons of British Columbia v. Wu*, 2013 BCSC 1986 at paras. 43, 47 [Wu]; *Khakh #1* at para. 24; *Khakh #2* at para. 37; *Health Care Corp. of St. John's* at para. 2.

ANALYSIS

- [29] The Province seeks the following:
- a) the directors of B&B and Twenty Ten, jointly and severally with B&B and Twenty Ten, pay a \$25,000 fine;
 - b) Mr. Baumel be sentenced to 30 days incarceration;
 - c) Mr. Butler be sentenced to 30 days of house arrest.
- [30] Mr. Butler stated that he regretted his role in these events, and that he would accept and face whatever penalty the court imposed.
- [31] Mr. Baumel submits that, taking into account all the circumstances, and with respect to the applicable principles, the appropriate fine would be \$5,000 and that there should be no order for committal. In the alternative, if a greater fine was imposed, he asked that he be given time to pay, perhaps no more than \$5,000 per month, recognizing that Mr. Butler's financial situation may compel the Province to only go after Mr. Baumel.

- [32] With respect to incarceration, as an alternative, he asks that he be allowed to serve any time as house arrest. In the alternative, he asked if committal is imposed, it be suspended pending his ability to finalize a loan that he could pay the Province \$175,000.

Deterrence and Impact on the Public

- [33] The Province submits that general deterrence is important in this case to clearly send the message that companies should not abandon their commercial waste. It also says there is a strong need to denounce the specific conduct in this case. A failure to sufficiently punish the actions in this case raises the spectre that corporate contempt will be treated as a licence fee for future non-compliance akin to the "cost of doing business". This not only disrespects the court's specific order, it impacts the administration of justice and the public confidence in the legal system.
- [34] The defendants say this position runs afoul of the admonition in *Boily and Ezzati* not to conflate a consequence of the harms caused by the behaviour with the appropriate sanction for non-compliance with a court order. Specifically, they point out that pursuant to s. 62 of the Land Act, the Province may have the ability to seek compensation for the abandonment of the Barges and loss or damage suffered.
- [35] They also say that the facts do not support the concern about any fine being seen as merely a cost of doing business because at the current time, the defendants are not in a position to purge the contempt or comply with the injunction since the Province has now seized the Barges.
- [36] The Province's position is that it was the defendants' contempt that forced the Province's hand to seize the Barges, and no benefit or advantage should accrue to the defendants because of that.
- [37] In response to the defendants' submission that s. 62 of the Land Act may provide a separate statutory remedy, the Province points out that that is not relevant. Its position is that the existing action in which these proceedings have been taken were brought based on nuisance and trespass.
- [38] I agree in this case that both general and specific deterrent weigh very heavily towards a more serious sanction. I repeat Justice Baird's comments from the original decision granting the injunction from 2019 at para. 12:
- [12] Moreover, the public has the right to expect that forestry companies will conduct their operations responsibly, including cleaning up after themselves, and that public funds will not be expended to correct the manner of trespass and nuisance conceded in this case - wrongful conduct, that is, by private enterprise - except in case of emergency or as a last resort.

