

2012 ONSC 3691
Ontario Superior Court of Justice

Ahmed v. Ghuman

2012 CarswellOnt 9099, 2012 ONSC 3691, [2012] W.D.F.L. 5709, 102 W.C.B. (2d) 131, 219 A.C.W.S. (3d) 559

Sania Muneeb Ahmed, Applicant and Muneeb Ahmed Ghuman, Respondent

Czutrin J.

Heard: June 12, 2012
Judgment: July 20, 2012
Docket: FS-11-371125

Counsel: James S. Marks, for Applicant
Muneeb Ahmed Ghuman, for himself

Subject: Civil Practice and Procedure; Family

Headnote

Judges and courts --- Contempt of court — Contempt in family law matters — Miscellaneous

Motion by wife for finding of contempt against husband — Wife alleged that husband failed to provide financial disclosure pursuant to order — Motion dismissed — No order for contempt could be made — Wife incorrectly used Form 31 for her Notice of Motion — Husband conceded that he only substantially complied with order after he was served with motion for contempt.

Table of Authorities

Rules considered:

Family Law Rules, O. Reg. 114/99

R. 14(23) — considered

R. 31 — considered

Forms considered:

Family Law Rules, O. Reg. 114/99

Form 14 — referred to

Form 31 — referred to

Czutrin J.:

1 Although this motion commenced as a notice brought by the Applicant, wife, seeking a finding of contempt against the Respondent, husband, for failing to provide disclosure pursuant to Sanderson J.'s Order of December 1, 2011, returnable March 27, 2012, her counsel submitted that the main objective of the motion was to compel the disclosure, or alternatively, striking the Respondent's Answer, and not necessarily a contempt finding.

2 When the motion first came before me, I was concerned about how it was presented and the Respondent's ability to respond.

3 I allowed the Respondent to be questioned *viva-voce* concerning the disclosure.

4 By the time I heard submissions, the Respondent conceded that he only substantially complied with Sanderson J.'s December 1, 2011 Order (Sanderson J.'s Order) after he was served with the Motion for Contempt.

5 The Applicant seeks additional disclosure as per a proposed draft Order filed on June 12, 2012 submitting that this additional disclosure is part of paragraphs 5(nn) of Sanderson J.'s Order requiring the Respondent to respond to the Applicant's valuator's requests and supply documents or "indicate in writing why the request is not reasonable".

6 The Respondent maintains that some of these requests relate to documents after the date of the parties separation and would include some documentation that his valuator's, Deloitte, did not have when they prepared their report on his behalf.

7 Sanderson J.'s order set out 42 items of disclosure. The Applicant still seeks a contempt findings with respect to paragraphs 5(cc), (ff), (gg) and (oo) of Sanderson J.'s Order. Originally, the Applicant deposed that 33 items of disclosure remained outstanding. As I said, after being served with the motion, the Respondent substantially complied.

8 The Applicant's Notice of Motion was on Form 14. Rule 14 (23) deals with motions for failure to obey orders.

9 A contempt motion must be on Form 31 and must be served personally.

10 While no contempt finding can be made, given the failure of the Applicant to use Form 31. For a contempt finding rule 31 must be complied with, however, a rule 14 (23) remedy may still be available.

11 Paragraph 5(cc) of Justice Sanderson's Order requires the respondent to provide an answer (that is his explanation), not a document and while the Applicant may not be satisfied with the Respondent's answer given, his answer may be explored by questioning. Even if Rule 31 had been complied with, not being satisfied with the Respondent's answer cannot, in the circumstances satisfy a wilful non compliance with a clear and unambiguous order.

12 With respect to subparagraphs 5(ff), (gg) (oo), if these documents are in the possession, control of the Respondent or if he has the ability to obtain them (he claims no interest in Envision Studios Inc.), he should produce these documents and make the request of Envision Studios Inc., I if he does not have control or possession) and to provide evidence of his request and their response forthwith to the Applicant's counsel. If he provides no proof of request and response and if the disclosure is not made within 30 days and after questioning of the Respondent, the Applicant is at liberty to bring a motion for disclosure, on notice to Envision Studios Inc., and any other third party.

