

CANADA / JUDGMENT

Reehal v. Reehal

2020 BCSC 1635

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Supreme Court of British Columbia

DECIDED

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2020 BCSC 1635 Reehal v. Reehal

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Reehal v. Reehal,

2020 BCSC 1635

Date: 20201103

Docket: E170396

Registry: Vancouver

Between:

Dorothy Reehal also known as Dorothy Nowakowski

Claimant

And

Harvey Reehal also known as Harvinder Singh Reehal and 866887 B.C. Ltd.

Respondents

Before: The Honourable Mr. Justice A. Ross

Reasons for Judgment

Counsel for the Claimant:

A. Ouellet

K. Gardiner

Counsel for the Respondents:

L. Ridgedale

N. Aram

L. Shepherd

Place and Date of Trial/Hearing:

Vancouver, B.C.

July 29-31, 2020

September 9-10, 2020

Place and Date of Judgment:

Vancouver, B.C.

November 3, 2020

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- [1] This application follows in a line of applications in this high-conflict family litigation.
- [2] At the start of this hearing, there were three applications before the court. Two filed by the claimant and one by the respondent.
- [3] When filed, the claimant's notice of application sought various forms of relief. In the application, the claimant alleged that the respondent had breached two prior orders of this Court in 14 different ways. Those orders required the respondent to pay certain amounts to the claimant and produce certain financial documents.
- [4] The claimant sought a finding that the personal respondent, Mr. Reehal (the "respondent"), was in contempt of court for failure to comply with those prior orders. Alternatively, the claimant sought an order that the respondent was in breach of those orders and for a fine or special costs pursuant to ss. 213, 230 of the Family Law Act, S.B.C. 2011, c. 25 [FLA].
- [5] The parties sought additional relief in the remainder of the cross-filed notices of application, including variation to the existing interim support. Those items were adjourned to a hearing date in November 2020.

- [6] This hearing proceeded for five days solely on the issues of contempt and breach of the prior orders. The hearing commenced in July, but three full days were not sufficient to get through the 14 binders of jointly filed affidavit material. The hearing was adjourned to September 9, at which point two further binders of affidavits were tendered.
- [7] During the interregnum, the respondent disclosed documents and made payments to the claimant. Those actions put him in compliance with the prior orders. Depending on your point of view, by these actions, he either "purged his contempt", "cured his breach", or "took the necessary steps". However one may describe the respondent's actions, as of the September hearing dates, the claimant had achieved the relief sought in her first two applications, and the respondent was in compliance with all orders.
- [8] However, given the expenses she incurred to get to that point, the claimant continues to seek an order that the respondent was in contempt of the prior orders, or alternatively, an order finding that the respondent was in breach of the orders, pursuant to ss. 213, 230 of the FLA. She seeks a fine and an award of special costs.
- [9] The claimant submits that this application was necessary due to the respondent's actions in flaunting his disclosure obligations and his breaches of prior orders. She says that the respondent has delayed the progress of this action.
- [10] In response, the respondent frames the claimant's application as an abuse of process, tantamount to litigation harassment, undertaken by the claimant for strategic purposes to gain an advantage at trial. He says that the claimant is using the court in these interim applications as a "weapon".
- [11] For the reasons set out below, I am unable to find that the respondent was in contempt of the prior orders. However, I find that he was in breach of the orders pursuant to ss. 213, 230 of the FLA, and I order the respondent to pay the claimant the amount of \$5,000.

Litigation Steps and Chronology

- [12] Some background to the litigation is necessary for context.
- [13] The parties began living together in 1992 and were married in 1998. They have two daughters, both of university age.
- [14] The parties have been before the courts on several applications. In her decision (indexed at 2018 BCSC 475), Justice Fitzpatrick described the family as wealthy, with family assets exceeding \$7 million. Those assets were generated by Mr. Reehal's successful business ventures. The profits from those ventures are paid out as management fees to certain family companies, and then to the claimant and the respondent.
- [15] Justice Fitzpatrick described the web of companies as follows:
- [16] The family's wealth is mainly concentrated in certain corporate interests.

