

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *I Buy Beauty LLC v. Dong* ,
2023 BCSC 1352

Date: 20230704
Docket: S220548
Registry: Vancouver

Between:

I Buy Beauty LLC and Vuong Pham

Plaintiffs

And:

Si Phung Dong, also known as Phil Dong

Defendant

Before: The Honourable Mr. Justice Riley

Oral Reasons for Sentence (Civil Contempt)

Counsel for the Plaintiffs:

R. McConchie

Counsel for the defendant:

D.F. Sutherland, K.C.

Place and Date of Hearing:

Vancouver, B.C.
June 21, 2023

Place and Date of Judgment:

New Westminster, B.C.
July 4, 2023

Introduction

[1] On 21 June 2023, I found Mr. Dong guilty of civil contempt of court, for intentionally violating the terms of the interlocutory injunction order issued by Mr. Justice Brongers on 4 June 2022. The injunction order prohibited Mr. Dong from publishing statements maligning the plaintiffs I Buy Beauty LLC and Mr. Pham. In the earlier ruling, I found that Mr. Dong repeatedly breached the injunction order, by publishing videos on Youtube with content referencing the plaintiffs Mr. Pham and I Buy in terms prohibited by the order. Mr. Dong is now before the court for the sentencing.

The Facts

The Underlying Civil Action

[2] The underlying action involves allegations that the defendant Mr. Dong, a professional YouTuber, committed defamation and pursued a campaign of online harassment against the personal plaintiff Mr. Pham and his business, I Buy Beauty LLC doing business as Fastboy Marketing. The harassment was alleged to have taken place principally in the form of Mr. Dong posting Youtube videos claiming that Mr. Pham and his company are fraudsters, scammers, and money launderers.

The interlocutory Injunction

[3] On 4 June 2022, the plaintiffs obtained an interlocutory injunction enjoining Mr. Dong from making further publications with content asserting either directly or by implication that the plaintiffs were, among other prohibited terms, fraudsters, scammers, or money launderers.

[4] The order was granted on 4 June 2022 but was not reduced to writing and entered until 15 June 2022. The plaintiffs served the order on Mr. Dong by various means on 16 June 2022. In the reasons for judgment finding Mr. Dong guilty of contempt, I was satisfied beyond a reasonable doubt that, as of 16 June 2022, Mr.

Dong was at the very least wilfully blind as to the existence of the injunction order, and yet continued to post Youtube videos in contravention of the order.

The Particulars of Mr. Dong's Contempt

[5] Mr. Dong repeatedly violated the terms of the injunction order, by posting Youtube videos referencing the plaintiffs using terms prohibited in the order. I can say from the English translations of titles of the Youtube video alone that Mr. Dong posted at least 25 offending Youtube videos during the period covered by the contempt application, from 4 June 2022 to 4 August 2022. Of these, 18 were posted after 16 June 2022, which is the date on which Mr. Dong had notice of the terms of the injunction order. The offending videos expressly refer to the plaintiff Mr. Pham by name, in conjunction with terms and phrases such as “money laundering”, “deceitful”, “bogus”, and “fraud” or “fraudulent scheme”. Some of the offending videos referred to Mr. Pham as the “king of fraud”.

[6] Although it is not part of the finding of guilt, it is a further aggravating feature of Mr. Dong's conduct that he continued to post offending Youtube videos after the period covered by the contempt application. Mr. Dong posted a total of 71 Youtube videos referencing the plaintiffs between 5 August 2022 and 17 August 2022. Of these, I am satisfied based on the English translation of the titles alone that at least six videos had content running afoul of the injunction order.

[7] Mr. Dong's conduct appears to have continued unabated until he was physically arrested on 29 October 2022. At that point, Mr. Dong was held in custody until 31 October 2022, at which time he was released by a Justice of this Court on conditions.

[8] To Mr. Dong's credit, since his release from custody on 31 October 2022, he has (a) not published any more Youtube videos contrary to the terms of the injunction order, and (b) taken active steps to identify and delete all of the offending videos from the Youtube accounts under his control. Thus, following his release, Mr. Dong promptly purged his contempt. Of course, this only occurred after months of

wilfully blind disregard for the terms of the injunction order, and after he was arrested and held in custody for two days.

Mr. Dong's Personal Circumstances

[9] Mr. Dong is 53 years old. He turns 54 next week. He was born in Vietnam and immigrated to Canada in 2013. He became a Canadian citizen in 2018.

