

CANADA / JUDGMENT

Pagedped v. Singh

2020 BCSC 236

COURT

Supreme Court of British Columbia

DECIDED

24 February 2020

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2020 BCSC 236 Pagedped v. Singh

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Pagedped v. Singh,

2020 BCSC 236

Date: 20200224

Docket: S215596

Registry: New Westminster

Between:

Shion Pagedped, Honeylyn Ngamilot Martin, and

Ester Lilly Martin

Plaintiffs

And

Madhu Lata Singh, Sanjay Kumar Singh and SSI Building Maintenance Services Ltd.

Defendants

Before: The Honourable Chief Justice Hinkson

Reasons for Judgment

Counsel for the Plaintiffs:

M. Magaril

G. Munroe

Counsel for the Defendants:

No one appearing

Counsel for the Attorney General of Canada:

A. Sanghera

Place and Date of Hearing:

New Westminster, B.C.

January 17, 2020

Place and Date of Judgment:

New Westminster, B.C.

February 24, 2020

- [1] The plaintiffs claim that they were fraudulently misled and/or induced to make various payments to one or more of the defendants, and seek the return of those payments and other relief against the defendants.
- [2] In their application before me, they seek orders to assist them in enforcing other orders that they have obtained from this Court. In effect, they seek orders that would require the civil warrants issued against the defendants to be enforced as if they were criminal warrants.
- [3] The issues to be determined on this application are whether this Court has the jurisdiction to make the orders sought and, if so, whether they are appropriate to make in the circumstances.

Background

- [4] The notice of civil claim in this action was filed on June 5, 2019, and amended on August 30, 2019.
- [5] The relief sought by the plaintiffs in their notice of civil claim includes judgment against the defendants, general damages, accounting and tracing remedies, aggravated, punitive and exemplary damages, declarations and special costs.
- [6] The plaintiffs assert that the defendant Madhu Lata Singh represented to them and others that she provided commercial cleaning services through the corporate defendant, and that the sole director of the corporate defendant was the defendant Sanjay Kumar Singh.
- [7] The plaintiffs assert that in reliance on the representations of Madhu Lata Singh, they made payments totalling \$83,600 into bank accounts controlled by one or more of the defendants.

- [8] On July 2, 2019, the defendants filed a response to the notice of civil claim, denying most of the allegations contained therein, but admitting that they received the sum of \$83,600 from the plaintiffs as a loan, repayable on demand.
- [9] There is no suggestion by the defendants that they have taken any steps to repay the monies that they say were loaned to them by the plaintiffs.
- [10] On June 7, 2019, Mr. Justice Harvey granted a Mareva injunction ("the Mareva Order") on various terms including:
1. Except as permitted by this Order, each of the Defendants Madhu Lata Singh, Sanjay Kumar Singh, and SSI Building Enterprises Ltd. ("SSI") must not directly or indirectly:
 - a) remove from British Columbia or in any way dispose of or deal with or diminish the value of any of their assets that are in British Columbia whether in their own name or not and whether solely or jointly owned except as otherwise provided in this Order.
 3. This Order does not prohibit the Defendants:
 - a) Madhu Lata Singh, and Sanjay Kumar Singh from spending up to \$4,000 collectively, not individually, a month on ordinary living expenses;
 - b) SSI from dealing with, or disposing of any of its assets in the ordinary and proper course of business; and
 - c) Madhu Lata Singh, Sanjay Kumar Singh, and SSI from spending a total of \$20,000 on legal advice and representation collectively, not individually, so long as the funds are deposited to either the general or trust account of a lawyer that is a member in good standing with the Law Society of British Columbia, or the general or trust account of a law firm through which said lawyer practices with.
 6. This Order will remain in force up to and including 24/JUN/2019 (the "Return Date") unless before then it is varied or discharged by a further Order of this Court. The application in which this Order is made shall come back to the Court for further hearing on the Return Date.
 17. 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 their affidavit setting out all of that Defendant's assets as of the date of this Order whether in or outside British Columbia and whether in its own name or not and whether solely or jointly owned, and details of all such assets, including the nature of each asset, all identifying numbers and other identifying information, its exact location as of the date of this Order, and whether the asset is held in the Defendant's name or jointly held with another person, or by another on the Defendant's behalf.

