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— Franks & Zalev - This Week in Family Law

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Strike 9! Yeeeeerrrrr Out!!!

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***Boutin v. Boutin*, 2022 CarswellOnt 11944 (S.C.J.) — Ricchetti J. (penalty hearing)**

We apologize for the length of our comment on this case, but it is important, and deals with issues that all family lawyers involved in "catch-me-if-you-can-disclosure-game" cases should know about.

We've been told time and again that non-disclosure is the "cancer" of family law: *Leskun v. Leskun* (2006), 34 R.F.L. (6th) 1 (S.C.C.) at para. 34 and *Leitch v. Novac* (2020), 38 R.F.L. (8th) 1 (Ont. C.A.) at para. 44 (where the Court of Appeal noted that "nondisclosure metastasizes and impacts all participants in the family law process."). It frustrates a party's, and the court's, ability to determine support and equalization. It prevents lawyers from properly advising their clients. It forces those entitled — including children — to make do with less. And it clogs the already over-burdened family justice system with unnecessary motions and attendances to obtain and enforce disclosure Orders.

Routine remedies such as Orders striking pleadings, fines, and adverse inferences against the non-disclosing party just don't seem to solve the problem of obtaining the financial information needed to determine the issues. And, by that time, the recipient has spent thousands on legal fees (if not tens of thousands), is worn down, and is more likely to accept an improvident settlement — the very strategy of the sometimes successful non-disclosing party.

So, what is a court to do in the face of a recalcitrant party's repeated refusals to provide financial information in flagrant breach of Court Orders? *Boutin* offers some guidance in the form of the appointment of an investigative receiver.

Somewhat remarkably, Mr. and Mrs. Boutin were 77 and 72 at the time of separation. They were married for 47 years during which time Mr. Boutin built an extremely successful real estate development and construction business. At the time of separation, Mr. Boutin operated his business through multiple corporations and had extensive land holdings, owned personally and through several corporations.

Although Mr. Boutin was clearly very wealthy and successful, he refused, in the face of several Court Orders, to provide Mrs. Boutin with the disclosure she needed to determine her entitlements to an equalization payment and spousal support. Mr. Boutin's litigation strategy was clearly to delay and obfuscate, and make it as difficult and expensive as possible for Mrs. Boutin to prosecute her case. In the meantime, he used the delay to dissipate his assets even after a preservation Order was made. He even, brazenly, engaged the parties' adult son, Jimmy (who was estranged from Mrs. Boutin and worked for Mr. Boutin), to help him carry out his strategy and to shield his assets from Mrs. Boutin by, among other things, transferring assets to his son, his son's wife, and their children, which assets were then "loaned-back" to Mr. Boutin or his companies. (This brings to mind a saying about apples and trees.)

In November 2019, Mrs. Boutin commenced an Application for, among other things, equalization of net family property, sale of property and spousal support. She obtained an Order for disclosure on August 23, 2020. After the Application was commenced, the parties attended Court around 11 times, and Mrs. Boutin brought approximately eight motions — the majority of which were to obtain disclosure from Mr. Boutin. While Mr. Boutin's personal and corporate holdings were complicated, the disclosure Mrs. Boutin requested was standard — valuations of property, companies, and income. The steps Mrs. Boutin was forced to take to obtain disclosure are summarized as follows:

• On August 23, 2020, Mrs. Boutin obtained a disclosure Order. Mr. Boutin did not comply with it;

• On February 26, 2021, Mrs. Boutin brought a motion to strike Mr. Boutin's pleadings for failure to provide disclosure. Mr. Boutin was ordered to provide a proposed timetable for the delivery of the disclosure as well as additional information requested by Mrs. Boutin's expert;

• On May 25, 2021, Mrs. Boutin brought a second motion to strike Mr. Boutin's pleadings for failure to comply with the two previous Court Orders. Mr. Boutin was ordered to comply with the disclosure Orders by a specified deadline, or to provide an affidavit as to why he could not comply. The parties were ordered to attend before the Court to review Mr. Boutin's compliance;

