

CANADA / JUDGMENT

EAM Global Logistics Ltd. v. Khataw

2023 BCSC 2026

COURT

Supreme Court of British Columbia

DECIDED

17 November 2023

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2023 BCSC 2026 EAM Global Logistics Ltd. v. Khataw

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

EAM Global Logistics Ltd. v. Khataw,

2023 BCSC 2026

Date: 20231117

Docket: S249172

Registry: New Westminster

Between:

EAM Global Logistics Ltd. and Hasan Gokal

Plaintiffs

And

Muhammad Azim Khataw, Fatim Khataw, BRK Properties Ltd., Giotto Trade Ltd., Ancor Log Limited, Inovo Rawmaterials Ltd., GFR Health Ltd. and

GFR Imports

Defendants

Corrected Judgment: The front page of the judgment was corrected on November 23, 2023

Before: The Honourable Chief Justice Hinkson

Reasons for Judgment

Counsel for the Plaintiffs:

M. Canofari

G. Douvelos

Counsel for the Defendants, Muhammad Azim Khataw, Giotto Trade Ltd., Ancor Log Limited, Inovo Rawmaterials, and GFR Health Ltd.:

R. Gill

J. Gellis

A. Solari, a/s

Counsel for the Defendants Fatim Khataw and BRK Properties Ltd.:

B. Olthuis, KC

J. Hernaez

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Counsel for the Defendants GFR Imports:

No one appearing

Place and Date of Hearing:

New Westminster, B.C.

October 11 and 12, 2023

Place and Date of Judgment:

New Westminster, B.C.

November 17, 2023

I. Introduction

- [1] On April 18, 2023, I granted an ex parte Mareva injunction to the plaintiffs (the "Order"). The Order included terms freezing and limiting the use of the defendants' assets or their removal from British Columbia: EAM Global Logistics Ltd. v. Khataw (April 18, 2023), New Westminster 249172. The initial term of the Order was six months, which I have extended for a further two months. Paragraph 5 of the Order incorrectly omitted the words "per month" after "\$25,000", and I have ordered that that omission be corrected.
- [2] The parties, with the exception of GFR Imports, appeared before me on October 11 and 12, 2023, to argue two applications by the plaintiffs. In the first application, the plaintiffs seek a declaration that the defendants are in contempt of Court for refusing or neglecting to comply with the Order (the "Contempt Application"). They further seek security for costs, an amendment of the Order, and an array of accounting particulars related to the certain defendants' personal, business, and legal financial transactions.

- [3] In the second application, the plaintiffs seek orders for payment of monies held in two bank accounts of Inovo Rawmaterials Ltd. ("Inovo") and costs on a full indemnity basis (the "Funding Application").

II. Background

- [4] For convenience, I will repeat some of the background that I set out in my earlier reasons for judgment in this case, indexed at EAM Global Logistics Ltd. v Khataw, 2023 BCSC 1575 [Reasons].
- [5] EAM Global Logistics Ltd. ("EAM") is a Singapore company that specializes in international logistics and supply chain solutions.
- [6] Hasan Gokal is the majority shareholder and director of EAM and is a Canadian citizen. He personally guaranteed the investments made by EAM to fund the purported purchase and sale of cod liver fish oil and other health supplements promoted by the defendants or some of them.
- [7] The defendants Muhammad Azim Khataw ("Mr. Khataw") and Fatim Khataw ("Ms. Khataw" and together, the "Khataws") are husband and wife and are, respectively, the uncle and aunt of Mr. Gokal.
- [8] Mr. Khataw is the director of Ancor Log Limited ("Ancor"), Inovo, and GFR Health Ltd. Mr. Khataw was also the director of Giotto Trade Ltd. ("Giotto") and its directing mind. Mr. Khataw has described Giotto as "now-dissolved". The plaintiffs allege that Mr. Khataw's various related companies were created for the purpose of impersonating other companies with similar names.
- [9] The defendant BRK Properties Ltd. ("BRK") is a BC registered company that is alleged to have participated in the impugned scheme by accepting and using funds that were fraudulently obtained to finance business operations. Ms. Khataw is the director of BRK.
- [10] The plaintiffs allege that the defendants partnered with them to intermediate cod liver fish oil sales, but in reality, and unbeknownst to them, the enterprise was a fraudulent "Ponzi" scheme where no goods were sold, and thus resulted in their loss of millions of dollars.
- [11] The plaintiffs assert that, in or around 2015, Mr. Gokal was contacted by Mr. Khataw, who was seeking an investor for the purchase and sale of cod liver fish oil and other health supplement products through a US company identified as Tyler Global Trading LLC ("Tyler Global"). Each of the following entities were alleged to have played the following roles in the enterprise:
- a) Icelandirect was the manufacturer of the cod liver fish oil. This was a legitimate company that was unaware of the scheme.