(i) The Reehal Entities

- [17] Beginning in 2007, Mr. Reehal established the following three companies and a family trust (the "Reehal Entities") to better organize the family's income from other corporate entities (described below):
- a) Harvey Reehal Consulting Inc. ("Reehal Consulting");
 - b) Reehal Holdings Ltd. ("Reehal Holdings"): formed as an operating company to manage the family's expenses. Originally, the Reehals were both directors and hold officer positions of secretary and president;
 - c) the respondent, 866887 B.C. Ltd. ("866"): formed in November 2009 for the purpose of owning certain properties the Reehals purchased, being two Vancouver condominiums and a cottage property in Washington State. The Reehals are directors and hold officer positions of secretary (Ms. Reehal) and president (Mr. Reehal); and
 - d) Harvey Reehal Family Trust ("Reehal Trust"): despite having been set up for tax purposes, the Reehal Trust has never been used and no funds were ever deposited into it. Mr. Reehal is the trustee and the beneficiaries are the Reehals and their Children.
- [18] The joint expert appointed under the JCC order is in the process of valuing the Reehal Entities. Unfortunately, the status of this valuation process is not clear, particularly since no 2016 and 2017 financial statements have been prepared for the Reehal Entities, save for the Reehal Trust. Mr. Reehal contends that Ms. Reehal, as the accountant for these companies, has failed to provide the external accountant for these companies with the information and documents necessary to complete these financial statements, despite numerous requests that she do so.

(ii) The Corporate Entities

- [19] Mr. Reehal has interests in four companies related to his work in the luxury furnishings business: Inform Projects Partnership ("IPP"); Inform Installations Ltd. ("Inform Installations"); Bulthaup Studio Vancouver Inc. ("Bulthaup Vancouver"); and Rebe Holdings Inc. ("Rebe") (collectively, the "Corporate Entities").
- [20] Mr. Reehal and his business partner formed IPP in May 2007 pursuant to a partnership agreement dated May 1, 2007 (the "Partnership Agreement"). IPP works with developers, interior designers and architects to create interiors for large, multi-residential buildings in Vancouver, Calgary, Toronto and the United States. Mr. Reehal and his business partner each have a 50% interest in IPP through their respective companies (Mr. Reehal's is Reehal Consulting).
- [21] IPP is the main income generating business and is the source of most of the Reehal family's income and wealth.

- [22] Mr. Reehal and his business partner also formed Inform Installations in May 2007. They each have a 50% interest in it. Inform Installations' primary purpose is to hire and pay subcontractor installers. Mr. Reehal states that Inform Installations does not generate a lot of income and Mr. Reehal and his partner have not taken any income or withdrawals of funds from this company.
- [23] Bulthaup Vancouver is owned by IPP and was formed in March 2008 with the primary purpose of opening a showroom for IPP. The majority (75%) of Bulthaup Vancouver's sales are for smaller projects and as a result, it earns much less income than IPP. Mr. Reehal states that he and his partner have not taken any income or withdrawals from the company.
- [24] Rebe was formed in November 2011 for the purpose of purchasing a warehouse. Mr. Reehal and his partner each have a 50% interest in Rebe through their respective companies (Mr. Reehal's is Reehal Holdings). Mr. Reehal states that, although the warehouse is fully leased, it required major repairs in the past few years. As a result, he says that Rebe operated at a loss from 2015- 2017. Mr. Reehal states that he and his business partner have not taken any income or withdrawals from Rebe.
- [16] The claimant filed the notice of family claim in February 2017.
- [17] This action was scheduled for trial in the summer of 2020, but was adjourned by consent. The matter is now scheduled to proceed to a 15-day trial in October 2021. No examinations for discovery have been conducted.
- [18] There have been numerous applications.
- [19] The application before Fitzpatrick J. transpired over two days in February 2018. After much back and forth, the respondent eventually consented to many of the 17 areas of relief sought by the claimant. In that decision (the "Fitzpatrick Order"), Fitzpatrick J. granted interim spousal and child support, and reconciled certain funds that had been withdrawn by the claimant from a joint account.
- [20] Justice Fitzpatrick's decision notes that the claimant's application sought a fine against the respondent but that relief was dismissed:
- [121] Ms. Reehal also sought an order imposing a \$5,000 fine on Mr. Reehal pursuant to s. 213 of the FLA in relation to her position that he had failed to comply with disclosure requirements under the Supreme Court Family Rules, B.C. Reg. 169/2009. Given my conclusion above, there is no basis for such relief.
- [21] One of the paragraphs of relief that was achieved by consent was para. 14. I set it out here because, as discussed below, it was breached by the respondent:
14. BY CONSENT, Mr. Reehal will fund the amount of \$20,000 per year to Reehal Holdings' line of credit to pay for the ongoing expenses of the three rental properties owned by 866 (the "Rental Properties"). The payment will be made in two installments of \$10,000 and shared by the parties. The first installment is to be paid by the parties forthwith for the current year

and then on the first day of January in each subsequent year; the second installment is to be paid by the parties no later than six months after payment of the first installment in any given year.