• On August 11, 2021, the parties appeared before the Court as previously ordered, and the presiding judge commented that "crucial disclosure remained outstanding", that the disclosure that was provided was "in a disorganized and haphazard manner", and that Mr. Boutin was attempting to "renege on his commitment to provide new disclosure as describe [*sic*] in the February 26, 2021 and May 25, 2021 orders." Mr. Boutin was given 45 days to provide the outstanding disclosure. The Court reserved on the issue of striking Mr. Boutin's pleadings;

• On October 5, 2021, Mrs. Boutin brought a motion for a preservation Order and a contempt motion as a result of Mr. Boutin's continued failure to comply with the disclosure Orders;

• On November 18, 2021, Mrs. Boutin brought a long motion seeking extensive financial and other relief as a result of Mr. Boutin's continued lack of financial disclosure. The motion was scheduled for December 15, 2021. Mrs. Boutin's contempt motion and motion for a preservation Order were to be heard with this long motion;

• Although Mrs. Boutin's long/contempt motion was to have been heard on December 22, 2021, Justice Ricchetti adjourned it to January 19, 2022, to give time for the previous judge to release his decision on the issue of striking Mr. Boutin's pleadings. In the meantime, Justice Ricchetti granted Mrs. Boutin's request for a preservation Order over all of Mr. Boutin's property, whether under his direct or indirect control, which precluded Mr. Boutin from transferring monies and property between his corporations without Mrs. Boutin's consent;

• On December 31, 2021, Justice Barnes released his decision dismissing, without prejudice, Mrs. Boutin's May 25, 2021 motion to strike Mr. Boutin's pleadings, even though considerable disclosure remained outstanding, including business and income valuations which Mr. Boutin's counsel had advised the Court at the hearing of the motion in May would be provided within two months. Justice Barnes gave Mr. Boutin a further 45 days to comply with the disclosure Orders and to provide the expert reports;

• On January 19, 2022, Mrs. Boutin's long/contempt motion was heard before Justice Van Melle. Mr. Boutin argued that since the 45-day deadline in Justice Barnes' December 31, 2021 Order had not yet passed, he was not in default of a disclosure Order. This argument was rejected by Justice Van Melle, and Her Honour ordered Mr. Boutin to pay Mrs. Boutin $1,500,000 towards interim disbursements. Mr. Boutin was also ordered to pay Mrs. Boutin costs of around $160,000;

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> • The parties then attended a case management hearing before Justice McGee. Mrs. Boutin advised she would be bringing a motion for the appointment of a Receiver over the assets of Mr. Boutin. Justice McGee ordered the long/contempt motion to be heard on April 28, 2022, with a *viva voce* hearing;
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> • The parties attended before Justice Ricchetti on April 28, 2022 for the hearing of Mrs. Boutin's long/contempt motion. Justice Ricchetti ordered that the contempt motion (liability only) would be heard on May 11, 2022, and the receivership and other relief in the long motion would be heard on May 16, 2022.

By this point, Mr. Boutin had managed to avoid making full disclosure for over 2 $^{1}/_{2}$ years. (This is starting to sound like Helicopter-Parent-Lack-of-Resilience-Little-League-Baseball where no one ever strikes out.)

The Contempt Hearing

The contempt hearing took place over three days (that's right — three days of court resources) and involved evidence from Mrs. Boutin, Mr. Boutin, the parties' son, Jimmy, and the parties' experts.

Justice Ricchetti first provided a helpful summary of the law applicable to contempt motions. (For those that don't need the refresher, feel free to skip ahead!):

