

Federal Court



Cour fédérale

Date: 20210923

Docket: T-1176-20

Citation: 2021 FC 989

Ottawa, Ontario, September 23, 2021

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

WARNER BROS. ENTERTAINMENT INC.
AMAZON CONTENT SERVICES LLC
BELL MEDIA INC.
COLUMBIA PICTURES INDUSTRIES, INC.
DISNEY ENTERPRISES, INC.
NETFLIX STUDIOS, LLC
NETFLIX WORLDWIDE
ENTERTAINMENT, LLC
PARAMOUNT PICTURES CORPORATION
SONY PICTURES TELEVISION INC.
UNIVERSAL CITY STUDIOS
PRODUCTIONS, LLLP

Plaintiffs

and

TYLER WHITE dba BEAST IPTV
COLIN WRIGHT dba BEAST IPTV

Defendants

ORDER AND REASONS

I. Overview

[1] This Order arises from a contempt hearing held on September 20, 2021 to hear proof of the acts with which the Defendants, Tyler White and Colin Wright, were charged.

[2] At the hearing, Mr. White entered a plea of guilt to the charges. These reasons provide the context in which the plea was accepted.

[3] For reasons explained in a separate order, the charges against Mr. Wright were dismissed.

II. Background

[4] The Plaintiffs are entertainment companies which, either directly or indirectly through a parent, affiliates or subsidiaries, are engaged in the production and distribution of motion pictures and television content, and own or control the copyright in Canada in certain cinematographic works [Plaintiffs Works].

[5] On October 2, 2020, the Plaintiffs commenced an action against the Defendants alleging that they infringed the Plaintiffs' copyrights in the Plaintiffs' Works by developing, operating, maintaining, promoting, and selling subscriptions to the "Beast IPTV Service."

[6] On the same day, the Plaintiffs filed an *ex parte* motion for an interim injunction enjoining the Defendants from developing, operating, maintaining, promoting, providing support, selling subscriptions for, or authorizing anyone to sell subscriptions for the Beast IPTV

Service, or any other similar service. The Plaintiffs also sought orders requiring the Defendants to transfer custody of aspects of the online infrastructure of the Beast IPTV Service to an independent supervising solicitor [ISS], ordering the Defendants to disclose information relating to their financial assets and those of the Beast IPTV Service and prohibiting the Defendants from dissipating or removing assets out of this Court's jurisdiction.

[7] On November 17, 2020, Mr. Justice Yvan Roy granted the Plaintiffs' motion and issued an interim order [Interim Order].

[8] On November 24, 2020, the Interim Order was personally served upon Mr. White at his residence around 9:00 AM Atlantic Standard Time [AST]. Immediately after Mr. White was served with the Interim Order, the Plaintiffs executed the Interim Order until approximately 1:00 PM AST.

[9] At the time of service of the Interim Order, and during its execution, the terms of the Interim Order, including those relating to Mr. White's right to consult with counsel, his obligations under the Order, the potential of an adverse inference being drawn in case of non-compliance, and the risk of contempt for non-compliance with the Order were explained to Mr. White by the ISS, Mr. David Hutt, and by the Plaintiffs' counsel, Ms. Jillian Kean.

[10] Mr. White was given the opportunity to ask questions about the Interim Order. Mr. White was also informed that he was entitled to seek advice from his own counsel before deciding whether to comply with the Interim Order provided that such advice was sought and obtained

within a reasonable time and did not exceed two (2) hours from the time the Interim Order was explained to him. Mr. White made numerous attempts to contact legal counsel but was unable to do so at the time of execution.

[11] Mr. White was informed that failure to comply with the provisions of the Interim Order would put him in breach of its terms and subject him to facing a motion for contempt of Court, which could result in a fine and/or imprisonment.

[12] During the execution of the Interim Order, Mr. White claimed to have no knowledge or involvement with the Beast IPTV Service.

[13] The Interim Order was to remain valid for a period of not more than fourteen (14) days, within such time the Plaintiffs were required to bring a motion to review the execution of the Order and consider any application to convert the interim relief into interlocutory relief.

