SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ ENDORSEMENT FORM

COURT FILE NO.: CV-24-00728550-00CL **DATE:** JANUARY 13, 2025

NO. ON LIST: 1

TITLE OF PROCEEDING: CANADIAN WESTERN BANK v. CANADIAN MOTOR FREIGHT LTD. et al

BEFORE: JUSTICE W.D. BLACK

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

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For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
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For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
David Im	Canadian Western Bank	dim@chaitons.com

ENDORSEMENT OF JUSTICE W.D. BLACK:

[1] On December 16, 2024 I released a decision in respect of a hearing in this matter on December 13, 2024, at which hearing the Receiver was seeking a contempt order against various individual and corporate parties, entities and persons.

[2] In my endorsement released on December 16 I found each of the parties defined therein as "Contemnors" to be in civil contempt of various orders of this court. I will continue to use, for purposes of this endorsement, various terms as defined in that December 16 endorsement.

[3] In that endorsement, I ordered that the Contemnors would be sentenced on a date to be fixed during the week of January 6, 2025, and reminded the Contemnors of the importance of compliance with court orders which, I also reminded the Contemnors, were not negotiable.

[4] The date for sentencing was booked for January 6, 2025. The sentencing did not proceed that day, for a handful of reasons. First, and most importantly, Mr. Manis had just been engaged by United and United Management, and I was persuaded to accept his submission that he had simply not had time to get up to speed. While I was concerned about the potential for parties to manipulate the court's process by seeking to orchestrate last minute adjournments, I felt on balance it was important for United and United Management to have the benefit of the advice and representation of Mr. Manis, who is an experienced commercial counsel.

[5] It was also the case on January 6 that a number of the individual Contemnors who were to be sentenced were not in attendance at court. While again I accept that this was not intended to show disrespect for the court's process, I felt that it would be appropriate and indeed important for all of the Contemnors to attend at the sentencing hearing.

[6] It was the case on January 6 that counsel for the Debtors and Debtor Management was late for court. While it would have been possible for the matter nonetheless to proceed that day, this was another (modest) factor which inclined me to adjourn the sentencing hearing to today's date (January 13, 2025).

[7] Finally, I was advised on January 6 that the Fleet Assets, the removal and concealment of which was at the heart of the contempt findings I made, had by then been returned to the possession of the Receiver (although unfortunately one of the Fleet Assets has apparently been stolen since being delivered to the Receiver). While the return of the Fleet Assets does not obviate the need for a sentencing hearing, it did reduce some of the immediate time pressure.

[8] Today, all of the Contemnors, and their counsel, were in attendance, and I heard submissions from counsel for the Receiver, from counsel for Canadian Western Bank (the applicant), and from counsel for the two sets of Contemnors – the Debtors and Debtor Management, and United and United Management – respectively.

[9] The Receiver's position was that the appropriate sentence would be:

(a) An order committing each of Messrs. Bajwa and Mangat (of United Management) to 15 days' imprisonment;

(b) And order committing Mr. Dhaliwal (also of United Management) to 10 days' imprisonment;

(c) An order committing each member of Debtor Management to 5 days' imprisonment;

(d) An order compelling United Management to pay full indemnity costs to the Receiver in the updated amount of $68,701.74 in respect of the motion brought on December 2, 2024; and,

(e) An order compelling the Contemnors to pay, on a joint and several basis, full indemnity costs to the receiver, updated to $213,887.87 for the contempt motion on December 13, 2024 and the sentencing hearing of today's date.

[10] The Receiver also sought to have each of the Contemnors to pay fines, in the amount of $100,000 in the case of United, and $25,000 each in the case of each of the individual Contemnors, and, in the original version of its materials had asked that the fines be paid to the Receiver.

[11] By today's attendance, the Receiver had determined, and confirmed for the court, that any fines would necessarily be paid to the Provincial Treasurer for Ontario (and not to the Receiver).

[12] The Receiver also sought today an order for production by the Toronto-Dominion Bank ("TD") of certain documents relating to the Debtors and/or certain property of the Debtors. I was advised by counsel for the Debtor and Debtor Management that they did not oppose this relief, and was advised by Receiver's counsel that TD likewise does not oppose the order, and so I am granting that order, a signed copy of which is attached to this endorsement.

