

Federal Court



Cour fédérale

**ADMIRALTY ACTION *IN REM* AGAINST
THE SHIP “NOLHANAVA” AND *IN PERSONAM***

Date: 20240610

Docket: T-836-17

Citation: 2024 FC 878

Edmonton, Alberta, June 10, 2024

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

CANADIAN MARITIME ENGINEERING LTD., a body corporate

Plaintiff

and

IONADA INCORPORATED, a body corporate

Defendant

REASONS AND ORDER

I. INTRODUCTION

[1] By Order dated October 31, 2023, Mr. Edoardo Panziera was ordered to appear before this Court on Friday, December 8, 2023, to show cause why he should not be held in contempt of the Order issued on June 22, 2023. That Order provided, in part, as follows:

The Defendant, Mr. Edoardo Panziera, shall make himself available for a follow-up Examination in Aid of Execution, including all questions set forth in Revised Schedules A and B and any proper questions arising therefrom, at the time, date and under such modalities that will be set by farther order of the Court.

II. BACKGROUND

[2] The following history of this action is derived from the Index of Recorded Entries.

[3] By a Statement of Claim issued on June 9, 2017, Canadian Maritime Engineering Ltd. (the “Plaintiff”) commenced an action against Ionada Corporation, a body corporate (the “Defendant”) and the Owners and all others interested in the Ship “NOLHANAVA” (the “Ship”).

[4] A Defence was filed on behalf of the Ship and her Owners on July 28, 2017.

[5] Default Judgment was entered on September 12, 2017 against the Defendant.

[6] On March 20, 2019, the action was discontinued against the Owners and all others interested in the Ship and the Ship.

[7] By a Notice of Motion filed on May 11, 2022, the Plaintiff sought an Order identifying the Judgment Debtors and related relief.

[8] By Order issued on July 27, 2022, the style of cause was amended to name “IONADA Incorporated, a body corporate” as the Defendant. In the accompanying reasons, Justice Ahmed allowed the corporate veil to be pierced. He identified Mr. Panziera as a Judgment Debtor. He also identified a Canadian company, Ionada Carbon Solutions Limited (“Ionada #2”) as a Judgment Debtor.

[9] By the same Order, Judgment was entered in the amount of \$253,067.28, as of May 19, 2022 against Mr. Panziera and Ionada #2, as the Judgment Debtors. The Order also provided that Mr. Panziera and others be required to attend an Examination in Aid of Execution.

[10] Mr. Panziera attended an Examination in Aid of Execution on August 22, 2022. However, Counsel for the Plaintiff was not satisfied with the answers given or with the responses to Undertakings subsequently provided by Mr. Panziera and on November 10, 2022, Counsel for the Plaintiff filed a Notice of Motion seeking an Order to compel the re-attendance of Mr. Panziera to answer “questions and undertakings improperly answered or objected to” during the August 22, 2022 Examination.

[11] By Order issued on June 29, 2023, Mr. Panziera was ordered to make himself available on July 18, 2023 for a further examination to be conducted virtually.

[12] On October 3, 2023, the Plaintiff filed a Notice of Motion, seeking the issuance of a “show cause” Order pursuant to Rule 467 of the *Federal Courts Rules*, SOR/98-106 (the “Rules”). A “show cause” Order was issued on October 31, 2023 requiring Mr. Panziera to

appear for a hearing by videoconference on Friday, December 8, 2023, such hearing to proceed from the office of the Federal Court at 1801 Hollis Street, Halifax, Nova Scotia.

[13] The Plaintiff identifies three grounds where Mr. Panziera allegedly failed to comply with the Order of June 22, 2023, as follows:

1. The question “[d]o you have any assets anywhere in the world?” was ordered answered, to which Mr. Panziera answered “no”. He subsequently refused to identify the source of his pocket money.
2. Questions relating to the payment of Mr. Panziera’s cellphone expenses, life insurance and car rentals were ordered answered. Mr. Panziera answered that Ionada Limited pays for these expenses by way of credit card but refused to provide the credit card number.
3. The question “[w]here in Italy are you currently residing?” was ordered answered. Mr. Panziera refused to answer.

[14] According to an affidavit of service dated November 9, 2023, and filed by Counsel for the Plaintiff on November 9, 2023, the “show cause” Order was served upon Mr. Panziera by email.

