

CANADA / JUDGMENT

# Hazen v. Hazen

2022 BCSC 1900

## COURT

Supreme Court of British Columbia

## DECIDED

12 July 2022

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2022 BCSC 1900 Hazen v. Hazen IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Hazen v. Hazen, 2022 BCSC 1900 Date: 20220712 Docket: E220137 Registry: Vancouver Between: Natasha Camille Hazen also known as Natasha Camille Sherman Claimant And Shawn Thomas Hazen, The Hazen Family Trust, Haztech Energy Corp., Haztech Industrial Services Ltd., 102127605 Saskatchewan Ltd., Haztech USA LLC - Wyoming, Haztech USA LLC - Texas, Haztech USA LLC - Colorado, Haztech USA LLC - Nevada and ABC Corporation Respondents Corrected Judgment: The discussion points at paras. 17-28 of the judgment were removed on November 9, 2022. Before: The Honourable Justice Tammen Oral Reasons for Ruling Re Application for Various Relief Related to Breaches of Court Orders In Chambers (Hearing proceeded via videoconference) Counsel for Claimant: L. MacLean, Q.C. Counsel for the Respondent, Shawn Hazen: L.S. Klass No other appearances Place and Date of Hearing: Vancouver, B.C. July 8, 2022 Place and Date of Ruling: Vancouver, B.C. July 12, 2022

- [1] THE COURT: This is a case in which fines or other monetary penalties are appropriate in order to bring home to the recalcitrant personal respondent, Shawn Hazen, the need to comply with court orders. There is no doubt that Mr. Hazen is the controlling mind of at least the main corporate respondent, Haztech Energy Corp. His own affidavit states that he is the sole owner. He is thus in a position to ensure that the payments required to be made to the claimant by the corporate respondents are made in a timely manner. He has failed to do that repeatedly.
- [2] For many of the months between January-June 2022, the payments were simply late and were only made after reminders or demands from claimant's counsel. Of greater concern, since the present application was filed, the payments have ceased altogether. The notice of application was filed on June 28, 2022, when the June payment was 28 days late. The July payment was coming due in two days. With full knowledge of those facts, Mr. Hazen agreed to extend the original order of Master Harper (the "Harper Order") indefinitely on June 30, 2022. At the time of the hearing on July 8, 2022, no payments had been made for either June or July. Thus, knowing that the claimant was seeking declarations of breach, rather than bring himself into compliance, the respondent has taken the opposite approach and failed to make the required payments.

- [3] In his affidavit filed just prior to the hearing, the respondents did not address his reasons for non-compliance, nor give any assurances about steps being taken to give the court comfort that there would not be further breaches. At the time of hearing, through counsel, the respondent made certain assurances, in effect attempting to negotiate with counsel and the court to secure an adjournment of this hearing. The promises then made by the respondent come under the colloquial heading of too little, too late.
- [4] The respondent's affidavit also failed to address the ability of the family-owned businesses to make the required payments. The financial statements for Haztech Energy Corp. appended to his affidavit certainly show good liquidity and seeming ability to pay. The net income for 2021 was almost \$4 million, and the retained earnings were close to \$3.4 million.
- [5] The respondent has also failed to make the financial disclosure required by the order made at a judicial case conference (JCC) on May 16, 2022 (the "JCC Order"). I therefore make declarations that Mr. Hazen has committed the following breaches of that order:
- a) failure to provide a list of documents within 30 days.
  - b) failure to provide the corporate financial statements for Haztech Energy Corp. and Haztech Industrial Services within 14 days.
  - c) failure to provide a Form F8 financial statement within 30 days.
- [6] I cannot find any other deliberate breaches of the JCC Order as urged by counsel for the claimant on the evidence before me.
- [7] As for the failure to make the payments of \$50,000 per month on the 1st day of each month, I am not persuaded that there was deliberate non-compliance related to the month of January. There is some ambiguity in the ex parte order, which I resolve in favour of the respondent. It is not surprising that he needed to be reminded of his obligation for that month.
- [8] The payment for March 2022 was eight days late, April 2022 was five days late and May 2022 was one day late. As noted, there has been no payment for June or July 2022. On April 29, 2022, Master Vos ordered that the Harper Order be extended to June 30, 2022 (the "Vos Order"). I make a declaration that there has been a breach of the Vos Order. This breach relates to the non-payment for the month of June 2022.
- [9] I make a further declaration that there has been a breach of the June 30, 2022 order of Justice Skolrood (the "Skolrood Order"), extending the Harper Order until further order of the court. The respondent continues to be in breach of the Skolrood Order by failing to make the required July 2022 payment.

- [10] Although the respondent says, again through counsel, that he intends to apply to have the Harper Order varied or set aside, he has not filed an application in that regard. Rather, he has consistently consented to extensions of the order, yet failed to adhere to its terms. For that, I intend to impose monetary penalties pursuant to s. 230 of the Family Law Act, S.B.C. 2011, c. 25 [FLA]. The Harper Order was made pursuant to s. 91 of the FLA, and thus s. 230 applies.
- [11] The maximum a party may pay is \$5,000, which may be either a fine (FLA, s. 230(2)(b)(iii)) or an amount paid to or for the benefit of the other party or a child (FLA, s. 230(2)(b)(ii)). I order that Mr. Hazen pay \$25,000 to the claimant pursuant to s. 230(2)(b)(ii). That equates to \$5,000 for five separate breaches, three related to the JCC Order and two related to the Vos Order and Skolrood Order. I am not imposing penalties directed at the tardy payments for March, April and May 2022. The \$25,000 is payable no later than 4:00 p.m. July 19, 2022.
- [12] I am also ordering pursuant to s. 230(2)(a) of the FLA that the respondent post monetary security. The claimant sought an amount of \$500,000 as security for the payments due for the ten months commencing August 1, 2022. I intend to order security in the amount of \$300,000, sufficient to cover six months. That sum may be paid by Mr. Hazen from his personal bank accounts or pursuant to his direction by Haztech Energy Corp. It is to be paid into the trust account of counsel for the respondent, Mr. Klass, by no later than 4:00 p.m. on August 15, 2022. Thereafter, respondent's counsel shall make the required distribution of \$50,000 per month to the claimant on the first day of each month commencing September 1, 2022.
- [13] I also expect, although it is not a term of my order, that the payments for June and July 2022 will be made forthwith and that there will be a payment on August 1, 2022. Those payments are all required pursuant to previous orders.
- [14] Finally, I award special costs on a solicitor-and-client basis to the claimant for this application and all matters necessary and incidental to ensuring compliance with the previous orders.
- [15] To be clear, those additional matters include reminder letters by counsel and other steps taken to remedy non-payment or late payment but not the discrete applications made to extend the original ex parte order. Those applications were necessitated not by the conduct of the respondent but by the time-limited nature of the original ex parte order.
- [16] That concludes my ruling. "Tammen J."

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