IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Tiger Tool International Incorporated v. Cool-It Hi-Way Services Inc.*, 2015 BCSC 1606

Date: 20150731
Docket: S27841
Registry: Chilliwack

Between:

Tiger Tool International Incorporated

Plaintiff

And

Cool-It Hi-Way Services Inc. and Steve (Saeed) Zaeri

Defendants

Before: The Honourable Madam Justice S.C. Fitzpatrick

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:	A. Ayliffe C. Drinovz
Counsel for the Defendants:	B. Loewen
Place and Date of Hearing:	New Westminster, B.C. July 31, 2015
Place and Date of Judgment:	New Westminster, B.C. July 31, 2015

[1] **THE COURT:** The plaintiff, Tiger Tool International Incorporated ("Tiger Tool"), applies for an order that the defendants, Cool-It Hi-Way Services Inc. ("Cool-It") and Steve

Zaeri, be held in contempt of court in respect of an injunction granted by Mr. Justice N. Brown of this Court on May 20, 2014.

Background Facts

[2] Cool-It is in the business of manufacturing, distributing and selling air conditioning and refrigeration systems, air-conditioning related equipment and engine and driveline oil coolers for certain trucks, buses and other heavy-duty equipment. Mr. Zaeri is the principal of Cool-It.

[3] Tiger Tool is in the business of marketing and selling equipment and accessories to dealers and consumers in the truck, bus and heavy-duty equipment industries across North America.

[4] On January 1, 2012, Tiger Tool, Cool-It and Mr. Zaeri entered into a supply and distributorship agreement (the "Agreement"). By the Agreement, Cool-It appointed Tiger Tool as the sole and exclusive distributor of "Products", as defined in the Agreement, for a defined "Exclusive Territory", with the sole and exclusive right to act as Cool-It's sales and marketing representative, to solicit orders for the Products, and to distribute the Products in the Exclusive Territory. Cool-It also appointed Tiger Tool as the non-exclusive distributor of the Products for all of the "Non-Exclusive Territory" as defined in the Agreement.

[5] The Exclusive Territory is defined in preamble C to include all of Canada, save for British Columbia, and all of the United States of America. "Products" is defined in the Agreement in accordance with preamble A and clause 1.7. Mr. Zaeri is also referred to in clause 1.7 in that "Products" included any associated products that might be manufactured, developed, supplied or sold by him.

[6] Issues arose between the parties in the fall of 2013.

[7] In March 2014, Cool-It commenced proceedings in the Vancouver Registry of this Court seeking recovery of certain amounts that had been invoiced to Tiger Tool. Also, in February 2014, Cool-It issued a notice of termination to Tiger Tool by which it purported to terminate the Agreement. Termination of the Agreement is addressed in clause 7.1 and allows for 30-days' notice to be given by any party where there is failure to comply with any material provision of the Agreement.

[8] I am advised by Cool-It's counsel that this notice was given sometime in February 2014, which would have resulted in a termination effective sometime in March 2014. I am also advised by Cool-It's counsel that, in accordance with that termination notice and after

the 30-days' notice period, Cool-It began conducting business operations in accordance with its view that the Agreement had been terminated.

[9] Tiger Tool commenced this action in the Chilliwack Registry on May 9, 2014 against Cool-It and Mr. Zaeri. The notice of civil claim outlines various provisions of the Agreement. On page 10, Tiger Tool alleges that there have been and continue to be a substantial number of breaches of various provisions of the Agreement. The relief sought includes an interlocutory and permanent injunction restraining breaches of the Agreement, and also specific performance of the Agreement. Tiger Tool also seeks an accounting, payment of monies found to be due to Tiger Tool, an order for delivery of certain documents, general, special and punitive damages, interest and costs.

[10] On May 20, 2014, Tiger Tool sought the interim interlocutory injunction against Cool-It and Mr. Zaeri. That application was contested; however, an injunction was granted by Brown J. on that date (the "Injunction"). I will address the provisions of the Injunction later in these reasons. At paragraph 5 of the Injunction, the court ordered that the amount claimed by Cool-It in the Vancouver action was to be held in trust pending further court order or agreement of the parties. My understanding is that this was done and the monies continue to be held at this point in time.

