
CANADA / JUDGMENT

Slater Vecchio LLP v. Arvanitis

2020 BCSC 385

COURT

Supreme Court of British Columbia

DECIDED

18 March 2020

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2020 BCSC 385 Slater Vecchio LLP v. Arvanitis

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Slater Vecchio LLP v. Arvanitis,

2020 BCSC 385

Date: 20200318

Docket: S195495

Registry: Vancouver

Between:

Slater Vecchio LLP

Plaintiff

And

Vicky Arvanitis

Defendant

Before: The Honourable Madam Justice Sharma

Reasons for Judgment

In Chambers

Counsel for the Plaintiff:

D.K. Georgetti

Counsel for the Defendant:

E. Kornfeld

Place and Date of Hearing:

Vancouver, B.C.

February 4, 2020

Place and Date of Judgment:

Vancouver, B.C.

March 18, 2020

[1]

- [1] These are my reasons relating to the plaintiff's application, filed November 7, 2019, seeking, among other things, a declaration that the defendant is in contempt of court. I outline below the background to the application.

BACKGROUND TO THE APPLICATION

- [2] The defendant, Vicky Arvanitis sued the plaintiff law firm Slater Vecchio LLP (the "Applicant") which had previously represented her with regard to a motor vehicle action. She sued in negligence, but her claim was dismissed: 2016 BCSC 1612. The decision on costs came later: 2017 BCSC 155. The trial judge awarded costs in favour of the Applicant, but accepted its submission to limit that award to the amount Ms. Arvanitis had posted for security (\$8,000).
- [3] Neither decision was appealed.

This Action

- [4] On May 10, 2019, the Applicant filed a claim in defamation against Ms. Arvanitis seeking both damages and an injunction. She filed a response and counterclaim on May 21, 2019.
- [5] On May 24, 2019, the Applicant filed a notice of application seeking an interim injunction relating to the allegations made in the civil claim. It also filed a response to the counterclaim on May 29, 2019. On June 6, 2019, the Applicant filed an application to dismiss the counterclaim.
- [6] The Applicant set down the application for an interim injunction for hearing on June 18, 2019. On June 10, 2019, Ms. Arvanitis brought, without notice to the Applicant, an application to adjourn the June 18 hearing. The adjournment application was itself adjourned to June 14, 2019 (by Justice Grauer), but when it was heard, Justice Ker dismissed it: 2019 BCSC 1289. In her decision, Justice Ker explained the background to Ms. Arvanitis's application for an adjournment:

- [6] Counsel for the plaintiff wrote to the defendant on April 30, 2019, advising that he had been retained by the plaintiff regarding the alleged defamatory publications by her on the Internet and formally demanding that the publications cease and be removed. The defendant's response was that she was on disability, had no assets, and that "you all can go and fuck yourselves". She also advised that she had more websites coming and that "there will be nothing you lying bastards can do about it". She has since started posting on YouTube.
- [7] By email dated May 1, 2019, plaintiff's counsel responded by advising he had instructions to commence legal proceedings seeking an injunction and asked regarding the hearing of the application, "Please advise which of May 21 to 24 or 27 to 31 is best for you." He added, "I urge you, in the strongest possible terms to seek legal advice as this is a serious matter." The defendant's response of that same day was that she was not intimidated by the plaintiff's counsel's threats and "feel free to waste your time taking me to court".
- [8] After further uncooperative emails from the defendant, plaintiff's counsel wrote to the defendant on May 10, advising that he proposed filing his client's application materials the next week, with a view to scheduling the hearing for sometime during the first two weeks of June, and asked, "If there are any dates during that period which are inconvenient for you or if you have other scheduling concerns, please advise." He again urged the defendant to seek legal advice.
- [13] Upon being advised of the hearing date, the defendant immediately responded that she was not available on June 18 and was away until September 17.
- [14] Plaintiff's counsel proposed a compromise on the basis that the application would be postponed if the defendant was willing to remove the allegedly defamatory content pending the hearing. The defendant's response to plaintiff's counsel query of when the defendant was leaving was, "It's none of your business."
- [15] Plaintiff's counsel responded that same day, advising that he would be proceeding with the application on June 18. The defendant responded that she would be seeking an adjournment until December. The defendant advises that she needs this long-term adjournment to either retain counsel or get herself up to speed on the law to represent herself.
- [16] Despite seeking a lengthy adjournment, the plaintiff says the defendant has significantly escalated her defamatory campaign since being served with the injunction application.
- [18] The plaintiff asserts the defendant has made it very clear that she continues to escalate matters. As just one example, on June 3, 2019, the defendant stated, "Clearly, the word is getting out. I have contacted the news, as well. Would you like to add that to your "defamation" list?"