- [11] On June 24, 2019, Mr. Justice Jenkins extended the Mareva Order to include vehicles owned by the defendants and extended the order until 30 days after the pronouncement of final judgment ("the extended Mareva Order").
- [12] On August 30, 2019, Jenkins J. found each of the defendants in contempt of court for willfully breaching the extended Mareva Order. Jenkins J. ordered the defendants to purge their contempt within seven days from his finding of contempt. His order was not filed until October 2, 2019.
- [13] On October 11, 2019, Mr. Justice Ball granted civil warrants for contempt against the two personal defendants, pursuant to Rule 22-8 of the Supreme Court Civil Rules, B.C. Reg. 168/2009 ("the Civil Warrants"), directing his order to "any Peace Officer" stating:

WHEREAS this court is of the opinion that [the personal defendant] may be guilty of contempt of court;

YOU are hereby ordered to apprehend [the personal defendant] and promptly bring him/her before a judge of the Supreme Court, and, after that, to deal with him/her as directed.

- [14] After Ball J. granted the Civil Warrants, counsel for the plaintiffs pressed the Surrey RCMP to investigate his clients' claims, as well as those of anyone else who might have been taken advantage of by the defendants. Although advised that the RCMP had opened a file with respect to the plaintiffs' complaints, the plaintiffs' counsel is dissatisfied with the apparent efforts and lack of progress by the RCMP.
- [15] On November 19, 2019, the extended Mareva Order was amended by Ball J. to prohibit the defendants from in any way disposing of, or dealing with, or diminishing the value of any of their assets, whether they were in or outside British Columbia, Fiji, New Zealand, Australia or elsewhere in the world.
- [16] On that same day, Ball J. granted another order with respect to containers intended to be used to ship items owned by the defendant Sanjay Kumar Singh's mother. In recital in that order, it states, in part:

on hearing Mikhael Magaril, counsel for the Plaintiffs, and no one appearing for the Defendants, though duly served pursuant to the Case Plan order made by Master Dick on 05/NOV/2019, and remaining at large and having absconded to Fiji

- [17] The plaintiffs attempted to bring a 24 count private prosecution against the defendants, for the conduct that led to and was the basis for the orders of Harvey and Jenkins JJ., however the Attorney General for British Columbia stayed the prosecution.
- [18] The application before me was not served on the defendants, but the Attorney General of Canada filed a response to the application.

Relief Sought

- [19] The plaintiffs have not yet sought judgment on their civil claim.
- [20] According to her unfiled affidavit sworn July 26, 2019, Madhu Lata Singh and her husband, Sanjay Kumar Singh, are the owners of a home in Surrey, British Columbia. The home is encumbered by two mortgages, but if still owned by the personal defendants, could presumably be the subject of collection efforts if the plaintiffs obtained the relief they seek in their notice of civil claim.
- [21] In this application, the plaintiffs seek orders that include:
1. That the Officer in Charge or the Non-Commissioned Officer in Charge of the Surrey Detachment of the Royal Canadian Mounted Police, or his or her delegate ("the Police") do all things necessary to cause the warrants issued against each of the individual Defendants Madhu Lata Singh and Sanjay Kumar Singh (the "Individual Defendants") on 11/OCT/2019 by Mr. Justice Ball in this proceeding (the "Warrants") to be executable as if they were warrants issued under the Criminal Code, R.S.C. 1985 c. C-46, which shall include, but not be limited to:
 - a. Adding the Warrants to the Canadian Police Information Centre, commonly referred to as CPIC, and all other police information systems including but not limited to Police Reporting and Occurrence System, commonly referred to as PROS, Police Information Retrieval Systems, commonly referred to as PIRS, and the Police Records Information Management Environment, commonly referred to as PRIME; and
 - b. Cause, or seek that, a Red Notice to be issued by the International Criminal Police Organization, commonly referred to as INTERPOL, in respect [sic] the Warrants outstanding against the Individual Defendants, who are currently present in Fiji.
 3. That the Canada Border Services Agency ("CBSA") do all things necessary to cause the Individual Defendants to be held at any port of entry upon their arrival back into Canada and to not be released except into the custody of the B.C. Sheriffs or the Royal Canadian Mounted Police for execution on the Warrants, or any other warrants caused to be issued under an enactment of Canada or British Columbia. For greater clarity, this shall require CBSA to add the Individual Defendants to any watch list or other information system that it uses to keep track of individuals with outstanding warrants.
 4. The Attorney General of Canada, and CBSA, do all things necessary to prevent Madhu Lata Singh, whose date of birth is [] and who is believed to bear a Canadian Passport bearing number [], and Sanjay Kumar Singh, whose date of birth is [] and who is believed to bear a Canadian Passport bearing number [] from travelling to any Country, except the United States of America and Canada if they are on a flight itinerary that will result in them arriving back in British Columbia.