[11] This application, by which Tiger Tool seeks an order that Cool-It and Mr. Zaeri be found and held in contempt for wilful disobedience of the Injunction, was filed on August 29, 2014. The substance of Tiger Tool's allegation, again, refers to various alleged breaches of the Agreement. I am advised by Tiger Tool's counsel that the allegations of breaches in the notice of application refer to breaches of the Agreement after the granting of the Injunction. It is apparent from a review of the allegations in paragraph 6 of Part II (Factual Basis) that most of the allegations essentially track the same allegations as are found in the notice of civil claim.

[12] In September 2014, Cool-It and Mr. Zaeri filed their response to civil claim. Both deny that there were any breaches by Cool-It and Mr. Zaeri under the Agreement. In addition, at that time, Cool-It and Mr. Zaeri filed an application to set aside the Injunction.

[13] Later still, there were various efforts made to have these two applications, or at least Tiger Tool's application for contempt, heard. Those efforts were made throughout September and October 2014, but did not actually result in any court application being heard until mid-October.

[14] On October 14, 2014, the matter came on for hearing. I am advised that, by reason of discussions between the parties, there was agreement at that time that the Injunction would

be set aside at a later date as determined by the parties. In conjunction with that agreement, the parties also agreed that Cool-It and Mr. Zaeri would be allowed to terminate the Agreement at a future date. Tiger Tool did not agree *per se* to the termination, but it was agreed that Cool-It and Mr. Zaeri would be in a position to terminate once the Injunction had been set aside. That termination notice was later given and did become effective on December 31, 2014.

[15] In the meantime, other issues came to the fore. From early on in this dispute, Cool-It had taken the position that if there is a disagreement or dispute between the parties, it was to be referred to an arbitrator pursuant to the *Commercial Arbitration Act* (now the *Arbitration Act*, R.S.B.C. 1996, c. 55). This requirement was said to arise from clause 8.1 of the Agreement, which provides for arbitration in such circumstances, and by which any determination of the arbitrator was to be final and binding between the parties.

[16] There did not appear to be any consensus on the issue concerning the arbitration. That issue was addressed at a hearing before Mr. Justice Grist on October 10, 2014. On October 15, 2014, Grist J. acceded to Mr. Zaeri's application to stay this action. By his order, this action was stayed on the basis that the parties had agreed to resolve, at least in the first instance, any issues pursuant to the *Arbitration Act*.

[17] I understand that Grist J.'s order has been appealed by Tiger Tool. I am not aware as to the status of the appeal proceeding, other than to confirm counsel's advice that the appeal has not been heard. Accordingly, whether or not the issues between the parties are to be resolved by arbitration or by trial remains to be seen.

[18] While all of these other proceedings were going on, it has always been the case that Cool-It and Mr. Zaeri are anxious to have this outstanding contempt matter resolved in some fashion. They both wish to resolve the contempt application once and for all given the negative inference that arises from having such an application extant as against them. Tiger Tool's counsel advises me that it is content to leave the matter as adjourned generally from October 2014.

Discussion and Disposition

[19] As I have stated, Tiger Tool takes the position that Cool-It was in further breach of the Agreement between May 20 and August 29, 2014, the latter date being the date upon which this contempt application was filed. Tiger Tool also takes the position that these further breaches are, in substance, to such an extreme extent that Cool-It and Mr. Zaeri have acted as if the Agreement was terminated, not only in form, but in substance, so as to disobey the Injunction.

[20] The threshold issue is the interpretation of the Injunction. In particular, the issue is whether, even accepting that Cool-It and Mr. Zaeri were in breach of the Agreement after May 20 and until August 29, those matters were the subject of the Injunction such that it could be said that they were in breach of the Injunction.

