CITATION: *907037 Ontario Inc. et al. v. Plating Plus Ltd. et al.*, 2024 ONSC 1359
COURT FILE NO.: CV-21-00665635-00CL
DATE: 20240304

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ONTARIO - SUPERIOR COURT OF JUSTICE – COMMERCIAL LIST

RE: 907037 Ontario Inc. and 2637373 Ontario Inc., Moving Parties/Applicants

AND:

Plating Plus Ltd., Robin Thede and Vijai Ramkisson, Defendants/Respondents

BEFORE: Peter J. Osborne J.

COUNSEL: *Dalkeith Palmer and Parul Ahluwalia*, Counsel for 907037 Ontario Inc. and 2637373 Ontario Inc.

Hugh Scher, Counsel for Plating Plus Ltd., Robin Thede and Vijai Ramkisson

HEARD: March 1, 2024

ENDORSEMENT

1. The Applicants seeks an order declaring the Defendant, Vijai Ramkisson ("Ramkisson"), to be in contempt of the order of Steele J. dated November 22, 2023 requiring him to attend for an examination in aid of execution, and directing that he be incarcerated for a period of time. Alternatively, they seek an order allowing Ramkisson to purge his contempt within a very short period of time, failing which he be remanded into custody.

Background and Procedural History

2. Today, counsel for the Trustee and counsel for Ramkisson were present in Court. Ramkisson himself did not appear, as a result (according to his counsel) of a misunderstanding between them. A court reporter was present. Regrettably, and contrary to the Practice Direction of the Commercial List, none of the motion materials were hyperlinked.

3. The Applicants obtained default judgment against the Respondents jointly and severally (specifically including Ramkisson) on May 26, 2023 in the amount of $319,124.82 plus interest and costs (in the amount of $45,164.96 inclusive of HST), together with costs of the motion for judgment in the amount of $16,027.92 inclusive of HST.

4. The judgment of May 26, 2023 specifically ordered that service on the Respondents of that order shall be effective by mailing a copy of the order by regular mail and by emailing a copy to the Respondents, including Ramkisson at his email address vijai@svrjobs.com.

5. The Respondents failed to make any payment in respect of that outstanding judgment.

6. The relationship between the parties is one of landlord and tenant. The Respondent in this proceeding, Plating Plus, originally commenced an application in June, 2020 against the Applicants in this proceeding (the moving parties on this motion), as a result of having been locked out of a commercial property, allegedly for non-payment of rent. The Moving Parties responded to that application and subsequently commenced their own application in May, 2021.

7. The original application commenced by Plating Plus was subsequently dismissed for delay. As observed by Conway J. in her Endorsement dated April 18, 2023 (amended April 19, 2023), the parties who are now the Respondents on this motion were "completely unresponsive and disinterested in the litigation".

8. Subsequently, previous counsel who was acting for Plating Plus in this Application advised that he may be retained to represent the Respondents Ramkisson and Thede in their respective personal capacities as well, although it took some months for him to confirm same, which was finally done in December, 2021.

9. The Applicants then served a Notice of Examination on each of the three Respondents on January 21, 2022, scheduling cross-examinations on their respective affidavits. None of the Respondents attended for cross-examination.

10. Ultimately, Ramkisson attended for examination on June 29, 2022 pursuant to the second Notice of Examination served on him on or about June 10, 2022. However, Ramkisson refused to answer a significant number of questions which the Applicants maintained were proper and relevant.

11. As a result of what the Applicants say was the continued lack of cooperation from the Respondents, they sought the assistance of the court yet again with respect to scheduling and service, all as reflected in the Endorsement of Gilmore J. made February 16, 2022.

12. Counsel for the Respondents then brought a motion pursuant to Rule 15 to be removed as solicitors of record which was granted by Kimmel J. On March 8, 2023.

13. As stated above, default judgment against the Respondents was then granted on May 26, 2023.

14. On September 8, 2023, Ramkisson was served with a Notice of Examination in aid of execution requiring him to attend for examination on September 15, 2023. There was no response. I pause to observe that according to the record on this motion, the Applicants have, despite their best efforts, been unable to effect service of the same Notice of Examination on either of the other two Respondents, the whereabouts of each of which they continue to attempt to ascertain.

