Federal Court  Cour fédérale

Date: 20250313

Docket: T-1257-22

Citation: 2025 FC 461

Ottawa, Ontario, March 13, 2025

PRESENT: The Honourable Mr. Justice Duchesne
Case Management Judge

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

[1] This Order is in respect of a motion for an interlocutory penalty for contempt to be imposed upon two contemnors pursuant to Rule 472(d) of the *Federal Courts Rules*, SOR/98-106 (the *Rules*), pending the Court's hearing of evidence and argument with respect to the penalty to be imposed upon them. The interlocutory penalty order sought by the Plaintiffs is not intended to be dispositive of all penalties that could be imposed upon the contemnors by the Court. As the Plaintiffs argue, this motion was brought to ensure that the personal Defendants Marshall Macciacchera (Marshall) and Antonio Macciacchera (Antonio) (together, the Personal Defendants), do not flee Canada pending either the penalty hearing or the penalty judgment being rendered following the penalty hearing. The Personal Defendants are not being referred to by their given names out of any disrespect, but because their family relationship and identical surnames could lead to confusion if they are not more particularly referred to.

[2] The Plaintiffs seek an Order:

a) requiring the Personal Defendants to surrender their passports prior to or at the outset of the penalty hearing for their contempt until a penalty judgment is rendered;

b) authorizing the Plaintiffs to send a copy of the Order to be rendered on this motion to the Canadian Border Services Agency (the CBSA) and border service agencies abroad to inform them that the Personal Defendants are not to leave Canada pending the issuance of the penalty judgment confirming the penalty for their contempt;

c) authorizing the Plaintiffs to send a copy of the Order to be rendered on this motion to passport services in Canada and abroad, informing them that the Order requires the Personal Defendants' passports to be deposited with the Federal Court, and asking them not to issue replacement passports to the Personal Defendants; and,

d) an interim confidentiality Order for the affidavit of Ms. Julie Morin, dated January 28, 2025, filed in support of the motion.

[3] For the reasons that follow, this motion is granted in part and dismissed in part.

I. **Background**

[4] The Plaintiffs hold the Canadian rights in motion picture and television content. The content was pirated and resold for profit by unauthorized users through "SSTV Services".

[5] SSTV Services were a collection of Unauthorized Subscription Services (commonly known as "IPTV services") that operated under the "SmoothStreams" umbrella brand. The three known interconnected SSTV Services were Live247 (operating from the website live247.tv), StreamTVNow (streamtvnow.tv) and StarStreamsTV (starstreams.tv).

[6] SSTV Services were accessible through different user-friendly platforms designed to provide users with immediate and unauthorized access to multiple television stations, including Canadian stations, from around the world. Payment processing for the SSTV Services was

performed through various corporations, including the Defendants Arm Hosting Inc. for Live247, Roma Works Limited (Hong Kong) for StreamTVNow, and Star Hosting Limited (Hong Kong) for StarStreamsTV. The Plaintiffs estimate that the SSTV services had thousands of unique subscribers, generating significant annual revenues.

[7] The Plaintiffs' investigation into the SSTV Services was exceptionally lengthy and complex, involved consulting a large number of varied sources and cooperating with multiple parties, at least in part due what the Plaintiffs describe as the Personal Defendants' tactics to hide their identities on the Internet. Their investigation ultimately revealed that Marshall and Antonio were the key individuals behind the operation of the SSTV Services, including their related payment processors.

[8] The Plaintiffs commenced this proceeding against the Defendants on June 17, 2022.

[9] On the same day, the Plaintiffs filed a motion for an interim injunction, an Anton Piller Order, and other ancillary orders against the Defendants. The motion was supported by extensive evidence of copyright infringement, ongoing and irreparable harm, and the demonstration of a real risk of destruction or concealment of evidence.

[10] On June 28, 2022, Madam Justice Rochester (as she then was) issued an Order against the Defendants that generally corresponded to the order sought by the Plaintiffs (the "Interim Order").

[11] The Interim Order required the Personal Defendants to permit entry onto specified premises to enforce the Interim Order and to complete the execution of the Interim Order. The Interim Order provided the Personal Defendants with the right to refuse entry to the premises described in the Interim Order. However, it warned of the consequences for failing to facilitate entry, including being held in contempt.

[12] The Interim Order enjoined the Personal Defendants from being involved in the operation of the SSTV Services or other unauthorized subscription services. The Interim Order also included a mechanism that ordered the Personal Defendants to transfer control over the infrastructure of the SSTV Services to the Independent Supervising Solicitor as custodian, and for that infrastructure to be shut down. It also enjoined the Personal Defendants from dissipating or removing assets out of the Court's jurisdiction, ordered them to sign a consent form authorising their financial institutions to disclose information pertaining to their assets to the Plaintiffs, and to provide certain information to the independent supervising solicitor, computer forensic experts, private investigators and to the Plaintiffs' solicitors.

