CITATION: NDrive, Navigation Systems S.A. v. Zhou, 2024 ONSC 92
BARRIE COURT FILE NO.: CV-23-414
DATE: 20240104

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
NDRIVE, NAVIGATION SYSTEMS S.A.	
Applicant	Ryder Gilliland and Corey Groper, for the Applicant
– and –	
SI ZHOU (a.k.a. SI (SILAS) ZHOU, a.k.a. SILAS ZHOU)	
Respondent	Michael B. Miller, for the Respondent
	HEARD: In Writing

REASONS ON VEXATIOUS LITIGANT APPLICATION

McCARTHY, J.

The Application

[1] This is an application for a declaration that the Respondent is a vexatious litigant and for other accompanying relief.

Relief Sought

[2] The Applicant seeks an order providing that:

(a) The Respondent is a vexatious litigant who has persistently and without reasonable grounds instituted vexatious court proceedings and has conducted court proceeding in a vexatious manner within the meaning of ss. 140(1)(a) & (b) of the *Courts of Justice Act*, R.SO. 1990, c. C.43 ("*CJA*");

(b) No action, originating process, proceeding, motion or appeal of any kind may be instituted by the Respondent, directly or indirectly, in any court governed by the *CJA*, without first obtaining leave of a Judge of the Superior Court of Justice;

(c) The Respondent is prohibited from taking any step in any proceedings previously instituted, including in Court File No.: CV-20-00000732-0000, Court of Appeal File No.: COA-22-CV-0391, Court File No.: CV-23-00695330- 0000 and Court File No. CV-23-00695942-0000, directly or indirectly, without first obtaining leave of a Judge of the Superior Court of Justice;

(d) Should the Respondent seek to commence or continue any proceeding or any appeal in any court governed by the *CJA* without first filing an issued and entered order permitting him to do so, that proceeding shall immediately be stayed upon any person filing a copy of this order;

(e) Should the Respondent, directly or indirectly, obtain leave to initiate or continue any proceeding in any court governed by the *CJA*, he must first satisfy all outstanding awards of costs against him;

(f) The Respondent shall pay costs of this application to the Applicant on a substantial indemnity basis, forthwith.

[3] The Applicant asserts that the relief sought is justified in that the Respondent has engaged in a long and concerted effort to hinder proceedings, abuse the court's process, and defeat justice for the Applicant at every turn.

Background

[4] The Applicant NDrive is a software navigation company based in Portugal. The Respondent began providing consultancy services to NDrive in March 2010. The Respondent helped NDrive establish a business relationship with LG Electronics Inc. ("LG"). A dispute between NDrive and LG led to a commercial arbitration with the Respondent assigned to supervise the arbitration on NDrive's behalf. NDrive was granted an arbitral award of more than one million USD ("the Arbitral Award"). NDrive appealed the Arbitral Award again with the Respondent assigned to oversee the appeal. The appeal was unsuccessful, but the Respondent withheld that information from NDrive for nearly a year. The Respondent took receipt of the Arbitral Award by directing NDrive's lawyers to deposit it into a bank account controlled by his corporation. When NDrive discovered this, the Respondent fabricated claims to justify having withheld the funds but did not return them.

[5] After having issued a claim for the Arbitral Award, as well as other relief, the Applicant obtained a Mareva Injunction ("the Mareva") on May 7, 2020, which essentially froze the assets of the Respondent.

The Post-Mareva Litigation

[6] On May 22, 2020, the parties agreed to an order lifting the Mareva upon the Respondent paying the sum of $1,186,735.62 as security.

[7] That consent order was varied by the court on June 19, 2020. This subsequent "variation order" required the Respondent to make an additional payment of security in the amount of $368,113.00 termed "additional payment of security (APOS)".

[8] The Respondent's motion to vacate the variation order was dismissed on November 12, 2020. Leave to appeal the variation order was denied in February 2021.

[9] The Applicant obtained summary judgment against the Respondent on November 5, 2021 (the "Judgment"). The court ordered the Respondent to pay the CAD equivalent of $881,170.48, plus punitive damages in the amount of $200,000 and costs on a full indemnity basis in the amount of $230,000. The court found that the Respondent had perpetrated "substantial fraud", that his absconding of the arbitral award was "calculated and sustained" and that the Respondent had "deliberately lied and concealed information."