Positions of the Plaintiffs and the Attorney General of Canada

- [22] The plaintiffs concede the novelty of the relief they seek, submitting that "a novel order is necessary to do justice in this case". They argue that this Court can make any order that it feels necessary to protect its own orders and to give effect to the interests of justice.
- [23] The Attorney General of Canada opposes the relief sought by the plaintiffs. He points out the obvious; that the warrants in issue are civil warrants, and cannot be treated as though they are criminal warrants. In the Attorney General's submission, to treat the warrants as criminal warrants would deprive the defendants of their rights to be fully aware of the allegations against them being criminal in nature.

Discussion

Canada Border Services Agency

- [24] The plaintiffs are seeking orders that, in effect, would require the RCMP and CBSA to assist in the enforcement of the Mareva Order and Civil Warrants, which they say are not being enforced.
- [25] The willful refusal to adhere to the orders of the court threatens the rule of law, which is at the heart of our society. Clearly, orders of this Court are to be obeyed and enforced. If they are not, the administration of justice may be brought into disrepute.
- [26] With respect to the enforcement of the orders of Harvey, Jenkins and Ball JJ., counsel for the plaintiffs assert, "where there is a right, there must be a remedy", and that "[i]t is not the duty of a litigant to pursue a contemnor to the ends of the earth". He says that it is the responsibility of peace officers and the Attorney General to do no less than to "tenaciously pursue the enforcement of court orders".
- [27] Just what right he relies upon is unclear.
- [28] The duty of peace officers to enforce court orders is discussed in the decision of Mr. Justice Burnyeat in *Telus Injunction Re: Enforcement Order*, 2006 BCSC 441 at paras. 4 and 10:
- [4] Enforcement orders have traditionally been required as, without such provisions, the Attorney General and, in turn, peace officers have not been prepared to enforce orders of the Court when labour disputes or "civil disobedience" protests are involved despite the statements made by British Columbia Judges that it should be the Province and not civil litigants who should "prosecute" civil contempt and that "enforcement orders" should not be required before peace officers take action to enforce orders of the Court.
- [10] Despite my considerable frustration with the positions taken by the Province and by peace officers including the R.C.M.P., it is clear that private litigants such as the Plaintiffs will have to continue to seek the assistance of the Court to enforce orders of this Court and that it will be necessary for orders granted to include an enforcement clause before peace officers will fulfill their public duty as well as their duty to this Court to enforce orders without further

direction rather than attempting to act as neutral mediators when labour disputes or civil disobedience protests arise. Even though their statutory mandate is to enforce the law including orders of the Court, it remains necessary for the Court to tell peace officers that they should do what they are already required to do.

- [29] While police enforcement orders are sometimes granted in the civil and family law context, some judges have taken the view that such enforcement orders are unnecessary because the police already have a duty to uphold orders. Mr. Justice Vickers, in dealing with an application for an injunction, held in *Finning Ltd. v. U.M.W.*, (1992) 10 C.P.C. (3d) 17 (B.C.S.C.), at para. 2:

I want to say for the record that orders of this court should be enforced without an enforcement order. The police authorities have a public duty, as well as a duty to this court, to enforce its orders without any further direction I repeat, I remain of the view that court orders should not have enforcement provisions because it is the duty of the police to enforce them without any further direction.

- [30] In *Ochiichagwe'babigo'ining First Nation Council v. Beardy*, (1996) 1 C.P.C. (4th) 276 (Ont. Gen. Div.) at para. 21, Mr. Justice Stach wrote:

It is a fundamental proposition that a court order in the nature of an injunction is immediately enforceable and that the order must be obeyed until it is varied by the court which made it or on appeal. [per Esson C.J. as cited in *Canada Post Corp. v. C.U.P.W.* (1991), 6 C.P.C. (3d) 105, by B.D. Macdonald J. at 117 (B.C. S.C.)]. Police authorities already have a public duty as well as a duty to this court to enforce the court's orders without an enforcement order and without any extraordinary direction. [*Finning Ltd. v. U.M.W.* (1992), 10 C.P.C. (3d) 17 (B.C. S.C.), per Vickers J. at 18].

