Court of King's Bench of Alberta

Citation: 1254748 Alberta Ltd v McBurney, 2024 ABKB 732

Date: 20241209
Docket: 2304 00089
Registry: Grande Prairie

Between:

1254748 Alberta Ltd., 1606893 Alberta Ltd., Art Stirrett and Medix Safety Inc.

Plaintiff

- and -

Christopher McBurney and ELEV8 Hockey Corp operating as AK Hockey Grande Prairie

Defendants

Reasons for Judgment
of the
Honourable Justice Michael J. Lema

I. Introduction

[1] Should continued defiance of produce-documents-and-information orders result in the defaulting party's pleadings being struck?

[2] The answer here is yes.

II. Background

[3] The background is described in ***1254748 Alberta Ltd v. McBurney***, 2023 ABKB 264, where I reviewed (in part) a production order granted by Inglis J. on July 29, 2022 against Mr. McBurney, a contempt order granted by Clackson J. on November 18, 2022 against him for

failing to comply fully with the Inglis Order, and the state of affairs through to March 27, 2023, when I heard an application by 125 for further contempt relief.

[4] On March 27, 2023, I gave Mr. McBurney until April 14, 2023 to "submit proof of his compliance with each paragraph of the Inglis Order … no later than April 14, 2023", with 125 having until April 21, 2023 to comment on his further production or responses otherwise.

[5] As discussed in 2023 ABKB 264 (issued May 1, 2023), after reviewing Mr. McBurney's further submissions and Mr. Stirrett's comments, I found that Mr. McBurney continued to be in default of the Inglis Order (and thus to have not purged the contempt found by Clackson J.) and to have committed further contempt of my production directions on March 27, 2023.

[6] As noted in the earlier decision, the parties dispute the degree to which Mr. McBurney had access to Medix financial information between 2017 (when Mr. Stirrett, via 125, and Mr. McBurney joined forces to expand Medix) through to roughly July 2020 (or perhaps November 2020), when Mr. McBurney effectively began solo operations of Medix i.e. without any involvement of Mr. Stirrett and 125.

[7] In my earlier decision, I was not able to gauge whether Mr. McBurney had access to Medix's financial information in that period and, if so, whether any lack of access would be a reasonable excuse for failing to comply with the Inglis and Clackson Orders, at least to the extent of that information.

[8] Accordingly, I did not make a further contempt finding in respect of those (possible) continuing production failures.

[9] However, I reached a different outcome for the period as of or after July 2020 i.e. the going-solo phase.

[10] Per Mr. Stirrett, after that point Mr. McBurney had exclusive access to whatever Medix financial information was generated or became available.

[11] Mr. McBurney argued that he continued to have no access to Medix financial information even after going solo.

[12] I rejected the latter argument in the earlier judgment (paras 33-40), finding that Mr. McBurney must or should have financial documents reflecting Medix's operations after the going-solo point.

[13] In particular, I found that he had failed to provide:

1. an accounting of all profits made by Medix since (at minimum) July 1, 2020;
2. all of the outstanding invoices for Medix or, in the alternative, to explain the gap between the invoices provided to date and the revenue figures reported by him to 125's counsel (per the latter's April 21, 2023 letter);
3. general ledgers for Medix since (at minimum) July 1, 2020;
4. the July 2021 bank statement for the ATB account in question and also any credit card statements since July 1, 2020 (or alternatively to show that no credit cards existed or were used in this period), as well as any bank statements for any other bank accounts used by Medix after July 1, 2020 or, alternatively, evidence that it used only the ATB account;

5. shareholders' loan account statements for Medix from (at minimum) July 1, 2020;
6. financial statements including balance sheets, cash-flow statements, income statements and profit calculations for Medix from (at minimum) July 1, 2020; and
7. a completed Financial Information statutory declaration under the *Civil Enforcement Act* i.e. Form 14 -- Financial Statement of Debtor (Corporate Debtor) -- under the *Civil Enforcement Regulation*. [para 45]

[14] Those failures were breaches of all three of the noted orders, over the noted-below time periods:

> Inglis J. gave McBurney **approximately six weeks** to produce the required records. He produced only a very modest subset of them.
>
> Clackson J. found McBurney in contempt of the Inglis Order and gave him **almost two more months** to purge his contempt. And no further records were produced and (as far as I can tell) no further explanations of "not possible to produce" were provided or, in any case, given my findings here, were not actually available.
>
> The effect of my [March 27, 2023] order was to give McBurney, after the fact, a **further fifteen months to comply or explain and then, going forward, a further two-week period to do the same.** With the same (non-) result. [para 47-49 of the earlier judgment].

