

Court of King’s Bench of Alberta

Citation: Reddy v Saroya, 2024 ABKB 478

Date: 20240802  
Docket: 1201 02096  
Registry: Calgary

Between:

Neville Reddy

Applicant

- and -

Parminder Saroya, Jyoti Saroya, John Doe, Joseph B Amantea, and Warren Tettensor  
Amantea LLP

Respondents

Endorsement  
of the  
Honourable Associate Chief Justice Blair Nixon

I. Introduction

- [1] Neville Reddy (“**Reddy**”) is the Applicant. He is also the Plaintiff/Defendant by Counterclaim in underlying Action.
- [2] Parminder Saroya (“**Saroya**”) is the Respondent. He is also one of the Defendants in the underlying Action and the Plaintiff by Counterclaim.
- [3] Reddy initiated this Action in 2012. Reddy is seeking damages for millions of dollars that he transferred to Saroya. Reddy alleges that the funds he transferred to Saroya were to be

invested. He asserts that Saroya was to use the funds he transferred to purchase investment property in Canada and the USA.

[4] Reddy also alleges that Saroya was supposed to invest his own funds in an equal amount. Reddy asserts that Saroya had control over: (i) the funds provided by Reddy; and (ii) the selection and purchase of the properties.

[5] The underlying Action depends on Reddy being able to trace the funds that he transferred to Saroya. Further, he needs to determine how and where Saroya spent the funds he provided and whether Saroya also invested his own funds to purchase properties.

## II. Issues

[6] Framed in a question format, the issues underlying this Application are as follows:

- (a) Should Saroya be held in civil contempt for willfully failing, neglecting, or refusing to supply answers to Undertakings 14, 34, 91, 105, 106, 107, 128, and 135 in violation of the *Alberta Rules of Court* and in breach of the Consent Order granted by Master Andrew Robertson, QC, on November 8, 2013, which required answers to undertakings 1-141 by said Respondent within 45 days from the date of service of the said Consent Order, and which Consent Order was served upon the said Defendant's Counsel on November 8, 2013, by fax, and imposing fit and proper punishment or sentence, including but not limited to striking out the pleadings of said Defendant and judgment in favor of the Plaintiff/Applicant?
- (b) Should Saroya be held in civil contempt for willfully failing, neglecting, or refusing to supply answers to Undertakings 14, 34, 91, 105, 106, 107, 128, 135, 149, 151, 153, 154, 155, 163, 164, 167, 168, 175, 177, 181, 184, 186, 205, 255, 277, 309, 312, 313, 330, 399, 400, 447, 453, 459, and 462, in violation of the *Alberta Rules of Court* and in breach of the Case Management Order granted by Justice D. B. Nixon, on June 28, 2016, which required full and complete answers to undertakings 1-141, excepting thereout 95, 99, 101, 102, 103, 111, 112, 115, 118, 136, by said Respondent within 45 days from the date of the Case Management Order, full and complete answers to undertakings 142-225 within 60 days from the date of the Case Management Order and full and complete answers to undertakings 226-482 within 90 days from the date of the Case Management Order and imposing fit and proper punishment or sentence, including but not limited to striking out the pleadings of said Defendant and judgment in favor of the Plaintiff/Applicant?
- (c) Should Saroya be held in civil contempt for willfully failing, neglecting, or refusing to supply answers to Undertakings 14, 34, 91, 105, 106, 107, 128, 135, 149, 151, 153, 154, 155, 163, 164, 167, 168, 175, 177, 181, 184, 186, 205, 255, 277, 309, 312, 313, 330, 399, 400, 447, 453, 459, and 462, in violation of the *Alberta Rules of Court* and in breach of the Order granted by Justice D.B. Nixon, on April 16, 2018, which required the Defendant to provide the Plaintiff with any additional replies to his undertakings arising from his questionings including any documentation on or before May 21, 2018, and imposing fit and proper punishment or sentence, including but not limited to striking out the pleadings of said Defendant and judgment in favor of the Plaintiff/Applicant?

- (d) Should Saroya be held in civil contempt for willfully failing, neglecting, or refusing to supply answers to Undertakings 14, 34, 91, 105, 106, 107, 128, 135, 149, 151, 153, 154, 155, 163, 164, 167, 168, 175, 177, 181, 184, 186, 205, 255, 277, 309, 312, 313, 330, 399, 400, 447, 453, 459, and 462, in violation of the *Alberta Rules of Court* and in breach of the Order granted by Justice D.B. Nixon, on January 11, 2022, and imposing fit and proper punishment or sentence, including but not limited to striking out the pleadings of said Defendant and judgment in favor of the Plaintiff/Applicant?

### III. Facts

[7] The initial Statement of Claim was filed by Reddy on February 16, 2012. The correspondence in evidence indicates that the Statement of Claim was served on Saroya on February 16, 2012. The Statement of Defence was filed by Saroya and his daughter, Jyoti Saroya ("Jyoti"), on April 16, 2012.

[8] Reddy questioned Saroya on six different occasions. Those questionings occurred on April 3 to 5, 2013 ("**First Questioning**"), July 15, 2013 ("**Second Questioning**"), November 3 to 5, 2015 ("**Third Questioning**"), January 28, 2016 ("**Fourth Questioning**"), January 29, 2016 ("**Fifth Questioning**"), and April 8, 2016 ("**Sixth Questioning**").

[9] The Undertakings granted during these Questioning events are as follows: (i) Undertakings 1 to 123 during the First Questioning; (ii) Undertakings 124 to 141 during the Second Questioning; (iii) Undertakings 142 to 225 during the Third Questioning; (iv) Undertakings 226 to 319 during the Fourth Questioning; (v) Undertakings 320 to 457 during the Fifth Questioning; and (vi) Undertakings 458 to 482 during the Sixth Questioning.

[10] Saroya did not address Undertakings 1 to 141 as promptly as Reddy wished. As a result, Reddy filed an Application on September 27, 2013, seeking an Order compelling Saroya to provide answers to the Undertakings from the First Questioning and the Second Questioning.

[11] On November 8, 2013, a Consent Order was granted compelling Saroya to provide answers to Undertakings 1 to 141 within 45 days from the date of service of the Consent Order (the "**2013 Consent Order**"). However, the application of the 2013 Consent Order did not include those Undertakings that were objected to or taken under advisement and not subsequently accepted by the Respondent.

[12] On January 12, 2014, Saroya provided Reddy with some answers to Undertakings 1 to 141. However, Reddy asserts that many answers provided to those Undertakings on that date were deficient and some remained outstanding.

[13] On June 5, 2014, Saroya provided further answers to the outstanding Undertakings 1 to 141. Notwithstanding that subsequent effort by Saroya, Reddy continued to assert that many answers provided to those Undertakings were still deficient. To explain his position, on or about June 10, 2016, Reddy provided Saroya with a brief outlining the deficiencies with his answers to undertakings #1-141 ("**June 2014 Deficiencies Brief**").

[14] On June 28, 2016, this Court granted a Case Management Order compelling Saroya to provide full and complete answers to: (i) Undertakings 1-141 within 45 days of the date of the Case Management Order, excepting undertakings 95, 99, 101, 102, 103, 111, 112, 115, 118, and 136; (ii) Undertakings 142-225, excepting those objected to or taken under advisement and not

subsequently accepted by Mr. Saroya, within 60 days from the date of the Case Management Order; and (iii) Undertakings 226-482, excepting those objected to or taken under advisement and not subsequently accepted by Mr. Saroya, within 90 days of the Case Management Order.

[15] On August 16, 2016, a contempt application was scheduled to be heard by this Court (the “**First Contempt Application**”). Presumably in contemplation of the First Contempt Application, Sayora provided Reddy with revised answers to Undertakings 1-141, along with approximately 1500 pages of supporting documentation. This filing by Sayora was made on August 12, 2016, which was just four days prior to the First Contempt Application. In his submissions, Reddy acknowledged that additional answers and 1,500 pages of supporting documentation was in response, at least in part, to the June 2014 Deficiencies Brief.

[16] Given the context of Sayora providing answers and additional documentation on August 12, 2016, the Court decided to issue another case management order (the “**August 2016 Case Management Order**”). The August 2016 Case Management Order was filed on September 15, 2016.

[17] On October 4, 2016, Sayora provided his answers to Undertakings 142-457. Reddy asserted that many answers to the Undertakings were missing or were answered, but these answers were grossly deficient.

[18] On April 16, 2018, the First Contempt Application was scheduled to continue to be heard by this Court. Presumably in contemplation of the April 2018 hearing, Sayora provided Reddy with: (i) revised purported answers to Undertakings 145-457; and (ii) purported answers to undertakings 458-482. This filing by Sayora was made on April 12, 2018. Like the August 2016 incremental disclosure, Sayora provided additional particulars to Reddy just four days prior to the continuation of the First Contempt Application that was scheduled for April 16, 2018.

[19] Given the context of Sayora providing answers and additional documentation on April 12, 2018, the Court decided to issue another case management order. That April 2018 Case Management Order was filed on June 8, 2018.

[20] On May 24, 2018, Sayora provided further revised purported answers to Undertakings 142-482. He also provided hundreds of pages of supporting documentation.

[21] Reddy subsequently asserted that the overwhelming majority of the answers provided on April 12, 2018 were grossly deficient. He asserted that much of the information provided by Sayora did not provide any answers at all.

[22] Concerning the additional information provided on May 24, 2018, Reddy again asserted that the revised answers to Undertakings remained grossly deficient. The overwhelming majority of the answers stated that Sayora: (i) did not remember; (ii) did not have the requested documentation; (iii) had already provided the documentation; or (iv) had made a request to another individual due to his lack of recollection and lack of records.

[23] On June 4, 2018, Reddy filed a second application for contempt (the “**Second Contempt Application**”). The Second Contempt Application was heard on June 28, 2018. As a result of the evidence and argument provided during the Second Contempt Application, the Court directed Reddy to provide it with summary binders outlining the various productions of Saroya. This step again granted Saroya more time to provide further answers to undertakings and adjourned the Second Contempt Application.

[24] On or about July 17, 2018, Reddy provided thirteen summary binders to the Court.

[25] On September 10, 2018, the Second Contempt Application was heard by this Court. This hearing resulted in the Order of September 10, 2018, setting out the steps to be taken in furtherance of holding Saroya in civil contempt of Court. Master Farrington (as he then was) was appointed to review the answers to undertakings provided by Saroya.

[26] On June 13, 2019, Master Farrington issued a report indicating that Saroya provided 63 inappropriate answers to the Undertakings because the subject answers were either not responsive to the undertakings, or not sufficient to permit a meaningful dialogue during future testing of the responses at a questioning session on the undertakings (the “**Farrington 2019 Report**”)

[27] On or about July 8, 2021, Reddy began canvassing Court dates to seeking an Order to compel Saroya to provide further answers to the 63 undertakings that were deemed deficient within the Farrington 2019 Report and to compel the Defendant Jyoti to provide her answers to undertakings (“**Undertakings Application**”). This Court set the hearing date of the Undertakings Application to October 25, 2021.

[28] Saroya did not provide any further answers to undertakings between the issuance of the Farrington 2019 Report on June 13, 2019, and the efforts by Reddy to set a date for the Undertakings Application in July of 2021.

[29] On September 28, 2021, in response to the Undertakings Application that was now scheduled for October 25, 2021, Reddy received further answers to undertakings from Saroya.

[30] On October 25, 2021, I heard the component of the Undertakings Application dealing with Jyoti and adjourned the part dealing with Saroya to a later date. On January 11, 2022, I heard the continuation of the Undertakings Application, the 2021 Saroya Answers were reviewed, and I issued a further Order compelling Saroya to provide answers to undertakings and outlining specific steps to be taken in seeking records or information (“**January 2022 Order**”).

[31] Mr. Ivan Ioudine, Counsel for the Applicant, reviewed the January 11, 2022, Transcript of Proceedings and drafted a form of the January 2022 Order. Mr. Mathew Farrell, Counsel for the Respondent, drafted a vastly different form of the January 2022 Order.

[32] On December 23, 2022, Reddy filed an application to endorse the January 2022 Order (“**Application to Endorse**”). The Application to Endorse was set to be heard on January 6, 2023. In the first week of January 2023, Mr. Ioudine and Counsel for Soroya, agreed on the form of the January 2022 Order. The Application to Endorse was heard with respect to costs and enhanced costs were ordered against Saroya.

[33] On January 5 and 6, 2023, in response to the January 2022 Order, Saroya provided further answers to undertakings (“**2023 Saroya Answers**”).

[34] The January 2022 Order was endorsed on January 26, 2023, and was served on Saroya's Counsel via email, on January 27, 2023.

[35] Mr. Ioudine reviewed the 2023 Saroya Answers and determined that Saroya answered some undertakings but had either failed to provide any response or provided incomplete or non-answers to the vast majority of undertakings that are required to be answered.

[36] On March 14, 2023, I granted a Consent Order wherein Reddy was to file a third Application for Contempt and supporting brief outlining the deficiencies with the 2023 Saroya Answers (the “**Third Contempt Application**”).

#### IV. Analysis

##### A. The Context

[37] As mentioned above, Reddy had initially understood that he and Saroya would be pursuing a business venture together. By the time Reddy began to suspect something was wrong in his business relationship with Saroya, his money was apparently gone. Further, he was saddled with a multitude of condemned properties which were transferred to him without his knowledge and consent.

[38] Saroya was questioned on six occasions in this Action by Reddy. During these Questionings, Saroya provided a total of 482 undertakings (collectively, the “**Undertakings**”) to produce documents and or to provide further information.

[39] When the Farrington Report was issued in June 2019, it reported that Sayora had provided 63 inappropriate answers to the Undertakings. That equated to a failure rate of approximately 13%. As at the date of the Third Contempt Application, Sayora had provided 35 inappropriate answers to the Undertakings. That equates to a failure rate of approximately 7%.

