Federal Court  Cour fédérale

Date: 20231215

Docket: T-1257-22

Citation: 2023 FC 1698

Ottawa, Ontario, December 15, 2023

PRESENT: THE CHIEF JUSTICE

BETWEEN:

BELL MEDIA INC.
ROGERS MEDIA INC.
COLUMBIA PICTURES INDUSTRIES, INC.
DISNEY ENTERPRISES, INC.
PARAMOUNT PICTURES CORPORATION
UNIVERSAL CITY STUDIOS LLC
UNIVERSAL CITY STUDIOS PRODUCTIONS LLLP
WARNER BROS. ENTERTAINMENT INC.

Plaintiffs

and

MARSHALL MACCIACCHERA dba SMOOTHSTREAMS.TV
ANTONIO MACCIACCHERA dba SMOOTHSTREAMS.TV
ARM HOSTING INC.
STAR HOSTING LIMITED (HONG KONG)
ROMA WORKS LIMITED (HONG KONG)
ROMA WORKS SA (PANAMA)

Defendants

ORDER AND REASONS

I. Introduction

[1] These reasons and the accompanying Order concern the costs to be awarded in the civil contempt proceedings brought by the Plaintiffs against the Defendant Antonio Macciacchera. Similar proceedings brought against the other Defendants are being dealt with separately.

[2] Given that the two individual Defendants have the same last name, and to avoid any potential confusion between them, they will be referred to below solely by their first names.

[3] For the reasons that follow, Antonio will be ordered to pay a lump sum amount of $91,742.86 to the plaintiffs, payable forthwith. The legal fees component of this award ($73,000) represents approximately 73% of the fees incurred by the Plaintiffs in connection with their contempt proceedings against Antonio. The other components are HST on those fees ($6,326.67)[1], plus the plaintiffs' reasonable disbursements ($12,416.19).

II. Background

[4] The background to these contempt proceedings is summarized *in Bell Media Inc. v Macciacchera (Smoothstreams.tv)*, 2023 FC 801, at paras 4 – 22 [***Macciacchera***].

[5] In brief, *Macciacchera* concerned ten charges listed in an Order issued by Associate Judge Benoit Duchesne on July 21, 2022, as amended (the **"Duchesne Charging Order"**)[2]. Those charges pertained to alleged breaches of an Anton Piller Order, which was part of a

[1] It appears that some of the Plaintiffs are not required to pay HST on the services rendered by their legal counsel.
[2] At that time, the title of the Court's Associate Judges was "Prothonotary".

broader Order issued by Justice Rochester on June 28, 2022, and which also included a range of injunctive and other related relief (the **"Rochester Interim Order"**).

[6] Among other things, the Rochester Interim Order included extensive provisions for the search, seizure and preservation of evidence and equipment related to certain alleged operations of the Defendants, collectively referred to as the **"SSTV Services."** It also required the Defendants to disclose information regarding the SSTV Services, as well as their financial and other assets.

[7] Ultimately, I found that Antonio was in contempt of four of the ten charges listed in the Duchesne Charging Order.

[8] With respect to five of the other charges, I found that the Plaintiffs had not tendered any evidence *in the hearing before me* to connect Antonio to any of the technical information, undisclosed assets, financial information or other information that was specifically required to be disclosed, provided or delivered up, as contemplated by charges (i), (ii), (iv), (vi) and (viii) of the Duchesne Charging Order. Although such evidence had been tendered in written form in the earlier proceeding before Justice Rochester, the Court did not specifically direct that it could be considered in the hearing before me, as required by Rule 470 of the *Federal Courts Rules*, SOR/98-106 (the **"Rules"**).

[9] Similarly, insofar as the remaining charge was concerned, I found that no evidence had been tendered *in the hearing before me* to demonstrate that Antonio had concealed anything that was specifically described in the Rochester Interim Order.

[10] Regarding costs, and in accordance with paragraph 2 of the Duchesne Charging Order, I ordered the Parties to provide brief written submissions. To reduce the time and expense that would likely be associated with preparing a detailed bill of costs, I encouraged the Parties to reach an agreement regarding an appropriate lump sum amount to be paid by Antonio to the Plaintiffs. Failing such agreement, I encouraged the Parties to make their respective submissions regarding such lump sum amount.

III. Overview of the Parties' Submissions

A. *The Plaintiffs*

[11] The Plaintiffs seek a lump sum cost award of $121,124.74, payable forthwith. This is comprised of legal fees of $100,038.55, HST of $8,670, and disbursements of $12,416.19. The legal fees represent 100% of the legal fees incurred by the Plaintiffs in connection with these contempt proceedings against Antonio.