[21] The starting point in addressing with interpretation of the Injunction is found in *Yu v. Jordan*, 2012 BCCA 367. The Court of Appeal discussed the proper approach, as follows:

> [53] In my view, the interpretation of a court order is not governed by the subjective views of one or more of the parties as to its meaning after the order is made. Rather an order, whether by consent or awarded in an adjudicated disposition, is a decision of the court. As such, it is the court, not the parties, that determines the meaning of its order. In my view, the correct approach to interpreting the provisions of a court order is to examine the pleadings of the action in which it is made, the language of the order itself, and the circumstances in which the order was granted.

[22] Also relevant, particularly to the contempt matter, are various authorities that both parties have referred to. I will review those briefly.

[23] In the first instance, Cool-It and Mr. Zaeri refer to two authorities. First is a decision from the Saskatchewan Court of Appeal in *Culligan Canada Ltd. v. Fettes*, 2010 SKCA 151. In that case, Madam Justice Jackson was considering a contempt application. At paragraphs 19-21, Jackson J.A. sets out what I consider to be well-taken principles upon which any court will consider an interpretation of the order in the context of contempt proceedings. She emphasizes that any injunction must provide clear guidance in terms of what activities are prohibited, or I would add required, and that any ambiguities are to be resolved for the benefit of the alleged contemnor. She also refers to an order being unclear where the order incorporates overly-broad or unclear language. Jackson J.A. stated:

> [19] It is self-evident that an enjoined party cannot insist on absolute precision in an injunction (see: Robert J. Sharpe, *Injunctions and Specific Performance*, looseleaf, 2nd ed. (Aurora, Ont.: Canada Law Book, 2009) at s.6.180). The injunction must, however, give the enjoined party sufficient guidance by making it clear what activities are prohibited (see: *New Roots Herbal Inc. et al. v. W-7 Clay Inc. et al.* (1999), 176 Sask. R. 144 (Q.B.); affirmed (1999), 180 Sask. R. 140 (C.A.); and *Baumung v. 8 & 10 Cattle Co-operative Ltd.*, 2005 SKCA 108, 259 D.L.R. (4th) 292).
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> [20] In *Baumung*, the Court referred to numerous authorities to illustrate the statement that "in order to ground a contempt finding, a court order must be clear or, to put the point in another way, that an ambiguity in an order should be resolved to the benefit of the alleged contemnor" (at para. 27). Similarly, in *Sonoco Ltd. v. Local 433, Vancouver Converters of the International Brotherhood of Pulp, Sulphite and Paper Mill Workers* (1970), 13 D.L.R. (3d) 617 at p. 621, the British Columbia Court of Appeal wrote: "persons enjoined ought to be able to tell from the order what they may not do without having to decide whether they are acting lawfully or not." Further, the very clarity of the court order must be proven beyond a reasonable doubt before a finding of contempt will be sustained (see: *Bhatnager v. Canada (Minister of Employment and Immigration)*, [1990] 2 S.C.R. 217 at p. 224).

> [21] A review of the jurisprudence reveals that courts tend to find an order unclear on one of three possible bases:
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> (i) the order is missing an essential detail about where, when or to whom the order will apply (see: *Skybound Dev. Ltd. v. Hughes Properties Ltd.* [1988] 5 W.W.R. 355 (B.C.C.A.); and *1196303 Ontario Ltd. v. Glen Grove Suites Inc.*, 2009 CanLII 40564 (Ont. S.C.J.), [2009] O.J. No. 3270 (QL));
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> (ii) the order incorporates overly broad or unclear language (see: *Re Distillery, Brewery, Winery, Soft Drink& Allied Worker's Union 604 and British Columbia Distillery Co. Ltd.*, (1975), 57 D.L.R. (3d) 752 (B.C.S.C.) at pp. 752-53; *Buttcon Energy Inc. v. Ontario Lottery & Gaming Corp.*, 2010 ONSC 3056 at para. 39; and *New Roots, supraat* para. 16); and,
>
> (iii) external circumstances have obscured the meaning of the order (see: *Bell ExpressVu Limited Partnership v. Torroni,* 2009 ONCA 85 at para. 25, 304 D.L.R. (4th) 431; *Baumung, supra; and Québec (Commission des valeurs mobilières) c. Lassonde*, [1994] J.Q. No. 1073 (QL) (Que. C.A.) at para. 31).
>
> In this case, the Order is not missing an essential element, but in my respectful view it is unclear and ambiguous because it incorporates overly broad and unclear language, and external circumstances have exacerbated that lack of clarity, such that a finding of contempt, in relation to it, cannot be sustained.