[15] The hearing of the contempt proceeding took place on Friday, December 8, 2023, in a hybrid manner, with personal appearance of the Plaintiff by Counsel in Halifax, Nova Scotia and the attendance of Mr. Panziera by video connection from Treviso, Italy.

[16] The Plaintiff called Mr. Brendan Daniel Peters as its sole witness. Mr. Panziera also testified.

[17] Mr. Peters is a lawyer. He has acted on behalf of the Plaintiff in this action. He conducted the Examination of Mr. Panziera on July 18, 2023. He testified about the answers given by Mr. Panziera upon the Judgment Debtor Examination that took place on July 18, 2023.

[18] Mr. Peters submitted a book of documents that was entered as Exhibit P-1. That book contained the following documents, as identified in the Table of Contents:

- a) Plaintiff's Book of Documents, Tab 1 - Order of Case Management Judge Steele dated 31-OCT-2023;
- b) Plaintiff's Book of Documents, Tab 2 - Order and Reasons of the Honourable Mr. Justice Ahmed dated 27-Jul-2022;
- c) Plaintiff's Book of Documents, Tab 3 - Plaintiff's Written Reasons in Reply;
- d) Plaintiff's Book of Documents, Tab 4 - Order of Case Management Judge Steele dated 22-JUN-2023;
- e) Plaintiff's Book of Documents, Tab 5 - Order of Case Management Judge Steele dated 29-JUN-2023;
- f) Plaintiff's Book of documents, Tab 6 - Certified Transcript of the Examination in Aid of Execution of Edoardo Panziera on 18-JUL-2023;
- g) Plaintiff's Book of Documents, Tab 7 - List of Undertakings dated 18-JUL-2023;
- h) Plaintiff's Book of Documents, Tab 8 - Email from Mr. Panziera to Mr. Peters dated 19-JUL-2023; and
- i) Plaintiff's Book of Documents, Tab 9 - Email from Mr. Panziera to Mr. Campbell dated 15-NOV-2023.

[19] Each document was individually entered and consecutively marked as P-1(A), et cetera.

[20] As appears from the Table of Contents of Exhibit P-1, many of the exhibits were Orders from the Court file, with five exceptions. The exceptions are the following:

- a) the Plaintiff's written representations in reply, Exhibit P-1(C);
- b) the transcript of the Examination that was held on July 18, 2023, Exhibit P-1(F);
- c) the list of Undertakings arising from that Examination, Exhibit P-1(G);
- d) the email dated July 19, 2023 from Mr. Panziera to Mr. Peters with an attachment, Exhibit P-1(H); and
- e) an email from Mr. Panziera to Mr. Peters dated November 15, 2023 with an attachment, Exhibit P-1(I).

[21] Mr. Peters reviewed various Orders that had been issued between 2022 and 2023, relative to the attendance of Mr. Panziera for an Examination in Aid of Execution upon the Order that was granted on July 27, 2022. He testified that no appeals were taken from the Order of Justice Ahmed made on July 27, 2022 and the Orders of Case Management Judge Steele made on June 22, 2023 and June 29, 2023.

[22] Mr. Peters testified that he conducted the re-Examination on July 18, 2023 and that subsequently, he received a written response to Undertakings from Mr. Panziera. Those responses were tendered in evidence as part of Exhibit P-1(H). The responses were set out in an email dated July 19, 2023. The email was addressed to Mr. Scott Campbell, with a copy to Mr. Peters. Mr. Campbell is a lawyer with the law firm that represents the Plaintiff in this action.

[23] Mr. Peters was not cross-examined.

[24] For his part, Mr. Panziera testified that he had intended to comply with the Order, and he had provided answers addressing the three counts of contempt.

[25] Upon cross-examination, Mr. Panziera was questioned about the contents of his email of November 15, 2023 and about whether he, or any Ionada entity, had any intention to repay the judgment debt. He testified that neither he nor any entity he controlled had the means to repay the debt.

[26] Among the documents entered as exhibits at the hearing on December 8, 2023 was an email dated November 15, 2023 from Mr. Panziera to Counsel for the Plaintiff. This email purported to answer questions arising from the Judgment Debtor Examination and provides as follows:

Dear Mr. Campbell,

I have received the Order and Motion Record.

It is unfortunate that your client continues to waste the courts time with his vexatious motions.

I have agreed to answer the three questions in Appendix A rather than to defend my response in an oral examination in an effort to avoid wasting the courts time any further.

My answers to the three questions are attached.