B. *Antonio*

[12] Antonio proposes that a much lower lump sum award of $10,000 in favour of the Plaintiffs is appropriate. In support of this position, Antonio notes that the Plaintiffs were unsuccessful in proving six of the ten charges set forth in the Duchesne Charging Order. In

addition, he maintains that the penalty ultimately imposed in these proceedings is likely to be lower or similar to any cost award that may be imposed by the Court. Pending a ruling on that penalty, he asserts that a requirement to pay costs "forthwith" would effectively function as a penalty, without the benefit of sentencing submissions. Accordingly, he requests that any costs awarded against him should be made payable "in any event of the cause."

[13] In further support of this latter request, Antonio notes that there is an ongoing consolidated appeal related to the execution of the Rochester Interim Order and a cost award issued against him by Justice Lafrenière. He states that the Court should await the result of that appeal before pronouncing on costs in the contempt proceedings against him.

IV. Assessment

A. *General Principles*

[14] The general principles applicable in determining cost awards were summarized in *Allergan Inc. v Sandoz Canada Inc.*, 2021 FC 186 at paras 19–35 [***Allergan***]. In recognition of the fact that some of those principles are not applicable to the present proceedings, the Parties are specifically referred to paragraphs 19–23, 26–30 and 33 of that decision.

[15] For the present purposes, it will suffice to reiterate that: (i) the Court has broad discretion over costs; (ii) the Court's discretion must be exercised in accordance with well-established principles pertaining to costs, unless the circumstances justify a different approach; (iii) the successful party is ordinarily entitled to have its costs; (iv) the Court has been trending toward

granting lump sum awards in recent years, often as a percentage of actual costs incurred; (v) in intellectual property law cases, those lump sum awards have been increasingly "well in excess of" Tariff B of the Rules - typically in the range of 25%-50% of actual fees, plus reasonable disbursements; and (vi) in determining the specific amount of costs to be awarded, it is incumbent upon the Court to examine the relevant factors, including any that are listed in Rule 400(3).

[16] In the present proceedings, I consider that it is also appropriate to keep in mind that the principal objective of the law of civil contempt is to foster compliance with court orders: *Carey v Laiken*, 2015 SCC 17, at para 30; *Bell Canada v Adwokat*, 2023 FCA 106, at para 18. Ensuring the achievement of this objective is essential to maintaining public confidence in the administration of justice, supporting the rule of law, and ensuring that "social order prevails rather than chaos": *Morasse v Nadeau-Dubois*, 2016 SCC 44, at para 81, per Wagner CJC (dissenting on other grounds); *Minister of National Revenue v Bjornstad*, 2006 FC 818, at para 4; see also *Canada (Human Rights Commission) v Canadian Liberty Net (CA)*, [1996] 1 FC 787, at page 796 (CA).

[17] This objective underpins the "customary practice in contempt cases to impose costs on a solicitor-client basis": *Lari v Canadian Copyright Licensing Agency*, 2007 FCA 127, para 38 [***Lari***]; *Trans-High Corp. v Hightimes Smokeshop and Gifts Inc.*, 2015 FC 919 at paras 32, 35; *Minister of National Revenue v Money Stop Ltd*, 2013 FC 133 at para 19; *Telewizja Polsat S.A. v Radiopol Inc*., 2006 FC 137 at para 34. Among other things, this ensures that a "party acting to support compliance with an order of the court does not bear the costs of proceedings that were

necessary to maintain the orderly administration of justice": *Lari*, at para 39, quoting *Innovation and Development Partners/IDP Inc. v Canada*, [1993] 2 CTC 88, 64 FTR 177, at page 181 (FCTD).

[18] Regarding disbursements, they are typically awarded in full, provided they are reasonable: *MediaTube Corp v Bell Canada*, 2017 FC 495, at para 21.

B. *Appropriateness of an Award of Lump Sum Costs*

[19] The Plaintiffs and Antonio have both proposed that the cost award in these proceedings should be made on a lump sum basis. They simply disagree on what the lump sum amount should be.

[20] I agree that an award of costs on a lump sum basis is justified in the particular context of this case and having regard to the objectives underlying cost awards in contempt proceedings discussed at paragraph 17 above.

[21] To begin, the contempt charges against Antonio concerned the attempted execution of an extensive Order (the Rochester Interim Order) targeted at a very complex business operation, involving offshore entities, a large number of Internet domains and subdomains and a large number of servers and hosting providers: *Bell Media Inc. v Macciacchera (Smoothstreams.tv)*, 2022 FC 1602, at Schedule I. Although Antonio continues to maintain that he had no role in Smoothstreams.tv, the fact remains that, in preparing for the contempt proceedings, it was necessary for the Plaintiffs and the Court to come to grips with a complex record. Among other

things, that record concerned an allegedly illegal business that Justice Lafrenière described as being “a highly sophisticated and lucrative operation over a number of years”: *Bell Media Inc. v Macciacchera (Smoothstreams.tv)* (28 December 2022), Ottawa T-1257-22 (FC) (unreported).