[14] Following a request by Defendants' counsel to adjourn the review motion scheduled for December 7, 2020, Justice Roy issued an Order on December 3, 2020, which stated that the Interim Order would remain valid and continue until a judgment of the Court on the review motion had been rendered.

[15] The review motion was heard by Justice Roy on December 18, 2020.

[16] On January 14, 2021, Justice Roy issued a judgment granting an interlocutory injunction [Judgment] and an Order requiring the Defendants to appear before a judge of this Court for a contempt hearing and be prepared to hear proof of the acts with which they were charged [Contempt Order]: *Warner Bros. Entertainment Inc. v. White (Beast IPTV)*, 2021 FC 53 2021 FC 53.

III. Charges against Mr. White

[17] The charges against the Defendants are set out at paragraph 5 of the Contempt Order. Mr. White is specifically charged with:

- i. disobeying paragraph 2B) of the Interim Order, thereby constituting contempt of Court under Rule 466(1)(b) of the *Federal Courts Rules*, by refusing to disclose any of the technical information about the Beast IPTV Service as required at paragraphs 2B) of the Interim Order, and by instead falsely claiming to have no knowledge of the Beast IPTV Service;
- ii. disobeying paragraphs 2I), 3A) and 3B)i. of the Interim Order, thereby constituting contempt of Court under Rule 466(1)(b) of the *Federal Courts Rules*, by communicating with third parties with his phone or other electronic devices during the execution of the Interim Order in order to interfere with the execution of the Interim Order and conceal evidence, notably by instructing third parties to delete websites, infrastructure or evidence related to this proceeding;

- iii. disobeying paragraph 3B)i. of the Interim Order, thereby constituting contempt of Court under Rule 466(1)(b) of the *Federal Courts Rules*, by communicating with Mr. Wright and with third parties regarding the existence of this proceeding and of the Interim Order within forty-eight (48) hours after the service of the Interim Order upon him;
- iv. disobeying paragraphs 2J) and 2K) of the Interim Order, thereby constituting contempt of Court under Rule 466(1)(b) of the *Federal Courts Rules*, by refusing to disclose to the ISS and the Plaintiffs' solicitor any of the financial information, as required at paragraphs 2J) of the Interim Order, and by refusing to provide any consent to authorize financial institutions or other service providers to make such disclosures, as required at paragraphs 2K) of the Interim Order;
- v. disobeying paragraph 2A) of the Interim Order, thereby constituting contempt of Court under Rule 466(1)(b) of the *Federal Courts Rules*, by:
 - 1. developing, operating, maintaining, promoting, providing support, selling subscriptions, or authorizing anyone to sell subscriptions to unauthorized IPTV services, including the Beast IPTV Service;
 - 2. developing, maintaining, updating, hosting, distributing, promoting or selling any software application that provides access to unauthorized IPTV services, including the Beast IPTV Service;

3. operating, maintaining, updating, hosting, promoting or selling access to the Internet domains and subdomains through unauthorized IPTV services, including the Beast IPTV Service;

by himself or by his employees, representatives and agents, or by any company, partnership, trust, entity, or person under his authority or control, or with which he is associated or affiliated, and by failing to take the necessary steps to ensure that such persons would cease these activities after service of the Interim Order upon him.

[18] On January 25, 2021, Mr. White served and filed a Notice of Appeal of the Contempt Order to the Federal Court of Appeal, bearing Court File No. A-25-21.

[19] No stay was sought by Mr. White pending the appeal.

IV. Pre-Hearing Matters

[20] By Order dated April 27, 2021, the liability phase of the contempt proceeding was scheduled to be heard at a special sitting commencing on September 20, 2021.

[21] On June 3, 2021, the parties were ordered to provide a proposed agenda for a pre-hearing conference convened to take place with counsel on September 13, 2021.