- [31] I accept that this Court has the power to make a police enforcement order if the circumstances require, but it is my view that enforcement orders ought to be made only in extraordinary circumstances.
- [32] The plaintiffs seek orders requiring the CBSA to add the defendants to any "watch list" used to track individuals with outstanding warrants; to detain the defendants upon their return to Canada and only release them into the custody of the B.C. Sheriffs or the RCMP; and to prohibit the defendants from travelling, except if travelling to British Columbia via the United States or Canada.
- [33] The plaintiffs have not referred me to any legislation pursuant to which the CBSA could act in order to accommodate the proposed orders against it.

- [34] The CBSA is a statutory body created by the Canada Border Services Agency Act, S.C. 2005, c. 38. Its responsibility is to facilitate the free flow of persons and goods, and to provide integrated border services in support of national security and public safety. The CBSA's constituting statute does not specifically provide it with the authority to carry out general domestic law enforcement activities.
- [35] While the Immigration and Refugee Protection Act, S.C. 2001, c. 27, ("IRPA"), the Customs Act, R.S.C., 1985, c. 1 (2nd Supp.), and the Criminal Code, R.S.C., 1985, c. C-46, provide CBSA officers with some peace officer powers, those powers are circumscribed and do not equate with all police powers.
- [36] Under section 2 of the Criminal Code, CBSA officers are defined as "peace officers" for a limited purpose:
- "peace officer" includes:
- (d) an officer within the meaning of the Customs Act, the Excise Act or the Excise Act, 2001, or a person having the powers of such an officer, when performing any duty in the administration of any of those Acts.
- (d.1) an officer authorized under subsection 138(1) of the Immigration and Refugee Protection Act.
- [37] Section 138(1) of the IRPA provides:
- 138(1) An officer, if so authorized, has the authority and powers of a peace officer - including those set out in sections 487 to 492.2 of the Criminal Code - to enforce this Act, including any of its provisions with respect to the arrest, detention or removal from Canada of any person.
- [38] The relevant provisions of the Customs Act mirror those in the Criminal Code, namely the peace officer power to arrest an individual who is the subject of an outstanding criminal arrest warrant.
- 163.5(1) In addition to the powers conferred on an officer for the enforcement of this Act, a designated officer who is at a customs office and is performing the normal duties of an officer or is acting in accordance with section 99.1 has, in relation to a criminal offence under any other Act of Parliament, the powers and obligations of a peace officer under sections 495 and 497 and paragraphs 498(1)(a) and (b) of the Criminal Code, and subsections 495(3) and 498(3) of that Act apply to the designated officer as if they were a peace officer.
- [39] As a statutory body, the CBSA is limited in the exercise of its powers to that which has been statutorily delegated to it. The Civil Warrants do not fall under either of those Acts. Thus, they do not permit CBSA officers to exercise "peace officer" powers in relation to the enforcement of the Civil Warrants.

[40] I am not prepared to order the CBSA to arrest and detain the defendants upon their entry into Canada. If the personal defendants return to British Columbia, the Civil Warrants issued by Ball J. authorize their apprehension by any peace officer.

Canadian Police Information Centre

[41] In his affidavit affirmed January 13, 2020, Superintendent Jeff Beaulac of the RCMP deposed, in part, that the primary function of the Canadian Police Information Centre (CPIC) system is to facilitate nation-wide information sharing amongst law enforcement agencies to better carry out their duties. He also explained that:

As of January 6, 2020, there were approximately 227,000 active warrants on CPIC. While CPIC does not signify whether an entered warrant is a criminal or civil warrant, in my experience a strictly non-criminal warrant would only be entered onto the system if it involved a public safety risk component. For instance, a family law protection order may be entered onto CPIC given the risks to the public, including the individual who sought the order, and the police should they come into contact with the person against whom the order is made.