[22] In addition, it is readily apparent from a review of the *pro forma* Bill of Costs prepared by the Plaintiffs for “illustrative purposes”, and with reference to the middle of Column III of Tariff B, that costs calculated by reference to any of the Columns of Tariff B would be clearly inadequate and fail to achieve the underlying objectives of cost awards: *Nova Chemicals Corporation v Dow Chemical Company*, 2017 FCA 25 at paras 13-15; *Apotex Inc. v Shire LLC*, 2021 FCA 54, at para 18 [***Shire***]. This is particularly so in the context of contempt proceedings.

[23] Moreover, I am satisfied that the fixing of an award of lump sum costs would significantly reduce the time and expense that would be required to prepare, review and make submissions on the type of detailed bill of costs that is required for the purposes of an assessment under Tariff B: *Venngo Inc v Concierge Connection Inc.*, 2017 FCA 96 at para 85, leave to appeal to SCC refused [2017] SCCA No 302; *Allergan*, at para 22. This would further the goal of ensuring “the just, most expeditious and least expensive determination of every proceeding on its merits,” as set forth in Rule 3: *Shire*, at para 18.

[24] Finally, fixing costs on a lump sum basis would be consistent with the marked trend in this Court to award a significant lump sum amount “well in excess of the Tariff” in intellectual property cases, particularly in complicated proceedings such as those in the case at bar: *Allergan*, at para 27.

[25] The factors listed in Rule 400(3) that are relevant to this proceeding are discussed immediately below.

C. *The Result of the Proceeding*

[26] As previously noted, the Plaintiffs were only successful with respect to four of the ten charges of contempt listed in the Duchesne Charging Order.

[27] Antonio relies on this mixed success to argue that the cost award should reflect the fact that the Plaintiffs "were mostly unsuccessful." He adds that the Plaintiffs' lack of success was, in part, a self-inflicted wound. He states that this is because they failed to request the Court to permit documentary evidence that had been put before Justice Rochester to be adduced at the contempt hearing, as contemplated by Rule 470: *Macciacchera*, at para 38.

[28] I agree that the Plaintiffs' misstep in this regard weighs in favour of a downward adjustment from the full solicitor-client costs that serve as the point of departure for the present assessment of costs: see the jurisprudence cited at paragraph 17 above. However, in the particular circumstances of this case, such downward adjustment ought not to be proportionate to the number of charges (6) in respect of which the Plaintiffs were unsuccessful, relative to the total number of charges (10). That is to say, this mixed success achieved by the Plaintiffs does not weigh in favour of a 60% downward adjustment from the point of departure. This is because, by persistently refusing to cooperate with the execution of the Rochester Interim Order, Antonio "completely frustrated the execution of the Order": *Macciacchera*, at para 117. In these

circumstances, he should not be able to fully benefit from the Plaintiffs' inability to prevail with respect to the majority of the charges in the Duchesne Charging Order.

[29] Stated differently, by steadfastly refusing to permit the Independent Supervising Solicitor (the **"ISS"**), Mr. Mark Davis, to enter his home and execute the Rochester Interim Order, Antonio flagrantly disobeyed that Order and defied the Court: *Macciacchera*, at para 123. He also completely frustrated an important purpose of that Order, which was to prevent the circumvention of the Court's processes by pre-empting the destruction or removal of evidence, or the shifting of funds beyond the Court's reach: *Macciacchera*, at paras 111-112. In these circumstances, he ought not to be able to indirectly and fully benefit from the fact that his blatant defiance of the Rochester Interim Order entirely prevented Mr. Davis from establishing the nexus between Antonio and the six charges.

[30] Moreover, Antonio was unsuccessful with respect to two of the three arguments he made in support of his position that the Plaintiffs had not established any nexus between him and six of the charges against him: *Macciacchera*, at paras 39-49.

[31] Considering all of the foregoing, I find that the Plaintiffs' lack of success with respect to six of the ten charges against Antonio does not weigh in favour of a proportionate (i.e., 60%) reduction in the full legal fees incurred by the Plaintiffs. Instead, the circumstances are such that Antonio only merits a 25% reduction from that starting point.

[32] Applying that 25% reduction ($25,009.64) reduces the potentially recoverable legal fees from the $100,038.55 amount claimed, to $75,028.91 (plus applicable HST).

