

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**CIV 2015-404-991
[2016] NZHC 1665**

BETWEEN DAMIEN GRANT AND STEVEN
 KHOV
 Applicants

AND SATWANT SINGH
 Defendant

Hearing: 2 and 21 July 2016

Counsel: A Ho for Applicants
 G Aulakh for Respondent

Judgment: 21 July 2016

(ORAL) JUDGMENT OF HEATH J

Solicitors:
Brent James Norling/Alden Ho, Auckland
Counsel:
G Aulakh, Auckland

[1] Mr Grant and Mr Khov are liquidators of AK Group (2006) Ltd. That company was placed in liquidation on 11 December 2014. It is one of the companies of what has been called the “Masala” group. Others include CHK Hospitality Ltd, Bucklands Beach Ltd and Stanmore Bay Ltd. Those companies are also in liquidation, and Messrs Grant and Khov are liquidators of each.

[2] Mr Grant and Mr Khov apply for orders that Mr Satwant Singh be held in contempt of Court, fined and ordered to pay costs in respect of his alleged deliberate disobedience of Court orders made in July 2015 and February 2016. Those orders required four directors of companies within the “Masala” group to deliver records of each company to the liquidators.

[3] I have already dealt with issues relating to other directors of companies within the Masala Group in a judgment given on 11 July 2016.¹ I deferred consideration of the present application against Mr Singh because it became clear, during the course of a hearing on 2 Jun 2016, that there was an issue as to whether Mr Singh had authorised a solicitor, Mr Tolhurst, to act on his behalf on the relevant applications.²

[4] The hearing was adjourned to today, 21 July 2016. Mr Tolhurst has appeared, at my request. He has explained to me the circumstances in which he came to act as solicitor for the parties against whom the original orders were made on 29 July 2015.

[5] Mr Tolhurst was approached initially by Ms Jain, in relation to the proceeding in which the orders were sought. He was asked to act on behalf of all four of the respondents to that application; namely, Mr Rajwinder Grewal, Ms Ravinda Kaur, Ms Jain and Mr Satwant Singh. Mr Tolhurst asked to see all of the respondents before taking instructions. Ms Jain brought a group of people to see him, whom he saw on a number of occasions. He was introduced specifically to one of them.

¹ *Grant and Khov v Grewal* [2016] NZHC 1564. The orders in issue are set out at paras [8] and [10] of that judgment.

² *Ibid*, at para [12].

[6] As a result of those meetings, Mr Tolhurst believed that he had instructions to act for the four persons against whom the application had been brought. However, he frankly accepts that he cannot identify Mr Singh as one of those parties from whom he received instructions, in the sense of being present at one of those meetings. Mr Singh has said on oath that he did not give instructions to Mr Tolhurst to act for him. There is no convincing evidence that he gained knowledge of the terms of the orders from any other source.

[7] In those circumstances, the authority warranted by Mr Tolhurst when he filed documents in Court in response to the applications and his appearances at hearings, while giving rise to an ability for the liquidators to rely on his authority in civil proceedings,³ is not sufficient to justify a finding that Mr Singh is in contempt of the orders that were made.

[8] That is because, as a Full Court of this Court held in *Solicitor-General v Miss Alice*,⁴ there is a need for the party seeking to prove a contempt to establish *beyond reasonable doubt*, both that the alleged conduct amounts to a contempt and the state of mind that evidences a deliberate breach. I am not satisfied beyond reasonable doubt that Mr Satwant Singh had the requisite knowledge to commit a deliberate breach of the orders.

[9] In those circumstances, the application to have Mr Singh held in contempt must fail. It is dismissed. However, in the circumstances in which the liquidators were placed, I make no order as to costs.

[10] During the course of this morning's hearing I have heard from Mr Tolhurst, as an officer of the Court, without requiring him to go into the witness box and give evidence on oath. For the benefit of the liquidators, I direct that a transcript of everything said in Court this morning be made, so that they can assess their position

³ For example, see *Carrell v Carrell* [1975] 2 NZLR 441 (SC) at 445–446 (Cooke J).

⁴ *Solicitor-General v Miss Alice* [2007] 2 NZLR 783 (HC), at para [30].

in light of that. Mr Tolhurst has confirmed to me that he is happy to speak to Mr Ho, as solicitor, for the liquidators, to assist them in their inquiries.

P R Heath J