

Federal Court



Cour fédérale

Date: 20110127

Docket: T-38-09

Citation: 2011 FC 99

Toronto, Ontario, January 27, 2011

PRESENT: The Honourable Mr. Justice Rennie

BETWEEN:

SETANTA SPORTS CANADA LIMITED

Plaintiff

and

**1053007 ONTARIO INC. CARRYING ON
BUSINESS AS ENDZONE BAR & GRILL,
AND JUDY KOROPATNICKI,
1014490 ONTARIO INC. CARRYING ON
BUSINESS AS THE LAZY LIZARD,
AND ANTHONY FALOVO AND GARY
MICHAEL KIS,
1456440 ONTARIO INC. CARRYING ON
BUSINESS AS THE HORNY TOAD PATIO
BAR,
AND CHRISTOPHER SHAH,
1397868 ONTARIO LIMITED, CARRYING ON
BUSINESS AS MOE'S TAP & EATERY,
AND BOSILJKA RASETA,
1681736 ONTARIO INC. CARRYING ON
BUSINESS AS HOOPS SPORTS BAR & GRILL
AND
KAMAL ARANJI THAMALAR
SUBRAMANIAM,
7550804 CANADA CORP., CARRYING ON
BUSINESS AS HOOPS SPORTS BAR & GRILL
AND
SINNATHAMBY VIJAYAKUMAR
1556845 ONTARIO LTD. CARRYING ON**

**BUSINESS AS CHARLIE FITZWHISKEY'S
TAP AND EATERY, AND SAMI R. AKIKI,
2041642 ONTARIO INC. CARRYING ON
BUSINESS AS JAY'S SPORTS BAR AND
GRILL,
AND OMER AHMAD ABDULLAH AND
MONEER KEWANKIS,
1545937 ONTARIO INC. CARRYING ON
BUSINESS AS THE HONEST LAWYER
RESTAURANTAINMENT, AND SHELLEY
SANDWELL AND GREGORY PETER
THOMAS SANDWELL,
1677195 ONTARIO INC. CARRYING ON
BUSINESS AS CHE BURRITO & LOUNGE,
SCOTT MCDONALD AND ROBERT KURUC,
1541104 ONTARIO LIMITED CARRYING ON
BUSINESS AS BOOMERS SPORTS BAR
AND RANIA MISHEAL**

**Defendants
(Ontario)**

and

**0750278 BC LTD. CARRYING ON BUSINESS
AS CHARLIE HAMILTON'S
AND TEJINDER BANSAL**

**Defendants
(British
Columbia)**

and

**SHOOTERS SPORTS INCORPORATED
CARRYING ON BUSINESS AS SHOOTERS
RESTAURANT & LOUNGE, AND SUSAN
SANGSTER**

**Defendants
(Nova Scotia)**

and

**ROCKY'S SPORTS BAR INC. CARRYING
ON BUSINESS AS ROCKY'S LOUNGE,
AND SAVERIO ROCCA AND
JACQUELINE ROCCA,
AQUARIUS LTD. CARRYING ON
BUSINESS AS AQUARIUS PUB,**

**AND F. ANDREW SIMPSON,
DON MATT ENTERPRISES LIMITED
CARRYING ON BUSINESS AS THE
BUCCANEERS PUB, AND PATRICK
MICHAEL VALARDO
AND BRIAN NEVELLE VALARDO,
JOSEPH PETERS CARRYING ON BUSINESS
AS KA-BOOM'S RESTAURANT LOUNGE,
624834 N.B. INC. CARRYING ON BUSINESS
AS KA-BOOM'S RESTAURANT LOUNGE,
AND SUSAN PORTER-EADLE
AND,
F. EUGENE O'CONNOR CARRYING ON
BUSINESS AS GROVE LOUNGE**

**Defendants
(New
Brunswick)**

REASONS FOR ORDER AND ORDER

[1] This motion, brought by the plaintiff, and heard in Toronto on January 17, 2011, is for a finding of contempt against the defendants 1681736 Ontario Inc., carrying on business as Hoops Sports Bar & Grill, Kamal Aranjji Thamalar Subramaniam, 7550804 Canada Corp. carrying on business as Hoops Bar & Grill, and Sinnathamby Vijayakumar (the Defendants).