- [39] I agree, and I echo, Justice Baird's comments. These companies receive the benefit of being able to harvest Crown timber. There is an expectation they will do so responsibly. Logging takes place in very remote areas, and the people of British Columbia expect companies to essentially police themselves. We could not have a viable logging industry if the Province had to follow up and clean up after companies who engage in logging. In my view, it is appropriate for a serious penalty to be imposed to provide this general deterrent.
- [40] In terms of the specific deterrent, I find the factors also support a more serious penalty on the defendants. Mr. Baumel has been less than forthcoming throughout this matter. Even on today, while more documents and information were provided and information at the last minute, there still remains outstanding sufficient details about the operations of Twenty Ten and Eagle West Timber. It is clear that he operates a number of companies, and he is allowed to do so. Perhaps, he is allowed to shift resources and contracts from one to another. However, it is exactly those actions he relied on in his failure to disclose from the beginning an accurate and picture of his financial affairs. That prolonged these proceedings. Companies can operate however they choose, but they must bear the consequences of that behaviour.
- [41] The Province also points to the impacts on the First Nation and potential environmental damage as significant factors. It points out that there is evidence of anger and frustration in the community at the continued presence of the Barges. It notes the evidence that the First Nation has had to spend its own resources in efforts to assess the clam bed and to police those listing Barges. The Province submits a severe penalty would signal to the local community that the defendants' non-compliance with court orders will not be tolerated.
- [42] Mr. Baumel points out that it has been six months since the vessels were seized, and yet they remain in place. He submits that if the impact was as severe as suggested, they would have been removed by now. He submits this ought to temper the Province's position as to the weight attached to the impact on the First Nation. He also notes there was no evidence to substantiate that environmental damage has occurred.
- [43] I agree that the relevance of the impacts on the First Nation are not factors that weigh heavily towards or against the severity of the penalty.
- [44] However, they are clearly relevant in another way. The particulars of the contempt are relevant. That is because we are dealing with a very visible contempt of a court order. The local community is faced not only with the blight of the Barges, but that their continued presence raises concerns about its own fishery. The Barges are very real, demonstrative evidence of the contemnor's failure to abide by this Court's orders. In my view that weighs towards a more serious penalty.
- [45] I accept that the evidence from the First Nation about its concerns about the environmental impact on the clam bed was not proven to scientific certainty. In my view, it does not to be proven to that degree. It surely cannot be disputed that the Barges staying on top of the clam bed could raise concerns about the environmental impact, and I specifically had evidence

there was serious concern about that. However, more importantly, the First Nation has been unable to conduct assessments to assess damage because of the existence of the Barges. The continued presence of the Barges has completely prevented it from operating its fishery. In my view, that does speak to a more serious sanction.

Aggravating Factors

- [46] The Province says the following factors are aggravating.
- [47] B&B has taken no steps to comply with the 2019 injunction. Instead, the directors allowed B&B to dissolve. The only steps it took was an email exchange with a salvage company that resulted in a quote vastly higher than what appears to be the appropriate quote. It points out that B&B's contempt is approaching two years and its former directors have simply ignored the injunction and the Contempt Order.
- [48] In response, Mr. Baumel says the court must again be careful not to conflate consideration of the appropriate penalty with a revisiting of what led to the contempt. He also says that the contempt is not ongoing; since the point in time when the Barges were seized by the Province, the defendants have lost the ability to comply with the injunction and Contempt Order. He submits that the penalty must be based on conduct occurring from the date of Justice Baird's order to when the Crown seized the barges.
- [49] For the same reasons as I have already discussed, I do not find that the Province has conflated its analysis. I do appreciate counsel being clear that the defendants were not trying to revisit my earlier findings that they made no good-faith efforts at the time I made the Contempt Order. I agree that we are not revisiting those facts. However, it is clear that since that judgment, but for the very recent vague indication of a possible loan available to Mr. Baumel, nothing was done.
- [50] The Province submits that B&B had the means to secure financing or move the Barges but chose not to. Specifically, it points out that the directors acknowledged that B&B routinely relied on Twenty Ten's money, manpower, and machinery to assist B&B's operations. Mr. Butler acknowledged that Twenty Ten could have repaired and removed the Barges. He stated that Mr. Baumel refused to authorize the payment to do so.
- [51] I appreciate that evidence is disputed, but as between the two of them, I accept Mr. Butler's evidence on that point. As noted earlier, Mr. Butler has been forthright while I have found Mr. Baumel has been evasive to some degree in giving evidence.
- [52] Mr. Baumel relies on evidence that was only very recently filed in which he described his financial situation. I confirm I do take his living circumstances into account. He submitted as follows (quoting from written submissions):

The [Province] argues that another aggravating factor is Mr. Baumel's failure to borrow money to pay for the cost of removing the [Barges] while, at the same time, continuing to pay himself a salary. Mr. Baumel lives in with his wife and two sons in a home owned by his wife. His wife is

retired. Mr. baumel is the main breadwinner for the family. He has submitted evidence to show that the net amount of money that he receives in salary, after taxes, is roughly equivalent to the family's annual household expenses. Even if Mr. Baumel had substantially reduced his income, this is unlikely to have been sufficient to pay for the cost of removing the [Barges] from Donkey Cove.

