

Date: 20080111

Docket: T-508-07

Citation: 2008 FC 38

Ottawa, Ontario, January 11, 2008

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

MINISTER OF NATIONAL REVENUE

Applicant

and

**GREGORY CLYDE HUMPHREYS OPERATING AS
WAYFARER TECHNOLOGIES**

Respondent

REASONS FOR ORDER AND ORDER

[1] These are the reasons for my oral judgment rendered from the bench on January 9, 2008 in which I found Mr. Humphreys to be in contempt of the Order of Justice Gibson dated May 10, 2007 and my Order dated November 6, 2007.

[2] The present proceedings were a continuation of contempt proceedings heard on November 5, 2007 in a Show Cause Hearing with respect to contempt of Justice Gibson's Order.

[3] On May 10, 2007, Justice Gibson issued an order requiring the Respondent to comply with a Requirement for Information issued July 15, 2005 in regards to a GST audit. The pertinent term of that Order is:

THIS COURT ORDERS pursuant to section 231.7 of the ITA and section 289.1 of the ETA that the Respondent shall comply with the Requirement issued by the Minister and shall forthwith, and in any event not later than 30 days after being served with this Order, provide the Information and Documents to a Canada Revenue Agency officer acting under the authority conferred by the ITA and ETA or other person designated by the Commissioner of Customs and Revenue.

[4] The Applicant alleged that the Respondent had failed to provide the Information and Documents ordered despite the fact that he had been present for the Compliance Hearing, consented to the Compliance Order and was personally served with that Order.

[5] On November 5, 2007, a Show Cause Hearing was held at which the Respondent was present and gave evidence. That Hearing was adjourned to be set on request of either party and Mr. Humphreys was given a last chance to provide the Information and Documents on terms to which he consented. The specific term was:

Gregory Clyde Humphreys shall at or about 09:00 a.m. on Friday, November 16, 2007 at his residence at 328 Weddenburn Road S.W., Calgary deliver up to representatives of the Minister the records ordered by Justice Gibson to be provided in his May 10, 2007 Order.

[6] In his evidence on November 5, 2007 Mr. Humphreys testified that he had the required documents delivered to the Hays Building in Calgary (the federal building at which the responsible officials were located) on June 20, 2007. He says, and the evidence confirms this, that the building suffered a flood. He produced photographs of the container which he claimed held the relevant documents and which was claimed to be damaged, possibly in the flood. The container was returned on August 28, 2007. Mr. Humphreys took no further steps to deliver the Information and Documents.

[7] At the Hearing of January 9, 2008, the Applicant's witnesses testified that they went to Mr. Humphreys' home pursuant to the November 6, 2007 Order. Prior to doing so, Jason Sheppard, the Canada Revenue Agency (CRA) official responsible for the file, picked up his voicemail message from Mr. Humphreys in which Mr. Humphreys said that he was en route from British Columbia and expected to make the scheduled 9:00 a.m. meeting.

[8] When Mr. Sheppard and his associate Mr. Wong arrived at Mr. Humphreys' home, there was a note indicating that the door bell did not work and that visitors were to knock and/or call Mr. Humphreys' cell phone. Mr. Sheppard did just that, with no response, and waited a half-hour. Messrs. Sheppard and Wong left briefly and returned about 10:00 a.m. and repeated the process without success. Neither witness saw nor heard anything (not even the cell phone ringing) to suggest that Mr. Humphreys was in the house despite their efforts to discern his presence.

[9] Except for this Contempt Hearing, neither official has heard from Mr. Humphreys since November 16, 2007 with regard to delivery of the Information and Documents.

[10] Mr. Humphreys' evidence is that after arriving at his home at 8:00 a.m. on November 16, 2007 to meet with CRA officials, he suffered some sort of spell, and fell down on the floor where he remained immobile from Friday to Sunday. He also says that he heard Mr. Sheppard, that he called out for help and accuses Mr. Sheppard of wilfully ignoring his pleas for assistance.

[11] Mr. Humphreys also claims that subsequent to November 16, 2007, he called Mr. Sheppard on two occasions, left his voicemail message and the calls were not returned. Mr. Sheppard denies ever having received these calls.

[12] Mr. Humphreys, in addition to testifying, was permitted leeway from the usual rules to file an affidavit in which he attaches what he claims is evidence to support his medical condition. The evidence is a prescription of April 30, 2007 for Tylenol 3, a doctor's note of December 3, 2007 saying that he is ill and unable to work (despite the fact that Mr. Humphreys had not been working for some time before the note), a requisition for blood tests, a requisition for a CT scan and some articles from the Brain Injury Resource Center.