- b) Tyler Global had a distribution agreement with Icelandirect and also had business relationships with the alleged customers. This too was a legitimate company that was unaware of the scheme.
 - c) Natural Factors and GFR Pharma were the alleged customers. Both are legitimate companies who were unaware of the scheme.
 - d) Ancor was responsible for the transportation and is a legitimate company that was unaware of the scheme.
- [12] The plaintiffs allege that they were told that the transactions would work in the following manner:
- a) Tyler Global's customer would issue a purchase order;
 - b) the purchase order would contain the amount purchased and the price;
 - c) the defendants would then email the purchase orders to the plaintiffs;
 - d) the plaintiffs would then secure the financing and provided the funds to the defendants who were supposed to transmit the funds to Tyler Global;
 - e) Tyler Global would then use the funds to purchase the fish oil from Icelandirect;
 - f) Tyler Global would arrange for the fish oil to be delivered from the Icelandirect warehouse in New Jersey, USA, to the customers;
 - g) the customers would pay Tyler Global directly for the fish oil; and,
 - h) Tyler Global would then transmit the proceeds from the sale back to the plaintiffs.
- [13] For a period of some eight years each purported transaction in the enterprise was documented by purchase orders, wire transfers, invoices and other necessary documentation that was routinely sent between the parties.
- [14] It is common ground that at no time was any cod liver fish oil or any other health supplements purchased, transported or sold at the request of any of the parties, by Icelandirect, Natural Factors, GFR Pharma or Ancor.
- [15] Tyler Global confirmed in writing that it owed and paid the plaintiffs the sums of \$5,484,777 USD and \$7,417,800 USD, but stopped payments in January 2023. EAM asserts that it is presently owed a sum by Tyler Global that it estimates to be in the range of \$9,400,000 USD.
- [16] Through its legal counsel, Robert Lee, Icelandirect confirmed on April 13, 2023 that the cod liver fish oil documents pertaining to Icelandirect were false and forged.

[17] Insofar as GFR Pharma is concerned, on the evidence then before me from its lawyers, purchase orders 14392 and 14537 to Tyler Global, each for 1,200 drums of cod liver fish oil, bills of lading numbered 36652 and 36731 purporting to relate to those shipments of cod liver fish oil to GFR Pharma, and Customs Canada invoices relating to such orders, were all falsified documents neither authorized, issued or otherwise generated, signed, nor acknowledged by GFR Pharma.

[18] On March 20, 2023, Valerie Keller, GFR Pharma's senior accounts payable representative responded to an email from Bobby Hawkins, the plaintiffs' lawyer in Texas, about purchases for cod liver fish oil from Tyler Global that were purported to have been authorized by "Amber Nicholson" and advised:

We do not have Tyler Global Trading as a vendor in our system and the PO's you have attached are not GFR Pharma issued PO's.

The format is different, our PO's start with 5 and the address is incorrect. We also do not have an employee buy [sic] the name Amber Nicholson, who has apparently authorized these PO's.

[19] On March 28, 2023, Surjit Hundal, GFR Pharma's vice president of Finance and IT wrote to Mr. Hawkins:

Please be advised that the attached purchase orders are not legitimate.

GFR does not do business with Tyler Global Trading and did not place the attached PO's. The purchase orders have been modified to use our logo and an old address from which we moved in 2017.

[20] In his affidavit sworn on June 16, 2023, and on the application heard June 29 and July 17, 2023, Mr. Khataw admitted that he participated in a fraudulent scheme with respect to the purchase and sale of cod liver fish oil, and that the transactions were illegitimate, but asserted that the plaintiffs were complicit and knowingly participated in that scheme.

[21] In the Reasons, I wrote:

[63] I have concluded that while the new evidence adduced by the defendants raises questions about the role played by the plaintiffs in the cod liver oil and health supplements enterprise, it does not convince me that Mr. Gokal was a knowing participant in the fraud .

[22] I remain of that view on the evidence now before me.

III. The Order

[23] The notice of civil claim ("NOCC") in this action was filed on April 17, 2023, and served by counsel for the plaintiffs upon Mr. Rishi Gill by email and a cloud link on April 22, 2023. Mr. Gill is counsel to the defendants and practices out of RTG Law Corporation ("RTG").

- [24] On April 22, 2023 at approximately 3:00 p.m., the Order was served on Mr. Khataw at the residence of he and Ms. Khataw. The service was performed by Thomas Dolo, a licensed private investigator, who deposed that he attended the residence, spoke with, and personally served Mr. Khataw. In his affidavit affirmed on September 27, 2023, Mr. Dolo deposed that Mr. Khataw advised that Ms. Khataw was upstairs at the time of service and that he would provide her with the documents.
- [25] The Order was also served on Mr. Gill on April 22, 2023 at 10:06 p.m.
- [26] In an email on April 24, 2023, Mr. Gill advised Mr. Canofari, counsel for the plaintiffs, that he was counsel for all of the defendants:

Hello Tom,

Please note that my office now represents all parties in the noted action. I understand you have communicated with Mr. Khataw with respect to personal service of his wife.

We have already spoken with counsel for the Plaintiff, Mr. Mark Canofari (cc'd) and we will accept all outstanding process service.

We would prefer the individual parties not be further contacted for personal service unless this is necessary. Please contact me to discuss directly if there are any issues.