[53] In particular, he submitted evidence that in November 2021 he was in no position to seek to secure the \$175,000 because of difficulties with Eagle West Timber and other litigation. In his most recent affidavit he deposed:

Recognizing the impact that a lengthy period of incarceration could have, Watkins Sawmills has agreed to provide me with a loan in the amount of \$175,000, so that I can pay the claim of the Crown in respect of the cost of towing the two B&B Barges now grounded at Donkey Cove.

[54] He also submits that he has now made appropriate disclosure, not only of his personal finances, but of Twenty Ten and Eagle West Timber.

[55] The Province's position is that Mr. Baumel's evidence about the financial situation throughout these proceedings contained inconsistencies internally within his own evidence, as well as between his evidence and Mr. Butler's and even between his evidence and Mr. Garrett's. The Province points out that the directors continued to receive a high salary while the Barges sat in Donkey Cove.

[56] The Province also points out, thereafter, there still remains outstanding requests for certain information. In light of all that, the Province says the court should be wary of the statement about the possible loan.

[57] As stated earlier, I do have concerns about the reliability and credibility of statements made by Mr. Baumel about his finances. I do not doubt that he may have been facing financial difficulties, and his companies may have done so, but I simply cannot accept, based on the record put before me throughout these proceedings, that he was unable until this past week to secure a possible loan. With respect, my inability to do so lies very much at his feet because of his late disclosure and because of his continued vagueness and lack of diligent cooperation with the Province's attempts to get information. I also find the timing of this most recent disclosure to be concerning.

[58] I agree with the Province that Mr. Baumel's behaviour within these proceedings after he was found to be in contempt demonstrates an attitude disrespectful of this Court and its orders. I find the following are examples of why his conduct deserves rebuke, which speaks to a more serious sanction:

- a) He did not provide his tax returns and asset lists within the time ordered by the Court. He conceded he did not even start looking for the documents
- b) Mr. Baumel sent Mr. Garrett to attend Mr. Butler's examination, and Mr. Garrett refused to leave, obstructing the Province's ability to conduct an examination.

- c) Mr. Baumel did not provide answers to requests made at his examination for two months. His answers were incomplete and somewhat evasive.
- d) While supplementary responses were given, that took many months and there remained information lefts unanswered.
- e) Mr. Baumel disclosed Mr. Butler's transcript evidence to a third party shortly after the examination. This is a clear violation of the undertaking in civil litigation not to disclose documents to third parties.

[59] In response, Mr. Baumel acknowledges his recordkeeping was "not as organized as it could be". I appreciate counsel acknowledging that the late disclosure should not have happened. He was not the lawyer on the file at the time, but no good reason has been given for the late disclosure. I have to emphasize that was done in the face of a finding of contempt already made, and for that reason it is particularly egregious. Disclosure is extremely important in any civil litigation matter, but exacerbating the facts here, I made specific orders for disclosure. I find that Mr. Baumel did not comply with either the strict terms or the spirit of the disclosure orders.

[60] In my view, these are significantly aggravating factors for Mr. Baumel.

[61] The Province submits that Mr. Butler is in a very different position than Mr. Baumel. Specifically, they point out he complied with the disclosure orders and timeliness and that he made admissions against his interest. He demonstrated contrition and remorse. The Province's position is that reduces his blameworthiness and responsibility and justifies a lesser sentence.

[62] I agree. I also note that Mr. Butler has wanted to have these matters resolved for some time, but has been unable to do so because they are intertwined with Mr. Baumel, who is the reason the matter was adjourned several times.

