

CANADA / JUDGMENT

Maryoush v. Ibrahim

2023 BCSC 95

COURT

Supreme Court of British Columbia

DECIDED

20 January 2023

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2023 BCSC 95 Maryoush v. Ibrahim

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Maryoush v. Ibrahim,

2023 BCSC 95

Date: 20230120

Docket: E181717

Registry: Vancouver

Between:

Marwa Amir Maryoush

Claimant

And

Khdor Ibrahim, also known as Khodre Ibrahim, also known as Khadar Ibrahim,

also known as Khodor Ibrahim, also known as Kodor Ibrahim, also known as

Kador Ibrahim, also known as Hidir Ibrahim, Highrise Pro Holdings Inc.,

Spider Holding Ltd., Spider Solutions Ltd., Fevzi Taha Cetinkaya,

Van Pro Solutions Ltd., Extreme Power Wash Ltd., Jihan Malla Ibrahim,

AAA West Services Ltd. and Emina Cetinkaya

Respondents

And

Lloyd's Sky Contractors Inc., also known as Van Pacific Solutions Ltd.

and Kador Contracting Group Ltd.

Respondents by Counterclaim

Before: The Honourable Mr. Justice Coval

Reasons for Judgment

Counsel for the Claimant:

L.R. Nambiar

Counsel for the Respondent, Khdor Ibrahim:

P. Verrier

Place and Dates of Hearing:

Vancouver, B.C.

April 4-5, May 16, July 6-7

and November 17, 2022

Dates of Written Submissions Received:

December 2 and 5, 2022

Place and Date of Judgment:

Vancouver, B.C.

January 20, 2023

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Introduction

- [1] In this family law case, the claimant, Ms. Maryoush, seeks remedies for the continued contempt of court by her ex-husband, Mr. Ibrahim.
- [2] In reasons for judgment of January 14, 2022, at 2022 BCSC 59 ("January 2022 Judgment"), I found Mr. Ibrahim in contempt for failing to comply with support orders made in August and November 2020. I found Ms. Maryoush had proven, beyond a reasonable doubt, that Mr. Ibrahim was able to pay materially more support than he had to date and he was ordered to purge his contempt within 30 days.
- [3] I also found, however, that it was not established beyond a reasonable doubt that Mr. Ibrahim had the means to pay all his arrears. He was therefore given leave, in response to any future penalty application by Ms. Maryoush, to provide complete, detailed disclosure of his financial position and a payment plan. I said that, if he did so, and paid his arrears accordingly, that could be considered when deciding whether he remained in contempt and, if so, the appropriate penalty.
- [4] In response to the January 2022 Judgment, Mr. Ibrahim paid Ms. Maryoush a lump sum of \$20,000, increased his monthly payments from \$567 to \$3,400, and provided extensive financial disclosure. He submits that he has paid everything he can afford and more, going into debt on his credit cards and to his friends to do so. He submits that his arrears, which now exceed \$250,000, are based on an imputed income artificially inflated by Ms. Maryoush and her family members, and that his income has almost disappeared due to injuries from a car accident and business difficulties.
- [5] Ms. Maryoush argues that her evidence demonstrates, beyond a reasonable doubt, that Mr. Ibrahim has diverted business revenue and hidden money and assets with family members, all to avoid paying his arrears. Mr. Ibrahim denies this.
- [6] Ms. Maryoush seeks a five-year term of incarceration, with Mr. Ibrahim to serve a minimum of 60 days and the balance to be suspended if and when he pays the full arrears.
- [7] For the reasons that follow, I find the question of whether or not Mr. Ibrahim has the ability to pay more of his arrears than he has since the January 2022 Judgment is unsuitable for determination on the affidavit evidence alone. In my view, that determination requires credibility assessment regarding numerous disputed facts.
- [8] I reach this conclusion reluctantly. In these proceedings, Mr. Ibrahim has demonstrated a strategy of avoiding his legal obligations to Ms. Maryoush and their daughter, and shown disrespect for orders of the court. If his ability to pay more than he has since the January 2022 Judgment is ultimately demonstrated, the consequences for him will be serious.

- [9] Under Rule 21-7(13) of the Supreme Court Family Rules [SCFR], Ms. Maryoush is at liberty to schedule cross-examination of Mr. Ibrahim on his affidavits. Alternatively, if she wishes, she may transfer the issue of his ability to pay and punishment for contempt to the trial list under Rule 10-3(7)(d).