[22] On September 3, 2021, counsel for the Plaintiffs submitted a letter advising that the parties had agreed on a list of admission of facts. Counsel also attached an Agreed Statement of Facts between the Plaintiffs and Mr. White [Agreed Statement of Facts] dated the same day.

[23] On September 8, 2021, counsel for the Plaintiffs submitted a letter to advise the parties had conferred and agreed on a proposed agenda for the conference. Counsel wrote that Mr. White had confirmed he would be entering a plea of guilt with respect to the charges of contempt made against him in the Judgment, having regard to the Agreed Statement of Facts. Counsel then inquired whether the Court would prefer to receive Mr. White's plea in writing or whether a personal appearance before the Court via Zoom would be required. Counsel also gave notice that the parties had agreed that the sentencing phase of the contempt proceeding should be deferred until after the disposition of Mr. White's appeal.

[24] During the pre-hearing conference held on September 13, 2021, I directed that the Agreed Statements of Facts, which had been incorrectly filed by the Registry, be formally accepted for filing. Mr. White was ordered to appear at the contempt hearing by videoconference to confirm that he was making the plea of guilt voluntarily and that he understood the nature and the consequences of the plea.

V. Plea of Guilt

[25] On September 20, 2021, Mr. White entered a plea of guilt with respect to the charges of contempt made against him in the Contempt Order. While the parties may have considered this declaration to be sufficient for the purpose of moving on to sentencing, it is incumbent on the

Court, given the quasi-criminal character of contempt proceedings, to seek assurance that any plea of guilty is voluntary and based on an appreciation of the nature of the charges and of the consequences of such a plea. The public interest in the proper administration of justice should not be sacrificed in the interest of expediency.

[26] Accordingly, Mr. White was asked to confirm he was making the plea voluntarily. He was also asked whether he understood: (a) that the plea was an admission of the essential elements of the charges against him, (b) the nature and consequences of the plea, and (c) that the Court was not bound by any agreement made between him and the Plaintiffs. Mr. White answered affirmatively to the questions. In light of the answers provided by Mr. White, I am satisfied that the plea of guilt is voluntary, unequivocal and informed.

[27] Before accepting a plea, the Court must also be satisfied that the facts support the charge. In the present case, the facts that are the object of the charges against Mr. White are set out in detail in the Agreed Statement of Facts. These include the following admissions.

Non-disclosure of Beast IPTV servers and domains

18. At least Mr. White acquired and paid for various servers and hosting services used in association with the Beast IPTV Service, including from server/hosting providers Mach Host, Zenex 5ive, reliablesite, and Datapacket/DataCamp (the “Beast IPTV Servers”).

19. At the Time of Execution, Mr. White, Colin Wright, an individual identified as “Q”, an individual identified as “Slip”, an individual identified as “Andrew”, an individual identified as “Sal” and an individual known as “Jay Stevens”, all had possession of, or access to, the identity, location and login credentials of the Beast IPTV Servers.

20. At the Time of Execution, Mr. White, Colin Wright, an individual identified as “Q”, an individual identified as “Slip”, an

individual identified as “Andrew”, an individual identified as “Sal” and “Jay Stevens”, all had possession of, or access to, the credentials to access the server/hosting provider accounts associated with the Beast IPTV Servers.

21. During the execution of the Interim Order, Mr. White did not disclose to the ISS or to the Plaintiffs any information relating to the identity, location, or login credentials of the Beast IPTV Servers or any other servers, nor the server/hosting provider accounts associated therewith.

22. At the Time of Execution, Mr. White, Colin Wright and “Jay Stevens”, all had knowledge of at least some of the registrar accounts associated with the following domains used in association with the operation or promotion of the Beast IPTV Service (the “Beast IPTV Domains”):

- a. BeastIPTV.tv
- b. Beasthosts.net
- c. Beasthosts.org
- d. Powergraphics.shop
- e. Powergraphicsiptv.shop
- f. Beasttv.io
- g. Beasttv.cc
- h. BeastIPTV.cc
- i. Beasthosts.com
- j. Beasthosting.org
- k. BeastIPTV.com
- l. Strikeforceseo.com

23. At the Time of Execution, Mr. White, Colin Wright and “Jay Stevens”, all had possession of, or access to, the login credentials for the registrar accounts associated with the Beast IPTV Domains.