15. Ramkisson did not attend for the scheduled examination.

16. The Applicants then brought a motion for an order compelling Ramkisson to attend for the examination in aid of execution, returnable on November 22, 2023, and sought the assistance of the court with respect to service of the motion record on Ramkisson, resulting in the Endorsement of Conway J. dated November 14, 2023 directing that service be effected by courier to his home address.

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17. The Applicants did that, and in addition, the Applicants served the motion materials, together with a copy of the endorsement of Conway J. via email on November 15, 2023 to the same email address: vijai@svrjobs.com. They (or counsel on their behalf) also attempted to correspond with Ramkisson by email and courier, all without any response. Email correspondence used the same email address noted above.

18. At the return of that motion on November 22, 2023, Steele J. made the order in respect of which the declaration of contempt is now sought. That order compelled Ramkisson to attend for an Examination in Aid of Execution and that examination was then scheduled for December 4, 2023. The order of Steele J. also ordered Ramkisson to pay costs thrown away in respect of the previous examination for which he did not attend, it in the amount of $7475.73.

19. The order of Steele J. further expressly directed that service on Ramkisson of the Notice of Examination could be effected by courier at his municipal address. The Applicants effected service in that manner, as well as by email, the following day on November 23, 2023. They also effected service, in addition, via email to the above-noted email address. Service is confirmed in the affidavit of service of Ms. Deborah Warwick sworn November 23, 2023.

20. Ramkisson did not attend for his examination on the scheduled date of December 4, 2023. Again, a certificate of non-attendance was obtained.

21. Accordingly, the Applicants then brought this motion for contempt, and in particular for the refusal by Ramkisson to comply with the order of Steele J.

22. In accordance with the order of Steele J. dated January 19, 2024, Ramkisson was required to serve his responding motion materials, if any, by January 31, 2024. This contempt motion was made returnable on February 8, 2024.

23. Those motion materials were served again in the same manner, including by both email to the above-noted email address, and by courier to Ramkisson's home address. Service was effected on January 24, 2024.

24. Ramkisson acknowledges on this motion receiving the motion materials at least on that date, by courier. Indeed, his position is that he received the motion materials for the first time on that date (January 24, 2024).

25. He also received the email enclosing the motion record, again to the same email address, on the same date. Although he does not acknowledge this in his affidavit sworn in response to this motion, the record is clear that he received the email on January 24, 2024.

26. Two days later, on January 26, 2024, counsel for the Applicants received an email from Ramkisson. It was sent from his known email address vijay@svrjobs.com, which is the email address that the Applicants used to serve all of the materials and correspondence referred to above.

27. In the email from Ramkisson, the only text was an email address of what appeared to be a law firm: ray@thaparlaw.ca.

28. Counsel for the Applicants, out of an abundance of caution and to determine whether that was in fact correct and Ramkisson was represented by counsel, sent an email to that address

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inquiring as to whether someone at that email address was acting for Ramkisson in connection with this proceeding. His hunch was correct. On January 30, 2024, counsel for the Applicant received a telephone call from Mr. Ray Thapar, who identified himself as a lawyer and stated that he was calling on Ramkisson's behalf. However, Mr. Thapar was careful to note that he had not been retained as counsel, but was calling as someone who had acted for Ramkisson in the past and as someone who knew him very well. He was inquiring as to whether the Applicants would agree to adjourn the motion to allow for settlement discussions, and in the event the Applicants were not so inclined, he would refer Ramkisson to another lawyer.

29. The evidence in the record is to the effect that Mr. Thapar confirmed that he had a copy of the motion record on this motion and had received it from Ramkisson.

30. On January 31, 2024, counsel for the Applicants wrote to Mr. Thapar via email to advise that the Applicants were not prepared to adjourn the motion, although the Applicants would be happy to receive any settlement offer.

31. The contempt motion returned before Penny J. on February 8, 2024, the date that had been scheduled by Steele J. on January 19, 2024. New counsel for Ramkisson (a colleague of Mr. Scher, who appears today) appeared to advise that Mr. Scher (who is counsel for Ramkisson today), had submitted a letter to the court indicating that he was in the process of being retained and requesting an adjournment.

32. In the circumstances, and as requested by counsel for Ramkisson, Penny J. adjourned the matter to March 1, 2024 when the matter came on before me last week. That date was peremptory to Ramkisson as was the date for delivery of responding materials by him of February 16, and cross-examinations, if any, were directed to be completed by February 28. Costs thrown away in the amount of $2500 were ordered payable by Ramkisson to the Applicants forthwith.