[2] The plaintiff (Setanta), is an internationally recognized distributor of specialty sports programming including soccer, rugby and cricket. It makes these programs available to commercial establishments on a pay for view basis, as well as through its own sports channel in Canada.

[3] Setanta has copyright and distribution licences and all associated intellectual property rights to distribute Ultimate Fighting Championships (UFC) in Canada. It also has the right to take proceedings in Canada to protect its interests.

[4] In January 2009, Setanta commenced an action against the named defendants, 1681736 Ontario Ltd., carrying on business as Hoops Sports Bar & Grill and Kamal Aranji Thamalar Subramaniam, the director and officer of the corporation. It also obtained an interlocutory injunction from Barnes J. on January 27, 2009, enjoining these defendants from further exhibition of Setanta events.

[5] On December 15, 2009, Setanta obtained default judgment and a permanent injunction from Harrington J.. A writ of seizure and sale was filed with the Sheriff of the City of Toronto on January 13, 2010, and thereafter registered in the Registry Office, Land Titles Division.

[6] The Defendants have been served with copies of the Court's January 27, 2009 Order. Knowledge of this Order and its terms have been acknowledged by counsel purporting to act on behalf of the Defendants as well as by an individual purporting to be manager of Hoops Sports Bar & Grill.

[7] On May 5, 2010, the plaintiff sought to enforce the Write of Seizure and Sale. The Sheriff attended the Defendants' premises and seized \$3,010.00. A week later, the plaintiff received calls from a party who said he was the new manager of Hoops Sports Bar & Grill. Further attempts to enforce the January 27, 2009 Order were thwarted when, on August 16, 2010, the Sheriff advised the plaintiff that he could not enforce the Order since the business operated by 16817636 Ontario Ltd. was now operated by 7550804 Canada Corp.

[8] I am satisfied that this purported conveyance was to avoid compliance with the January 27, 2009 Order of the Court and defeat its effect. The conveyance allegedly took place less than a week after the Sheriff's first attendance at the property. The address of the Directors and Officers of the purchaser is nearly identical to that of the vendor and the business also continues to trade as "Hoops Sports Bar & Grill". Moreover, to accept that a *bona fide* transaction occurred would require the Court to believe that a *bona fide* purchase for value overlooked, or was prepared to overlook, the Writ of Seizure and Sale issued and registered against the vendor corporation.

[9] In this context, the plaintiff brings this motion for contempt. No defendants appeared at this motion, nor at any prior hearing, although properly served with notice in all instances.

[10] The Court heard via voice testimony that subsequent to the injunction Order of Barnes J. the Defendants have, on at least three occasions, shown Setanta product at Hoops Sports Bar & Grill. Employees and agents of Setanta testified of their attendance on May 23, 2009, November 21, 2009 and March 21, 2010, at Hoops Sports Bar & Grill, wherein they viewed UFC Setanta programming being displayed to customers.

[11] The Court heard from three witnesses; José Lacruz, Ken Pannuzio and Tim Jackson. These witnesses testified that they attended Hoops Sports Bar & Grill on various occasions subsequent to service of the subject Order of this Court and observed Setanta programming being displayed to customers. In addition, photographs of posters advertising that Hoops Sports Bar & Grill would be showing Setanta programs were entered into evidence. The evidence before this Court also clearly demonstrates unauthorized and unlawful exhibition of Setanta's programming having been

displayed, at Hoops Sports Bar & Grill, on upwards of 35 television screens to audiences ranging between 80-200 people.