- [22] Justice Fitzpatrick ordered that the parties bear their own costs of the two-day application.
- [23] The parties later appeared before Justice Jenkins on July 5, 2018 (15 weeks after the Fitzpatrick Order). The claimant sought several forms of relief, including payment of certain expenses. She, again, sought the assessment of a fine under s. 230 of the FLA. Justice Jenkins dismissed or adjourned various items of relief sought by the claimant. In respect of the fine sought by the claimant, Jenkins J. found no wilful conduct by the respondent and dismissed that relief. He awarded costs to the respondent.
- [24] Following the hearing before Jenkins J., the claimant sought production of financial documents from Inform Projects Partnership. The respondent was concerned about producing those documents due to sensitive business information. On August 12, 2019, he obtained an order of Master Harper requiring the parties to comply with the implied undertaking pertaining to document production.
- [25] The parties next appeared before Justice Milman on August 20 and 21, 2019 (indexed at 2019 BCSC 1563). The claimant sought further document production and alleged that the respondent was in breach of three paragraphs of the Fitzpatrick Order. The claimant was, on the whole, successful in that application.
- [26] Justice Milman dealt separately with each of the three paragraphs of the Fitzpatrick Order that the claimant alleged the respondent had breached. Of the three allegations of breach, Milman J. adjourned one, dismissed one, and allowed one (the "Milman Order"). He found that Mr. Reehal had breached para. 14 (above, at para. 21) relating to the funding of expenses for certain rental properties owned by the parties.
- [27] In discussing the respondent's approach to the Fitzpatrick Order, Milman J. noted:
- [40] Mr. Reehal acknowledges that he has not complied with that paragraph, inasmuch as he has not paid \$20,000 into the Reehal Holdings line of credit each year as required. His explanation is that it was no longer possible to pay the expenses through that account once it was frozen by Vancity. He has, he says, complied instead with the "intent" of the order by paying the ongoing expenses associated with the rental properties directly. He notes that on a previous application in this matter heard July 5, 2018, Jenkins J. refused to find him in breach of the March 23, 2018 Order for having paid certain expenses directly in lieu of making those particular payments via the Reehal Holdings line of credit account at Vancity.
- [41] For reasons that I will explain more fully below, I find that Mr. Reehal is in breach of para. 14 of the March 23, 2018 Order for having failed to make the requisite payments into the account specified in that paragraph.
- [28] In explaining his reasons more fully, Milman J. wrote:

- [60] I appreciate that Mr. Reehal believes he has adhered to the "intent" of the March 23, 2018 Order by covering the rental property expenses from other sources. The proper way for him to have made that change, however, would have been to seek Ms. Reehal's agreement to it, or failing that, to apply to the Court for a variation of the March 23, 2018 Order to permit him to do so. The order he later obtained from Jenkins J., whatever its effect, did not go that far. Instead he took matters into his own hands and must now, at least in the interim, bear the consequences of that conduct.
- [61] I am therefore vacating para. 14 of the March 23, 2018 Order, as it is no longer relevant.
- [62] Instead, I am making the following orders:
- (a) until the conclusion of the trial, Mr. Reehal is to fund any shortfall between the revenue and expenses of the rental properties;
 - (b) until the conclusion of the trial, Mr. Reehal is to provide an accounting to Ms. Reehal each quarter showing all revenue received and expenses incurred in relation to the rental properties;
 - (c) Mr. Reehal is to pay Ms. Reehal \$20,000 forthwith to compensate her for the payments she has made to retire the Reehal Holdings line of credit; and
 - (d) Mr. Reehal is to pay \$10,000 to Vancity monthly toward the Reehal Holdings line of credit until the outstanding balance is paid in full.
- [29] Before Milman J., the claimant, again, sought a fine or special costs but that portion of her application was dismissed. He wrote:

E. Fine and Costs

- [80] Ms. Reehal seeks a fine, or alternatively, an award of special costs against Mr. Reehal to punish him for his alleged breaches of the March 23, 2018 Order and his false and delayed financial disclosure in this litigation.
- [81] I have concluded that it would be premature to grant that kind of relief at this stage. Although I have found Mr. Reehal to be in breach of para. 14 of the March 23, 2018 Order, I have been unable to determine, on the state of the evidence before me on this application, whether he has also breached para. 1 of that order. The degree to which the inaccuracies in and lateness of his financial disclosure to date is deserving of rebuke more generally, if at all, is also a matter that can best be assessed after all of the evidence has been reviewed at the conclusion of the trial. I am therefore remitting that aspect of the application to be dealt with at the trial.
- [82] As she has been substantially successful on the remainder of the application, however, I am awarding costs of the application to Ms. Reehal at the ordinary tariff, in any event of the cause.

- [30] As noted, Milman J. found that the respondent was in breach of the prior order and awarded costs of the application to the claimant in any event of the cause.
- [31] I set out the paragraphs above to provide context for this application. This is the third time that the claimant has sought a fine against the respondent and the first time that she has sought an order finding him in contempt.
- [32] In those three prior applications:
- a) Justice Fitzpatrick ordered that each party bear their own costs.
 - b) Justice Jenkins awarded costs to the respondent.
 - c) Justice Milman awarded costs to the claimant in any event of the cause.
- [33] As noted above, the current application elapsed over five hearing days. The first three days were heard on July 29-31, 2020. The claimant's notice of application sought production of certain documents and payment of approximately \$50,000 that had been ordered by Milman J.
- [34] The respondent opposed the claimant's application.
- [35] With respect to the order for document production, he argued that, although some were delivered late, he had complied with most of the order by July 29. With respect to the one document in dispute, he claimed that he produced the document, although in a format that was not compatible with counsel's software. I discuss the nature of that disclosure below.
- [36] With respect to the order that he reimburse the claimant for approximately \$50,000, he claimed that he had been unable to pay the amount ordered because he could not access the necessary funds. Hence, his stated reason for opposing that part of the claimant's application, relating to the breach of the order to pay certain amounts, was his "defence" (to the contempt allegation) that he was incapable of securing the necessary funds to pay the amount ordered.
- [37] Mr. Reehal's counsel brought to my attention several letters that she wrote in the weeks and months after Milman J.'s reasons where she indicated Mr. Reehal's inability to access the funds necessary to pay the ordered amounts. The letters show Mr. Reehal sought alternative routes toward achieving the substance of the order. For example, he sought agreement to sell or mortgage one of the family's properties, with the proceeds being paid into trust and a portion allocated to pay the ordered amount.
- [38] The respondent further submitted that his ability to produce documents, and to provide accurate financial disclosure, was limited due to his lack of financial or accounting experience. The respondent goes further and foists blame onto the claimant for many of the accounting problems relating to the family companies. On this point, I note that these family companies are not active businesses. They are simply vehicles through which the annual income from the respondent's business is paid out to family members. The claimant

had been the accountant for those entities. I am informed that the respondent, and the family companies, have commenced a separate action against the claimant, alleging that she was negligent in her duties toward those companies.

[39] The issues for me to decide are as follows:

- a) Was the respondent in contempt?
- b) Was the respondent in breach?
- c) If so (for either finding), what is the appropriate relief?

[40] Below, I deal with the claimant's allegation of contempt and the respondent's defence to it. I find that the respondent was not in contempt. I then go on to address the (less stringent) test applicable to the allegation that the respondent was in breach of the prior orders, where I find that the respondent was, in fact, in breach.

Contempt of Court

[41] The claimant's notice of application, filed May 21, 2020, set out 13 paragraphs of alleged breaches of the Milman Order and one paragraph relating to a breach of the Fitzpatrick Order.

[42] The respondent concedes that he was late in producing certain documents. By the time this hearing commenced on July 29, the claimant acknowledges that Mr. Reehal had taken steps to put himself in compliance with all but two items in the prior orders:

- a) The claimant submitted that he had not produced the general ledger for one of the family companies for the fiscal year ending 2019.
- b) The claimant alleged, and the respondent conceded, that he had not paid various amounts to the claimant. The amounts ordered by Milman J. totalled approximately \$50,000. As noted, the respondent claims that he could not access the funds necessary to pay those amounts.