The Parties

- [10] Ms. Maryoush and Mr. Ibrahim have a daughter, Sophia, who is almost five. They began their marriage-like relationship in December 2012. On August 24, 2013, they performed a marital ceremony and were formally married on March 3, 2014. They separated on May 30, 2018 and divorced on December 18, 2022.
- [11] They have been in this litigation, which includes numerous family members and family businesses, since their separation.
- [12] The corporate parties are family companies in the business of construction and building services or real estate holding. They and the other parties are summarized in the January 2022 Judgment, at paras. 6-13.
- [13] For present purposes, suffice it to say that Spider Holding Ltd. ("Spider Holding"), Van Pro Solutions Ltd. ("Van Pro") and Extreme Power Wash Ltd. ("Extreme") are owned and controlled by Ms. Maryoush and her two brothers, Hisham and Muthana Maryoush ("Maryoush Family Companies"). Mr. Ibrahim initially owned and controlled Spider Holding and Extreme but transferred ownership to the Maryoush family in 2017 and 2018 as part of the separation.
- [14] Spider Solutions Ltd. ("Spider Solutions"), Van Pacific Solutions Ltd. ("Van Pacific") and AAA West Services Ltd ("AAA") are also in the construction and building services business. On paper, they are owned by Mr. Ibrahim's nephew, Fevzi Cetinkaya. Before the settlement of many of the claims in this action, as described below, Ms. Maryoush alleged that they were owned and controlled by Mr. Ibrahim, which he denied.
- [15] Spider Solutions and Van Pacific were incorporated in December 2018, just after Mr. Ibrahim transferred away ownership of Spider Holding and Extreme. Ms. Maryoush alleged that he put ownership in the hands of his nephew to hide his business income and avoid the August 27, 2018 freezing and disclosure order against him in these proceedings. She says he did the same again, a year later, with AAA West Services Ltd ("AAA"), after she sued Spider Solution and Van Pacific.
- [16] Highrise Pro Holdings Ltd. ("Highrise") is a real estate holding company, incorporated by Mr. Ibrahim in 2009 and then transferred to his sister, Jihan Malla, in 2012. Before the settlement referred to above, Ms. Maryoush alleged Highrise was also owned and controlled by Mr. Ibrahim.

- [17] Finally, there is Kador Contracting Group Ltd. ("Kador"), also in the construction service business, and owned and controlled solely by Mr. Ibrahim.

Procedural History

- [18] The litigation history is summarized in paras. 15-21 of the January 2022 Judgment.
- [19] In April 2022, just before trial, all parties except Mr. Ibrahim and Kador settled the litigation at a mediation, pursuant to an agreement dated April 7, 2022 ("Settlement Agreement"). Ms. Maryoush received a 67.5% interest in the net proceeds of sale of a warehouse property at 814 East Hastings Street, Vancouver, owned by Highrise. The property is currently listed for sale.
- [20] In exchange, Ms. Maryoush and the Maryoush Family Companies abandoned their claims against Spider Solutions, Van Pacific, AAA and Highrise (the "Disputed Companies"), including the allegations that they were beneficially owned and controlled by Mr. Ibrahim and that his family members had assisted Mr. Ibrahim hide his income and assets.
- [21] Mr. Ibrahim and Kador did not participate in the mediation. The Settlement Agreement is expressly without prejudice to the claims of all parties against them. As a result of the settlement, Ms. Maryoush adjourned generally the April 2022 trial.

Mr. Ibrahim's Contempt

- [22] In the January 2022 Judgment, I found Mr. Ibrahim in contempt of the August 27 and November 4, 2020 support orders ("Support Orders"). To that point, his arrears exceeded \$150,000. He was paying only \$567 in monthly child support and no spousal support, despite the Support Orders requiring \$4,000 in monthly child support and \$8,939 in monthly spousal support retroactive to June 1, 2018.
- [23] The January 2022 Judgment summarized the finding of contempt and the issues regarding his ability to pay as follows:
- [50] The imputed income may well be inflated as Mr. Ibrahim claims. That is for him to establish in an application to vary, which his counsel advises he intends to pursue. Nevertheless, the financial evidence described above indicates, beyond a reasonable doubt, an ability to pay materially more towards compliance with the Support Orders than he has, and therefore he is in deliberate contempt of those orders.
- [51] There are other financial allegations against Mr. Ibrahim that are for trial, and so not taken into account at this stage. If proven, however, they would significantly increase his ability to pay and exacerbate his contempt of court. They include the claimant's allegations of: (a) his alleged beneficial ownership of the [Disputed] Companies; (b) his sham family debts; and (c) his sham transfer of Spider Holding to Hisham Maryoush.