33. Penny J. concluded his Endorsement by stating: "I note in conclusion that the best way for Mr. Ramkisson to extricate himself from his current predicament is simply to attend on his examination in aid of execution. This will bring him in compliance with the prior orders of the court and reduce his liability for costs in the long run. I strongly urge Mr. Ramkisson to consider this alternative before incurring further risk and cost".

34. Ramkisson delivered responding materials on this motion. He then attended for cross-examination on his affidavit sworn in response to this motion, on February 28, 2024.

35. Ramkisson was not inclined to proceed as Penny J. had suggested he do and "simply attend on his examination in aid of execution". He continued to refuse to be examined in aid of execution. Indeed, that refusal was maintained even at the hearing of this motion. His position on this motion was twofold:

a. first, it was (and is) inefficient and premature for him to have to attend on an examination in aid of execution, since, as he advised in his responding materials (for the first time), and as his counsel confirmed in submissions, he intends to move "right away" to set aside the default judgment; and

b. second, and notwithstanding the successive orders of this Court particularly with respect to the manner of service, he never received either the motion record for this

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motion or a copy of the default judgment until he received it by courier on January 24, 2024. Of course, it was also served by email to the address noted above on the same date.

36. Receipt of the motion record via email is hard to deny, since he replied to that email from counsel to the Applicants by providing the email address for Mr. Thapar also as noted above, resulting in the discussion between Mr. Thapar on his behalf and Applicant's counsel. Ramkisson explains this by saying that he had not used that email address since "before Covid", and it was only upon receipt of the motion record by courier that he checked "his old email address", saw that he had received a copy of the materials to that address also, and then retained counsel to oppose this motion.

37. In his responding affidavit, Ramkisson makes reference to what can only be described as extremely challenging and difficult family circumstances which, he says, required him to travel to Guyana from Ontario during the period October 26, 2023 through November 18, 2023. He attached as exhibits his passport and travel itinerary and stated that he was out of the country essentially at all material times (during which the motion to compel him to attend at the examination was brought and when the order in respect of which he is alleged to be in contempt was obtained). I pause to reiterate that the order of Steele J. that is the subject of this contempt motion is in fact dated November 22, 2023, as noted above. That date is after the date on which Ramkisson returned to Canada on his own evidence.

38. Ramkisson goes on to state in his affidavit that upon his return to Ontario on November 18, 2023, he was dealing with additional family matters and was assisting his brother who suffered health challenges and ultimately passed away. He denies ever having received the notice of examination or the motion record until January 24, 2024.

39. Ramkisson then makes various statements about the circumstances of the underlying action resulting in default judgment (being the statements to which counsel for the Applicant objected, as noted below).

40. Ramkisson states that he has "every intention to move to set aside the default order expeditiously", with the result that if he is "successful in setting aside the default order then my attendance at a judgment debtor examination would be both moot and premature and the option to conduct the judgment debtor examination would not be available to the Applicants".

41. I observe that in his responding affidavit, Ramkisson makes no statement whatsoever with respect to his email address. To be very clear, he makes no statement to explain his rather bald but repeated assertions that until January 24, 2024, he had never received a copy of the default judgment, the various orders repeatedly sent to him, or the various notices of examination, all of which were delivered to him via the email address referred to above (in addition to courier and/or regular mail as described above and in the earlier endorsements).

42. Yet, as noted above, the record is very clear that he received the motion record (including the default judgment, the order in respect of which he is alleged to be in contempt and the notice of examination) via email to this same address on January 24, since he responded two days later (at the risk of stating the obvious, from the same email address) to provide the email address of his new lawyer, Mr Thapar. He does not explain in his affidavit whatsoever how or why his email

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address worked perfectly, for both sending and receiving messages, in January, 2024, but not before.