Yours truly,

Rishi Gill

- [27] None of the defendants filed a response to the plaintiffs' NOCC within the 21 days required by r. 3-3(3)(a)(i) of the Supreme Court Civil Rules, B.C. Reg. 168/2009 [Rules]. They have yet to do so, asserting that they cannot do so without further and better particulars than those already provided by the plaintiffs on June 23, 2023.
- [28] I make no comment upon whether or not their failure to file a response to the NOCC is justified.

IV. Orders Sought

- [29] On the contempt application, the plaintiffs seek orders that:
- any response to their claim be struck and that the proceeding continue as if no appearance had been entered or defence filed;
 - BRK and the Khataws post \$35,000 as security for costs;
 - paragraph 5 of the Order, concerning allowed monthly expenditures on ordinary expenses, be amended by reducing the sum of \$3,500 to \$1,000 with respect to Mr. Khataw;

- d) the Khataws provide the plaintiffs with a full accounting, satisfactory to the plaintiff, of their monthly living expenses from May 2023 to the present date and identify the source of the funds for those living expenses;
 - e) the Khataws produce to the plaintiffs, all documents within their possession, custody or control related to all expenditures and income;
 - f) that paragraph 7 of the Order be struck; and,
 - g) that special costs be ordered, summarily assessed at \$25,000 and payable forthwith by the defendants, BRK, and the Khataws, from funds approved of by the plaintiffs.
- [30] The plaintiffs also seek an order that defendants BRK, Mr. Khataw, and Ms. Khataw provide affidavits with supporting documents detailing:
- a) amounts transferred to RTG;
 - b) source of the funds transferred to RTG;
 - c) date(s) that all monies were transferred to RTG; and,
 - d) details of the arrangement in place with RTG relating to its funding of the defendants, including BRK and Ms. Khataw.
- [31] On their funding application, the plaintiffs seek orders that:
- a) TD Canada Trust immediately pay \$991,640.79 USD from Inovo's Account ending in 797 to the plaintiffs' solicitor, George Douvelos, to be held "in trust" for the benefit of the plaintiffs;
 - b) the \$24,235.08 USD that was withdrawn on May 15, 2023 from Inovo's Account ending in 797 to be paid forthwith to the plaintiffs' solicitor, George Douvelos, to be held "in trust" for the benefit of the plaintiffs.
 - c) the defendants pay the costs of this application on a full indemnity basis, paid forthwith.

V. The Contempt Application

A. The Law

- [32] In *United Nurses of Alberta v. Alberta (Attorney General)*, [1992] 1 S.C.R. 901 at 931, the Supreme Court of Canada addressed the law of contempt. In her judgment for the majority, Justice McLachlin, as she then was, commented that:

Both civil and criminal contempt of court rest on the power of the court to uphold its dignity and process. The rule of law is at the heart of our society; without it there can be neither peace, nor order nor good government. The rule of law is directly dependent on the ability of the courts to enforce their process and maintain their dignity and respect. To maintain their process and respect, courts since the 12th century have exercised the power to punish for contempt of court.

[33] The test to be met for a finding of civil contempt of court has been repeated by many courts. For example, in *CE International Resources LLC v. Yeap Soon Sit*, 2013 BCSC 186, at paras. 24-25, Justice Fisher explained:

24 Civil contempt proceedings are quasi-criminal in nature and the applicant bears the onus of proving the elements of contempt on the criminal standard of proof beyond a reasonable doubt. Where the alleged contempt is a breach of a court order, as here, the applicant must prove three elements: (1) the existence of the court order; (2) the alleged contemnor knew of the order and its terms; and (3) the alleged contemnor intentionally disobeyed one or more of the terms of the order. This last element requires proof of deliberate conduct that has the effect of contravening the court order. It is not necessary to prove an intent to bring the Court into disrepute or to interfere with the lawful process of the Court. Intention may be inferred from the circumstances: see *North Vancouver (District) v Sorrenti*, 2004 BCCA 316; *Topgro Greenhouses Ltd. v Houweling*, 2003 BCCA 355.

25 The order said to have been breached must be clear and precise in its directions. The party who is subject of the order must be able to determine exactly what he is required to do. If the order is ambiguous, the alleged contemnor is entitled to the most favourable interpretation of it: see *Hama v Werbes*, 2000 BCCA 367; *C.L. v H.B.*, 2011 BCSC 1188.

[34] In *Friedlander v. Claman*, 2016 BCCS 434, Justice Smith explained:

26 Contempt proceedings must follow a *strictissimi juris* approach. In *Bassett v. Magee*, 2015 BCCA 422, this Court summarized the procedure to be followed from *Peel Financial Holdings Ltd. v. Western Delta Lands Partnership*, 2003 BCCA 551 at para. 18, and confirmed in *Jackson v. Honey*, 2009 BCCA 112 at para. 12, for a contempt application. This Court stated:

[33] ... Those principles are summarized in *Peel* at para. 18, as follows:

1.The proceedings are quasi-criminal in nature and the rules of *strictissimi juris* apply, meaning for example that the evidence supporting the motion must conform to the rules of admissibility at a trial; so no hearsay, opinion, conclusions and the like are receivable ...