[13] The Plaintiffs served and attempted to execute the Interim Order upon Antonio and Marshall simultaneously on July 14, 2022.

[14] Antonio was served at his residence and ultimately refused to provide his consent to the execution of the Interim Order. He was charged with contempt on July 21, 2022. Antonio's contempt hearing was held before Chief Justice Crampton on August 24, 2022. On June 7, 2023,

Chief Justice Crampton issued an order finding Antonio guilty of four (4) counts of contempt. A penalty hearing was to be scheduled at a later date.

[15] Marshall also failed to comply with the entirety of the Interim Order. He was charged with contempt on July 28, 2022. Marshall's contempt hearing was held before Justice Rochester (as she then was) on April 25 though 28, 2023. On August 21, 2024, her Honour found Marshall guilty of contempt on four (4) counts of contempt.

[16] Steps have been taken to fix the dates for both Marshall and Antonio's penalty hearing. Because the evidence to be led at the penalty hearings is anticipated to be similar in many respects, the parties agreed that the penalty hearings for Marshall and Antonio should be heard together. A timetable for the exchange of materials and for penalty recommendations was fixed. Although the penalty hearing had to be rescheduled, the parties have nevertheless exchanged some affidavit material and have engaged with each other on penalty recommendations to be made to the penalty hearings judge.

[17] The Plaintiffs have informed the Personal Defendants that they will be seeking a term of imprisonment of up to 6 months and that such term of imprisonment should continue until Marshall and Antonio comply with the Interim Order and cure their contempt by providing the information, documentation and passwords that they have been ordered to provide.

[18] The Personal Defendants have responded to the Plaintiffs with their penalty proposals. Antonio will recommend that he serve a 30-day term of imprisonment to be served on weekends

or 30 days of house arrest as his penalty for not providing the financial information has had been ordered to provide and continues to not provide. Marshall intends to recommend that he serve a term of imprisonment of one (1) week per clear failure to comply with an Interim Order, without having to provide the Plaintiffs with the passwords and other information and documentation he has been ordered to provide them.

II. **The Evidence**

A. ***Regarding Marshall***

[19] In addition to the background discussed above, the Plaintiffs have led the following evidence in support of their argument that Marshall is a flight risk to Thailand in the event that the Court orders a penalty that includes a term of imprisonment in Canada.

[20] Marshall is self-employed as an IT consultant. He spends significant amounts of time outside of Canada in South East Asia and Thailand, where he resides with his fiancée. He refuses to disclose where he resides in Thailand or to provide any details of his living arrangements in Thailand other than that he resides in a rental apartment owned by persons from the United Arab Emirates and that he does not actually pay any rent. His evidence is that he is not a permanent resident of Thailand and is in the country on a tourist visa. He says that he has resided in Thailand for most of the last 15 years, despite returning to Canada between April or May and September or November in any given year except for 2023 and 2024.

[21] Marshall has no children and no family in Canada other than his father, Antonio, his mother, brother, uncle and other unnamed and unidentified Canadian relatives.

[22] In his responding affidavit served on this motion, Marshall describes himself as an "IT consultant from the City of Woodbridge, in the Region of Vaughan, Ontario". Marshall describes his address in the same affidavit as a postal box. He admitted on cross-examination that he has no permanent address in Canada.

[23] Marshall deposes that he has purchased a one-way ticket to Toronto to attend his penalty hearing. Although he has a business trip planned in 2025 to attend information technology conferences in Southeast Asia, he has no other pre-determined travel plans fixed for 2025. He has testified that he has no passport other than a Canadian passport.

B. ***Regarding Antonio***

[24] In addition to the background discussed above, the Plaintiffs have led the following evidence in support of their argument that Antonio is a flight risk in the event that the Court orders a penalty that includes imprisonment in Canada.

[25] Antonio resides in Woodbridge, Ontario, with his spouse. He was born in Priverno Latina, Italy, and has returned there relatively often to visit his extended family who continues to reside there and provides him with accommodation when he visits them. He has recently visited family in Italy in 2021 and 2022 and returned to Canada after each visit. He has testified that he

is not an Italian citizen and has no Italian passport. He has testified that he is Canadian citizen and has a Canadian passport. He has no trips planned for 2025.

[26] Antonio is currently in his 70s. He has deposed that he suffers from several health conditions but has produced no medical evidence to substantiate what those health conditions may be or how he should conduct himself to manage them.

C. ***Evidence common to both Personal Defendants***

[27] The Plaintiffs have led affidavit evidence that the Personal Defendants have repeatedly disobeyed and ignored orders made by this Court over and above those for which they have already been found guilty of contempt.

[28] This Court has made significant costs orders against both Marshall and Antonio and in favour of the Plaintiffs. The costs orders remain unpaid despite that some of the orders required they be paid forthwith. The Plaintiffs have yet to take any enforcement steps with respect to these costs orders.