I. LEGAL PRINCIPLES

[13] The *Federal Courts Rules* R. 466(b) provides that a person is guilty of contempt who disobeys an order of the Court.

[14] The principles to be applied when considering whether to find a person in contempt of court are:

1. The party alleging contempt has the burden of proving such contempt, and the person alleged to be in contempt (the contemnor) need not present evidence to the Court.
2. The constituent elements of contempt must be proven beyond a reasonable doubt.
3. In the case of disobedience of an order of the Court, the elements which must be established are the existence of the Court order, knowledge of the order by the alleged contemnor, and knowing disobedience of the order.
4. Unless the Court otherwise directs, evidence to establish contempt shall be given orally.

[15] The fundamental purpose of the Court's contempt power is to ensure respect for the judicial process so as, in turn, to secure the proper and effective functioning of the judicial system. In short, the rule of law requires that court orders be complied with.

II. FINDINGS

[16] This case turns on credibility as to Mr. Humphreys' story which is largely uncorroborated and is in direct conflict on many important points to that of the CRA officials. Where there is direct conflict, such as whether phone calls were made or whether pleas for assistance were ignored, I accept the evidence of the CRA officials whose evidence was clear, unwavering and dispassionate.

[17] With respect to the balance of Mr. Humphreys' evidence, I find him not to be credible. I have observed his manner of presentation and responding to questions, his retreat from categorical statements when confronted, his obvious attempts to evoke sympathy such as plainly leaving his pill bottle on the counsel table, and the inconsistency in his evidence (for example, his ability to drive frequently to British Columbia to see his mother and his claim that he has such trouble seeing that he cannot put the required documents together). This inconsistency is compounded by his ability to put together a detailed affidavit when his interests to do so were at stake.

[18] On the basis of the evidence, I am satisfied beyond a reasonable doubt that:

1. Mr. Humphreys was aware of both Court Orders.
2. While I am sceptical of Mr. Humphrey' evidence that he delivered documents to CRA in June 2007, even by his own admission he knew in early September that CRA did not have the information required. He took no steps to ensure compliance with Justice Gibson's Order.
3. His description of events on November 16, 2007 which prevented him from delivering the documents is not credible.
4. He did not then or even to date comply with the Court's Order of November 16, 2007.
5. Mr. Humphreys has knowingly and deliberately engaged in a course of conduct designed to (and has largely succeeded in) frustrating the requirement to produce the Information and Documents so ordered by this Court.

[19] Mr. Humphreys' contempt is a continuing one and is not an isolated incident. It is arguable that each day of knowing refusal to comply is a contempt. Mr. Humphreys acknowledges that he has the Information and Documents at home, yet has made no effort to deliver them even in the case of this continuation of these contempt proceedings.

III. CONCLUSION

[20] Therefore, I find Mr. Humphreys knowingly and deliberately in contempt of the Court's Orders of May 10 and November 6, 2007.

[21] The Court of Appeal has made it clear in *Warman v. Winnicki*, 2007 FCA 52, that contempt proceedings have at least two distinct phases. The first is the finding of contempt and if so found, a further hearing on sentencing.

[22] A sentencing hearing will be scheduled at the earliest opportunity, by videoconference if necessary. The Respondent should be prepared to address the issues of possible incarceration, penalty and costs.

[23] The Respondent continues to be under Court order to produce the Information and Documents which are to be produced forthwith.

ORDER

THIS COURT ORDERS that:

1. Gregory Clyde Humphreys is found to be in contempt of this Court's Orders of May 10, 2007 and November 6, 2007.
2. A sentencing hearing is to be scheduled at the earliest date possible. The Applicant is to take out an Order fixing the date for the sentencing hearing.
3. The Applicant is to effect service of these Reasons for Order and Order and any Scheduling Order by personal service on Mr. Humphreys or substituted service by leaving a copy of such documents at his residence at 328 Weddenburn Road S.E., Calgary, Alberta.

"Michael L. Phelan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-508-07

STYLE OF CAUSE: MINISTER OF NATIONAL REVENUE

and

GREGORY CLYDE HUMPHREYS OPERATING AS
WAYFARER TECHNOLOGIES

PLACE OF HEARING: Calgary, Alberta

DATE OF HEARING: January 9, 2008

**REASONS FOR ORDER
AND ORDER:** Phelan J.

DATED: January 11, 2008

APPEARANCES:

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| Ms. Margaret McCabe | FOR THE APPLICANT |
| Mr. Gregory Humphreys | FOR THE RESPONDENT |

SOLICITORS OF RECORD:

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| MR. JOHN H. SIMS, Q.C. Deputy Attorney General of Canada Edmonton, Alberta | FOR THE APPLICANT |
| SELF-REPRESENTED | FOR THE RESPONDENT |