- [20] In all, plaintiff's counsel has made approximately one dozen requests to the defendant for a date for the hearing of the applications. Ultimately, plaintiff's counsel advised that he was available on any date except June 10, 2019. The defendant then set down an ex parte application to adjourn the June 18, 2019, hearing date, returnable on June 10. Plaintiff's counsel, coincidentally, was in chambers that day when the defendant's application was called. Mr. Justice Grauer adjourned the application to today's date.
- [7] On June 18, 2019, Justice Duncan heard the application for an interim injunction, which she granted, on June 20, 2019, in the following terms: 2019 BCSC 1156 at para. 29:
1. Until further order of the Court, Ms. Arvanitis shall immediately delete or remove all statements and content, which she has published or caused to be published in any online forum including any social media platform, which contain direct or indirect reference to:
 - (a) the plaintiff;
 - (b) the current or former partners, employees, or family members of the plaintiff; and
 - (c) current or former clients of the plaintiff or family members thereof.
- These are collectively the "Protected Parties".
2. The defendant is hereby prohibited, on an interim basis, from publishing or causing to be published any statements or content in any online forum, including social media, which contain direct or indirect reference to the Protected Parties; directly or indirectly having contact with the Protected Parties except through plaintiff's counsel; directing, encouraging, or assisting any other person from engaging in conduct which the defendant is prohibited from engaging with by way of this order.
- [8] In granting the injunction, Justice Duncan held that the statements in question were in her view "manifestly defamatory; that is, defamatory on their face" (at para. 24). As to the balance of convenience, she held that greater prejudice would be visited upon the Applicant if the injunction were refused pending a final determination on the merits. In part, she based that on Ms. Arvanitis's statements that she was judgment proof and has no assets (at para. 27). Lastly, Justice Duncan awarded costs in the sum of \$1,000 against Ms. Arvanitis (at para. 31).
- [9] At the conclusion of that hearing, the remaining relief sought in the application, including to strike the counterclaim, was scheduled to be heard on August 15, 2019.
- [10] The Applicant came to the view that Ms. Arvanitis had breached the interim injunction granted by Justice Duncan, so on June 25, 2019, it filed an application seeking among other things, a finding of contempt. It set that application down for hearing on July 12, 2019, but Ms. Arvanitis did not appear. A bench warrant was issued and she turned herself in to the Sheriffs at the Vancouver Law Courts the next day and was placed in cells and released the same day (the equivalent of one day's incarceration).

- [11] On July 17, 2019, the Applicant filed an application seeking to strike the response to the civil claim, and seeking judgment in its favour. It also sought orders against a few companies seeking production of documents and information relating to websites on which the disputed postings appeared.
- [12] Justice Groves heard the application for contempt for Ms. Arvanitis's breach of the interim injunction on July 22, 2019 (the one originally scheduled for July 12, 2019). In reasons delivered that day, he found Ms. Arvanitis in contempt. A sentencing hearing was scheduled for October 4, 2019.
- [13] On July 30, 2019, the Applicant was successful in having its July 17, 2019 application for summary judgment, among other things, set down to be heard on August 15, 2019, together with the application to strike the counterclaim. Those two applications were addressed as one and came before me for hearing. I delivered reasons that day granting most of the relief sought.
- [14] One of the orders granted was for production of all correspondence that the defendant had exchanged with the persons that she knew or had reason to believe were former or current clients of the Applicant (the "Production Order"):

within seven (7) days [Ms. Arvanitis] shall provide to counsel for the [Applicant], copies of all correspondence she has exchanged with persons she knows, or has reason to believe, to be current or former clients of the [Applicant], including but not limited to emails and messages exchanged through social media or other messaging services from January 1, 2018 to the present;

- [15] At para. 56 of the August 15 judgment, indexed as 2020 BCSC 2369, I stated the following:

This remedy is different than usual, but I find it is justified in this case because the plaintiff is unable to get relief from defamation from damages. It has reasonably asked that with regard to their former or current clients, which is the most direct source of their reputation, that they get these documents in lieu of damages, and I am granting that order.

