



No. S-218212
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

RAKESH DHUNNA

PLAINTIFF

AND:

STEPHEN BROWN

DEFENDANT

NOTICE OF APPLICATION

Name of applicant: Rakesh Dhunna, the Plaintiff/Judgment Creditor

To: Stephen Brown, the Defendant/Judgment Debtor

And to: Bank of Montreal

And to: TD Canada Trust

TAKE NOTICE that an application will be made by the applicant to the presiding judge or associate judge at the courthouse at 800 Smithe Street, Vancouver, British Columbia, on **April 17, 2024** at 9:45 am for the orders set out in Part 1 below.

The applicant estimates that the application will take 30 minutes.

This matter is within the jurisdiction of an associate judge.

Part 1: ORDERS SOUGHT

1. Bank of Montreal produce and deliver to the solicitors for Rakesh Dhunna on or before May 3, 2024 all monthly statements for the following bank accounts from April 1, 2021 to date:

- (a) Brown Family Investments Ltd., Bank of Montreal account No. 0778 1992533;
 - (b) Crank Media Inc., Bank of Montreal account No. 0778 1990597;
 - (c) Bank of Montreal account No. 20152 001 3788650;
 - (d) Bank of Montreal account No. 0778-1990-757 3587; and
 - (e) Bank of Montreal account No. 0778-1992-533 3587.
2. Bank of Montreal produce and deliver to the solicitors for Rakesh Dhunna on or before May 3, 2024 documents available to it which identify the source of funds deposited to Brown Family Investments Ltd. account No. 0778 1992533, excluding funds deposited from Bank of Montreal account nos. 0778-1990-757 3587 and 0778-1992-533 3587.
 3. Bank of Montreal produce and deliver to the solicitors for Rakesh Dhunna on or before May 3, 2024 documents available to it which identify the source of funds deposited to Crank Media Inc. account No. 0778 1990597, excluding funds deposited from Bank of Montreal account Nos. 0778-1990-757 3587 and 0778-1992-533 3587.
 4. TD Canada Trust produce and deliver to the solicitors for Rakesh Dhunna on or before May 3, 2024 all monthly statements for TD account No. 96640 004 9011500 from April 1, 2021 to date.
 5. Costs payable to the Bank of Montreal and to TD Canada Trust by Stephen Brown.

Part 2: FACTUAL BASIS

Background

6. Rakesh Dhunna (“Dhunna”) obtained a judgment against Stephen Brown (“Brown”) for \$4,262,369.40 on July 18, 2023. Brown lives in lavish circumstances but he says that he has no money to pay the judgment. He has not paid any amount towards the judgment.
7. Before, during and following Brown’s September 11, 2023 Examination in Aid of Execution, he was asked to produce specific Bank of Montreal and Toronto-Dominion

Bank statements. He did not. On November 22, 2023, Master Vos ordered that Brown produce the requested bank records. He was required to do so by December 6, 2023.

8. Brown did not provide any bank records by December 6, 2023. On January 11, 2024, Dhunna filed an application seeking an order finding Brown in contempt of court for his failure to comply with Master Vos' order. The application was served on Brown and Brown subsequently produced some bank records but the production falls well short of compliance with Master Vos' order.
9. This application is brought to seek production of the bank records directly from the Bank of Montreal and TD Canada Trust.

Judgment Against Brown

10. On July 18, 2023, Dhunna obtained a judgement against Brown in the amount of \$4,262,369.40 in this action.

Affidavit #4 of Lisa Christine Ziegler, Exhibit "A"

11. Dhunna's claim in this action was that Brown agreed in April 2021 to purchase a house from him for \$18,000,000 and Brown failed to complete. Dhunna ultimately sold the house for \$14,300,000. Dhunna claimed against Brown for his damages and was successful in obtaining judgment.
12. Brown has not paid any of the judgment amount.

September 11, 2023 Examination in Aid of Execution

13. Dhunna's counsel conducted an examination in aid of execution of Brown on September 11, 2023.

Affidavit #4 of Lisa Christine Ziegler, Exhibit "B"

14. The appointment for the examination in aid of execution was served on Brown together with a letter from Dhunna's counsel dated August 18, 2023.