> [77] This motion alleges civil contempt. There are three essential requirements for a finding of civil contempt as set out by Blair J.A., in *Prescott-Russell Services for Children and Adults v. G. (N.) et al.* (2007), 82 O.R. (3d) 686 (C.A.):
>
> > [27] The criteria applicable to a contempt of court conclusion are settled law. A three-pronged test is required. First, the order that was breached must state *clearly and unequivocally* what should and should not be done. Secondly, the party who disobeys the order must do so *deliberately and wilfully*. Thirdly, the evidence must show contempt *beyond a reasonable doubt*. Any doubt must clearly be resolved in favour of the person or entity alleged to have breached the order.
>
> [78] Courts should only invoke its contempt powers in the clearest of cases and with the greatest of caution. See *R. v. Cohn* (1984), 48 O.R. (2d) 65 at 76 (C.A.). It is to be used sparingly and as a remedy of last resort where another adequate remedy is not available to seek to enforce this court's order.
>
> [79] Contempt findings in family law cases should be made only sparingly and as a last resort: *Hefky v. Hefky*, 2014 CarswellOnt 2986 (OCA).
>
> [80] In *Sweda Farms Ltd. (c.o.b. Best Choice Eggs) v. Ontario Egg Producers*, [2011] O.J. No. 3482, Justice Lauwers (as he then was) summarized the applicable principles and purpose of contempt proceedings:
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> > 18 In a civilized society governed by the rule of law, such as ours, people are expected to and do comply with court orders. But in the rare cases that they do not, the court must take action. As Pepall J. stated: "Once an order has been obtained, it is imperative that it be obeyed, that the public understand that it must be obeyed, and that judges have the will and ability to ensure compliance." There are many other similar expressions of judicial resolve. See, for example, the following statement of Blair J.: "No society which believes in a system of even-handed justice can permit its members to ignore, disobey, or defy its laws and its courts, orders at their whim because in their own particular view it is right to do so."
> >
> > 19 The nature of the contempt may vary with the context, with slightly different considerations taken into account. Cumming J. noted that the court's authority over court orders includes orders relating to commercial matters:
> >
> > > The deliberate failure to obey a court order strikes at the very heart of the administration of justice. This includes court orders relating to commercial matters as seen in the case at hand. If someone can simply ignore or finesse his way around a court order it will tend to add uncertainties and risks, with consequential inefficiencies

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> and additional costs, as well as causing unfairness, with consequential inequities and additional costs, to the commercial marketplace. Just as white collar crime is crime, white collar contempt is contempt.
>
> 20 I summarize briefly the relevant aspects of the law of civil contempt for failing to comply with a court order. Given the gravity of a finding that a person is in contempt and the exposure to penalties, the court should always exercise prudence and restraint before making such a finding.
>
> 21 The order "must state clearly and unequivocally what should and should not be done."It must be directive and not simply permissive. ***In terms of compliance, the alleged contemnor must have knowledge of the nature of the terms of the order, and, once having knowledge, must obey the order in letter and spirit with every diligence. A person who is subject to an order should not be permitted to "finesse" it or to "hide behind a restrictive and literal interpretation to circumvent the order and make a mockery of it and of the administration of justice."***
>
> 22 The alleged contemnor's conduct must objectively breach the order. There is also a mental or subjective element, often expressed in the formula that the disobedience must be deliberate and wilful, or wilfully blind, indifferent or reckless. ***Actionable disobedience includes the deliberate failure of a person to make inquiries in circumstances where suspicion is or should be aroused. Further, "[i]f a party feels that the injunction is over-broad, its recourse is to apply to have the terms narrowed or made more explicit, not to resort to self-help by ignoring some or all of the terms."***
>
> 23 There is some subtlety here. An element of the classical formulation is that "any act done or writing published calculated to obstruct or interfere with the due course of justice or the lawful process of the Courts is a contempt of Court." McIntyre J.A. noted, however, "The word 'calculated' as used here is not synonymous with the word 'intended'. The meaning it bears in this context is found in the Shorter Oxford English Dictionary as 'fitted, suited, apt'." ***Accordingly, the moving party does not need to prove that the alleged contemnor intended specifically to disobey the order: "The offence consists of the intentional doing of an act which is in fact prohibited by the order."*** The alleged contemnor need not be shown to exhibit "any particular aversion, abhorrence or disdain of the judicial system" despite the ordinary meaning of the word "contempt."
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> 24 ***The moving party must prove contempt at the highest threshold — that is, beyond a reasonable doubt.*** The quasi-criminal nature of the accusation engages principles and concepts more familiar in a criminal law context. For example, the onus of proof remains on the moving party throughout; it never shifts. Further, the alleged contemnor is not compelled to testify; but, if he chooses to testify, his evidence is subject to full scrutiny, and the court may draw adverse inferences from his evidence.
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> . . . . .
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> 26 Any reasonable doubt must be resolved in favour of the alleged contemnor. A reasonable doubt is not to be an imaginary or frivolous doubt, nor may it be based on sympathy or prejudice. It must be based on reason and common sense, logically derived from the evidence or absence of evidence. But the court recognizes that it is virtually impossible to prove anything to an absolute certainty and the moving party is not required to do so. [emphasis added by Justice Ricchetti]