- [58] Mr. Ibrahim's contempt of the Support Orders is a continuation of his refusal to respect the orders of this court and his apparent determination to deprive Ms. Maryoush and their daughter of the support as ordered. These are serious transgressions, and manifest disrespect for the Court and a strategy towards the claimant and their daughter which the Court must not abide. In sum, Mr. Ibrahim's failure to respect the Support Orders requires punishment.
- [59] In my view, the appropriate remedy in such circumstances is that Mr. Ibrahim must purge his contempt or face incarceration. I therefore order that, within 30 days, he must purge his contempt by paying Ms. Maryoush the full arrears of the Support Orders. If he fails to do so, Ms. Maryoush may apply for his incarceration or any other remedies she wishes to seek. The reason for this follow-up application is that, in my view, the parties have not yet provided adequate submissions regarding the appropriate penalty in British Columbia for this type of contempt.
- [60] There remains the issue that, although I have found Mr. Ibrahim in contempt because he is able to pay materially more support than he has to date, I have not found it to be established beyond a reasonable doubt that he has the means to pay his entire arrears within 30 days.
- [61] I therefore give him leave, in response to a penalty application by the claimant, to provide complete, detailed, good faith disclosure of his financial position and a plan for repayment of all arrears. If he does so, and pays all arrears accordingly, this may be considered in deciding whether he remains in contempt and any appropriate penalty. The claimant is of course at liberty to challenge his evidence and position in this regard. Regarding Mr. Ibrahim's position that his imputed income is too high, in my view the obligation rests with him to make a variation application without further delay.

Position of the Parties

- [24] Ms. Maryoush contests Mr. Ibrahim's evidence of inability to pay. Her position is that the evidence demonstrates beyond a reasonable doubt that he has used his family members to hide assets and divert income.
- [25] She seeks a five-year term of incarceration, with Mr. Ibrahim to serve a minimum of 60 days and the balance to be suspended if and when he pays the full arrears. She asks that the suspension of sentence remain in place for as long as Mr. Ibrahim's support obligations continue and he be imprisoned upon any future failure to pay. She also seeks costs of the contempt proceedings assessed at 90% of actual costs.
- [26] As mentioned above, in response to the January 2022 Judgment, Mr. Ibrahim paid Ms. Maryoush a lump sum of \$20,000, and increased his monthly support payments from \$567 to \$3,400 per month starting April 1, 2022.

- [27] In his initial affidavits filed for this application, Mr. Ibrahim acknowledged making poor decisions throughout this litigation, including not paying enough support. He made extensive financial disclosure and submitted that it demonstrated inability to pay anything more in response to the January 2022 Judgment than the \$20,000 lump sum and \$3,400 per month.
- [28] His evidence was that he had been unemployed since June 2022, due to injuries from a car accident. He claimed to be living with friends and making support payments from credit cards and loans from friends, some of whom he identified and put in evidence their cheques and money transfers to him.
- [29] Mr. Ibrahim's affidavits claimed he paid a steep price for his misconduct in the litigation, including having his pleadings struck, judgment granted against him to Ms. Maryoush and to the Maryoush Family Companies, support orders made based on a highly inflated deemed income, and his residential property in Deep Cove, that he purchased before the marriage, sold with all proceeds paid to Ms. Maryoush.
- [30] His financial disclosure included a new Form F8 financial statement, filed March 22, 2022. He produced his 2018-2020 income tax returns and notices of reassessment. He provided what he claimed were all his bank and credit card statements, back to January 2022. His accountant prepared substantial financial disclosure from Kador, including an accounting of the company's net income available to Mr. Ibrahim for support purposes in 2021. He claimed not to have worked in 2022 due to his injuries.
- [31] Mr. Ibrahim continued to maintain that the income imputed to him in the Support Orders was much inflated, due to false T4 Statements of Remuneration issued to him by the Maryoush Family Companies. He says the T4s they issued treated as income to him payments that were clearly reimbursement of legitimate business expenses he incurred while working for the Maryoush Family Companies, such as for construction materials. He submits that he cannot, however, pay the legal fees for applying to vary the imputed income or Support Orders, and he abandoned his appeal of those Orders.
- [32] Mr. Ibrahim described the alleged unfairness of his imputed income in his 17th affidavit, sworn March 30, 2022:
25. The Claimant prepared my taxes in 2016 and 2017 and I had a declared annual income of \$60,000 with her friend's accountant that she hired. Attached and marked as Exhibit "B" is a copy of the email conversation between the Claimant and her accountant friend. At that time the Claimant had no issue with my declared income. However, after our separation; she made an inaccurate T-4 slip where my income jumped up from \$60,000 to \$375,000. She has the ability to create T4 slip at the time that the Claimant's is appointed as Director of the company Extreme Power Wash Ltd. and Spider Holding Ltd. and the Claimant herself posted \$133,000 in 2018 on my CRA account even without providing me a T4 slip. The Claimant provided 2 T4 slips from 2 different companies in 2018 with amounts that I have never received. One of them from Van Pro Solutions Ltd. for \$133,000 which is posted on my CRA

account and the second one is \$375,000 which has never been posted on my CRA account. I also worked in 2019 for a 7 months period and the Claimant never gave me any T4 slip for the period I worked for the Claimant's company. And because of all the false T slips that the Claimant created, I have paid a very high amount of child and spousal support which I can not afford and caused my land in Deep Cove to be sold to pay the child support.