[29] Both Marshall and Antonio have been examined for discovery, have been ordered to answer a large number of proper questions asked during their examinations, and have yet to provide answers to undertakings that the Plaintiffs consider responsive. The Plaintiffs argue that the Personal Defendants have failed to comply with this Court's orders made in connection with examinations for discovery, are essentially ignoring this Court's authority, and have failed to answer nearly 100 questions on examination that they have improperly objected to. The Plaintiffs

argue that the Personal Defendants' failures to comply with this Court's orders and rules regarding discovery are stonewalling the Plaintiffs' attempts to pursue and enforce their rights, and are thwarting the Plaintiffs' efforts to have this proceeding progress towards a trial or resolution.

D. ***Cross-examination and curing their contempt***

[30] The Personal Defendants were both cross-examined on the affidavits they swore in connection with this motion. The Plaintiffs argue that both Personal Defendants testified that they would not cure their contempt by providing the information, documentation and passwords that they have already been ordered to provide.

[31] The cross-examination transcript shows that the Personal Defendants were not as definite in their refusals as the Plaintiffs argue for the most part, although the Personal Defendants were evasive. This evasiveness, combined with their own recommendation that they be imprisoned and released without having to comply with the Interim Order, suggests that they do not intend to cure their contempt.

[32] When asked about whether he would cure his contempt by providing the Plaintiffs with the personal computer password and financial documents as required by the Interim Order, Marshall testified as follows:

> 154. Q. I won't go into a lot of detail on this because it's been belaboured many times, but you understand that two of the grounds for contempt on which you were charged in this case are related to not providing your password to a personal computer, and then 2) not disclosing certain financial documents related to

accounts that were found in some paperwork? You understand that?

A. The first one was related to -- could you just briefly, like, the first and second?

155. Q. Yes. I will repeat. I see that you were taking a sip of water and not necessarily taking note. So the first one I mentioned was failing to provide a password to a personal computer?

A. Okay. Yes.

156. Q. So you know what I'm referring to when I mention this?

A. Yes.

157. Q. And the second one was failing to disclose certain financial and banking information regarding accounts that were found in paperwork during the execution of the order? You also know what I'm referring to?

A. Yes, I do.

158. Q. And you know that -- you know, at least -- these are two of the -- there are more charges of contempt, but these are two of them. Is your intention today to ever provide the password for that computer?

A. As far as the password, given the legal advice that I've received, that’s the direction that I would be continuing with, is -- yeah, not to disclose the password.

159. Q. So you don’t intend to give us the password?

A. Based on the legal advice that I've received, correct.

160. Q. Who gave you that legal advice?

A. It was a Toronto lawyer referred to by Mr. Lomic. Do you require the name?

161. Q. Yes, please.

A. Daniel Brown, I believe was his name.

162. Q. What area of law does Mr. Brown practise in?

A. Criminal law.

> 163. Q. And regarding the financial information, the disclosure of banking information. Do I take it that you take the same position and you have no intention of providing these documents in the future?
>
> A. It wouldn't be the same answer. But it would be for both parties to, I think, discuss off the record and see if there was some amicable solution. I don't have an exact answer for you. I think it's to be determined, given -- now that we have time between now and the delay, will assist things, I think in terms of compliance and all that.

[33] When asked about whether he would cure part of his contempt by disclosing banking information as required by the Interim Order, Antonio testified on cross-examination as follows:

> 80. Q. Yeah, I think it's relevant. Do you intend to disclose that banking information?
>
> A. I don't believe it's relevant. I can answer the questions on the contempt date in front of a judge.
>
> 81. Q. So you're refusing to answer whether you ---
>
> A. I'm refusing to answer you. But I'm not refusing to answer the Court. And to provide reasons for whatever I did.
>
> 82. Q. Okay.
>
> A. I have documentation as to what and why and when I did what I did in front of the judge with reasons and documentation.
>
> 83. Q. But you're refusing to tell me today whether you intend ---
>
> A. Because one question will lead to another, will lead to another.
>
> 84. Q. That is my only question.
>
> A. And it will be very vague. It will be very vague.
>
> 85. Q. My only question on this point, Mr. Macciacchera, is if you intend ---
>
> A. I can't answer that. I can't answer that because it requires reasons or it requires more information which I can't answer with yes or no to you today. Sorry.

> …
>
> 90. Q. And you don’t intend to disclose the financial information? That’s correct?
>
> A. Again, I'm not answering your questions until we’re in front of a judge.
>
> 91. Q. Thank you.

E. ***Flight Risk Evidence***

[34] The Plaintiffs’ evidence of Antonio being a flight risk is limited to the production of selected posts, photos, text and videos from Antonio’s Facebook page. The productions reflect various photos, texts and brief videos dated October 2, 2022, March 21, 2023, March 22, 2023, March 25, 2023, March 28, 2023, and March 29, 2023. Antonio’s Facebook posts reflect that he has family in Italy and that he visited them in Italy on the dates of the posts. Other evidence adduced reflects that Antonio generally has strong ties to Italy, has called Rome his “home”, and has visited Italy on at least 4 separate occasions since 2022 in addition to travelling to Los Angeles, Miami, Paris and Bali.