[10] Of great importance for this application, the motions judge found the Respondent's conduct in the litigation to be outrageous, that he had wasted court resources, employed delay tactics, and demonstrated an intention to undertake a long and drawn-out process while raising issues that were clearly statute barred and/or irrelevant.

[11] The Respondent launched an appeal of the Judgment. Prior to hearing the appeal, the Court of Appeal ordered that the Respondent and his corporation post additional security in the amount $300,000 for costs of the appeal.

[12] On August 15, 2022, the Respondent's appeal was summarily dismissed by the Court of Appeal at the close of oral submissions. No leave to appeal to the Supreme Court was sought by the Respondent at that time. Nonetheless, the Respondent refused to agree to an order for the payment of funds out of court towards the Judgment. This necessitated a further motion whereby the Applicant obtained a release order for those court funds (the "Release Order") on October 27, 2022. The court again ordered costs against the Respondent, finding that the motion should not have been opposed and that his opposition to the motion had unnecessarily complicated and prolonged the matter.

[13] Instead of seeking leave to appeal the interlocutory Release Order, the Respondent launched an appeal directly to the Court of Appeal. The Applicant was successful in having that appeal quashed on April 11, 2023. The Court of Appeal termed the Respondent's initiative as "abusive" because it sought to appeal an order for payment out of court funds standing to the credit of an action which had been finally determined on its merits.

[14] On December 27, 2022, the Respondent served and filed a notice of intention to act in person. Almost immediately, the Respondent began directing unsolicited correspondence via regular and electronic mail to NDrive's directors and its lawyers. Between January 5,

2023, and March 14, 2023, the Respondent peppered those entities with 108 separate pieces of correspondence.

[15] Prior to the hearing of the motion to quash the appeal of the Release Order, the Respondent brought a motion to stay the appeal of the Release Order on the basis that his corporate entities, Aquazion and Aqua Latitude International Limited, did not have legal representative and did not have the legal capacity to sue or be sued.

[16] The Respondent then brought an application naming not just the Applicant but its lawyers DMG Advocates LLP ("DMG"). The relief sought included a request that DMG produce all its accounts and unredacted dockets pertaining to NDrive together with an order that the Applicant assess DMG's accounts.

[17] Then on March 9, 2023, the Respondent brought an application to have DMG removed as solicitors of record for the Applicant and seeking payment from NDrive of nearly $489,000 USD for allegedly overdue invoices. The material in that application included: i) accusations that NDrive's principals and lawyers engaged in and facilitated fraud on the court; ii) a clear attempt to relitigate the credibility findings of the summary judgment motion judge; and iii) a suggestion that DMG be removed as solicitors of record for the Applicant.

[18] The Respondent commenced a third application against the Applicant and its lawyers on March 30, 2023, again seeking the removal of DMG but also seeing monetary payment from the Applicant for work the Respondent allegedly performed pertaining to the arbitration. The summary judgment motions judge had held that these claims for monetary payment were unfounded and statute barred.

[19] On April 26, 2023, the Applicant sought to have the Accountant of the Superior Court pay out the funds in court to NDrive. The next day, the Respondent delivered an application for leave to appeal the Court of Appeal decision of April 11, 2023, to the Supreme Court of Canada.

Legislative Framework

[20] Section 140 of the *CJA* provides as follows:

> Vexatious proceedings
> 140 (1) Where a judge of the Superior Court of Justice is satisfied, on application, that a person has persistently and without reasonable grounds,
>
> (a) instituted vexatious proceedings in any court; or
>
> (b) conducted a proceeding in any court in a vexatious manner, the judge may order that,
>
> (c) no further proceeding be instituted by the person in any court; or
>
> (d) a proceeding previously instituted by the person in any court not be continued, except by leave of a judge of the

> Superior Court of Justice. R.S.O. 1990, c. C.43, s. 140 (1); 1996, c. 25, s. 9 (17).