Please let me know if you still intend to proceed with the contempt motion

best regards,

Edoardo Panziera

[27] Mr. Panziera responded to the three counts of contempt in an attachment to his email of November 15, 2023.

[28] In response to the question about his pocket money, Mr. Panziera provided the following reply:

The cash in the wallet is from \$100 CAD gift received from parent, \$20 petty cash withdrawals from ATM Ionada Carbon Solutions LLC, 50 euros petty cash withdrawal from ATM Ionada GmbH.

[29] In response to the second count, that is an Undertaking to provide the number of credit cards “under” Ionada Limited, Mr. Panziera replied that there was a Visa credit card, the number was redacted for privacy reasons.

[30] In response to the third count relative to Mr. Panziera’s residence and travel, he provided the residential address of Via Venozzi 15, Volpago del Montello, Treviso 31040, Italy.

[31] The Plaintiff, on the basis of the evidence submitted, argues that it has shown contempt of Court on the part of Mr. Panziera, arising from his failure to provide acceptable answers to the questions put to him at the Judgment Debtor Examination.

[32] Mr. Panziera made brief submissions to the effect that he had complied with all the Orders and that he answered the three grounds of the alleged contempt.

III. DISCUSSION

[33] The sole issue arising in this proceeding is whether the Applicant has shown that Mr. Panziera should be found in contempt of Court for failure to comply with the Order of June 22, 2023. Rule 466(b) of the Rules is relevant and provides as follows:

Contempt

466 Subject to rule 467, a person is guilty of contempt of Court who

(b) disobeys a process or order of the Court;

Outrage

466 Sous réserve de la règle 467, est coupable d'outrage au tribunal quiconque :

b) désobéit à un moyen de contrainte ou à une ordonnance de la Cour;

[34] Rule 467 addresses the process to be followed in a contempt hearing and provides as follows:

Right to a hearing

467 (1) Subject to rule 468, before a person may be found in contempt of Court, the person alleged to be in contempt shall be served with an order, made on the motion of a person who has an interest in the proceeding or at the Court's own initiative, requiring the person alleged to be in contempt

(a) to appear before a judge at a time and place stipulated in the order;

(b) to be prepared to hear proof of the act with which the person is charged, which shall be described in the order with sufficient

Droit à une audience

467 (1) Sous réserve de la règle 468, avant qu'une personne puisse être reconnue coupable d'outrage au tribunal, une ordonnance, rendue sur requête d'une personne ayant un intérêt dans l'instance ou sur l'initiative de la Cour, doit lui être signifiée. Cette ordonnance lui enjoint :

a) de comparaître devant un juge aux date, heure et lieu précisés;

b) d'être prête à entendre la preuve de l'acte qui lui est reproché, dont une description suffisamment détaillée est donnée pour lui

particularity to enable the person to know the nature of the case against the person; and

(c) to be prepared to present any defence that the person may have.

Ex parte motion

(2) A motion for an order under subsection (1) may be made *ex parte*.

Burden of proof

(3) An order may be made under subsection (1) if the Court is satisfied that there is a *prima facie* case that contempt has been committed.

Service of contempt order

(4) An order under subsection (1) shall be personally served, together with any supporting documents, unless otherwise ordered by the Court.

permettre de connaître la nature des accusations portées contre elle;

c) d'être prête à présenter une défense.

Requête *ex parte*

(2) Une requête peut être présentée *ex parte* pour obtenir l'ordonnance visée au paragraphe (1).

Fardeau de preuve

(3) La Cour peut rendre l'ordonnance visée au paragraphe (1) si elle est d'avis qu'il existe une preuve *prima facie* de l'outrage reproché.

Signification de l'ordonnance

(4) Sauf ordonnance contraire de la Cour, l'ordonnance visée au paragraphe (1) et les documents à l'appui sont signifiés à personne.

[35] The first matter to be addressed is whether Mr. Panziera had notice of the hearing that was held on December 8, 2023.

[36] In *Pintea v. Johns*, [2017] 1 S.C.R. 470 (S.C.C.) at paragraph 1, Justice Karakatsanis, writing for the Court, said the following:

The common law of civil contempt requires that the respondents prove beyond a reasonable doubt that Mr. Pinteá had actual knowledge of the Orders for the case management meetings he failed to attend.

[37] I am satisfied that Mr. Panziera had notice of the hearing that was set down for December 8, 2023.