[12] I am satisfied, beyond a reasonable doubt, on the basis of the oral testimony and photographs received in evidence that the Defendants have breached the injunction Order of Barnes J. in an open and flagrant manner, and that the purported transfer of ownership to a new numbered company was effected to thwart enforcement of that Order.

[13] Although the evidence required to prove contempt is equivalent to a criminal case, and proof must be beyond a reasonable doubt, *mens rea* is not an element that must be proven. It is not necessary to show that the defendant is intentionally contumacious though contumacious conduct may be a mitigating factor when it comes to penalty.

[14] In so far as the individual defendants are concerned, where a company is found in contempt, aiding and abetting officers may be in contempt: *Telus Mobility v Telecommunications Workers Union* 2002 FCT 656, [2002] FCJ No 872.

[15] The Court is satisfied, beyond a reasonable doubt, that the Defendants did, subsequent to the January 27, 2009 Order of this Court, display, in clear violation of the terms of that Order, Setanta programming.

[16] The Court is also satisfied that the Defendants attempted to avoid enforcement of the Orders of this Court by purporting to convey the assets of 1681736 Ontario Inc. to 7550804 Canada Corp.

This purported transfer, which took place on May 12, 2010, one week after the attempt by the Sheriff to enforce the injunction Order issued by Barnes J. Hoops Sports Bar & Grill continues to operate under the same name and to conduct the same manner of business as under its previous ownership. The address of the sole officer and director of 7550804 Canada Corp. is 63 Wandering Trail, Scarborough, Ontario, presumably a dwelling adjacent to, or across from, 65 Wandering Trail, which is the listed address of the directors of 1681736 Ontario Ltd. Based on these facts, the Court concludes that this incorporation was not *bona fide* and was done for the sole purpose of circumventing the Order of this Court and interfering with the enforcement of such Order, by the Sheriff.

[17] In this case, given the deliberate and repeated violation by the Defendants of the subject Order, and the aggravating factor of the fraudulent conveyance, an appropriate penalty is \$25,000.00 against each defendant corporation, and a \$10,000.00 fine for the individual defendants Kamal Aranji Thamalar Subramaniam, and Sinnathamby Vijayakumar. Costs to the plaintiff are awarded on a solicitor-client basis in the amount of \$18,233.18, payable within 5 days of the date of this Order.

ORDER

WHEREAS UPON motion heard in Toronto on the 25th day of October, 2010, the Honourable Mr. Justice Campbell ordered that the defendants 1681736 Ontario Inc. carrying on business as HOOPS SPORTS BAR & GRILL and KAMAL ARANJI THAMALAR SUBRAMANIAM attend before this Court on January 17, 2011 at 9:30 a. m. at the general sittings in Toronto to hear proof of contempt made against them by the Plaintiff (Setanta) that contrary to the Orders of the Honourable Justice Barnes, dated January 27, 2009 and the Honourable Justice Harrington, dated December 15, 2009, they and their officers, directors, employees, agents, assigns, servants, or persons acting under their instructions, or persons having knowledge did knowingly breach these orders and decoded, decrypted or downloaded via the Internet, for exhibition, viewing, or public showing and did publicly show and exhibit Ultimate Fighting Championship (“UFC”) pay-per-view (PPV) events in their commercial establishment without authorization from the Plaintiff and also showed events exclusively made available by Setanta in Canada to commercial establishments without the written authorization and consent of the Plaintiff, and contrary to the terms of the order of the Honourable Justice Barnes, dated January 27, 2009 failed to disclose the source, description and means by which they were able to gain access to, show, exhibit or download via the Internet any UFC PPV events, or any other matches or events licensed to or broadcast by Setanta and the means used to intercept, decode, decrypt or download via the Internet such events and to provide all such information, including cable, or satellite receiver serial identification numbers, satellite receiver card identification numbers, Universal Resource Locator (URL) address as well as the Internet Service Provider (ISP) used to gain access to such broadcasts, telecasts, or signal feed and to provide all such information to the Plaintiff within five days of service of the order on 1681736 Ontario Inc., carrying on business as HOOPS SPORTS BAR AND GRILL and