[10] Mr. Dong is married with two children. Since 2014, he has been living with his family in Abbotsford.

[11] Mr. Dong obtained a university degree in Vietnam, after which he worked in a series of corporate jobs for about 15 years. In 2009, he started his own IT business.

[12] Upon relocating to Canada, Mr. Dong continued to operate his IT business, until about 2019 or 2020 when he became a full time professional Youtuber. Mr. Dong has met with some success in this arena. He has tens of thousands of Youtube followers, and some of his videos have garnered well over 100,000 views. However, it is not clear that his Youtube popularity has translated into financial success, as his taxable income for the past several years has been minimal.

[13] Mr. Dong has no criminal record. He deposes, and I accept, that prior to his arrest in connection with this matter on 29 October 2022, he had never been in trouble with the police in either Canada or Vietnam.

[14] Mr. Dong further deposes, and I accept, that being arrested in the presence of his wife, being held in custody for two days, and having his house searched for firearms were all upsetting and embarrassing experiences for him.

[15] As noted above, subsequent to his release from custody Mr. Dong effectively purged his contempt by deleting all of the offending videos from Youtube accounts under his control. At the sentencing hearing, Mr. Dong filed an affidavit in which he apologized to the court for his actions in violating the court order. In submissions on Mr. Dong's behalf, his counsel expanded the apology to include the plaintiffs.

Counsel explained that Mr. Dong now regrets his actions and apologizes for the effect that they have had on the plaintiffs.

Analysis

[16] As I said in my earlier reasons for judgment in this matter, the overall purpose of contempt proceedings is to compel obedience and punish disobedience of court orders, in the interest of restoring both individual and public respect for the integrity of the court's processes: *College of Optometrists of Ontario v. SHS Optical Ltd.* (2008), 93 O.R. (3d) 139 (C.A.).

[17] The first and most immediate concern in contempt proceedings is to bring the contemnor into compliance with the law. However, there are also broader concerns, in addressing the effect of the contemnor's actions on the integrity of the court's processes, and indeed the integrity of the rule of law itself: *College of Physicians and Surgeons v. Ezzati*, 2021 BCCA 421 at para. 54, applying *Carey v. Laiken*, 2015 SCC 17 at para. 30-31. Thus, the case law confirms that deliberate violation of a court order is always a serious matter, first because of the effect on the parties to the particular dispute, and second because of the broader potential to undermine public respect for the courts and the legal system.

[18] In determining the appropriate penalty for contempt of court, the principal objective is deterrence, both specific and general: *Ezzati* at para. 26, citing *Health Care Corp. of St. John's v. Newfoundland and Labrador Assn. of Public and Private Employees*, [2001] N.J. No. 17 (N.L.T.D.) at para. 26. Specific deterrence is the idea that the court must impose a penalty severe enough to ensure the contemnor's future respect for and compliance with court orders. General deterrence is the idea that the penalty must be significant enough to discourage others who might be tempted to disobey court orders from doing so.

[19] The court has a broad discretion in determining the appropriate penalty for civil contempt of court. The sentencing options include supervisory orders, fines, and even jail sentences: *Paramount Fine Foods v. Johnston*, 2021 ONSC 6558 at

para. 55; *College of Dental Surgeons of British Columbia v. Shapoval*, 2014 BCSC 505 at para. 51. However, sentences of actual incarceration should only be imposed as a last resort, where no other sanction would achieve the objectives of ensuring the contemnor's future compliance with the law and restoring public confidence in the legal system: *Ezzati* at para. 59.

[20] In this particular case, there are a number of aggravating features to Mr. Dong's conduct. These include:

- (i) The lengths that Mr. Dong went to in trying to evade service of court documents upon him, as a rather obvious means of trying to maintain some degree of deniability as to his awareness of the injunction order; this was part of a pattern of conduct underlying Mr. Dong's wilful blindness;
- (ii) The persistence of Mr. Dong's conduct in violating the injunction order. As I say, after the order was brought to his attention in various ways, Mr. Dong posted at least 18 videos violating the terms of the injunction during the time frame covered by the contempt application, and further offending videos after that time frame but prior to his arrest;
- (iii) The public nature of the offending conduct, in that it involved posting videos on a publicly accessible internet platform. Some of the offending videos had tens of thousands of views; and
- (iv) Mr. Dong's conduct in publicly maligning not only the plaintiff Mr. Pham and his businesses, but also counsel for the plaintiffs, who was simply representing his client's interests within the bounds of his professional responsibilities.