D. *The importance and complexity of the issues*

[33] The importance of the issues in these proceedings can scarcely be overstated. At their core, contempt proceedings concern the bedrock issues of compliance with court orders, the maintenance of public confidence in the administration of justice, and the rule of law: See paragraph 16 above. Stated differently, contempt of court is "a challenge to the judicial authority whose credibility and efficiency it undermines as well as those of the administration of justice": *9038-3746 Quebec Inc. v Microsoft Corporation*, 2010 FCA 151, at para 18.

[34] Insofar as the complexity of the issues is concerned, Antonio maintains that the contempt proceedings against him were not complex because very little evidence was tendered. In this regard, he notes that there were only "2 orders, videos, some notes, affidavits of service" and a single witness. Antonio asserts that this supports a lump sum award "at the lower range."

[35] I disagree. As previously noted, these proceedings required the Plaintiffs and the Court to come to grips with a complex record relating to a highly sophisticated business operation: see paragraph 21 above. This is reflected in the lengthy, 127-paragraph decision on the merits that I issued: *Macciacchera*.

[36] Accordingly, I consider that the importance and complexity of the issues are not such as to weigh in favour of any downward variation of the legal fees claimed by the Plaintiffs.

E. *The amount of work required*

[37] Antonio maintains that he should not have to compensate the Plaintiffs for the "Cadillac" legal services they allegedly obtained and the disbursements they incurred. Without having had the benefit of knowing the total amount of fees claimed by the Plaintiffs at the time he made his submissions on costs, Antonio estimates that such "Cadillac" services would likely amount to "at least $30,000 to $40,000" fees, beyond what was reasonably necessary.

[38] I disagree. After reviewing the confidential invoices of the Plaintiffs' legal counsel, Smart & Biggar LLP (**"Smart & Biggar"**), I find that the legal fees charged were largely reasonable. Although there appears to have been some duplication, it was very minor in nature.

[39] In a time-sensitive proceeding such as the case at bar, it is reasonable that the senior partner (Mr. Guay) representing the Plaintiffs would seek the assistance of a junior partner (Mr. Lavoie Ste-Marie), two junior associate lawyers (Ms. Felsztyna and Mr. Beaulac) and a small number of paralegal staff. It is also reasonable that Mr. Guay would involve a mid-level partner (Mr. Evans) in the file to the minor degree that is reflected in Smart & Biggar's time sheets.

[40] Consistent with the rationale underlying the fixing of costs in a lump sum amount, I do not consider it to be appropriate to conduct a detailed assessment of each apparently duplicative entry. I am satisfied that a deduction of $2,028.91 from the fees claimed to eliminate such duplication would be reasonable. Applying that deduction to the $75,028.91 figure mentioned at

paragraph 32 above leaves potentially recoverable legal fees of $73,000, subject to any further adjustments that may be warranted, in light of the factors addressed below.

[41] For the record, I will note that some of the time entries in Smart & Biggar's dockets have been redacted. Those redactions were explained in an affidavit sworn by Martine Guy, a legal assistant employed at Smart & Biggar. According to Ms. Guy, the time entries that were entirely redacted in blue were fully deducted from the amount of legal fees being claimed by the Plaintiffs. For entries that were only partially redacted in blue, the Plaintiffs deducted half of the amount of each such entry from the legal fees being claimed. Having reviewed those entries, I consider that approach to be very reasonable.

[42] Ms. Guy also explained that the redactions in black were made "to avoid disclosing privileged information, notably related to the Plaintiffs' litigation strategy." Given that the time sheets from Smart & Biggar relate exclusively to the period July 20, 2022 to August 31, 2022, I consider it to be reasonable to infer that the entries redacted in black relate to litigation strategy in relation to the contempt proceedings against Antonio,[3] and not to the prior proceedings that took place before Justices Rochester and Lafrenière.

[43] Regarding the Plaintiffs' disbursements, after reviewing the invoices paid by the Plaintiffs, I find that those disbursements were entirely reasonable. For the record, they consist of

[3] The contempt proceedings consisted of an initial hearing on July 21, 2022 before Associate Judge Duchesne, which resulted in the Duchesne Charging Order, and a second hearing on August 24, 2022 before me, which resulted in a finding of contempt against Antonio, in relation to four of the ten charges listed in the Duchesne Charging Order.

(i) $562.74 for a 249-page transcript of the contempt hearing, prepared by Atchison and Denman, and (ii) $11,853.45 for legal fees plus GST (5%) charged by the ISS, Mr. Mark Davis.

