

Federal Court



Cour fédérale

Date: 20210924

Docket: T-1176-20

Citation: 2021 FC 996

Ottawa, Ontario, September 24, 2021

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

**WARNER BROS. ENTERTAINMENT INC.
AMAZON CONTENT SERVICES LLC
BELL MEDIA INC.
COLUMBIA PICTURES INDUSTRIES, INC.
DISNEY ENTERPRISES, INC.
NETFLIX WORLDWIDE
ENTERTAINMENT, LLC
PARAMOUNT PICTURES CORPORATION
SONY PICTURES TELEVISION INC.
UNIVERSAL CITY STUDIOS
PRODUCTIONS, LLLP**

Plaintiffs

and

**TYLER WHITE DBA BEAST IPTV
COLIN WRIGHT DBA BEAST IPTV**

Defendants

ORDER AND REASONS

I. Overview

[1] This Order arises from a contempt hearing held on September 20, 2021 to hear proof of the acts with which the Defendants, Tyler White and Colin Wright, were charged.

[2] As explained in a separate order, Mr. White entered a plea of guilt to the charges against him and the matter was adjourned to the sentencing phase of the contempt proceeding.

[3] With these reasons, I bring to a close the contempt proceeding brought against Mr. Wright.

II. Background

[4] The Plaintiffs are entertainment companies which, either directly or indirectly through a parent, affiliates or subsidiaries, are engaged in the production and distribution of motion pictures and television content, and own or control the copyright in Canada in certain cinematographic works [Plaintiffs Works].

[5] On October 2, 2020, the Plaintiffs commenced an action against the Defendants, alleging that they infringed the Plaintiffs Works by developing, operating, maintaining, promoting, and selling subscriptions to the “Beast IPTV Service.”

[6] On the same day, the Plaintiffs filed an *ex parte* motion for an interim injunction enjoining the Defendants from developing, operating, maintaining, promoting, providing

support, selling subscriptions for, or authorizing anyone to sell subscriptions for the Beast IPTV Service, or any other similar service. The Plaintiffs also sought orders requiring the Defendants to transfer custody of aspects of the online infrastructure of the Beast IPTV Service to an independent supervising solicitor [ISS], ordering the Defendants to disclose information relating to their financial assets and those of the Beast IPTV Service and prohibiting the Defendants from dissipating or removing assets out of this Court's jurisdiction.

[7] On November 17, 2020, Mr. Justice Yvan Roy allowed the Plaintiffs' motion and issued an interim order [Interim Order].

[8] On November 24, 2020, the Interim Order was personally served upon Mr. Wright at his residence at around 8:10 AM Eastern Standard Time [EST]. Shortly after, the Plaintiffs executed the Interim Order at Mr. Wright's residence between approximately 8:00 AM and 12:00 PM EST.

[9] At the time of service of the Interim Order and during its execution, the terms of the Interim Order, including those relating to Mr. Wright's right to consult with counsel, his obligations under the Order, the potential of an adverse inference being drawn in case of non-compliance, and the risk of contempt for non-compliance with the Order were explained to Mr. Wright by the ISS, Mr. David Lipkus, and by the Plaintiffs' counsel, Mr. Ryan Evans.

[10] Mr. Wright was given the opportunity to ask questions about the Interim Order and to seek advice from his own counsel before deciding whether to comply with the Interim Order.

Mr. Wright was informed that failure to comply with the provisions of the Interim Order would put him in breach of its terms and subject him to facing a motion for contempt of Court, which could result in a fine and/or imprisonment.

[11] There is no dispute that Mr. Wright failed to comply with the provisions of the Interim Order, as explained further below.

[12] The Interim Order was to remain valid for a period of not more than fourteen (14) days, within such time the Plaintiffs were required to bring a motion to review the execution of the Order and consider any application to convert the interim relief into interlocutory relief.

[13] Following a request by Defendants' counsel to adjourn the review motion which was scheduled for December 7, 2020, Justice Roy issued an order on December 3, 2020, which stated that the Interim Order would remain valid and be continued until a judgment of the Court on the review motion had been rendered.

[14] The review motion was heard by Justice Roy on December 18, 2020.

[15] On January 14, 2021, Justice Roy issued a judgment granting an interlocutory injunction [Judgment] and an order requiring the Defendants to appear before a judge of this Court for a contempt hearing and be prepared to hear proof of the acts with which they were charged

[Contempt Order]: *Warner Bros. Entertainment Inc. v. White (Beast IPTV)*, 2021 FC 53 2021 FC 53.

