

IN THE SUPREME COURT OF BRITISH COLUMBIA

Date: 20150218
Docket: S072933
Registry: Vancouver

Between:

The Law Society of British Columbia

Petitioner

And:

Robert G.D. Gallard and Gallard's Collection Service Ltd.

Respondents

Before: The Honourable Madam Justice Dorgan

Oral Reasons for Judgment

(In Chambers)

Counsel for the Petitioner:

M. J. Kleisinger

Counsel for the Respondents:

W. L. George

Place and Date of Trial/Hearing:

Victoria, B.C.
February 18, 2015

Place and Date of Judgment:

Victoria, B.C.
February 18, 2015

[1] **THE COURT:** The notice of application before the court is brought by the Law Society and filed July 25, 2014. The petitioner Law Society seeks an injunction in respect of the respondents; enjoining them from commencing, prosecuting, or defending a proceeding in any court, other than representing themselves if they are named individual parties to a proceeding; and secondly, an order, a finding, from this court that the respondents be found in contempt of an order of this court pronounced August 14, 2007. The further relief claimed in the notice of application goes to disposition if a finding of contempt is made.

[2] The respondents are represented by Mr. George. On February 11, 2015 counsel for the parties filed an agreed statement of facts which forms the evidentiary basis of the contempt application.

[3] The elements of a finding of civil contempt are that the respondents knew of the existence of a court order, in this case, one which granted injunctive relief; (2) that the respondents knew of the existence of the order and its terms; and (3) that the respondents did one or more acts amounting to disobedience of the terms of the order. In this regard I was referred to the case of *International Forest Products v. Kern*, 2000 BCSC 736, which is referred to in the decision of Mr. Justice Savage, then of this court, in *Law Society of British Columbia v. Gorman and Gateway North International Property Management Inc.*, 2014 BCSC 1174.

[4] In the case before me, and referring to the agreed statement of facts, in particular paras. 17 and 18, the respondents admit to doing certain things, namely, that they engaged in various activities, on behalf of others, in relation to 27 different actions in Small Claims Court, for or in the expectation of a fee, gain, or reward. Those actions are defined and described in para. 17 of the agreed statement of facts. Further, at para. 18 of the agreed statement of facts the respondents admit to this court that the activities they engaged in, described in para. 17, were indeed contrary to the consent order entered into August 14, 2007, in this court, and contrary to the provisions of the *Legal Profession Act*.

[5] Further, the personal respondent, at para. 19 of the agreed statement of facts, admits that he and the corporate respondent received money from clients for the services described in para. 17 of the agreed statement of facts, in effect agreeing that they were practising law without being licensed to do so and in breach of the terms of the injunction order made by consent on August 14, 2007.

[6] Based on the material before me, I have no hesitation in finding that the petitioner has proved the respondents, by their breaches of the order in issue, are in contempt of that order made by consent August 14, 2007. Further, I find that the subjective beliefs of the respondents, referred to in submissions and in the agreed statement of facts, go to disposition, not to the question of whether there has been a breach and whether that breach constitutes contempt. In summary, I make the finding that the admitted breaches constitute a civil contempt of the August 14, 2007 order of the Supreme Court of British Columbia.

[7] I will now turn to disposition, and in that regard, Mr. George, I will ask your client if he wishes to address the court after I hear submissions.

[8] Do you want to have an opportunity? I can take the morning break at this point, prior to hearing submissions on disposition, if that suits you.

[9] MR. GEORGE: Certainly that would be appropriate, My Lady.

[10] THE COURT: All right. We will take 15 minutes at this point.

[11] THE CLERK: Order in Chambers.

(PROCEEDINGS ADJOURNED FOR MORNING RECESS)

(PROCEEDINGS RECONVENED)

[SUBMISSIONS ON DISPOSITION AT 11:10:30 TO 11:20:00 A.M.]

[12] THE COURT: Having found that the earlier outlined requisite elements of civil contempt have been proven, I turn now to the matter of disposition.

[13] Counsel have presented a joint submission. At the request of the court, Mr. Gallard has addressed the court. He referred to his subjective belief leading to his conduct and said again, both through counsel and directly to the court, that he did not believe that he was in breach of a court order; an order of a court which he says he holds in high regard.

[14] I have considered the mitigating and aggravating factors in this case, as well as considering the fact that the respondent Mr. Gallard has agreed that he will cease the behaviour which has been found to be contemptuous. I find the joint submissions compelling, in that it is a measured response to the proven contempt. It is a response that is practical and, in my view, appropriate in all of the circumstances.

[15] Mr. Gallard, please stand.

[16] The disposition that I impose upon you for your acts and those of your company, which acts I have found constitute a contempt of the consent order of August 14, 2007, made by the Supreme Court of British Columbia, is as follows:

- 1) On or before July 2, 2015, Mr. Gallard will pay a fine to the court. I agree with Ms. Kleisinger that it is appropriate in these circumstances, that the fine be paid to the court as a measure of contrition arising from the contempt proved. Mr. Gallard will pay the fine of \$2,500 to the court on or before July 2, 2015;
- 2) Gallard's Collection Service Ltd., the corporate respondent, will pay a fine of \$5,000 to the court on or before September 1, 2015; and
- 3) On or before July 3, 2015 and September 2, 2015, the respondents respectively, will provide the Law Society with proof that they have paid the fines to the court.

[17] By consent, until such time as he becomes a member in good standing of the Law Society, Mr. Gallard and Gallard's Collection Service Ltd., are permanently

prohibited and enjoined from commencing, prosecuting, or defending a proceeding in any court, except as an individual party to a proceeding acting without counsel and solely on his or its own behalf; and by consent, until such time as he becomes a member in good standing of the Law Society, Mr. Gallard and Gallard's Collection Service Ltd. are permanently prohibited and enjoined from doing the following:

- (a) appearing as counsel or advocate;
- (b) drawing, revising or settling a document for use in a proceeding, judicial or extra-judicial;
- (c) drawing, revising or settling a document relating in any way to a proceeding under a statute of Canada or British Columbia;
- (d) doing an act or negotiating in any way for the settlement of, or settling, a claim or demand for damages;
- (e) giving legal advice;
- (f) making an offer to do anything referred to in paragraphs (a) to (e) above; and
- (g) making a representation that they are qualified or entitled to do anything referred to in paragraphs (a) to (e) herein

for or in the expectation of a fee, gain or reward, direct or indirect, from the person for whom the acts are performed.

[18] Finally, this is an appropriate case for special costs to be awarded. On or before February 20, 2015, the respondents will pay to the Law Society its special costs fixed by agreement in the sum of \$5,550.

“J. L. Dorgan, J.”
The Honourable Madam Justice Dorgan