- [16] I adjourned the application to prohibit Ms. Arvanitis from instituting proceedings against counsel for the Applicant, but gave counsel liberty to re-apply on two days' notice to Ms. Arvanitis.
- [17] On October 4, 2019, Justice Groves heard submissions on sentencing relating to Ms. Arvanitis's contempt of the interim injunction, and he rendered his decision that day. A few passages from that judgment are helpful to the issues before me, including the following:
- [14] But let me say this: No one, in my experience, goes through life completely unscathed, and no one is not negatively affected by what they perceive, at least, to be the actions of others. But there are other realities to life which come into play when one considers how you deal with difficulties or how you deal with things when people, at least in your own mind, have done you wrong. We, as individuals, only have one life to live. We only go around the planet once. You have a choice to make as an individual. You can let the difficulties caused you, or

you think have been caused you by others, ruin your life and act out, or you can move on or try to move on.

- [15] Sometimes it is difficult to move on, but always it is the better thing to move on. Focusing on the negative, acting out against those who you have perceived have done you wrong does not do anything, other than enhance the feeling of being wronged.
- [16] Ms. Arvanitis, I perceive at this stage, is someone who has viewed that her life has been ruined, as she has said, but she is not making her life easier or was not making her life easier by the actions that she took which gave rise to the allegations of defamation, which gave rise to the interim injunction, and which gave rise to her breach of Madam Justice Duncan's order.
- [17] I do not necessarily believe that anything I say today will cause Ms. Arvanitis, who has very strong opinions about this matter, to look at things differently, but I would urge her, in as strong language as I can, that life is difficult and life is short, and you only have so much time to spend on the planet, and you should try to make the most of it.
- [18] Justice Groves then turned to a consideration of the legal principles:
- [22] Contempt is a serious matter for the following reasons. We are all fortunate to live in a country that is governed by the rule of law. There are several principles associated with the rule of law. One principle is that all persons are to be treated equally under the law. All persons are to have an opportunity to be heard by an independent tribunal or court when it is alleged that they have not, either in a criminal or in a civil way, acted responsibly in regards to what the law is. Finally, the rules that govern our society, our laws, apply equally to everyone. We are fortunate in Canada to live in a democracy where the rule of law applies, where everyone is treated equally under the law, where everyone is expected to abide by the law, and where everyone who is aggrieved has an opportunity to have a legal determination of their level of aggrievement.
- [23] Those who breach court orders unfortunately show a disrespect to the rule of law, which is the foundation of our civil society and our democracy. They act, whether intentionally or otherwise, as if the law does not apply to them when they disobey court orders. Contempt is the only remedy available to the courts to enforce its ruling and to ensure that people respect the rules and respect the law. If persons collectively chose to disobey court orders, then society would break down. We would lose the security of living in a peaceful society and in a democratic society. If persons simply chose to disobey laws or court orders that they did not want to follow, our democratic institutions would be threatened, our courts would be of no effect, and freedom would be at risk.
- [19] After noting that he had indications that the defendant had made substantial efforts to comply with Madam Justice Duncan's order, Justice Groves turned to sentencing and made the following comments:

- [28] In terms of promoting a sense of responsibility in the offender, I acknowledge, as does Mr. Georgetti in his submissions, that Ms. Arvanitis has taken most, if not all, of the steps necessary under Madam Justice Duncan's order now to be in compliance with it. But the thing that has to happen here is to send a message; send a message to persons who may think that court orders only have to be complied with if you want to; to send a message to people who are tempted to disobey court orders and, as such, perilously place society on the path towards a society where the rule of law does not apply and peaceful individuals cannot coexist with each other. A message has to be sent to persons who would wilfully disobey court orders that there are consequences. The consequences here, however, are the most modest possible.
- [29] I am satisfied that the sentence suggested by Mr. Georgetti is an appropriate one. In that regard, on the 22nd of June, 2019, in response to advice she had received that a warrant had been issued for her failure to attend in court on a contempt application, Ms. Arvanitis turned herself in to the sheriffs at 800 Smithe Street, Vancouver, on the morning of the 22nd of July, 2019. She remained in the cells, I understand, until such time as her case was called in Courtroom 31. After her case was called in Courtroom 31, she was released from custody. She has essentially spent one day in jail already and I am sentencing her in regards to her contempt to what is known as time served. Her sentence is simply the time that she has already spent in jail.
- [30] In terms of costs, it is clear from my review of the case law over the lunch that when someone is found in contempt, that it is appropriate for the court to order special costs, and special costs are essentially the actual costs incurred by the person who had to enforce the court order by way of hiring a lawyer and having them attend. The modest amount suggested by Mr. Georgetti, I do not doubt, is not anywhere near the bill that Slater Vecchio LLP will get for Mr. Georgetti's attendance before Madam Justice Duncan, before me on the 22nd of July, and before me today for the full day. It is, in fact, very similar to what the costs would be if I were simply awarding costs on Scale B of our tariff.
- [20] On September 18, 2019, the Applicant filed an application seeking a declaration that Ms. Arvanitis comply with the Production Order. That application was heard and the order granted on October 1, 2019 (the "October Order").