Affidavit #4 of Lisa Christine Ziegler, Exhibit "C"

15. The August 18, 2023 letter requested that Brown bring with him to the examination in aid of execution various documents relating to his financial circumstances. The requested documents included the following:

8. All bank account, credit card and other financial institution statements for the period 2019 to present held in Canada or elsewhere, including but not limited to accounts with the following financial institutions. This should include statements relating to accounts held jointly by you with others and accounts where you have either a legal or beneficial interest:

- (a) Bank of Montreal;

...

- (e) Toronto-Dominion Bank;

...

Affidavit #4 of Lisa Christine Ziegler, Exhibit "C"

16. Brown did not take any documents to the examination in aid of execution which was conducted on September 11, 2023.

Affidavit #4 of Lisa Christine Ziegler, Exhibit "B", page 12-13

17. Brown's evidence at the September 11, 2023 examination in aid of execution included:

- (a) Brown resides at 925 Fairmile Road, West Vancouver, BC (the "Fairmile House"). He lives there with his wife, Mary Brown, and his two children, Christopher Brown, age 24, and Stephen Brown, age 22.

Affidavit #4 of Lisa Christine Ziegler, Exhibit "B", page 10-12

- (b) Brown rents the Fairmile House. The monthly rent is \$17,000.

Affidavit #4 of Lisa Christine Ziegler, Exhibit "B", page 47

- (c) A photo of the Fairmile House obtained from a Google search is at Exhibit “D” of Affidavit #4 of Lisa Christine Ziegler. The 2023 assessment of the Fairmile House indicates a value of \$12,638,000.

Affidavit #4 of Lisa Christine Ziegler, Exhibit “E”

- (d) Brown has no sources of income.

Affidavit #4 of Lisa Christine Ziegler, Exhibit “B”, page 36

- (e) Brown does not own any assets.

Affidavit #4 of Lisa Christine Ziegler, Exhibit “B”, page 47-48

- (f) Brown has not filed income tax returns in any country since 2018.

Affidavit #4 of Lisa Christine Ziegler, Exhibit “B”, page 38

- (g) In order to get by, Brown is borrowing money from his brother, Paul Brown, and his sister, Lindsey Brown.

Affidavit #4 of Lisa Christine Ziegler, Exhibit “B”, page 36

- (h) Brown’s sister, Lindsey Brown, deposits money to a Bank of Montreal account held by Brown Family Investments Ltd.

Affidavit #4 of Lisa Christine Ziegler, Exhibit “B”, page 47 and 54-55

- (i) The directors of Brown Family Investments Ltd. are Brown’s wife and two children.

Affidavit #4 of Lisa Christine Ziegler, Exhibit “F”

- (j) In order to pay the \$18,000,000 purchase price of Dhunna’s house, Brown was going to borrow against shares owned by Brown Family Investments Ltd. in two companies which were trading on the Over The Counter Exchange (Pink Sheets) in the United States: HPIL Holding and Crank Media Inc.

Affidavit #4 of Lisa Christine Ziegler, Exhibit “B”, pages 14-15, 28-29

- (k) In 2021 Brown provided Dhunna with a statement from Canaccord Genuity Wealth Management. It showed the holdings of Brown and Brown Family Investments Ltd. in

Crank Media Inc. On the face of it, the value of the holdings were approximately \$213,000,000 but in fact the stock was restricted and not tradable.

*Affidavit #4 of Lisa Christine Ziegler, Exhibit "G"
and Exhibit "B", pages 33-34*

18. Information regarding bank accounts referred to at the examination in aid of execution includes the following:

(a) Brown does not have a personal bank account – “everything is done through Brown Family”.

Affidavit #4 of Lisa Christine Ziegler, Exhibit "B", page 39

(b) Brown Family Investments Ltd. has a Bank of Montreal account.

Affidavit #4 of Lisa Christine Ziegler, Exhibit "B", pages 39 and 54

(c) Crank Media Inc. has a Bank of Montreal account.

Affidavit #4 of Lisa Christine Ziegler, Exhibit "B", page 40

(d) TD Account No. 96640 004 9011500 is a joint account with Brown, his wife and his children.

*Affidavit #4 of Lisa Christine Ziegler, Exhibit "I",
Exhibit "B" page 40-41, 54*

(e) A Bank of Montreal account in the name of Brown and his wife, No. 20152 001 3788 650, is an account that is closed.