Mitigating Factors

[63] While the Province agrees this is the first instance of B&B being in contempt, which is a mitigating factor, it has to be assessed in light of the fact that from the outset, B&B was a shell company created solely for the Barges and that it was dissolved shortly after these events.

[64] Mr. Baumel relies on his recent loan agreement not yet formalized as a mitigating circumstance. He recognizes that it is too late to purge his contempt because the Crown has seized the Barges, but he asks that his evidence about securing a loan be seen as mitigating.

[65] To the extent that it can be mitigating, I would say its mitigating effects are minimal, for the reasons I have already stated. Primarily, given the evidence in this matter and what the facts I have found about Mr. Baumel's conduct, the Court does not have confidence that it can rely on his characterization of why he could not have obtained money sooner. Nor does the Court

have any confidence in the statement about the loan itself. This is especially true when one remembers that this hearing was actually supposed to take place on January 5, 2022, but was delayed because of COVID. It appears no efforts were made by him before that hearing.

Other Cases

[66] Both counsel agree that there was no particular case directly on point.

[67] The Province submits the appropriate range for a fine is between \$10,000 and \$100,000, and the appropriate range for committal if between 15 days and six months to a year. I agree that those ranges are appropriate. However, I note the Court of Appeal's comments in *Ezzati* at para. 112 that the fact a particular sentence departs from a generally accepted range does not necessarily mean it is unfit. In that case, the facts were unique, and it was therefore more difficulty to identify an established range.

[68] The Province cited a number of cases[1], but submitted the following were the most helpful with regard to specific penalty.

- a) *Shelburne (Town) v. Farley Mowatt (Ship)*, 2017 FC 1184. The ship was berthed, but no fees were paid. The ship sank. The plaintiff stored it and obtained an order that the defendant remove the ship from the terminal. The ship's owners were found to be in contempt of the order to remove the ship. The court ordered \$10,000 fine and 20 days incarceration, which was suspended for 21 days to allow time for the defendants to purge their contempt. They failed to do so and were incarcerated.
- b) *Crawford v. Standard Building Contractors Limited*, 2021 ONSC 5346. The defendants were found in contempt of an order enjoining them from dissipating assets, including operating bank accounts, and requiring them to disclose under oath the nature, value, and location of all assets held worldwide. The penalty imposed was 90 days incarceration.

[69] The defendants referred to *Shelbourne* as well as *North Arm Transportation v. "Gulf Kanayak" (the)*(1987), 13 F.T.R. 290 (the Province also cited that case). In that case the company failed to remove a vessel from the harbour and was in contempt. It finally did so eight days after the court order. The company was fined \$5,000 (which I understand would equate currently to about \$10,200).

[70] All the cases provided some guidance, but I agree with the counsel, they were not typically very helpful because of the unique facts in this case. I rely more heavily on the general principles.

CONCLUSIONS

[71] The Province seeks a \$25,000 fine. I do find it appropriate to issue a fine. In my view, the ongoing nature of the contempt in this case was serious. The duration was long. The impact on the public's perception of this Court's authority was serious. The scant evidence about the recent loan does have some mitigating effect, but not a great deal.