[38] The next issue is whether Mr. Panziera is in contempt of Court as a result of failing to answer the questions put to him in the Examination conducted on July 18, 2023.

[39] The evidence upon this Motion consists of the oral testimony of Mr. Peters and of Mr. Panziera, including the cross-examination of the latter. The Plaintiff also tendered nine documents as described above and contained in Exhibit P-1.

[40] Exhibit P-1(C) is the written Reply argument, dated November 22, 2022, filed by the Plaintiff in support of its Motion, dated November 11, 2022, for an Order to compel answer from Mr. Panziera and for another attendance. The document includes nine (9) pages, purporting to be the questions and Undertakings, respectively, which the Plaintiff alleged had not been properly answered or satisfied by Mr. Panziera.

[41] Written representations are not “evidence”; they are written argument. The attachments to this document are called “Revised Schedules” A and B. Schedule A sets out questions for which the Plaintiff sought better answers. Schedule B sets out Undertakings arising from the Examination on August 22, 2022 for which the Plaintiff sought better replies.

[42] Both Schedules refer to responses provided by Mr. Panziera on November 17, 2022.

[43] Those responses were not filed as an Exhibit.

[44] Exhibit P-1(D) is the Order of Case Management Judge Steele, ordering the Plaintiff to provide a draft Order relative to its Motion for the re-attendance of Mr. Panziera.

[45] Exhibit P-1(E) is a copy of the Order issued by Associate Judge Steele, as the Case Management Judge, on June 29, 2023.

[46] Exhibit P-1(F) is a transcript of the Examination conducted on July 18, 2023.

[47] Exhibit P-1(G) is a list of Undertakings that were given by Mr. Panziera.

[48] Exhibit P-1(H) is a copy of an email, dated July 19, 2023, from Mr. Panziera to Mr. Peters with a carbon copy to Mr. Campbell.

[49] Attached to the email was a document containing Mr. Panziera's answers to Undertakings arising from the Examination, as well as copies of certain documents that Mr. Peters had requested.

[50] In his response, Mr. Panziera referred to some questions as being “not pertinent”, including inquiries about the number of credit cards issued “under Ionada Limited”, and questions about assets, credit cards and creditors of Ionada #2.

[51] Exhibit P-1(I) is a copy of an email, dated, November 15, 2023, from Mr. Panziera to Mr. Campbell, with a carbon copy to Mr. Peters. This email included an attachment.

[52] The email was addressed by Mr. Peters, the witness for the Plaintiff, in his evidence, as follows:

MR. PETERS: This is an email from Mr. Panziera sent November 15th, 2023 sent to Mr. Campbell, yourself, copying me, attaching a document, and what appears to be an appendix laying out the charges of contempt brought forward in the submissions of the Plaintiff in the motion record for the show cause order, and there appears to be, similar to the marked up list of undertakings we discussed, this is a marked up appendix, meaning Mr. Panziera has taken this material and added the right-most column, “Edoardo Panziera Answer”. So that’s what this document is.

[53] Mr. Peters then read Mr. Panziera’s “answers” into the record and testified that Mr. Panziera had not provided the Plaintiff with any further information with respect to the three counts of contempt.

[54] The Plaintiff argues that this email should not be considered as evidence that Mr. Panziera purged his contempt, but that it may be relevant at the penalty stage.

[55] Penalty cannot be considered unless the contempt is established. In my opinion, the email of November 15, 2023 has limited relevance at this stage and will not be taken into account in deciding this Motion.

[56] The Plaintiff submitted a copy of the Order and Reasons of Justice Ahmed, as an Exhibit. This decision relates to a different issue, that is upon a Motion to identify Judgment Debtors.

[57] Justice Ahmed was not addressing a Motion for contempt. In my opinion, the decision is not relevant to the present matter.

[58] The burden of proof in a contempt hearing lies upon the moving party. According to the decision in *Bhatnager v. Canada (Minister of Employment and Immigration)*, [1990] 2 S.C.R. 217, contempt of court is a matter of criminal or quasi-criminal jurisdiction and the constituent elements of contempt must be proven beyond a reasonable doubt.

[59] In *Lyons Partnership, L.P. v. MacGregor* (2005), 5 C.P.R. (4th) 157, the Court said that the Rules codify the common laws of contempt. The moving party, here the Plaintiff, must prove beyond a reasonable doubt that the alleged contemnor had personal knowledge of the Court Order in issue; that he was a primary actor, expressly or impliedly in the conduct that is the subject of the contempt proceedings; and that he possessed the necessary *mens rea* or intention to disobey the Court Order.