This Application

- [21] On November 7, 2019, the Applicant filed an application seeking a declaration that the defendant had breached the Production Order and the October Order and, on that basis, they sought a declaration that she be found guilty of contempt of court (the "Contempt Application"). The Applicant seeks as a sentence for contempt a term of imprisonment of 14 days. It also seeks special costs in the amount of \$2,500.

- [22] The Contempt Application came before me on November 21, 2019. In all previous proceedings in this action, Ms. Arvanitis had represented herself but she had counsel representing her with regard to the Contempt Application.
- [23] Rather than decide the Contempt Application that day, I gave Ms. Arvanitis the opportunity to present evidence by way of affidavit to be delivered within two weeks about her compliance with the Production Order and the October Order. Accordingly, I adjourned paragraphs 1, 2, 3 and 5 of the Contempt Application. The parties were to set the matter down for a hearing, if needed.
- [24] Counsel for the Applicant also sought on November 21, 2019 an order prohibiting Ms. Arvanitis from filing proceedings against him, and his law firm, its partners or employees, which I granted. In the August 15 decision, I had specifically given counsel leave to return to seek that order on no more than two days' notice and I stated that the grounds for him to bring that application were not high:
- [53] I am going to give [Ms. Arvanitis] one chance to prove everybody wrong. I am not going to grant that order. What I am going to do is adjourn it, and give leave to Mr. Georgetti to come back in front of me on short notice at any time if, in fact, there is a suit brought against him or his law firm or any employees by the defendant. So para. 4(b) in the draft order handed up is adjourned. I find seeking that relief is premature. [Ms. Arvanitis] said to me that she does not foresee why she would bring a suit against Mr. Georgetti or his law firm related to his conduct in this litigation, and I want to give her a chance to show us that she can stick to her word.
- [54] However, if something more happens that leads you to believe, Mr. Georgetti, that the time has come for that issue to be decided, you have permission to come before me on no more than two days' notice to [Ms. Arvanitis] to get a quick hearing before me under a request to appear to seek to get that order. And, I am seized of that because it is part of this application before me.
- [58] With regard to the order, I am granting adjournment of the relief sought in para. 4(b) relating to extending the declaration of vexatious litigant status to actions started by [Ms. Arvanitis] against Mr. Georgetti and/or any member of his firm, the grounds upon which he can come back before me is not a high standard. I am saying it has to meet no other standard, except Mr. Georgetti's belief that she may pursue litigation. I do recognize it is a low standard, but, in all the circumstances, I find it appropriate in this case.
- [25] In granting the order on November 21, 2019, indexed at 2019 BCSC 2370, I said:
- [6] Mr. Georgetti has provided me with evidence, specifically communication Ms. Arvanitis has had with him and/or with others that raises the spectre of litigation. There has been still allegation of harassment and abuse relating to what has happened in these proceedings that she appears at one time to have been pursuing. I am concerned by that.

- [8] I am [granting the order prohibiting the institution of proceedings against Mr. Georgetti or his law firm or its employees] because, as I have said in earlier rulings, the court commends Mr. Georgetti and his law firm's conduct in this matter, which has been appropriately and even exemplary given the nature of the material I have reviewed in a number of proceedings in this litigation. I intentionally laid a low standard for Mr. Georgetti to seek the Orders I previously adjourned. Despite material I have seen which suggests he had cause to pursue this earlier, he did not seek the Orders immediately. He has now adduced sufficient evidence that satisfies me that it is appropriate to grant the order at this time, and I do so.
- [26] I ended my November 21 judgment with the following comments:
- [9] I do hope, Ms. Arvanitis, that you can move on. I cannot imagine what it is like to be in your position. I do not know. What I do know and what I do see is it is not good for you to keep continuing as you have in the past. There may be other ways you can deal with this issue, but so far, in the courts, things have not gone in your favour. I would suggest that you find some other way to deal with these issues. It is not going to get better for you, I am afraid. I am very worried about that prospect. So, I do hope that you can bring yourself into compliance and we can avoid sending you to jail.
- [27] The remaining matters from the Contempt Application were originally set for hearing on December 17, 2019, but the court was unavailable and they were re-set to February 4, 2020.