##### B. The Law

###### 1. Alberta Rules of Court

[40] The *Alberta Rules of Court* have provisions to address civil contempt of court. The relevant provisions are Rules 10.51 (Order to appear), 10.52 (Declaration of civil contempt), and 10.53 (Punishment for civil contempt of Court).

###### 2. Jurisprudence – Civil Contempt

[41] The purpose of the civil contempt power of the court is twofold. First, to achieve compliance with court orders. Second, to uphold the court’s authority: see *Koerner v Capital Health Authority*, 2011 ABQB 191, aff’d 2011 ABCA 289, leave to appeal to SCC refused, 34573 (April 26, 2012) at para 42; see also *Dreco Services Ltd v Wenzel*, 2004 ABQB 517 at para 66.

[42] The law with respect to civil contempt has been framed in several cases: see *Schithelm v Kelemen*, 2013 ABQB 42; see also *Koerner* at para 43; *Point on the Bow Development Ltd v Kelly (William) & Sons Plumbing Contractors Ltd*, 2006 ABQB 775. The elements of civil contempt in a case where the contemptuous behaviour is a breach of a court order are as follows: (i) there is an existing requirement of the court; (ii) there is notice of the requirement to the alleged contemnor; and (iii) there is an intentional act (or failure to act) that constitutes a breach of the requirement without adequate excuse: *Kelemen* at para 40.

[43] Each of these elements must be established by the accuser: *Kelemen* at para 40. The burden of proof rests with the accuser when they are attempting to prove that the alleged contemnor has committed an intentional act (or failure to act) that constitutes a breach of a court order: *Kelemen* at para 46; *United Nurses of Alberta v Alberta (Attorney General)*, 1992 CanLII 99 (SCC), [1992] 1 SCR 901 at 933; *Synergy Credit Union Ltd v Husch*, 2008 SKQB 275 at

para 29; **Bhatnager v Canada (Minister of Employment and Immigration)**, 1990 CanLII 120 (SCC), [1990] 2 SCR 217 at 224; **Calgary (City) v Chisan** (2002), 32 MPLR (3d) 256 (Alta QB) at para 32. These elements must be proven on a beyond a reasonable doubt standard: **Carey v Laiken**, 2015 SCC 17 at para 32; **Morasse v Nadeau-Dubois**, 2016 SCC 44 at para 116. That being the case, the alleged contemnor need not respond to a contempt allegation until the accuser proves all the elements of civil contempt.

[44] To prove a breach of a requirement in a court order, the accuser must prove the existing requirement. The *actus reus* of the breach constitutes the action in breach of the court order or the failure to perform an act that the court order requires. The *mens rea* is the intention of the Respondent (the alleged contemnor) to commit the prohibited act or the intentional, willful or reckless failure to perform the required act: **Kelemen** at para 41.

[45] The need for *mens rea* in mandatory court orders has been established by the jurisprudence: see **Michel v Lafrentz**, 1998 ABCA 231 at para 21. Where someone is ordered by the court to do something, they must use a sufficient degree of diligence to perform, or to have the act performed: **Lafrentz** at para 21; see also **Broda v Broda**, 2004 ABCA 72 at para 7; and **Kelemen** at para 42.

[46] To prove contempt, the accuser must establish that the alleged contemnor had actual knowledge of the existing requirement or the underlying order: **Bhatnager** at 225. Personal service provides the alleged contemnor with actual knowledge of the order. Further, the accuser must prove that the alleged contemnor had proper notice of the contempt motion. Proving personal service of the application or otherwise demonstrating the alleged contemnor's actual knowledge of the motion is required: **Kelemen** at para 45; and **Metropolitan Life Insurance Co v Hover**, 1999 ABCA 123 at paras 6-9.

### 3. Jurisprudence – Striking Pleadings and Judgment

[47] There are a couple of circumstances where it may be appropriate to strike out pleadings. Those circumstances include where the breach of a Court order: (i) prevents the other party from defending or prosecuting an action; or (ii) constitutes a flouting or flaunting of a judicial order or demonstrates a persistent failure to obey: **Envacon Inc v 829693 Alberta Ltd**, 2017 ABQB 623 at para 28. A litigant who violates a Court order cannot be given infinite chances to modify their behaviour. At some point, a final solution must be imposed: **Envacon** at para 28.

[48] The case involving Bains Engineering Corporation is instructive: **Bains Engineering Corporation v 734560 Alberta Ltd**, 2004 ABQB 780. The respondent corporation in **Bains Engineering** did not provide answers to undertakings. It therefore required a Court Order compelling it to do so.

[49] In the **Bains Engineering** case, the respondent corporation, 734560 Alberta Ltd, eventually provided answers. However, those answers were inadequate to undertakings. The answers lacked sufficient particulars.

[50] The Court held 734560 Alberta Ltd in civil contempt, struck its pleadings and entered judgment in favor of Bains Engineering Corporation. The Court held that there were several aggravating circumstances which justified striking of the respondent's pleadings and judgment against it. The Court first noted that the inadequacy of the answers to undertakings were a clear and apparent breach of a Court Order, and the respondents knew of the inadequacy of their answers: **Bains Engineering** at para 15.

#### 4. Books and Records – A Business Necessity

[51] Keeping of proper books and records is an important matter in any business context. Indeed, proper books and records are necessary in any context where money is in play and accountability must be tested. This is so because the absence of such books and records leads to confusion and chaos, and helps the commission of fraudulent transactions: ***Re Wallace; Ex parte Campbell*** (1885), 15 QBD 213 (CA); ***Re Davidson***, [1937] 18 CBR 154 (SC); see also Honourable Mr. Justice Lloyd W. Houlden, Mr. Justice Geoffrey B. Morawetz, Dr. Janis P. Sarra, *Bankruptcy and Insolvency Law of Canada*, 4th Edition § 7:154. Indeed, the failure to keep proper books is one of the most serious offences that can be committed by a business colleague.

#### C. Alleged Deficiencies – 35 Undertakings

[52] Saroya asserts that he has made sufficient attempts to address the undertakings. To justify his position, he highlights that Reddy is focused on 35 allegedly deficient answers to undertakings given by Saroya, out of the 462 undertakings. Saroya further asserts that the alleged deficiencies arose out of six questionings and related court applications over the course of ten years.

[53] Saroya further submits that all 35 undertakings have been answered in accordance with the law of Alberta. Saroya further alleges that he gave evidence to each undertaking indicating that the information or documentation does not exist or is not in his possession despite efforts made to retrieve them.

[54] In contrast, Reddy takes the position the responses have been insufficient. Saroya addresses that comment by asserting that it cannot create evidence that does not exist. Moreover, after years of seeking these undertakings through repetitive, costly, and time-consuming procedures, Reddy's singular-focus pursuit of greater and more thorough undertakings responses is greatly disproportionate to the just resolution of the underlying Action.

[55] To properly address matters, I turn to review each of the subject 35 Undertakings.

##### 1. Undertaking 14

[56] Undertaking 14 arose in April 2013 during the First Questioning. Saroya was asked to request from Mr. Bhatt that he provide all the documents he had with respect to the Grimshaw project and 1385536 Alberta Ltd.

[57] Saroya asserts the relevant documents were provided when he addressed Undertaking 14. Based on my view of the documentation provided, I have not been able to identify the documentation that I would expect to see for purposes of addressing this undertaking.

[58] In his quest to address matters, Saroya appears to do some investigations in 2020 and 2021. The evidence from Saroya is very thin.

[59] For me to properly assess the steps that Saroya took to address this matter, I asked him to outline his best efforts in respect of Undertaking 14. In the evidence that Saroya provided to the Court in February 2024, he indicated that a key individual, Mr. Bhatt, passed away in April 2019. Saroya went on to state that he made a request to Mr. Bhatt's widow for the subject documentation. Saroya now states that the widow indicates that the old document boxes of Mr. Bhatt have been disposed of and that she has no further knowledge of such documents.

[60] Given that Mr. Bhatt died in April 2019, I find there was at least a six-year span between the time that Undertaking 14 arose on the First Questioning, and the time the inquiries were made of the relevant documents. I make this determination because my review of the documentation provided earlier by Saroya does not address Undertaking 14. In the circumstances, I further find this response by Saroya unacceptable because of the inquiry being made in or after April 2019. The inquiry should have been made in 2013 when Mr. Bhatt could have addressed it.

## **2. Undertaking 34**

[61] Undertaking 34 arose in April 2013 during the First Questioning. Saroya was asked to provide the account information, bank statements and cheques from the three banks in which Mich-Alta Management LLC had accounts.

[62] In his quest to address matters, Saroya wrote to the Cathay Bank on October 1, 2020 requesting that the bank supply him with bank statements, account information, and cheques for the three banks with which Mich-Alta Management LLC had accounts. In that letter, Saroya also identified relevant bank account numbers as being 410-0073907 or 009416552. Saroya also indicated that his company was Mich-Alta Management LLC, and that the Detroit apartments were bought in 2010 and 2011.

[63] In an email communication, dated October 14, 2020, from Cathay Bank, the financial institution informed Counsel for Saroya that notwithstanding a thorough search of its records, it was not able to locate a bank account under the name of Mich-Alta Management LLC. The Cathay Bank also advised that the alleged bank account 410-0073907 was not a valid account number.

[64] Concerning bank account number 9416552, the Cathay Bank asked what specific records that Saroya was seeking. I infer that such was a valid bank account. Based on my review of the information provided by the bank, it appears to relate to 2013 and subsequent years. It does not relate to the relevant years, which are 2010 and 2011. Concerning those relevant years, there is an email communication from the Cathay Bank to Counsel for Saroya, dated November 10, 2020, which reads as follows:

Please be informed that pursuant to our bank record retention policy, we only retain 7 years [of] records. The bank records for 2011 and beyond were being purged. Thank you for your attention.

[65] In other evidence, Saroya stated that he spoke to employees of each of the relevant banks on August 18 and 19, 2022, including the Bank of America. As a result of those inquiries, he was advised by these financial institutions that none of them keep records older than seven years on closed accounts.

[66] For me to properly assess the steps that Saroya took to address this matter, I asked him to outline his best efforts in respect of Undertaking 34. In the evidence that Saroya provided to the Court in February 2024, he indicated that he provided the relevant documentation to opposing counsel in 2014. I do not accept this best effort assertion because it contradicts an earlier argument of Saroya to the effect that since he did not provide the documentation requested concerning Undertaking 34, it was the responsibility of Reddy to make a third-party application to the financial institution for production of the requested documents. That is not the way the

system works. Saroya had an obligation to exercise due diligence in addressing Undertaking 34, and he failed to do so.

[67] I have a few comments concerning the inquiries made by Saroya. First, based on his evidence, Saroya waited until 2020 to make the first inquiry of a financial institution. That is a delay of seven years from the date of Undertaking 34. Second, he waited until 2022 to make the second inquiry of other financial institutions. That is a delay of nine years from the date of Undertaking 34. A delayed inquiry of either seven or nine years is not acceptable. Memories fade and documents are often lost or destroyed over such a long period of delay. Third, as noted above, the transactions in issue occurred during 2010 and 2011. As such, the substantive delay by Saroya was in the range of 10 to 12 years between the date of the subject transactions and the date of inquiry. Fourth, the provision of incomplete bank records ten years after the undertaking was granted, coupled with the excuse that banks only keep records for seven years, will cause severe prejudice to the ability of Reddy to prove his case.

[68] Based on my review of the evidence and analysis of the law, I find the efforts by Saroya concerning Undertaking 34 were inadequate. I make this determination because Saroya waited a minimum of seven years before he took active steps to address the undertaking. His tardiness in following up with the financial institutions increased the chances that he would not be able to provide obtain the necessary information from the financial institutions.

### **3. Undertaking 91**

[69] Undertaking 91 arose in April 2013 during the First Questioning. Saroya was asked to advise of the origin of the deposits in the amounts of \$647,339.05 in Document Number 1002 and to what the debits of almost the same amount related. The purpose of this Undertaking 91 was to assist Reddy: (i) in the tracing of funds in furtherance of determining whether the funds in question originated from Reddy or Saroya; and (ii) in determining the how the subject funds were used.

[70] In an apparent attempt to address Undertaking 91, Saroya retained an accounting firm to review Document Number 1002 and assist in answering this undertaking. Through Counsel, Saroya also contacted the Wells Fargo Bank in October 2020 in the quest to obtain relevant documentation.

[71] The answer provided to Reddy by Saroya was superficial. The accounting firm could not provide the information that Reddy was seeking without records that would show the flow of funds. The provision of records provided by Saroya to Reddy as part of the response does not show the origin of the deposit. Importantly, the information provided by Saroya to Reddy contained no information concerning the source of the funds.

[72] Saroya also asserted that the level of detail being asked by Reddy was not relevant or material to the matters at issue. I disagree. The detail being requested by Reddy through Undertaking 91 was directly relevant to the issues in this case. The underlying Action depends on Reddy being able to trace the funds, and he needs details to address matters.

[73] For me to properly assess the steps that Saroya took to address this matter, I asked him to outline his best efforts in respect of Undertaking 91. In the evidence that Saroya provided to the Court in February 2024, he indicated that he retained an accounting firm to address matters. He indicates that the accounting firm provided a detailed analysis in January 2023. I do not accept this best effort assertion because it did not address the specific question asked. Further, making

requests of a financial institution in 2020 and reaching out to accountants in subsequent years is not diligent. Those steps were taken over seven years after Undertaking 91 was given.

[74] Based on my review of the evidence and analysis of the law, I find the answer provided by Saroya to Reddy concerning Undertaking 91 addressed neither the question as to where the funds originated nor for what the funds were used. The answer does not assist Reddy in tracing the funds referenced in Document Number 1002. I make this determination because: (i) the detailed information sought was not provided; and (ii) the evidence indicates that Saroya waited over seven years before he made any real effort to seek the necessary information. By that time, it was too late.