[44] I will pause to observe that the Plaintiffs' uncontested evidence is that the Plaintiffs have each paid all of the invoices attached to Ms. Guy's affidavit, and that the Plaintiffs' law firm has paid the invoices for the disbursements that have been claimed.

F. *The public interest*

[45] The Plaintiffs maintain that contempt proceedings are, in essence, a matter of public interest.

[46] I agree. This public interest is implicit in the principal objective of the law of civil contempt, discussed at paragraph 16 above. The public interest also permeates the considerations discussed at paragraph 33 above.

[47] The public interest in fostering compliance with court orders provides a strong rationale for the "customary practice in contempt cases to impose costs on a solicitor-client basis": *Lari*, at para 38; see also the additional jurisprudence cited at paragraph 16 above.

[48] This consideration weighs in favour of awarding the Plaintiffs their full costs, less the adjustments discussed above. This is particularly so given that the Plaintiffs derived no benefit from my finding of guilt on Antonio's part, in relation to four of the ten charges set forth in the Duchesne Charging Order, except to the extent that it may spur his eventual compliance with all

of the terms of the Rochester Interim Order. Even if Antonio does so, he cannot cure the fact that he deliberately deprived the Plaintiffs of the element of surprise. In turn, this permanently defeated an important public interest objective of the Rochester Interim Order, namely, to prevent the destruction or removal from Canada of relevant evidence and any ill-gotten gains.

G. *The parties' conduct during the proceedings*

[49] The Plaintiffs submit that the Court should take into consideration the fact that Antonio's counsel (Mr. Lomic) attempted to derail the contempt hearing by seeking to disqualify their lead counsel, Mr. Lavoie Ste-Marie, at the outset of the hearing. As a result of that objection, the hearing lasted approximately one hour longer than would otherwise have been the case.

[50] As I noted at the time, Mr. Lomic should have raised his objection to Mr. Lavoie Ste-Marie's participation well before the date of the hearing, particularly given that he knew that Mr. Lavoie Ste-Marie would be running the hearing on behalf of the Plaintiffs. Fortunately, Mr. Lomic ultimately agreed to withdraw his objection. As a result, his actions only had a very minor impact on these proceedings. I find that this impact was not such as to warrant any variation to the adjusted $73,000 figure for legal fees discussed at paragraph 40 above.

[51] For his part, Antonio maintains that the Plaintiffs also engaged in conduct that is relevant for the present purposes. Specifically, he notes that the Plaintiffs sought to unilaterally re-open submissions three weeks after the trial ended, by providing additional submissions. He states that his need to provide an immediate response deprived him of a similar three-week opportunity to conduct research into the issue in question.

[52] The additional submissions filed by the Plaintiffs consisted of a two-page letter drawing the Court's attention to two cases that were relevant to the nexus issue that had been briefly mentioned by Antonio for the first time in written submissions filed on the day of the hearing. That issue was then significantly elaborated upon during Antonio's oral submissions. During the hearing, I repeatedly pressed counsel on both sides for jurisprudence to support their respective positions on this issue. At approximately 6:40 p.m., just before the hearing ended, I provided the Plaintiffs' counsel team with a very brief opportunity to privately discuss this issue. However, in the short time available, they were unable to provide me with any jurisprudence in support of their position.

[53] Considering the foregoing, I will not make any adjustment to the adjusted $73,000 amount for legal fees mentioned above. The Plaintiffs have not claimed for any legal fees incurred in relation to their short post-hearing submissions. Moreover, Antonio was not ultimately prejudiced. I will simply add for the record that he responded to the two pages of submissions made by the Plaintiffs with two pages of his own submissions, including references to cases that he had not previously mentioned.

[54] The Plaintiffs submit that the Court should take into account the fact that Antonio refused to admit certain uncontroversial documents and facts well ahead of the hearing, despite repeated requests that he do so. As a result, the Plaintiffs' counsel had to prepare two witnesses (Mr. Drapeau and Ms. Hansen), who ultimately did not testify after Antonio admitted the facts and documents in question late in the hearing.

[55] The Plaintiffs further assert that they had no choice but to call Mr. Mark Davis to testify on facts that should not have been contested, because Antonio refused to admit those facts.

[56] I agree that the refusals to admit described in the two immediately preceding paragraphs weigh in favour of awarding the Plaintiffs their full costs in relation to the preparation of Mr. Drapeau and Ms. Hansen, and in relation to the preparation of Mr. Davis and his attendance at the hearing. Given that those costs are already included in the adjusted $73,000 figure mentioned above, no further adjustment to that figure is warranted.