13 I note that Sanderson J.'s Order refers to Mr. Figov, an expert retained by the Applicant.

14 I also note that para. 5(nn) also deals with additional disclosure and the method to be used.

15 Therefore, with respect to the additional requests for disclosure outlined in the proposed draft Order of the Applicant, the Respondent shall, as Sanderson J.'s Order provided, comply and respond as per subparagraph 5(nn). For ease of reference, her Order of December 1, 2011 is attached to this endorsement as Appendix "A". Applicant's counsel submits that

while no motion was served for this specific Order, Sanderson J.'s subparagraph 5(nn) of the Order should have been complied with. The Respondent shall have thirty days from the release of this endorsement to provide why ant "request is not reasonable" or provide same. At the same time, he should return to Deloitte and show them the request and ask if the requests are reasonable to critique their report or to elevate the report from a "Calculation Valuation". Their response should be provided to Applicant's counsel. This issue may be returned thereafter if any dispute remains on this issue. I note that the Respondent maintains that he has satisfied 1(k), (l), if so, he is to provide reference to where this may be found or provide copies to Applicant's counsel.

16 With respect to requests for interim disbursements requested by the Applicant, the issue is adjourned pending a letter from Mr. Figov, the Applicant's expert, outlining his proposed work and estimate of fees.

17 I did not get to Respondent's motion for disclosure, as the motion took longer than anticipated, however I note that the Respondent seeks disclosure similar to the process envisioned by Sanderson J. Counsel for the Applicant is to respond to the request outlining her position and willingness to provide the disclosure.

18 I agree with Applicant's counsel that requests for joint bank statements, passports have been appropriately answered by responses in his letter of March 13, 2012.

19 The Applicant's suspicions concerning the Respondent's income and business interests are understandable. They however may be more fully explored as outlined by questioning and the completion of the disclosure issues as outlined by this endorsement.

20 The Motion for Contempt is dismissed.

21 The parties are to comply with this endorsement.

22 All Orders previously made remain.

23 The request for further disclosure and advance on equalization or disbursements are adjourned on seven days' notice as outlined in this endorsement and further and better material, before me, if I am available.

24 The Respondent is reminded that since he is a shareholder and officer of Envision Mobile Ltd., his income is not merely what is disclosed on his tax returns. The businesses and corporations in which he has an interest need to make ongoing disclosure so that his income may be determined. The Respondent has the obligation to satisfy the court as to his income. Similarly, he has the onus of satisfying the court as to his business interests and the values, as of the date of separation. The Applicant has the right to relevant and sufficient disclosure to explore the accuracy and reliability of the information provided.

25 Costs are reserved to me upon return of motion.

Appendix "A"



ONTARIO Superior Court of Justice Family Court Branch <i>(Name of Court)</i>		Court File Number FS-11-371125
at 393 University Avenue, Toronto, Ontario M5G 1E6 <i>(Court office address)</i>		Form 25: Order (General) <input checked="" type="checkbox"/> Temporary <input type="checkbox"/> Final
Applicant(s)		
<i>(Full legal name & address for service: street, number, municipality, postal code telephone & fax numbers & e-mail address (if any).)</i> Sania Muneeb Ahmed 3001 Finch Avenue West Suite 209 Toronto, Ontario M9M 3A9	<i>(Lawyer's name & address: street, number, municipality, postal code, telephone & fax numbers & e-mail address (if any).)</i> James S. Marks Barrister & Solicitor 1 Dundas Street West Suite 2702, Box 81 Toronto, Ontario M5G 1Z3 Tel: 416.929.6968 Fax: 416.929.7380 james@jamesmarks.ca	
Respondent(s)		
<i>(Full legal name & address for service: street, number, municipality, postal code telephone & fax numbers & e-mail address (if any).)</i> Muneeb Ahmed Ghuman 210 Victoria Street Suite 2508 Toronto, Ontario M5B 2R3	<i>(Lawyer's name & address: street, number, municipality, postal code, telephone & fax numbers & e-mail address (if any).)</i>	