43. However, on his cross-examination on that affidavit, Ramkisson stated the following, among other things:

a. his address was 77 Highmark Dr., Woodbridge, ON (the address to which the motion materials had been delivered courier);

b. he had lived at that residence for about 15 years;

c. his wife and his adult daughter resided with him at that address. His daughter worked, although he did not know where;

d. his email address was vj@outsource.com, although that was not the email address that he used throughout the litigation;

e. he has an "old" email address, (being the email address referred to above) of vijai@svrjobs.com, although he had not used that email address "since before Covid", and thereafter he began using the other email address;

f. in response to the question of whether he had used his "old" email address since that time, he responded that "people just send us stuff; it's junk mail most of the time";

g. while he received regular letter mail from different places, he did not receive any regular letter mail about this matter at any of the various times materials were sent to him via regular mail;

h. he has not received any emails about this matter;

i. he may have received via email correspondence from Applicant's counsel dated September 15, 2023, although he was not certain, stating "maybe it come to, but I didn't -- I'm not looking at that email for a long time". Then, confronted with the fact that he used the email recently in January, he stated that "I can't recall using it" and that "if I use it, I went back to see if anything came in when I spoke to the lawyer";

j. he carries a cell phone, through which he receives emails sent to him, although he only checks his email "once in a blue moon";

k. he initially gave evidence to the effect that he returned to Canada on November 18, 2023 as stated in his affidavit;

l. Ramkisson then conceded that, as reflected in his passport which was produced as an exhibit, he in fact returned to Guyana on November 13, 2023 and not on November 18 as stated in his affidavit;

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m. he then agreed that as a result, he returned to Canada on November 13 and was therefore in Canada on the date on which the motion record was served by courier at his residence on November 22, 2023, although he maintained his position that he did not in fact see the record until January 24, 2024;

n. asked whether his wife or daughter, who resided with him, received the materials and specifically whether they received the court order, he responded that "I don't know if they saw anything, but I never received anything";

o. he conceded, after a lengthy exchange, that contrary to the statements in his affidavit, he was in fact in Canada and not in Guyana when he received the materials including the November 22, 2023 order, although he maintained his position that he had not seen the materials;

p. then asked when he actually received the contempt motion materials, he confirmed that he saw them for the first time when they were couriered to him, although could not recall whether that was in January, 2024 (as previously stated) or in December, 2023. He could not recall the dates;

q. asked about his (Ramkisson's) own reply of January 26, 2024 to the email sent to his email address enclosing the motion record and other materials on January 24 (being the email by which he provided the name of his lawyer, Mr. Thapar), Ramkisson stated that he did not know that lawyer, and that he did not think he had sent the email or at least he could not recall having done so although agreed that "it's saying it's from me";

r. he did not disagree with the suggestion that the email address was active as of January 26, 2024;

s. asked whether his counsel, Mr. Thapar, would have contacted him at some point in connection with these emails, his counsel responded to the effect that "that's not really relevant right now";

t. his counsel refused the question of whether Mr. Thapar contacted him using the same email address; and

u. the email address used, vijai@svrjobs.com was never disabled or rendered inactive.

44. Moreover, Ramkisson does not explain either in his affidavit or in his evidence on cross-examination, two things, neither of which is dependent upon the precise accuracy of his travel dates in any event. First, he does not explain how it is he says he never received the materials, orders and notices for the many months prior to October 26, 2023, the date on which he says that he left Ontario. Nor does he explain why (or even if) he could not access correspondence in his email account, from Guyana.

45. During argument on the motion, and following the submissions of counsel for the Applicants, I inquired of counsel for Ramkisson whether he wished to have a short adjournment to consider his position and obtain instructions from his client. He replied that he would. Upon

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resumption of the hearing, counsel for Ramkisson confirmed that he declined to agree to attend for an examination in aid of execution, but that he would abide by any court order made.

46. I must therefore consider the first stage of the contempt matter.

47. The Supreme Court of Canada has set out a three-part test to ground a finding for civil contempt:

a. the order alleged to have been breached must state clearly and unequivocally what should and should not be done;

b. the party alleged to have breached the order must have had actual knowledge of it; and

c. the party allegedly and breach must have intentionally done the act the order prohibits or intentionally failed to do the act the order compels.

See *Carey v. Laiken*, 2015 SCC 17 at paras. 17-35; and *Castillo v. Xela Enterprises Ltd*., 2024 ONCA 141 ("*Castillo*") at para. 35.

48. The evidence must show the contempt beyond a reasonable doubt.

49. As to the first element of the test, the order alleged to have been breached is the order of Steele J. dated November 22, 2023 compelling Ramkisson to attend for the examination.

50. It is very clear and unequivocal in stating what was to be done, and that was very straightforward: attend for the examination in aid of execution. The first element of the test is satisfied.