#### **4. Undertaking 105**

[75] Undertaking 105 arose in April 2013 during the First Questioning. Saroya was asked to provide copies of the quit claim deeds or other registration documents pertaining to each property acquired from Go Invest Wisely LLC and how payment was made for each property.

[76] For me to properly assess the steps that Saroya took to address this matter, I asked him to outline his best efforts in respect of Undertaking 105. In the evidence that Saroya provided to the Court in February 2024, he indicated that in January 2014 and August 2016 he provided Reddy with a confirmation of a cheque payment and the submission of documents. He also indicated that he attempted to contact LLC Wisely but that the company had been dissolved.

[77] In my review of the evidence provided, I reviewed approximately 190 pages of Quit Claim Deeds and other registration documents. While some of the documents did not seem complete, many of the documents referred to Go Invest Wisely LLC as a party.

[78] Without a benchmark, it is not possible for me to conclude that the efforts that Saroya took to address Undertaking 105 were inadequate. Notwithstanding the disorganized and sometimes incomplete documents, it is not clear to me that Saroya did not provide appropriate disclosure.

[79] Based on my review of the evidence and analysis of the law, I cannot find that Saroya gave an inadequate answer concerning Undertaking 105.

#### **5. Undertaking 106**

[80] Undertaking 106 arose in April 2013 during the First Questioning. Saroya was asked to provide copies of each payment that was made to Stonecrest and Summit Solutions Team Corp for all the properties in the USA.

[81] For me to properly assess the steps that Saroya took to address this matter, I asked him to outline his best efforts in respect of Undertaking 106. In the evidence that Saroya provided to the Court in February 2024, he indicated that he provided copies of documents which disclosed when the USA properties were acquired. While he made general references to cashiers cheques and email communications between himself and Stonecrest in 2022, I saw no evidence that Saroya actually provided Reddy with copies of each payment that was made to Stonecrest and Summit Solutions Team Corp for all of the properties in the USA.

[82] The deficiencies are evidenced by his lack of efforts in the first instance. Instead of retaining his accountants (or their successors) in the first instance to assist him in gathering and reviewing the relevant records, Saroya retained a Mr. Baines to help him answer this undertaking. In his apparent efforts to allegedly satisfy Undertaking 106, Saroya provided one

copy of a wire transfer, dated January 26, 2010, made to Stonecrest Income and Opportunity Fund. In providing this documentation, Saroya stated that it was made pursuant to an agreement to purchase real estate dated February 5, 2010. Without more, I do not accept that explanation by Saroya concerning this payment because the contract is dated after the payment was made. More particulars would be required by the court before I could make a proper determination.

[83] Saroya provides a bank statement showing payment being made to Heights Title Company on January 7, 2010. This was allegedly pursuant to an agreement to purchase real estate from Summit Solutions Team Corp dated January 6, 2010. However, the transaction trail is, in my view, incomplete. Further evidence of this incomplete trail exists insofar as Saroya provided bank records showing two payments totalling \$901,575 made to Realty Executive Associates.

[84] Saroya asserts that Realty Executive Associates was related to Summit Solutions Team Corp. However, I did not see any evidence as to the nature of that alleged relationship. Further, I did not see any evidence that satisfied me as to which contracts these payments were made.

[85] Further evidence of incomplete transaction trails concerning Undertaking 106 is present where Saroya outlined an additional six contracts for the purchase of real estate from Stonecrest Income and Opportunity Fund, with a total purchase price of \$1,129,279.99. Notwithstanding that Undertaking 106 stipulated that Saroya was to provide copies of each payment that was made concerning the abovementioned transactions, I did not see any documentation that would evidence the payments which allegedly aggregated to \$1,129,279.99.

[86] Concerning the alleged best efforts of Saroya, he asserts that he reached out to stakeholders in 2022 in an effort to address Undertaking 106. Those efforts were nine years after this undertaking was given on the First Questioning. I do not accept this best effort assertion because, in my view, he did not take appropriate steps on a timely basis. A delay of nine years is inappropriate.

[87] Based on my review of the evidence and analysis of the law, I find Saroya gave an answer concerning Undertaking 106 that was inadequate. Saroya was directed by this Court to carry out specific steps. His efforts were lacking given the context.

## **6. Undertaking 107**

[88] Undertaking 107 arose in April 2013 during the First Questioning. Saroya was asked to inquire and advise whether the property noted in Document Number 1059 is one of the properties that was acquired and, if so, why it was not transferred into Mich-Alta LLC.

[89] Initially, Saroya advised that the subject property was not transferred directly into Mich-Alta because that was how Go Invest Wisely LLC operated. Saroya then advised that because Mich-Alta no longer existed, he could not make inquiries as to further details. I infer from his comments, that Saroya was of the view that this satisfied his inquiry obligations concerning Undertaking 107.

[90] For me to properly assess the steps that Saroya took to address this matter, I asked him to outline his best efforts in respect of Undertaking 107. In the evidence that Saroya provided to the Court in February 2024, he stated (and I paraphrase):

that in his response to Undertaking 107 in January 2014 and August 2016 he indicated that Go Invest Wisely would give him the deeds in different instances

and that the property listed in Document Number 1059 would have eventually been transferred to Mich-Alta Management LLC at a later date. Go Invest Wisely was no longer active in 2016 and his requests before 2016 to Go Invest Wisely for comprehensive records and or files in their possession were unsuccessful. Furthermore, subsequent best efforts undertaken are represented by the quit claim deed documents located and provided with response to Undertaking 107. The quit claim deed documents depict how and when the property noted in Document 1059 was first acquired from Summit Solution in March of 2010 and transferred to himself and then transferred to Mich-Alta Management LLC from him. All of these types of deed transfer documents that were in his possession were also submitted to opposing counsel prior to 2016.

[91] Based on my review of the evidence and analysis of the law, I find Saroya gave an answer concerning Undertaking 107 that was inadequate. He provided a lot of narrative but not much substance to review. Saroya was directed by this Court to carry out specific steps. His efforts were inadequate given the context. In my view, the answer Saroya provided to Reddy in respect of Undertaking 107 is evasive and nonresponsive. The contradictions which are inherent in his responses suggest that he is not telling us all that he knew.

## **7. Undertaking 128**

[92] Undertaking 128 arose in April 2013 during the First Questioning. Saroya was asked to make inquiries and consult with his accountant as to whether documents 1727-1781 are invoices or documents which relate to the US properties or the apartment project. If that determination could be made, he was asked to advise how that determination was made.

[93] Initially, Saroya indicated that he had request all the accountant's records and had not received any of them. Saroya also asserted that he had answered Undertaking 128 based on the information that he had available, and that it was Reddy's responsibility to make an application to compel production from a third party.

[94] In his quest to address matters, Saroya wrote to the Count Plus Inc on October 5, 2020 requesting that they provide the information requested in Undertaking 128. While I am not sure what information was forwarded to Saroya as a result of that October 2020 letter, I have approximately 57 pages of documentation before me concerning Undertaking 128. The documentation are invoices from Home Depot, but not much to address the questions inherent in Undertaking 128.

[95] For me to properly assess the steps that Saroya took to address this matter, I asked him to outline his best efforts in respect of Undertaking 128. In the evidence that Saroya provided to the Court in February 2024, he indicated (and I paraphrase):

his response to Undertaking 128 in June 2014 outlined that all invoices in Documents 1727-1781 were invoices for US property homes except for the documents numbered 1747, 1752, and 1777. In August of 2016, he further responded to this undertaking stating that he conclusively knew that most of the listed Document Numbers related to the US properties (houses) as it was the address of the US properties listed on all the invoices aside from those noted in June 2014 which showed the apartment project addresses. Moreover, his subsequent and additional best efforts to answer and satisfy undertaking included

attaching with his response a letter from his solicitors in October 2020 to his accountant at the time of Mich-Alta Management LLC operations, Mr. Woody Kaadou, asking him to produce records relating to documents 1727-1781 and to make a determination as to whether they pertain to US properties or the apartment project. Additionally, his response to Undertaking 128 included engaging Hutcheson & Co to review the Home Depot invoices to make an assessment on what the invoices pertained to. Hutcheson & Co's response was included with his own response to Undertaking 128 along with an email and a letter from Mich-Alta Management's construction manager, Shawn Reed, who was in charge of purchasing materials, which indicated that the invoices all pertained to the US properties (houses).

[96] I do not accept this best effort assertion by Saroya because the February 2024 response indicates that he did not take steps to contact his accountant until October 2020. That is more than six years after he gave the undertaking. Further, that updated information from Saroya contradicts his earlier assertion that he could not provide the information requested because his accountant had not provided him with the documents asked for concerning Undertaking 128. I also disagree with Saroya's suggestion that it was the responsibility of Reddy to make a third-party application to the accountant for production of the requested documents. As mentioned above, that is not the way the system works. Saroya had an obligation to exercise due diligence in addressing Undertaking 128, and he failed to do so.

[97] Based on my review of the evidence and analysis of the law, I find Saroya gave an answer concerning Undertaking 128 that was inadequate. Saroya was directed by this Court to carry out specific steps, which included a review of documents 1727-1781 and to provide explanations. He provided lots of narrative, but never answered the question or properly dealt with Undertaking 128. His efforts were inadequate given the context.

### **8. Undertaking 135**

[98] Undertaking 135 arose in July 2013 during the Second Questioning. Saroya was asked to review documents and advise to what documents 1810-1814 relate.

[99] Reddy expressed concern with the response on Undertaking 135 because he alleges that Saroya did not rely on his review of the subject documents and did not make the necessary inquiries to determine to what Documents 1810 to 1814 related. Reddy asserts that Saroya simply guesses that the documents relate to some website designing for the company. As a result of this apparent lack of due diligence, Reddy asserts that Undertaking 135 is not properly complied with and answered by Saroya.

[100] Normally I would accept Saroya's evidence on a matter of this nature. However, I reviewed the documentation concerning Undertaking 135. While I see a comment that suggests it has a connection with the development of a website, I found the evidence very thin. There was not enough evidence to allow me to draw any conclusion on a balance of probabilities.

[101] For me to properly assess the steps that Saroya took to address this matter, I asked him to outline his best efforts in respect of the undertakings, including Undertaking 135. In the evidence that Saroya provided to the Court in February 2024, he did not address Undertaking 135 at all. In the absence of a response, I draw an adverse inference.

[102] Based on my review of the evidence and analysis of the law, I find Saroya gave an answer concerning Undertaking 135 that was inadequate. Saroya was directed by this Court to carry out specific steps, which included a review of documents 1810-1814. I infer that he did not do so. His efforts were inadequate given the context.

### **9. Undertaking 149**

[103] Undertaking 149 arose in November 2015 during the Third Questioning. Saroya was asked to determine whether the deposits of \$50,000 and \$25,000 on the 368755 Alberta Ltd/Wapiti Ridge Holdings lands were paid by Cal-Alta Management. If they were, he was asked to provide copies of the cheques evidencing said payments.

[104] Reddy asserts that instead of making the requested determination and providing copies of cheques evidencing said deposits, Saroya stated that he could not recall. Saroya asserted that this information was provided in the accounting and income tax papers.

[105] I reviewed the information and documentation concerning Undertaking 149. Based on my review of the information provided, there was a lot of detail but no real answers or evidence that addressed the issues inherent in Undertaking 149. For example, there were highlighted deposits of \$50,000 made to an HSBC bank account in August 2009 for 1385536 Alberta Ltd but no detailed explanation. There was another highlighted deposit of \$50,000 to that same bank account in December 2009 but with no detailed explanation. Further, there was a highlighted deposit of \$25,000 made to a Charter One bank account in July 2011 for the benefit of Mich-Alta Properties LLC but again with no detailed explanation.

[106] For me to properly assess the steps that Saroya took to address this matter, I asked him to outline his best efforts in respect of the undertakings, including Undertaking 149. In the evidence that Saroya provided to the Court in February 2024, he referred to 1385536 Alberta Ltd, which is not a corporation referred to in Undertaking 149. Without appropriate explanation, the information provided to the Court concerning 1385536 Alberta Ltd is meaningless. Further, Saroya indicated that he wrote the CIBC in April and August 2022 to request complete records for any and all accounts for Cal-Alta Management Ltd and also under his personal name.

[107] While Saroya referred to the CIBC in his February 2024 evidence, the documentation he provided was from HSBC and the Charter One Bank. While he provided some narrative in his February 2024 evidence, it does not satisfy the evidentiary requirements. Further, his narrative indicates that he retained an accounting firm in 2022 to review and assess Undertaking 149. That is approximately seven years after he gave Undertaking 149, and over a decade after the transactions in issue in Undertaking 149.

[108] Based on my review of the evidence and analysis of the law, I find Saroya gave an answer concerning Undertaking 149 that was inadequate. Saroya was directed by this Court to carry out specific steps, including details concerning the source of certain deposits (\$50,000 and \$25,000). His efforts were inadequate given the evidence provided and given his delay of approximately seven years to engage an accountant. In my view, the answers provided by Saroya concerning Undertaking 149 were evasive and nonresponsive.

### **10. Undertaking 151**

[109] Undertaking 151 arose in November 2015 during the Third Questioning. Saroya was asked to provide a listing of all the lots that he sold in Elmont Estates, the net proceeds received from the sale of such lots, and the dates he received the said net proceeds from each sale.

[110] Reddy asserts that Saroya provided incomplete documentation regarding his sale of the lots in Elmont Estates. Saroya was specifically directed to obtain the requested information and make the necessary determinations. Notwithstanding that direction from the Court, Reddy asserts that Saroya failed to adequately answer Undertaking 151.

