

CANADA / JUDGMENT

Masjoody v. Motmaen-Far

2024 BCSC 2017

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Supreme Court of British Columbia

DECIDED

17 October 2024

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2024 BCSC 2017 Masjoody v. Motmaen-Far

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Masjoody v. Motmaen-Far,

2024 BCSC 2017

Date: 20241017

Docket: S240300

Registry: Vancouver

Between:

Masood Masjoody

Plaintiff

And:

Avideh Motmaen-Far

Defendant

Before: The Honourable Madam Justice Fitzpatrick

Oral Reasons for Judgment

In Chambers

The Plaintiff, appearing on his own behalf:

M. Masjoody

Appearing on behalf of Counsel for the Defendant, David Levangie and Alexander Evangelista,
who appear via video:

G.J. Nash, K.C.

A. Visser

Place and Date of Hearing:

Vancouver, B.C.

October 17, 2024

Place and Date of Judgment:

Vancouver, B.C.

October 17, 2024

- [1] THE COURT: On January 16, 2024, the plaintiff, Masood Masjoody, filed this action against the defendant, Avideh Motmaen-Far. Mr. Masjoody's claims include defamation and conspiracy.
- [2] On July 26, 2024, Mr. Masjoody filed his application seeking relief in respect of both the defendant and the defendant's lawyers who have been retained to represent her in this action (Alexander Evangelista and David Levangie (collectively, the "Lawyers")).
- [3] Today, the only aspects of the application to be addressed relate to the relief sought against the Lawyers, as follows:
1. An order holding [the Lawyers] in contempt of court for using two stolen and illegally obtained documents, specifically, for listing documents 1.22 and 1.24 in the defendant's list of documents, as of June 27, 2024;
 4. An order holding [Mr. Evangelista] in contempt of court for attempting to mislead the court during a hearing on July 25, 2024, by falsely asserting that the defendant had removed all her posts and reposts about the plaintiff from her social media and, further, falsely asserting in court that the real-time screenshots dated July 23, 2024, presented in Exhibit A of the plaintiff's affidavit #6, affirmed July 23, 2024, showed the time of searching the archived content rather than the time of archiving the real time content;
 5. An order referring [the Lawyers] to the Law Society of British Columbia [LSBC] for investigation and potential disciplinary action based on the unethical conduct demonstrated collectively by using stolen and illegally obtained documents and making misleading statements to the court.
- [4] Mr. Masjoody's allegations against the defendant in this action appear to be similar to those brought in another action filed by him in this Court on January 8, 2024 (SCBC Action No. S240157). In that action, Mr. Masjoody also advances defamation and conspiracy claims against various defendants, including Reza Pahlavi (the "Pahlavi Action").

Preliminary Issue

- [5] At the outset of this hearing, Mr. Masjoody raised the issue of the appropriateness of me hearing this matter.
- [6] Needless to say, Mr. Masjoody is very much aware that I presided at hearings in other litigation commenced by him against Amélie Trotignon and Simon Fraser University (SFU). My involvement began in July 2021 and I heard a further application in November 2023, leading to a striking of Mr. Masjoody's claim based on this Court's lack of jurisdiction to address the underlying dispute. Reasons for judgment were issued after both hearings: *Masjoody v. Trotignon*, 2021 BCSC 1502 and *Masjoody v. Trotignon*, 2023 BCSC 2224.
- [7] I am also aware that there were extensive appeal proceedings advanced by Mr. Masjoody, although the appeal(s) were dismissed: 2022 BCCA 48; 2023 BCCA 220 and 2024 BCCA 22. Mr. Masjoody states that there are still further appeal proceedings relating to that matter. In addition, Mr. Masjoody refers to having commenced judicial review proceedings before the Federal Court of Appeal relating to his allegations of misconduct against various appeal judges.
- [8] In fact, the Trotignon/SFU proceedings and my involvement in them are specifically mentioned in the notice of civil claim in the Pahlavi Action (para. 3).
- [9] Mr. Masjoody submitted that it was inappropriate that I hear this matter on the basis of my previous involvement in the Trotignon/SFU proceedings. He did not specifically argue that I should recuse myself on the basis of bias or potential bias, although I took that possibly, if not likely, to be his meaning.
- [10] In any event, I have considered Mr. Masjoody's submissions. The Trotignon/SFU matter is very distinct from this matter. In my view, there was no basis raised upon which I would recuse myself. I dismissed Mr. Masjoody's preliminary application and indicated that I would hear this application on its merits.