[35] The Plaintiffs also introduced evidence of Marshall being a flight risk in order to avoid the consequences of his contempt pending the determination of his penalty. The Plaintiff’s evidence is limited to information and photographs related to his residence in Thailand, his cross-examination evidence as to his residing in Thailand with his fiancée, images documenting his attending restaurants in Thailand in 2022, an account with a Thai telecommunications company in which Marshall declared his address to be located in the City of Phuket, and envelopes addressed to addresses in Thailand that are made to his attention. Other evidence

adduced reflects that Marshall has admitted on examination for discovery that he has resided part-time in Thailand and sometimes in Italy in the last decade.

[36] The Personal Defendants do not deny their past travels or their strong ties to different jurisdictions. Their evidence is that they have no intention of fleeing Canada at any time, whether before, during or after the penalty hearing. They also argue that the penalty sought by the Plaintiffs, in their minds, is the not the type of penalty that causes one to undertake to flee and be forced to "look over their shoulder for the rest of their lives".

III. **Arguments and Analysis**

A. **The Plaintiffs' Arguments**

[37] The Plaintiffs argue that Rule 472(d) of the *Rules* provides the Court with the authority to make an interlocutory order requiring the Personal Defendants to surrender their passports pending the determination of the penalty to be imposed upon them for their uncured contempt.

[38] Rule 472 of the *Rules* provides as follows:

Penalty	***Peine***
472 Where a person is found to be in contempt, a judge may order that	**472** Lorsqu'une personne est reconnue coupable d'outrage au tribunal, le juge peut ordonner :
(a) the person be imprisoned for a period of less than five years or until the person complies with the order;	**a)** qu'elle soit incarcérée pour une période de moins de cinq ans ou jusqu'à ce qu'elle se conforme à l'ordonnance;

(b) the person be imprisoned for a period of less than five years if the person fails to comply with the order;	**b)** qu'elle soit incarcérée pour une période de moins de cinq ans si elle ne se conforme pas à l'ordonnance;
(c) the person pay a fine;	**c)** qu'elle paie une amende;
(d) the person do or refrain from doing any act;	**d)** qu'elle accomplisse un acte ou s'abstienne de l'accomplir;
(e) in respect of a person referred to in rule 429, the person's property be sequestered; and	**e)** que les biens de la personne soient mis sous séquestre, dans le cas visé à la règle 429;
(f) the person pay costs.	**f)** qu'elle soit condamnée aux dépens

[39] They argue that this Court should follow and apply the reasoning followed by the Ontario Superior Court of Justice in *Sussex Group Ltd. v 3933938 Canada Inc. (c.o.b. Global Export Consulting)*, 2003 CanLII 49334 (*Sussex Group*), and in *Mendlowitz & Associates Inc. v Chiang*, 2007 CanLII 12203 (*Mendlowitz*) and order the Personal Defendant contemnors to surrender their passports in advance of the penalty hearing.

[40] The Plaintiffs argue that Rule 60.11(5) of Ontario's *Rules of Civil Procedure*, O. Reg. 194 as amended (the ORCP) provides the Superior Court of Justice the authority to require a person in contempt to surrender their passport where reasonable. They also argue that Rules 60.11(5)(b) and (d) of the ORCP are the Ontario equivalent of Rule 472(d) and that both rules should be interpreted in a similar manner, that is, as procedural authority for the Court to require the Personal Defendants to surrender their passports pending the determination of their penalty for contempt. The salient portions of Rule 60.11(5) ORCP reads as follows:

Contempt Order

Motion for Contempt Order

60.11 (1) A contempt order to enforce an order requiring a person to do an act, other than the payment of money, or to abstain from doing an act, may be obtained only on motion to a judge in the proceeding in which the order to be enforced was made.

…

Content of Order

(5) In disposing of a motion under subrule (1), the judge may make such order as is just, and where a finding of contempt is made, the judge may order that the person in contempt,

(a) be imprisoned for such period and on such terms as are just;

(b) be imprisoned if the person fails to comply with a term of the order;

(c) pay a fine;

Ordonnance pour outrage

Obtenue par voie de motion

60.11 (1) L'ordonnance pour outrage, qui vise à obtenir l'exécution forcée d'une ordonnance enjoignant à une personne de faire quelque chose, sauf de payer une somme d'argent, ou de s'abstenir de faire quelque chose, ne peut être rendue que sur motion présentée à un juge dans l'instance au cours de laquelle l'ordonnance a été rendue.