The Honourable
 Madam Justice
 Sanderson

Judge (Print or type name)
 December 1, 2011
 Date of order

Graphic 1

The court heard a motion made by *(name of person or persons)*

the Applicant, Sania Muneeb Ahmed

The following persons were in court *(names of parties and lawyers in court)*

James Marks and Fareen Jamal for the Applicant, Sania Muneeb Ahmed, Sania Muneeb Ahmed, Muneeb Ahmed Ghuman acting for himself, Imran Bashir and Vasdev Chanchlani acting for themselves

The court received evidence and heard submissions on behalf of *(name or names)*

Sania Muneeb Ahmed, Muneeb Ahmed Ghuman, Imran Bashir and Vasdev Chanchlani

THE COURT ORDERS THAT:

1. The preservation Order of Kitley J. dated August 25, 2011 shall remain in force and effect.
2. The Respondent, Muneeb Ahmed Ghuman, is restrained from selling, transferring, pledging or otherwise depleting his shares and interest in Envision Mobile Ltd. until further order of this Court.
3. Until April 19, 2012, the Respondent, Muneeb Ahmed Ghuman, is restrained from selling, transferring, pledging, depleting, or encumbering the property municipally known as 200 Victoria Street, Suite 1006, Toronto, Ontario. As the loan to Mr. Bashir dated April 20, 2010 is payable as of April 19, 2012, either party is at liberty to apply to the court to vary this portion of this order.
4. The Respondent, Muneeb Ahmed Ghuman, must prepare and deliver an updated Affidavit of Documents.
5. If not already provided and after the non-disclosure agreement is signed, the Respondent, Muneeb Ahmed Ghuman,

shall provide:

- a. Interim financial statements for 2011 for Envision Mobile Ltd.
- b. Shareholders' Register for Envision Mobile Ltd.
- c. Copy of Envision Mobile Ltd.'s Minute Book.
- d. Proof of lenders exercising their options in Envision Mobile Ltd., including but not limited to proof of payment, copies of share certificates, shareholders' register.
- e. A copy of the original Commitment Letters dated November 26, 2007.
- f. An explanation of the business model of the business of Envision Mobile Ltd.
- g. An explanation of professional services and licence fees per the revenues of the income statement for Envision Mobile Ltd. for the period of 2007 to present.
- h. A list of Envision's customers and details of any contracts.
- i. Sample copy of a licence agreement for customers for Envision Mobile Ltd.
- j. How many customers does Envision Mobile Ltd. currently have and did it have as at the date of separation.
- k. How many potential new deals are under discussion for Envision Mobile Ltd. to the end of November 2011.
- l. An explanation of professional fees per the expenses in the income statement of Envision Mobile Ltd. from 2007 to present.
- m. An explanation and breakdown of wages and benefits per the expenses in the income statements for Envision Mobile Ltd. for 2007 to present.
- n. Details of the number of employees of Envision Mobile Ltd. and/or any other corporation affiliated with the Respondent by location.
- o. Details of the Respondent's personal bank accounts for 2007 to present
- p. Details of any licencing agreements between vendors and Envision Mobile Ltd. since inception.
- q. Details of who owns software that Envision Mobile Ltd. applications run on since inception.
- r. Copy of engagement letter as to Deloitte valuation.
- s. All documents and information provided to Deloitte in respect of their valuation of Envision Mobile Ltd.
- t. The name of the Respondent's employer while in Dubai and his position and documentation verifying his remuneration during this period of time.
- u. The Respondent use his best efforts to obtain all bank statements during the period the Respondent was employed in Dubai, and in particular all bank statements showing payment of his remuneration.
- v. All tax returns filed by the Respondent in both Canada and Dubai during the period he was employed in Dubai.
- w. The nature of the relationship between the Respondent and Vasdev Chanchlani and Imran Bashir (friends, previous associations, relationships, how they met, etc.).
- x. Copies of all personal bank statements, cancelled cheques and deposit slips for all bank and savings accounts of

which the Respondent was an account holder (whether jointly or individually) for the period from January 1, 2007 to present.

y. Copies of all personal credit card statements from January 1, 2007 to present.

z. Particulars of the safety deposit box at Scotiabank, including a copy of the document under which it was opened.

aa. Copies of all of the pages in the Respondent's Canadian and Pakistani passports from January 1, 2004 to August 5, 2011.