[13] I should also note that, between January 6 and today, United and United Management cooperated with the Receiver to provide certain biographical details relative to one of the Contemnors that the Receiver required, and cooperated in the removal/dismissal of certain lien-type claims (registered under the PPSA) that had been made by a party related to United.

[14] Regarding the consequences of the contempt, the Receiver first reminds the court of the critical importance of the "ability of the courts to enforce their process and maintain their dignity and respect" (*United Nurses of Alberta v. Alberta (Attorney General)*, 1992 CanLII 99 (SCC)). The Receiver references caselaw confirming the essential operation of the rule of law for the protection of citizens in their commercial affairs (*Sussex Group v. Fangeat*, [2003] O.M. No. 3348 (Ont. Sup. Ct.).

[15] The Court of Appeal for Ontario has confirmed the two main purposes served by sentences for civil contempt: to compel obedience and to punish a contemnor's disobedience (*College of Optometrists (Ontario) v. SHS Optical Ltd.*, 2008 ONCA 685).

[16] Rule 60.11 (5) and (6) give the court wide discretion to fashion a sentence that achieves both objectives in a given case, and provide an array of alternative forms of measures, including imprisonment, fines, injunctive relief and costs.

[17] In its submissions, the Receiver acknowledges that the Court of Appeal for Ontario has held that "normally incarceration for civil contempt is a sanction of last resort" (*Chiang (Re)*, 2009 ONCA 3) but also notes caselaw confirming that, where a breach of a court order has been knowing and deliberate, and continuing over several days, and in respect to which a defendant's response is defiance without remorse, then in those circumstances a term of imprisonment may be justified, and in fact the most appropriate result (see for example *Ceridian Canada Ltd. v. Azeezodeen*, 2014 ONSC 4162).

[18] In the context of a receivership in particular, the Court of Appeal has recently held that it is "difficult to think of conduct by a litigant that is more flagrant and disrespectful of the court and the rule of law" than behaviour undermining "the Receiver's exclusive authority and power to deal with the Receivership Property" (*Castillo v. Xela Enterprises Ltd.*, 2024 ONCA 141).

[19] In this case, as the Receiver colorfully puts it in its factum, the "conduct of the Contemnors transformed this otherwise straightforward receivership process into a dramatic chase for the lost Fleet Assets across Ontario." It notes that the terms of the relevant orders were clear and uncontroversial, and simply directed the Debtor, Debtor Management and other persons to facilitate the return of the Fleet Assets to the Receiver.

[20] The Receiver fairly asserts that the Contemnors treated the clear terms of the orders issued by this court as "worthless words on a page" and argues that on the basis of the *Castillo* precedent alone, a term of imprisonment is justified here in respect of the individual Contemnors "flagrant and intentional" interference with the functions of a court-appointed officer.

[21] The Receiver says that a custodial sentence for the individual Contemnors is in fact the only penalty capable of effectively responding to the specific conduct at issue here, and of signaling the court's lack of tolerance for "disregarding what are supposed to be structured and organized insolvency processes conducted under the BIA."

[22] On the topic of "aggravating and mitigating factors", which all parties agree are appropriate touchstones in these circumstances, the Receiver points, as aggravating factors, to the "knowing and deliberate" breaches here, the "continuing contemptuous behaviour" the fact that the conduct here was willful and unrepentant as opposed to accidental, and conduct (in the case of the United Management Contemnors) that was "intended to produce some personal or financial benefit."

[23] The Receiver asserts, on the other side of the coin, that there are no mitigating factors here other than the fact that the Contemnors appear to be first time offenders. The Receiver maintains that the recent apology on the part of the United Management Contemnors is too late to constitute genuine remorse, and that the fact that the Fleet Assets were recently returned by another party (Matheson Collision/King Towing) does not count as the Contemnors, or any of them, purging their contempt.