…

Contenu de l'ordonnance

(5) Dans sa décision sur la motion présentée en application du paragraphe (1), le juge peut rendre une ordonnance juste et, s'il conclut que la personne en cause est coupable d'outrage, il peut ordonner que la personne :

a) soit incarcérée pour une période et à des conditions justes;

b) soit incarcérée si elle ne se conforme pas à l'une des conditions de l'ordonnance;

c) paie une amende;

(d) do or refrain from doing an act;	d) fasse ou s'abstienne de faire quelque chose;
(e) pay such costs as are just; and	e) paie des dépens justes;
(f) comply with any other order that the judge considers necessary,	f) se conforme à l'autre ordonnance que le juge estime nécessaire.
and may grant leave to issue a writ of sequestration under rule 60.09 against the person's property.	Il peut accorder l'autorisation de délivrer un bref de mise sous séquestre judiciaire des biens de cette personne en application de la règle 60.09.
(7) An order under subrule (5) for imprisonment may be enforced by the issue of a warrant of committal (Form 60L).	**(7)** L'exécution forcée de l'ordonnance d'incarcération rendue en application du paragraphe (5) peut s'obtenir par la délivrance d'un mandat de dépôt (formule 60L).

[41] The Plaintiffs argue that ordering a contemnor to surrender their passport is both a reasonable and necessary measure where there is a long record of deceit, repeated contempt, and a risk the defendant will leave the jurisdiction (*Mendlowitz* at paras 157-159).

[42] They further argue that the Personal Defendants have repeatedly refused to comply with this Court's orders such as the Interim Order, or to collaborate with the Plaintiffs, all of which has essentially defeated the purpose of the Interim Order and rendered it futile. They characterize the Personal Defendants as contemnors who refuse to pay their costs awards and have demonstrated no intention to comply with this Court's orders other than scheduling orders, timetables, and attending virtual case management conferences.

[43] They argue that it is virtually guaranteed that the Personal Defendants pattern of behavior will continue if this Court grants the contempt penalty sought by the Plaintiffs, and that the Defendants will attempt to avoid incarceration by fleeing Canada to Asia and to Italy. They argue that Marshall's strong ties to Thailand and Antonio's strong ties to Italy present an "immense risk that the Defendants will either leave this Court's jurisdiction if a judgment ordering incarceration is rendered or pre-emptively leave Canada for these destinations in anticipation of the judgment to avoid incarceration".

[44] The Plaintiffs argue that allowing the Personal Defendants to retain their passports and leave this Court's jurisdiction would render any penalty judgment issued by the Court just as futile as the Orders it has previously issued. It is therefore reasonable and necessary in the circumstances for the Court to issue an order requiring the Defendants to surrender their passports prior to or at the outset of the penalty hearing for their contempt until a judgment is rendered as it is the only way to ensure that said judgment has any real effect.

[45] Finally, the Plaintiffs argue that the contemnors will suffer no prejudice if they are ordered to surrender their passport(s) to the Court pending the decision on their penalty. The Plaintiffs note the Personal Defendants' evidence and claims that they do not intend to leave or remain out of the Court's jurisdiction.

B. **The Personal Defendants' Arguments**

[46] The Personal Defendants do not ground their arguments in law. They argue on the basis of the facts that their ties to Canada are at least equally as strong as their ties to Thailand or

Rome and that their past conduct in this proceeding has reflected that they do remain in Canada or return to Canada as required for hearings. They argue that visits to other countries or having alternative addresses in Thailand where they reside part of the year do not on their own give rise to a conclusion on the balance of probabilities that they are flight risks. They also argue that they have spent considerable time and money defending themselves in this action and on the Plaintiffs' contempt motions such that it does not follow that they would now change their approach and flee.

[47] The Personal Defendants indicated at the conclusion of the hearing of this motion that they agree to surrender their passports to this Court for safe keeping by the Court pending the delivery of any penalty judgment following a hearing on the penalty to be imposed upon them. However, they fear and believe that any Order informing the CBSA or any other border service agency abroad that they have had to surrender their passports would be equivalent to placing them on a "no-fly" list. They are concerned that any such order would result in unwarranted prejudice to them and potentially hinder them in their potential future travels outside of Canada. They have not adduced any evidence in this regard.

[48] The Personal Defendants have also agreed with the Plaintiff that their penalty for contempt should include a term of imprisonment of some type and duration, whether to be served on weekends, or as home confinement for a limited period of time.

C. **Analysis**

[49] The Plaintiffs have not cited any authority from this Court or from the Federal Court of Appeal in support of the order they seek. They rely upon *Sussex Group, Mendlowitz,* and the wording of Rule 472(d) of the *Rules* instead.

[50] The facts of *Mendlowitz* were very different than the facts at issue in this proceeding and serve to distinguish the decision. The same is true for the decision in *Sussex Group*.