[60] I am satisfied that the first two elements of the test in *Lyons, supra* have been satisfied.

[61] Mr. Panziera, according to the transcript of the Examination July 18, 2023, acknowledged receipt of the Order of June 22, 2023. He testified that he had reviewed that Order. This evidence satisfies the first element of the test.

[62] I am satisfied that Mr. Panziera is the “principal actor” in the alleged contempt. The Order of June 22, 2023 was directed to him. The second element of the test is met.

[63] That leaves the third element, that of intention. Did Mr. Panziera willfully disobey the Order of June 22, 2023?

[64] The Plaintiff complains that Mr. Panziera did not properly answer questions or fully respond to Undertakings upon his further Examination on July 18, 2023.

[65] The Plaintiff tendered a transcript of that Examination as Exhibit P-1(F), upon the contempt hearing held on December 8, 2023. However, it did not tender any transcript of the initial Examination that was held on August 22, 2022.

[66] In the absence of all the evidence given by Mr. Panziera upon his Examinations, that is in August 2022 and July 2023, the Court cannot assess the completeness of his answers. In my opinion, the further written responses provided by Mr. Panziera, on July 19, 2023 cannot fairly be assessed without all the evidence that was provided by Mr. Panziera in August 2022 and July 2023.

[67] Mr. Panziera provided answers upon his attendance on July 18, 2023. It appears that the answers were not satisfactory to the Plaintiff insofar as the answers did not disclose the existence or location of exigible assets. As well, the Plaintiff objects that Mr. Panziera refused to answer certain questions on grounds of relevance.

[68] In cross-examination, Counsel for the Plaintiff did not challenge the credibility of Mr. Panziera. There is no evidence that Mr. Panziera was untruthful in his testimony which was given under affirmation.

[69] Mr. Panziera testified that neither he nor any corporation that he controls has any assets. Since that is his evidence and his credibility was not challenged, in my opinion there is no evidence that he intended to disobey the Court Order.

[70] Mr. Panziera repeatedly testified on July 18, 2023 that he owns no property, has no savings or Registered Retirement Savings plans, owns no art work or real estate or appliances. He testified that the corporate Defendant is a “shell company” and has no assets-no bank accounts, no accounts receivable, no creditors.

[71] In his email dated July 19, 2023, that is Exhibit P-1(H), Mr. Panziera responded to the Undertakings arising from the Examination that took place on July 18, 2023. He did not answer all the Undertakings, on the grounds that the requests were not relevant. Among others, he did not answer requests related to bank accounts, real property or equipment held by Ionada #2. He expressed his view that these questions were not relevant.

[72] Mr. Panziera was questioned about his recent and pending travels. I question the relevance of these questions.

[73] Mr. Panziera was questioned about the assets of Ionada #2. He testified that this corporate body has no assets. In his response to the Undertakings on July 19, 2023, he said that neither he nor any of the Ionada entities hold any patent rights.

[74] According to the test in *Lyons, supra*, the moving party must show, beyond a reasonable doubt, that the alleged contemnor has intentionally disobeyed an order of the Court.

[75] I am not satisfied, upon the basis of the evidence submitted, that the Plaintiff has discharged that burden.

[76] In the result, the Motion will be dismissed. In the exercise of my discretion pursuant to Rule 400 of the Rules, I make no Order as to costs.

ORDER IN T-836-17

THIS COURT'S ORDER is that the Motion is dismissed. In the exercise of my discretion under Rule 400 of the *Federal Courts Rules*, SOR/98-106, there is no Order as to costs.

"E. Heneghan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-836-17

STYLE OF CAUSE: CANADIAN MARITIME ENGINEERING LTD., a
body corporate v. IONADA INCORPORATED, a body
corporate

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE
BETWEEN HALIFAX, NOVA SCOTIA AND
TREVISO, ITALY

DATE OF HEARING: DECEMBER 8, 2023

REASONS AND ORDER: HENEGHAN J.

DATED: JUNE 10, 2024

APPEARANCES:

Scott R. Campbell

FOR THE PLAINTIFF

Edoardo Panziera

FOR THE JUDGMENT DEBTOR
(ON HIS OWN BEHALF)

SOLICITORS OF RECORD:

Stewart McKelvey
Barristers and Solicitors
Halifax, Nova Scotia

FOR THE PLAINTIFF