[111] In his efforts to address matters, Counsel for Saroya wrote to the Canada Revenue Agency (CRA) on November 4, 2020 and requested documentation for the 2009 to 2011 time period so that Saroya could establish proof of ownership. In that correspondence to the CRA, Counsel for Saroya referred to a “List of Properties in Elmonst Estates and proceeds of each sale and dates he received funds”. The years identified in the letter included 2009 to 2011.

[112] To further assess the steps that Saroya took to address this matter, I asked him to outline his best efforts in respect of Undertaking 151. In the evidence that Saroya provided to the Court in February 2024, he stated (and I paraphrase):

that in April 2018 he noted in his response to undertaking that approximately \$3.6 million proceeds were received as a result of the sale of the lots on Elmont Drive from the 2007-2012. Furthermore, his subsequent and additional best efforts included attaching in his response to the undertaking all documents he could locate with respect the sale of each lot on Elmont Drive SW. This included Agreement for Sale documents, Statement of Adjustment documents depicting when the closing date was and when the funds were received from the sale, Brokerage documents, and documents relating to his solicitor at the time who handled the sale of the lots, Joe Amantea.

[113] In reviewing multiple pages and documents provided by Saroya, I noted the following: (i) it is disorganized; (ii) the documentation provided largely referred to the sale of Elkton properties rather than Elmont properties; (iii) some of the documentation appeared to effect the sale of the same properties more than once (see the 109 Elkton Way SW property, first, sold by Cal-Alta Management Ltd to Real Estate Professionals Inc on November 8, 2010; and, second, sold by Cal-Alta Management Ltd to Kyle Easton on or about November 25, 2011); and (iv) there appears to be other duplicate sales documents.

[114] I have two comments concerning the above inquiry to the CRA. First, Saroya waited five years after the undertaking was given to make inquiries of the CRA. Second, I cannot understand why Saroya wrote to the CRA seeking documentation to establish proof of ownership. It is common knowledge that the CRA neither seeks nor retains any such information to verify proof of ownership. At most, the CRA would have within its records the details concerning the sale of properties, including proceeds of disposition and the adjusted cost base. That said, as framed, I would be surprised if the CRA responded to the Saroya letter in any substantive manner. On that point, I see no substantive response from the CRA. Third, in the letter to the CRA, the writer requested details of the sales of the “Elmonst Estates” rather than of the “Elmont properties”. I saw no correspondence which corrected that reference.

[115] I also note that during the hearing on January 11, 2022, Mr. Saroya’s Counsel stated that he spoke to Saroya’s accountant and was informed that the accountant had destroyed his records. The destruction of records is concerning, especially if it occurred during the time that this litigation was occurring.

[116] Notwithstanding the utter confusion in the records provided for Undertaking 151, I concede that after spending considerable time eliminating the duplicate records and overlapping transactions, I was able to identify possible sales for the Elkton properties which may have exceeded \$3.2 million. While that tracks into the range of sales that Saroya referred to in his February 2024 evidence, he was referring to the “Elmont property” sales whereas the documents supplied referred to the “Elkton property” sales.

[117] Based on my review of the evidence and analysis of the law, I find Saroya gave answers concerning Undertaking 151 that were inadequate. I make this determination because Saroya was directed by this Court to provide Reddy with specific information, and he made inquiries to the CRA in a fashion that were not likely to render results because of the way the questions were framed in the letter. Further, the fact that the accountant destroyed records was never adequately explained. I also note that my determination is supported by the fact that Undertaking 151 was seeking information concerning the sales of the Elmont properties whereas the documentation provided Saroya was largely in respect of the sale of Elkton properties.

### **11. Undertaking 153**

[118] Undertaking 153 arose in November 2015 during the Third Questioning. Saroya was asked to review documents to determine whether the deposits of \$98,200 and of \$1,500 in Document 2,219 were deposited by Mr. Saroya or one of his companies. If so, Saroya was asked to provide particulars of said deposits.

[119] In his efforts to address matters, Counsel for Saroya wrote to the HSBC Bank on October 27, 2020 and requested information concerning the deposits of \$98,200 and of \$1,500. These deposits were made in or about March 2009.

[120] I have two comments concerning this inquiry to the HSBC Bank. First, I query why Saroya waited almost five years after the undertaking was given to make the inquiry to the financial institution. In my view, a delayed inquiry of a few months would be acceptable. However, a delayed inquiry of five years is not acceptable. Second, given that the subject deposits were made in March 2009 and Undertaking 153 was granted in November 2015, Saroya should have expedited the inquiry. I make that comment because the deposits were already six years old when Undertaking 153 was granted.

[121] Based on my review of the evidence and analysis of the law, I find the efforts by Saroya concerning Undertaking 153 were inadequate. I make this determination because Saroya did not act promptly notwithstanding the urgency of the situation. The tardiness of Saroya’s efforts effectively ensured that he would not be able to properly address Undertaking 153. Notwithstanding his assertions to the contrary, Saroya did not do everything he could to comply with the requirements of Undertaking 153.

### **12. Undertaking 154**

[122] Undertaking 154 arose in November 2015 during the Third Questioning. Saroya was asked to review documents to determine whether the two deposits of \$15,131.30 in Document 2,221 were deposited by Mr. Saroya or one of his companies. If so, Saroya was asked to provide particulars of said deposits.

[123] In an initial communication to Reddy, Saroya conceded that the two deposits of \$15,131.30 went into the wrong bank account. Saroya subsequently stated that he did not recall

and possessed no further particulars concerning these deposits beyond which has already been provided to the accountant for tax returns.

[124] In his further efforts to address matters, Counsel for Saroya wrote to the HSBC Bank on October 27, 2020 and requested information concerning two deposits in the amount of \$15,131.30 in April 2009.

[125] To further assess the steps that Saroya took to address this matter, I asked him to outline his best efforts in respect of Undertaking 154. In the evidence that Saroya provided to the Court in February 2024, he stated (and I paraphrase):

that this deposit noted in Document 2,221 were mistakenly deposited into the wrong account as they pertained to Cal-Alta Management Ltd's commercial property. The subsequent best effort undertaken included a definitive statement in his response to undertaking as to the deposits in question. He stated that he was landlord of Starbuck's Canada who mistakenly deposited rent monies into HSBC account 029-528887-001 rather than into Cal-Alta's account. Document 2,221 depicts that the deposits were made by Starbuck's Coffee Canada. This deposit should have been in a different account but was mistakenly deposited into 1385536 Alberta Ltd account.

[126] I have two comments concerning this inquiry to the HSBC Bank. First, Saroya waited almost five years after Undertaking 154 was given to make the inquiry to the financial institution. In my view, a delayed inquiry of a few months would be acceptable. As mentioned above, a delayed inquiry of five years is not acceptable. Second, if the issue was simply an error in the corporation to which the deposits were made, they should have been corrected. I saw no indication that corrective steps were taken by Saroya. Third, given that the subject deposits were made in April 2009 and Undertaking 154 was granted in November 2015, Saroya should have expedited the inquiry. The deposits were already six years old when the undertaking was given.

[127] Based on my review of the evidence and analysis of the law, I find the efforts by Saroya concerning Undertaking 154 were inadequate. I make this determination because Saroya did not act promptly notwithstanding the urgency of the situation. The tardiness of Saroya's efforts effectively ensured that he would not be able to properly address Undertaking 154 because the deposits had been made approximately 11 years before Saroya raised the question with the HSBC Bank. As a couple of closing comments: (i) I find it strange that Saroya accepted that the deposits were made to the wrong bank account (and wrong company) in circumstances where there is no evidence that he took corrective steps; and (ii) I do not accept the assertions of Saroya that he could not address matters because his accountant had the information.

### **13. Undertaking 155**

[128] Undertaking 155 arose in November 2015 during the Third Questioning. Saroya was asked to review documents to determine whether the deposit of \$40,000 in the Plaintiff's Document 66 was deposited by Mr. Saroya or one of his companies. If so, Saroya was asked to provide particulars of said deposit.

[129] In his efforts to address matters, Saroya wrote to the HSBC Bank on October 27, 2020. He requested information concerning a deposit in the amount of \$40,000, which was made in June 2009.

[130] To further assess the steps that Saroya took to address this matter, I asked him to outline his best efforts in respect of Undertaking 155. In the evidence that Saroya provided to the Court in February 2024, he stated (and I paraphrase):

that his response to Undertaking 155 entailed a lack of uncertainty (sic) as to what Plaintiff Document 66 was because Document 66 in his possession was for a rental car invoice. It also noted that further particulars of this deposit would have been provided to his accountant for tax returns. Moreover, subsequent best efforts included various emails and requests attached to response of Undertaking 155 from his counsel to obtain from opposing counsel, Plaintiff Document 66 which he did not have in his possession nor understand what it relates to until he saw it.

[131] I have three comments concerning the efforts of Saroya to respond to Undertaking 155. First, Saroya waited almost five years after the undertaking was given to make the inquiry to the financial institution. I reiterate, a delayed inquiry of a few months would be acceptable. However, a delayed inquiry of five years is not acceptable. Second, given that the subject deposits were made in June 2009 and Undertaking 154 was granted in November 2015, Saroya should have expedited the inquiry. The deposits were already six years old when the undertaking was given. Third, in his February 2024 evidence, he asserts ignorance. He comments that his document 66 relates to a car rental, notwithstanding that the undertaking is exploring a \$40,000 deposit.

[132] Based on my review of the evidence and analysis of the law, I find the efforts by Saroya concerning Undertaking 155 were inadequate. I make this determination because Saroya did not act promptly notwithstanding the urgency of the situation. The tardiness of Saroya's efforts effectively ensured that he would not be able to properly address Undertaking 154 because a financial institution typically does not respond in a substantive way to transactions that are 11 years old. His lack of best efforts are also highlighted by the ignorance that Saroya claims concerning the \$40,000 deposit and his attempts to reference the document to a car rental receipt.

[133] I provide a couple of additional comments concerning Undertaking 155. First, I do not accept the assertions of Saroya that he could not address matters because his accountant had the information. Given the undertaking, he had an obligation to address matters within a reasonable period of time. Second, I also disagree with Saroya's suggestion that it was the responsibility of Reddy to make a third-party application to for production of the requested documents. I reiterate, that is not how the system operates. It is Saroya who has the obligation to obtain and supply his records to Reddy and to address relevant undertakings, provided the underlying questions are posed in an appropriate manner.

#### **14. Undertaking 163**

[134] Undertaking 163 arose in November 2015 during the Third Questioning. Saroya was asked to provide documents that show the origins of any particular sum of money that was put in and where it came from originally. This undertaking deals with the tracing of any deposits that are attributed to Mr. Saroya.

[135] As acknowledged in a Guardian Law Group LLP document dated January 21, 2021, this undertaking was an inquiry into how much Saroya had invested in the projects. Based on its review of the documents examined, the Guardian Law Group was not able to find any documents

pertaining to the “project” and the law firm further stated it did not know which “project” was being referring to in the undertaking.

[136] To further assess the steps that Saroya took to address this matter, I asked him to outline his best efforts in respect of Undertaking 163. In the evidence that Saroya provided to the Court in February 2024, he stated (and I paraphrase):

that after October 2016 a review took place in regard to a document that shows the origins of a sum of money that was invested. In May 2018 Saroya noted that the only related documents in his possession were corporate tax returns which were provided within the answer of numerous other undertakings. Furthermore, his subsequent and additional best effort to satisfy and answer undertaking 163 included providing a financial breakdown summary prepared by his accountant at the time (who was Pari Bhatt), bank reconciliation documents, bank statements, State Bank of India documents, and a document from First American Title Insurance Company which depicts the proceeds from the sale of my property in 2006 that shows the origin of his funds. He asserted that this undertaking wording was extremely unclear such that he was unsure as to what exact sum of money is being referred to. He closed his comments by asserting that he has, to the best of his ability, provided responses on multiple occasions to the undertaking.

[137] Concerning the efforts of Saroya to respond to Undertaking 155, I find the response by Saroya evasive. Any one with a business background would understand that Reddy is simply seeking to determine what Saroya invested himself into the business venture. Reddy is attempting to determine if Saroya had kept his part of the bargain. That is just common sense in these types of circumstances.

[138] Based on my review of the evidence and analysis of the law, I find the efforts by Saroya concerning Undertaking 163 were inadequate. I make this determination because the reporting to stakeholders of what an investor puts into a project is basic bookkeeping. Further, the keeping of proper books and records is fundamentally important in any business venture. For Saroya to now effectively say (through his law firm) that he does not know how much he invested into a project, and that he does not know to which “project” this undertaking pertains is, in my view, reflective of an avoidance attitude. At best, his lack of effort is reflective of an intentional, willful and reckless failure to perform the act he was ordered to pursue.

### **15. Undertaking 164**

[139] Undertaking 164 arose in November 2015 during the Third Questioning. Saroya was asked to provide copies of all the income tax returns that have been completed for 1385536 Alberta Ltd, once necessary signatures are obtained and documents provided in order to obtain said tax returns.

[140] To further assess the steps that Saroya took to address this matter, I asked him to outline his best efforts in respect of Undertaking 164. In the evidence that Saroya provided to the Court in February 2024, he stated (and I paraphrase):

that Reddy had copies for these returns as 1385536 was in both of their names and both Reddy and he had the same access to documents associated to this company. Moreover, in April of 2018 Saroya alleges that he noted once again in response to the undertaking that copies of the returns were available to Reddy and providing

with response to undertaking copies of tax returns for 1385536 Alberta Ltd from 2009 to 2014 after which the company was dissolved on 2014/09/02. A copy of a Certificate of Dissolution for 1385536 Alberta Ltd was also included in response as verification of dissolution.