2.The applicants bear the onus of proving the elements of contempt on the criminal standard, viz. beyond a reasonable doubt ...

3.If the order said to be breached is ambiguous, the alleged contemnor is entitled to the most favourable construction ...

[34] In short, a court must find that a contemnor "wilfully disobeyed a court order that was clear and precise in its meaning" beyond a reasonable doubt: *Jackson* at para. 13. A court must "ensure that no one is found to have transgressed without a full consideration of all the relevant information, including any explanations for the conduct of persons accused of violating court orders": *Larkin v. Glase*, 2009 BCCA 321 (B.C.C.A.) at para. 9. If an order directs a party to provide an item that is not in that party's possession, the party cannot be said to have wilfully or deliberately disobeyed an order that was "impossible" to comply

with: Jackson at para. 14.

[35] The notion of strictissimi juris encompasses more than the examples given in Peel. It requires close adherence to procedural requirements: a precision in pleadings, procedure and evidence appropriate to the nature of the process which engages the court in a conflict with one of the parties. The process must be carried out with great care. The order said to be breached must be clear, for it will be strictly construed.

B. Ms. Khataw and BRK

i Allegations

[35] The plaintiffs allege that Ms. Khataw and BRK breached the Order by:

- a) transferring and disposing of funds in an effort to avoid compliance with the Order, after being served with it and retaining counsel, including:
 - i. on April 24, 2023, removing \$11,570 by online transfer from the RBC account ending in 533;
 - ii. on April 24, 2023, removing \$11,570, \$21,570, \$1,500, and \$325 in the form of online transfers from the RBC account ending in 107, which were paid to Bakhtiar Khataw (Ms. Khataw's son, hereafter "Bakhtiar");
 - iii. on April 25, 2023, removing \$100 by online transfer from the RBC account ending in 107;
 - iv. on April 24, 2023, removing \$24,000 by online transfer from the RBC account ending in 541; and,
- v. causing direct deposits from Ms. Khataw's employer, Carson Customs, which were being made to the RBC account ending in 533, to be paid to an undisclosed account;
- b) failing to disclose an asset list or provide an affidavit within the seven day time limit ordered;
- c) intentionally omitting the VanCity account ending in 802 from her affidavit;
- d) intentionally omitting from the CIBC account ending in 081 from her affidavit (the "CIBC Account");
- e) intentionally swearing that BRK received a total of \$225,000 when in fact it received a minimum of \$290,000 from the other defendants and omitting from her affidavit monthly rental income from a property owned by BRK;
- f) failing to report assets in the form of money received from:
 - i. Bakhtiar on May 29, 2023 in the amount of \$1,500;
 - ii. RTG on May 29, 2023 in the amount of \$3,500;
 - iii. Mohamed Raza Hussein Jagani (Ms. Khataw's father, hereafter "Mohamed Raza") on June 6 and 20, 2023 in the amount of \$4,985;

- g) spending more than \$3,500 per month on living expenses;
- h) spending more than \$25,000 on legal fees; and,
- i) the omission of the true amount of funds received from the defendant companies.

ii. Transfer of Funds

- [36] Ms. Khataw deposed that she conducted various banking activities after the close of business on Friday April 21, 2023, or during the following weekend, in order to ensure that her family could pay expenses for her son, Raza Khataw's wedding, and so that BRK's mortgage could be paid. The transactions she recalled included:
- (a) transferring \$11,570 from her personal chequing RBC account ending in 533, to an RBC account ending in 107, a savings account jointly held by herself and Raza Khataw;
 - (b) transferring \$11,570 and \$21,570 from the RBC account ending in 230 to Bakhtiar;
 - (c) transferring another \$24,000 for Raza Khataw's wedding from her RBC savings account ending in 541 to the RBC account ending in 230; and,
 - (d) transferring \$24,000 from the RSC account ending in 230 to Bakhtiar.
- [37] Ms. Khataw deposed that she could not recall for what a transfer for \$100 on April 25, 2023 from the RBC account ending in 107 might have been for, or where it was sent.
- [38] The plaintiffs allege that Ms. Khataw and BRK breached the Order by transferring and disposing of funds in an effort to avoid compliance with the Order, after being served with it and retaining counsel. The funds transferred by Ms. Khataw prior to April 29, 2023 are conceded in her affidavit. In response to the plaintiffs' claim, Ms. Khataw sought to raise a reasonable doubt as to whether she was in fact personally served on April 18, 2023. It is her position that she only became aware of the terms of the Order on April 29, 2023, and to this extent, none of the aforementioned transfers constitute contempt.
- [39] It is the plaintiffs' position that Ms. Khataw was personally served on April 18, 2023 by Mr. Dolo who, in his affidavit affirmed on September 27, 2023, deposed, in part, that:
- 2. On the Service Date, I met Muhammad Azim Khataw who introduced himself, and I explained the purpose of my visit and I was invited inside and stayed for approximately one (1) hour and during that time explained the documents to him and also that I was required to serve Fatim Khataw, and he advised that she was upstairs and that he would provide her with the documents, because he did not want her to be alarmed by the situation. I then left the residence.
 - 3. On 23 April 2023 at approximately 10:30 a.m. I was contacted by Mr. Rishi Gill, who advised me that he acted for all the defendants and accepted service for all of them and that I was not to contact them again.