The Law

- [11] In his notice of application, Mr. Masjoody referred to various legal bases upon which he advanced his contempt allegations, including as against the Lawyers.
- [12] Mr. Masjoody refers to ss. 131-132 of the Criminal Code of Canada. I assume this relates to the allegations that the defendant made false statements in certain affidavits sworn by her in this proceeding.
- [13] With respect to his allegations against the Lawyers, Mr. Masjoody appears to rely on the Legal Professional Act, S.B.C. 1998, c. 9, s. 26 which allows a person to make a complaint to the LSBC. Mr. Masjoody also refers to the Code of Professional Conduct of British Columbia [Code]. Although he does not refer to any specific provisions of the Code, I think it is well taken that lawyers in BC are expected to uphold and maintain a high degree of professionalism in terms of their duties to their clients and the Court.

[14] In the Legal Basis of their application response, the Lawyers have referred more fulsomely to the law regarding contempt. I do not intend to repeat all of the points made and the various authorities cited, other than to stress certain principles.

[15] The law of contempt, including civil contempt, was discussed by Justice McLachlin, as she then was, in *United Nurses of Alberta v. Alberta (Attorney General)*, 1992 CanLII 99 (SCC), [1992] 1 S.C.R. 901. Speaking for the majority, she stated at 931-933:

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.

[16] Various authorities refer to contempt of court as being an issue between the person or party and the court that transcends the dispute between the parties: *Feeny v. Feeny*, 2015 BCSC 744 [Feeny] at para. 11, citing *Glase v. Glase*, 2009 BCCA 321 [Glase] at para. 8. Another purpose of the remedy of civil contempt is to enforce compliance with the Court's order for the benefit of the parties.

[17] Allegations of contempt of court are serious in that they are considered quasi-criminal in nature. The person advancing such allegations - here, Mr. Masjoody - bears the onus of proving the of all elements of civil contempt beyond a reasonable doubt: *Feeney* at para. 12; *Bassett v. Magee*, 2015 BCCA 422 at para. 33; and *Hokhold v. Gerbrandt*, 2016 BCCA 6 at para. 17.

[18] It is also a serious matter to level accusations of contempt against professional persons, given the potential for harm, particularly reputational harm, if those allegations are made lightly or are not proven at the end of the day.

[19] To make a finding of contempt, a court must find that a contemnor "wilfully disobeyed a court order that was clear and precise in its meaning", beyond a reasonable doubt. The applicant must show that the party alleged to have breached the order had actual knowledge of it, and intentionally did the act that the order prohibited (or intentionally failed to do the act that the order compelled): *Bassett* at para. 34; *Hokhold* at para. 17; *Feeny* at para. 18; *Langford (City) v. Dos Reis*, 2016 BCCA 201 at para. 20, citing *Carey v. Laiken*, 2015 SCC 17 at paras. 32-36.

[20] Both Mr. Masjoody and the Lawyers refer to Rule 22-8 which confirms the Court's power to punish contempt of court.

[21] The Lawyers also refer to Rule 22-8(4) of the Supreme Court Civil Rules [Rules], which provides that a person is guilty of contempt of court if they are guilty of an act or omission described in Rule 12-5(25) or 22-7(5) (none of these Rules are engaged on the facts here).

- [22] Finally, the Lawyers refer to the strict procedural requirements in contempt proceedings: Bassett at para. 33. These procedural requirements include that no hearsay evidence is admissible.
- [23] In addition, precise pleadings or details of the allegations must be disclosed to allow the alleged contemnor to understand the case they must meet. This requirement is consistent with Rule 22-8(12) that requires that the allegations be supported by an affidavit setting out the conduct alleged to be contempt of court. If an applicant fails to set out in his affidavit any conduct on the part of the alleged contemnors that is alleged to be contempt of court, there cannot be any finding of contempt: R.J.R. v. British Columbia (Children and Family Development), 2014 BCSC 860 at paras. 28 and 30.