[51] In *Mendlowitz* the Ontario Superior Court of Justice found it necessary to require a contemnor to surrender his or her passport in order to ensure that they appear at a sentencing hearing in Ontario as part of an ongoing bankruptcy proceeding. The first few paragraphs of the decision set the table for the lengthy reasons that followed:

> Overview
>
> [1] Jay Chiang says that he is without resources and has no employment. Nonetheless, he and his wife Christina live in a 10,000 square foot home. He drives an expensive S500V model Mercedes and Christina drives a 2006 Lexus SUV. Their two children attend Upper Canada College. On July 16, 2003, they were found to be in contempt of a series of court orders. They were given the opportunity to purge their contempt by fulfilling a number of undertakings, which required them to disclose and document the transfer of significant amounts of money, failing which they were each to be incarcerated. This proceeding is to determine if they have complied with the undertakings and purged their contempt.
>
> Background
>
> [2] The contempt proceeding has a long history, but it originates at an even earlier time. It begins approximately 15 years ago when Jay Chiang in Ontario and his brother Julius Chiang in California grew a computer monitor business, Aamazing Technologies Inc. ("Aamazing") from nothing to over $40,000,000 in sales in less than 5 years. Its proclivity for purchasing computer monitors from others, selling the monitors, but not paying for them, may explain the amazing growth of Aamazing.

[3] Korea Data Systems, Co. Ltd. and Korea Data Systems (USA), Inc. (collectively, "KDS") was the largest supplier to Aamazing and in the early 1990's, it delivered over $10,000,000 of computer monitors to Aamazing, but never received payment. Since that time, through various actions in various jurisdictions, the plaintiffs have been attempting to recover that money. They have met with no success because the Chiang family has been able to transfer assets to one another and to hide assets so as to frustrate and defeat the plaintiffs' persistent attempts to satisfy its judgments in California, in Ontario and elsewhere.

Ontario Proceedings

[7] In 2000, the plaintiffs commenced this action in Ontario and obtained a worldwide "Mareva order" freezing the assets of Jay and Christina Chiang and certain family members, including Y.C. and En Fu Chiang who live in Irvine, California and Christina's mother, Tsai Chen Chiang Yueh (hereinafter "Tsai"), who lives in Taiwan. The basis for this order included substantial evidence of assets being fraudulently conveyed from Jay and Christina to their parents in an attempt to make themselves judgment proof. The court also granted an "Anton Piller order" giving the plaintiffs access to the Chiangs' residence at 10 Cortina Court in Richmond Hill. Documents recovered as a result of the search revealed that Jay Chiang was involved in a very lucrative telecom business in China.

[8] Between 1999 and 2003, Jay and Christina Chiang admittedly breached six court orders, including refusal to produce documents that were later found during the Anton Piller search, withdrawals and transfers of large sums of money from their accounts to accounts of their parents, removal of the contents of safety deposit boxes, the swearing of false affidavits, using credit cards for family travel in contravention of the Mareva order and importantly, refusing to divulge or claiming no knowledge of the whereabouts of substantial sums transferred from their accounts to related parties. Mr. Chiang has acknowledged in this proceeding that in the range of US$8 million was transferred from accounts or entities controlled by him and his wife to his parents or to Christina's mother, Tsai. It is likely that the amount transferred was higher than this as the production of the passbook for the "4043" account shortly before this trial, records a further US$1.8 million in apparent transfers.

[9] In the result, information about major assets owned or controlled by the Chiang family remained undisclosed and after failing to comply with the court orders and after admittedly being

> untruthful under oath, Mr. and Mrs. Chiang faced a contempt hearing in July 2003 and a potential prison sentence.

[52] Having determined that the contemnors continued to be in default and contempt again Justice Lax concluded as follows:

> [155] This case puts in issue the capacity of the court to enforce its orders where a judgment debtor with substantial financial means decides to avoid his obligations. Contempt proceedings are in large measure about ensuring the effectiveness of the court's process. However, ultimately, a function of the court, and particularly the Commercial List, is to ensure that disputes can be resolved quickly, efficiently, and effectively. This case challenges these objectives.
>
> [156] Most plaintiffs in this case would have given up long ago. Most would have concluded that money wired to the Far East is uncollectible; that hollow judgments are expensive wallpaper. However, that would have resulted in a miscarriage of justice – because people who are able to pay, and were admittedly dishonest in hiding the money, would have gotten away with living an extravagant lifestyle with other people's money. The plaintiffs have devoted enormous time and resources to track the Chiangs' efforts to hide their money. If the plaintiffs are unable to obtain an effective remedy in this case, this would undermine the rule of law and send a terrible message to litigants and the public. A contempt hearing is often a last resort for a litigant, but in the face of shameless dishonesty and intransigent refusals to obey the rule of law, it is, regrettably, the only remedy that remains.
>
> [157] By prior arrangement with counsel, I will put this over for a sentencing hearing. Rule 60.11(5)(f) states that a judge may order that the person in contempt comply with any order that the judge considers necessary. Rule 60.11(5)(b) and (d) allow a judge to require that the person in contempt do or refrain from doing an act and to imprison the person if he or she fails to comply with a term of the order. There is authority to require a person in contempt to surrender his or her passport where this is necessary (Sussex Group Ltd. v. 3933938 Canada Inc. (c.o.b. Global Export Consulting), 2003 CanLII 49334 (ON SC), [2003] O.J. No. 2952 at para. 21 and authorities cited).
>
> [158] Mr. and Mrs. Chiang hold Canadian passports. I believe they also hold Taiwanese passports, and perhaps others. I