- [40] Beyond their assertion that Ms. Khataw was personally served on April 18, 2023, the plaintiffs say that the defendants quickly retained counsel in response to the service and set down an application for the Order to be vacated or varied. On these bases, the plaintiffs contend that I can conclude that all of the defendants had actual notice of the orders pursuant to r. 22-8(14) of the Rules, and deliberately and intentionally failed to comply with those orders.
- [41] In her affidavit affirmed October 10, 2023, Ms. Khataw deposed, in part, that:
3. I was not personally served with the Mareva Order.
 5. Mr. Dolo's affidavit states that Mr. Khataw told him that I was upstairs, but I do not recall if this is accurate. On Saturdays, I typically run errands, and go grocery shopping, so it is likely that I was not at home when Mr. Dolo attended my residence.
 6. If in fact I was home, I confirm that I did not meet Mr. Dolo at the time he says he attended my residence. When I am at home, I spend a lot of time on the third floor of my home. As such, I usually am not aware that someone is visiting, unless it is specifically drawn to my attention.
 7. On or around this same day, Fatim had a conversation with her husband about Mr. Dolo's visit, and he told her that the Plaintiff, Hasan Gokal, was looking to serve her with documents too. Her husband told her that he retained Rishi Gill to act as the lawyer for him and his companies. Fatim's husband also told her that he would take care of things, and that Mr. Gill would assist her and BRK. Fatim did not ask her husband for further details, and she not make further inquiries.
 10. I do not have a recollection of Mr. Gill telling me about any sort of freezing order, or the details of the Mareva Order, and any effects on my own assets. At no time before I made the transfers below was I aware that the transfers were prohibited by court order.
 37. The Plaintiffs assert that I have transferred \$25,000.00 to RTG. Neither BRK nor I have transferred funds to RTG. I have no knowledge of what the Plaintiff is referring to.
- [42] Ms. Khataw also deposed that she only learned that her bank accounts were frozen after she went to the bank and attempted to take out jewelry from her safety deposit box on or around April 29, 2023. It was her evidence that when she learned that her accounts were frozen, she panicked and became extremely stressed out because she was not sure how she was going to pay for day-to-day expenses.
- [43] Ms. Khataw argues that contempt cannot be established regarding the transfer of funds, because she was not personally served with the Order or made aware of its contents. In addition, she deposed that she recalls making these transfers after business hours on April 21, 2023, which is why she says they appear as being dated April 24, 2023.

- [44] As set out above, it is a critical element of civil contempt that the alleged contemnor knew of the order and its terms.
- [45] Although Mr. Gill purported to accept service of the Order on behalf of all of the defendants, he provided no evidence as to whether he made Ms. Khataw aware of the Order before April 29, 2023.
- [46] While I am prepared to treat her evidence with considerable caution, given her denial of any appreciation of the terms of the Order prior to April 29, 2023, I am unable to accept, beyond any reasonable doubt, the plaintiffs' assertion that Ms. Khataw was personally served with the Order on April 18, 2023, or that it was brought to her attention before she began to move funds in her various accounts up to April 29, 2023.
- [47] I find, however, that there is a reasonable doubt as to whether Ms. Khataw knew of the Order and its terms prior to April 29, 2023.

iii. Asset Lists

- [48] Paragraph 18 of the Order required that:

Each of the defendants must, within seven days of service of this Order, provide, the Plaintiffs solicitor with a list (the "Defendant's Asset List"), verified by his, her or its affidavit setting out all of the defendant's assets...

- [49] Mr. Gill's office provided an "informal" asset list of the defendants, without a confirming affidavit on May 5, 2023. Certain incomes and accounting information was not included in Ms. Khataw's list including:
- a) the existence of a CIBC "Mortgage" account (the CIBC Account) in Ms. Khataw's name, which was opened on January 1, 2017;
 - b) that on or about April 14, 2023, Ms. Khataw caused rental payments from JKS Realty to go to an undisclosed account held by Bakhtiar;
 - c) that on or about May 1, 2023, Ms. Khataw directed her employer to cease depositing funds into the RBC account ending in 533, and did not disclose where those funds were subsequently being deposited;
 - d) that on May 29, 2023, Ms. Khataw received \$1,500 from Bakhtiar, and \$3,500 from RTG; and,
 - e) that on June 6 and 20, 2023, Ms. Khataw received \$4,985 from Mohamed Raza.
- [50] An affidavit reflecting what was required in the Order was not provided by Ms. Khataw until June 27, 2023, in response to complaints made by the plaintiffs in their response to the defendants' application to set aside the Order. This was the same day on which counsel for Mr. Khataw served Mr. Khataw's affidavit confirming his asset list.