[141] The evidence is that 1385536 Alberta Ltd was dissolved on September 2, 2014 is acknowledged. Mr. Saroya provided tax returns up to March 31, 2014. The deficiency is that Saroya failed to provide tax records for the period of April 1, 2014, to September 2, 2014.

[142] I have just one comment on Undertaking 164. It was a simply request by Reddy to Saroya. All indications are that Saroya was in charge on the operations of 1385536 Alberta Ltd, and that included the bookkeeping and filing of the income tax returns. We can debate whether Reddy had direct access to the subject income tax return, but the fundamental obligation of Saroya was to supply copies of them to Reddy. He did not complete the obligation because he did not supply the stub period income tax return covering the period from April 1, 2014, to the date of dissolution on September 2, 2014.

[143] Based on my review of the evidence and analysis of the law, I find the efforts by Saroya concerning Undertaking 164 were inadequate. I make this determination because the preparation and filing of corporate income tax returns is a legal requirement and obligation. There is no excuse for this obligation not to have been attended to and for the stub period income tax returns not to have been provided to Reddy.

#### **16. Undertaking 167**

[144] Undertaking 167 arose in November 2015 during the Third Questioning. Saroya was asked to provide a copy of the solicitor's file with respect to the incorporation of Mitch-Alta Management LLC.

[145] Reddy initially expressed concern, asserting that Saroya took no steps to obtain the solicitor's file concerning the incorporation of Mitch-Alta Management LLC. Saroya initially refused to address this undertaking on the premise that he did not have the file.

[146] In a memo dated January 21, 2021, Guardian Law Group LLP reported that they had reviewed the documents which their office had received, and they could not find any documents pertaining to the subject solicitor file. I note that this review by Guardian Law Group LLP was conducted before Saroya had even taken steps to seek the file from the solicitor who incorporated Mich-Alta Management Ltd.

[147] For me to properly assess the steps that Saroya took to address this matter, I asked him to outline his best efforts in respect of Undertaking 167. In the evidence that Saroya provided to the Court in February 2024, he indicated that he emailed Mr. Ken Allen in April 2022 in an effort to secure the information required to address Undertaking 167. Saroya indicated that Mr. Allen was an individual who worked with the solicitor who incorporated Mich-Alta Management Ltd. Ultimately, Saroya was not successful in obtaining the solicitor's file.

[148] I have two comments concerning the inquiries made by Saroya. First, based on his evidence, Saroya waited seven years after the undertaking was given before he reached out to Mr. Allen. A delayed inquiry of seven years is not acceptable. As I have already stated, memories fade and documents are often lost over such a long period of delay. Second, there is no evidence that Saroya made any effort to contact the actual lawyer who was responsible for the incorporation. Instead, Saroya reached out to Mr. Allen who had worked with the solicitor.

Common sense informs me that the solicitor would have had the relevant solicitor's file, and not Mr. Allen.

[149] Based on my review of the evidence and analysis of the law, I find the efforts by Saroya concerning Undertaking 167 were inadequate. I make this determination because Saroya waited seven years before he took active steps to address the undertaking. Again, the tardiness of Saroya's efforts increased the chances that he would not be able to provide the solicitor's file to Reddy.

### **17. Undertaking 168**

[150] Undertaking 168 arose in November 2015 during the Third Questioning. Saroya was asked to provide the branch address at which the Southfield, Michigan, Bank of America that Account Number 375000410590 was opened. He was also to request and provide a copy of the file that this branch of Bank of America had with respect to said bank account and any other documents that had to be completed in connection with the opening of said account.

[151] In his quest to address matters, Counsel for Saroya wrote to the Bank of America on October 5, 2020 and requested information concerning bank account 375000410590. The letter from Counsel for Saroya requested information concerning the opening of the account, details of the transactions through the account, and any other bank records. There is no evidence before me that the bank records were forthcoming as a result of the first bank inquiry.

[152] To further assess the steps that Saroya took to address this matter, I asked him to outline his best efforts in respect of Undertaking 168. In the evidence that Saroya provided to the Court in February 2024, he indicated that he wrote letters to the Bank of America in April and August of 2022 (along with phone calls) in an effort to obtain the file copies.

[153] I have two comments concerning this inquiry to the Bank of America. First, Saroya waited almost five years after the undertaking was given to make the initial inquiry to the financial institution. I reiterate, a delayed inquiry of five years is not acceptable. Second, Saroya waited almost seven years from the date that Undertaking 168 was given to make the second inquiry to the Bank of America in February 2024. Saroya should have issued the second inquiry earlier, rather than waiting until the end of the seventh year to do so.

[154] Based on my review of the evidence and analysis of the law, I find the efforts by Saroya concerning Undertaking 168 were inadequate. I make this determination because Saroya did not address the undertaking in a timely manner. His first inquiry to the Bank of America was in the spring and summer of 2022. As mentioned above, there is no evidence that anything resulted from this first inquiry. His second inquiry to the bank was in the fall of 2022. I infer the tardiness of Saroya's efforts effectively ensured that he would not be able to properly address Undertaking 168 because much of the bank documentation would likely be destroyed through the normal house cleaning policies that are typically followed by most financial institutions.

### **18. Undertaking 175**

[155] Undertaking 175 arose in November 2015 during the Third Questioning. Saroya was asked to provide a copy of Cheque Number 1124 dated July 15, 2008.

[156] Saroya initially took the position that his obligation to respond to Undertaking 175 did not extend to an obligation to make inquiries of third parties. That being the case, he was of the

view that he had complied with the undertaking. Since Reddy will be obliged to examine on answers in any event, Saroya was of the view that follow up ought to be left to that process.

[157] To further assess the steps that Saroya took to address this matter, I asked him to outline his best efforts in respect of Undertaking 175. In the evidence that Saroya provided to the Court in February 2024, he stated (and I paraphrase):

that in his response in October 2016 he noted the vagueness of the Undertaking. He also noted in his response in May of 2018 that he could not locate a cheque based on a "Cheque 1124". He reiterated that he had provided hundreds of pages of statements including cheque images from multiple banks to opposing counsel in numerous other undertakings. Moreover, additional and subsequent best efforts undertaken entailed engaging accounting firm Hutcheson & Co to complete a thorough review and analyses of bank statements and other available documents to locate a copy of cheque 1124 dated July 15, 2008, or references to it. He also noted that Hutcheson & Co's response was included with his response to Undertaking 175.

[158] The disclosure did contain a copy of a bank statement from Cathay Bank with a cheque number 1124 listed. That bank statement indicates that the cheque was posted on "08/08" in the amount of \$144,000. However, there is no indication as to who the payee is, which is important information in the circumstances because Reddy is trying to trace funds. I also note that given Undertaking 175 involved a 2008 transaction, Saroya should have followed up promptly on the matter. He did not do so.

[159] Based on my review of the evidence and analysis of the law, I find the efforts by Saroya concerning Undertaking 175 were inadequate. I make this determination because I see no evidence that Saroya made any real effort to seek a copy of Cheque Number 1124 dated July 15, 2008. If he was genuinely concerned with the vagueness of Undertaking 175, common sense suggests that he should have asked Reddy for clarification. By not doing so, Saroya was being evasive.

## **19. Undertaking 177**

[160] Undertaking 177 arose in November 2015 during the Third Questioning. Saroya was asked to make a request of Realty Executives Associates Inc for a copy of their entire file which Mr. Saroya had with them with respect to the wire transfer in question and all dealings regarding US properties and to provide a copy of same.

[161] Based on my review of the evidence, Saroya initially advised during his 2015 questioning that he made efforts to contact Mr. Tanguay who was apparently with Realty Executives Associates at the relevant time. Saroya indicated that his efforts were unsuccessful. As a result of these initial actions, Saroya asserted that he had done everything reasonably expected of him to fulfill his obligations concerning Undertaking 177. Given his efforts, Saroya was of the view that he had provided an avenue for Reddy to further pursue the matter in the event he thought additional efforts were warranted.

[162] In a document dated January 21, 2021, Counsel for Reddy indicated that they had reviewed the documents in their office and could find nothing that dealt with Undertaking 177. Counsel further confirmed that in its communications with the US companies, Heights Title Agency, Summit Solutions Team Corp, and StoneCrest, there was no response to date. While the

comments of Counsel are instructive, I see no indication that they had explored matters with Realty Executives Associates Inc or that they had made any efforts to reach out to that entity.

[163] To further assess the steps that Saroya took to address this matter, I asked him to outline his best efforts in respect of Undertaking 177. In the evidence that Saroya provided to the Court in February 2024, he (and I paraphrase):

provided some specific detail. In particular, he indicated that he made a request on April 20, 2022, by way of registered mail seeking his entire file for all past dealings, including the payment history that Realty Executives Associates still have in their possession. He did not receive any reply to that request. Saroya also stated that he called Realty Executive Associates Inc, on September 12, 2022. He indicated that the person he spoke to could not assist him.

[164] I have two comments concerning this evidence. First, there was a time span of almost six years between when Saroya gave Undertaking 177 and when he initiated the second inquiry of Realty Executives Associates Inc personnel. A delayed inquiry of six years is not acceptable. Second, at his 2015 questioning that Saroya advised that he made efforts to contact Mr. Tanguay who was apparently with Realty Executives Associates Inc. In his February 2024 evidence, Saroya also stated that he did not deal with any realtor or any other individuals at Realty Executive Associates Inc, but instead indicated that he dealt with Summit Solution Teams Corp. I construe that as a contradiction.

[165] Based on my review of the evidence and analysis of the law, I find the efforts by Saroya concerning Undertaking 177 were inadequate. I make this determination because Saroya did not address the undertaking in a timely manner. If his answers to his 2015 questioning is to be believed, his first inquiry to Realty Executives Associates Inc was in or before November 2015. As mentioned above, I understand that no response was forthcoming from that first inquiry. His second inquiry to Realty Executives Associates Inc was in September 2022. I infer the tardiness of Saroya's efforts effectively ensured that he would not be able to properly address Undertaking 177 because much of the business documentation would likely be destroyed through the normal house cleaning policies that are typically followed by most business operations.

## **20. Undertaking 181**

[166] Undertaking 181 arose in November 2015 during the Third Questioning. Saroya was asked to provide copies of the list changes provided to him from Heights Title Agency Inc and Summit Solutions Team Corp regarding 322 properties.

[167] In the documentation that I reviewed, there: (i) was a letter from Coldwell Banker dated June 24, 2010, which referenced 410 properties; and (ii) were five pages which allegedly listed 410 properties (and the document included a handwritten notation that suggested this listing was the aggregate of 88 properties plus 320 properties). However, when I added the number of properties listed on these five pages, I only come to an aggregate of 221 properties. I further note that there is nothing in the documentation provided that gives me comfort that the 221 properties listed on the abovementioned five pages are a subset of the 322 properties.

[168] In letters dated August 26, 2020, Counsel for Reddy wrote separately to Summit Solutions Team Corp and Heights Title Agency Inc requesting a complete list and details of 322 properties. That correspondence also sought copies of documentation in relation to the 322 properties, all apparently with a settlement date of January 22, 2010. The correspondence

indicated that the subject properties involved Summit Solutions Team Corp as the seller and Saroya as the purchaser.

[169] In a response letter dated August 28, 2020, Summit Solutions Team Corp indicated that it did not have any records or information on bulk package purchase by Saroya or Jyoti. Notwithstanding it was the vendor of 322 properties, Summit Solutions reported to the Guardian Law Group LLP that the individuals who interacted with Saroya in 2010 left the company in late 2010. Summit Solutions further reported that its employees did not leave any records or documentation with Summit Solutions Team Corp.

[170] I saw no indication that Heights Title Agency Inc responded to the August 2020 letters of inquiry that Counsel for Reddy wrote them. In the evidence that Saroya provided in February 2024, he confirmed that Heights Title Agency did not respond to any inquiry.

[171] To further assess the steps that Saroya took to address this matter, I asked him to outline his best efforts in respect of Undertaking 181. In the evidence that Saroya provided to the Court in February 2024, he included some specific detail. In particular, he indicated that there was no information coming from either Summit Solutions Team Corp or Heights Title Agency Inc. Saroya further noted that Reddy could follow up with those entities directly.

[172] I have two comments concerning this evidence. First, there was a time span of almost five years between when Saroya gave Undertaking 181 and when he initiated the inquiry of both Summit Solutions Team Corp and Heights Title Agency Inc. A delayed inquiry of five years is not acceptable. Second, the purchase and sale of 322 real property parcels involves a substantive business transaction. Both the vendor and the purchaser have reporting obligations to their respective tax authorities, albeit at different times. That being the case, both must maintain appropriate books and records. But for the passage of time, I find it remarkable that neither the vendor nor the purchaser has any records in respect of the 322 properties that were sold and bought, respectively.

[173] Based on my review of the evidence and analysis of the law, I find the efforts by Saroya concerning Undertaking 181 were inadequate. I make this determination because Saroya did not address the undertaking in a timely manner. I infer the five-year tardiness in Saroya's efforts to seek the relevant document effectively ensured that he would not be able to properly address Undertaking 181. I also note that since Saroya was involved in their business endeavour, he had a responsibility to maintain books and records for income tax reporting purposes. In my view, he had a duty to keep such records on all 322 properties in case he was audited by the authorities.

## **21. Undertaking 184**

[174] Undertaking 184 arose in November 2015 during the Third Questioning. Saroya was asked to identify the 88 properties that were purchased pursuant to Documents Number 5,342 to 5,344, and to identify the ones that were accepted and the ones that were returned.

[175] Based on my review of the evidence, Saroya initially advised that he had fulfilled this undertaking. In his view, he had fulfilled his obligation when he stated that the 88 properties were particularized in the corporate income tax returns.