[43] By the time the hearing reconvened on September 10, Mr. Reehal had brought himself into compliance with those two orders.

[44] The principles to be applied in a civil contempt application were recently discussed in *M.P.R. v J.B.R.*, 2020 BCSC 1046, where Justice Armstrong cited the Supreme Court of Canada's decision in *Carey v. Laiken*, 2015 SCC 17:

[106] The principles applied to civil contempt applications are summarized in *Carey v. Laiken*, 2015 SCC 17 [Carey]. In *Carey*, the Court described typical contempt proceedings as a bifurcated process where liability is addressed first, and once liability is established the court engages in a separate penalty phase: see para. 18. Civil contempt occurs when a party intentionally does an act prohibited by an order of the court.

- [107] The purpose of contempt orders is "first and foremost a declaration that a party has acted in defiance of a court order": Carey at para. 30.
- [108] Generally, civil contempt is a coercive matter: for the purpose of sentencing the goal is to punish for breaching an order: Carey at paras. 30 and 31.
- [109] In Carey the court discussed the three important elements that must be proved beyond a reasonable doubt in a contempt application:
- (a) The order breached must be stated clearly and unequivocally concerning what should and should not be done: Carey at para. 33. If an order is unclear or is missing essential detail about where, when, or to whom it applies, or if it incorporates overly broad language or if external circumstances obscured its meaning, the alleged contemnor may be excused;
 - (b) The person must have actual knowledge of the order: Carey at para. 34. It may be possible to infer knowledge in some circumstances or that the contemnor has been wilfully blind;
 - (c) The party alleged to be in breach must have done the act intentionally: Carey at para. 35. Intent to interfere with the administration of justice is an element of civil contempt and the lack of contumacy is not a defence: at para. 47.
- [45] To those considerations, I add the comments of Justice Punnett in J.D.G. v. J.J.V., 2013 BCSC 1274 at para. 27, regarding the overlay of s. 213 of the FLA onto the jurisprudence on contempt applications:
- [27] While an application to hold a party in contempt is still available, presumably in all but the most egregious cases an application under s. 213 should be made initially. This recognizes the seriousness of a contempt application with its more onerous procedural and evidentiary requirements. It also recognizes that the FLA adds to the arsenal for enforcement available to the courts rather than subtracting from the court's remedies.
- [46] I note that the claimant has previously brought three applications seeking a fine or special costs under the FLA. No fine or special costs have been ordered. Justice Milman did make a finding of breach against the respondent, but left the determination of special costs consequences of that breach to the trial judge.
- [47] In accordance with the suggestion of Punnett J. in J.D.G., the claimant has made an application under s. 213 of the FLA. Accordingly, I find no barrier to considering the contempt application.
- [48] However, I find that the allegations of contempt are not established beyond a reasonable doubt.
- [49] As set out in Carey at paras. 33-35 there are three elements to an allegation of contempt:
- a) The order breached must be stated clearly and unequivocally concerning what should and should not be done.

- b) The person must have actual knowledge of the order.
 - c) The party alleged to be in breach must have done the act intentionally.
- [50] In this application, it is clear that the respondent received, and was aware of the prior orders. Thus, the second element is established beyond a reasonable doubt.
- [51] The respondent says that the first and third elements are not established.
- [52] Before addressing those elements, I note again that, by the date of the resumption of the hearing, Mr. Reehal was in compliance with all prior orders. I consider that to be some evidence that his earlier failure to comply was not as a result of contempt of the orders, but of a misunderstanding or an inability to comply. While I do have concerns about the evidence tendered by Mr. Reehal, the totality of the evidence provides me with at least a reasonable doubt about his intentions and actions.
- [53] First, I will address the clarity of the prior order regarding document production, which is the first element in an allegation of contempt.
- [54] As noted, the claimant alleges that the respondent failed to produce the general ledger of one of the family companies for the fiscal year ending 2019. She says she needs that document in order to determine the respondent's actual (personal) spending within the family companies. She says the document produced by the respondent was not a general ledger.
- [55] The respondent submits that he believed that he had complied with the order for the production of the general ledger. In that respect, he notes that the order required him to provide the general ledger but it did not indicate a specific format. He produced a document showing all of the financial transactions of the company. The claimant, however, says that document was undecipherable because it was simply a spreadsheet listing all financial transactions. The document listed hundreds (perhaps thousands) of transactions that were not delineated into categories or headings that would allow any analysis. They were not even in date order. The claimant's position is that the document produced by the respondent was not a "general ledger". It was, at best, a useless data dump.
- [56] The claimant asks that I infer from this action by the respondent, the necessary intent for contempt. She notes that the respondent sought to avoid production of the general ledger by seeking additional protections before Master Harper and Milman J. She submits that, by generating the jumble of transactions, the respondent sought to achieve the same goal that he did not achieve in those hearings.
- [57] In response, the respondent submits that the document was, in fact, "produced", albeit in a different format. He argues that, using the appropriate software, the data within the document could be manipulated to produce the desired result.