[24] The second authority is *Gurtins v. Panton-Goyert*, 2008 BCCA 196, which involved a contempt application in a family setting. Mr. Justice Frankel stated:

> [14] As the chambers judge correctly noted in paragraph 13 of her reasons, in a contempt matter, an order alleged to have been breached must be precise and unambiguous in its direction, and the alleged contemnor is entitled to the most favourable interpretation of it: *Hama v. Werbes*, 2000 BCCA 367, 76 B.C.L.R. (3d) 271 at para. 8. However, in my view, she erred when she looked beyond the four corners of the two orders in deciding what legal obligations they placed on Mr. and Mrs. Goyert. It is apparent from the chambers judge's reasons that, in interpreting the orders, she had regard to the transcripts of various court appearances, and to the reasons given by de Walle P.C.J. and Goepel J. for making their respective orders.
>
> [15] The rule of law requires that court orders be obeyed. Accordingly, it is of paramount importance that persons who are subject to court orders be able to readily determine their obligations and responsibilities. They do this by having regard to what is on the face of the formal order setting out what they are required to do, or refrain from doing. As stated in *Arlidge, Eady & Smith on Contempt* (London: Sweet & Maxwell, 2005) (at paras. 12-55), "[a]n order should be clear in its terms and should not require the person to whom it is addressed to cross-refer to other material in order to ascertain his precise obligation". [Citations omitted.]
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> [16] A concise and most helpful summary of the principles applicable to the interpretation of an order in contempt proceedings is found in *R. (Mark Dean Harris) v. The Official Solicitor to the Supreme Court*, [2001] EWHC Admin 798 (Q.B.D.), wherein Mr. Justice Munby stated (at para. 68):
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> (i) No order will be enforced by committal unless it is expressed in clear, certain and unambiguous language. So far as this is possible, the person affected should know with complete

> precision what it is that he is required to do or to abstain from doing.
>
> (ii) It is impossible to read implied terms into an injunction.
>
> (iii) An order should not require the person to whom it is addressed to cross-refer to other material in order to ascertain his precise obligation. Looking only at the order the party enjoined must be able to find out from the four walls of it exactly what it is that he must not do.
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> (iv) It follows from this that, as Jenkins J. said in *Redwing Ltd v. Redwing Forest Products Ltd (1947)*, 177 LT 387 at p. 390,
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> > a Defendant cannot be committed for contempt on the ground that upon one of two possible constructions of an undertaking being given he has broken that undertaking. For the purpose of relief of this character I think the undertaking must be clear and the breach must be clear beyond all question.
>
> [Emphasis added by Frankel J.A.]

[25] I would also emphasize the quote in *Gurtins* at para. 16, quoting from *R. (Mark Dean Harris) v. The Official Solicitor to the Supreme Court,* [2001] EWHC Admin 798 (Q.B.D.), referring to the principle that it is impossible to read implied terms into an injunction.

[26] On Tiger Tool's part, I was referred to other case authorities. These authorities were in support of the argument that a party can be held in contempt of a court order, not only in respect of the clear and unambiguous language of the order, but also the "spirit" of the order. See *Oakley Manufacturing Inc. v. Bowman,* [2005] O.J. No. 1641 at para. 54 (S.C.J.); *Capital Estate Planning Corp. v. Lynch*, 2004 ABQB 727 at para. 26; and *Tele-Direct Publications Inc. v. Canadian Business Online Inc.*, [1998] F.C.J. No. 1306 at para. 20 (T.D.), referring to the plaintiff's materials at para. 76.