[24] Ultimately, taking into account the factors enumerated above, and such other factors as proportionality, similarity and reasonableness articulated by the Court of Appeal for Ontario in *Boily v. Carleton Condominium Corporation 145*, 2014 ONCA 574), the Receiver advocates a fine in the amount of $100,000 for United. It argues that not only did United fail to take advantage of multiple opportunities to purge its contempt and comply with this court's orders, but that it joined Matheson Collision and King Towing in alleging that the Receiver somehow acted in bad faith, and demanded nearly $280,000 in payments in exchange for advising the Receiver as to the location of the Fleet Assets.

[25] As against Messrs. Bajwa and Mangat, the Receiver says that a 15-day term of imprisonment, plus a fine in the amount of $25,000 is appropriate. It notes that Mr. Bajwa is the sole director and officer of United, and that Mr. Mangat is the company's CEO, and argues that the "shocking conduct" of United was under their direction.

[26] It argues that this term of incarceration is in keeping with the 30-day sentence imposed by Conway J. in *Castillo*, upheld by the Court of Appeal, and in keeping with a recent order by Penny J. for five days' imprisonment for a director who had actually purged his contempt.

[27] With respect to Mr. Dhaliwal, the Receiver acknowledges that Mr. Dhaliwal was and is an employee, and not a directing mind of United, but notes that he was engaged in wilful contempt himself, and abetted the contempt of the other United parties. It points to such cases as *Fangeat*, and *Ontario*

(Attorney General) v. Clark, in which employees abetting breaches received sentences of six months (*Fangeat*) and 15-60 days (*Clark*). It argues that 10 days for Mr. Dhaliwal is reasonable, consistent and proportionate.

[28] With respect to Debtor Management, the Receiver asks that each individual Contemnor be sentenced to a term of imprisonment of 5 days, and be ordered to pay a fine in the amount of $25,000.

[29] It acknowledges a difference in the nature of the wrongdoing attributable to Debtor Management (as compared to United Management), but argues that the Debtors' transfer of the Fleet Assets to United constituted a deliberate and knowing breach of the Receivership Order, and that the Debtors and Debtor Management thereafter made no effort to assist in recovering the Fleet Assets.

[30] While again the Receiver agrees that this misconduct attracts less culpability than the conduct of United and United Management, it argues that to allow the Debtor Management to escape without a custodial sentence would amount to tacit approval of their nonetheless deliberate and continuing contempt, done with knowledge of the orders.

[31] The Receiver does not seek a fine against the Debtors, inasmuch as the Debtors, as evidenced by the receivership, are insolvent, such that to order the Debtors to pay a fine would cause the Crown to become (another) creditor of the Debtors and reduce the recovery otherwise potentially available to other innocent creditors.

[32] Finally, the Receiver argues that the Contemnors should pay the Receiver's full indemnity costs, on the basis that the moving party should not be the one to bear the financial burden of the contempt, and because the contemptuous conduct here was serious and without mitigating factors present.

[33] The position of the Debtors and Debtor Management is effectively to deny that they are in contempt, and to re-argue the underlying contempt motion. The Debtors and Debtor Management have appealed the contempt finding against them, which of course is their right, but I did not find the repetition of the argument from the contempt motion to be particularly helpful.

[34] In terms of penalty, they note that there was essentially a single finding of contempt against them, for transferring the Fleet Assets to the United Contemnors. They acknowledge that they failed to assist in the recovery of the Fleet Assets, but note that there is no evidence of the Receiver "requesting assistance from any of the Debtor Management."

[35] Again, as I noted following the contempt hearing, the position of the Debtors and Debtor Management is that, once they transferred the assets to United, it was "out of their hands" and there was nothing they could do to change anything.

[36] The Debtors and Debtor Management argue that their conduct was much less serious than that of United and United Management, that United's contemptuous conduct was "not foreseen by the Debtor Respondents", and that the Debtor Respondents "did not participate in the removal and hiding of the Fleet Assets".

[37] They argue that the appropriate penalty for them, to the extent that the contempt finding is upheld, is a fine in the range of $1,500 to $5,000 each, and that no term of incarceration would be appropriate or reasonable having regard to the less serious nature of the conduct at issue in their case.