- [58] Because of the limited evidence available, I am unable to reach a decision on the respondent's argument. My inability in that regard is indicative of my doubt. Further, as noted, the document has now been produced in a format acceptable to the claimant.
- [59] On that basis, I am unable to find that Mr. Reehal was in contempt of the order to produce the general ledger.
- [60] The second allegation of contempt is that the respondent failed to pay amounts ordered by Milman J. The respondent says that he did not breach this part of the order intentionally.
- [61] First, Mr. Reehal notes that the amounts were paid in August 2020 (between the two hearing dates). He had to arrange special financing for this purpose.
- [62] Second, as discussed, Mr. Reehal's counsel tendered a series of correspondence from her office to the claimant's counsel. Those letters and emails, commencing after the date of the Milman Order, indicate that Mr. Reehal was having difficulty freeing up the funds necessary to pay the ordered amount. He made offers in an attempt to access the funds by mortgaging or selling one of the family's properties. The response from the claimant was that she had an order of the court and she was entitled to rely upon it. That position was repeated at the hearing. There is no doubt that position is correct.
- [63] However, there is a distinction between the claimant not achieving the benefit of an order and (as the claimant alleges) Mr. Reehal exhibiting contempt for the order. It is evident from his counsel's correspondence that Mr. Reehal's failure to pay the funds was not due to any contempt he had for the order itself. Instead, assuming the letters are based in fact, Mr. Reehal was having financial difficulties.
- [64] The respondent further submits that, because of his financial difficulties, he could not afford to pay counsel to seek a variation of the Milman Order. I note that such a step would have been far more preferable than the steps he did take, which ultimately led to the current morass. Justice Milman stated the same thing in respect of the Fitzpatrick Order at para. 60 of his reasons (above, at para. 28).
- [65] Again, the fact that Mr. Reehal finally took the appropriate financial steps to pay the amounts prior to the close of this hearing is some evidence that he was not acting in contempt of the order.
- [66] For the reasons set out above, I do not find Mr. Reehal's actions to meet the test for contempt. He has provided an explanation for his failure to comply with the orders.
- [67] I further note that a portion of the claimant's submission harkened back to the applications before Fitzpatrick and Milman JJ. She submitted that the respondent was exhibiting a pattern of conduct in relation to all three of these applications. She submitted that his conduct demonstrated his contempt of the court's orders. In response, Mr. Reehal submitted, and I accept, that a general "pattern of conduct" is not a basis for a contempt finding. There is no concept of "rolling" liability. A finding must be made in respect of a

specific order that is breached: *Basset v. Magee*, 2015 BCCA 422 at para. 36.

[68] For those reasons, I am unable to find that Mr. Reehal was in contempt of court.

Breach of Order Under S. 213

[69] The claimant says that the same conduct that formed the basis for her allegations of contempt also form the basis for her claims for relief under ss. 213 and 230 of the FLA. Section 213 deals with financial disclosure and s. 230 deals with enforcing orders generally.

[70] Section 213 provides:

Enforcing orders respecting disclosure

213 (1) This section applies if a person

(a) fails to comply with

(i) an order for disclosure made under section 212 [orders respecting disclosure], or

(ii) a requirement to disclose information in accordance with the Supreme Court Family Rules or the Provincial Court (Family) Rules,

within the time or in the manner required by the order or Rules, or

(b) provides information that is incomplete, false or misleading.