- [33] His 18th affidavit, sworn March 30, 2022, in which he agreed to pay a \$20,000 lump sum towards arrears and \$3,400/month ongoing support, said this about his ability to pay:
35. As seen by my evidence I do not have hidden funds or the ability to simply pay the arrears.
36. I am living off credit cards and borrowing funds to pay legal costs.
49. I am not even making enough to pay this amount so I would have to likely borrow the funds but I wanted to pay something to stay out of jail and have a chance to vary the support and arrears. I was willing to go further into debt because if support was reasonable and the arrears reduced, I could make a realistic effort to address things and hopefully get caught up and get my license and life back.
62. I am also agreeable to paying \$20,000 within 30 days. I need 30 days because I do not have these funds and will have to borrow from friends or family.
63. I desperately need to bring an application to vary the support awards and arrears.
91. I acknowledge and accept I have support obligations but I currently lack the means to pay the court ordered amounts and will continue to lack the means to pay those amounts until the amounts and arrears are varied.
92. I will endeavor to keep current with the payments the court determines are reasonable when examining the income of the Claimant and myself as I am hopeful it will more accurate[sic] reflect the reality of each party's income.
- [34] In September 2022, roughly six months after swearing this affidavit, Mr. Ibrahim reduced his monthly support payments. His payments from September to November 2022 were \$1,700, \$1,320 and \$1,037, respectively. He explains this in his 20th affidavit, sworn December 2, 2022:
8. I am paying every month, less than what the judge asked for, but much more than I can afford. I have no driver's license for year and a half. I am not working due, in part to the injuries I sustained. More importantly I cannot get work as no one will work with me. Any place that I had a relationship with was dragged into this matter by the Claimant or the Claimant had advised them that I was a criminal. The parties I used to be able to reach out to for work will not speak to me out of fear of being drawn into this litigation. Cleaning high-rises is a small community and word gets around fast. I have a horrible reputation due to the Claimant making all sorts of allegations to possible employers. I cannot get any work so I am unable to pay the support.

11. I am paying as much as I can afford. I simply do not have the income to pay any more than I am.
12. I simply cannot afford the support payments as I have borrowed from every person I can think of to assist me in this matter. I have no funds left, no property, no credit and I do not currently have the funds for the lawyer to assist in trying to adjust the arrears as I have been advised this would need to go to a lengthy trial.

Governing Law

- [35] In *Airside Event Spaces Inc. v. Langley (Township)*, 2022 BCCA 393, Fitch J.A. (in Chambers) summarized the elements of civil contempt and the principles of a contempt application:
- [24] As explained in *Carey v. Laiken*, 2015 SCC 17 [Carey] at paras. 32-35, civil contempt has three elements which must be established beyond a reasonable doubt:
- a) The order alleged to have been breached must state clearly and unequivocally what should and should not be done;
 - b) The party alleged to have been in breach must have had actual knowledge of the order; and
 - c) The party allegedly in breach must have intentionally done the act that the order prohibits or intentionally failed to do the act that the order compels.
- [25] Intention to breach the order may be inferred from the circumstances of the case: *North Vancouver (District) v. Sorrenti*, 2004 BCCA 316 at para. 15. In practice, "all that is required to establish civil contempt is proof beyond a reasonable doubt of an intentional act or omission that is in fact in breach of a clear order of which the alleged contemnor has notice": *Carey* at para. 38.
- [26] The principles governing a contempt application are well-settled. They were summarized, albeit in a non-exhaustive way, in *Peel Financial Holdings Ltd. v. Western Delta Lands Partnership*, 2003 BCCA 551 at para. 18:
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

[Citations omitted.]