[38] They say there is no evidence that they stood to gain from moving the Fleet Assets, and that there are mitigating factors in their case, including that they turned over "effective control" of the Fleet Assets to the Receiver by November 15, 2024, that they had previously parked assets at the United Yard due to space limitations on their own property, and that in any event moving the Fleet Assets was their sole breach of the Receivership Order.

[39] They argue that there are no aggravating factors in their case, and that there is no need, given the less serious nature of the conduct at issue in their case, for denunciation or deterrence.

[40] Finally, the Debtors and Debtor Management assert that the costs sought by the Receiver are "extraordinarily high".

[41] The Debtors and Debtor Management asked that I delay the operation of any penalty I impose (they ask that I stay any such penalty, but the Receiver suggested instead a delay in implementation, to which the Debtors and their counsel appeared to agree), to allow them to pursue their appeal and to seek a stay from the Court of Appeal for Ontario.

[42] United and United Management, for their part, do not deny their contempt. In their materials filed for sentencing they acknowledge their inappropriate conduct, and provide an apology.

[43] As noted above, the Receiver doubts the sincerity of the contrition of United and United Management, given how late in the process the purported contrition surfaced. While I understand this concern, I think it is equally possible that United and United Management, who as I noted only engaged Mr. Manis a week ago, were not being guided until that change in counsel in appropriate directions. In the circumstances, while I cannot put as much weight on United's recent apology as I would on an earlier apology, equally I do not dismiss it out of hand.

[44] With respect to the imprisonment sought for the individual United Contemnors, United first asserts that Mr. Bajwa, while technically the sole officer and director of United, is something of a "figurehead". An affidavit of Mr. Mangat deposes that although Mr. Bajwa was a founder of the company, Mr. Bajwa now in fact plays no role in the operation or direction of the business. Moreover, Mr. Bajwa, according to the materials filed by the United Contemnors for sentencing, is 71 years old and has a heart condition for which he recently underwent a transthoracic echocardiogram (with contrast) and for which he has upcoming medical appointments on January 14 and 15, 2025.

[45] It is frankly difficult to tell based on the medical information filed, just how serious Mr. Bajwa's heart condition is. That said, he clearly has heart issues that are being investigated and, albeit that the materials are late-breaking and the Receiver fairly says that it has had no opportunity to test or respond to this evidence, that evidence is also uncontradicted at this stage, and frankly seems credible. Likewise, other than his notional position with United, there is no evidence in the record that Mr. Bajwa had any involvement in the events at issue in these proceedings.

[46] With respect to Mr. Dhaliwal, United argues that he is a young man with a young family, and that, with no management authority at United, he was necessarily following directions, in his conduct in this matter, from management and in particular Mr. Mangat.

[47] In the case of Mr. Mangat, the position is essentially that he was and is the directing mind, and that he accepts responsibility for the actions of United and United Management. In his case, however, Mr. Manis

cautions that his direct participation in the day-to-day operation of the business is critical, and that if he is away for any significant length of time, the business will suffer and various employees could be out of work.

[48] United and United Management also take issue with the proposed length of the incarceration suggested by the Receiver, calling it "disproportionate and overly punitive". They refer to many of the same cases as the Receiver and the Debtors, and echo the notion that incarceration should be the penalty of "last resort".

[49] They emphasize that they have apologized and expressed remorse, and that this is the first and only time that United or United Management have been found in contempt of court.

[50] They also point out that, subsequent to January 6 (and their change of counsel), they have cooperated with the Receiver, providing information that the Receiver sought and ensuring that 43 PPSA registrations made by Edge Transport Group Ltd (an entity related to United) against the Fleet Assets were discharged. United and United Management characterize this recent cooperation as being part of an effort to purge their contempt and to mitigate further damages.

[51] United and United Management deny the existence of significant aggravating factors, arguing that the contemptuous conduct here took place over approximately three weeks (as opposed to months or years in some of the cases on which the Receiver relies).

[52] They liken their contemptuous conduct, which again they do not deny, to that evident in the *Boily* case, wherein certain directors of a condominium corporation ignored a court order to restore certain landscaping to its original design and instead continued with a new design. They note that the contemnors in that case were ordered to pay a fine of $7,500 and argue that, particularly inasmuch as they are already liable to pay a $50,000 costs award in this case, fines in the amount of $5,000, together with a period of community service, would be appropriate here.