III. Charges against Mr. Wright

[16] The charges against the Defendants are set out at paragraph 5 of the Contempt Order. Mr. Wright is specifically charged with:

- i. disobeying paragraph 2B) of the Interim Order, thereby constituting contempt of Court under Rule 466(1)(b) of the *Federal Courts Rules*, by refusing to disclose any of the technical information about the Beast IPTV Service as required at paragraphs 2B) of the Interim Order, and by instead falsely claiming to have no knowledge of the Beast IPTV Service;
- ii. disobeying paragraphs 2I), 3A) and 3B)i. of the Interim Order, thereby constituting contempt of Court under Rule 466(1)(b) of the *Federal Courts Rules*, by communicating with third parties with his phone or other electronic devices during the execution of the Interim Order in order to interfere with the execution of the Interim Order and conceal evidence, notably by instructing third parties to delete websites, infrastructure or evidence related to this proceeding;
- iii. disobeying paragraph 3B)i. of the Interim Order, thereby constituting contempt of Court under Rule 466(1)(b) of the *Federal Courts Rules*, by communicating with Mr. White and with third parties regarding the existence of this proceeding and of the Interim Order within forty-eight (48) hours after the service of the Interim Order upon him;

- iv. disobeying paragraphs 2J) and 2K) of the Interim Order, thereby constituting contempt of Court under Rule 466(1)(b) of the *Federal Courts Rules*, by refusing to disclose to the independent supervising solicitor and the Plaintiffs' solicitor any of the financial information, as required at paragraphs 2J) of the Interim Order, and by refusing to provide any consent to authorize financial institutions or other service providers to make such disclosures, as required at paragraphs 2K) of the Interim Order;
- v. disobeying paragraph 2A) of the Interim Order, thereby constituting contempt of Court under Rule 466(1)(b) of the *Federal Courts Rules*, by:
 - 1. developing, operating, maintaining, promoting, providing support, selling subscriptions, or authorizing anyone to sell subscriptions to unauthorized IPTV services, including the Beast IPTV Service;
 - 2. developing, maintaining, updating, hosting, distributing, promoting or selling any software application that provides access to unauthorized IPTV services, including the Beast IPTV Service;
 - 3. operating, maintaining, updating, hosting, promoting or selling access to the Internet domains and subdomains through unauthorized IPTV services, including the Beast IPTV Service;

by themselves or by their employees, representatives and agents, or by any company, partnership, trust, entity, or person under his authority or control, or with which he is associated or affiliated, and by failing to take

the necessary steps to ensure that such persons would cease these activities after service of the Interim Order upon him.

[17] On January 25, 2021, Mr. Wright served and filed a Notice of Appeal of the Contempt Order to the Federal Court of Appeal, bearing Court File No. A-25-21.

[18] No stay was sought by Mr. Wright pending the appeal.

IV. Pre-Hearing Matters

[19] By Order dated April 27, 2021, the liability phase of the contempt proceeding was scheduled to be heard at a special sitting commencing on September 20, 2021.

[20] On June 3, 2021, the parties were ordered to provide a proposed agenda for a pre-hearing conference convened to take place with counsel on September 13, 2021.

[21] By letter dated September 3, 2021, counsel for the Plaintiffs advised that the parties had conferred and agreed on a proposed agenda for the conference. The Court was informed that Mr. White would be entering a plea of guilt with respect to the charges of contempt made against him. As for Mr. Wright, the Plaintiffs advised that they no longer intended to present evidence in furtherance of the charges of contempt as they pertained to him and respectfully recommended that the charges be dismissed, on consent of the parties.

[22] During the pre-hearing conference held on September 13, 2021, an Agreed Statement of Facts between the Plaintiffs and Mr. Wright was formally accepted for filing. The document reads in part as follows:

15. During the execution of the Interim Order, Mr. Wright did not disclose to the ISS or to the Plaintiffs the registrar accounts or corresponding login credentials for the Beast IPTV Domains or any other domain or subdomain.

16. During the execution of the Interim Order, Mr. Wright did not disclose to the ISS or to the Plaintiffs any login information/credentials for the Beast IPTV billing systems.

17. During the execution of the Interim Order, Mr. Wright provided to the ISS a list of certain, but not all, of those assets that were owned, or directly or indirectly controlled by him (the "Partial Asset List"), on the condition that the list be left under seal with the ISS and not disclosed to the Plaintiffs pending further Order of the Court, or an agreement between the parties.