[81] As stated above, it is unnecessary to prove that the alleged contemnor *intended* to put himself or herself in contempt. However, it must be established that he or she deliberately or wilfully or knowingly did some act which was designed to breach of a court order. See *R. v. Perkins* (1980), 51 C.C.C. (2d) 369 (B.C.C.A.); *R. v. Barker*, [1980] 4 W.W.R. 202 (Alta. C.A.); and *Rivard v. Proc. Gen. du Quebec*, [1984] R.D.J. 571 (Que. C.A.). Simply put, one does not need to have the intention to disobey, one must only have the intention to commit an act which is designed to result in the breach of the order. See *Carey v. Laiken*, 2015 SCC 17.

[82] A court's contempt powers cannot be used to enforce payment terms of an order. See Rule 26(4) of the *Family Law Rules*. While the court cannot find a person in contempt of the non-payment of a monetary order, all the circumstances,

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including repeated disregard for compliance with orders, monetary and otherwise, may lead to an inference being drawn that the alleged contemnor simply disregards the importance of compliance with court orders.

[83] Once having knowledge of the order, the party must obey the order in letter and spirit with every diligence. See *Canada Metal Co. Ltd. et al. v. Canadian Broadcasting Corp. et al. (No. 2)* (1974), 1974 CanLII 835 (ON SC), 4 O.R. (2d) 585 (H.C.) at p. 603, aff'd (1975), 1975 CanLII 544 (ON CA), 11 O.R. (2d) 167 (C.A.) and *iTrade Finance Inc. v Webworx Inc.* (2005), 13 C.P.C. (6th) 103, [2005] O.J. No. 1200 at para. 12 (Sup.Ct.)

[84] A person who is subject to an order should not be permitted to "finesse" it (see *Sussex Group v. 3933938 Canada Inc.*, [2003] O.J. No 2906 (Sup. Ct.) or "hide behind a restrictive and literal interpretation to circumvent the order and make a mockery of it and of the administration of justice." See *Zhang v. Chau*, (2003), 2003 CanLII 75292 (QC CA), 229 D.L.R. (4th) 298 at para. 32 (Qc. C.A.), leave to appeal dismissed [2003] S.C.C.A. No. 419. [emphasis in original]

While Mr. Boutin admitted that he had not fully complied with the disclosure Orders, he blamed others and a lack of financial resources for his non-compliance. He claimed the disclosure was in the control of third parties — like his son — who were asked to provide the disclosure, but did not do so. And he claimed he was "struggling financially" and had no income except his pension income to deal with the requests, notwithstanding that before separation he had provided a net worth statement to a bank to obtain financing showing a net worth of around $78,000,000. A minor problem . . .

Justice Ricchetti rejected Mr. Boutin's excuses and had no issue finding that he was in contempt of several disclosure Orders beyond a reasonable doubt. Not only were disclosure orders breached, but Mr. Boutin engaged in several clandestine and questionable transactions in breach of the preservation Order including:

- Mr. Boutin sold properties on the same day the preservation Order was made, which was deliberately hidden from Mrs. Boutin. Mr. Boutin's counsel later wrote to Mrs. Boutin's counsel requesting her consent to these transactions, which had already closed, without disclosing that the transactions had already closed;

- Mr. Boutin disposed of assets he owned personally or through his companies and redirected the proceeds to Jimmy or other companies he did not wholly own;

- Mr. Boutin transferred assets to Jimmy, some of which were later loaned back to Mr. Boutin or his companies by Jimmy, Jimmy's wife, or his children (who were three and five years old). There were millions of dollars in loans from Jimmy, his wife and his children to Mr. Boutin's companies, which Mr. Boutin claimed reduced his net worth. Incomplete disclosure was provided regarding the loans despite that Mr. Boutin was ordered to provide it;