[42] This statement is somewhat inconsistent with the earlier statement in Superintendent Beaulac's affidavit that:

Section 10.1.2 of the CPIC policy manual states "CPI Centre systems were designed and intended for use in public safety and criminal justice matters only and are not intended for use in civil matters. However, civil courts may at times request or require an agency to enter a civil order. Before entering a civil order on any CPI Centre system, Agency Heads must consider the following:

- Does the civil situation involve a threat to public safety (i.e. child custody matters) or could it potentially lead to criminal charges?
- Will a police officer have the legal authority to act on or execute the civil court order (i.e. warrant of arrest for contempt of a civil court)?
- Could the agency be exposed to civil liability issues (i.e. unlawful detention)?
- Can the validity of the order be confirmed 24/7 as required by CPI Centre policy?"

[43] In the result, I am satisfied that if I were to order that the Civil Warrants were to be entered into CPIC that would have to be done.

Other Police Information Systems

[44] Superintendent Beaulac deposed that the Police Records Information Management Environment British Columbia ("PRIME") is the legislated records management system for law enforcement agencies in British Columbia, which is used by all police agencies in the province. Insofar as PRIME is concerned, Superintendent Beaulac further deposed:

13. Each police agency is responsible for their own information uploaded to PRIME. RCMP Detachment Commanders are responsible for the overall supervision and ownership of PRIME records. Line Supervisors are responsible for reviewing all reports generated in PRIME and the management of workflow queues. Lead Investigators are responsible for the completeness and accuracy of all data in the PRIME record. Every PRIME user has the responsibility to ensure accurate and complete information is added to PRIME.
14. There is no policy specifically on whether a civil warrant can be uploaded to PRIME.
- [45] Superintendent Beaulac also deposed information in relation to the Police Information Retrieval System ("PIRS") and the Police Reporting and Occurrence System ("PROS"). Superintendent Beaulac deposed PIRS was a system used by the RCMP, as well as external partner agencies, to index limited information captured during the investigation of a police incident, but it was decommissioned on November 29, 2017. He further deposed that PROS is not used to record warrants.
- [46] I conclude from the plaintiffs' application that they include PRIME, PIRS and PROS, within their application as a part of CPIC, and I will treat them as such for the purposes of the application before me.
- [47] At the hearing of this application, the plaintiffs abandoned the position that the Civil Warrants should be added to PIRS and PROS.
- [48] For the purpose of the application before me, I will consider only the relief sought in relation to CPIC and PRIME together.

INTERPOL

- [49] Superintendent Beaulac deposed that INTERPOL is an international network of police organizations and legal experts. Its aim is to facilitate police cooperation amongst member states to further international law enforcement in all sectors of criminal activity. Currently, INTERPOL membership sits at 194 countries. With respect to INTERPOL, Superintendent Beaulac further explained:
20. INTERPOL's principal operations are conducted through the National Central Bureau ("NCB") of each member state. The RCMP has been delegated the responsibility to administer and operate Canada's NCB, which is located at the RCMP's national headquarters in Ottawa (the "Canadian NCB")
21. The Canadian NCB is the central coordination point for the Canadian law enforcement community in matters involving INTERPOL.
22. The police force of a member state may arrest an international fugitive when they have notice that the individual is sought for arrest by another member state or, in some cases, an international criminal tribunal. One mechanism through which such notice is provided is through the issuance of "Red Notices" signaling that a person is wanted for arrest. Red

Notices allow an arrest warrant issued by a member state to be circulated amongst INTERPOL member states and posted to INTERPOL's website with a view towards extraditing the person sought.

23. There are two types of Red Notices. The first type is based on an arrest warrant and is issued against a person wanted for prosecution. The second type is based on a court decision and is issued when a person is sought to serve a sentence.
24. Red Notices may not be effective as arrest warrants in all jurisdictions. For example, in Canada, an individual cannot be arrested on the strength of an international request or warrant. When a request is received from INTERPOL or directly from a state to arrest an individual in Canada, it is necessary to go before a judge to obtain a Canadian arrest warrant.

[50] Article 83(1)(a) of INTERPOL's Rules on the Processing of Data, III/IRPD/GA/2011 (2019), sets out the minimum criteria for the publication of red notices, namely:

- (i) The offence concerned is a serious ordinary-law crime.
- (ii) Penalty threshold:
 - if the person is sought for prosecution, the conduct constituting an offence is punishable by a maximum deprivation of liberty of at least two years or a more serious penalty;

[51] Article 83(1)(b) of the same Rules sets out that a Red Notice may be published if the cumulative criteria in Article 83(1)(a) are not met, but only if the INTERPOL General Secretariat considers that "publication of the requested red notice would be of particular importance to international police cooperation".