[21] There are also mitigating features to be taken into account, namely:

- (i) The fact that subsequent to his arrest, Mr. Dong has abided by the terms of the injunction order. No further offending videos have been posted.

(ii) The fact that Mr. Dong has purged his contempt, by actively taking steps to identify and remove all of the offending videos from Youtube channels under his control. The act of purging one's contempt does not make the underlying conduct any less contemptuous, but it is indicative of a subsequent change in attitude or position, which is relevant at sentencing, as evidence of the contemnor's remorse and willingness to bring him or herself into compliance with the law.

(iii) The fact that Mr. Dong has no prior criminal record, including no history of intentional disregard for court orders.

[22] In addition to these mitigating factors, I also take into account that Mr. Dong has already suffered significant consequences as a result of his contemptuous conduct, and he will suffer additional consequences above and beyond any penalty that the court imposes upon him. Those consequences include the following:

- (i) Mr. Dong was arrested, in the presence of his wife, at which point he was placed in handcuffs and taken to jail.
- (ii) Mr. Dong spent two days in jail, prior to his release.
- (iii) While Mr. Dong was in custody, his home was searched by the police, for firearms. I have no doubt that the search was considered necessary and was undertaken for good reason, based on the menacing content of some of Mr. Dong's videos. Still, I accept that the search of Mr. Dong's residence by a substantial number of uniformed police officers was a source of embarrassment for Mr. Dong and his family.
- (iv) Under the terms of his release, Mr. Dong has been prohibited from leaving British Columbia for the past eight months.
- (v) Mr. Dong has already incurred some \$60,000 in legal fees for representation in this matter. I am satisfied based on the submissions of counsel that these legal fees have been incurred principally if not entirely

for the purposes of defending Mr. Dong on the contempt application, as opposed to representation of his interests on the underlying defamation action. Now, to be fair, some of this may be attributable to the fact that a full hearing on the issue of Mr. Dong's contempt was necessary, however, the reality is that this is a very substantial amount of money for Mr. Dong. The very fact of his having incurred these legal fees can be expected to bring home to Mr. Dong that there are serious and long-lasting consequences arising from the deliberate disobedience of a court order.

- (vi) Mr. Dong is also facing a costs order, which I will come to in due course. The purposes of costs orders can be both punitive (in punishing or discouraging certain conduct on the part of the unsuccessful litigant) and compensatory (in allowing the successful litigant to recover some or all of the legal costs incurred). Whether regarded as punishment for the one party or compensation to the other, in either case the actual financial effect on Mr. Dong will be the same. The costs order will represent a further significant financial setback for Mr. Dong, arising from his contempt.

[23] Taking all of these factors into account, I reach three conclusions.

[24] First, I accept that Mr. Dong has purged his contempt and I am satisfied that by virtue of all of the consequences Mr. Dong has already faced as a result of his actions, he has personally learned the lesson that court orders must be complied with and are not to be ignored. In other words, the objective of specific deterrence has already been met.

[25] Second, despite this, I find that it is necessary for the court to maintain some degree of supervision over Mr. Dong's conduct for the next 18 months, to ensure among other things that he does not abuse the court's process or engage in evasive conduct going forward.

[26] Third, I am satisfied that others who are facing injunction orders in similar circumstances would also take the message, based on Mr. Dong's experience in this

matter, that court orders must be respected. In other words, the consequences that Mr. Dong has already had to bear in this matter will go a long way toward meeting the objective of general deterrence.

[27] Mr. Dong could you please stand up.

[28] Sir, in view of all of the circumstances, including the three conclusions of fact I have just summarized, I am satisfied that the appropriate disposition in this case is to suspend the passing of sentence, and to place you on probation for a period of 18 months. What that means sir, is that if you abide by the terms of the probation order for the entire 18 months, at the end of that process there will be no further penalty imposed on you. However, if you violate the terms of the probation order, then you could be brought back before me, and I could impose a different and much more substantial sentence, including a possible jail sentence, immediately. Do you understand that sir.

[29] Mr. Dong, you can have a seat. I am going to go over the terms of the probation order.

Suspended Sentence

(1) Having found Phillip Dong, aka Si Phung Dong, aka Phil Dong guilty of civil contempt of court for intentionally violating the terms of the interlocutory order of Mr. Justice Brongers made on 4 June 2022, the court hereby suspends the passing of sentence pending Mr. Dong’s successful completion of a term of probation of 18 months.