H. *Other considerations*

[57] Antonio underscores that he did not know what the Plaintiffs would claim in legal fees and disbursements at the time he was required to file his submissions on costs. Consequently, he maintains that his inability to challenge those claims supports a downward adjustment, particularly given that the affiant who swore an affidavit on behalf of the Plaintiffs in an earlier proceeding last year admitted on cross-examination that she had knowingly provided false evidence regarding costs.

[58] I disagree with the submission that such considerations warrant a downward adjustment in the costs claimed by the Plaintiffs. The affiant mentioned immediately above was not Ms. Guy. It does not follow from the fact that another person was knowingly untruthful, that Ms. Guy would also be untruthful.

[59] Moreover, the inability to challenge costs requested by another party is not a basis for making a downward adjustment. In the Court's *Consolidated General Practice Guidelines*, dated June 8, 2022, the public was put on notice that parties to proceedings before the Court should be prepared to make submissions regarding costs before the end of the hearing of their proceeding.[4] In this regard, those guidelines state as follows:

> 15. During the hearing of a motion, application or action, the parties should be prepared to inform the Court as to whether they have agreed on the disposition and/or quantum of costs. If the parties have not settled the disposition and/or quantum of costs, they should be prepared to make submissions on those issues to the presiding judge or prothonotary before the end of the hearing.

[60] Had the Plaintiffs and Antonio followed this guidance, they would have had an opportunity to orally address each other's submissions.

[61] Where the Court's above-mentioned guidance is not followed, this Court frequently requires parties to provide their cost submissions by a common deadline. If the Court were to adopt a policy of discounting the amount of costs sought by parties in such circumstances on the basis that those costs could not be challenged, this would result in the routine and automatic reduction of such costs. That would not be appropriate. The ability of the Court to review the costs claimed and the basis for those claims is a sufficient safeguard, particularly where the Court's above-mentioned guidance has not been followed.

I. *Timing of payment*

[4] A similar notice was provided in a Notice to the Parties and the Profession entitled *Costs in the Federal Court*, dated April 30, 2010.

[62] The Plaintiffs submit that the cost award in these proceedings should be made payable "forthwith." In response, Antonio states that any award against him should be made payable "in any event of the cause." In support of this position, he asserts that the penalty ultimately imposed in these proceedings is likely to be lower or similar to any cost award that may be imposed by the Court. He adds that a requirement to pay costs "forthwith" would effectively function as a penalty, without the benefit of sentencing submissions.

[63] I agree with the Plaintiffs that the award of costs against Antonio should be made payable "forthwith." My ruling on the ten charges set forth in the Duchesne Charging Order is a final judgment of the Court: *Federal Courts Act*, RSC 1985, c F-7, subsection 2(1) (definition of "final judgment"). That judgment concerns issues that are substantively distinct from those that remain to be determined in the underlying copyright infringement proceeding. In addition, I consider that Antonio's ongoing breach of the Rochester Interim Order, at least until the date of the hearing in these contempt proceedings,[5] weighs in favour of exercising my discretion to order that costs be payable "forthwith."

J. *Summary*

[64] For the reasons set forth in part IV.B above, I consider it appropriate to fix costs in a lump sum amount.

[5] I am unaware of whether any significant progress has been made with respect to compliance with the Rochester Interim Order, since the date of the hearing in these proceedings.

[65] For the reasons provided in part IV.C above, which deal with the Plaintiffs' mixed success in these proceedings, I consider it appropriate to reduce the legal fees claimed by the Plaintiffs by 25%. This reduces their claimed fees from $100,038.55 to $75,028.91 (plus applicable HST).

[66] For the reasons provided in part IV.E above, which deal with Antonio's submission that he should not have to pay for the "Cadillac" legal services alleged to have been provided to the Plaintiffs, the fees claimed by the Plaintiffs will be further reduced by $2,038.91. This reduces the Plaintiff's claimed legal fees to $73,000.

[67] For the reasons provided in parts IV.D, and IV.F-H above, I find that no further adjustments to the legal fees claimed by the Plaintiffs ought to be made.

[68] For the reasons provided at paragraph 43 above, I find that the full amount of the disbursements claimed by the Plaintiffs ($12,416.19) is reasonable.

[69] For the reasons provided in part IV.I above, I find that Antonio should be required to pay the costs awarded in favour of the Plaintiffs "forthwith."

V. Confidentiality Order

[70] The Plaintiffs state that the Confidential Version of their submissions on costs contains sensitive information pertaining to the details of their cost-sharing arrangements. They further

note that they are actively involved in various efforts to enforce their intellectual property rights, including in multiple proceedings before the Federal Courts with other rights holders.

[71] In these circumstances, the Plaintiffs request that an order of confidentiality be made in relation to the confidential version of Ms. Guy's affidavit.