The Court of Appeal Proceedings

- [28] In reasons indexed at 2019 BCCA 481, Madam Justice Dickson (in chambers) dismissed Ms. Arvanitis's application for an extension of time to appeal the order granting an interim injunction, the bench warrant issued on July 12, 2019 and the August 15 order generally (the Production Order being a part thereof). Justice Dickson dismissed the applications on the basis that they were bound to fail (at para. 19). By consent, the parties adjourned generally the application brought by the Applicant to have the Court of Appeal declare Ms. Arvanitis a vexatious litigant in its court (at para. 3).

LEGAL PRINCIPLES

- [29] The court has the inherent jurisdiction to punish for contempt, but that power is also addressed in Rules 13-2, 22-7, 22-8 of the Supreme Court Civil Rules. The power to punish for contempt is essential in order to uphold the rule of law, the court's authority and the integrity of its process: *Transportation Lease Systems Inc. v. Viridi*, 2009 BCSC 695 at para. 16, citing *United Nurses of Alberta v. Alberta (Attorney General)*, [1992] 1 S.C.R. 901 at 931. Contempt of court is committed where a person knowingly breaches or fails to comply with an order of the court: *North Vancouver (District) v. Sorrenti*, 2004 BCCA 316 at para. 14 [Sorrenti].

[30] The Supreme Court of Canada has confirmed that contempt of court is not a mere enforcement power and should not be something resorted to at first instance: *Carey v. Laiken*, 2015 SCC 17 at para. 36. In the same paragraph the Court also noted that the power is meant to be used cautiously and with great restraint and that it is a discretionary power and should not be viewed as a routine mechanism to obtain compliance, (citing *Hefkey v. Hefkey*, 2013 ONCA 44 at para. 3; *TG Industries Ltd. v. Clarke Inc., et al.*, 2001 NSCA 105 at para. 32).

[31] In *B.C.G.E.U. v. British Columbia (Attorney General)*, [1988] 2 S.C.R. 214 at 234, Chief Justice Dickson described contempt in the following terms:

In a legal context the phrase is much broader than the common meaning of "contempt" might suggest and embraces "where a person, whether a party to a proceeding or not, does any act which may tend to hinder the course of justice or show disrespect to the court's authority", "interfering with the business of the court on the part of a person who has no right to do so", "obstructing or attempting to obstruct the officers of the Court on their way to their duties" - See *Jowitt's Dictionary of English Law*, vol. 1, 2nd ed., at p. 441.

[32] In order to qualify as contempt, noncompliance with the court order must have been intentional rather than accidental or unintentional. However, a court can infer intention from the circumstances: *Sorrenti* at para. 14.

[33] Lastly, contempt may be civil or criminal, but there is no dispute in this case that the allegations concern civil contempt. Although it is civil in nature, a proceeding for civil contempt is quasi-criminal. The following elements must be proven beyond a reasonable doubt in order for there to be a finding of contempt (*Carey* at para. 32):

- a) The existence of a court order that clearly and unequivocally says what should and should not be done (*Carey* at para. 33);
- b) Actual knowledge of the court order by the alleged contemnor (*Carey* at para. 34); and,
- c) The intentional commission of an act that the order prohibits or intentional omission of an act that the order compels (*Carey* at para. 35).

[34] In terms of proving an intentional breach of a court order, the court looks at whether the person had the intention to commit the act itself, not the disobedience. In other words, it is not necessary to make a finding that the person intended to disobey in the sense that they were choosing not to comply. It is enough if a person's action were deliberate and amount to a breach: *United Nurses of Alberta* at 931. The mens rea is simply the intention to do the act which in fact was prohibited by the order, or in this case, the intention not to do an act that was mandatorily ordered: *Carey* at para. 35.

[35] It is important to note that there are a number of defences that are often raised, but cannot relieve a person from a finding of contempt. One is to attack the original order because that would amount to an impermissible collateral attack. In *Silver Rill Corn Ltd. v. Island View*

Golf Centre Ltd., 2007 BCSC 865 at paras. 26-33, the court held that it is not a defence to civil contempt for the person to establish that they took reasonable efforts to comply unless the order itself makes that defence available by referring to due diligence. As stated in *Luft v. Ball*, 2013 BCSC 81 at para. 29, a party who has breached an order of the court cannot escape a finding of contempt for that failure to comply simply by asserting that it took all reasonable steps to avoid breaching the order short of complete compliance.