*Affidavit #4 of Lisa Christine Ziegler, Exhibit "J",
Exhibit "B" page 45-46*

Brown's Failure to Produce Documents

19. At the September 11, 2023 examination in aid in execution Brown was asked to produce bank statements and other documents requested in Dhunna's counsel's letter to Brown of August 18, 2023.

Affidavit #4 of Lisa Christine Ziegler, Exhibit "B", page 60-67

20. Following the September 11, 2023 examination in aid of execution Dhunna's counsel wrote letters to Brown requesting production of the requested bank statements and other documents. These letters are dated September 12, 2023, September 26, 2023 and October 10, 2023.

*Affidavit #4 of Lisa Christine Ziegler, Exhibit "K",
Exhibit "L" and Exhibit "M"*

November 22, 2023 Order of Master Vos

21. Brown had not produced any of the requested bank statements or other documents by October 25, 2023

Affidavit #4 of Lisa Christine Ziegler, para 7

22. On October 25, 2023 Dhunna filed an application seeking an order that Brown produce specified bank statements and other documents that had been requested at the September 11, 2023 Examination in Aid of Execution. On November 22, 2023, Master Vos ordered that Brown produce the requested documents by December 6, 2023.

Affidavit #1 of Carter Moe, Exhibit A

23. The terms of Master Vos' Order included the following:

Stephen Brown produce and deliver to the solicitors for Rakesh Dhunna all of the documents and records in his possession, custody and control as set out below on or before December 6, 2023:

- (a) Monthly statements from the following bank accounts from April, 2021 to date:
- (i) Brown Family Investments Ltd. Bank of Montreal account;
 - (ii) Crank Media Inc. Bank of Montreal account;
 - (iii) TD account No. 96640 004 9011500;
 - (iv) Bank of Montreal account No. 20152 011 3788650.

Affidavit #1 of Carter Moe, Exhibit A

Brown's Failure to Comply with Master Vos' Order

24. On January 11, 2024, Dhunna filed an application seeking an order finding Brown in contempt of court for his failure to produce any documents in compliance with the November 22, 2023 Master Vos order. The application was scheduled to be heard on February 8, 2024.

Affidavit #1 of Carter Moe, Exhibit B

25. On February 6, 2024, a package of documents was delivered to Dhunna's counsel's office. The produced documents which relate to the bank accounts referred to in Master Vos' Order consist of the following:

- (a) Balance Details of Brown Family Investments Ltd.'s Bank of Montreal account No. 0778 1992533 as at February 5, 2024; and
- (b) Balance Details of Crank Media Inc.'s Bank of Montreal account No. 0778 1990597 as at February 5, 2024;
- (c) A copy of the notice of application filed by Dhunna's counsel on October 25, 2023 with handwritten notes on it indicating that there is "no such account" as TD account No. 96640 004 9011500 or Bank of Montreal account No. 20152 001 3788650.

Affidavit #1 of Carter Moe, Exhibit C

26. On February 13, 2024, Dhunna's counsel emailed a letter to Brown detailing the shortcomings in Brown's purported compliance with Master Vos' Order. Dhunna's counsel further requested that Brown comply with Master Vos' Order by producing monthly statements for the period April, 2021 to date for the identified bank accounts and other specified documents.

Affidavit #1 of Carter Moe, Exhibit D

27. On February 23, 2024, a package of documents was delivered to Dhunna's counsel's office. The produced documents which relate to the bank accounts referred to in Master Vos' order consist of the following:
- (a) The first page of monthly bank statements for the period July, 2023 to January, 2024 for Bank of Montreal account #0778 1992-533 in the name of Brown Family Investments Ltd.
 - (b) The first page of monthly bank statements for the period July, 2023 to January, 2024 for Bank of Montreal account #0778 1990-597 in the name of Crank Media Inc.
 - (c) A copy of Dhunna's counsel's February 13, 2024 letter to Brown with handwritten notes on it indicating that there is "no such account" as TD account #96640 004 9011500 or Bank of Montreal account #20152 001 3788650.