The Jurisprudence

[21] The overall purpose of section 140 the *CJA* was succinctly stated by Dow J. in *Howie, Sacks & Henry LLP v. Chen*, 2015 ONSC 2501, [2015] O.J. No. 2030, at para. 28: "to protect honest citizens, including those who serve the administration of justice as counsel, and maintain the overall integrity of the justice system against those who abuse the court process."

[22] The purpose of vexatious litigant orders was elaborated upon in the recent decision of this court in *Colbert v. Colbert Estate,* 2023 ONSC 811, [2023] ONSC 811 "*Colbert*", at para. 26:

> Vexatious litigant orders therefore serve multiple purposes, including to: (i) prevent vexatious litigants from harassing others and forcing them to incur unnecessary legal costs; (ii) protect the vexatious litigant, by preventing him or her from squandering their resources on unmeritorious claims; and (iii) protect the interests of society as a whole, by limiting the needless diversion of finite court resources to private vendettas that do not give rise to any genuine cause of action

[23] In *Roscoe v. Roscoe*, [2005] O.J. No. 5117, aff'd at 2007 ONCA 516, Justice Power put it rather more tersely in invoking the principle of access to justice:

> Enough is enough. This Court has limited resources and must, therefore, attempt to deal with the work before it in a fashion that is fair to all users of the court. While a person's access to justice is a fundamental right, the court must be diligent to ensure that its processes are not abused by any particular litigant to the detriment, not only to those directly involved in the litigation, but, as well, to the system at large: *Roscoe*, at para. 1.

[24] In its decision of *Lochner v. Ontario Civilian Police Commission*, 2020 ONCA 720, [2020] O.J. No. 4851, at para. 20, the Ontario Court of Appeal set out a non-exhaustive list of what constitutes a vexatious litigant. This list includes:

(a) Bringing multiple proceedings to try to re-determine already determined issues;

(b) Bringing forward grounds and issues from previous proceedings;

(c) The persistent pursuit of unsuccessful appeals;

(d) The failure to pay costs awards; and,

(e) Bringing proceedings where no reasonable person would expect to obtain the relief sought.

[25] A person's behaviour both in and out of the court may be relevant to the determination of whether they should be declared a vexatious litigant. For example, an email campaign can be found to be part of an overall strategy of abuse and harassment: see *Colbert* at para. 25.

[26] In determining whether proceedings or conduct are vexatious, the entire history of the matter must be considered: see *Tiago v. Tinimint Housing et al*., 2021 ONSC 2232, at paras. 55-57.

Discussion

[27] I have reviewed and considered the entirety of the proceedings in question.

[28] I have no hesitation in concluding that the Respondent is a vexatious litigant and that the relief sought by the Applicant ought to be granted.

[29] I provide the following reasons:

(a) The Respondent has not paid costs awards made by this court and the Court of Appeal. This issue has been bandied back and forth with the Respondent attempting to convince the court (unsuccessfully) that payment was tendered but refused. On July 27, 2023, I found that those costs had not been paid. There is no evidence before me that would cause me to vary that previous finding. As stated by Champagne J. in *College of Registered Nurses v. Shannon Hancock*, 2022 MBQB 26 at paras. 97-98: "…vexatious litigants seldom pause to consider the consequences of meritless litigation because they rarely, if ever, pay costs. That is why costs are a significant factor in a vexatious litigant determination."

(b) The Respondent appealed nearly all of the orders made against him these past three and a half years.

(c) During that same time period, the Respondent has persistently launched proceedings for relief which had no realistic chance of success (viz, the appeal of an interlocutory order to the Court of Appeal which the panel found to be "abusive"; first filing then withdrawing the judicial recusal motion; the motion to have DMG removed as solicitors of record for the Applicant; the application for production of DMG's accounts and dockets and for an order directing NDrive to assess DMG's accounts).

(d) The Respondent's documents have contained personal attacks, pointless allegations and often been suggestive of broad conspiracies against him.

(e) The Respondent has continued to repeat unfounded and irrelevant allegations against the solicitors retained by NDrive and his communications with counsel have

been characterized by abusive and threatening language directed towards those representatives.