- [27] As noted in *Carey*, contempt of court rests on the power of the court to uphold its dignity and process. Civil contempt grounded in disobedience of a court order is a very serious matter. It constitutes an affront to the court and a challenge to the rule of law: *Frith v. Frith*, 2008 BCCA 2 at para. 32. A contempt finding transcends the dispute between the parties. It strikes at the heart of the administration of justice.
- [28] At the same time, the contempt power is discretionary and should not routinely be used to obtain compliance with court orders: *Carey* at para. 36. It is a "heavy, blunt tool"--one to be used with restraint and as a measure of "last resort": *Morasse v. Nadeau-Dubois*, 2016 SCC 44 at para. 21; *Taherkhani v. Este*, 2020 BCCA 226 at para. 32, citing *Hokhold v. Gerbrandt*, 2016 BCCA 6 at paras. 31-32.
- [29] The primary purpose of imposing a sanction for civil contempt is coercive--to secure the contemnor's compliance with the court order: *Carey* at paras. 40-41.
- [36] Ms. Nambiar quite appropriately acknowledged that inability to pay is a legitimate excuse for failure to comply with a court order for the payment of money. To prove contempt of such an order, ability to pay must be established beyond a reasonable doubt (*Swann v. Swann*, 2009 BCCA 335, at paras. 10-14).
- [37] Ms. Nambiar relies, however, on the principle that the defence does not apply if the inability arises from the person's own actions contrary to the order. In *Carey v. Laiken*, 2015 SCC 17, Justice Cromwell said:
- [41] Where, as here, the person's own actions contrary to the terms of a court order make future compliance impossible, I fail to see the logic or justice of requiring proof of some higher degree of fault in order to establish contempt.
- (See also *Power v. Power*, 2015 NSSC 258 at paras. 50, 59.)
- [38] The case law is clear that, if determination of whether contempt has occurred requires credibility findings regarding disputed facts, then the matter should be referred to the trial list or, at a minimum, cross-examinations ordered. As stated in *XY, LLC v. Canadian Topsires Selection Inc.*, 2015 BCSC 988:
- [24] It appears to be settled law that where a contempt matter has controverted facts relating to matters essential to whether a party is in contempt, and credibility findings are necessary, it should be referred to the trial list: *Denman Island Trust v. 4064 Investments Inc.* 2000 BCSC 1645, relying on *R. v. Jetco Manufacturing Ltd. and Alexander* (1987), 57 O.R. (2d) 776 (C.A.).
- [39] For similar outcomes, see *L.H.K. v G.D.U.*, 2004 BCSC 728, at para. 1, and *British Columbia (Workers' Compensation Board) v. Skylite Building Maintenance Ltd.*, 2013 BCSC 1666, at paras. 41-42, and 2018 BCSC 474 at para. 64.

Mr. Ibrahim's Ability to Pay

Mr. Ibrahim's income

[40] Mr. Ibrahim's tax returns indicate the following taxable income, which he contrasts with the \$375,000 annual income imputed to him by the Support Orders retroactive to 2018:

2018

\$84,000

2019

\$41,000

2020

\$57,500

2021

WCB income \$15,716.52

Net income available from Kador, before tax, \$122,011.48

Personal tax return not yet prepared.

2022

Unemployed

[41] As indicated, he claims total income in 2021 of \$137,728, made up of \$122,011.48 available to him from Kador and the rest from WCB payments received after his June 2021 motor vehicle accident.

[42] He relies on this to justify his monthly support payments of \$3,400 since the January 2022 Judgment. He argues that, using his income of \$137,728, and assuming an income of \$30,000 for Ms. Maryoush, \$3,400 represents his child support obligation under the Guidelines (\$1,367) plus low-end spousal support (\$2,090).

[43] Ms. Maryoush responds that her 2021 income was \$26,000, not \$30,000, and even accepting Mr. Ibrahim's figures, the mid-range spousal support is \$2,555 and high-end is \$3,006.

[44] Mr. Ibrahim's affidavits explained the substantial drop in his income since mid-2019. It is undisputed that, in July 2019, he fell out with Ms. Maryoush's brother, Hisham Maryoush, and ceased working as a manager for Spider Holding and Van Pro. As a result, he claims to have lost access to key equipment, major customers (whom he names) began to avoid him for fear of being caught up in this litigation, and Kador was reduced to smaller sub-contracting work such as power-washing and window-cleaning. I note that at least two customers have been sued by Ms. Maryoush and the Maryoush Family Companies, and others have been caught up in disputes between the companies about which entity to pay for services.

- [45] Mr. Ibrahim claims that, in June 2021, he was injured in a motor vehicle accident rendering him unable to work ever since. He claims that, while stopped at a red light, his vehicle was struck from behind by a large truck, causing him back and shoulder injuries, headaches, and inability to sit or stand for long periods. He says the accident and years of hard manual labour have taken their toll and he is unsure if he can ever return to the physical labour jobs he used to do. In July 2021, the Family Maintenance Enforcement Program seized his driver's licence, which he says further hindered his ability to work.
- [46] As a result of the accident, Mr. Ibrahim is receiving WCB benefits of \$1,457.12 every two weeks. The bank statements he produced for himself and Kador show negligible savings and credit card debt of around \$23,000.
- [47] Mr. Ibrahim submitted detailed financial statements for Kador, recently prepared by his accountant, indicating 2021 income available to Mr. Ibrahim of \$122,011.48. The profit and loss statement itemized costs of goods sold and payments to arm's-length subcontractors, and provided documentary support for the claimed expenses.
- [48] Ms. Maryoush argues that Kador's business expenses are inflated for purposes of calculating support. She says that they include personal benefits that should be added back into revenue and are illegitimate for someone in contempt for insufficient support payments. She pointed to: \$4,336 for insurance, \$906 for meals and entertainment, \$43,000 for legal fees, \$7,708 for automobile, and \$19,787 for truck payments.
- [49] Mr. Ibrahim's affidavits claim the expenses were valid and necessary for Kador's business. The company's leased truck has been returned because of his injuries and loss of his driver's license. The question of adding back, for support purposes, personal benefits paid to him by Kador was addressed by Mr. Ibrahim's accountant. The accountant added back into available income 50% of such expenses, recognizing some portion could be considered personal benefits above and beyond reasonable and legitimate business expenses. I accept this adjustment, which is reflected in the \$122,011.48 figure.
- [50] Ms. Maryoush also argues that Mr. Ibrahim should have been paying support instead of incurring these expenses within Kador. Mr. Ibrahim contends, that such expenses were reasonable and necessary for Kador to run its business and earn income as a construction and building service provider.
- [51] In my view, the only expense that jumps out as potentially unreasonable is the legal fees of \$86,000 paid in 2021 (allocated 50% to Kador and 50% to Mr. Ibrahim). The evidence indicates a further \$9,000 of legal fees in early 2022.
- [52] The legal fees are a difficult issue. While recognizing that Mr. Ibrahim has been the author of his own misfortune in this litigation, it is true that he has faced intense pressure and numerous applications by Ms. Maryoush and the Maryoush Family Companies, including this application seeking five years of imprisonment. The litigation has been complex, involving 15 parties and five sets of counsel. Between them, Ms. Maryoush and Mr. Ibrahim