[15] I concluded as follows:

> McBurney may have legitimate complaints against 125 or others for their (possible) failures to provide certain Medix records to him. I am not ruling on that point
>
> But he has no legitimate excuse for failing to the provide all the records required by the Inglis Order for (at minimum) the period after July 1, 2020 i.e. during which Medix carried on business under his control.
>
> He has been **flouting the three Court Orders here**, which cannot continue.
>
> The consequence is a **$1,500 fine**, payable by May 31, 2023, and in default, a period of imprisonment to be set at a hearing at the request of 125, scheduled with the Seized-Matters Coordinator and requiring the personal attendance of McBurney.
>
> As well, McBurney shall pay a **daily fine of $100.00 for each day (business and non-business) that he remains in non-compliance with the Inglis Order** i.e. that he remains in contempt of that Order.
>
> I award 125 **costs** of bringing the current application on a **solicitor-and-client basis**.
>
> I am seized of any further applications bearing on enforcement of these contempt sanctions and concerning who has or should have the Medix records from 2017 to

the rupture point and any further production orders relating to that period. [paras 50-56 of the earlier judgment]

III. Has Mr. McBurney purged his contempt?

[16] Per Mr. McBurney, he has fully discharged his obligations under all of the noted orders via information and explanations provided (or re-provided, in whole or in part) in his affidavits sworn on July 24, 2023 and October 3, 2024.

[17] Per Mr. Stirrett, Mr. McBurney remains in non-compliance with each of these orders.

[18] I agree with Mr. Stirrett.

[19] I start with Mr. McBurney's attempt to explain why he cannot provide more financial information about the going-solo period i.e. beyond the limited invoicing and banking information noted below that has been provided.

[20] On the missing financial information from the going-solo point, he deposed:

> Medix's operations [continued from November 2020] for another six months before its operations were permanently discontinued. During these final six months, employees for Medix would take the trucks and accompanying MTCs [work units] from my personal residence to work sites, then return them to my personal residence when job were completed. **They would then submit their time sheets via email to Medix's bookkeepers and Art [Stirrett]. The written invoices that the employees would have drawn up were then left in the trucks that were returned to my property**. Prior to moving operations to my personal residence, these written invoices would be given to Medix's bookkeepers, who would then submit them through the appropriate online invoicing platform for whatever oil company we did the work for. **The invoices for [these] six months of work were therefore not billed to the oil companies and remained in the trucks. Unfortunately, in December of 2020 six of these trucks were seized from my personal residence. I suspect there were a number of hand-written invoices inside the trucks when they were seized by the Plaintiffs.**
>
> Additionally, [description of circumstances in which someone may have intentionally or accidentally taken documents from his home]. [paras 17 and 18] [emphasis added]

[21] I reject Mr. McBurney's account here as implausible, for these reasons:

1. he does not explain why (on his account) he continued to use Medix's bookkeepers and (apparently) Mr. Stirrett to process the time sheets of the employees working in his (Mr. McBurney's) solo operation, especially in light of his evidence (discussed further below) of having been effectively kept at arm's length from Medix' financial information by them. Particularly with no evidence provided from employees, the bookkeepers, or anyone else to corroborate that timekeeping (or any) information was in fact being provided to the bookkeepers and Mr. Stirrett in the solo period. And more so in light of Mr. Stirrett's more plausible evidence that, during the solo period, he had no window at all into Medix's ongoing operations. And even more so in light of

Mr. McBurney's apparent evidence, concerning invoices, that after going solo, he did *not* use the bookkeepers to track and otherwise process invoices (as discussed further below);