[27] What I take from these authorities is that a party is not allowed to subvert the intent of the court by doing something indirectly that the party is clearly prohibited from doing directly. In my view, this is not a controversial point, nor was it disputed by Cool-It and Mr. Zaeri's counsel.

[28] I return to the *Yu v. Jordan* principles and will now address the pleadings and the circumstances that underlie the contempt application.

[29] As of May 20, 2014, there were clearly issues between the parties concerning whether or not there were breaches of the Agreement. The purported termination of the Agreement by Cool-It and Mr. Zaeri was such an issue. In that circumstance, in my view, the

intent of the Injunction was to preserve the *status quo* between the parties pending trial. Counsel for Tiger Tool agreed that this was the intention behind the Injunction.

[30] However, the *status quo* included this simmering dispute between the parties as to whether or not there were breaches of the Agreement that would justify a termination of the Agreement. A preservation of the *status quo* was necessary at that point in time pending a determination of these issues on the merits. Again, the substance of the issues was firstly, whether there were, in fact, breaches by Cool-It and even Tiger Tool under the Agreement; and, secondly, whether Cool-It was able to terminate the Agreement by reason of any alleged breaches.

[31] The other important circumstance relating to this matter arises from the materials that were before Brown J. on May 20, 2014. I have been referred to Tiger Tool's notice of application dated May 9, 2014, by which it applied for an injunction. Paragraphs 1 and 2 of the orders sought read as follows:

> 1. The Defendants Cool-It Hi-Way Services Inc. and Steve (Saeed) Zaeri, by themselves and through their agents, servants and representatives, are enjoined until further order of this Honourable Court from directly or indirectly, whether through their agents, servants, or any other entity, from breaching the Supply and Distributorship Agreement among the Parties, made as of January 1, 2012, a true copy of which is attached as Exhibit "C" to the Affidavit No. 1 of Kenneth Jansen, filed May 9, 2014.
>
> 2. The Defendants shall forthwith and until further order of this Honourable Court, comply with the Supply and Distributorship Agreement among the Parties, made as of January 1, 2012[.] ...

[32] As pointed out by Cool-It's counsel, Tiger Tool was seeking an order enjoining *any* breach of the Agreement on the part of Cool-It and Mr. Zaeri. Tiger Tool also sought an order of the court that there be compliance on the part of Cool-It and Mr. Zaeri under the Agreement.

[33] Turning to another factor noted in *Yu v. Jordan*, it is of some significance that the actual relief granted in the Injunction was substantially different from what was sought as above. The Injunction provided:

> 1. The Defendant Cool-It Hi-Way Services Inc., its officers, directors, employees, servants, agents and any and all persons acting on behalf of or in conjunction with Cool-It Hi-Way Services Inc. are hereby restrained from directly or indirectly, by any means whatsoever, until the disposition of this action at trial or further order of this Court, from terminating, attempting to terminate, purporting to terminate, including taking any steps in furtherance thereof, the Supply and Distributorship Agreement among [Tiger Tool, Cool-It, and Mr. Zaeri], a copy of which is attached as **Schedule "A"** to this Order[.] ...
>
> 2. The Supply and Distributorship Agreement shall remain in force until the disposition of this action at trial or further order of this Court[.] ...

[Emphasis added.]

[34] Tiger Tool takes the position that this language is broad enough to encompass not only a restraint of the termination provision in the Agreement, but also takes the position that the "spirit" of the Injunction is sufficient to encompass a general prohibition against Cool-It and Mr. Zaeri committing *any* breach of the Agreement.

[35] In my view, such an interpretation is unsustainable. The words of the Injunction are clear and unambiguous in that they only relate to a termination of the Agreement. This is consistent with the intent of the court to keep the Agreement afoot until a disposition of the issues arising between the parties on the merits.