- [36] Because there is the potential for a custodial sentence, the principles of fundamental justice and Charter guarantees apply to contempt proceedings. That means that a person has a right to counsel, but that does not mean state-funded counsel. Instead, a person must be given a reasonable opportunity to obtain and instruct counsel. This issue does not arise because Ms. Arvanitis does have counsel representing her.

EVIDENCE

- [37] On December 5, 2019, as permitted by the court's comments on November 21, 2019, Ms. Arvanitis filed an affidavit purporting to explain steps she has taken to comply with both the Production Order and the October Order. The contents of that affidavit may be relevant to her state of mind regarding the non-compliance with the court orders.
- [38] The Applicant submits Ms. Arvanitis's affidavit does not assist her position. It contends the affidavit supports its position that Ms. Arvanitis is defiant in her non-compliance with the Production Order.
- [39] The affidavit consists of 14 paragraphs, portions of which contain information irrelevant to the legal issues before me (specifically paras. 8, 9, 10 and 13, including exhibits G, H, I and L).
- [40] With regard to an email account in her name, Ms. Arvanitis deposed:
- a) At paragraph 2, she attached as exhibit A screen shots of the inbox of the account as of November 30, 2019;
 - b) At paragraph 3, she attached as exhibit B printouts of screen shots from "sent" box from the same account;
 - c) At paragraph 7, she attached as exhibit F printouts of screen shots from the "trash bin" as of November 30, 2019 on the same account.
 - d) At paragraph 4, she attached as an exhibit screen shots of attempts she made to recover previously deleted emails of the same account.
- [41] With regard to her Facebook account, Ms. Arvanitis deposed at paragraph 5 that she deleted her Facebook account in her belief she needed to do that to comply with an order to remove all postings. She deposed she did not believe she could re-activate a deleted Facebook account but that around November 26, 2019, she did so successfully. She attached as exhibit D print-outs from her Facebook account that contain messages that can be interpreted as

being consistent with the account previously having been inactive. She deposed while the account has been successfully re-activated, messages sent through Facebook are no longer available.

- [42] At paragraph 6, Ms. Arvanitis deposed that she included screen shots of some text messages and a few of those are messages exchanged between her and three individuals whom I understand are the Applicant's former clients. Exhibit E also contains copies of letters from the same individuals which Ms. Arvanitis deposed "are the letters of support I had referred to", from which I infer she means references to letters she made in her statements to the court.
- [43] At paragraph 14, Ms. Arvanitis discloses names of three former clients she has spoken to (they are the same individuals who wrote the letters referred to above), as well as an additional person with whom she had contact through Facebook.
- [44] She also deposed: "I have had no contact with anyone since I was ordered not to".

The Applicant's Submissions on the December 5, 2019 Affidavit

- [45] The Applicant submits exhibits A and B, and portions of the affidavit's narrative support its position for a number of reasons. The Applicant prepared a booklet (which I accepted as an aide memoire) which re-arranged the pages in exhibits A and B in reverse chronological order. The booklet identified about 24 pages (of a total of about 113 pages) which are duplications. The Applicant submits the duplication together with other factors, the court can infer Ms. Arvanitis intended to mislead the court.
- [46] The Applicant also submits the redactions support its position. Ms. Arvanitis deposed she redacted "legal conversations". Among other things, the Applicant points out Ms. Arvanitis did not have counsel representing her until November 2019. That does not foreclose the possibility she had contacted people seeking legal advice, but the Applicant submits that inference should not be drawn.
- [47] The Applicant submits the dates of the redactions are significant. He points out that it is just around the time of the original application for an injunction when the defendant stated to the court that she had correspondence with a number of clients. Both Justice Ker and Justice Duncan found that Ms. Arvanitis was in correspondence with former clients based on the material and/or Ms. Arvanitis's statements before them. Yet the printout from her emails does not show any of that correspondence. The Applicant submits the court can infer the redactions are not for the purpose of protecting legal privilege, but in fact identify the correspondence sought by the Production Order. The booklet also identifies examples of redactions being inconsistently applied based on comparing some of the duplicate pages.