> understand that they have obtained or are in the process of obtaining permanent resident status in the United States. One might well wonder how it is that an impecunious family with no assets and no breadwinner would be in a position to do this. In view of their long record of deceit, their repeated contempt of orders of this court and the risk that they will leave this jurisdiction, I am of the view that it is both reasonable and necessary to require Mr. and Mrs. Chiang to surrender their passports today, failing which I will sign a warrant of committal.
>
> [159] I acknowledge that this is a drastic measure, but in my view it is a necessary measure to ensure that Mr. and Mrs. Chiang appear for the sentencing hearing. If either fails to obey my order to surrender their passports today, they are both to be taken into custody and are to remain there pending the sentencing hearing. I may be spoken to concerning arrangements for the surrender and custody of their passports and any other documents that would make travel possible, but let there be no doubt that if Mr. and Mrs. Chiang do not surrender their travel documents today as I have ordered, I will sign a warrant for their committal with instructions that it be executed forthwith. (the emphasis is mine)

[53] The Court in *Mendlowitz* recognized that its order requiring the contemnors to surrender their passports was drastic but necessary to ensure that they appear at their sentencing hearing. The necessity of such an order appears to have been driven by persuasive evidence that the contemnors would leave Ontario prior to their sentencing hearing, which included efforts by the contemnors to obtain permanent residency in the United States, along with a long record of deceit and repeated findings of contempt against them.

[54] In *Sussex Group*, Justice Cumming of the Ontario Superior Court of Justice's Commercial List considered the mechanisms available to the Court pursuant to section 742.3 of the *Criminal Code* in the context of a conditional sentence imposed in a criminal proceeding and considered their availability in the civil context of a contempt penalty. Justice Cumming observed that the supervisory enforcement terms provided therein were not available to enforce a

civil contempt order. The Court also considered Rule 60.11(5)(f) of the ORCP, which was held to provide it with wide latitude in defining the terms of a contempt order and creating restrictive conditions which, if breached, may then result in imprisonment (*Sussex Group* at para 18). Justice Cumming then relied on Rule 60.11(5)(f) of the ORCP to consider ordering that the contemnor surrender his passport as a term of a potential conditional sentence for civil contempt to be served by way of home confinement on terms, this to ensure that he did not flee or travel to Cuba (as he was known to do regularly) during his conditional sentence. The Court did not issue any conditional or passport surrender Order because the contemnor was sentenced to a term of imprisonment rather than home confinement.

[55] The attraction of the potential passport surrender order discussed in *Sussex Group* is of little to no assistance to the Plaintiffs here. In *Sussex Group*, the passport surrender order was contemplated as part of the potential sentence to be imposed on the contemnor and then only as part of a sentence that included a term of home confinement. This reflects that a passport surrender order may be appropriate as part of a penalty order or sentence after a penalty or sentencing hearing, but it does not support making such an Order as an interlocutory order pending the penalty or sentencing hearing.

[56] I find the reasoning in *Mendlowitz* as to the making of an interlocutory order in a contempt proceeding, as well as to the scope of orders that may be made pending a penalty or sentencing hearing, to be persuasive. The similarities in the regulatory language used in Rules 60.11(5)(d) and (f) of the ORCP and Rule 472(d) of the *Rules* suggest a procedural kinship that can support an interpretation of Rule 472(d) of the *Rules* in a manner consistent with the

interpretation of Rules 60.11(5)(d) and (f) of the ORCP in Ontario. The wording of Rule 472 reflects that the Court's discretion to impose a penalty upon a contemnor pursuant to Rule 472(d) is triggered by a judicial finding of contempt. Once that judicial finding of contempt has been made the Court has the discretion to impose a wide range of penalties as set out in Rule 472 (*Musqua . Bellegarde,* 2024 FCA 85 at para 17). Rule 472 does not suggest that the scope of the Court's discretion to make an order against a contemnor is strictly limited to making an order that is in the nature of a sentence that follows a penalty hearing.

[57] I find no regulatory language in Rule 472 that would preclude the Court from making an interlocutory penalty order against a contemnor pending a penalty hearing and the imposition of a sentence. In light of the principle that the *Rules* themselves are to be interpreted in a manner that is proactive in preventing, eliminating or minimizing conduct that causes delay and cost (*Viiv Healthcare Company v Gilead Sciences Canada, Inc.,* 2021 FCA 122 at para 18), I conclude that Rule 472 is sufficiently broad to enable Court to impose an interlocutory penalty against a contemnor without exhausting the Court's ability to render a sentence after a penalty hearing. Interlocutory orders to ensure that a contemnor appears before the Court to hear and present evidence and argument as to the penalty ultimately imposed upon them, including orders for the surrender of a passport, may be appropriate in appropriate circumstances would fall within the ambit of Rule 472(d). I therefore agree with the Plaintiffs Rule 472(d) of the *Rules* is sufficiently broad to include the making of an interlocutory order as sought here.