[36] Brown J. did not order that Cool-It and Mr. Zaeri comply with the terms of the Agreement as was sought by Tiger Tool. In accordance with Cool-It's authorities, and given the extensive experience of Brown J., I would have expected that, if the intention of this Court was to order that Cool-It and Mr. Zaeri act in a way that was contrary to the way they had been acting, there would be specific provisions in the Injunction as to what, in fact, they were expected to do. Such provisions would have been consistent with, as I addressed above, the well-taken principles that this Court regularly applies in that any injunction is to be clear in respect of what an enjoined person can or cannot do.

[37] Frankly, in my view, an order of this Court that there be compliance generally with an agreement is far from a clear order, and that would have been particularly so in light of the situation before Brown J. at the hearing. I say that in the sense that there was substantial disagreement between the parties in terms of what they were doing and whether or not their activities did amount to a breach of the Agreement. Therefore, in my view, such a provision in an injunction would have been clearly unambiguous.

[38] Nor do I see that having attached a copy of the Agreement to the Injunction provides any further support for Tiger Tool's position. As I read the Injunction, all that was accomplished by attaching the Agreement was to identify the exact agreement that Cool-It and Mr. Zaeri were enjoined from terminating.

[39] I do not accept Tiger Tool's submissions that these further actions of Cool-It and Mr. Zaeri after May 20, 2014 were contrary to the "spirit" of the Injunction. In my view, this argument really amounts to arguing that there was an implied provision in the Injunction that there was to be compliance with the Agreement. Again, the authorities are to the effect that no implied terms are to be taken from any injunction. Tiger Tool's authorities do not

contradict that principle. It remains the case that the terms that Tiger Tool contends are in the "spirit" of the Injunction are simply not found in the terms of the Injunction.

[40] Tiger Tool's authorities referring to the "spirit" of an injunction are, again, intended to prevent a party who is enjoined from doing something from doing that same thing indirectly so as to thwart the intention of the court order. An obvious example is getting a nominee of the enjoined party to do the prohibited action. That is not what happened or might have happened here. There is no allegation that Cool-It and Mr. Zaeri have done something indirectly that they were enjoined from doing directly. As I said, this principle of acting in the "spirit" of an injunction does not allow the court to infer obligations under the order that are not clearly set out.

[41] What Tiger Tool is really seeking to do on this application is to resolve highly-contentious issues through a summary process on this contempt application. It alleges facts that are very much disputed by Cool-It and Mr. Zaeri. I have not delved into the details of the allegations on this application; however, these allegations are really the substance of the issues between the parties that will be resolved either through arbitration or through the court process. These are complex issues. While there may be facts that have been admitted by Cool-It, as Tiger Tool's counsel contends, at the end of the day, there will be substantial issues of applying those facts to the law, or there will be issues of mixed fact and law, particularly as it relates to the interpretation of the Agreement.

[42] I would emphasize that these are real and contentious issues between the parties that have been raised from the outset, and these same issues arise in the period from May 20 to August 29, 2014, as is clear from a reading of the notice of civil claim and the notice of application. In my view, it is not appropriate in these contempt proceedings, in any event, to resolve such contentious issues, particularly given the high bar that must be met in terms of proving any contempt on the part of the defendants.

[43] I would also highlight the principle from the case law that any ambiguity is to be resolved in favour of Cool-It and Mr. Zaeri. Given the amorphous nature of the obligations under the Agreement, and even accepting Tiger Tool's interpretation of the Injunction, I would have expected that Tiger Tool's argument would be a very difficult one indeed.

[44] In summary, I find that the Injunction is clear and unambiguous. There is nothing in the Injunction that restrains Cool-It and Mr. Zaeri, other than in respect of a termination of the Agreement. As Cool-It's counsel argues, there is no evidence that Cool-It or Mr. Zaeri took any steps pursuant to the provisions of the Agreement to terminate the Agreement after it was granted.

[45] Accordingly, as intended by the Injunction, the Agreement remained afoot until the Injunction was addressed by the parties by agreement and which led to the later termination of the Agreement on December 31, 2014. It follows that even if Tiger Tool might be able to establish breaches of the Agreement in the period of time from May 20 to December 31, 2014, these breaches are not caught by the Injunction.