2. he does not explain why, even if copies of customer invoices were left in the trucks as described, he (as the self-described driving force of Medix in the solo period) did not retrieve them daily or on any particular frequency i.e. to ensure that revenues would be recorded, receivables logged and tracked, collection efforts (if needed) launched, and so on. Even if (as he seems to suggest here) he was no longer using Medix's bookkeepers to process invoices, it makes no sense that he would, on the one hand, pursue work with Medix equipment and personnel, with the express aim of "continu[ing] to operate Medix to ensure that it didn't go under" (from para 16 of his affidavit), and, on the other, leave invoices unprocessed, receivables unlogged, and so on;

3. even if some of the invoices went astray (truck seizures or wrongfully or mistakenly removed from his home), he could presumably have reconstructed them or at least provided basic information about what work was done over the solo period, for which customers, and when, and yielding what revenues e.g. from his records, as Medix's driving force then, of contacts with customers i.e. requesting services in the first place, records of instructing employees on where to go and with which units, etc. or even from simply contacting Medix's regular customers over that period to get their confirmation of work done, invoices provided, payments made, and so on;

4. he did not explain why, for any he did obtain or could have obtained, the invoices would not have been billed to the customers i.e. why the apparent discontinuance of billing assistance from "Medix central" meant billing did not or could not otherwise happen i.e. directly by Mr. McBurney or persons under his direction; and

5. concerning the allegedly missing invoices, he did not give evidence of asking Mr. Stirrett or anyone else at "Medix central" for assistance in retrieving or at least looking for them in the seized vehicles or the same of the person who may have removed them from his home.

[22] Recall that the focus of my March 27, 2023 order (i.e. a subfocus of the Inglis and Clackson Orders, which required broader disclosure) was information from Mr. McBurney reflecting the financial results of his solo operation of Medix.

[23] He does not convincingly explain why he could not provide formal or informal or reconstructed or even estimated reports of those financial results.

[24] I find that he was trying to obscure an intentional failure to provide available information.

[25] His unsuccessful efforts continued later in his affidavit, where he deposed further on the identified information categories:

A. Accounting of all profits made by Medix since 2017

I have never had access to Medix's financial information. Art [Stirrett] was the one who handled the financial aspect of the company in conjunction with our bookkeepers. I never had a password to Medix's accounting software (QuickBoks) while Medix operated in the office building or thereafter when I moved operations to my personal residence. When I have seen financial statements in the past, they were provided to me in meetings. I never retained hard copies of those documents and do not have any of them saved in my electronic records. **I have no way to comply with this requirement.**

B. Copies of any outstanding invoices for Medix

I attached as Exhibit "O" the **only invoices that I have in my possession**. I suspect that some of the invoices were in the 6 trucks that were seized as mentioned previously or lost or taken accidentally by [third party]. I did not take invoices from the office building when I left. [Exhibit "O" consists of seven Medix invoices for work done for two different customers between September 22, 2020 and May 28, 2021.]

C. General ledgers for Medix from January 2017 to Inglis Order [July 29, 2022]

As mentioned previously, I have **never had access to Medix's financial information – which includes general ledgers**. This was within Art and our bookkeeper's purview. I have **no way to comply with this requirement**. [Reference to Exhibit "P" – certain ledger materials through to summer 2020]

D. Bank statements for Medix from January 1, 2017 to Inglis Order, including but not limited to deposit accounts and credit card statements

When I first began operating Medix as its sole shareholder [i.e. before joining forces with Mr. Stirrett], I opened an ATB account and a CIBC account. Prior to Art joining as a shareholder, I banked exclusively using the CIBC account. **It was not until I sold … two 2013 Dodge Ram 2500 SLTs in June of 2021 that I first deposited corporate funds into the ATB bank account.** The CIBC bank account was closed down when Art became a shareholder as he insisted that Medix bank exclusively with the RBC. I do not have access to the RBC account statements as Art ahs locked me out of that account. I attached all the ATB statements required as Exhibit "N" to this affidavit. I sent all these account statements to [Mr. Stirrett's counsel] on September 6, 2022. [Exhibit "N" consists of monthly bank statements for an ATB account in Medix's name from [June 2017 to July 2022] and a stand-alone statement for July 2023. **The only banking activities reflected in these statements are the deposits totalling approximately $36,000 in [June 2021], an $X withdrawal in [month], and the deduction of $5 monthly banking fees in**