[72] I agree that the information identified as being confidential at paragraph 5 of Ms. Guy's affidavit ought to be the subject of a confidentiality order. I find that the same is true with respect to the time-entry sheets attached at Tab 1 (identified as MG-1-CONF) of that affidavit.

[73] However, I reach a different conclusion with respect to the invoices for the disbursements claimed by the Plaintiffs, which are attached at Tab 2 (identified as MG-2-CONF), and the e-mail exchange between the parties attached at Tab 3 (identified as MG-3-CONF). In my view, there is nothing confidential about the information included at those two tabs.

[74] I note also that Appendix A to the Plaintiff's submissions is identified as being confidential. It contains a breakdown of the fees paid by each of the three groups of Plaintiffs. I am prepared to infer from the designation of this information as being confidential that the Plaintiffs' omission of any mention of this Appendix in their request for confidentiality was inadvertent. To the extent that the rationale provided in relation to the request for confidentiality of the information at Tab 1 of Ms. Guy's affidavit applies equally to the information in Appendix A to the Plaintiff's submissions, I consider it appropriate to extend the confidentiality order to the latter information.

ORDER in T-1257-22

THIS COURT ORDERS that:

1. The Defendant Antonio Macciacchera shall pay to the Plaintiffs, forthwith, lump sum costs of $94,906.19, comprising reasonable legal fees of $73,000, plus HST of $6,326.67 on those legal fees, plus reasonable disbursements of $12,416.19.
2. The Public version of the Plaintiffs' cost submissions shall be refiled to include, in unredacted form, Tabs MG-2 and MG-3 to the affidavit of Martine Guy.
3. Pursuant to Rule 152, the confidential version of the affidavit of Martine Guy shall remain confidential.

"Paul S. Crampton"
Chief Justice

APPENDIX 1 – The Duchesne Charging Order

Federal Court Cour fédérale

Date: 20220721
Docket: T-1257-22

Ottawa, Ontario, July 21, 2022

PRESENT: Prothonotary Benoit M. Duchesne

BETWEEN:

BELL MEDIA INC.
ROGERS MEDIA INC.
COLUMBIA PICTURES INDUSTRIES, INC.
DISNEY ENTERPRISES, INC.
PARAMOUNT PICTURES CORPORATION
UNIVERSAL CITY STUDIOS LLC
UNIVERSAL CITY STUDIOS PRODUCTIONS LLLP
WARNER BROS. ENTERTAINMENT INC.

Plaintiffs

and

MARSHALL MACCIACCHERA dba SMOOTHSTREAMS.TV
ANTONIO MACCIACCHERA dba SMOOTHSTREAMS.TV
ARM HOSTING INC.
STAR HOSTING LIMITED (HONG KONG)
ROMA WORKS LIMITED (HONG KONG)
ROMA WORKS SA (PANAMA)

Defendants

AMENDED ORDER

UPON reading the notice of motion, the affidavits of Mark Davis sworn on July 15, 2022, and the exhibits attached thereto, and the written representations made by the Plaintiffs for an Order pursuant to Rules 467(1) of the *Federal Courts Rules*, SOR/98-106, (the "*Rules*") requiring

the Defendant Mr. Antonio Macciacchera to appear before a judge at time and place to hear proof of the act(s) for which he is charged with contempt and to present any defence(s) he may have to the charges of contempt, the whole being brought *ex parte* as is authorized by Rule 467(3) of the *Rules*;

AND UPON HEARING the oral submissions made by the solicitors for the Plaintiffs at a special sitting of this Court on July 21, 2022, no one appearing for the Defendant Mr. Antonio Macciacchera as this motion was heard *ex parte*;

AND UPON CONSIDERING that a party seeking an order pursuant to Rule 467(1) of the *Rules* must establish a *prima facie* case of willful and contumacious conduct on the part of the contemnor (*Chaudhry v. Canada*, 2008 FCA 173, at para. 6) and must prove (1) a Court Order or other Court process, (2) the contemnor's knowledge of the Order or process, and, (3) a deliberate flouting of the Court Order or process that by the contemnor (*Chédor v. Canada (Immigration, Refugees and Citizenship*, 2017 FC 291 at para. 22; *Warner Bros. Entertainment Inc. v. White (Beast IPTV)*, 2021 FC 53 (CanLII), at para. 49);

AND UPON CONSIDERING and concluding that the Plaintiffs have discharged their burden of proof on this motion and have shown *prima facie* that Mr. Antonio Macciacchera willfully and contumaciously disobeyed the interim order made by the Honourable Madam Justice Rochester of this Court on June 28, 2022 (the "Order") and thereby engage in contempt;