Affidavit #1 of Carter Moe, Exhibit E

Sources of Deposits to Bank Accounts

Brown Family Investments Ltd. Bank of Montreal Account No. 0778 1992533

28. Brown has produced the following excerpts from monthly bank statements for this account:
- (a) Page 1 of 5 of statement for the period ending July 31, 2023. Page 1 shows a deposit of \$800 and credits for the month totalling \$92,200;
 - (b) Page 1 of 5 of statement for the period ending August 31, 2023. Page 1 shows a deposit of \$3,000 and credits for the month totalling \$83,492.42;
 - (c) Page 1 of 9 of statement for the period ending September 29, 2023. Page 1 shows deposits totalling \$750 and credits for the month totalling \$113,631.30;
 - (d) Page 1 of 5 of statement for the period ending October 31, 2023. Page 1 shows no deposits and credits for the month totalling \$104,925;

- (e) Page 1 of 4 of statement for the period ending November 30, 2023. Page 1 shows a deposit of \$7,500 and credits for the month totalling \$62,507.44;
- (f) Page 1 of 5 of statement for the period ending December 29, 2023. Page 1 shows a deposit of \$13,100 and credits for the month totalling \$59,317.76;
- (g) Page 1 of 2 of statement for the period ending January 31, 2024. Page 1 shows deposits totalling \$27,770 and credits for the month totalling \$43,937.76.

Affidavit #1 of Carter Moe, Exhibit E

29. The deposits indicated on the first page of these bank statements are either from account 0778-1990-757 3587 or from Interac etransfers with no source account indicated.

Crank Media Inc. Bank of Montreal Account No. 0778 1990-597

30. Brown has produced Page 1 of 2 for each of the monthly bank statements for this account for the period July 2023 to January 2024.
31. The deposits shown on page 1 of the bank statements produced are from the following accounts:
- (a) Account No. 0778-1992-533 3587 (12 deposits);
 - (b) Account No. 0778-1990-757 3587 (4 deposits);
 - (c) Interac etransfer (1 deposit);
 - (d) Incoming wire payment (1 deposit); and
 - (e) Foreign wire payment (1 deposit).

Bank of Montreal Account 20152 001 3788650

32. Brown wrote a \$1,000,000.00 cheque on this account on May 7, 2021 in relation to the real estate transaction with Dhunna. A copy of the cheque is at Affidavit #4 of Lisa Christine Ziegler, Exhibit "J". Brown has not produced any documents in relation to this account. Rather, he has indicated "no such account."

TD Canada Trust Account No. 96640 004 9011500

33. Brown wrote a \$1,000.00 cheque on this account on June 14, 2021 in relation to the real estate transaction with Dhunna. A copy of the cheque is at Affidavit #4 of Lisa Christine Ziegler, Exhibit "I". Brown has not produced any documents in relation to this account. Rather, he has indicated "no such account."

Part 3: LEGAL BASIS

34. Dhunna seeks an order that the Bank of Montreal and TD Canada Trust produce the bank records that Brown was ordered to produce, but did not. In addition, Dhunna seeks an order that the Bank of Montreal produce records indicating the source of the funds deposited to the Brown Family Investments Ltd. and the Crank Media Inc. accounts and, to the extent that the source of the funds is a Bank of Montreal account, copies of the monthly bank statements for those accounts from April, 2021 to date.
35. This is the context in which the Orders are sought:
- (a) Dhunna has a judgment against Brown for \$4,262,369.40;
 - (b) Brown has not paid anything towards the judgment, and he claims to have no assets or income, yet he lives in a luxurious residence;
 - (c) Brown has been ordered by the Court to produce bank records, but he has defied the Court Order by producing only snippets of the required records;
 - (d) The snippets show substantial deposits to the Brown Family Investments Ltd. account, through which Brown testified, "everything is done."
 - (e) The deposits to the Brown Family Investments Ltd. account are made primarily from an account (0778-1990-757 3587) which is held at the same West Vancouver, BC, Bank of Montreal branch as the Brown Family Investments Ltd. account. The Bank of Montreal statements indicate that the transit number for the Ambleside Branch is 0778.;

- (f) The holder of Account 0778-1990-757 3587, if not Brown, is someone who Dhunna would no doubt be entitled to examine pursuant to Supreme Court Civil Rule 13-4(5);
- (g) A similar situation exists with respect to the Crank Media Inc. account. It too is an account at the Ambleside Branch. Some of the deposits to the Crank Media Inc. account are from 0778-1990-757 3587 (the same account that was the source of deposits to the Brown Family Investments Ltd. account) and many others are from another Ambleside Branch Account 0778-1992-533 3587.

