

Federal Court



Cour fédérale

**Date: 20190304**

**Docket: T-1887-17**

**Citation: 2019 FC 32**

**Halifax, Nova Scotia, March 4, 2019**

**PRESENT: The Honourable Madam Justice Heneghan**

**BETWEEN:**

**LOUIS VUITTON MALLETIER S.A.;  
LOUIS VUITTON CANADA, INC.,  
CELINE; CHRISTIAN DIOR COUTURE, S.A.;  
GIVENCHY S.A.**

**Plaintiffs**

**and**

**AUDREY WANG AKA NINI WANG  
AKA NI YANG;  
JOHN DOE AKA "MICHAEL",  
CANADA ROYAL IMPORT & EXPORT CO.  
LTD.; COLLECTIVELY DOING BUSINESS  
AS NI FASHION, NIYANGBAZZA AND NI  
BAZZA, AND LIAN TONG COURIER  
SERVICE**

**Defendants**

**PUBLIC ORDER AND REASONS**

**(Identical to the Confidential Judgment and Reasons issued on January 9, 2019)**

I. **INTRODUCTION**

[1] By Order dated December 14, 2017, Ms. Audrey (Nini) Wang (the “Defendant”) was ordered to appear before the Federal Court at Vancouver on Tuesday, December 19, 2017 to show cause why she should not be held in contempt in respect of an Order that was issued on December 12, 2017.

II. **BACKGROUND**

[2] On December 6, 2017, a Statement of Claim was issued on behalf of Louis Vuitton Malletier S.A.; Louis Vuitton Canada, Inc., Celine; Christian Dior Couture, S.A.; Givenchy S.A. (the “Plaintiffs”), seeking injunctive and other relief against a number of parties including the Defendant. The Statement of Claim was issued on a confidential basis.

[3] Pursuant to a Notice of Motion filed on December 6, 2017, an Anton Piller Order (“the Order”) was issued on December 12, 2017.

[4] Among other things, the Order required the Defendant to immediately deliver up all electronic devices and cell phones to Mr. Paul Smith, the Independent Supervising Solicitor appointed by the Order.

[5] Upon an *ex parte* motion filed on December 14, 2017, the Plaintiffs sought an order requiring the Defendant to show cause why she should not be held in contempt, pursuant to the *Federal Courts Rules*, SOR/ 98- 106 ( the “Rules”).

[6] An order was issued on December 14, 2017. That order provided in part as follows:

2. Wang shall be prepared to hear proof at the Contempt Hearing of the act with which she is charged, namely that: Wang disobeyed the Order of the Court dated December 12, 2017, specifically paragraph 19 thereof, by failing to provide her phone to the Independent Supervising Solicitor, Paul Smith, after being duly served with the December 12, 2017 Order and it being explained to her that she was required to turn over her phone in accordance with the December 12, 2017 Order.

3. Ms. Wang shall be prepared to present at the Contempt Hearing any defence that she may have to the allegations of contempt set out in paragraph 2.

4. Ms. Wang shall bring with her and be prepared to deliver all personal and business phones to the Independent Supervising Solicitor in compliance with the Order of the Court dated December 12, 2017, subject to further Order of the Court.

[7] The show cause hearing proceeded on December 19, 2017. Immediately prior to the introduction of evidence, the Defendant passed over her cell phone to Mr. Smith, the Independent Supervising Solicitor.

[8] Two witnesses were called on behalf of the Plaintiffs, that is Mr. Smith and Dr. Wenhui Zhong.

[9] Mr. Smith testified that he attended at premises situated at Unit 1775, 4311 Hazelbridge Way in Richmond, British Columbia on December 13, 2017 and served the Defendant with a copy of the Order. A copy of that Order was introduced as Exhibit A1.

[10] Mr. Smith testified that he explained the terms of the Order to the Defendant and advised her that he was not there to provide legal advice, his role was as an Independent person to supervise execution of the Order.

[11] Mr. Smith also testified that he advised the Defendant to obtain legal advice and she was given a list of names and telephone numbers of lawyers to call. A telephone was also available for her to use. According to Mr. Smith, the Defendant indicated that she did not wish to call a lawyer at that time.