Contempt - Listing of Documents

- [24] On June 27, 2024, the Lawyers prepared the defendant's amended list of documents (the "LOD"), which was received by Mr. Masjoody.
- [25] Mr. Masjoody's Affidavit #4 affirmed July 2, 2024 refers to the documents which are the subject of the allegations referred to in para. 1 of the notice of application. He attaches the LOD, where two specific documents are listed:
1. No. 1.22 refers to a document dated October 11, 2022, being a notice of intention in respect of Mr. Masjoody's matter before the Immigration and Refugee Board of Canada; and
 2. No. 1.24 refers to an undated document 1.24, being a letter from Tim Archibald (as Chair at SFU's Mathematics Department) that Mr. Masjoody says he received by mail and by email, and may or may not relate to the Trotignon/SFU litigation that I have already mentioned.

(the "Documents")

- [26] At para. 20 of his notice of application, Mr. Masjoody alleges:

As of June 27, 2024, the Defendant has included two stolen and illegally obtained documents in her list of documents which documents she appended to her list of documents, dated June 26, 2024, at Tabs 22 and 24 ("Stolen Documents"). I am the lawful owner of the Stolen Documents, these documents have been stolen from me, and I have never authorized the Defendant to possess or use these documents. The Defendant has obtained the Stolen Documents through unlawful means.

- [27] Mr. Masjoody says that his allegation is supported by his evidence, including his Affidavit #4 (the relevant portions are repeated in his Affidavit #5 affirmed July 17, 2024).
- [28] In Mr. Masjoody's Affidavit #4 at paras. 9-12, he states that the Documents were in various boxes at his home address. He says that he gave the boxes, which included the Documents, to Mehdi Ahmadzadeh who then took them away. He also says that, when the Documents were taken from his home, they were in separate sealed envelopes.

- [29] Despite Mr. Masjoody describing the Documents as "confidential", he has appended both to an Exhibit to his Affidavit #4.
- [30] At para. 13 of his Affidavit #4, Mr. Masjoody alleges that the defendant and others (including Mr. Ahmadzadeh) conspired to breach his privacy and illegally take possession of, alter and abuse the Documents. In argument, he also alleges that Mr. Ahmadzadeh stole, or perhaps more accurately, improperly or illegally used the Documents given to him. Then, Mr. Masjoody takes somewhat of a leap with respect to the evidence by then contending that the defendant could only have obtained these "confidential" Documents illegally. Then he takes the further leap of suggesting that the Lawyers somehow knew that the Documents had been "illegally" obtained by the Defendant and thus knew that it would be improper to list them in her LOD.
- [31] It will be obvious by the above description of Mr. Masjoody's evidence that there is absolutely no evidence of any impugned conduct on the part of the Lawyers with respect to the listing of the Documents. There is no evidence as to how these documents came to be in the possession of the defendant, perhaps from Mr. Ahmadzadeh or others, let alone that they were obtained by the defendant through "illegal" or "unlawful means". To accept Mr. Masjoody's submissions is to accept pure speculation.
- [32] There is no evidentiary basis upon which this Court could find any impropriety or contempt of court on the part of the Lawyers in respect of their listing of the Documents. By all accounts, the Lawyers listed the documents that were in their client's possession or control, as was their duty as counsel and in accordance with the Rules. That is all that can be taken from the evidence presented by Mr. Masjoody to the Court in respect of this allegation.

Contempt - July 25, 2024 Hearing

- [33] Mr. Masjoody's allegations in respect of counsel's submissions at the July 25, 2024 hearing (para. 4) are advanced against Mr. Evangelista only. Again, Mr. Masjoody alleges that, in his submissions to the Court that day, Mr. Evangelista "mislead" the Court.
- [34] To put the matter in context, it is my understanding that the July 25, 2024 hearing was held to address or potentially address six filed notices of application. Three of the notices of application were filed by Mr. Masjoody relating to: document production; the striking of the defendant's response to civil claim; and, injunctive relief. Three of the notices of application were filed by the defendant relating to: an adjournment of the trial (scheduled for August 6, 2024); injunctive relief; and, an extension for the filing of a counterclaim. I was advised by the Lawyers' counsel's that, on July 25, 2024, the Court apparently only addressed the defendant's application relating to the adjournment of the trial.
- [35] I say "apparently" because of the state of the evidence as to what happened at the July 25, 2024 hearing and, particularly, what submissions were made by Mr. Evangelista that are alleged to be contemptuous.