24. During the execution of the Interim Order, Mr. White did not disclose to the ISS or to the Plaintiffs, the registrar accounts

and corresponding login credentials for the Beast IPTV Domains or any other domain or subdomain.

Non-disclosure of financial information

25. At the Time of Execution, Mr. White, Colin Wright and an individual named “Sal”, all had possession of, or access to, invoices relating to the Beast IPTV Servers.

26. During the execution of the Interim Order, Mr. White did not disclose to the ISS or to the Plaintiffs the invoices associated with the Beast IPTV Servers.

27. At the Time of Execution, Mr. White and Colin Wright both had control of, or access to, PayPal accounts associated with the email addresses strkeforceseo@Protonmail.com and beasthosts@protonmail.com (the “Beast IPTV PayPal Accounts”), which were used in association with the operation of the Beast IPTV Service.

28. During the execution of the Interim Order, Mr. White did not identify or disclose any information to the ISS or to the Plaintiffs related to the Beast IPTV PayPal Accounts.

29. During the execution of the Interim Order, Mr. White did not disclose to the ISS or to the Plaintiffs the existence of any assets, revenues, or any financial documentation related to him or to the Beast IPTV Service.

30. During the execution of the Interim Order, Mr. White did not disclose the identity of any bank, financial institution, or other financial service provider responsible for any asset related to him or the Beast IPTV Service.

31. On September 3, 2021, Mr. White provided his written consent to authorize any bank, financial institution or other financial service provider to disclose to the Plaintiffs’ solicitors any information pertaining to assets that are directly or indirectly owned or controlled by him.

Communications with others.

32. At the time of service of the Interim Order, and during its execution, Mr. White was informed that once he was served with the Interim Order, he could only use electronic devices under the supervision of the independent supervising solicitor, and further, that he should not be communicating about this matter with anyone

for 48 hours, except with counsel for the purpose of seeking and obtaining legal advice.

33. During the execution of the Interim Order, at approximately 10:43 am EST / 11:43 AST, Mr. White breached the Interim Order by instructing a Beast IPTV server manager known as “Jay Stevens”, to delete the powergraphicsiptv.shop and Beast IPTV.cc domains.

34. By 12:30 pm EST / 1:30 pm AST, November 24, 2020, the Beast IPTV.cc and powergraphicsiptv.shop domains had been suspended or otherwise taken offline.

35. On November 25, 2020, Mr. White took the Beast IPTV Service offline, including the Beast IPTV.tv site and the web player accessible at watch.Beast IPTV.tv.

36. Subsequent to Mr. White taking the Beast IPTV Service offline, a third party brought the service back online and changed the credentials needed to access the domain registrar.

37. In breach of the Interim Order, Mr. White communicated with his co-defendant Mr. Colin Wright within the first forty-eight (48) hours of being served with the Interim Order about each having been served with the Plaintiffs’ claim and the Interim Order, and the difficulties each were having with respect to retaining a lawyer.

38. On November 25, 2020, (within the first forty-eight (48) hours of being served with the Interim Order), Mr. White also breached the Interim Order by disclosing the existence of the proceeding and execution of the Interim Order on him with another third party associated with the Beast IPTV Service known as “Sal”.

30. At about 10:17 pm EST / 11:17 pm AST on November 25, 2020, (within the first forty-eight (48) hours of being served with the Interim Order), Mr. White had a telephone conversation with a Beast IPTV server manager known as “Jay Stevens”, in which Mr. White discussed the execution of the Interim Order on him and how Mr. White planned to respond to the proceedings.

[28] The above facts, agreed to by the parties, clearly support each and every charge against Mr. White.

[29] For the above reasons, Mr. White's plea of guilt is accepted.