[46] I would hasten to add that I am not making any finding on this application with respect to any of the activities of the parties during that period of time or whether they constitute breaches of the Agreement. It remains open to Tiger Tool, if it has not already, to allege breaches during that period of time. That may require some amendment of the pleadings. And, of course, it remains open to Cool-It and Mr. Zaeri to accept or dispute those allegations as they see fit. Those issues will be resolved at a trial or arbitration. It remains open to Tiger Tool to seek damages for any breaches of the Agreement over that period of time; however, in my view, no contempt issues arise in that respect.

[47] Tiger Tool's application is dismissed. Any submissions on costs?

[SUBMISSIONS RE COSTS]

[48] **THE COURT:** In my reasons for judgment following the application, I dismissed Tiger Tool's application to hold the defendants Cool-It and Mr. Zaeri in contempt of the Injunction. The defendants now seek an order of special costs arising from that disposition.

[49] Counsel for Cool-It and Mr. Zaeri rely on *439288 B.C. Ltd. v. Omineca Lama Ranch Inc.*, 2011 BCSC 865, in support of an award of special costs. In that case, an application had been brought to hold a court-appointed receiver in contempt of a court order. Madam Justice Watchuk refers to *Garcia v. Crestbrook Forest Industries Ltd.* (1994), 9 B.C.L.R. (3d) 242 (C.A.) where the court held that "reprehensible conduct" by a party may justify such an award: para. 9. Watchuk J. also refers to "conduct deserving of rebuke" where perhaps somewhat less egregious conduct might support such an order: para. 17.

[50] I am satisfied that the facts in *Omineca Lama Ranch* are distinguishable from those here. In that case, groundless allegations had been advanced against the court's own officer and the court is always quite concerned with protecting its officers from such claims. In addition, there was a clear alternative course of action available to the other party by bringing an application for directions in respect of the receiver's activities. Finally, the contempt application against the receiver was eventually dismissed by consent, and there was a ruling that affidavits sought to be relied on by the applicant were ruled inadmissible.

[51] Watchuk J. referred to various factors and found that there was no foundation for the application and that there were procedural difficulties: *Omineca Lama Ranch* at paras. 17-22. Those circumstances are not present here.

[52] While I did not accede to Tiger Tool's position, I accept that it held a *bona fide* belief that the Injunction did have the breadth of interpretation that would have supported its position. It was not what I would call a baseless position, but it was, in my view, one that was not ultimately sustainable.

[53] In terms of an alternate procedure, it is correct to say that Tiger Tool could have abandoned this application and, instead, amended its notice of civil claim to advance the same allegations. That was not done but, in any event, the allegations still would have been extant as against the defendants leaving them with the prospect that it would be decided at a later point in time.

[54] There have also been allegations concerning delay. The contempt application was adjourned by consent in October 2014 in the circumstances that I outlined above. Tiger Tool's counsel indicated his rationale as to why he did not wish to bring the matter back on for hearing. That was, in part, related to the various procedural issues that were being addressed by the parties. Further, I accept Tiger Tool's counsel's submissions that, in the face of efforts by Cool-It to have this matter brought on and resolved in some fashion beginning in November of 2014, at no time did Tiger Tool prevent the matter from being scheduled for hearing.

[55] There does appear to have been some delay in bringing the matter back on. There were efforts by Cool-It's counsel to do so from November 2014 to March 2015. There were also efforts to set the matter down for June 2015 although it was not heard until today's date. I cannot find that there was any particular fault on the part of either party in respect of that delay.

[56] Accordingly, I see no basis upon which to find that Tiger Tool acted in a reprehensible manner, or that Tiger Tool's conduct was deserving of rebuke. Ultimately, it was the unsuccessful party. In that event, and exercising my discretion, the appropriate costs disposition is to award costs in favour of the defendants of this application in any event of the cause. However, the matter of the payment of those costs will await the disposition of either the arbitration or the action and can be addressed in that context once the entire matter is disposed of.

"Fitzpatrick J."