[12] Dr. Zhong is an interpreter. He speaks English, Mandarin and Cantonese. He was present at the Defendant's retail premises when the Order was served by Mr. Smith upon the Defendant. He testified that he was present for the purpose of providing assistance, not to provide complete and continuous interpretation.

[13] Dr. Zhong testified that in his "estimation", the Defendant was sufficiently fluent in English to be capable of communicating in that language most of the time.

[14] Dr. Zhong testified that he translated part, but not all, of the Order. When he did translate, he said that he directly translated what was said by Mr. Smith.

[15] The Defendant chose to testify. In the course of her evidence, she acknowledged the service of the Order upon her by Mr. Smith. She said that she was served on December 14, 2017. The Defendant testified that she understood most, but not all of the contents of the Order.

[16] In the course of her evidence, the Defendant admitted that she did not surrender her cell phone when asked to do so by Mr. Smith. She admitted that she left the premises and went outside and made a phone call, while Mr. Smith and his team were on the premises.

[17] The Defendant acknowledged the advice from Mr. Smith that she could call a lawyer. She acknowledged receipt from Ms. McDonald of a list of lawyers whom she could call. She said that she did not call any of those lawyers because she did not “have a trust about this”, that is the list of lawyers.

[18] The Defendant did not consult a lawyer on the day she was served with the Order but did retain Counsel prior to her attendance for the “show cause” hearing on December 19, 2017.

[19] The Defendant, in her evidence, said that she understood the request from Mr. Smith to turn over her cell phone to him.

[20] The Defendant testified that she did not give her phone to Mr. Smith and that she took her phone to the bathroom to make a call. She testified that she thought the search of her premises was then over.

[21] The Defendant also testified that she understood she was at liberty to refuse to turn over her cell phone but there would be consequences if she followed that course of conduct. She testified that she did not turn over the cell phone when first requested to do so because she did “not know” who Mr. Smith was, she did not “recognize” the Order and she needed a “connection” to a lawyer and to her mother.

### III. DISCUSSION AND DISPOSITION

[22] The issue in this motion is whether the Plaintiffs have met the burden of showing that the Defendant is in contempt of an order of this Court, specifically the Order dated December 12, 2017.

[23] Contempt proceedings in this Court are governed by Rules 466 to 472. Rules 466(b), 467(1), (3) and (4), 469 and 470(2) are relevant to the present matter and provide as follows:

<p>466. Subject to rule 467, a person is guilty of contempt of Court who</p> <p>...</p> <p>(b) disobeys a process or order of the Court;</p>	<p>466. Sous réserve de la règle 467, est coupable d'outrage au tribunal quiconque :</p> <p>...</p> <p>b) désobéit à un moyen de contrainte ou à une ordonnance de la Cour;</p>
<p>467. (1) Subject to rule 468, before a person may be found in contempt of Court, the person alleged to be in contempt shall be served with an order, made on the motion of a person who has an interest in the proceeding or at the Court's own initiative, requiring the person alleged to be in contempt</p>	<p>467. (1) Sous réserve de la règle 468, avant qu'une personne puisse être reconnue coupable d'outrage au tribunal, une ordonnance, rendue sur requête d'une personne ayant un intérêt dans l'instance ou sur l'initiative de la Cour, doit lui être signifiée. Cette ordonnance lui enjoint :</p>

(a) to appear before a judge at a time and place stipulated in the order;

a) de comparaître devant un juge aux date, heure et lieu précisés;

(b) to be prepared to hear proof of the act with which the person is charged, which shall be described in the order with sufficient particularity to enable the person to know the nature of the case against the person; and

b) d'être prête à entendre la preuve de l'acte qui lui est reproché, dont une description suffisamment détaillée est donnée pour lui permettre de connaître la nature des accusations portées contre elle;

(c) to be prepared to present any defence that the person may have.

c) d'être prête à présenter une défense.

(3) An order may be made under subsection (1) if the Court is satisfied that there is a prima facie case that contempt has been committed.

(3) La Cour peut rendre l'ordonnance visée au paragraphe (1) si elle est d'avis qu'il existe une preuve prima facie de l'outrage reproché.

(4) An order under subsection (1) shall be personally served, together with any supporting documents, unless otherwise ordered by the Court.

(4) Sauf ordonnance contraire de la Cour, l'ordonnance visée au paragraphe (1) et les documents à l'appui sont signifiés à personne.