- [36] The only evidence arises from Mr. Masjoody's Affidavit #8 affirmed August 30, 2024. Mr. Masjoody has not obtained a transcript of the hearing on July 25, 2024, which in my view is problematic. In any event, at para. 3 of his Affidavit #8, Mr. Masjoody states that, on August 8, 2024, he listened to the DARS recording while at the Registry. He then sets out what he says is an "accurate report" of Mr. Evangelista's concluding submissions, save for a "brief unintelligible portion from 2:49:31 p.m. to 2:53:02 p.m." He says that he double-checked his notes of the recording during another attendance at the Registry on August 29, 2024.
- a) Case Splitting
- [37] As a preliminary matter, the Lawyers' counsel take the position that Mr. Masjoody's evidence in his Affidavit #8 is improper and amounts to him splitting the case. They say that his Affidavit #8 should be disregarded.
- [38] Mr. Masjoody's allegations - filed July 26, 2024 - were said to be based on various of his Affidavits #2-6, all of which filed by that time. In other words, when the contempt allegations were filed, no evidence was put before the Court to support Mr. Masjoody's allegations against Mr. Evangelista in terms of what happened at the July 25, 2024 hearing.
- [39] It was on the basis of that evidence - or more accurately, lack of evidence - to which the Lawyers responded in their response to application filed August 2, 2024. Understandably, at paras. 20-22, they stated that there was no evidence as to what was or was not stated at the July 25, 2024 hearing, that could be said to support the contempt allegations.
- [40] In addition, on August 2, 2024, the Lawyers filed a response affidavit from a legal assistant, that simply appended application materials filed in the Pahlavi Action and a July 26, 2024 X (formerly Twitter) posting by Mr. Masjoody, both of which I will return to later in these reasons. This response affidavit did not address the July 25, 2024 hearing at all (or any of the allegations concerning the LOD).
- [41] As the Lawyers' counsel timeline indicates, only after receipt of the Lawyers' application response on August 2, 2024, did Mr. Masjoody see fit to gather or attempt to gather more evidence in support of his contempt allegations. In particular:
- a) On August 2, 2024, he delivered interrogatories to the defendant, in part requesting that she answer a variety of questions regarding the Documents and, in particular, how she came to be in possession of them (#44-66). Mr. Masjoody did so without obtaining leave or consent as required under Rule 7-3;
 - b) On August 2, 2024, he filed his Affidavit #7 which exhibited a portion of the interrogatories;
 - c) On August 6, 2024, he filed an application seeking leave to serve the interrogatories;
 - d) On August 8, 2024, he attended at the Registry to listen to the DARS recording for the July 25, 2024 hearing;
 - e) On August 30, 2024, he listened to the DARS again and filed his Affidavit #8;

- f) September 10, 2024, the Court dismissed his application for leave to serve the interrogatories. On the same day, Mr. Masjoody served a notice to admit on the defendant, essentially asking the same questions as in the interrogatories; and
- g) September 25, 2024: he filed an application to compel the defendant to provide "proper responses" to the notice to admit or, in the alternative, have the Court deem that the facts specified were admitted.
- [42] Rule 8-1 addresses how application materials are to be filed. Under Rule 8-1(7), an applicant must serve all affidavits as referred to the notice of application (save as has already been served). Under Rule 8-1(9) and (10), a party responding to the application must file and serve every affidavit that is to be referred to at the hearing and list those affidavits in the application response. Under Rule 8-1(13), the applicant is allowed to file "responding affidavits". Under Rule 8-1(14), no other affidavits are to be filed by any party, save with consent or as the court may allow.
- [43] The above process - and in particular the meaning of "responding affidavits" - was considered by Master Baker in *The Owners, Strata Plan KAS 2971 v. American Bankers Insurance Company of Florida*, 2016 BCSC 581. As with Mr. Masjoody's Affidavit #8, the issue was whether the applicant's affidavit, filed only after the application response, was proper. The Master said "No", stating:
- [31] Rule 8-1(9) lists the documents that a respondent must file: a response and any affidavits it intends to refer to. Clearly the Rule does not oblige a party to file an affidavit in response unless the party intends to rely on it. It must, however, file a response. Rule 8-1(13) could be read, in its general reference to "any document", to permit an applicant to file an affidavit in response to the respondent's response. I do not interpret it that way. I agree with Mr. Elder that to do so is tantamount to splitting one's case in chambers. Once one has led, so to speak, one's evidence in support of the application (i.e. served its affidavits) the evidentiary phase is done, unless the respondent files a responding affidavit. Only then may the applicant file further affidavit, one that is limited to proper reply to the respondent's affidavit. To do otherwise is to mix apples with oranges. In my view, evidence is met with evidence, and argument with argument.
- [Emphasis added.]
- [44] By any measure, Mr. Masjoody's Affidavit #8 was not responsive to the sole responding affidavit filed by the Lawyers. As such, Mr. Masjoody's intention to rely on this Affidavit is tantamount to splitting his case.
- [45] To my mind, this stands as a complete answer to Mr. Masjoody purporting to rely on what he describes as the statements made at the July 25, 2024 hearing. In that event, there is no evidence as to what happened at the July 25, 2024 hearing that would ground any allegations against Mr. Evangelista.