[51] It is clear that both Ms. Khataw and BRK failed to file an asset list and affidavit within the time required by the Order, but I accept that they did so before the present applications were brought. While their conduct is, strictly speaking, a contempt, in the circumstances it does not warrant any sanction by this Court.

iv. The VanCity and CIBC Accounts

[52] Ms. Khataw gave evidence that she developed a concern about how she would survive if she could not access her pay cheques. She said that her husband suggested that she open a bank account and tell her employer to deposit her pay cheques into that account for the time being. In the result, it was her evidence that she opened the VanCity account ending in 028 (the "VanCity Account").

[53] It was Ms. Khataw's evidence that, on or around May 1, 2023, her employer agreed to help her by depositing her pay cheques into Raza Khataw's account. On August 16, 2023, Ms. Khataw asked her employer to begin depositing her pay cheque into the VanCity Account.

[54] The evidence further demonstrates that, on May 29, 2023, Mohamed Raza stopped depositing funds into the RBC 533 account, and directed those funds to be deposited into an undisclosed, account at VanCity ending in 8028. The records pertaining to this account record deposits from:

- (i) Bakhtiar in the amount of \$1,500 on May 29, 2023;
- (ii) RTG in the amount of \$3,500 on May 30, 2023;
- (iii) Mohamed Raza in the amount of \$4,985 on June 6, 2023;
- (iv) Mohamed Raza in the amount of \$4,985 on June 20, 2023;
- (v) Reza Khan in the amount of \$2,400 on July 6, 2023;
- (vi) Reza Khan in the amount of \$1,800 on July 10, 2023; and,
- (vii) a Mobile Deposit in the amount of \$3,500.

[55] The banking records produced by the CIBC on August 17, 2023 disclose that Ms. Khataw held the CIBC Account from January 1, 2017 until August 9, 2023. The account is referred to as a "Mortgage" type account. Payments have been made from that account since April 18, 2023 in excess of \$3,500 per month.

[56] On June 28, 2023, Ms. Khataw swore an affidavit deposing that neither she nor BRK Properties Inc, held bank accounts other than at Scotiabank, or the Royal Bank of Canada.

[57] I find that the omission of any reference to the VanCity Account and the CIBC Account was deliberate and in contempt of this Court.

[58] I am not satisfied that Ms. Khataw's failure to report the receipt of the funds from her relatives was clearly required by the Order, and decline to make a finding of contempt for that conduct.

v. Receipt of Funds by BRK

[59] The plaintiffs take issue with what they allege to be false statements and non-disclosure in respect of monies received by BRK.

[60] In her affidavit affirmed June 16, 2023, Ms. Khataw deposed that approximately \$225,000 was paid from Inovo and Ancor to BRK. In this proceeding, however, Ms. Khataw gave further evidence that the figure of \$225,000 she listed for BRK was only an estimate made after consultation with Raza Khataw, the other director of that company. This was because the relevant accounts held by BRK were frozen, and they could not access the relevant statements to determine a more accurate figure. She acknowledged in her affidavit that the correct amount should have been \$290,000.

[61] The documents disclosed by the TD Bank corroborate that the actual amount paid was \$290,000 from accounts held by Inovo and Ancor. The plaintiffs were the source of these funds, which were to be used for the purchase of cod liver fish oil, but instead were distributed by the defendants amongst themselves.

[62] Beyond this payment, Ms. Khataw did not disclose the receipt of any rental income by BRK. Ms. Khataw deposed that a home owned by BRK was purchased in 2021, and only rented commencing in March 2023 for \$6,500 a month, or \$5,785 after property management fees are deducted. She asserted that she received \$11,570 for the first two months of rent from JKS Realty & PR (the property managers for BRK's property) on April 14, 2023.

[63] Ms. Khataw deposed that neither this rent, or the CIBC mortgage were listed in BRK's asset list because she did not believe them to be assets. She indicated that the rent payment was used to pay for BRK's mortgage, but is now paid by JKS Realty & PR into an account managed by Raza Khataw, which is then used to pay BRK's mortgage.

[64] I find that Ms. Khataw's failure to report the rental income from the property owned by BRK was deliberate and done in contempt of this Court.

[65] Given her explanation about the figure of \$225,000, I find that the plaintiffs have not proven beyond a reasonable doubt that Ms. Khataw or BRK committed a contempt of this Court by swearing that BRK received only \$225,000 as opposed to \$290,000.