469. A finding of contempt shall be based on proof beyond a reasonable doubt.

469. La déclaration de culpabilité dans le cas d'outrage au tribunal est fondée sur une preuve hors de tout doute raisonnable.

470. (2) A person alleged to be in contempt may not be compelled to testify.

470.(2) La personne à qui l'outrage au tribunal est reproché ne peut être contrainte à témoigner.

[24] In *Lyons Partnership, L.P. v. MacGregor (2000)*, 5 C.P.R. (4th) 157 (F.C.T.D.), the Court held that the Rules codify the common law of contempt. The moving party must prove

beyond a reasonable doubt that the alleged contemnor had personal knowledge of the Court order; that the alleged contemnor was a primary actor, expressly or impliedly, in the conduct at issue; and that the alleged contemnor possessed the necessary *mens rea*.

[25] The Plaintiffs bear the burden of showing, first, that the Defendant had notice of the Order of December 12, 2017 and second, that she had notice of the show cause hearing of December 19, 2017. I refer to the decision in *Pintea v. Johns*, [2017] 1 S.C.R. 470.

[26] On the basis of the evidence of Mr. Smith and Dr. Zhong, I am satisfied that the Defendant was personally served with the Order on December 13, 2017, at the business premises in Richmond.

[27] The Defendant appeared, with Counsel, at the show cause hearing on December 19, 2017. Her presence satisfies me that she was aware of that hearing, although no affidavit of service was filed at the hearing respecting service upon her of the show cause order.

[28] Have the Plaintiffs shown that the Defendant is in breach of the Order and in Contempt of Court?

[29] The Defendant alone was the subject of paragraphs 2, 3 and 4 of the Order, as recited above.



[30] The Defendant was the principal actor; she had control of her cell phone and she failed to deliver it to the Independent Supervising Solicitor as required by the Order.

[31] By her failure to comply, the Defendant disobeyed the Order. In her testimony, the Defendant acknowledged that did not turn over her cell phone when served with the Order.

[32] I am satisfied that the Defendant understood the requirements to deliver her cell phone and that she chose not to do so.

[33] The actions of the Defendant, in my opinion, satisfy the legal requirements of *mens rea*.

[34] In these circumstances, I am satisfied that the Plaintiffs have met the legal test set out in *Lyons Partnership, supra*. They have met their burden of showing, beyond a reasonable doubt, that the Defendant is in contempt of an order of this Court. An Order will issue accordingly.

[35] Rule 472 addresses the penalties that may be imposed after a finding of contempt and provides as follows:

**Penalty**

472 Where a person is found to be in contempt, a judge may order that

(a) the person be imprisoned for a period of less than five years or until the person complies with the order;

**Peine**

472 Lorsqu'une personne est reconnue coupable d'outrage au tribunal, le juge peut ordonner :

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.

[36] According to the decision in *Canadian Human Rights Commission v. Winnicki* ( 2007), 359 N.R. 101 ( F.C.A. ), the Federal Court of Appeal instructed that a person found in contempt of Court should be given the opportunity to make submissions prior to the imposition of a penalty.

[37] Although Counsel for the Defendant made some submissions on penalty at the hearing of December 19, 2017, I consider it appropriate that a hearing about the penalty will take place shortly and a Direction will issue in that regard.

[38] Costs will be addressed at that time.

**ORDER**

**THIS COURT ORDERS THAT:**

1. The Defendant, Audrey Wang aka Nini Wang aka Ni Wang is in contempt of the Court Order dated December 12, 2017.
2. A Direction will issue concerning the date for a sentencing hearing.

“E. Heneghan”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1887-17

**STYLE OF CAUSE:** LOUIS VUITTON MALLETTIER S.A. AND OTHERS V.  
AUDREY WANG AKA NINI WANG ET AL

**PLACE OF HEARING:** VANCOUVER, BRITISH COLUMBIA

**DATE OF HEARING:** DECEMBER 19, 2017

**ORDER AND REASONS:** HENEGHAN J.

**DATED:** MARCH 4, 2019

**APPEARANCES:**

Karen MacDonald  
Mathew Brechtel

FOR THE PLAINTIFFS

Christopher M. Dafoe

FOR THE DEFENDANT  
(AUDREY (NINI) WANG)

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