(f) The content of the Respondent's 108 letters and emails sent to NDrive's lawyers between January 5, 2023 and mid-March 2023, the content of which was often spiteful, threatening and harassing, are indicative of an individual whose sole intention is to pursue an agenda which has nothing to do with accessing justice or pursuing a legitimate cause of action. Like the applications judge in *Goodlife Fitness Centres Inc. v. Hicks*, 2019 ONSC 4942, at paras. 65-70, I find that the number and nature of the emails to be a significant concern and that the emails were "sent for purposes other than addressing any ongoing proceedings that would require him to communicate with any of the addresses."

(g) The Respondent has demonstrated a willingness to take whatever steps are necessary to avoid paying his judgment debt. This included refusing to consent to a release of the trust funds, necessitating a motion before me. I found that the Respondent's failure to consent had "unnecessarily complicated and prolonged the matter."

(h) The Respondent went so far as to bring a recusal motion against me before withdrawing it before adjudication. He did this in the face of the present motion being brought and while costs awards made previously remained unpaid.

(i) In lengthy reasons given in her judgment in favour of NDrive and against the Respondent, my sister, Justice Healey, writing in November 2021, and in support of her award of punitive damages against the Respondent, had the following to say about the Respondent's conduct in the litigation up to that time:

> Judges see the enormous toll taken by dishonesty and abusive litigation on our strained justice system. It significantly prolongs proceedings, delaying access to justice, not just for the parties to the lawsuit before us, but for other litigants and lawyers who need the judicial resources. It exacts a severe financial toll on the innocent party, sometimes causing them to "fold their cards." And it undermines public confidence in the administration of justice when it goes overlooked and unchecked. There is a distinct, qualitative difference between hard fought litigation, putting the plaintiff to the proof of its case, and strategic nonsense. We know it when we see it, as I do here. If judges fail to respond strongly to litigants like Zhou, they get away with it and others come to expect that they will as well.
>
> The cumulative conduct of the Zhou parties, from their substantial fraud to those aspects of their litigation conduct

> that I have found to be unacceptable, is reprehensible and departs to a marked degree from ordinary standards of decent behaviour. In order to send a serious message to the Zhou parties and to like-minded litigants that the judicial system is not to be abused as a tool to obfuscate, mislead, and expend one's personal rancour, a significant award is warranted: *NDrive, Navigation Systems v. Zhou et al.*, 2021 ONSC 7366, at paras. 282 and 283.

(j) In those same Reasons, Healey J. also made the following findings of note:

i) Mr. Zhou's "approach in this litigation has caused extreme expense for both parties and appropriated many hours of judicial resources" (at para. 181); and,

ii) Mr. Zhou "is deliberately lying and attempting to mislead the court" and his evidence is "frequently illogical, internally inconsistent, inconsistent with the contemporaneous documentary evidence, and at times patently false" (at paras. 198-199).

(k) In Healey J.'s Cost Endorsement dated November 24, 2021, *NDrive Nagivation Systems S.A. v. Zhou*, [2021] O.J. No. 6670, 2021 ONSC 7772, she expounded upon her previous findings in respect of the Respondent:

i) Mr. Zhou "showed an intention to undertake a long and drawn-out process, raising issues that were clearly statute barred and/or irrelevant";

ii) He also, "wasted scarce court resources";

iii) Mr. Zhou made "serious and unsubstantiated allegations against opposing counsel, even in a pleading";

iv) Mr. Zhou engaged in conduct that was "shocking and reprehensible"; and,

v) this included, "an intention to hide relevant evidence and to mislead the court" (at para. 25).

[30] The Respondent's conduct has not improved in the two years following the admonitions of Healey J. He continues to show disrespect and disregard for court orders and for the administration of justice. He threatens and launches meritless proceedings. He continues to harass and insult the representatives of his opponents, asserting frivolous, petty, and unfounded allegations against their integrity and competence. Even in his responding materials to this vexatious litigant application, which should focus on his conduct and not the conduct of others, the Respondent continues to point an accusatory finger at the courts, the Applicant and its lawyers suggesting that: costs award cheques were refused by the Applicant; that the Applicant has failed to provide any proof of their foreign registration; that the Applicant was not entitled to bring any court proceedings; that the court was not

clear in its last order as to who the Applicants were; that in motions preceding the present application, the Applicant's affidavits have been deficient; and even that the Applicant has failed to respond to a proposal that the actions be consolidated to save time and money.