[52] The present case does not meet the cumulative criteria set out by INTERPOL.

[53] That said, the order sought by the plaintiffs does not require INTERPOL itself to do anything; it only requires the RCMP to "seek that" INTERPOL publish a Red Notice.

[54] The question then becomes whether I am prepared to make the orders sought with respect to the RCMP, CPIC or INTERPOL.

The Evidentiary Foundation for the Plaintiffs' Applications

[55] The plaintiffs wish to enforce the Civil Warrants, but recognize that if the personal defendants are indeed in Fiji, Canadian peace officers cannot enforce the warrants there.

[56] Counsel for the plaintiffs seeks the orders set out above in order to discourage the Fijian government from permitting the personal defendants to regain their Fijian citizenship.

- [57] As I understand the plaintiffs' theory, the personal defendants have fled to Fiji and will be seeking to regain their Fijian citizenship. They say that if the personal defendants seek their former Fijian citizenship, the Fijian government would make inquiries of the Canadian government as to the defendants' activities while in this country. The plaintiffs submit the Fijian authorities therefore must be made aware of the Civil Warrants.
- [58] The plaintiffs contend that if the Fijian officials learned of outstanding warrants against the personal defendants, they would refuse to grant them the return of their Fijian citizenship, and deport them back to Canada.
- [59] Although the plaintiffs' counsel has consulted with Fijian counsel, to whom I will refer below, they offered no evidence that the personal defendants ever had, or have lost, their Fijian citizenship, nor any evidence of the steps that the personal defendants might face in seeking a return of their Fijian citizenship, if indeed they had and lost that citizenship.
- [60] The basis upon which the plaintiffs seek these orders is problematic.
- [61] Notwithstanding the retainer of Fijian counsel, the plaintiffs offered no evidence as to whether any reciprocal enforcement of court orders such as the enforcement of orders to appear before a Canadian court exists between Fiji and Canada.
- [62] One difficulty is that counsel for the plaintiffs asserts that the personal defendants were Fijian citizens, but took out Canadian citizenship. In his submissions, he said that they have left Canada and are presently in their native Fiji on limited visas due to their Canadian citizenship. There was no evidence before me to support his advice or those submissions.
- [63] The order of Ball J. does not refer to any affidavit or any other evidence to support the recitation that the personal defendants have absconded to Fiji, and I do not regard the recital as a finding of fact.
- [64] The only evidence before me that could support the conclusion that the personal defendants have absconded to Fiji was in the affidavits of Manroop Kaur Sanghera affirmed October 28, 2019, Abdul Razak affirmed November 5, 2019, Shaheen Farnaaz Begum affirmed November 5, 2019, and Manjinder Sodhi affirmed November 20, 2019.
- [65] In her affidavit, Ms. Sanghera states that she had a conversation with Bhagwant Singh, who also had dealings with the personal defendant Madhu Lata Singh, and deposed:

During the conversation Bhagwant mentioned that he has solid information that Madhu is in Fiji with her husband, children, mother and father in law. He said he was informed that they have been there since 05/OCT/2019.

- [66] In his affidavit, Mr. Razak states:

After we finished the work, my wife and I met Glen who introduced himself as the contractor for Top Notch Building Maintenance. Glen started to enquire about Madhu's whereabouts and had informed us that Madhu has fled the country because she has not paid her other workers for the past month and nobody is answering at Madhu's door when they attend her property.

I have made numerous attempts trying to find Madhu in Fiji. I have had some assistance by using some contacts in Fiji.

I was informed that Madhu was living with her sister in Sigatoka and Madhu had arrived in Fiji on 07/OCT/2019.

Again, I made several attempts to contact the Fiji police, Fiji Immigration and received confirmation that she is in Fiji.

