

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *1548199 Alberta Ltd. v. My Mortgage Auction Corp. (Shop Your Own Mortgage)*,
2023 BCSC 1824

Date: 20230911
Docket: S233210
Registry: Vancouver

Between:

1548199 Alberta Ltd.

Plaintiff

And

My Mortgage Auction Corp. dba Shop Your Own Mortgage, Gregory Joseph Martel, Martel Investments Ltd., Shop Your Own Corp., 2289548 Alberta Ltd., Snail Team One, Inc. (also listed as Shair Fleet, Inc.), Shair Your Car, Inc., Snail Team Six Software Development, Corp., G&G Discount Merchandise LLC, and Martel Capital, Inc.

Defendants

Before: The Honourable Justice Fitzpatrick

Oral Reasons for Judgment

In Chambers

Counsel for the Receiver:

P. Rubin
A. Burns

Counsel for the Defendant, Gregory Martel:

D. Wotherspoon

No other appearances.

Place and Date of Hearing:

Vancouver, B.C.
September 11, 2023

Place and Date of Judgment:

Vancouver, B.C.
September 11, 2023

[1] **THE COURT:** This application is the last of many that I have addressed today in this receivership proceeding.

[2] PricewaterhouseCoopers Inc. (“PwC”), in its capacity as the court-appointed receiver of the defendant, My Mortgage Auction Corp., doing business as Shop Your Own Mortgage (“MMAC”), (the “Receiver”) seeks an order declaring the defendant, Gregory Martel, guilty of contempt of civil contempt of court. In addition, the Receiver seeks the issuance of a warrant to apprehend Mr. Martel and that the order, if granted, be posted on the Canadian Police Information Centre (“CPIC”) system.

[3] Mr. Wotherspoon, Mr. Martel's latest and second counsel in this proceeding, withdrew his representation of Mr. Martel earlier this morning. As such, this application is proceeding without any involvement by Mr. Martel, either with counsel or in person.

The Application

[4] The facts underlying the Receiver's application are set out in detail in the notice of application. I do not intend to repeat all of the facts stated there. In addition, the application is supported by the Affidavit #1 of Neil Bunker sworn August 30, 2023. Mr. Bunker is PwC's Senior Vice-President and he has had carriage of this matter since PwC's appointment by my order initiating the receivership on May 4, 2023 (the “Receivership Order”).

[5] The facts set out in Mr. Bunker's Affidavit #1 and reproduced to a large degree in the notice of application are actually well-known to me by this point, given that I have been the supervising judge in this proceeding since May 2023. In addition, I am aware of the various court materials filed in this proceeding, including as set out in the Receiver's reports. The Receiver's reports that are specifically before me today include the Fifth report dated July 24, 2023 and the Sixth report dated September 6, 2023.

[6] In addition, on June 6, 2023, the Receiver placed MMAC in bankruptcy and PwC was appointed as Trustee. I have before me PwC's First Report to the Court dated September 6, 2023 filed in the bankruptcy proceeding of MMAC.

[7] Since this proceeding began, the primary focus has been to determine what assets of MMAC are available to the thousands of stakeholders or investors who invested monies with MMAC. Those monies were provided to MMAC for the purpose of a program, as described by Mr. Martel to them, by which the money would be invested in secured bridge loans.

[8] Mr. Martel is the sole owner, officer and director of MMAC. The evidence quite convincingly indicated that he was the driving force behind MMAC since its inception.

[9] I have granted a number of Court orders in this proceeding, which are detailed in the application materials. To summarize:

- a) May 9, 2023: At Mr. Martel's counsel's request, I granted a short adjournment of the reconsideration of the Receivership Order on condition that Mr. Martel and MMAC provide certain corporate and personal disclosure within a specified period of time (the "Adjournment Order");
- b) May 9, 2023: I also granted an investigatory powers order, which was amended on May 17, 2023, and further amended on July 26, 2023 (the "IPOs"). Under the IPOs, various corporate parties and Mr. Martel were to ordered to provide access to information and co-operate with the Receiver, again, towards the Receiver's primary goal of discerning the assets that were available to repay the thousands of investors who had loaned in excess of \$234 million to MMAC. Specifically, under the May 17, 2023 IPO, Mr. Martel was required to provide specific information and respond to certain specific requests by the Receiver;
and

- c) May 17, 2023: I granted an amended receivership order which followed from my original May 4, 2023 order (both orders are collectively the “Receivership Orders”). In the May 17, 2023 order, Mr. Martel was also required to provide certain specific information and documentation to the Receiver in response to various requests that were had been made to him at that time.