[176] In his quest to address matters, Saroya wrote to the Michigan Department of Treasury on December 30, 2022 requesting that the Michigan Department of Treasury supply him with transfer Affidavits for each property that Saroya held in Michigan. While I am not sure what information was forwarded to Saroya as a result of that December 2022 letter, I have

approximately 286 pages of documentation before me concerning Undertaking 184. The documentation evidences what was purchased by Saroya, what was allegedly returned by him, and the properties that were transferred by Quit Claim Deed to Mich-Alta Management LLC. In my review of the documents in evidence, I note that the subject transactions appear to have been effected in 2010 or 2011.

[177] To further assess the steps that Saroya took to address this matter, I asked him to outline his best efforts in respect of Undertaking 184. In the evidence that Saroya provided to the Court in February 2024, he gave some specific detail. In particular, he again indicated that the 88 properties were particularized in the corporate tax returns. Saroya went on to comment about several aspects that really did not address the simple question raised by Undertaking 184.

[178] There are multiple properties listed on Document SAR005344, all of which are stated to have been returned. In contrast, Reddy asserts that several of the properties are listed as having been returned but are also detailed in an Affidavits of Facts as having been purchased by Saroya. To test Reddy's assertions, I reviewed the "returned items" 16 and 36. Consistent with the Reddy assertions, both property items 16 and 36 are: (i) on the returned list; and (ii) shown as being purchased by Saroya in the Affidavits of Facts.

[179] I have two comments concerning this evidence. First, there was a time span of over seven years between when Saroya gave Undertaking 184 and when wrote the December 2022 letter to the Michigan Department of Treasury. A delayed inquiry of seven years is not acceptable. Second, there are discrepancies in the facts that has been provided to the Court. It is evident that that not all the evidence provided by Saroya is accurate and complete. Given the initial seven-year time span between granting Undertaking 184 and the letter to Michigan Department of Treasury; and the nine-year time span between the granting of Undertaking 184 and the February 2024 Affidavit by Saroya, I would have expected greater accuracy in his reply. As it stands, there is much inconsistency in the information provided by Saroya.

[180] Based on my review of the evidence and analysis of the law, I find the efforts by Saroya concerning Undertaking 184 were inadequate. I make this determination because Saroya did not address the undertaking in a timely manner. I infer the seven-year tardiness in Saroya's efforts to seek the relevant document was an attempt to avoid having to address Undertaking 184. Further, the inaccuracies in the two properties that I tested suggest that he put no care or attention to the evidence that he was providing in his alleged efforts to address Undertaking 184.

## **22. Undertaking 186**

[181] Undertaking 186 arose in November 2015 during the Third Questioning. Saroya was asked to provide copies of the wire transfers with respect to the \$308,000, \$201,575, and \$211,000 listed on Documents W28 and W29 of Exhibit Number D-22.

[182] In my review of the bank statements that record the transfer of funds, I note that they all occurred in January 2010.

[183] Based on my review of the evidence, Saroya initially advised in 2018 that he was not in possession of these wire transfers. He also stated that this undertaking was refused because the wire transfers merely confirmed the contents of the bank statements. Saroya further asserted that the requested information is not relevant and material to the matters at issue. He was of the view that the requested information neither helped to establish facts in dispute nor directly supported facts in dispute. He went on to add that, at best, the particulars requested in Undertaking 186

were details which could possibly help prove facts in dispute but that this was an insufficient basis upon which to require production of the records.

[184] There is some suggestion in the narrative reviewed that Saroya subsequently provided a copy of the wire transfer for the amount of \$211,000. However, he did not provide copies of the wire transfer forms for the amounts of \$308,000 and \$201,575.

[185] To further assess the steps that Saroya took to address this matter, I asked him to outline his best efforts in respect of Undertaking 186. In the evidence that Saroya provided to the Court in February 2024, he indicated (and I paraphrase):

that the wire transfer details were contained in the hundreds of pages of bank statement disclosure which was previously provided to opposing counsel. Further, he stated that his best efforts were evidenced by the fact that he engaged an accounting firm in or about April, 2022. Saroya also infers that he sent letters by registered mail on or about April 19, 2022 to Wells Fargo requesting in all relevant information with respect to bank account number 287-9225320, which was in the name of Cal-Alta Management USA LLC.

[186] I note during Questioning that Saroya was of the view that a review of the underlying wire transfer documentation would not provide Reddy with any additional information. As a result, Saroya objected to the request. That objection is without merit in this matter. Reddy is trying to trace funds. That being the case, any details on a wire transfer document could be both relevant and material to the underlying dispute. To the extent that Saroya is trying to avoid producing these documents, he either does not understand the “discovery” process or he is trying to be obstructive.

[187] Based on my review of the evidence and analysis of the law, I find the efforts by Saroya concerning Undertaking 186 were inadequate. I make this determination because Saroya did not address the undertaking in a timely manner. I infer the seven-year tardiness in Saroya’s efforts to seek the relevant document from Wells Fargo was an attempt to avoid having to address Undertaking 184. Further, his continued assertions to the effect that the documents sought under Undertaking 184 were irrelevant is without merit. I make this comment because Reddy is trying to trace funds, and Saroya is not addressing the undertakings that go to this very issue.

### **23. Undertaking 205**

[188] Undertaking 205 arose in November 2015 during the Third Questioning. Saroya was asked to provide copies of any and all receipts relating to the Bank of America statements in question from the date that he took possession of the Detroit apartments.

[189] Based on my review of the evidence, Saroya initially advised that he had fulfilled this undertaking because the information requested was in documents previously provided in respect of Undertaking 172. In his view, reference to those other documents was sufficient to satisfy Undertaking 205.

[190] In his quest to address matters, Saroya wrote to the Internal Revenue Service on November 2, 2022 requesting that the IRS supply him with records that identify when Saroya took possession of the Detroit apartments, what company held apartments, and the identification of accounts that the company held with Bank of America. In the letter to the IRS, Saroya also indicated that his company was Mich-Alta Management LLC, and that the Detroit apartments were bought in 2010 and 2011.

[191] To further assess the steps that Saroya took to address this matter, I asked him to outline his best efforts in respect of Undertaking 205. In the evidence that Saroya provided to the Court in February 2024, he indicated (and I paraphrase):

that he had provided hundreds of pages of documents, and that reference could be made to Undertaking 34 and Undertaking 172.

[192] I have a few comments concerning this evidence. First, there was a time span of approximately five years between when Saroya gave Undertaking 205 and when wrote the November 2020 letter to the IRS. A delayed inquiry of five years is not acceptable. Second, I find the letters to the IRS misleading insofar as they give a superficial indication that Saroya is taking steps to seek information, but he is seeking the data from an institution which does not retain the detail requested. I make that comment because the information sought by Saroya from the IRS is generally not within the scope of information that is kept by that institution. It is the obligation of a taxpayer to report taxable events to the IRS. That institution does not retain details of, for example, when Saroya took possession of an apartment in Detroit. Third, the reference Saroya makes to the information supplied under Undertaking 34 does not satisfy Undertaking 205. My conclusions concerning Undertaking 34 were to the effect that I found Saroya's efforts inadequate. I made that determination concerning Undertaking 34 because Saroya waited a minimum of seven years before he took active steps to address the undertaking. His tardiness in following up with the financial institutions concerning Undertaking 34 resulted in him not being able to obtain the relevant information. Fourth, the reference Saroya makes to the information supplied under Undertaking 172 does not satisfy Undertaking 205. While I acknowledge that Saroya did reach out to the Bank of America, he did not do so in a timely manner. Further, there is no evidence that anything resulted from his inquiry.

[193] Based on my review of the evidence and analysis of the law, I find the efforts by Saroya concerning Undertaking 205 were inadequate. I make this determination because Saroya did not address the undertaking in a timely manner. His tardiness in his efforts to seek the relevant document from financial institutions suggests a pattern of conduct that is reflective of an attempt to avoid having to address Undertaking 205. Further, his continued assertions to the effect that the documents sought under Undertaking 34 or Undertaking 172 address his obligations under Undertaking 205 is without merit.

#### **24. Undertaking 255**

[194] Undertaking 255 arose in January 2016 during the Fourth Questioning. Saroya was asked to provide his personal tax returns for 2009, 2010, 2011, both for Canada and the US, including any state returns that were required to be filed in connection with any of the properties that were acquired.

[195] Saroya initially advised that he had fulfilled most of Undertaking 255 because the tax documents forwarded are relatively complete, including his tax returns for 2010 and 2011. He acknowledges that to the extent that his tax returns for 2009 are not otherwise included in the production they ought to be provided (*i.e.*, for each of Canada and the US).

[196] To further assess the steps that Saroya took to address this matter, I asked him to outline his best efforts in respect of Undertaking 255. In the evidence that Saroya provided to the Court in February 2024, he indicated (and I paraphrase):

that he had provided most of the requested income tax returns for 2010 and 2011. Saroya further indicated that he had followed up with the Canadian and US tax authorities in his efforts to seek the outstanding income tax information, particularly concerning the 2009 taxation year. His evidence is that he followed up with the US tax authorities (federal) in April 2022 and the Canadian tax authorities in November 2022. In both instances, the tax authorities advised Saroya that the requested information was not available. He was informed that: (i) the US income tax information was not available if it was more than seven years old; and (ii) the Canadian income tax information was not available for taxation years before 2016. Saroya also advised that he reached out to the Michigan tax authorities in January 2023 but that he has not yet received a response concerning the income tax information sought by him.

[197] I have two comments concerning the deficiencies in the evidence sought for Undertaking 255. First, there was a time span of over six years between when Saroya gave Undertaking 255 and when he reached out to the US and Canadian tax authorities. A delayed inquiry of six years is not acceptable. Second, concerning the deficiencies in the 2009 income tax disclosure, the timing was particularly important. The filing dates for the 2009 taxation year in each of the US and Canada for personal income tax returns would have been in April 2010. Given that Undertaking 255 arose in the Fourth Questioning (January 2016), a prompt inquiry by Saroya to each of the US and Canadian tax authorities would have been within a time period where the requested tax information would have been available to him.

[198] Based on my review of the evidence and analysis of the law, I find the efforts by Saroya concerning Undertaking 255 were inadequate. I make this determination because Saroya did not address the undertaking in a timely manner. The tardiness in his efforts to seek the relevant documents from the US and Canadian tax authorities resulted in him not being able to fill deficiency gap.

## **25. Undertaking 277**

[199] Undertaking 277 arose in January 2016 during the Fourth Questioning. Saroya was asked to review his records and provide to Reddy either a list of the 322 properties or provide for Reddy a reference in the Saroya affidavit of records as to which Quit Claims or other documents pertain to the subject 322 properties.

[200] In the May 2018 answer, Saroya stated that this undertaking had been provided and is found in the corporate income tax filings. Saroya further asserted that there are lists of disposed properties in the corporate tax filings.

[201] Reddy continued to press for the details requested in respect of Undertaking 277. In its quest to address matters, Counsel to Saroya wrote to Counsel to Reddy in May 2022 requesting documentation so that Saroya could address Undertaking 277.

[202] I acknowledge the letters that Counsel to Saroya wrote in April 2022 to Heights Title Agency Inc seeking the file for the transactions that he carried out with them in 2008 and the following years. The response that Saroya received from Heights Title Agency Inc on April 13, 2022 was that they had no records and that all files over ten years are destroyed.

[203] To further assess the steps that Saroya took to address this matter, I asked him to outline his best efforts in respect of Undertaking 277. In the evidence that Saroya provided to the Court in February 2024, he indicated (and I paraphrase):

that this undertaking had already been addressed and that the answer is found in the corporate income tax filings. Saroya further indicated that subsequent best efforts undertaken included attaching with response a list of 322 properties from Undertaking 181 as outlined in the undertaking. Moreover, Saroya highlights that he tried to locate and obtain Document 930 by contacting Counsel to Reddy in April (sic – it should be May) 2022 and a response from my counsel that they are attempting to locate Document 930.

[204] I have a few comments concerning the deficiencies in the evidence sought for Undertaking 277. First, I do not accept the answer Saroya gave to Undertaking 277 when he simply references an income tax return. An income tax return is a reporting to the relevant government and is typically a summary reporting. Reddy was asking for documents with details. Saroya did not provide what was requested. Second, in his February 2024 response, Saroya referenced the information provided to Undertaking 181. For the reasons outlined above in my review of Undertaking 181, that reference by Saroya is not helpful to him. Third, concerning the efforts that Counsel to Saroya took in May 2022 to ask Counsel to Reddy for certain documents, Saroya has it backwards. It is Reddy who is seeking the information from Saroya concerning Undertaking 277. That is, the information and documentation sought concerning Undertaking 277 should be in the records held by Saroya. To emphasize the point, these are business records which Saroya had a duty to maintain. Fourth, there was a time span of over six years between when Saroya gave Undertaking 277 and when he wrote the April 2022 letter to the Heights Title Agency Inc. A delayed inquiry of six years is not acceptable. It is even more unacceptable when the subject records being sought related to 2010 and perhaps earlier fiscal years.

[205] Based on my review of the evidence and analysis of the law, I find the efforts by Saroya concerning Undertaking 277 were inadequate. I make this determination because Saroya's efforts to refer to information that is listed in summary form in the income tax does not provide an adequate answer to Reddy. Further, Saroya did not address the undertaking in a timely manner. For example, his efforts to reach out Heights Title Agency Inc in April 2022 was not adequate given that Undertaking 277 was given in January 2016. The delay is even a larger concern in these circumstances because the subject transactions occurred in or about 2010.

## **26. Undertaking 309**

[206] Undertaking 309 arose in January 2016 during the Fourth Questioning. Saroya was asked to inquire with Stonecrest Income Opportunity Fund to seek an explanation with respect to the difference in purchase price, an explanation with respect to confirmation of the actual amount received by them, that it was not returned or any way paid back to Saroya directly or indirectly, and also for confirmation with respect to the fact that the purchase price on Document 914, as shown on that document, conflicts with the consideration shown on the actual title transfers.