KAMAL ARANJI THAMALAR SUBRAMANIAM as well as failed to preserve all records and information, including on any devices related to the exhibitions of UFC PPV events used to gain access to the Plaintiff's proprietary events and failed to provide such data to the Plaintiff's legal representative in accordance with the Order of the Honourable Justice Barnes, dated January 27, 2009; and acted in concert with 7550804 Canada Corp. and Sinnathamby Vijayakumar to interfere with the orderly administration of justice, or to impair the authority or dignity of the Court by their actions in conveying, assigning or otherwise transferring the assets of the business operating as Hoops Sports Bar and Grill subsequent to the issuance of the Writ of Seizure and Sale dated January 13, 2010 against 1681736 Ontario Inc. and KAMAL ARANJI THAMALAR SUBRAMANIAM in an attempt to avoid enforcement of the processes of this court.

AND WHEREAS UPON motion heard in Toronto on the 25th day of October, 2010, the Honourable Mr. Justice Campbell ordered that the defendants 7550804 Canada Corp., carrying on business as HOOPS SPORTS BAR & GRILL and SINNATHAMBY VIJAYAKUMAR attend before this Court on January 17, 2011 at 9:30 a. m. at the general sittings in Toronto to hear proof of contempt made against them by the Plaintiff that as the successors to the defendants 1681736 Ontario Inc. and KAMAL ARANJI THAMALAR SUBRAMANIAM, carrying on business as HOOPS SPORTS BAR AND GRILL located at 4207 Keele Street, North York Ontario, and are also liable for the breaches of the Orders of the Honourable Justice Barnes, dated January 27, 2009 and the Honourable Justice Harrington, dated December 15, 2009 as alleged against 1681736 Ontario Inc. and KAMAL ARANJI THAMALAR SUBRAMANIAM and, that with knowledge of the orders, 7550804 Canada Corp., carrying on business as HOOPS SPORTS BAR & GRILL and SINNATHAMBY VIJAYAKUMAR, acted in concert with 1681736 Ontario Inc. and KAMAL

ARANJI THAMALAR SUBRAMANIAM to disobey these orders as set out above and to interfere with the orderly administration of justice, or to impair the authority or dignity of the Court by their actions in conveying, assigning or otherwise transferring the assets of the business operating as Hoops Sports Bar and Grill subsequent to the issuance of the Writ of Seizure and Sale dated January 13, 2010 in an attempt to avoid enforcement of the processes of this court.

AND UPON a hearing taking place on January 17, 2011 at the general settings in Toronto, wherein the Plaintiff and its witnesses attended to provide proof of contempt against 1681736 Ontario Inc. carrying on business HOOPS SPORTS BAR AND GRILL, KAMAL ARANJI THAMALAR SUBRAMANIAM, 7550804 Canada Corp. and Sinnathamby Vijayakumar, no appearing on behalf of these defendants despite their being served with the order of the Honourable Justice Campbell dated October 28, 2010, in accordance with the provisions of that Order.

AND UPON hearing the evidence from the Plaintiff and its witnesses and the submissions of counsel for the Plaintiff and upon a finding by this court by written reasons that the Plaintiff has provided proof beyond a reasonable doubt that 1681736 Ontario Inc. carrying on business HOOPS SPORTS BAR AND GRILL, KAMAL ARANJITH AMALAR SUBRAMANIAM, 7550804 Canada Corp. and Sinnathamby Vijayakumar are guilty of contempt and have breached the Orders of the Honourable Justice Barnes dated January 27, 2009 and the Honourable Justice Harrington dated December 15, 2009, as well as having interfered with the orderly administration of justice, impaired the authority and dignity of the Court by their actions in conveying, assigning or otherwise transferring the assets of the business operating as Hoops Sports Bar and Grill subsequent to the

issuance of these orders and the Writ of Seizure and Sale dated January 13, 2010 in an attempt to avoid enforcement of the processes of this court.