VI. Deferral of Sentencing

[30] The parties have requested that the sentencing phase of the contempt proceeding be deferred until after the adjudication of Mr. White's appeal by the Federal Court of Appeal. When questioned why sentencing should be delayed for such an extended period of time, counsel for Mr. White advised that it was not Mr. White's intention to dispute the validity of the Contempt Order at the time it was breached. He acknowledged that an order of the Court must be complied with and that an order stands, and commands respect, until it is reversed or varied. However, counsel submitted that in the event Mr. White was successful on appeal, there may be mitigating circumstances advanced in his favour at the sentencing hearing.

[31] In light of the explanation provided by Mr. White's counsel and the consent of the Plaintiffs, I am willing to accede to their adjournment request.

ORDER IN T-1176-20

THIS COURT ORDERS that:

1. The Court acknowledges and accepts the guilty plea of contempt of Court by the Defendant Tyler White.
2. Mr. Tyler White is found guilty of contempt of Court for disobeying:
 - a. Paragraphs 2B) of the Interim Order, by refusing to disclose any of the technical information about the Beast IPTV Service as required at paragraphs 2B) of the Interim Order, and by instead falsely claiming to have no knowledge of the Beast IPTV Service;
 - b. Paragraphs 2I), 3A) and 3B)i. of the Interim Order by communicating with third parties with his phone or other electronic devices during the execution of the Interim Order in order to interfere with the execution of the Interim Order and conceal evidence, notably by instructing third parties to delete websites, infrastructure or evidence related to this proceeding;
 - c. Paragraph 3B)i. of the Interim Order by communicating with his co-defendant Mr. Colin Wright and with third parties regarding the existence of this proceeding and of the Interim Order within forty-eight (48) hours after the service of the Interim Order upon him;
 - d. Paragraphs 2J) and 2K) of the Interim Order by refusing to disclose to the independent supervising solicitor and the Plaintiffs' solicitor at the time of service of the Interim Order, any of the financial information, as required at paragraphs 2J) of the Interim Order, and by refusing to provide any consent to

authorize financial institutions or other service providers to make such disclosures, as required at paragraphs 2K) of the Interim Order; and

- e. Paragraph 2A) of the Interim Order by:
 - i. accessing Internet domain registrar accounts and hosting services/servers associated with the Beast IPTV Service and temporarily suspending the Beast IPTV Service and associated websites; and;
 - ii. instructing a Beast IPTV system administrator to delete the domains for beasitv.cc and powergraphics.shop;

after being served with the Interim Order, and thereby operating, maintaining, and/or updating the Beast IPTV Service and software applications and domains that provide access to the Beast IPTV Service in violation of the activities enjoined at paragraph 2A) of the Interim Order.

- 3. The Plaintiffs shall, no later than thirty (30) days after disposition or conclusion of the appeal before the Federal Court of Appeal in Court File No. A-25-21, submit a status report to the case management judge and seek such order or directions as may be required pursuant to Rule 385(1) of the *Federal Courts Rules* to fix a special sitting for the sentencing phase of the contempt proceeding against Mr. White.

“Roger R. Lafrenière”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1176-20

STYLE OF CAUSE: WARNER BROS. ENTERTAINMENT INC., AMAZON CONTENT SERVICES LLC, BELL MEDIA INC., COLUMBIA PICTURES INDUSTRIES, INC., DISNEY ENTERPRISES, INC., NETFLIX STUDIOS, LLC, NETFLIX WORLDWIDE ENTERTAINMENT, LLC, PARAMOUNT PICTURES CORPORATION, SONY PICTURES TELEVISION INC., UNIVERSAL CITY STUDIOS PRODUCTIONS, LLLP v TYLER WHITE DBA BEAST IPTV, COLIN WRIGHT DBA BEAST IPTV

PLACE OF HEARING: BY VIDEOCONFERENCE

DATE OF HEARING: SEPTEMBER 20, 2021

ORDER AND REASONS: LAFRENIÈRE J.

DATED: SEPTEMBER 23, 2021

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