> **[months]. The June 2021 deposits square with the two-trucks sales proceeds reported by Mr. McBurney elsewhere in his affidavit. In other words, the ATB account does not reflect the inflows of any revenues from Medix's operations from summer or fall 2022 through to spring 2021**]
>
> …
>
> **E. Financial Statements, including but not limited to balance sheets, cash flow statements, income statements, and an accounting of profits for Medix, from January 1, 2017 to the Inglis Order**
>
> As mentioned previously, I have never had access to Medix' financial information. This was within Art's and our bookkeeper's purview. I have no way to comply with this requirement. [from para 20] [emphasis added]

[26] I reject Mr. McBurney's "never had access" evidence. As the sole operator of Medix in mid- to late-2020 through to 2021, he had complete access to (at minimum) all information reflecting Medix's operations in that period, for the reasons outlined above, and same for any financial reports assembled with that information or which could have been assembled with it.

[27] Further, on the bank account front, as noted he was directed to provide not only bank statements for the noted ATB account but also any account used by Medix in the going-solo period.

[28] The ATB bank statements reflect only two deposits in the going-solo period, both of which (per Mr. McBurney) were of vehicle-sale proceeds.

[29] I infer that Medix must have had another bank account i.e. beyond the three referenced by Mr. McBurney above, into which revenues from the going-solo operations were deposited and the associated expenses were paid.

[30] I find that Mr. McBurney failed to report on that must-have-existed account, in breach of that dimension of my March 27, 2023 order.

[31] Mr. McBurney observed:

> The irony in this process is that [Mr. Stirrett] has access to all the information that I am being court-ordered to produce and for which I am being held in civil contempt for not producing. He has access to all the financial information that is required. All the financial information he does not have would be the few invoices and bank account statements I have supplied herein and which I provided already to his counsel on September 6, 2022. …

[32] I disagree. Mr. McBurney has failed to show that he provided any of the ordered financial information for the going-solo period to Mr. Stirrett i.e. aside from the handful of noted invoices and the incomplete-banking-picture ATB statements.

[33] In other words, he has not purged his contempt under the Inglis Order, the Clackson Order, my March 27, 2023 Order, and the Order reflecting my May 1, 2023 judgment, all of which required him to provide (among other information) detailed financial and banking information about Medix's operations in the going-solo period.

[34] Recognizing the (limited) invoicing and (incomplete) banking information provided from that period, Mr. McBurney continues to leave a largely incomplete picture about how Medix's personnel and assets were deployed in that period, for which customers, generating what revenues, incurring what expenses, and netting what profits.

[35] And he has been in non-compliance with the Inglis Order's provisions covering the going-solo period (at minimum) for a period now measuring 28 months, and despite three further orders directing the production of that information (November 18, 2022, March 27, 2023, and May 1, 2023).

[36] With his July 24, 2023 affidavit not remedying that non-compliance.

[37] And same for his October 3, 2024 affidavit, which provided no additional information reflecting the financial results of the going-solo period.

[38] The question becomes the appropriate remedy for this ongoing contempt.

IV. Available remedies

[39] Here is Rule 10.53, which outlines the available penalties and sanctions for civil contempt:

> **10.53(1) Every person declared to be in civil contempt of Court is liable to any one or more of the following penalties or sanctions in the discretion of a judge:**
>
> (a) imprisonment until the person has purged the person's contempt;
>
> (b) imprisonment for not more than 2 years;
>
> (c) a fine and, in default of paying the fine, imprisonment for not more than 6 months;
>
> (d) if the person is a party to an action, application or proceeding, an order that
>
> (i) **all or part of a commencement document, affidavit or pleading be struck out,**
>
> (ii) an action or an application be stayed,
>
> (iii) a claim, action, defence, application or proceeding be dismissed, or judgment be entered or an order be made, or
>
> (iv) a record or evidence be prohibited from being used or entered in an application, proceeding or at trial.
>
> (2) The Court may also make a costs award against a person declared to be in civil contempt of Court.
>
> (3) If a person declared to be in civil contempt of Court purges the person's contempt, the Court may waive or suspend any penalty or sanction.