[67] Ms. Begum attached an email chain to her affidavit which includes, in part:

From: abdul razak <abdulrazak726@yahoo.com>

Date: 31/10/2019 08:50 (GMT + 12:00)

To: Abdual Shaim <abduls@ats.com.fj>

Subject: Re: VERY URGENT - IMMEDIATE ACTION REQUIRED - Madhu Lata SINGH and Sanjay Kumar SINGH

Hello brother. This is a good news. That they are still on Fiji. Would you would able to help me as to what els [sic] should be done that they can be sent here.

Thanks,

Kind regards

Abdul & Shaheen

On Wed, 30 Oct 2019 at 1:30 PM, Abdul Sahim <adduls@ats.com.fj> wrote:

Good Morning Brother

Passengers are in Fiji which is now under investigation by authorities.

Will update you as I have forwarded to the highest level of authority.

Refer chain of e-mails below. You may correspond to me only for anything I can assist you with.

Kind Regards,

Abdul Sahim

From: Doris K. Nakaora

Good morning Sir

This is to advice that the subject persons are not booked on any of the outgoing Fiji Airways NZ-bound flights today. Am yet to verify with Air New Zealand (NZ53)

We have been able to confirm passport numbers and D.o.B which are as follows:

1. Madhu Lata SINGH [];
2. Sanjay Kumar SINGH [];
3. [S.S] and
4. [I.S.].

The family arrived on 07/10/19 from LAX (FJ811) and stated local address as BILALEVU, SIGATOKA ETD declared on the arrival card is 27/03/2020.

Respectfully submitted for information.

DN

Doris Nakaora,

Senior Customs Officer, Border - Baggage Hall Nadi Airport | Nadi | Fiji

From: Mohammed Shameem

Sent: Thursday, October 31, 2019 6:49 AM

To: Doris K. Nakaora

Cc: Pita Keni; PaxDM; Sanjip Reddy; Mohammed Shameem; 'Border Police'; Deepak Karan

Subject: Fwd: VERY URGENT - IMMEDIATE ACTION REQUIRED - Madhu Lata SINGH and Sanjay Kumar SINGH

Bula Vinaka SCO Doris

As discussed, please refer to the email below and attachments. Liaise with the referral officer and see if they are in Fiji. If they are in Fiji, check their expected date of departure and try to check with airline if they are confirmed to depart.

Provide the update to DOI for their necessary decision and action please.

Thanks.

Mohammed Shameem

Chief Customs Officer - Nadi, Customs - Border | Nadi | Fiji

From: Abdul Sahim <abduls@ats.com.fj>

Date: 31/10/19 05:51 (GMT + 12:00)

Good Morning,

Please refer e-mail with attachments which has come our way for your action. They went on e-mailing and calling on 'Corporate Jet Handling' through ATS website.

Thanks,

From: Rosie Sodhi [mailto:rsodhi@bearcreeklaw.com]

Sent: Thursday, 31 October 2019 4:59 AM

To: PaxDM

Cc: mmagaril@bearcreeklaw.com

Subject: RE: VERY URGENT - IMMEDIATE ACTION REQUIRED - Madhu Lata SINGH and Sanjay Kumar SINGH

Dear Abdul,

I write further to your discussion with Abdul Razak concerning Madhu Lata SINGH and her family who are travelling from Fiji to New Zealand.

In order to assist you in recognizing Madhu Lata SINGH I have attached a copy of her drivers license which shows her date of birth as [].

I am afraid I do not have date of births for Sanjay Kumar SINGH nor the children. However, the names of the children are:

1. [S.S.]; and
2. [I.S.].

To assist you have attached Facebook pictures of Madhu Lata SINGH, her husband and children and also Canadian filed warrants for Madhu Lata SINGH and her husband Sanjay Kumar SINGH.

If you require any further information, please do not hesitate to contact either myself or Mikhael Magaril.

Many thanks,

Yours truly,

Yours truly,

Rosie Sodhi

Paralegal to Mikhael Magaril

[68] In her affidavit, Mr. Magaril's paralegal Ms. Sodhi deposed:

I am aware that Mr. Magaril has been in contact with Ms. Renee Lal, a barrister in Fiji who acts as his counterpart/local Fijan [sic] counsel in this proceeding. I've been included in numerous correspondences between them, including e-mails and phone calls. The most recent phone conversation that I was part of was yesterday (19/NOV/2019). During that phone call it was confirmed that both Madhu Lata Singh and Sanjay Kumar Singh according to Ms. Lal's resources and contacts remain in Fiji and remain residing at Sanjay's brother's residence in Sigatoka, Fiji.