[46] I would add that Mr. Masjoody did not seek the leave of the Court to allow his Affidavit #8 to be considered.

a) The Merits

[47] Despite my conclusion above, in the alternative, I consider it appropriate to address the merits of Mr. Masjoody's allegation against Mr. Evangelista.

[48] In para. 23 of his notice of application, Mr. Masjoody alleges that on July 25, 2024, Mr. Evangelista:

falsely reiterated to the Court the Defendant's claim about the removal of her posts about me, and further, falsely claimed that the screenshots in my Affidavit #6 show the time of searching the content, rather than the time of saving and archiving the real-time content.

[49] There are two aspects to Mr. Masjoody's argument.

[50] Firstly, Mr. Masjoody's contends that Mr. Evangelista was acting improperly in making submissions to the Court based on the defendants' sworn evidence as to what she said about the removal of certain posts and reposts. This evidence is referred to in the defendant's Affidavits #1 and #2 sworn July 15, 2024 (and her later Affidavit #3 sworn August 1, 2024).

[51] It is beyond dispute that legal counsel have an obligation to assiduously advance the interests of their clients, and advance the evidence that the lawyer's client is putting before the court toward that purpose. I accept that Mr. Masjoody vigorously disagrees with the defendant that her posts and reposts were removed from X and are no longer "live". However, the defendant's evidence disputes that contention. As far as I am aware, and Mr. Masjoody confirmed it, there has been no determination by this Court one way or the other as to whether the defendant removed her posts and reposts and, if so, on what date.

[52] Accordingly, I see absolutely no basis upon which it can be said that Mr. Evangelista should be subject to some type of censure from this Court, let alone a finding of civil contempt, arising from his submissions to the Court based on his client's sworn evidence.

[53] Secondly, Mr. Masjoody argues that Mr. Evangelista acted improperly in submitting to the Court that Mr. Masjoody's Affidavit #6 did not, in fact, support that the posts were "live". Mr. Masjoody referred in his Affidavit to having "archived" certain posts, including those by the defendant, and he attached copies of his searches.

[54] I have reviewed again Mr. Masjoody's "report" as to what he says Mr. Evangelista submitted to the Court in respect of this issue. Mr. Evangelista is said to have stated:

The timestamp there, is, what I presume is, the time he conducted the search given that this was shortly before he filed these materials. This is not evidence that the posts are live. For him to say that [the defendant] lied under oath by saying she's taken down posts, if, I would say, intentionally misleading.

- [55] Again, it was Mr. Evangelista's duty as the defendant's legal counsel to assiduously advance the interests of the client. Part of that duty involves making submissions about the quality of Mr. Masjoody's evidence. Mr. Evangelista took a very different view as to what Mr. Masjoody's evidence established. I presume that at some point in time (but certainly not on July 25, 2024), those issues would have been the subject of further debate and ultimately, a determination by the Court as to whether the posts had been removed and if so, on what date. However, no such determination has been made.
- [56] In conclusion, as with the first allegation of contempt, I see absolutely no evidentiary basis to support Mr. Masjoody's allegations of contempt against Mr. Evangelista in respect of his submissions to the Court on July 25, 2024.

Summary and Conclusions

- [57] I do not consider that Mr. Masjoody has established any improper conduct on the part of the Lawyers, let alone proven civil contempt beyond a reasonable doubt, to support such relief.
- [58] As above, in para. 5 of Mr. Masjoody's notice of application, he seeks an order referring the Lawyers to the LSBC for investigation and potential disciplinary action. It will be evident from my conclusions in respect of the two contempt allegations that no such order is appropriate in the circumstances.
- [59] In summary, the relief sought by Mr. Masjoody in paras. 1 is dismissed with respect to the Lawyers and the relief sought in paras. 4-5 of his notice of application is dismissed.