> (4) The judge who imposed a penalty or sanction for civil contempt may, on notice to the person concerned, increase, vary or remit the penalty or sanction. [emphasis added]

[40] The Rules define (in the Appendix) "commencement document" as including a counterclaim and "pleadings" as including a statement of defence and a counterclaim.

[41] In their declare-and-sanction-contempt application yielding the March 27, 2023 hearing before me, Stirrett and 125 expressly identified the striking of Mr. McBurney's statement of defence as a remedy, as discussed in 2023 ABKB 264

> For these perceived shortfalls, 125 seeks an order:
>
> - declaring [McBurney] to still be in … civil contempt pursuant to Rules 10.51, 10.52 and 10.53 of the *Alberta Rules of Court*, and directing that [he] is liable to one or more of the sanctions set out in Rule 10.52, which include:
> - **directing that [McBurney's] defence in the within action be struck**; and
> - a fine, and in default of paying the fine, imprisonment of not more than 6 months.
> - ordering [him] to return all Medix assets and funds to [125] within seven days from the date of the order being granted;
> - removing [him] as a shareholder and director of Medix; and
> - directing that [he] pay the plaintiffs forthwith, in any event of the cause, costs on a solicitor-and-his-own-client basis, for all steps taken in the action, such payment to be made no later than seven days from the date of the order being granted. [para 28] [emphasis added]

[42] They seek the same striking (among other) relief here and (via correspondence to the Court on November 12, 2024) to expand the striking to include Mr. McBurney's counterclaim (to which Mr. Stirrett and 125 responded via statement of defence).

[43] On the same date, Mr. McBurney responded on the proposed expansion, offering submissions on the overall merits but none on the expansion.

[44] I find that the same facts and law would apply in a stand-alone application to dismiss the counterclaim. In the interests of efficiency (i.e. instead of obliging Mr. Stirrett and 125 to bring a separate application focusing on the counterclaim, where the outcome would be the same), I proceed on the basis that the statement of defence and counterclaim are both under scrutiny here.

[45] I turn next to when pleadings should be struck as a contempt sanction.

V. Striking pleadings to sanction contempt

[46] Relevant factors when considering the appropriate sanction for contempt were identified in ***Demb v Valhalla Group Ltd***, 2016 ABCA 172:

> …In *McDonald Estate*, 2012 ABQB 704, 552 AR 308, the court, at para 55, lists a number of factors to be taken into account in determining the penalty for contempt. These include:
>
> > 1. Whether there was deliberate defiance of a Court order or whether there was an inadvertent failure to comply with the Court order;
> >
> > 2. The role of legal counsel;
> >
> > 3. Where there has been a failure to give discovery, the object of the exercise is more to secure the discovery rather than to punish;
> >
> > 4. Attempts to purge contempt or to apologize are relevant;
> >
> > 5. The entire context in the history of the litigation;
> >
> > 6. The amount of reasonable thrown-away costs properly incurred;
> >
> > 7. The nature of the contempt; and
> >
> > 8. The degree of culpability of the contemnor.
>
> See also *Michel v Lafrentz*, 1998 ABCA 231, 219 AR 192 at paras 31-32 and *Dreco Energy Services Ltd v Wenzel*, 2005 ABCA 185, 371 AR 11 at para 12.

[47] In ***R.O. v D.F***., 2016 ABCA 170, the Court of Appeal emphasized the first factor:

> On this record there was ample evidence for the case management judge to conclude that the appellant had **knowingly breached the restrictive court access orders**. It is not the role of this court to reweigh the evidence. The appellant has not demonstrated any reviewable error in the case management judge's decision.
>
> The appellant also challenges the penalties imposed by the case management judge; in particular, **the striking of the statement of claim. This is a harsh penalty but this was a very serious breach of a clear court order**. The actions of the appellant had the potential to cause serious harm to the respondent, his family and his employer. The imposition of the penalty was a reasonable exercise of the case management judge's discretion. [paras 31 and 32] [emphasis added]

[48] Deliberate disobedience of an order was also central in ***Koerner v. Capital Health Authority***, 2011 ABCA 289 (application for SCC leave dismissed: 2012 CanLII 22149):