[53] On the topic of community service, while that is a well-known and robust notion in the criminal courts, the Receiver fairly points out that there is no mechanism to allow for enforcement of such a disposition relative to a civil contempt finding.

[54] Similarly, with respect to the notion of fines, as noted above, the Receiver has confirmed, contrary to its earlier submission which contemplated that the Receiver might be able to receive fine payments itself (for the benefit of the receivership), that fines can only be paid to the provincial treasury. In my view, as discussed in a bit more detail below, here the amounts to be paid by the Contemnors should be in the category of costs, so that the Receiver is not out-of-pocket.

[55] The final position articulated by United and United Management bearing mention here is that United argues that in fact the Debtors and Debtor Management have considerable responsibility for the events that transpired here. They say that by transferring the Fleet Assets to United contrary to the Receivership Order, the Debtors and Debtor Management set in motion, the chain of events here leading to the Receiver's necessary resort to contempt proceedings, and that therefore the Debtors and Debtor Management should share responsibility, at least financial responsibility, equally with United and United Management.

[56] Having reviewed and considered the written and oral submissions on the sentencing hearing, I find:

(a) Debtor Management, i.e. the individual Contemnors Imran Hussein, Satbir Singh Kahlon and Sukhdeep Singh Arora, are each to pay to the Receiver costs in the amount of $20,000. This amount is, in each case, in lieu of a fine or a period of incarceration. While I find that these Contemnors have not cooperated with the Receiver or otherwise purged their contempt, I also find that their contempt, while serious, was not in a category sufficiently serious to require imprisonment. Their contempt largely consisted of the transfer of the Fleet Assets to United contrary to the Receivership Order. I am singularly unimpressed with the conduct of the Debtors and Debtor Management, but again do not find their conduct to warrant time in jail. I have not imposed a payment obligation on the Debtors themselves, in that they are insolvent and in receivership, but I expect these individual contemnors to pay these costs I have ordered, and that the requirement to do so will be a significant and meaningful punishment for their contempt. If they have not paid these costs within 60 days, I am prepared to convene a further hearing to consider alternate remedies, including at that stage and in those circumstances, incarceration. As requested, I forestall the operation of this aspect of the order for 10 days;

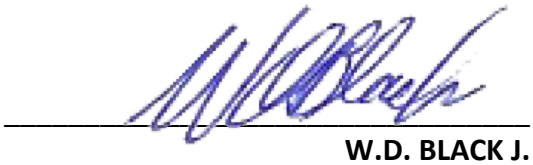
(b) For United Management, in the case of Mr. Mangat, I find that a period of incarceration of four days is appropriate, and that the sentence may be served on consecutive weekends so as not to interfere with Mr. Mangat's management role at United. I find United and United Management's contempt sufficiently serious as to warrant and require incarceration, but that a brief incarceration will be sufficient to send the messages of deterrence and denunciation required here;

(c) I decline to incarcerate Mr. Dhaliwal or Mr. Bajwa. In the case of Mr. Dhaliwal, it was a close call, but I am prepared to accept that he was "following orders" from management, and accept his acknowledgement that he regrets his actions. I am also taking into account that Mr. Dhaliwal is relatively young, and has a young family. In the case of Mr. Bajwa, I accept that he has no active role in management, and had no role in the poor decisions taken by Mr. Mangat on United's behalf;

(d) I order Mr. Dhaliwal to pay the Receiver's costs in the amount of $5,000, and Mr. Mangat to pay the Receiver's costs in the amount of $30,000, also, in each case, within 60 days;

(e) I order United to pay the balance of the Receiver's costs of $213,887.87, on a full indemnity scale (i.e. the balance of $118,887.87 taking into account the $95,000 to be paid collectively among Debtor Management and United Management), in this case within 30 days;

(f) As with the Debtor Management, I am prepared to convene a further hearing in 60 days if the Contemnors have failed to pay these amounts, to consider alternative or additional remedies.



W.D. BLACK J.

DATE: JANUARY 13, 2025