51. As to the second element of the test, the parties are in complete disagreement. The Applicants maintain that Ramkisson clearly had actual knowledge of the order, and Ramkisson denies any actual knowledge until January 24, 2024, at which time he says he acted with dispatch to retain counsel, seek an adjournment of the motion returnable on February 8, and thereafter deliver responding materials. I observe that the costs of $2500 ordered to be paid by Penny J. were apparently paid the day before the hearing of this motion.

52. Counsel for the Applicants made extensive submissions to the effect that Ramkisson was not a credible witness, that it was revealed during his cross-examination as described above that he was in fact in the country on the date he was served with the motion record, and not out of the country as he had stated in his affidavit, all with the result that not only did he have actual knowledge of the order in question (as well as this pending motion), but that he is not credible generally with the result that all of his evidence should be disbelieved.

53. While there is considerable merit to the submission of the Applicants given the evidence in the record described above, in my view it is unnecessary for me to make a determination as to whether and when, prior to January 24, 2024, Ramkisson was aware of the order in respect of which he is alleged to be in contempt.

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54. I say this because whatever happened or did not happen prior to January 24, there is absolutely no question that Ramkisson was well aware at least as of that date of the order and of the pending contempt motion. He instructed and retained counsel on his behalf to attend at the return date of the motion and seek the adjournment, which was ultimately granted by Penny J. on February 8.

55. Moreover, and given the fact that Ramkisson had actual knowledge of the order at least by January 24, 2024, it is unnecessary for me to determine whether he received knowledge of the order in 2023. However, I would find in any event that he did have actual knowledge of the order made by Steele J., And that he received it, repeatedly via email to the email address which he subsequently used to respond, albeit curtly, to counsel for the Applicants to provide Mr. Thapar's email address.

56. If it had been necessary for me to do so to dispose of this motion, I would reject Ramkisson's evidence stated baldly and without corroboration, that he had not used that email address since 2019 with the result that he only saw the order in the motion record in late January, as stated above.

57. In my view that explanation strains credulity. First, and based on his own admissions in cross-examination, the email address was never disabled or inactive. His evidence, at its highest, is that he simply did not check it often.

58. Yet, he clearly and unequivocally checked at email address and got the materials on January 24, 2024. He cannot credibly deny receiving the materials at least on that date, given that he responded on January 26 using the very same email address, in the same email message thread. However, he purports to explain this by saying that after receiving the materials by courier, as he admits doing, he then checked his email and saw that they were there as well. There is no explanation as to why, having already received the materials by courier, he would then check his email which he says he had not used "since the start of Covid" to see if he had received by email another copy of the same materials that he had by his own admission already received by courier. That explanation defies common sense.

59. I reject his explanation. I find that is much more likely that upon receiving the motion record (which included the order) via email, he responded to provide the name of a lawyer, which is precisely what he in fact did.

60. If necessary, I would have no difficulty inferring that Ramkisson had actual knowledge of the order precisely as contemplated by the Supreme Court of Canada in *Carey* at para. 34 where the Court stated: "it may be possible to infer knowledge in the circumstances, or an alleged contemnor may attract liability on the basis of the wilful blindness doctrine."

61. I also note that Rule 60.11(2) expressly provides that the notice of motion for contempt shall be served personally and not by an alternative personal service, unless the court orders otherwise. As expressly noted by Penny J. in his endorsement of February 8, 2024, Steele J. clearly ordered otherwise (as had both Kimmel J. and Conway J. in previous orders, all as a result of the challenges encountered by the Applicants in serving Ramkisson with any materials).

62. However, all of this is of marginal relevance, as noted above, given the unequivocal evidence of actual knowledge as of January 24, 2024.

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63. Accordingly, it is beyond any doubt that on the return date of this motion before me, Ramkisson had actual knowledge of the order. That is expressly conceded by his counsel today. What his counsel submits, however, and what Ramkisson stated in his own affidavit, is that it is premature to compel him to attend for the examination in aid of execution since such an examination might be moot if he is successful on his proposed motion to set aside the default judgment. His position is that now that he has advised the court that he intends to move to set aside that judgment, he is not required, or at least he ought not to be required, to comply with the order of Steele J.

64. In my view, two things flow from this. First, there is no question that the second element of the test is met. Second, an alleged contemnor, with actual knowledge of an order that is clear and unequivocal in stating what is required to be done, is not excused for complying with that order merely by advising of an intention to move to set aside that order.