have sworn 35 affidavits. Family members have also sworn numerous affidavits. The litigation has gone particularly poorly for Mr. Ibrahim when self-represented.

- [53] As mentioned in the January 2022 Judgment, a parent is not entitled to spend significant sums on litigation rather than pay outstanding child support. In my view, the \$86,000 in 2021 was excessive for someone so in arrears of court-ordered support, and this was part of the reason Mr. Ibrahim was found in contempt in the January 2022 Judgment. There is no evidence, however, that he has spent excessively on legal fees since the January 2022 Judgment.
- [54] Ms. Maryoush argues that Kador's financial statements indicated retained earnings of (round numbers) \$35,000 in 2021 and \$14,000 in 2020, which should have been paid towards support. As I understand the accounting evidence, however, this was not cash savings available to the company but rather a calculation of shareholder equity. That was also Mr. Ibrahim's evidence.
- [55] Ms. Maryoush argues that Mr. Ibrahim spent too much on personal items. He paid a personal trainer \$16,000 on July 21, 2021 and owes her \$50,717 more according to his March 2022 financial statement. He travelled to the Middle East from September 2021 to January 2022, and she attached a photo of him in October 2021 at what she says was a luxury resort. She says he sold their boat earlier this year but provided no details or payment from the net proceeds. Her earlier affidavits criticized the boat expenses of around \$6,000 in late 2021.
- [56] Mr. Ibrahim denies any personal relationship with the trainer and says he paid her \$16,000 in 2021 for help with his injuries after his accident. The evidence does not indicate he has paid her anymore since then. He says his trip to Turkey in 2021 was paid for by his brother so he could visit his ill and elderly mother whom he had not seen since the Covid-19 pandemic. He says the photo that Ms. Maryoush claims to be him visiting a luxury hotel was at a Starbucks in Bodrum, Turkey, where he was visiting his brother. I believe his affidavit evidence does not address the sale of his boat, but his 17th affidavit described it as a "1985 Hunter worth approximately \$15,000 to \$20,000."
- [57] The \$16,000 personal training payment in 2021 is excessive for someone in arrears of court-ordered support, and Mr. Ibrahim should have paid some, if not all, of the proceeds of sale of the boat towards his arrears. I am not satisfied, however, at this stage, based just on the affidavit evidence regarding these issues, that they demonstrate, beyond a reasonable doubt, an ability to pay materially more than he has since the January 2022 Judgment, given his evidence that he went into debt on his credit cards and to his friends to pay what has since the Judgment.
- [58] Finally, Ms. Maryoush argues there is no medical evidence supporting Mr. Ibrahim's alleged inability to work. All Mr. Ibrahim submits in support are his family doctor's regular "Physician Progress Reports" to WorkSafeBC and his family doctor's referrals for physiotherapy, kinesiology and personal training. The "Clinical Information" section of the Progress Reports describes significant and worsening pain in his neck, arms, shoulders,

back and hips, headaches, inability to sit or stand for prolonged periods, difficulty with lifting and twisting, and some temporary relief from treatment. The diagnosis is muscle strains, sprains and tears.

- [59] Although I understand Ms. Maryoush's skepticism about Mr. Ibrahim's medical claims, to reject them requires making credibility findings against Mr. Ibrahim that I am unable to do based on this affidavit evidence alone.
- [60] In sum, given how Mr. Ibrahim has conducted himself in this litigation, I do not accept his financial or medical evidence at face value. In my view, however, in circumstances where the facts are heavily disputed and Mr. Ibrahim has provided extensive sworn evidence of his lack of income and savings, these issues cannot be resolved to the standard of beyond a reasonable doubt on affidavit material alone.