> **The obligation to comply with court orders is one that is imposed on all persons, whether they are self-represented are not**. The importance of ensuring compliance with court orders is an aspect of the Rule of Law, which is one of the fundamental principles of Canadian law recognized in the *Charter of Rights*.
>
> **This is not a case of a mere failure to comply with court orders and the Rules of Court, but one of refusal**. The appellant incorrectly insists that she has constitutional or privacy rights that prevail over her obligation to answer questions and produce documents under the *Rules of Court*. In the circumstances, the decision of the case management judge to strike out the statement of claim discloses no error of principle. [paras 8 and 9] [emphasis added]

[49] And in ***Imperial Finishing Ltd v Moderno Homes Inc***, 2019 ABQB 64 (Labrenz J.):

> ... given the nature of the contemnor's actions and the history of the proceedings, which includes the **deliberate flouting** ... **of a consent order of this court, this is an appropriate case to strike the Amended Statement of Defence** of Moderno Homes Inc. ... I would **also strike the Counterclaim** that Moderno filed ...
>
> **The failure to abide by an order of the court is an especially serious form of contempt.** Imperial has expended significant litigation energy and significant cost pursuing the security that Moderno originally proposed. A proposal that was designed to persuade Imperial from encumbering Imperial's lands with a builder's lien.
>
> Moderno has consistently and persistently failed to deliver on its agreement with Imperial, but **more importantly Moderno has failed to comply with an order of this Court for nearly 7 months. This is a clear case of a persistent contempt of a court order, and the Court is persuaded that the drastic remedy involving the striking of pleadings is required.** I have considered the imposition of lessor remedies, but the **steadfast refusal of Moderno to obey the order of this Court, even after being found in contempt, persuades me that this is one of those clearest of cases where the court must act definitively and decisively to deter disrespect for and abuse of the court's processes.** [paras 61-63] [emphasis added]

[50] And ***Bains Engineering Corporation v. 734560 Alberta Ltd***., 2004 ABQB 780 (Clark J.) (appeal dismissed 2005 ABCA 187):

> In this case the Developers have been given **ample time to purge their contempt and they have failed to do so.** They have not provided adequate explanations as to why they should not be held in contempt. As such, it is appropriate in this case to award a remedy that takes effect immediately.
>
> The remedy of **striking pleadings** is appropriate in cases in which the breach of the court order by one party prevents the other party from defending the claim: *Jervis* at para. 28. **It is also appropriate in a case where a litigant persists in disobeying an order**: William A. Stevenson & Jean E. Côté, *Alberta Civil Procedure Handbook* (Edmonton: Juriliber, 2004) at 590.
>
> Because the Developers' breach of my June 19, 2002 order was the provision of inadequate undertaking responses, it was a breach that prevented McDougall, Bains, and Ronalco from defending the delay counter-claim brought against them by the Developers. Further, **as evidenced by the pattern of delay and lack of cooperation of the Developers, the Developers displayed a persistent disobedience of my order. Accordingly, the appropriate remedy in this case is to strike the Developers'pleadings in their entirety.** [paras 31-33 of ABQB decision] [emphasis added]

[51] Relevant context includes non-payment of costs: ***Alanen v Elliot***, 2019 ABCA 485:

> This court in *Demb v Valhalla Group Ltd*, 2016 ABCA 172 at para 55 listed a number of factors to be considered by a court in imposing penalties for civil contempt, including whether there was deliberate defiance of an order (as opposed to inadvertence), and the entire context of the litigation. The husband deliberately

> breached a clear order in the context of litigation where he had contacted the wife's advisors in the past. **Moreover, the husband has failed to pay a number of costs orders in the past**. There is no reviewable error in the chambers judge's imposition of a $10,000 award of costs as a penalty for civil contempt. [para 12] [emphasis added]

[52] On second (and more) chances to comply, see ***Kin Franchising Ltd. v. Donco Limited***, 1993 ABCA 7