- [48] The Applicant also submits the affidavit contains statements inconsistent with Ms. Arvanitis's previous statements to the court. On August 15, 2019, Ms. Arvanitis stated, in part, that the correspondence she had with the former clients were people who had become friends and her support group. That does not logically fit with her claim that prior to knowing she would be asked to turn that correspondence over she deleted that correspondence.
- [49] Moreover, the Applicant contends that in communications to counsel as well as in affidavits and submissions to the court, Ms. Arvanitis made dozens of references to her communications, including emails, with current or former clients of the plaintiff. He submits therefore the reference to deleted emails or accounts before the litigation started must be wrong. For instance, at paragraph 4 she states that emails she had with one of the former clients were deleted in January or February before this litigation had started. She also stated that she deleted conversations on Facebook before the litigation was started.
- [50] Lastly, the Applicant submits the screen shots are insufficient to constitute compliance because she was ordered to produce the correspondence, which it submits meant printing the emails or reproducing them onto a storage device.

ANALYSIS

- [51] The Applicant's position is that the deficiencies it identified in the affidavit, together with the lack of correspondence being sent to it by Ms. Arvanitis, confirm she remains non-compliant with the Production Order. Its position is that there should be no dispute that Ms. Arvanitis did not comply with the Production Order or the October Order because she did not turn over any correspondence to the Applicant within two weeks. It also submits her affidavit is misleading and is therefore itself a further example of Ms. Arvanitis's contempt for this Court.
- [52] Although not stated in terms of "purging her contempt", on November 21, 2019, the court afforded Ms. Arvanitis the opportunity to bring evidence as to what she had done to comply with the Production Order. The December 5 affidavit is her attempt to do so, and its interpretation is key to my findings in this case. Ms. Arvanitis submitted she has done "everything she could" to comply with the Production Order, and there is no other correspondence that still exists between her and former clients of the Applicant.
- [53] The Applicant submits the court can find, based on the material before it, that Ms. Arvanitis's claim that she has deleted all the correspondence and cannot comply is not credible. It asserts that Ms. Arvanitis essentially changed her story from not wanting to turn over the names or correspondence, to one of being unable to comply because she had deleted everything. It points out that if it was really true that she had deleted everything to comply (presumably) with the interim injunction, she could have made that point on August 15, 2019, before the Production Order was granted. However, no mention was made at that time about email accounts or Facebook accounts being deleted.

- [54] The Applicant submits the failure to mention deletion of the accounts supports an inference that the correspondence existed at that time and Ms. Arvanitis deleted them later with the intent of avoiding compliance. If true, the Applicant is correct that would not amount to a defence for contempt: Carey para. 41.
- [55] The Applicant also points out that the court must have been satisfied that the documents existed when it granted the Production Order otherwise there would be need for it.
- [56] That line of reasoning does have logical appeal. However, the situation is more nuanced if one looks to both the wording of the interim injunction (issued June 20, 2019, and made permanent on August 15, 2019) and the Production Order.
- [57] The interim injunction required Ms. Arvanitis to "immediately delete or remove all statements and content, which she has published or caused to be published in any online forum including any social media platform, which contain direct or indirect reference to" the Applicant or its clients (emphasis added). The Production Order requires her to produce to the Applicant's counsel "all correspondence she has exchanged with persons she knows, or has reason to believe, to be current or former clients of the [Applicant], including but not limited to emails and messages exchanged through social media or other messaging services from January 1, 2018 to the present" (emphasis added).
- [58] Accordingly, it is possible based on the wording of the orders, that by complying with the injunction, Ms. Arvanitis would have deleted correspondence, making it impossible for her to later comply with the Production Order. If true, then the ratio cited above from Carey at para. 41 (para. 54, above) may not apply.
- [59] The Applicant also submits that Ms. Arvanitis's claims that she deleted Facebook and emails "before the litigation started" are on their face untruthful because of her prior statements made to the court (see above 53).
- [60] However, it is possible that Ms. Arvanitis's reference to "this litigation" in her December 5, 2019 affidavit meant the contempt application, which was filed November 21, 2019. Notwithstanding the background I have outlined earlier in this judgment, it is possible that in her mind the contempt proceedings are separate and apart from the underlying action. For that reason, I am not persuaded beyond a reasonable doubt that her claim she deleted all correspondence before "this litigation" started is untruthful.
- [61] I agree with the Applicant that the extent to which Ms. Arvanitis has redacted information from her email accounts is suspicious. I find it most probable that one of the inconsistent redactions to be consistent with the Applicant's position that the redaction was not made for the purpose of protecting privilege. However, it is at least possible that the duplication and inconsistent redactions identified in the booklet illustrate a careless attitude toward preparation of the affidavit. I am mindful that Ms. Arvanitis prepared the affidavit, including the exhibits, without the benefit of legal counsel.