Diverted business revenue

- [61] Ms. Maryoush alleges that Mr. Ibrahim improperly lowered his income by diverting business away from himself and Kador to the three Disputed Companies owned on paper by his nephew Fevzi Cetinkaya. Her affidavit described Mr. Cetinkaya as "an inexperienced child" whom Mr. Ibrahim brought to Canada in 2018 to follow all of his instructions without question.
- [62] She alleges that Mr. Ibrahim began to send customers to Spider Solutions in 2018. In late 2018, she learned of this and so added the company to this litigation. She says Mr. Ibrahim responded by diverting revenues to Van Pacific while continuing to pay business expenses from Spider Solutions. In late 2019, she added Van Pacific, and she says that in response he did the same thing again, by directing revenues to AAA. She added AAA to the litigation in November 2020.
- [63] It appears from Ms. Maryoush's evidence that, as of late 2021 and early 2022, the three companies were no longer in good standing and did not provide updated financial statements in the litigation.
- [64] Ms. Maryoush points to AAA's gross revenue in 2020 of \$778,362 and in 2021 of \$1,335,053. She says all of this work should have been done by Kador because Mr. Ibrahim was "fully responsible for directing work to [AAA] and overseeing the projects run by the company." She submits that "at least \$500,000 representing the pre-tax corporate revenue of [AAA] and funds withdrawn from Spider Solutions Ltd. should be assumed to be available to Mr. Ibrahim in determining his ability to pay."
- [65] In the Settlement Agreement, Ms. Maryoush settled her claims against the Disputed Companies, including the allegation that they were owned and controlled by Mr. Ibrahim. The Settlement Agreement required her to dismiss those claims by consent.

- [66] Whether Mr. Ibrahim was the true owner and controller of those companies requires careful examination of the formation, actions and business of the companies and issues of credibility for Mr. Ibrahim and the numerous extended family members involved in the companies, all of whom denied and disputed Ms. Maryoush's allegations. Proof of these allegations, particularly to the standard of beyond a reasonable doubt, would require a trial.
- [67] Recognizing this obstacle, Ms. Maryoush argues, not for findings that Mr. Ibrahim owned and controlled the Disputed Companies, but that he diverted work to them that he could have performed himself within Kador. She argues that the customer contacts were his, and he managed the work, but he diverted the customer contracts to the Disputed Companies to reduce his income and avoid payment of his arrears.
- [68] Mr. Ibrahim's affidavits deny diverting these contracts as alleged. As described above, he claims that, by 2020, he did not have key equipment and his business connections had dried up because Ms. Maryoush and her family told people in the industry he was a criminal and, if they worked with him, they would be dragged into this litigation. The evidence is clear that the Maryoush Family Companies were competing with the Disputed Companies for work at the time and, as mentioned, Ms. Maryoush or the Maryoush Family Companies have sued two customers regarding these issues and others have been caught in disputes about which entity to pay.
- [69] Mr. Ibrahim acknowledged assisting his nephew to develop business and referring work to him, which he claims is similar to what he did for the Maryoush Family Companies before the falling out. He points to the (round numbers) \$70,000 Kador was paid by the Disputed Companies in 2019. He says this was his compensation from the Disputed Companies for his assistance in obtaining and performing these contracts.
- [70] He says that, in 2021, he stopped assisting his nephew's businesses and focused on obtaining whatever work he could for Kador because he needed the money. He says this explains Kador's increased income in the first half of 2021, before his car accident.
- [71] Once again, I do not accept Mr. Ibrahim's evidence on these issues. There is substantial circumstantial evidence suggesting that he either owned and controlled the Disputed Companies or was hiding income there. As mentioned, those claims, as against the Disputed Companies, were settled by Ms. Maryoush in exchange for 67% of the net proceeds of sale of Highrise's Delta warehouse. There is also evidence of Mr. Ibrahim's involvement in obtaining and performing work for the Disputed Companies.
- [72] In my view, however, in the face of the conflicting affidavits, I am unable to find Ms. Maryoush has proven, beyond a reasonable doubt, that Mr. Ibrahim intentionally reduced his income by directing business to the Disputed Companies rather than performing it himself. Such findings require inferences and credibility findings against Mr. Ibrahim and potentially some of his family members, and the rejection of his explanation, described above, that he was unable to perform much of this work himself and was paid \$70,000 for the assistance he gave the Disputed Companies.

- [73] In my view, I cannot make such findings to the requisite level of certainty without seeing Mr. Ibrahim, and perhaps other witnesses, testify and be cross-examined on these issues.