THIS COURT ORDERS that:

1. The Plaintiff shall be and is hereby permitted to enforce the orders of this court in this action, including any order for costs herein, as well as the judgment of the Honourable Justice Harrington dated December 15, 2009 against all of the assets of 7550804 Canada Corp. and Sinnathamby Vijayakumar and the Sheriff in and for the Province of Ontario shall provide such assistance as may be required to conduct such enforcement so as to satisfy the judgment and orders of this court.
2. In the event that any of the assets 1681736 Ontario Inc. carrying on business as HOOPS SPORTS BAR AND GRILL, KAMAL ARANJI THAMALAR SUBRAMANIAM, also known as KAMALARANJITH SUBRAMANIAM, 7550804 Canada Corp. and Sinnathamby Vijayakumar, have been, in any manner or form, transferred, conveyed, assigned, charged, encumbered, or pledged, subsequent to the filing of the Writ of Seizure and Sale against 1681736 Ontario Inc. carrying on business HOOPS SPORTS BAR AND GRILL, KAMAL ARANJI THAMALAR SUBRAMANIAM with the Sheriff for the City of Toronto on January 25th, 2010, any such transfer, conveyance, assignment, charge, encumbrance, or pledge is of no force or effect as against the Plaintiff and the Sheriff in and for the Province of Ontario shall be permitted and is hereby directed to enforce the Orders and Judgment of this court accordingly.

3. In the event that any legitimate arms length 3rd party may be affected by paragraph 2 of this order, such party may apply to this court, on not less than 4 days notice to the Plaintiff, to seek directions.
4. Leave to issue a Writ of Sequestration shall be and is hereby granted permitting a bailiff in and for the Province of Ontario to attend at the business premises of the Defendants 1681736 Ontario Inc. and 7550804 Canada Corp., and in accordance with paragraph 2 herein, against any party which as of the time of enforcement purports to operate the business of Hoops Sports Bar and Grill located at 4207 Keele Street, Toronto, Ontario, to seize any and all satellite receiving equipment, computer terminals, cable boxes, televisions and audio-video equipment including any related equipment used to exhibit or show the Plaintiff's proprietary events, which items may also be disposed of for the purposes of satisfaction of the orders and judgment of this Court.
5. 1681736 Ontario Inc. carrying on business as HOOPS SPORTS BAR AND GRILL shall pay of fine of \$25,000.
6. KAMAL ARANJI THAMALAR SUBRAMANIAM, also known as KAMALARANJITH SUBRAMANIAM shall pay a fine of \$10,000.
7. 7550804 Canada Corp. shall pay a fine of \$25,000.

8. Sinnathamby Vijayakumar shall pay a fine of \$10,000.

9. The Plaintiff shall have its costs of the motions and hearing on a on a solicitor and client basis fixed in the amount of \$18,223.00, payable by the defendants 1681736 Ontario Inc. carrying on business as HOOPS SPORTS BAR AND GRILL, KAMAL ARANJI THAMALAR SUBRAMANIAM, also known as KAMALARANJITH SUBRAMANIAM, 7550804 Canada Corp. and Sinnathamby Vijayakumar jointly and severally.

“Donald J. Rennie”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-38-09

STYLE OF CAUSE: SETANTA SPORTS CANADA LIMITED v. 1053007
ONTARIO INC. et al

PLACE OF HEARING: Toronto

DATE OF HEARING: January 17, 2011

REASONS FOR JUDGMENT: RENNIE J.

DATED: January 27, 2011

APPEARANCES:

Mr. Kevin W. Fisher

FOR THE PLAINTIFF

No one appearing.

FOR THE DEFENDANTS

SOLICITORS OF RECORD:

Basman Smith LLP
Toronto, Ontario

FOR THE PLAINTIFF

None.

FOR THE DEFENDANTS