[58] Notwithstanding this conclusion, the Plaintiffs have not persuaded me that the Court should exercise its discretion to impose the more drastic form of the interlocutory penalty proposed by the Plaintiffs on the Personal Defendants.

[59] Despite the Plaintiffs' able argument that the Personal Defendants have a long record of disregarding and failing to obey this Court's orders such as the Interim Order, the costs orders made payable forthwith, and the orders compelling them to answer questions put to them on examinations for discovery, it remains that they have been found in contempt on a limited number of charges in connection with the Interim Order only. This is not to suggest that their conduct is to be considered lightly or that their alleged failures to comply with other orders should be minimized. They certainly should not. Nevertheless, the relief sought on this motion follows the findings of contempt in connection with the Interim Order only, and ought not to be predicated upon alleged failures to comply with other court orders for which they have not been charged with contempt pursuant to Rule 467 nor found in contempt.

[60] Antonio's social media posts from 2 or 3 years ago are reasonably explained as posts arising from holidays to visit family overseas and are not sufficient to establish on a balance of probabilities that Antonio is a flight risk today. Evidence that Marshall resides a significant portion of any given year in Thailand, combined with his admissions that he regularly resides in Thailand with his fiancée, does not persuade me that Marshall will not attend his penalty hearing or that he is a flight risk.

[61] The Personal Defendants have attended previous hearings and cross-examinations virtually and in person and the evidence adduced does not persuade me that it is reasonable or necessary to order them to surrender their passports for safekeeping well in advance of their penalty hearing to ensure their attendance.

[62] As noted above, the Personal Defendants informed the Court at the conclusion of the hearing of this motion that they did not object to delivering up their passports at the outset of the penalty hearing and not in advance to be held by this Court for safekeeping pending their penalty being determined by the penalty hearing judge. They objected to all of the other passport orders sought by the Plaintiffs.

[63] I take note of the Personal Defendants' part consent to the Order sought on this motion and an order will issue accordingly.

[64] The Plaintiffs have filed a public facing version of their motion materials in which motion material they argue is confidential has been removed. Some of the removed motion material has previously been ordered to be filed as confidential material. The confidentiality of that material does not need to be revisited here. The Plaintiffs seek to add Exhibits JM-1 to JM-4, inclusively, of Julie Morin's affidavit solemnly affirmed on January 28, 2025, to the material that is to be filed as confidential.

[65] I find that the issue of a confidentiality Order as it pertains to Exhibits JM-1 to JM-4, inclusively of Ms. Morin's affidavit is necessary to prevent a serious risk to the Plaintiffs'

commercial interest in the context of this litigation because alternative measures will not prevent the risk, and the salutary effects of the confidentiality order outweigh its deleterious effects. An confidentiality order with respect to Exhibits JM-1 to JM-4, inclusively of the affidavit of Ms. Julie Morin, solemnly affirmed on January 28, 2025, filed in support of this motion shall be issued. The Personal Defendants have access to this confidential information and shall keep the information confidential.

ORDER in T-1257-22

THIS COURT ORDERS that:

1. The Plaintiffs' motion is dismissed except as follows.
2. The Defendants Marshall Macciacchera and Antonio Macciacchera shall deliver their passports to the registry of the Federal Court by no later than 9:00 am on the first day of their penalty hearing. Subject to any further or other Order from the Court, their passports shall be filed with the Registry under seal until the delivery of the penalty judgment to be issued following their penalty hearing and all appeals therefrom are exhausted.
3. Exhibits JM-1 to JM-4, inclusively of the affidavit of Ms. Julie Morin, solemnly affirmed on January 28, 2025, filed in support of this motion, shall be kept confidential by the Court, and shall not be made available to the public.
4. No costs are awarded for this motion.

"Benoit M. Duchesne"
Case Management Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1257-22
STYLE OF CAUSE:	BELL MEDIA INC ET AL. v. MARSHALL MACCIACCHERA ET AL
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	FEBRUARY 14, 2025
ORDER AND REASONS:	DUCHESNE, J.
DATED:	MARCH 13, 2025

APPEARANCES:

Guillaume Lavoie Ste-Marie Christopher Guaiani	FOR THE PLAINTIFFS
Marshall Macciacchera Antonio Macciacchera	FOR THE DEFENDANTS (SELF-REPRESENTED)

SOLICITORS OF RECORD:

Smart & Biggar LLP Montréal, Québec	FOR THE PLAINTIFFS