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PRACTICE

CONTEMPT OF COURT

Sentencing

Related Subject: Copyright

Sentencing phase of contempt proceedings wherein defendant Tyler White found guilty of contempt for disobeying numerous provisions of interim order (Interim Order) issued by Federal Court on November 17, 2020 — Plaintiffs recommending sentence of incarceration of 60 days in light of numerous aggravating factors, costs of contempt proceedings on solicitor-client basis — Defendant submitting incarceration grossly disproportionate given his personal circumstances, fine of \$20,000, costs fixed at \$20,000 more appropriate — Facts giving rise to contempt proceedings against defendant set out in *Warner Bros Entertainment Inc. et al. v. White (Beast IPTV)*, 2021 FC 53 — Plaintiffs had commenced action against defendant, co-defendant, alleging they infringed plaintiffs' copyright in their works by developing, operating, maintaining, promoting, and selling subscriptions to "Beast IPTV Service" — Plaintiffs brought *ex parte* motion for interim injunction (granted on November 17, 2020) — Interim Order specifically prohibited defendant from communicating with co-defendant, other third parties within 48 hours of being served with it, and from operating, maintaining, and/or updating Beast IPTV Service and corresponding applications and domains — Defendant breached many of those conditions — Defendant pleaded guilty to all charges of contempt — Facts supporting contempt charges, all admitted by defendant, broken down into three categories: a) non-disclosure of Beast IPTV servers and domains; b) non-disclosure of financial information and; c) communications with others — Following must be considered when determining appropriate sentence: a) proportionality of sentence to wrongdoing; b) presence of aggravating factors; c) presence of mitigating factors; d) deterrence and denunciation; e) similarity of sentences in like circumstances; and f) reasonableness of fine and reasonableness of incarceration — Here, contempt was knowing, contempt was deliberate, contempt was not, could not be purged, and contempt caused irreparable harm to plaintiffs — As to mitigating factors, defendant's guilty plea was positive factor, as was fact this was first time defendant was found in contempt — However, defendant's apology rang hollow, and his expression of remorse appeared insincere — Also nothing exceptional about his personal circumstances — To extent mitigating factors established, they paled in comparison to numerous aggravating factors established beyond reasonable doubt by plaintiffs — Turning to sentence to be imposed, necessary to consider principle of parity, which requires that similar offenders who commit similar offences in similar circumstances receive similar sentences — Still, each case must be decided on own facts in light of unique circumstances of contemnor — Important objective of sentencing is to denounce unlawful conduct and need for specific and general deterrence must be considered, especially in content piracy matters — Imposing fine in amount that is perceived as being nothing more than "cost of doing business" would not send correct message of

deterrence — Defendant hindered Court's ability to determine meaningful fine that achieves deterrence — Therefore necessary to consider what other penalty would serve to drive home message that Federal Court takes breaches of its orders seriously and deters others from engaging in similar conduct — In terms of parity, in absence of any Federal Court cases on point, sentences imposed by Ontario Courts in similar cases of breaches of Anton Piller Orders ought to guide its consideration — Sentence of incarceration warranted in this case — Evidence against defendant was overwhelming and damning — Numerous aggravating factors established beyond reasonable doubt — Plaintiffs' recommendation of sentence of incarceration of two months accepted — Were it not for defendant's guilty plea, longer sentence would have been warranted — In light of fact defendant now gainfully employed, he was allowed to serve 60-day sentence intermittently from Friday evenings 6 p.m. until Monday mornings 6 a.m. — Issuance of warrant of committal also suspended for 45 days to afford defendant sufficient time to file appeal, seek stay from Federal Court of Appeal — In terms of costs, granted to plaintiffs on solicitor-client basis.

WARNER BROS. ENTERTAINMENT INC. V. WHITE (BEAST IPTV) (T-1176-20, 2023 FC 907, Lafrenière J., reasons for order dated June 28, 2023, 52 pp.)