Probation Order

(2) Mr. Dong is to abide by the following terms, for a period of 18 months from today’s date:

(a) You are to obey all court orders in this matter, including but not limited to the interlocutory order of Mr. Justice Brongers dated 4 June 2022, unless and until that order is varied or comes to an end.

(b) You are to reside at [address], Abbotsford, British Columbia, and you are not to change your place of residence without prior court approval. Any court approval for change of your residence must be dealt with by an application before Mr. Justice Riley, in chambers, at 9:15 am on any date when Justice Riley is presiding in New Westminster, on three business days notice to the plaintiffs.

(c) For the next two months, until 3 September 2023, you are not to leave British Columbia, and you are to abide by a curfew under which you must be inside your residence or on your residential property from 8:00 p.m. each night until 6:00 a.m. the following day.

(d) If at any point you cease to be represented by counsel in this matter, within two business days you are to file and serve a Notice of Address for Service form listing your current residential address as your physical address for service, and [email address] as your email address for service.

(e) You are to personally maintain the specified email address and you are responsible for monitoring the incoming emails to that email account. You are not to block or mark as spam any emails from the court, or from counsel for the plaintiffs, or his legal assistant.

(f) If at any point you cease to be represented by counsel in this matter, you are to regularly monitor the specified email account for emails from counsel for the plaintiffs, his legal assistant, or the court. Further, you are to make yourself available for personal service of documents at your residential address, at 1:00 pm on a specific date set by counsel for the plaintiffs, on two business days notice to you, by email, sent to the specified email address.

(g) For the duration of this order, you are not to possess or have within your residence any any firearm, crossbow, restricted weapon, prohibited weapon, any ammunition or any explosive substance. If you presently have any such items in your residence or any other place under your control, you must, by 4:00 pm today, go to the police station in Abbotsford, British Columbia, and present a copy of this order for the purpose of accompanying a police officer to the place where any such items are held, along with any related authorizations, licenses or registration certificates, and to surrender all such items to that police officer.

(h) Within 90 days of this order being made, you may transfer legal ownership in any firearms, cross bows, restricted weapons, and ammunition to individuals or businesses possessing the necessary licenses, authorizations and registration certificates and who are not otherwise prohibited from possessing the items.

(i) If the plaintiffs have reasonable and probable grounds to believe that you have failed to comply with any of the terms of the probation order, they may apply to the Court for an order for your arrest, on two business days notice to you. Notice of such application may be given (a) if you have counsel, to your counsel, or (b) if you do not have counsel, via email at the specified email address, and service of such documents in this manner will be deemed to be personal service upon you.

(j) The registry is directed to prepare the probation order. You are to personally review and endorse the probation order, in the presence of a Vietnamese interpreter who is also to endorse the order affirming that the terms have been faithfully translated from the English language to the Vietnamese language.

Costs

[30] There is a long-standing practice of awarding special costs to a successful applicant in a civil contempt proceeding: *North Vancouver (District) v. Sorrenti*, 2004 BCCA 316 at para. 20. The justification for this approach would appear to be twofold. First, contempt of a court order is by its very nature reprehensible conduct, which is the “signal feature of a special costs award”. Second, a party who obtains a court order should be entitled to have it obeyed without further personal expense: *Langford (City) v. dos Reis*, 2004 BCCA 460 (Chambers) at para. 28. Although there does appear to be some discretion to depart from this long-standing practice, it would appear that this discretion is exercised sparingly.

[31] I accept that both of these underlying concerns are present in this case, in that Mr. Dong’s conduct was reprehensible, and the plaintiffs, having gone to the trouble and expense of obtaining an interlocutory injunction to protect their interests, should be entitled to have the order obeyed without further expense.

[32] Having said all of this, Mr. Dong should not have to compensate the plaintiffs for legal fees over and above what might be regarded as reasonable and necessary having regard to what was in issue in the contempt proceedings. I would therefore limit the special costs order in two ways. First, Mr. Dong is to pay special costs for the contempt proceedings, for one counsel, with a limit of five court days for the hearing itself. Second, if, after taxation of the bill of costs before a registrar, the total special costs bill exceeds \$60,000, then Mr. Dong will have a right to apply before me for an order capping the special costs at that amount (\$60,000 plus taxes), in the interests of ensuring that the costs order is not grossly disproportionate in view of the conduct in issue in this contempt proceeding. Within these parameters, any further concern that Mr. Dong may have about the prudence and reasonableness of the bill of costs can be dealt with by way of the taxation procedures provided for under the *Rules*.

“Riley J.”