[207] Saroya initially advised that he had gave Reddy permission to make inquiries of Stonecrest Income Opportunity Fund. Saroya stated that he was ill equipped to conduct a cross-examination of a third party on behalf Reddy.

[208] To further assess the steps that Saroya took to address this matter, I asked him to outline his best efforts in respect of Undertaking 309. In the evidence that Saroya provided to the Court in February 2024, he indicated (and I paraphrase):

that he granted consent to opposing counsel to deal with Stonecrest directly with respect to payment confirmation and other clarifications. Saroya further stated in his response to undertaking in May 2018 that Reddy had consent to make inquiries of Stonecrest. Further, he asserted that his subsequent best efforts included letters sent via registered mail to Stonecrest Opportunity Fund in which a request for a complete file including transactions was made. Stonecrest did not respond. Additionally, Saroya stated that with respect to Document 914 which he asserts he did not have access to, requests were made by his legal counsel to obtain Plaintiff Document 914 from opposing counsel. These requests were unsuccessful.

[209] I have a few comments concerning the evidence sought for in Undertaking 309. First, I do not accept the answer Saroya gave to Undertaking 309 when he simply consented to Reddy making the inquiries directly to Stonecrest. Saroya should have had the requested information within his business operations. If he did not, Saroya was primarily responsible for locating the information. Second, concerning the efforts that Counsel to Saroya took in May 2022 to ask Counsel to Reddy for certain documents, Saroya has it backwards. It is Reddy who is seeking the information from Saroya concerning Undertaking 309. I reiterate, the information and documentation sought concerning Undertaking 309 should be in the records over which Saroya had control.

[210] Based on my review of the evidence and analysis of the law, I find the efforts by Saroya concerning Undertaking 309 were inadequate. I make this determination because Saroya should have had that information within the records that he controlled. If he did not, Saroya was primarily responsible for locating the information. It is not appropriate for Saroya to direct Reddy to a third party with whom Saroya dealt with directly. Further, given the nature of the undertaking, Saroya was obligated to explain the discrepancies. In my view, that detail is critical to the claim that Reddy is making against Saroya.

## **27. Undertaking 312**

[211] Undertaking 312 arose in January 2016 during the Fourth Questioning. Saroya was asked to inquire of Stonecrest and ask them to provide a completed document similar to Document 3754 with respect to each of the properties that are listed on Document 914 of Reddy's affidavit of records.

[212] Saroya initially advised that he had gave Reddy permission to make inquiries of Stonecrest Investment LLC. Saroya also stated that he was ill equipped to conduct a cross-examination of a third party on behalf of Reddy.

[213] Saroya subsequently asserted a couple of additional arguments. First, he stated that the documents in question did not exist. Saroya went on to say that he is not required to create documents. Second, even if such documents were to exist, they are not in his power and control. That being the case, he asserted that he should as such not be required to request them. Third, Saroya reiterated that he is not required to cross-examine a third party for the benefit Reddy.

[214] To further assess the steps that Saroya took to address this matter, I asked him to outline his best efforts in respect of Undertaking 312. In the evidence that Saroya provided to the Court in February 2024, he indicated (and I paraphrase):

that his best efforts included his response to undertaking in April 2018 and May 2018, as with Undertaking 309, his stated consent for Reddy to obtain desired information directly from Stonecrest Investment LLC. He also asserted that his additional best efforts included two letters sent via registered mail to Stonecrest Investment LLC on April 11, 2022, and August 18, 2022 and two emails sent on April 7, 2022. He indicated that these communications requested all information or files that they may have in their possession with respect to any properties purchased with them. He stated that he did not receive any response from them for either letter. Moreover, with respect to Document 914, which he alleges he did not locate or have access to, requests were made by my counsel to obtain Document 914 from opposing counsel. These requests were unsuccessful.

[215] I have a few comments concerning the deficiencies in the evidence sought for Undertaking 312. First, I do not accept the answer Saroya gave to Undertaking 312 when he simply consented to Reddy making the inquiries directly to Stonecrest Investment LLC. Saroya should have had the requested information within his business operations. If he did not, Saroya was primarily responsible for locating the information. Second, concerning the efforts that Counsel to Saroya took in May 2022 to ask Counsel to Reddy for certain documents, Saroya has it backwards. It is Reddy who is seeking the information from Saroya concerning Undertaking 312. I reiterate, the information and documentation sought concerning Undertaking 312 should be in the records over which Saroya had control. As stated by Counsel for Reddy, asking him for records that are in his Affidavit of Records is improper because Saroya already has such documents. I infer that by making this request, Saroya is attempting to create an impression that he was making efforts to address Undertaking 312. I do not accept this façade.

[216] Based on my review of the evidence and analysis of the law, I find the efforts by Saroya concerning Undertaking 309 were inadequate. I make this determination because Saroya should have had that information within the records that he controlled. If he did not, Saroya was primarily responsible for locating the information. It is not appropriate for Saroya to direct Reddy to a third party with whom Saroya dealt with directly. Further, Saroya initially said that the information being sought concerning Undertaking 312 did not exist. Notwithstanding that comment, on April 11, 2022 Saroya wrote Stonecrest Investment LLC and asked them to send information and documentation for transactions in and after 2008 concerning what properties were purchased, the cost of such properties, details concerning the transfer of monies from him to Stonecrest Investment LLC, and a record of all payments for the purchase of those properties. Given the 2022 inquiries to Stonecrest Investment LLC, I infer that Saroya was misleading Reddy when he earlier stated that the information being sought through Undertaking 312 did not exist.

## **28. Undertaking 313**

[217] Undertaking 313 arose in January 2016 during the Fourth Questioning. Saroya was asked to make inquiries to the best of his abilities and obtain the property transfer affidavits and provide copies of each property transfer affidavit relating to properties transferred in the state of Michigan in relation to those properties.

[218] Saroya initially advised that he had compiled documents and made them available for inspection to Reddy. He also indicated that Reddy had refused the documents but gave no detail.

[219] In his quest to address matters, Saroya also wrote to the Michigan Department of Treasury on December 30, 2022 requesting that the government supply him with transfer affidavits from the properties that he held in Michigan. He indicated that all properties were under his personal name or Mich-Alta Management LLC, and that the corporation operated within the State of Michigan between 2010 and 2013.

[220] In the documentation allegedly associated with Undertaking 313 there are several hundred pages. The relevance of various documents is not apparent.

- a. I reviewed documents that Quit Claim property from Mich-Alta Management LLC to ZCL LLC. I am not aware of what connection ZCL LLC has to the dispute between Reddy and Saroya, and the connection was not explained.
- b. I reviewed a document that is entitled Land Contract, dated 06/01/2011. The seller is ABC 12 LLC and the buyer is Kymberly Calhoun. I am not aware of what connection ABC 12 LLC or Kymberly Calhoun have to the dispute between Reddy and Saroya, and the connection was not explained.
- c. I reviewed documents that Quit Claim property from Mich-Alta Management LLC to Reddy. That Quit Claim is not signed by Reddy, but it is signed by Saroya. I assume that document is relevant.

[221] To further assess the steps that Saroya took to address this matter, I asked him to outline his best efforts in respect of Undertaking 313. In the evidence that Saroya provided to the Court in February 2024, he indicated (and I paraphrase):

that in April 2018 he provided to Reddy whatever transfer affidavit documents he had in his possession. He asserts that his subsequent best efforts included a list of numerous Quit Claim deeds. Saroya also asserted that he provided in the past a binder containing most deeds or transfer affidavits for the State of Michigan. Additionally, he stated that he sent a letter and an email of request to Michigan's Treasury Department both on December 30, 2022, in which he requested transfer affidavits for each property held in the State of Michigan.

[222] I have two comments concerning the evidence sought in Undertaking 313. First, I am not convinced that all the information provided by Saroya concerning Undertaking 313 is relevant. That said, it includes hundreds of pages of disclosure, some of which appears to be relevant. Second, I assume that Saroya wrote to Michigan's Treasury Department on December 30, 2022 because he did not have all of the necessary information and documentation to comply with Undertaking 313.

[223] Based on my review of the evidence and analysis of the law, I find the efforts by Saroya concerning Undertaking 313 may have been adequate. I make this determination because Saroya did provide hundreds of pages of documentation. Given the manner in which Undertaking 313 is worded, I cannot say that the disclosure was inadequate. That said, the documentation provided is certainly not well organized.

### **29. Undertaking 330**

[224] Undertaking 330 arose in January 2016 during the Fifth Questioning. Saroya was asked to provide a full copy of Document 3755 and 3756.

[225] Saroya initially advised that the requested documents are copies of the Quit Claims. However, during questioning it was noted by both Counsel that the documents in question provided were not full copies.

[226] In his quest to address matters, Saroya also wrote to the RDS Group LLC on October 2, 2020 requesting full copies of Documents 3755 and 3756.

[227] To further assess the steps that Saroya took to address this matter, I asked him to outline his best efforts in respect of Undertaking 330. In the evidence that Saroya provided to the Court in February 2024, he indicated (and I paraphrase):

that he addressed this undertaking in October 2016 by providing a full copy of the Quit Claim deeds that were in his possession and was again confirmed in response to undertaking in May 2018. He also stated that his additional best efforts included attaching with his response to Undertaking 330 full copies of Documents 3755 and 3756 as existing in my records once again. He also asserts that he reached out by letter and email to Michigan's Treasury Department on December 30, 2022, requesting all copies of transfer documents and quit claims.

[228] I have two comments concerning the alleged deficiencies in the evidence sought for Undertaking 330. First, while Documents SAR003755 and SAR003756 which I reviewed are partially cut off at the top and bottom, they do appear to be relatively complete. Second, notwithstanding the late inquiry made to RDS Group LLC on October 2, 2020, the documentation is now in-hand.

[229] Based on my review of the evidence and analysis of the law, I find the efforts by Saroya concerning Undertaking 330 appears to be adequate. I make this determination because the materials I reviewed in respect of this hearing included Documents SAR003755 and SAR003756 (which were comprised of two pages) and the pages seem relatively complete and readable.

### **30. Undertaking 399**

[230] Undertaking 399 arose in January 2016 during the Fifth Questioning. Saroya was asked to provide whatever documents the IRS still had in its possession in respect of the tax years 2010, 2011, 2012 and the same with respect to the States where the properties were held.

[231] Saroya initially advised that he was not in possession of any documents beyond those already provided in the US corporate tax returns. He further stated that if more documentation was required from the IRS, Saroya would provide his consent for Reddy to obtain those additional records.

[232] To further assess the steps that Saroya took to address this matter, I asked him to outline his best efforts in respect of Undertaking 399. In the evidence that Saroya provided to the Court in February 2024, he indicated (and I paraphrase):

that he addressed his undertaking by providing in April 2018 whatever documents he had from his accountant and other parties such as Summit Solutions. He further stated that his response to this undertaking in May of 2018 had noted that Reddy

and his counsel had previously seen and reviewed these documents. He went on to state that he was willing to share copies of these documents if Reddy agreed to inspect them by coordinating with his solicitors who were in possession of these records. Saroya asserts his best efforts included phone call communications with the IRS on April 12, 2022 to request whatever documents the IRS still had in its possession in respect to tax years 2010, 2011, and 2012 and also the same with respect to the States where the properties were held. Regrettably, Saroya advised that during his April 2022 conversations with the IRS agent he was informed that records older than seven years were not available.

[233] I have two comments concerning the alleged deficiencies in the evidence sought for Undertaking 399. First, I am troubled by the fact there is no evidence that Saroya reached out to the taxation authorities before April 2022 to seek the additional documentation that might have addressed Undertaking 399. Given that Undertaking 399 was granted in January 2016, I find the efforts by Saroya concerning Undertaking 399 were inadequate. I make this determination because Saroya waited over six years before he took active steps to address the undertaking. His tardiness in following up with the taxation authorities increased the chances that he would not be able to obtain and provide the necessary information from the institutions. Second, notwithstanding that Saroya disclosed a number of pages of tax reporting, I find that the disclosure is incomplete.

[234] Based on my review of the evidence and analysis of the law, I find the efforts by Saroya concerning Undertaking 399 were inadequate. I make this determination because Saroya did not act promptly notwithstanding the urgency of the situation. The tardiness of Saroya's efforts effectively ensured that he would not be able to properly address Undertaking 399. Notwithstanding his assertions to the contrary, Saroya did not do everything he could to comply with the requirements of Undertaking 399.

### **31. Undertaking 400**

[235] Undertaking 400 arose in January 2016 during the Fifth Questioning. Saroya was asked to provide whatever documents the IRS still had in its possession in respect of the tax years 2013, 2014, 2015 up to present and the same with respect to the States where the properties were held.

[236] Saroya initially advised that no tax filings were made for 2013, 2014, and 2015. He subsequently stated that all documents pertaining to the IRS in respect to tax years 2013, 2014, and 2015 were in possession of the US accountant and Reddy.

[237] In his quest to address matters, Counsel for Saroya wrote to the IRS on October 1, 2020 and requested documents it had for the 2013 to 2015 taxation years, and also included a reference to the intervening years to "present". I did not see a response concerning the materials for the 2013, 2014, or 2015 taxation years. However, in correspondence dated May 13, 2012, the IRS advised that there was no record of a processed tax return for 2017, 2018, 2019, or 2020.

[238] To further assess the steps that Saroya took to address this matter, I asked him to outline his best efforts in respect of Undertaking 400. In the evidence that Saroya provided to the Court in February 2024, he indicated (and I paraphrase):

that he addressed his undertaking by stating in October 2016, that no returns were filed in 2013, 2014, and 2015 for the States where the properties were held. In his

further response in May 2018, Saroya stated that he was not in possession of any documents beyond those already provided in the US corporate tax returns. Saroya also stated that additional best efforts undertaken to satisfy and answer Undertaking 400 included a conversation with an IRS agent on April 12, 2022 to request copies of whatever documents the tax authority still had in its possession and the same with respect to the States where the properties were held. He asserts that his response to Undertaking 400 also included 2011 Michigan State Returns and his personal USA tax returns for the years 2012, 2013, and 2014.