[10] It is abundantly clear from the evidence that the Receiver has made substantial efforts to provide clarity to Mr. Martel about what was required to be provided. In addition, the Receiver has repeatedly requested the information over that period of time. The Receiver’s efforts have included direct communications with Mr. Martel over the Internet and various requests to his counsel (firstly, Mr. Clark and secondly, as of July 6, 2023, Mr. Wotherspoon’s offices).

[11] The Receiver has concentrated on three specific areas of non-compliance as it relates to the contempt application:

- a) The requirement that Mr. Martel provide information regarding the bridge loans;
- b) The requirement that Mr. Martel provide information regarding DocuSign accounts which even Mr. Martel said would provide documentation relating to the bridge loans that he stated existed; and
- c) the general duty to comply and cooperate with the Receiver in terms of its primary task in confirming the existence of the bridge loans, locating the bridge loans and also, more generally, discerning where the approximate \$234 million of investment monies have been directed.

Discussion

[12] The legal basis for a finding of contempt of court is well-known to this Court. Rule 22-8 of the *Supreme Court Civil Rules* provides for the Court's authority to

enforce its orders including through contempt. In addition, the Court has inherent jurisdiction to enforce its orders.

[13] The Receiver's counsel has referred me to the well-known authority of *Carey v. Laiken*, 2015 SCC 17 where, at paras. 31–35, the Court discusses the elements of civil contempt.

[14] Firstly, the order alleged to have been breached “must state clearly and unequivocally what should and should not be done”.

[15] I have no hesitation finding that the orders alleged to have been breached clearly and unequivocally stated what Mr. Martel was required to do. Mr. Martel does not suggest otherwise. This includes providing the information and documentation under the Adjournment Order in terms of disclosing his and MMAC's assets. It also includes providing the general cooperation and information about the bridge loans (and the DocuSign agreements), both under the IPOs and the Receivership Orders.

[16] It is unquestionably the case that that has been established here through this series of numerous orders that have been granted in this matter.

[17] Secondly, what must be established is that Mr. Martel, who is alleged to have breached the order or orders, must have actual knowledge of the orders. Again, the evidence is clear that Mr. Martel has been well aware of all of the orders since they were granted. Mr. Martel's legal counsel have continually confirmed their client's knowledge of the orders over the course of their representation of him during these proceedings.

[18] I should also add that Mr. Wotherspoon advised the Court this morning that Mr. Martel is aware of this contempt application and that it was proceeding today.

[19] Thirdly, what must be established is that Mr. Martel intentionally failed to do what the order compels. In *Carey*, the Court stated:

[38] It is well settled in Canadian common law that all that is required to establish civil contempt is proof beyond a reasonable doubt of an intentional act or omission that is in fact in breach of a clear order of which the alleged

contemnor has notice: *Prescott-Russell*, at para. 27; *College of Optometrists*, at para. 71; *Sheppard*, at p. 8; *TG Industries*, at paras. 17 and 32; *Bhatnager*, at pp. 224-25; *Sharpe*, at ¶ 6.190. The Court of Appeal followed this approach. As it noted, to require a contemnor to have intended to disobey the order would put the test “too high” and result in “mistakes of law [becoming] a defence to an allegation of civil contempt but not to a murder charge” (para. 59). Instead, contumacy or lack thereof goes to the penalty to be imposed following a finding of contempt: para. 62; see also *Sheppard*; and *Sharpe*, at ¶ 6.200.

[Emphasis added.]

[20] I find that Mr. Martel is well aware of what is required under the various orders. He has chosen, for reasons unknown to me and, I believe, to the Receiver and its counsel, to not comply with the order. The information and documentation sought is what could have been expected to be in Mr. Martel's knowledge and under his control. In fact, Mr. Martel has suggested to the Receiver from time to time, over the last few months, that he does in fact have control and/or knowledge of information (for example, relating to the identity of borrowers under the bridge loans).

[21] I am more than satisfied that the *Carey* requirements have been met in this case. I find Mr. Martel guilty of contempt of court for breaching the Adjournment Order, for breaching the Receivership Orders and for breaching the IPOs.

[22] I order that the warrant in Form 115 to issued to require that Mr. Martel be apprehended and promptly brought before a judge of this Court.

[23] Finally, I order that, if possible, the warrant to be issued be posted on the CPIC as soon as reasonably possible.

“Fitzpatrick J.”