- [62] I also note that Ms. Arvanitis has included in exhibit E correspondence she had with three former clients. She deposed that these are the letters of support she referred to in her statements in court. That production is in compliance with the Production Order.
- [63] I also find that the messages from Facebook after she reactivated her account can be read as being consistent with her claim that she deleted or deactivated her Facebook account for at least a period of time.
- [64] She claimed no messages were re-instated. The court is unaware whether upon re-activation of a Facebook account, postings and messages are also reinstated. Therefore, I have no basis one way or another to assess Ms. Arvanitis's claim on that point. Overall, however, I have a reasonable doubt whether the affidavit is misleading.
- [65] For all those reasons, I do have a reasonable doubt as to whether Ms. Arvanitis's affidavit was misleading, much less deliberately so.
- [66] The Applicant also urged me to view the Production Order in light of the larger context of the underlying action. The action was for defamation, but damages were not sought because Ms. Arvanitis has apparently been granted indigent status in this Court, and stated she is judgment-proof. Counsel also pointed out that Ms. Arvanitis has failed to pay any cost awards against her.
- [67] As noted in para. 56 of the August 15 judgment (see above, para. 15), the court recognized the Production Order was unusual, but found it was appropriate to attempt to redress some of the harm from the defamation. In that context, the Applicants submits non-compliance with the Production Order takes on enhanced significance.
- [68] However, the Applicant's primary relief from the defamation remains the permanent injunction. The defamation is caused by the publication of the comments. The purpose of the Production Order was to aid the Applicant in knowing which clients or former clients it may want to contact to counter the likely defamatory statements made to them by Ms. Arvanitis. This would aid the law firm in rehabilitating damage to its reputation with former or current clients who were in direct contact with Ms. Arvanitis. While important, the order is ancillary the primary relief granted.
- [69] Contempt is primarily a matter between a litigant and the court. While the underlying litigation between Ms. Arvanitis and the Applicant is the foundation of the application for contempt, the focus is on the impact deliberate disobedience has on the integrity of the court process and more generally, public confidence in the court system and the administration of justice. The court will only resort to contempt when satisfied beyond a reasonable doubt that the alleged contemnor intentionally breached a court order, and in doing so, the dignity of the court's process has been damaged. In other words, not every breach of a court order is contemptuous.

- [70] To be clear, I find the Applicant's submissions raise a real concern about the veracity of Ms. Arvanitis's claim that the correspondence no longer exists. It is also possible that the Applicant is correct that she deleted the accounts in full knowledge that would breach the court's order. It is also possible she has not deleted anything and her affidavit is untruthful.
- [71] However, taking into account everything, and having particular regard to the overlap in the wording of the injunction and Production Order, I am not convinced beyond a reasonable doubt that Ms. Arvanitis's non-compliance was contemptuous.
- [72] The Applicant is correct that someone cannot avoid a contempt finding if they have created a situation where compliance with the order in question is impossible. However, as I have noted, the alleged impossibility in this case could have arisen from Ms. Arvanitis's compliance with the interim injunction. That possibility amounts to reasonable doubt.
- [73] However, I want to be very clear: I am not making a finding that what Ms. Arvanitis has deposed in her affidavit or stated in court is true. Nor are my conclusions any indication that the Applicant did not have a reasonable and legitimate basis to pursue a finding of contempt. My conclusions rest completely on there being a reasonable doubt in my mind about her guilt. Nor would I want anything in this judgment to be taken as vindication of any of the claims Ms. Arvanitis continues to make in this Court regarding the Applicant or its counsel.
- [74] I must add I am very concerned to see in the December 6, 2019 affidavit filed on behalf of the Applicant evidence that raises the possibility that Ms. Arvanitis may have breached the injunction with comments she posted on the Law Society's website. However, that issue is not before me.

CONCLUSION AND COSTS

- [75] For all those reasons, I dismiss the application for contempt in relation to the Production Order.
- [76] Although the Applicant was not successful, I have emphasized that they had legitimate grounds to seek the contempt ruling. I have very real concerns about Ms. Arvanitis's recent on-line activity, and note her affidavit contained a lot of irrelevant content. In light of all the foregoing, I exercise my discretion and order that each party bear their own costs in relation to this application.

"Sharma J."

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