> The appellants say that they may not have performed well, but **they wish another chance, and that it is harsh to decide the suits against them without going into the merits. That is true, but that is an argument for never applying any final sanction, and always giving yet another chance. If no one case is ever bad enough to strike out pleadings, then the Rules will have no teeth.** The appellants are businesspeople who went into the interprovincial business of selling franchises, and they have and intimately involved an in-house lawyer, who is a member of the Bar of another province. **We do not wish to leave the impression with the Bar that substantive results will never flow from repeated procedural contempts. These appellants had their "one more chance" when the previous chambers judge ordered interrogatories.** [para 12] [emphasis added]

VI. Conclusion

[53] The appropriate sanction for the longstanding and ongoing contempt of the Inglis Order, the Clackson Order, and my Order – specifically (for all three), the disclosure shortfalls described above relating to the going-solo period – is the striking of Mr. McBurney's and Elev8 Hockey Corp.'s statement of defence and Mr. McBurney's counterclaim.

[54] I emphasize these factors:

1. the deliberate nature of the disobedience of these orders. (I explained above why I have rejected Mr. McBurney's arguments as to the impossibility of providing the full array of business records reflecting the business's operations in the going-solo period);
2. the defiance continuing despite the initial (Inglis) Order, the Clackson Order, and third Order, which was accompanied by detailed reasons in 2023 ABKB 264 confirming the scope of the earlier orders and what was required to meet the disclosure obligations of those orders for (at minimum) the going-solo period. Over 28 months have passed since the Inglis Order, over 24 months since the Clackson Order, and over 19 since my Order;
3. the modest disclosure (described above) in response to these orders does not excuse the outstanding non-disclosure (again, with no convincing reasons offered to justify it);
4. Mr. McBurney's self-represented status too does not excuse that non-disclosure, particularly where he had the benefit of the noted detailed

reasons and (as he explained it) periodic assistance from legal counsel; and

5. Mr. McBurney has failed to pay the $500 in costs imposed by Inglis J. and the solicitor-client-level costs imposed in 2023 ABKB 264 (para 55).

[55] On the impact of a party's pleadings being struck, see ***Boyer v Boyer***, 2024 ABKB 727.

[56] The striking of Mr. McBurney's pleadings is a sufficient sanction in the circumstances here i.e. neither imprisonment nor further fines are warranted here.

[57] Concerning Mr. Stirrett and 125's other requested relief i.e. orders directing Mr. McBurney "to return all Medix assets and funds ..." and removing him as a Medix shareholder and director, their notice of motion did not, under "Applicable rules" or "Applicable Acts and regulations", invoke any foundation for that relief e.g. applicable provisions of the *Business Corporations Act*. (The rules actually invoked (5.12, 10.51, 10.52, and 10.53) do not authorize either form of additional relief.)

[58] In the circumstances here, I find it appropriate to cancel the $100 daily penalty imposed in 2023 ABKB 264 (para 54), including the accumulated arrears. (I note here that, per ***Makis v Alberta Health Services***, 2020 ABCA 168 (para 66), that penalty would have been payable to the Clerk of the Court i.e. not Mr. Stirrett or 125.)

[59] Costs-wise, I take the same approach as in 2023 ABKB 264 i.e. award Mr. Stirrett and 125 solicitor-client costs of this sanctioning-of-contempt application. Per ***Alberta v AUPE***, 2014 ABCA 326 (para 3):

> ... It lies uneasily in the mouth of AUPE, as a contemnor, to say that the party which undertakes steps to enforce court orders are not entitled to be made whole for their expense in doing so. We can do no better than to cite this Court's decision in *Dreco Energy Services Ltd v Wenzel*, 2005 ABCA 185 at para 11, 387 AR 11 [para 60]:
>
> Requiring those in contempt to pay a part only of thrown-away costs related directly to the contempt does not bring home to the contemnors the seriousness of their actions and their responsibilities for the consequences attributable to that contempt. There is a public policy aspect to this entire issue. Generally, in principle, those who are found in civil contempt ought, at a minimum, to be required to accept responsibility for a substantial portion of the costs directly related to that contempt.

Heard via Webex on October 9, 2024.
Further submissions on November 12, 2024.
Dated at Grande Prairie, Alberta on December 9th, 2024.

Michael J. Lema
J.C.K.B.A.

Appearances:

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for the Defendants