Costs

- [60] On the issue of costs, the Lawyers' counsel again emphasize the serious nature of these allegations of contempt. They also emphasize the fact that Mr. Masjoody advanced these allegation against legal professionals in the course of fulfilling their duties and obligations to their clients and this Court. I have found these serious allegations and attacks on the Lawyers to have been completely unsubstantiated.
- [61] The test with respect to special costs is well-known and can be easily stated, as is found in *Garcia v. Crestbrook Forest Industries Ltd.*, [1994], 9 B.C.L.R. (3d) 242, 1994 CanLII 2570 (C.A.). Special costs can be awarded to address reprehensible conduct, including such lesser forms of conduct that are deserving of rebuke.
- [62] In their application response, the Lawyers have referred to various authorities on the issue of costs.
- [63] In *The Owners, Strata plan LMS3259 v. Sze Hang Holding Inc.*, 2015 BCCA 424, Justice Donald stated:

- [11] Self-represented litigants have no licence to employ accusations of dishonesty as a feature of their rhetoric unless such accusations are firmly grounded in the evidence, are relevant to the proceedings, and are responsibly made. the court is not a free fire zone where anything can be said regardless of the harm to others and their reputations
- [64] Further, the Lawyers refer to various case authorities where unsubstantiated allegations and attacks on the professional integrity of a lawyer have been found to justify an award of special costs: *Leger v. Metro Vancouver YWCA*, 2013 BCSC 2021 at paras. 75-77; *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 1808 at paras. 44-46 and 53.
- [65] Any costs award here involves a broader consideration of the circumstances beyond the fact that Mr. Masjoody advanced unsubstantiated allegations. I agree with the Lawyers' counsel that the only inference to be drawn from the overall circumstances is that Mr. Masjoody advanced these allegations for the purpose of potentially prejudicing and disrupting the defendant's legal representation. Such a result would obviously have been to Mr. Masjoody, as the plaintiff.
- [66] It is also concerning to me that there appears to be a pattern, perhaps a recent pattern, on the part of Mr. Masjoody, in bringing forward such serious allegations against opposing counsel.
- [67] On July 22, 2024, in the Pahlavi Action, Mr. Masjoody filed a notice of application seeking findings of contempt against one defendant, a "referral for criminal prosecution" and a striking of that defendant's response to civil claim. In addition, similar if not almost identical to this application, Mr. Masjoody sought an order declaring that this defendant's counsel is in contempt of court "for willfully making false statements during a court hearing" and also a referral of this counsel's conduct to the LSBC for "investigation and potential disciplinary action".
- [68] Even more concerning is another matter raised via the legal assistant's Affidavit. As I have said, Mr. Masjoody's application was filed on July 26, 2024, where these allegations were advanced. On that same date, Mr. Masjoody made various postings on X (formerly Twitter). I have reviewed this posting, in which Mr. Masjoody describes the relief that he was seeking on this application, including findings of contempt against the Lawyers.
- [69] However, Mr. Masjoody's post goes well beyond simply reproducing the relief sought. Mr. Masjoody states in the post that the defendant and her counsel (setting out their names) are "to be charged with Perjury, Contempt". Then, after the reproduction of the relief sought in the notice of application, Mr. Masjoody includes a full colour split-screen photograph. In that picture, he depicts both the defendant and Mr. Evangelista in prison garb.
- [70] In my view, Mr. Masjoody's behaviour is extremely troubling, especially when his allegations against the Lawyers have been found to be entirely unsubstantiated. Mr. Masjoody's actions in this litigation are highly reprehensible and deserving of rebuke.

- [71] In all of the circumstances, I have no hesitation finding that a special costs award is appropriate in the circumstances in respect of this application. Those special costs will be assessed by the Registrar and, once assessed, are payable forthwith by Mr. Masjoody.
- [72] This costs award is intended to send a message to Mr. Masjoody that these types of allegations should not be made lightly and, needless to say, should not be advanced based on a complete lack of evidence. As stated above, I consider that Mr. Masjoody's allegations were a strategic decision intended to hamper the conduct of this litigation and prejudice the defence, which is reprehensible.

"Fitzpatrick J."

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