65. Unless and until such time as it is set aside, it is an order of this Court that must be complied with. I pause to observe for clarity that here, Ramkisson advises that he intends to move to set aside not only the order in question (i.e., the order of Steele J. Requiring him to attend for the examination), but also the default judgment made against him that is now almost a year old and in respect of which he has yet to take any steps.

66. It was not appealed (he says because he had no knowledge of it until January of this year). Even more fundamentally, however, Ramkisson has taken no steps to even serve or file motion materials in respect of his proposed motion to set aside the default judgment since that time.

67. One would have reasonably expected that delivering those motion materials would be among the very first things he would do, as of January 24, 2024 to demonstrate his professed intention to “move expeditiously” to set aside the order. Yet, almost a month later, and even after the initial return date and the adjournment of February 8, 2024, no motion materials have been delivered. In my view, in the circumstances of a pending motion for contempt, such is inexplicable. Even if the expressed intention to bring a motion to set aside the judgment were an answer to a motion for contempt, I am not persuaded that such is *bona fide* in any event.

68. Whether a motion by Ramkisson, if and when brought, to set aside the order of Steele J. might be successful, is something about which I need not make, and do not make, any determination. I pause to observe that counsel for the Applicants submitted that the court ought to strike the paragraphs in Ramkisson’s affidavit in which he purports to set out the reasons why the order ought to be set aside. There is no motion before me to strike, but I need not do so to dispose of this motion. Those issues are for another day.

69. To be very clear, Ramkisson is free to bring a motion to set aside the default judgment, and, presumably, a companion motion to set aside the order requiring him to attend for an examination in aid of execution, which is the order in respect of which he is allegedly in contempt. But at the risk of repeating myself, until such a motion is brought, and further unless and until it is successful, the order must be complied with. Even if the judgment and the order were ultimately set aside, Ramkisson could presumably assert a claim for costs thrown away in respect of the examination which, he would submit, will have been unnecessary.

70. I am left with the inescapable conclusion that Ramkisson is simply continuing to delay enforcement of the judgment and attempt to avoid being examined under oath in aid of execution.

71. The second element of the test is met.

72. The third element of the test requires that the alleged contemnor be shown to have intentionally failed to do the required act. In my view, the evidence in respect of this element of the test could not be clearer: Ramkisson has, at least since January 24, 2024, intentionally refused to attend for his examination based on his proposed motion as set out above. I cannot help but echo the statement of Penny J. Made at the conclusion of his Endorsement to the effect that by far the easiest thing for Ramkisson to do would be to simply attend for the examination.

73. I am satisfied that all three elements of the test for contempt have been made out here.

74. This Court has emphasized in earlier cases the importance of court orders and the importance in a free and democratic society like Canada, that citizens act pursuant to and under the rule of law. The deliberate failure to obey a court order strikes at the very heart of the administration of justice. As Justice Coming stated: "if the remedies a court directs to be put in place through its orders can be ignored with impunity, the road to civil anarchy is close at hand." (*See Sussex Group Ltd. v.3933938 Canada Inc*., [2003] OJ 2906 at paras. 47-48.

75. Contempt findings may be appropriate where the orders clearly compel attendance for an examination and production of documents. (See *Ting v. Borelli*, 2020 ONSC 5976).

76. In all the circumstances, I am satisfied beyond any reasonable doubt that Ramkisson, wilfully and without lawful excuse, breached the order of Steele J. by failing to attend for the examination in aid of execution.

77. Today the Applicants seek an incarceration order or in the alternative, an order compelling him to attend for the examination within a very short period of time to purge his contempt.

78. I am not prepared to make any incarceration order today or until following the penalty hearing in this matter. There is no reason to depart from the usual practice of bifurcating the two phases of a contempt hearing.

79. Ramkisson shall have the opportunity to purge his contempt, as I would have ordered in any event of it being the alternative relief sought by the Applicants, by immediately attending for the examination in aid of execution. I observe that both counsel advised the court that they were available next week. I strongly urge Ramkisson to agree to attend for that examination, and in fact to attend as soon as possible. I will consider whether he did so and what, if any, other efforts he makes to comply with the order, as part of my consideration of whether he has purged his contempt at the penalty hearing.

80. The penalty phase of this contempt hearing shall proceed before me for one hour on the date fixed at the request of counsel for the Applicant through the Commercial List Office following the end of next week to allow for an opportunity for the examination to occur.

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81. The Applicants are entitled to their costs of today. Those costs should be quantified at the penalty hearing.

Osborne J.

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