- Mr. Boutin completed a corporate reorganization after separation which altered his shareholdings. Mr. Boutin argued, without evidence, that this was part of an estate freeze, though he could not explain who beneficially owned the frozen shares;

- While Jimmy was employed by Mr. Boutin's companies, he also invoiced the companies for approximately $100,000 for assisting Mr. Boutin to provide disclosure in the family court proceeding. The invoice was delivered and paid after the preservation Order was made; and

- Despite the preservation Order and following the bringing of Mrs. Boutin's contempt motion, a loan of approximately $850,000 was repaid by one of Mr. Boutin's companies to Jimmy's company.

Justice Ricchetti commented that:

[125] In my view, when all of the above facts and circumstances are considered, the only reasonable and rational conclusion is that Mr. Boutin acted in a deliberate manner to not comply with the Disclosure Orders so as to avoid disclosing his personal and financial information to Mrs. Boutin and to permit him time to deal with his personal and corporate assets in a manner that is prejudicial to the claims of Mrs. Boutin.

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So that was the first hurdle, cleared, for Mrs. Boutin and her counsel. A sentencing hearing was ordered to be heard with the receivership motion in June 2022, adjourned to August 2022.

The Sentencing Hearing and Receivership Motion

About three months later, the sentencing hearing to determine Mr. Boutin's penalty for contempt was heard. Justice Ricchetti first had to consider whether Mr. Boutin had "purged" his contempt by complying with the outstanding disclosure Orders or made best efforts to do so (see para. 49 of the reasons). While some additional information was provided, significant disclosure remained outstanding without explanation, and no explanation had been provided for the questionable transactions Justice Ricchetti identified on the contempt motion. Since Mr. Boutin had not purged his contempt, Justice Ricchetti had to determine the appropriate penalty.

Justice Ricchetti set out the relevant sentencing principles at paragraphs 50 to 54 of his decision. (Again, this is an ***excellent*** summary, but feel free to skip ahead if you know the test because you've recently been found in contempt.):

> [50] In *Blatherwick v. Blatherwick*, 2016 ONSC 4630, at para. 28, this court held that "the principal reasons for sentencing in civil contempt are to obtain compliance with court orders and to promote a society where the rule of law prevails."
>
> [51] The court must also be mindful of the primary objective of the *FLR*, which is to deal with cases justly. See *Stone* [*v. Stone*, 2019 CarswellOnt 8275 (S.C.J.)] at para. 20.
>
> [52] Deterrence is a sentencing goal to prevent further non-compliance by Mr. Boutin specifically and other parties involved in other family proceedings generally. Parties, in family proceedings and all civil proceedings, must know that there are serious consequences for the deliberate and flagrant disobedience of court orders and for failing to make complete and accurate financial disclosure.
>
> [53] Denunciation is also a sentencing goal to maintain confidence to parties in family law proceedings and the general public who use the justice system. The rule of law and the administration of justice is seriously undermined where parties can ignore statutory obligations or court orders.
>
> [54] Both goals are particularly important in family proceedings, where the failure to make complete and accurate financial disclosure undermines a just and fair resolution or court determination. And, of course, both goals are important in family proceedings to ensure a party does not take advantage of their failure to make financial disclosure, to hide and dispose of assets — with the intention of defeating or reducing the opposing party's claim. Unfortunately, this is too common a practice which the court must do its utmost to denounce and hopefully, discourage others to follow.

In the end, Justice Ricchetti ordered Mr. Boutin to pay Mrs. Boutin a penalty of $50,000. While Justice Ricchetti commented that this amount was "unusually low", it was the amount Mrs. Boutin had requested in her Notice of Motion, and he declined to increase the amount when she requested $500,000 at the sentencing hearing.

More interestingly, however, Justice Ricchetti accepted the invitation by Mrs. Boutin's counsel, and took the extraordinary step of appointing an *investigative receiver* (in contrast to a possessory receiver) over Mr. Boutin's affairs.

Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, authorizes a court to appoint a receiver where it is "just or convenient to do so". The receiver is an officer of the court and does not act for either party. A receiver must remain impartial and neutral. The goal of the appointment is to protect the parties' interests pending the resolution of the claims and to mitigate risk of non-recovery. A court can appoint a receiver to take control of and preserve a party's property — a "possessory receiver" — or to investigate and gather information about a person's financial affairs, a business, or analyze financial transactions, the goal of which is to furnish the Court with a report — an "investigative receiver".

A possessory receivership Order is comparable to a *Mareva* injunction, which preserves a defendant's assets as security for a potential future judgment. A possessory receiver can take control of a party's assets and even operate its business. An

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investigative receiver, generally speaking, does not have this authority or mandate. Its mandate is, for the most part, to gather financial information about a party (and potentially even related non-parties), and provide a report to the court and parties.

That said, both orders are extraordinary and intrusive remedies. In *Akagi v. Synergy Group (2000) Inc.*, 2015 CarswellOnt 7407 (C.A.), Justice Blair commented that these intrusive remedies "should be granted only after a careful balancing of the effect of such an order on all the parties and others who may be affected by the order." To that end, since these Orders are interlocutory and essentially in aid of execution before judgment, in the Superior Court decisions reviewed by Justice Blair, a party generally must satisfy the test for interlocutory injunctive relief set out in *RJR-MacDonald Inc. v. Canada (Attorney General)*, 1994 CarswellQue 120 (S.C.C.): (i) that there is a serious issue to be tried; (ii) that the creditor will suffer irreparable harm if the relief is not granted; and (iii) that the balance of convenience favours the creditor — the interlocutory order three-step.

We are left with one question at this stage. It is not entirely clear to us why a court must apply the *RJR-MacDonald* test for injunctive relief to the appointment of an *investigative* receiver. A mandatory or prohibitive injunction is an Order requiring a party to do or refrain from doing a certain act. It is a personally intrusive aid in execution before judgment, and it therefore makes sense to apply this test to a *possessory* receivership where control over a party's assets is essentially handed over to the receiver. But with an investigative receivership, assets are not preserved (though they may be "monitored") nor is a party restrained from using their assets; a third party is simply investigating financial affairs and dealings and reporting to the court. In *Akagi*, Justice Blair seems to acknowledge this, but did not resolve the issue:

> [91] An additional theme that is reflected in the authorities relates to the application of the three-part test set out by the Supreme Court of Canada in *RJR-MacDonald*, at paras. 47-48 . . . The test is often applied where the receivership order is purely interlocutory and ancillary to the pursuit of other relief claimed — where it is, in effect, execution before judgment.
>
> [92] Although the application judge applied the test at the time of the Comeback Hearing — concluding that it had been met here — **I need not dwell on whether that was so, or on the role of *RJR-MacDonald* in the receivership context generally, for the purposes of this appeal.** The Initial Order, Subsequent Orders, and Come-Back Hearing Order must be set aside in any event, in my view, for the reasons that follow. [emphasis added]

In any case, without much effort, Justice Ricchetti concluded that the test in *RJR-MacDonald* was met in this case. He also concluded that he had jurisdiction to appoint a receiver as part of the Court's broad powers to impose a penalty where a person is found to be in contempt and under the Court's inherent jurisdiction to control its own process:

> [79] The foundation for this contempt finding is anchored in Mr. Boutin's failure to make complete and accurate financial disclosure. In my view, a penalty of appointing a non-possessory Investigative Receiver with all the powers and rights that Mr. Boutin has, including his rights as owner, shareholder, director, officer, tax payer, debtor, and creditor, to seek, request, and obtain possession of all relevant financial documentation and information relating to the financial issues in this case for the purpose of preparing a report to this court regarding Mr. Boutin's assets, properties, financial transactions, and income from November 1, 2019, until the Receiver is discharged, is appropriate and necessary in the circumstances of this case (the "Investigative Receiver"). . . .