(2) In the circumstances set out in subsection (1), the court may do one or more of the following:

(a) make an order under section 212;

(b) draw an inference that is adverse to the person, including attributing income to that person in an amount that the court considers appropriate, and make an order based on the inference;

(c) require a party to give security in any form that the court directs;

(d) make an order requiring the person described in subsection (1) to pay

(i) a party for all or part of the expenses reasonably and necessarily incurred as a result of the non-disclosure of information or the incomplete, false or misleading disclosure, including fees and expenses related to family dispute resolution,

(ii) an amount not exceeding \$5000 to or for the benefit of a party, or a spouse or child whose interests were affected by the non-disclosure of information or the incomplete, false or misleading disclosure, or

(iii) a fine not exceeding \$5000;

(e) make any other order the court considers appropriate.

[71] Section 230 provides:

Enforcing orders generally

230 (1) Subject to section 188 [enforcing orders respecting protection], an order under this section may be made only if no other provision of this Act applies for the purposes of enforcing an order made under this Act.

- (2) For the purposes of enforcing an order made under this Act, the court on application by a party may make an order to do one or more of the following:
 - (a) require a party to give security in any form the court directs;
 - (b) require a party to pay
 - (i) the other party for all or part of the expenses reasonably and necessarily incurred as a result of the party's actions, including fees and expenses related to family dispute resolution,
 - (ii) an amount not exceeding \$5000 to or for the benefit of the other party, or a spouse or child whose interests were affected by the party's actions, or
 - (iii) a fine not exceeding \$5000.

[72] The claimant seeks an award of special costs (to be determined by a registrar).

[73] In response, Mr. Reehal submits that, if I should find that he failed to comply with the Milman Order, the breach should result in a fine. For the reasons set out below, I accept that submission.

[74] As noted above, I have concerns regarding Mr. Reehal's evidence on this application, but I still have a reasonable doubt about the essential elements of contempt.

[75] However, on the lower standard of proof required by ss. 213 and 230, I find that Mr. Reehal was in breach of the Milman Order.

[76] I find, on a balance of probabilities, that Mr. Reehal was aware that his "data dump" of transactions within the family companies did not accord with the Milman Order for production of the general ledger. If he was confused about whether his production did, or did not comply, then he could have reformatted the information after receiving the claimant's notice of application. Instead, he filed an application response opposing that relief.

[77] Mr. Reehal's lax approach to financial disclosure is further demonstrated by the Form 8 Financial Statement that he filed between the two hearing dates. Despite the fact that he was in the midst of this application, in which he was accused of contempt, his sworn Financial Statement contains demonstrably and obviously incorrect information. In turn, that incorrect information infiltrated his counsel's submissions, which had to be amended during the hearing.

- [78] The respondent's counsel submits that the cause of this problem relates to the respondent's lack of sophistication in matters relating to finance and business. She notes that he included information that both assists and hurts his overall case. As an example, counsel noted that Mr. Reehal listed vehicles that he did not have to list as personal assets, which does not help his case.
- [79] I find that Mr. Reehal's explanation for his failure to pay the amounts ordered falls short of a sufficient explanation. His Form 8 Financial Statement disclosed net assets exceeding \$7 million. To say that he was unable to find the funds necessary to pay the claimant \$50,000 is not reasonable. I find that he was in breach of that order and that he has not provided any sufficient defence or explanation.
- [80] On that basis, I find that, pursuant to ss. 213, 230 of the FLA, the respondent was in breach of two aspects of the prior orders: production of the general ledger and payment of the ordered funds.
- [81] That leads me to the question of remedy.
- [82] I have considered the possibility of an award of special costs. The quantum of any such award, I assume, would range well into the tens of thousands of dollars.
- [83] The claimant relies on *Hu v. Dickson*, 2015 BCSC 218; *C.L.M. v. M.J.S.*, 2017 BCSC 1517, where the court awarded special costs. However, in my opinion, the conduct of the parties in those cases was much more severe than in this case. Such an award of special costs would not be appropriate at this interim stage.
- [84] However, I do find that it is appropriate, under s. 230(2)(a) of the FLA, to require Mr. Reehal to pay the amount of \$5,000 to the claimant on the basis that her interests were affected by his actions. This level of payment will act as a deterrent to the respondent, while not providing the claimant with any encouragement to pursue additional applications alleging contempt.

Costs

- [85] I award the costs of this portion of the application to the claimant, in any event of the cause. Those costs are not payable forthwith. The costs for the second part of the application will be dealt with separately, following the conclusion of this application.

"A. Ross J."

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