- [72] In my view, the most appropriate fine to take into account in all these circumstances is \$20,000, which is the fine that I impose.
- [73] THE COURT: Mr. Butler, I will ask you to stand, please. You are a director of B&B and Twenty Ten, and you must bear some responsibility for the contempt that occurred. However, I appreciate that you have for some time acknowledged your responsibility, and you have sought to atone for your role. I also note, and I accept, the evidence that you dealt more with the operations side, not the financing. You gave evidence that you believe the Barges could have been moved, but that you were thwarted in the ability to do so.
- [74] It appears that these events led to a breakdown of your business relationship with Mr. Baumel, and I note that for some reason Mr. Baumel saw fit to disclose your examination transcript, which I find quite concerning. In my view, your responsibility and blameworthiness in these matters is significantly less than Mr. Baumel's.
- [75] I also note that you have been forthright in disclosure, and it appears not to be in dispute that you are largely impecunious. I make note of your personal circumstances. In particular, I understand you are caring for someone who is very ill and that you have had some issues from COVID because of a pre-existing condition.
- [76] I do want to make specific note that you issued an apology to the Court and that you have done so on more than one occasion. I find your apology was genuine and heartfelt.
- [77] In all those circumstances, I still find, however, it is appropriate that you be sentenced for a period of time under house arrest. In all the circumstances, I find a period of ten days house arrest is appropriate for you.
- [78] THE COURT: Mr. Baumel, would you please stand. Mr. Baumel, in all the circumstances, as I have already stated, I do find that your blameworthiness in this matter is greater than Mr. Butler's. I do find that your conduct is deserving of significant sanction. I have already referred in my reasons to the concerns that I have had that you were not forthright with the Court throughout these proceedings, particularly after I already found you to be in contempt. I am particularly concerned by your conduct after that hearing.
- [79] I do not have great confidence that the characterization that you gave of the loan that may come through was not available to you at any time before hand. I have given some mitigating effect to the evidence of that loan, but in my view, it does not mitigate enough to justify the Court of sending a very serious message for the conduct here. I do want to acknowledge and thank you for the apology that you did give to the Court today, and I do acknowledge it.
- [80] Nevertheless, the contempt in this case is serious. There is virtually no action on this matter for over two years. Even if I accept what counsel said that really, we are only looking at the period of time from Justice Baird's order to September when the Crown seized the Barge, that was almost two years. I do find that very little was done, and it was not done with good faith, and that remained the case until only very, very recently.

[81] The public needs to appreciate and understand that court orders mean what we say. We live in a society that is guided by the rule of law. Notwithstanding that you may disagree or be unhappy with what the court ordered in terms of removing the Barges, you had remedies for that, including an appeal. Notwithstanding that, when the court makes an order, you have to comply with it. I am very concerned you did not comply, but more importantly, I am very concerned by the conduct and your attitude towards that. I sentence you to 21 days incarceration.

(SUBMISSIONS RE STAY OF ORDER)

[82] THE COURT: After imposing sentence, Mr. Baumel's counsel asked me to exercise my discretion as permitted under the Rules to stay my penalty on him for the purpose of seeking a stay of the Contempt Order and today's order in the Court of Appeal.

[83] The Province is opposed to that. It says that the appeal has been outstanding with very little done until just days before the scheduled hearing in November. Its position is that the Court ought to view this request to be very much like what else has happened on this file, which only at the last minute an attempt is made to avoid what the Province says the defendants ought to have known was clearly coming down the line.

[84] The general test for a stay from RJR-MacDonald. It is a three-pronged test. There is clearly a serious issue to be tried. The other two steps are to consider Irreparable harm and the balance of convenience. Given the time, I simply cannot do justice in these oral reasons to the case law.

[85] As in my reasons, I stated already, I have found that Mr. Baumel's conduct is deserving of rebuke. He still has the ability to seek a stay in the Court of Appeal, and he has the ability to be released. I am not going to stay my decision. In the overall circumstances, I find that it is not appropriate to do so.

"Sharma J."

[1] Included in the Province's submissions were the following, which I also considered: *Business Development Bank v. Cavalon Inc.*, 2017 ONCA 663; *Roynat Inc. v. 1664092 Ontario Inc.*, 2014 ONSC 4825; *Fitzgerald Living Trust v. Mountainstar Gold, Inc.*, 2018 BCSC 1451; *Allied Properties REIT v. 1064249 Ontario Inc.*, 2018 ONSC 4396; *Bressi (Bankruptcy) v. 1418146 Ontario Inc.* (2005), 13 C.B.R. (5th) 35 (Ont. S.C.J.); *Petrack (Re)*, 2017 BCSC 1626; *Law Society of British Columbia v. Goodwin*, 2016 BCSC 240.

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