[23] In light of the agreed facts, which clearly establish that Mr. Wright breached some of the provisions of the Interim Order, Mr. Wright was ordered to appear at the contempt hearing by videoconference to explain why the contempt proceeding should be dismissed against him. It is important to bear in mind that civil contempt of court rests on the power of the Court to uphold its dignity and process and transcends the dispute between the parties or their personal interests.

V. Apology to the Court

[24] At the hearing, counsel for Mr. Wright advised that his client wished to offer an apology to the Court. Before being allowed to do so, Mr. Wright was asked if the apology was being made voluntarily and without any request or consideration from the Plaintiffs. Mr. Wright confirmed that he was neither compelled nor induced by anyone to apologize to the Court and

was doing so of his own free will. He then proceeded to offer what I can only describe as an abject apology to the Court.

[25] Mr. Wright stated that he understood the importance of Court orders. He freely admitted that he breached the Interim Order, adding that he had learned his lesson and would not do it again. Mr. Wright maintained that he did not intentionally mean to disrespect the Court. He explained that on the morning the Interim Order was being executed, he was taken by surprise. He immediately reached out to a lawyer to obtain legal advice. He later took steps to cure the breach and cooperated fully with the Plaintiffs by providing full disclosure of financial documents, as well as login credentials to the Beast IPTV Service. Mr. Wright added that he entered into a consent judgment with the Plaintiffs and would also be withdrawing his appeal to the Federal Court of Appeal.

[26] Counsel for Mr. Wright submitted that there were a number of factors mitigating in favour of dismissing the charges against his client. First, Mr. Wright offered a full apology and took responsibility for his actions. Second, he made good faith efforts to comply with the Interim Order after consulting a lawyer. Third, he cured the breach by cooperating fully with the Plaintiffs.

VI. Analysis

[27] As I advised Mr. Wright at the hearing, the Court expects its orders and judgments to be complied with and takes very seriously any breach. While Mr. Wright attempted to excuse his failure to comply with the Interim Order by suggesting he first needed to seek legal advice, I note

that he was fully informed by the ISS of the terms of the Order, his obligations under the Order, the potential of an adverse inference being drawn in case of non-compliance, as well as the risk of contempt for non-compliance with the Order.

[28] It remains that, on a scale of seriousness, the particular breach with which Mr. Wright was charged is at the lower end of the scale and pales in comparison to the breach committed by Mr. White. There is no indication that Mr. Wright intentionally meant to disrespect the Court or that the Plaintiffs were prejudiced by the delay in obtaining the required information. Moreover, as acknowledged by the Plaintiffs, the breach has since been cured. This is coupled with what I consider to be a contrite and sincere apology and a genuine exhibition of remorse. In *R. v. Martin*, 1985 CanLII 3618 (ON CA), at p. 253, the Court confirmed that a sincere apology may be sufficient to purge contempt.

[29] The main goal of contempt proceedings is to ensure compliance with court orders, which is fundamental to the rule of law and the fair and proper administration of justice. I am satisfied that the goal has been met in this case.

[30] In my view, no useful purpose would be served by putting the Plaintiffs to great expense to prosecute a contempt proceeding they have no interest in pursuing. In light of the mitigating factors cited above as well as the consent of the parties, I conclude that dismissal of the charges against Mr. Wright would not bring the administration of justice into disrepute or otherwise be contrary to the public interest.

VII. Conclusion

[31] For the above reasons, I accede to the parties' request to dismiss the charges of contempt against Mr. Wright, without costs.

ORDER IN T-1176-20

THIS COURT ORDERS that:

The charges for which the Defendant, Colin Wright, was cited for contempt in the Order of Mr. Justice Yvan Roy dated January 14, 2021 are hereby dismissed, without costs.

“Roger R. Lafrenière”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1176-20

STYLE OF CAUSE: WARNER BROS. ENTERTAINMENT INC., AMAZON CONTENT SERVICES LLC, BELL MEDIA INC., COLUMBIA PICTURES INDUSTRIES, INC., DISNEY ENTERPRISES, INC., NETFLIX WORLDWIDE ENTERTAINMENT, LLC, PARAMOUNT PICTURES CORPORATION, SONY PICTURES TELEVISION INC., UNIVERSAL CITY STUDIOS PRODUCTIONS, LLLP v TYLER WHITE DBA BEAST IPTV, COLIN WRIGHT DBA BEAST IPTV

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: SEPTEMBER 20, 2021

ORDER AND REASONS: LAFRENIÈRE J.

DATED: SEPTEMBER 24, 2021

APPEARANCES:

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