vi. Living Expenses and Legal Fees

- [66] Ms. Khataw agreed that she received \$3,500 from RTG on May 29, 2023 for the month of May, and a further \$3,500 each month between May and August 2023. She deposed that it was her understanding that those funds come from the bank account of Inovo. Ms. Khataw agreed that she asked Bakhtiar to send her money so that she could pay for her expenses, and that on May 29, 2023, he sent her \$1,500.
- [67] Ms. Khataw gave evidence that she also asked Raza Khataw and Mohamed Raza for help, and that she received \$2,400 on July 6, 2023 and \$1,800 on July 10, 2023 from Raza Khataw and \$4,985 on each of June 6 and 20, 2023 from Mohamed Raza to help pay for the expenses of Raza Khataw's wedding.
- [68] Ms. Khataw gave evidence of also receiving \$6,000 from Bakhtiar and \$2,200 from Raza Khataw in August 2023, and said that she did not know that she could not receive funds from other family members to help her pay for her day-to-day expenses.
- [69] The plaintiffs argued that Ms. Khataw spent in excess of the \$3,500 per month that she was permitted to spend on personal expenses. In light of the above, it is apparent that she did so.
- [70] Evidence produced by TD Canada Trust shows that on May 15, 2023, an amount of \$24,235.08 USD was withdrawn from an account in the name of Inovo, and used to pay legal fees. That amount converted to Canadian dollars was approximately \$32,600 on May 15, 2023.
- [71] Ms. Khataw took the position that there is no evidence that BRK itself, or any other individual has depleted the assets held by the company, or that either she or BRK transferred \$25,000 to RTG.
- [72] I accept that Ms. Khataw spent more than \$3,500 per month as alleged, and thus acted in contempt of this Court, but I am not satisfied that she spent more than \$25,000 per month on legal fees as alleged.

C. Mr. Khataw, Giotto, Ancor, Inovo, and GFR Health Ltd.

[73] The plaintiffs allege that certain plaintiffs breached the Order by:

- a) failing to disclose an asset list or provide an affidavit within the seven (7) day time limit ordered;
 - b) using a Prospera Account ending in 355 (the "Prospera Account") after the Order was made;
 - c) opening another bank account on September 1, 2023, at Khalsa Credit Union (the "Khalsa Account").
- i. Asset List

[74] Counsel for Mr. Khataw adopted the submissions made for Ms. Khataw on this application, however, few of those submissions can, in fact, apply to Mr. Khataw.

[75] As was the case with Ms. Khataw, I similarly find that Mr. Khataw failed to file an asset list and affidavit within the time required by the Order, as alleged, but accept that he did so before the present applications were brought.

[76] While his conduct is, strictly speaking, a contempt, in the circumstances it does not warrant any sanction by this Court.

ii. Prospera Account

[77] On September 8, 2023, it was disclosed in an email from Mr. Gill that Mr. Khataw had breached the Order by using the Prospera Account:

I understand Mr. Khataw opened a bank account after the Freeze Order was granted for the sole purpose of dealing with his monthly disbursement. He has advised that the account has now also been frozen. He is not able to access the funds in the account.

[78] Mr. Khataw notes that his counsel was mistaken in stating that he opened the account after the Order was granted, as the Prospera Account had existed since no earlier than 2019 and was noted on the "informal" asset list emailed to plaintiffs' counsel on May 5, 2023, by Mr. Ian Bownick, articulated student at RTG.

[79] Mr. Khataw asserts that the Prospera Account was not frozen immediately following the Order, and deposed that he was under the mistaken impression that the account was able to be used for a limited purpose given the fact that it was not suspended.

[80] In the result, and on the basis of Mr. Khataw's explanation, I am not prepared to find that Mr. Khataw is in contempt of this Court for the use he made of the Prospera Account.

iii. Khalsa Account

[81] In his affidavit affirmed on October 10, 2023, Mr. Khataw deposed, in part, that:

16. Given the concerns expressed by my counsel in the September 8 email, I opened another bank account on September 1, 2023, at Khalsa Credit Union ("Khalsa Account"). Previous to opening the Khalsa Account but subsequent to the freezing of the Prospera Account my counsel provided my monthly living expense to me in cash. I signed a receipt for funds issued by my counsel.
 17. I now understand that I should not have opened this account without the express consent of the Plaintiff and/or court.
 20. I have no difficulty in conceding I may have committed technical breaches of the Mareva Order based on the above information. However, my intent and my substantive actions have demonstrated that I am respectful of the purpose of the Mareva Injunction.
- [82] I find that in opening the Khalsa account, Mr. Khataw deliberately acted contrary to the terms of the Order in contempt of this Court.

D. Relief

- [83] In light of these findings in respect of Ms. Khataw, Mr. Khataw, and various other defendants, I turn now to the relief sought.
- [84] As I have indicated above, none of the defendants have filed any response to the NOCC. An order requiring that these proceedings continue as if no defence or appearance has been filed would therefore be inappropriate, and I decline to make such an order.
- [85] I also decline to order security for costs from Ms. Khataw or BRK or for the production of documents set out in paragraph 29(d) and (e) above, as the plaintiffs have their entitlement to document discovery and production under the Rules.
- [86] In terms of the relief sought against Mr. Khataw, I see no basis upon which I should reduce the monthly sum of \$3,500 to \$1,000 with respect to him, and decline to do so.
- [87] I will, however, order that BRK, Ms. Khataw, and Mr. Khataw provide affidavits with supporting documents detailing:
- a) the amount transferred to RTG;
 - b) the source of the funds transferred to RTG;
 - c) the date(s) that all monies were transferred to RTG; and,
 - d) details of the arrangement in place with RTG relating to its funding of the defendants, including BRK and Ms. Khataw.
- [88] As I did not receive fulsome submissions as to the matter of costs, I will adjourn that part of the application and hear those submissions when I hear submissions as to sanctions.