[30] In response to receiving notice that this application was to be brought, the Respondent sent an email to NDrive's Board of Directors on March 8, 2023, claiming that they had a "young lawyer who does not know what he is doing or does not know what to do" and suggesting to the Applicant that it should "fire DMG before I move to disqualify DMG for you."

[31] This email was quickly followed by an application for an order requiring the Applicant's lawyers to remove themselves as counsel of record. In his supporting materials, the Respondent accused NDrive's principals and lawyers of engaging in a fraud upon the court.

[32] On March 30, 2023, the Respondent commenced yet another application seeking to have DMG removed as counsel of record for the Applicant. The Respondent also sought to advance claims for payment on invoices rendered by him for work on the arbitration even though these claims were dismissed by the summary judgment motions judge as both unfounded and statute barred.

[33] It is also evident that the Respondent has attempted to delay the hearing of this application. First, the original return date of March 20, 2023 was adjourned; the evidence demonstrated that the Respondent was evading service. Service via electronic mail was permitted by the court. Next, the matter could not proceed on May 1, 2023 because the Respondent signalled his intention to bring the recusal motion. That recusal motion was subsequently abandoned on July 7, 2023. Both the June 14, 2023, and July 27, 2023 return dates needed to be adjourned because the preliminary issue of whether the Respondent had paid the outstanding costs awards totalling $18,000 had to be addressed. The court quickly found that the Respondent had not paid those costs awards.

[34] In my order dated May 1, 2023, I stated that the Respondent was not permitted to bring any proceedings, including motions, until final disposition of this application. Nonetheless, the Respondent has proposed to bring a motion to vacate my orders dated May 1, 2023, and July 27, 2023. In the latter order I found that the Respondent was in substantive breach of the previous order. The Respondent also proposes to seek security for costs and an order mandating NDrive to "provide affidavits sworn by individuals residing in Portugal."

Disposition

[35] Enough is enough.

[36] The Applicant, its lawyers, the judiciary, the court staff, the justice system, and the public deserve to be spared and protected from the Respondent's twisted agenda, his unending vitriol, his palpable resentment, his vindictive and provocative accusations, his baseless and repetitive allegations, his meritless motions, and his frivolous applications.

[37] Access to justice in a free and democratic society is a precious commodity. Generations of men and women have devoted their intellectual effort and moral courage to help weave it

into the fabric of our communities. The civil justice system should be neither trivialized nor abused. Those who do so subvert the ideal of access to justice. They must be stopped.

[38] Si Zhou, (aka Si (Silas) Zhou, aka Silas Zhou) is found to be a vexatious litigant within the meaning of s. 140 of the *CJA.*

[39] The proposed draft order filed as Schedule "B" to the Reply Factum of the Applicant contains the appropriate elements and wording necessary to give effect to my finding on this application.

[40] Accordingly, there shall be an order to go in accordance with the draft proposed order filed as Schedule B to that Reply Factum, save and except for paragraphs 9 and 10 of that proposed order.

[41] Assuming that the parties will be unable to agree on the issue of costs of this application, they shall furnish the court with written submissions on that issue according to the following schedule:

(a) Submissions of the Applicant limited to 5 pages to be served and filed on or before January 31, 2024.

(b) Submissions of the Respondent limited to 4 pages to be served and filed on or before February 15, 2024.

(c) Reply submissions of the Applicant if any limited to 3 pages to be served and filed on or before February 29, 2024.

[42] Based on the history of this matter, there is little chance that the Respondent will agree to the form and content of any proposed draft order. The Applicant is therefore invited to submit a revised proposed draft order in line with these reasons for my consideration through my judicial assistant at BarrieJudSec@ontario.ca.

McCARTHY J.

Released: January 4, 2024