AND UPON being satisfied that the Order sought should issue, based on the evidence presented by the Plaintiffs and considered by the Court;

THE COURT ORDERS AS FOLLOWS:

1. The Defendant Antonio Macciacchera is ordered to:

    a) appear via videoconference before a Judge of this Court, at the general sittings in Ottawa on Wednesday, August 17, at 9:30 am for a contempt hearing, to hear proof of the following acts, purportedly committed by him, with which he is

charged herein, and to be prepared to present any defence that he may have to the charges (the "Contempt Hearing"):

i. on July 14, 2022 and since, disobeying paragraph 20 of the Order which constitutes contempt of Court under Rule 466(b) of the *Rules*, by refusing to provide to the independent supervising solicitor and/or to the Plaintiffs' solicitors the technical information related to the SSTV Services and/or any other Unauthorized Subscription Services under his control;

ii. on July 14, 2022 and since, disobeying paragraph 24(a) of the Order, which constitutes contempt of Court under Rule 466(b) of the *Rules*, by refusing to disclose the assets, revenues, expenses and profits referred to in that paragraph;

iii. on July 14, 2022 and since, disobeying paragraph 24(b) of the Order, which constitutes contempt of Court under Rule 466(b) of the *Rules*, by refusing to provide all information pertaining to these assets, including by refusing to provide the documents likely to contain that information;

iv. on July 14, 2022 and since, disobeying paragraph 24(c) of the Order, which constitutes contempt of Court under Rule 466(b) of the *Rules*, by refusing to provide the identity and contact information of the banks, financial institutions or other service providers with which these assets are registered or through which they are controlled;

v. on July 14, 2022 and since, disobeying paragraph 25 of the Order, which constitutes contempt of Court under Rule 466(b) of the *Rules*, by refusing to provide his written consent to authorise banks, financial institutions or other service providers to disclose information pertaining to his assets to the independent supervising solicitor and to the Plaintiffs' solicitors;

vi. on July 14, 2022 and since, disobeying paragraph 29 of the Order, which constitutes contempt of Court under Rule 466(b) of the *Rules*, by refusing to disclose the location of evidence to be preserved under the Order;

vii. on July 14, 2022 and since, disobeying paragraph 30 of the Order, which constitutes contempt of Court under Rule 466(b) of the *Rules*, by refusing entry to his residence and therefore failing to assist the persons enforcing the Order in accessing the evidence to be preserved under the Order;

viii. on July 14, 2022 and since, disobeying paragraph 31 of the Order, which constitutes contempt of Court under Rule 466(b) of the *Rules*, by refusing entry to his residence and therefore failing to deliver up the evidence to be preserved under the Order to the persons enforcing the Order;

ix. on July 14, 2022 and since, disobeying paragraph 32 of the Order, which constitutes contempt of Court under Rule 466(b) of the *Rules*, by refusing entry to his residence and therefore concealing evidence to be preserved under the Order;

x. on July 14, 2022 and since, disobeying paragraph 37 of the Order, which constitutes contempt of Court under Rule 466(b) of the *Rules*, by refusing entry to his residence and therefore failing to cooperate with the persons enforcing the Order;

2. Costs on the present motion and for the Contempt Hearing shall be determined following the filing of brief written submissions by the parties within ten (10) days of the issuance of the judgment on the Contempt Hearing.

3. The Plaintiffs shall serve the Defendant Mr. Antonio Macciacchera with a copy of this order forthwith, and shall serve the Defendant Mr. Antonio Macciacchera with their materials for the Contempt Hearing by no later than August 8, 2022.

"Benoit M. Duchesne"
Prothonotary

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1257-22
STYLE OF CAUSE:	BELL MEDIA INC. V. MACCIACCHERA (SMOOTHSTREAMS.TV)

SUBMISSIONS ON COSTS CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO THIS COURT'S ORDER AND REASONS IN 2023 FC 801 AND THIS COURT'S ORDER DATED JULY 21, 2022 "DUCHESNE CHARGING ORDER"

WRITTEN SUBMISSIONS:	JUNE 23, 2023
ORDER AND REASONS:	CRAMPTON C.J.
DATED:	DECEMBER 15, 2023

WRITTEN SUBMISSIONS BY:

François Guay Guillaume Lavoie Ste-Marie Denise Felsztyna	FOR THE PLAINTIFFS
Paul V. Lomic	FOR THE DEFENDANTS

SOLICITORS OF RECORD:

Smart & Biggar LLP Montreal, Quebec	FOR THE PLAINTIFFS
Lomic Law Toronto, Ontario	FOR THE DEFENDANTS