VI. The Funding Application

- [89] The plaintiffs argue that the monies held in two accounts belonging to Inovo belong to them and seek orders that those monies be paid to them.
- [90] On the evidence before me, I find that the TD Trust US dollar bank account of Inovo ending in 797 was the account utilized by Mr. Khataw to deposit funds that he received from or on behalf of Mr. Gokal and/or EAM to be invested in the cod liver fish oil enterprise.
- [91] The evidence also shows that more than \$1.3 million USD was deposited into that account from funds received from or on behalf of Mr. Gokal or EAM. None of those funds were ever utilized for the purchase of cod liver fish oil. Instead funds from that account were used to pay BRK the sum of \$100,019.90, Raza Khataw the sum of \$34,009.95, Bakhtiar the sum of \$30,009.95 and Ms. Khataw the sum of \$53,905.45.
- [92] A draft in the amount of \$270,000 USD was paid from this account to Mr. Khataw on April 5, 2023.

- [93] The evidence before me on these applications was that this account held approximately \$1 million USD, but in an application that I heard subsequently in this case, it was apparent that further withdrawals from this account may have taken place since these applications were heard.
- [94] In his affidavit sworn October 12, 2023, Mr. Gokal deposed that:
2. The money that I borrowed to fund the fish oil business was partly my own and partly borrowed from lending institutions. The money that was borrowed by myself and my company, EAM Global that was invested in the fish oil business was personally guaranteed by myself.
 3. I discovered earlier this year that the fish oil business was a ponzi scheme perpetrated by Azim Khataw with the assistance of Fatim Khataw and since that time I have been trying my best to service the interest on the debt that I borrowed, but I am unable to keep up with the payments and am now likely going to be forced into bankruptcy by the lending institutions.
 4. The entirety of the monies that are held in the frozen accounts for the defendant companies came from me on the understanding that it was going to be used for the purchase and sale of fish oil. That never happened.
 7. Attached as Exhibit "A" to this my affidavit are documents that trace \$270,000.00 USD that I paid to the defendant, Azim Khataw, for the purchase of fish oil and that money ended up in his personal bank account at the Bank of Nova Scotia ending in 7285. The documents include:
 - a. Email dated 11 December 2022 from Azim Khataw requesting USD \$1,504,800.00 to cover this shipment;
 - b. On 12 December 2023, DBS bank statement showing me transferring \$1,304.800.00 USD to Giotto Trade;
 - c. On 12 December 2023, a text message from Azim Khataw confirming receipt of the funds;
 - d. On 12 December 2023, a transaction recorded in the Giotto Trade RBC account statement showing the funds being deposited
 - e. On 12 December 2023, there is \$1.3m USD transferred to the Inovo account held at TD and confirmed in the TD account statement;
 - f. On 5 April 2023, a draft is made out to Azim Khataw in the amount of the \$270,000.00 USD;
 - g. That draft is deposited in Azim Khataw's Bank of Nova Scotia ("BNS") account ending in 7285; and
 - h. The BNS account presently has the \$270,000.00 USD frozen.

8. The \$270,000.00 USD belongs to me and I am seeking that those funds be returned to me immediately, which will help me to continue working with my creditors and hopefully postpone bankruptcy.
- [95] I accept the plaintiffs' claim and find that at least \$991,640.79 USD of the funds deposited to this account are the property of the plaintiffs. There is no claim to entitlement to the funds in this amount by any of the defendants.
- [96] I am not prepared to grant the order sought with respect to the sum of \$24,235.08 USD at this time, as I am not presently persuaded that those funds were used for a purpose that was not permitted by the Order.
- [97] I do, however, order that TD Canada Trust immediately pay up to \$991,640.79 USD from the funds remaining in the Inovo account ending in 797 to the plaintiffs' solicitor, George Douvelos, to be held in trust for the benefit of the plaintiffs without any condition on that release. I say "up to" in case the recent withdrawals have reduced the balance in the account to below \$991,640.79 USD, in which case the remaining balance in that account is to be paid to Mr. Douvelos, in trust for the benefit of the plaintiffs.

VII. Sanctions

- [98] In anticipation of my decision, counsel for the plaintiffs proposed that I impose certain sanctions, while counsel for Ms. Khataw proposed that the matter of sanctions be deferred until my decision had been communicated to the parties.
- [99] I find that the approach proposed by Ms. Khataw with respect to sanctions is preferable, as it allows for submissions with respect to my findings. I will therefore invite written submissions from counsel for the plaintiff, to be filed and served within two (2) weeks of the date of the reasons for judgment. Both counsel for the defendants are to separately reply thereto within two (2) weeks of the receipt of the plaintiffs' submissions. Any reply thereto by the plaintiffs must be filed and served within one (1) week of their receipt of the defendants' submissions.

"The Honourable Chief Justice Hinkson"

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