[69] This evidence is clearly inadmissible. Ms. Sanghera's evidence is hearsay on hearsay, and Mr. Razak's evidence on this point is hearsay that cannot be traced to an identifiable individual, as is that of Ms. Sodhi. Ms. Begum's affidavit refers to unsworn hearsay evidence. None of these statements can be relied upon for proof that the personal defendants are no longer in Canada, or that they are now in Fiji.

[70] I find that the plaintiffs have failed to establish a factual basis to support their application and dismiss the application for that reason.

[71] I will, however, consider the merits of their application, on the basis of what would have been appropriate had the plaintiffs established a proper factual basis therefore.

The Exercise of the Court's Discretion

[72] Counsel for the plaintiffs contends that:

where the litigants are forced to prosecute civil contempt, the Crown is the beneficiary of any fines that are awarded.

The current system is broken. By leaving the prosecution of contempt to underfunded and ill-equipped litigants and then opposing their efforts, the Crown has effectively benefitted rogues by declaring open season on those who are unable to defend themselves.

If the court accedes to the Attorney-General's position, the long arm of the law will have surely been amputated and all teeth from the court's orders removed.

[73] Even if I was prepared to assume that the personal defendants were Fijian citizens, and are now Canadian citizens who may wish to renew their Fijian citizenship, I cannot accede to these hyperbolic and in terrorem submissions.

[74] The plaintiffs chose, and were not forced, to seek the orders that they have been granted. They did so in the context of a civil dispute. The Crown cannot be forced to inject itself into such a dispute, and I reject the plaintiffs' contention that the Crown should be forced to participate in this civil case because the relief sought by the plaintiffs could result in the sanction of a fine from which the Crown might benefit.

[75] Had I accepted that the personal defendants were in Fiji, then I would also find that Canadian peace officers could not enforce the Civil Warrants there.

[76] I accept that the CPIC system was designed and intended for use in public safety and criminal justice matters, and that should remain its principal focus. If civil warrants are to be ordered to be posted onto CPIC for the speculative purpose contended for by the plaintiffs, the present 227,000 entries could swell to proportions that could interfere with the main purpose of the CPIC.

[77] More importantly, however, entries on the CPIC system are largely a measure of police discretion, as discussed in the affidavit of Superintendent Beaulac.

- [78] When appropriate, some judges in this province have taken care to preserve police discretion in crafting enforcement orders: *Red Chris Development v. Quock et al.*, 2006 BCSC 1472 at para. 39; *Red Chris Development Company Ltd. v. Quock*, 2014 BCSC 2399 at para. 86; *Maple Ridge (City) v. Scott*, 2019 BCSC 157 at paras. 67 and 70; and *Gitwangak Indian Band v. Davis*, 2017 BCSC 744 at para. 52.
- [79] Nevertheless, as I have indicated above, I accept that it is open to me to order that the Civil Warrants be entered into CPIC. I accept that entries onto CPIC are largely a matter of police discretion, and that some judges have taken care to preserve police discretion in the enforcement of court orders. However, it is my view that this does not preclude the Court's ability to order the Civil Warrants be put onto CPIC.
- [80] Instead, I find there must be a sufficiently compelling reason to require the police to enter civil warrants onto CPIC. I am not prepared to make such an order, as the speculative basis urged upon me by the plaintiffs provides no such compelling reason.
- [81] Insofar as an order requiring the RCMP to intercede with INTERPOL is concerned, the plaintiffs' argument is even less compelling. I am satisfied by the evidence of Superintendent Beaulac that the focus of INTERPOL is to facilitate international police cooperation to further international law enforcement in all sectors of criminal activity, and I will not impose an order interfering with that organization's focus in this civil case.
- [82] The Attorney General for Canada submits that constitutional concerns arise with the plaintiffs' request that the defendants only be permitted to travel on a flight arriving in British Columbia, making reference in his submissions to s. 6(1) of the Charter. That section provides that:
- 6(1) Every citizen of Canada has the right to enter, remain in and leave Canada.
- [83] I find it unnecessary to address s. 6 of the Charter in order to resolve the plaintiffs' application.

Conclusion

- [84] The plaintiffs' application is dismissed.

"The Honourable Chief Justice Hinkson"

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