36. The Supreme Court Civil Rules (“the Rules”) address Dhunna’s ability to obtain documents from third parties. Rule 7-1(18) provides authority for the Court to order a non-party to produce documents.

Documents not in possession of party

(18) If a document is in the possession or control of a person who is not a party of record, the court, on an application under Rule 8-1 brought on notice to the person and the parties of record, may make an order for one or both of the following:

- (a) production, inspection and copying of the document;
- (b) preparation of a certified copy that may be used instead of the original.

37. While Dhunna seeks only production of documents and not the right to examine a bank representative, in the present circumstances the Rules may well authorize such an examination, and not just production of documents. Supreme Court Civil Rule 13-4(5) authorizes a judgment creditor to conduct an examination of someone other than the judgment debtor, where that person may have knowledge of the matters set out in Rule 13-4(2).

Examination of person other than judgment debtor

(5) On being satisfied that any other person may have knowledge of the matters set out in subrule (2), the court may order that other person to be examined for discovery concerning the person's knowledge.

38. The scope of questioning permitted at an examination in aid of execution is broad and Rule 13-4(2) encompasses the subject matter of the information/documents sought on this application.

- (2) If a judgment creditor is entitled to issue execution on or otherwise enforce an order of the court, the judgment creditor may examine the judgment debtor for discovery as to
- (a) any matter pertinent to the enforcement of the order,
 - (b) the reason for nonpayment or nonperformance of the order,
 - (c) the income and property of the judgment debtor,
 - (d) the debts owed to and by the judgment debtor,
 - (e) the disposal the judgment debtor has made of any property either before or after the making of the order,
 - (f) the means the judgment debtor has, had or may have of satisfying the order, and
 - (g) whether the judgment debtor intends to obey the order or has any reason for not doing so.

Supreme Court Civil Rule 13-4(2)

39. Brown should have produced the records that Dhunna now seeks. Brown has not complied with the Order of Master Vos, and as to the production of documents in addition to those identified in the Master Vos Order, Brown should have provided information/documents relating to the deposits made to the Brown Family Investments Ltd. and Crank Media Inc. accounts. Brown is obliged to provide the contact information of persons who may have knowledge relating to any matter in question. Rule 13-4(7) incorporates Rule 7-2(18).

- (18) Unless the court otherwise orders, a person being examined for discovery
- (a) must answer any question within his or her knowledge or means of knowledge regarding any matter, not privileged, relating to a matter in question in the action, and
 - (b) is compellable to give the names and addresses of all persons who reasonably might be expected to have knowledge relating to any matter in question in the action.

Supreme Court Civil Rule 7-2(18)

40. Courts will order production of records by a bank where a judgment debtor has been ordered to produce the documents but has failed to do so.

Brawinger Group Limited v Spring,
2003 ONSC 4832, at para. 22-23

41. Similarly, there is authority in support of Dhunna's application that the Bank of Montreal produce documents identifying the source of deposits made to the Brown Family Investments Ltd. and Crank Management Inc. accounts.

Creative Saskatchewan v Royal Bank of Canada,
2023 SKKB 222, at para. 40

42. Finally, while the Applicant does not seek to go this far in the present application, there are decisions that have permitted the examination of a bank manager in circumstances similar to those at bar.

Hrabcak v Hrabcak (1982), 44 BCLR 22

Part 5: MATERIAL TO BE RELIED ON

43. Affidavit #4 of Lisa Christine Zigler, filed October 25, 2023.
44. Affidavit #1 of Carter Moe, sworn March 11, 2024

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (ii) you intend to refer to at the hearing of this application, and
 - (iii) has not already been filed in the proceeding, and
- (a) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (iv) a copy of the filed application response;
 - (v) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (vi) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: March 12, 2024



William E. Knutson, K.C.,
Lawyer for the Plaintiff, Rakesh Dhunna

This Notice of Application is prepared by **William E. Knutson, K.C.** of the firm of **Clyde & Co Canada LLP**, whose place of business and address for delivery is 700 - 555 Burrard Street, Vancouver, B.C., V7X 1M8 (Tel: 604-684-0727), File No. 10282206.

To be completed by the court only:

Order made

- in the terms requested in paragraph(s) _____ of Part 1 of this Notice of Application
- with the following variations and additional terms:

Date: _____

Signature of

- Judge
- Associate Judge

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery; comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts
- none of the above