bb. A list of medications presently being taken by the Respondent and a summary of his medical condition.

cc. The Respondent's role in producing games for Envision Studios Inc. and his understanding if known of the ownership of Envision Studios Inc., and any benefit the Respondent has received from Envision Studios Inc.

dd. A copy of the original Promissory Note dated April 20, 2010.

ee. T2 corporate tax returns with all attached schedules and all Notices of Assessment for Envision Mobile Ltd. for the years 2007 - 2010.

ff. Invoices to Envision Studios Inc. and payment from Envision Studios Inc. to Envision Mobile Ltd.

gg. Documents and contracts relating to all games prepared by the Respondent and the team in Pakistan for sale to Apple Store.

hh. The respondent's personal tax returns with all Schedules and Notices of Assessment for the years 2007-2010.

ii. A copy of any application made by or for the Respondent within the last three years for a loan, line of credit, credit card or mortgage, including any statement of income or net worth provided by or for the Respondent.

jj. A detailed statement of all personal expenses paid by Envision Mobile Ltd. from January 1, 2007 to present.

kk. To the best of his knowledge, a statement showing a breakdown of all salaries, wages, management fees or other payments or benefits paid to, or on behalf of the Respondent and persons or corporations with whom the corporation does not deal at arm's length from 2007 to present.

ll. All documentation verifying the loan from the Respondent's father in May 2011, including but not limited to loan documents and receipt of funds.

mm. Copies of all statements of brokerage accounts in which the Respondent has an interest from January 1, 2007 to present.

nn. Once the Applicant's valuator, Harry Figov, makes a request for documents, the Respondent shall respond within 15 days and supply the documents or indicate in writing why the request is not reasonable.

oo. Personal and business e-mails relevant to the issues in this litigation once appropriate arrangements have been made regarding confidentiality.

6. The Applicant's valuator, Harry Figov, shall sign a non-disclosure agreement with Envision Mobile Ltd, immediately. The Agreement should provide that:

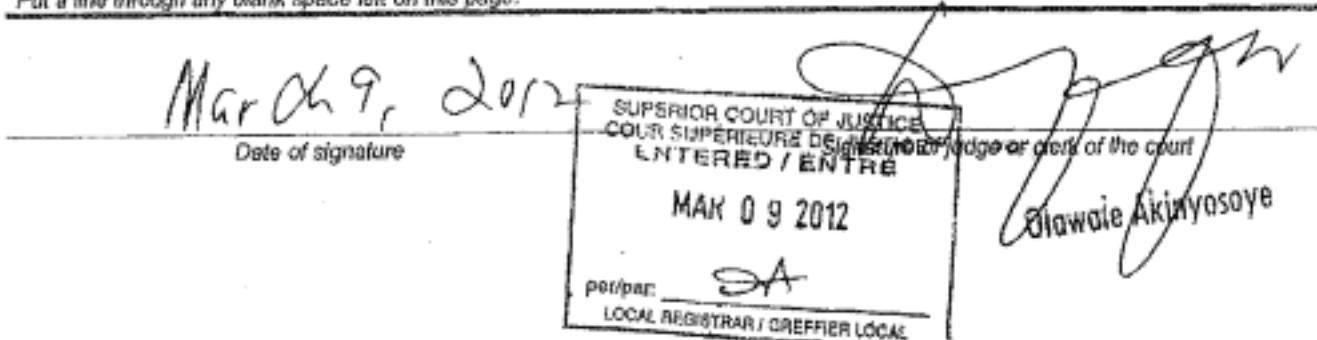
a. Any information disclosed to Mr. Marks, Sania Muneeb Ahmed, Harry Figov, and their respective firms shall not be used directly or indirectly for any purpose other than in connection with this litigation.

b. All information disclosed will be securely stored and the information will be protected against improper use.

- c. Should disclosure be requested of any of the information provided, Envision Mobile Ltd. and Muneeb Ahmed Ghuman and the lenders will be notified so they may seek an appropriate remedy.
- d. At the end of the litigation, information provided will be returned to Envision Mobile Ltd. and to Mr. Ghuman. No copies will be kept.

7. Counsel may make written submissions on the costs of this motion on or before December 14, 2011.

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