To that end, Justice Ricchetti identified the specific mandate of the investigative receiver as follows:

> • to investigate and report on the true and accurate financial circumstances of Mr. Boutin personally by reviewing all property owned legally or beneficially, directly or indirectly, by him as of the date of separation;
>
> • to review all of his dealings and financial transactions from the date of separation to the present;
>
> • to investigate and report on his true financial circumstances by reviewing and reporting on his income available for support purposes;
>
> • to investigate and report on the assets of Mr. Boutin's companies as of the date of separation, and all of its financial transactions and dealings since then;

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- to investigate and report on the details of all non-arm's length financial transactions and dealings by Mr. Boutin and/or his companies since the date of separation;

- to opine on the validity and enforceability of all of these non-arm's length transactions and what, if any property is due or payable to Mr. Boutin or his companies.

Justice Ricchetti granted the receiver complete access "with the power and authority that Mr. Boutin would have personally and in any corporate position, to provide documents and information in Mr. Boutin's power, possession and control as is reasonably needed by the Receiver to carry out its duties hereunder." (see para. 88). Notably, Justice Ricchetti also gave the receiver the authority to apply to the Court for an Order changing its role to a possessory receiver over all of Mr. Boutin's and his companies' property, if the receiver was met with obstruction or a lack of assistance.

To pay the receiver's $100,000 retainer, Justice Ricchetti ordered the sale of several properties owned by Mr. Boutin or his companies. Further proceeds from the sales were then to be applied to funds owing to Mrs. Boutin under outstanding Court Orders and for her costs. The remainder was to be paid into Court against which the receiver could request additional advances.

Given Mr. Boutin's extremely bad conduct and dubious unexplained transfers of assets to non-arm's length parties, it is not clear why Justice Ricchetti did not simply appoint a possessory receiver over Mr. Boutin's assets. Clearly the early preservation Order proved insufficient to stop Mr. Boutin from transferring assets, and Mr. Boutin still sold properties in breach of the Order. Mr. Boutin clearly does not care about Court Orders.

The answer may simply lie in the fact that Mrs. Boutin did not request the appointment of a possessory receiver in her Notice of Motion. While the Court could still have appointed a possessory receiver, Justice Ricchetti may have been concerned that a possessory receiver would have been too intrusive and possibly obstruct the affairs of the ongoing business, to the detriment of all. The issue at the heart of the contempt motion was the failure to provide financial disclosure and this could be addressed with the appointment of an investigative receiver, which is less extreme and intrusive than appointing a possessory receiver. Or, perhaps Mr. Boutin is just getting another strike.

The takeaway? Courts are becoming increasingly impatient with parties that purposefully default on their disclosure obligations. And they should be. In fact, sometimes courts seem to be all-too patient. But, then again, all situations are different — there is imperfect financial disclosure; and then there is delay, obfuscation, and general non-disclosure.

In any event, this case offers a stern warning to parties who refuse to provide financial disclosure and think that they can do it forever with impunity. At the request of a claimant and with the submissions of creative counsel, Justice Ricchetti crafted the necessary remedy.

And counsel must remember this: while the appointment here was used as a remedy on a contempt motion, a finding of contempt is not required for the appointment of a receiver. Such an appointment has been used in several civil cases absent a finding of contempt. See, for example: *DeGroote v. DC Entertainment Corp.*, 2013 CarswellOnt 15647 (S.C.J. [Commercial List]); *East Guardian SPC v. Mazur*, 2014 CarswellOnt 15935 (S.C.J.); and *Loblaw Brands Ltd. v. Thornton*, 2009 CarswellOnt 1588 (S.C.J.).

Furthermore, at least in Ontario, it has been held that Rule 1(8) of the *Family Law Rules*, O. Reg. 114/99 (penalty for failure to obey an order) is sufficiently broad to provide for the appointment of a receiver: see *Shouldice v. Shouldice* (2016), 78 R.F.L. (7th) 425 (Ont. S.C.J.). We're not ***100***% sure this is a correct use of Rule 1(8) (and we will be addressing this in an upcoming issue) — but, at least for now, it says what it says. See also *Bouchard v. Sgovio* (2021), 63 R.F.L. (8th) 257 (Ont. C.A.).

Obviously the appointment of a receiver is an expensive process and not for every case, but it is nice to have *Boutin* as a precedent should the need arise in one of "those" cases.

In this case, anyway, there may finally be some joy in Mudville as Mr. Boutin has struck out.

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