Money diverted to Emina Cetinkaya

- [74] Ms. Maryoush alleges Mr. Ibrahim paid over \$1 million to family members between December 2017 and June 2019, mainly to his sister, Emina Cetinkaya. Ms. Maryoush says these funds remain available to him to pay his arrears.
- [75] Mr. Ibrahim acknowledges making many of these payments to his sister but claims he was repaying a loan from her and her husband. In the litigation, Ms. Cetinkaya supported this version of events. As mentioned, Ms. Maryoush settled her claims against Ms. Cetinkaya and Highrise in the Settlement Agreement.
- [76] Mr. Ibrahim says that, in August 2013, he borrowed US\$825,000 from his sister and brother-in-law to construct an apartment building in Beirut, Lebanon. He claims the project failed due to the well-known problems in Beirut, and the land became worthless. He says that Ms. Maryoush knew of all this during their marriage, including that he was sending money to his sister to re-pay his debt.
- [77] On December 15, 2017, Mr. Ibrahim paid \$460,000 to Ms. Cetinkaya. He says this was partial repayment of his loan. There is no dispute that Ms. Cetinkaya then transferred these funds to Highrise, which used them to purchase the warehouse in Delta. As mentioned, in her settlement with Ms. Cetinkaya and Highrise, Ms. Maryoush will receive 67.5% of the proceeds of sale of this warehouse. Thus, if these were actually funds belonging to Mr. Ibrahim, in a sense Ms. Maryoush has recovered at least some of them.
- [78] On July 16, 2018, he paid a further \$195,000 to Ms. Cetinkaya, which he says was an additional repayment that she used to buy a property for herself in Turkey.
- [79] Ms. Maryoush says the alleged loan is a fiction that Mr. Ibrahim concocted to move money overseas and hide his assets in Ms. Cetinkaya's name. She argues that, although Mr. Ibrahim produced a loan agreement with Ms. Cetinkaya, he provided no evidence of actually receiving the money from her (e.g., in bank records), or that he lost the money on Lebanese real estate as claimed. I believe the loan agreement was not put in evidence, but both counsel described it as purporting to be signed in 2017, confirming the alleged loan, and bringing the balance up to date.
- [80] Ms. Maryoush argues that Mr. Ibrahim's sworn Form F8 financial statements are tellingly inconsistent about the alleged debt to Ms. Cetinkaya. The amount of the alleged debt recorded in the statements changed as follows:
- (a) November 1, 2018: \$650,000;
 - (b) March 29, August 12, November 29, 2019: \$250,000;

(c) April 8, 2020: not mentioned; and

(d) March 18, 2022: \$650,000.

[81] Ms. Maryoush also points to \$360,000 which Van Pacific sent to a friend of Mr. Ibrahim's in Turkey, Yasin Onur, in June 2019. She alleges this was used to purchase a property in Turkey, originally registered in the name of Mr. Ibrahim's sister, Cihan Malla, but later transferred to Fevzi Cetinkaya.

[82] Mr. Ibrahim's affidavits deny all allegations about having any money or property abroad, except for the Lebanese property which he says is now worthless. His evidence is that the loan from his sister exists and, given the passage of time, the only record he has is the loan agreement mentioned above.

[83] Regarding the discrepancy in his Form F8 financial statements, his evidence is that the \$250,000 in 2019 is a typographical error by his prior counsel. In April 2020, he drafted the financial statement himself and says he forgot to include the debt.

[84] Regarding the Turkish property, Mr. Ibrahim says he owns no land in Turkey. He says he was not involved in Mr. Cetinkaya, as principal of Van Pacific, transferring the funds to Yasin Onur.

[85] Once again, Mr. Ibrahim's evidence is highly suspect. One would expect far more documentary support to be available for the large loan from his sister, and his version of events is enormously convenient to his position in this litigation.

[86] In my view, however, to find beyond a reasonable doubt that Mr. Ibrahim has funds hidden overseas from which he could pay his arrears, requires significant inferences to be drawn and credibility findings to be made against him and his version of events. I cannot make such findings to the requisite level of certainty without seeing Mr. Ibrahim, and perhaps other witnesses, testify and be cross-examined on these issues.

Conclusion

[87] I find the question of whether Ms. Maryoush has established, beyond a reasonable doubt, Mr. Ibrahim's ability to pay more than he has since the January 2022 Judgment unsuitable for determination on affidavit evidence.

[88] Ms. Maryoush's application for the incarceration of Mr. Ibrahim for contempt is therefore dismissed, with liberty to re-apply.

[89] Under Supreme Court Family Rule 21-7(13), I order that Ms. Maryoush is at liberty to schedule cross-examination of Mr. Ibrahim on his affidavits. Alternatively, she is at liberty to transfer this issue to the trial list under Supreme Court Family Rule 10-3(7)(d).

"Coval J."

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Prepared on 29 October 2026 · Esheria