[239] I have two comments concerning the alleged deficiencies in the evidence sought for Undertaking 400. First, I am troubled by the fact there is no evidence that Saroya reached out to the taxation authorities before April 2022 to seek the additional documentation that might have addressed Undertaking 400. Given that Undertaking 400 was granted in January 2016, I find the efforts by Saroya concerning Undertaking 400 were inadequate. I make this determination because Saroya waited over six years before he took active steps to address the undertaking. His tardiness in following up with the taxation authorities increased the chances that he would not be able to obtain and provide the necessary information from the institutions. Second, notwithstanding that Saroya disclosed a number of pages of tax reporting, I find that the disclosure is incomplete. He also included tax documentation from years that were not requested.

[240] Based on my review of the evidence and analysis of the law, I find the efforts by Saroya concerning Undertaking 400 were inadequate. I make this determination because Saroya did not act promptly notwithstanding the urgency of the situation. The tardiness of Saroya's efforts effectively ensured that he would not be able to properly address Undertaking 400. Notwithstanding his assertions to the contrary, Saroya did not do everything he could to comply with the requirements of Undertaking 400.

### **32. Undertaking 447**

[241] Undertaking 447 arose in January 2016 during the Fifth Questioning. Saroya was asked to make inquiries as to what information was used to render Document 880 of the Reddy production and make inquiries as to what properties are being accounted within this document. If that information is available, Reddy also sought details as to what amounts are summed to provide the financial amounts indicated.

[242] Saroya initially advised that Document 880 is a bank statement dated October 2010. He subsequently states that he is not personally aware of this information. He goes on to asserts that all payments, transactions and deposits including these payments have been accounted for by the US accountant and are evidenced in the corporate tax returns which have already been provided.

[243] To further assess the steps that Saroya took to address this matter, I asked him to outline his best efforts in respect of Undertaking 447. In the evidence that Saroya provided to the Court in February 2024, he indicated (and I paraphrase):

that he addressed his undertaking in October 2016 by providing Document 880, which he believed to be a Bank statement dated October 2010. His response to Undertaking 447 in May 2018 further stated that he was unaware of this information and that all payments, transactions and deposits including payments would have been accounted for by the US accountant and evidenced in the corporate tax returns which were previously provided. Saroya also stated that

additional best efforts undertaken to satisfy and answer undertaking included an attempt to locate and request Reddy Document 880 which he asserts he did not have in his possession and was unable to obtain, from opposing counsel. Saroya further states that his counsel made a request from opposing counsel on April 8, 2022, to obtain Plaintiff Document 880 but was unsuccessful.

[244] I have a few comments concerning the deficiencies in the evidence sought for Undertaking 447. First, I do not accept the answer Saroya gave to Undertaking 447. Saroya was primarily responsible for locating the information. Second, concerning the efforts that Counsel to Saroya took in May 2022 to ask Counsel to Reddy for certain documents, Saroya has it backwards. It is Reddy who is seeking the information from Saroya concerning Undertaking 447. I reiterate, the information and documentation sought concerning Undertaking 447 should be in the records over which Saroya had control. As stated by Counsel for Reddy, asking Reddy for records that are in the Affidavit of Records of Saroya is improper because that defendant already had such documents in its possession. I infer that by making this request, Saroya is attempting to create an impression that he was making efforts to address Undertaking 447. I do not accept this façade.

[245] Based on my review of the evidence and analysis of the law, I find the efforts by Saroya concerning Undertaking 447 were inadequate. I make this determination because Saroya should have had that information within the books and records that he controlled. If he did not, Saroya was primarily responsible for locating the information. It is not appropriate for Saroya to direct Reddy to a third party with whom Saroya dealt with directly. As I interpret the evidence, Saroya made no effort to obtain the requested information or to make appropriate inquiries.

### **33. Undertaking 453**

[246] Undertaking 453 arose in January 2016 during the Fifth Questioning. Saroya was asked to provide the bank statements for Cal-Alta Management for 2008-2012.

[247] Saroya initially advised that he had addressed Undertaking 453. The evidence indicates that he provided the bank statements for Cal-Alta Management USA LLC, rather than the Canadian bank statements for Cal-Alta Management for the relevant years.

[248] In an apparent attempt to address Undertaking 453, Saroya wrote a letter to HSBC Bank on October 14, 2020 requesting that the financial institution provide the Canadian bank statements for Cal-Alta Management LLC from 2008 to 2012. He wrote a similar letter to CIBC Chinook Centre on October 16, 2020, requesting the same information. Given these requests, I infer Saroya knew that he should have been asking for the bank statement of Cal Alta Management LLC in the first instance, rather than bank statements for Cal-Alta Management USA LLC.

[249] To further assess the steps that Saroya took to address this matter, I asked him to outline his best efforts in respect of Undertaking 453. In the evidence that Saroya provided to the Court in February 2024, he indicated (and I paraphrase):

that he addressed his undertaking by providing in October 2016 and as noted in his response in May 2018, whatever documents he had in his possession. He asserts that best efforts undertaken include attaching with his response the bank statements he had in his possession for Cal-Alta Management Ltd from 2008-2012 which were previously provided. Additionally, letters via registered mail

were sent requesting bank statements and records/files on Cal-Alta Accounts from 2008-2012. Two letters were sent to CIBC on April 11, 2022, and August 23, 2022. Two letters were sent to HSBC on April 20, 2022, and August 23, 2022. And two letters were sent to RBC on April 19, 2022, and April 23, 2022. Moreover, the response from the CIBC Business Advisor on October 27, which was also attached to his response in Undertaking depicts the likely answer to all letters. Saroya informed Reddy that every bank that responded to requests for records or statements on accounts older than seven years indicated that those records are unavailable or out of the retention period of the bank.

[250] I have a few comments concerning the deficiencies in the evidence sought for Undertaking 453. First, I do not accept the initial efforts that Saroya made to address Undertaking 453. Although he provided Reddy with bank statements, they were for the wrong entity (Cal-Alta Management USA LLC, rather than the Canadian bank statements for Cal-Alta Management). It is trite to say that Saroya was responsible for locating and providing the correct information. Second, Saroya should have had the requested documentation within his possession and control. I make this determination because the bank statements for Cal-Alta Management for 2008-2012 are typical business records. Since he was served with the initial Statement of Claim in February 2012, all of the requested records should have been within his possession and control at that time because he would need them if, for example, a taxation authority required them for audit purposes. Third, there was a time span of over six years between when Saroya gave Undertaking 453 and when he wrote the 2022 letters to the various financial institutions. A delayed inquiry of six years is not acceptable. It is even more unacceptable when the subject records being sought related to the 2008 – 2012 fiscal periods.

[251] Based on my review of the evidence and analysis of the law, I find the efforts by Saroya concerning Undertaking 453 were inadequate. I make this determination because Saroya should have had those records within his possession and control. If he did not, Saroya was responsible for promptly locating the information and documentation.

### **34. Undertaking 459**

[252] Undertaking 459 arose in April 2016 during the Sixth Questioning. Saroya was asked to obtain the copy of Dr. White's file from the university medical services office or his independent file in its complete state.

[253] Saroya initially objected to this undertaking on the basis of relevancy. Nevertheless, Saroya granted Reddy consent and authorization to review the medical records.

[254] To further assess the steps that Saroya took to address this matter, I asked him to outline his best efforts in respect of Undertaking 459. In the evidence that Saroya provided to the Court in February 2024, he indicated (and I paraphrase):

that he addressed his undertaking by indicating in April 2018 that he did not believe asking for his personal health details was appropriate. Nonetheless, he authorized opposing counsel to obtain whatever information was required from Reddy. This authorization was again noted in response to the undertaking in May 2018. Saroya further stated that he made subsequent best efforts in the context of this Undertaking, which included contacting Dr. White's office on April 19, 2022. Saroya stated that after that contact, he filled out and sent in a Health Information

Access Request Form that was attached to his response of Undertaking 459. Additionally, attached to his response were previous requests made to Dr. White by legal counsel.

[255] I have a few comments concerning the deficiencies in the evidence sought for Undertaking 459. First, while we can debate the relevance of his medical records, Saroya did grant consent for Reddy to access those documents. Second, there was a time span of over six years between when Saroya gave Undertaking 459 and when he wrote the 2022 letter to Dr. White's office in April 2022. Separate and apart from the relevancy issue, a delayed inquiry of six years is not acceptable.

[256] Based on my review of the evidence and analysis of the law, I find the efforts by Saroya concerning Undertaking 459 were inadequate. I make this determination because Saroya should have reached out to Dr. White earlier than April 2022. But for the relevancy of the medical records sought, this is another example of Saroya not dealing with his undertakings on a timely basis.

### **35. Undertaking 462**

[257] Undertaking 462 arose in April 2016 during the Sixth Questioning. Saroya was asked to confirm whether he had signed Exhibit D-25 and whether he had provided it to Alberta Transportation for the purposes of receiving a renewal license.

[258] Saroya initially consented to this undertaking. He then objected to it on the basis of relevance.

[259] In email correspondence to his Counsel on August 20, 2020, Saroya confirmed that it was his signature on the document entitled "Medical Examination for Motor Vehicle Operators". That document was date stamped by the government on October 7, 2011.

[260] To further assess the steps that Saroya took to address this matter, I asked him to outline his best efforts in respect of Undertaking 462. In the evidence that Saroya provided to the Court in February 2024, he indicated (and I paraphrase):

that he addressed his undertaking in April and May 2018 by questioning the relevancy of undertaking. That said, Saroya indicated that he made subsequent best efforts in the context of this Undertaking which included confirmation of his signature on Exhibit D-25 and an attached copy to response, for the purposes of medical examination for motor vehicle operation.

[261] I have a few comments concerning the deficiencies in the evidence sought for Undertaking 462. First, while we can debate the relevance of his Alberta Transportation record, Saroya did grant consent for Reddy to access the document. Second, there was a time span of over six years between when Saroya gave Undertaking 462 and when he confirmed to his Counsel in August 2022 that it was his signature on the document. Separate and apart from the relevancy issue, a delayed inquiry of six years is not acceptable.

[262] Based on my review of the evidence and analysis of the law, I find the efforts by Saroya concerning Undertaking 462 were inadequate. I make this determination because notwithstanding Saroya did confirm that it was his signature on the document, I saw no confirmation that he provided it to Alberta Transportation for the purposes of receiving a renewal license. In essence, he did not provide a complete answer.

## V. Application of the Law to the Facts

[263] As outlined above, the elements of civil contempt in a case where the contemptuous behaviour is a breach of a court order are as follows: **Kelemen** at para 4; see also **Koerner** at para 43; and **Point on the Bow Development**.

### A. There is an existing requirement of the court

[264] The evidence in this case establishes that there are existing requirements of the Court. This fact is evidenced by: (i) the Consent Order granted by Master Andrew Robertson, QC, on November 8, 2013; (ii) the Case Management Order granted by Justice D. B. Nixon, on June 28, 2016; (iii) the Order granted by Justice D.B. Nixon, on April 16, 2018; and (iv) the Order granted by Justice D.B. Nixon, on January 11, 2022 (collectively, the “**Four Orders**”).

[265] In my view, this element is satisfied beyond a reasonable doubt.

### B. There is notice of the requirement to the alleged contemnor

[266] To prove this element of contempt, Reddy must establish that Saroya (the alleged contemnor) had actual knowledge of the existing requirements or the underlying orders: **Bhatnager** at 225.

[267] Based on my ongoing management of this litigation file, I find that Saroya had actual knowledge of the Four Orders. I make that determination because Saroya addressed the various items in the each of the Four Orders by way of: (i) Affidavits filed; (ii) written Briefs (*i.e.*, submissions); and (iii) oral argument.

[268] Further, Reddy (the accuser) must prove that Saroya (the alleged contemnor) had proper notice of the contempt motion. Proving personal service of the application or otherwise demonstrating the alleged contemnor’s actual knowledge of the motion is required: **Kelemen** at para 45; and **Metropolitan Life** at paras 6-9.

[269] Based on my ongoing involvement of the contempt applications, I find that Saroya, beyond a reasonable doubt, had notice of that contempt proceedings because twice on the First Contempt Application he dumped over a thousand pages of documentation on Reddy just four days before that contempt hearing (which was scheduled in August 2016) and again on the continuation of the hearing (which was scheduled in April 2018). When I review both of these actions in context, I find they were a part of a deliberate strategy to dump additional particulars on Reddy just four days prior to the respective hearings, all in an effort to delay matters.

[270] Concerning the Third Contempt Application, I also find that Saroya, beyond a reasonable doubt, had notice of that contempt proceedings because he addressed the various items in this hearing by way of: (i) Affidavits filed; (ii) written Briefs (*i.e.*, submissions); and (iii) oral argument.

[271] In my view, this element is satisfied beyond a reasonable doubt.

### C. There is an intentional act (or failure to act) that constitutes a breach of the requirement without adequate excuse

[272] As mentioned above, the burden of proof rests with Reddy (the accuser) when he is attempting to prove that Saroya (the alleged contemnor) has committed an intentional act (or failure to act) that constitutes a breach of a court order: **Kelemen** at para 46; **United Nurses of Alberta** at 933; **Synergy Credit Union** at para 29; **Bhatnager** at 224; **Chisan** at para 32. That

being the case, Saroya (the alleged contemnor) need not respond to a contempt allegation until the accuser proves all the elements of civil contempt.

[273] To prove a breach of a requirement in a court order, Reddy must prove the existing requirement. The *actus reus* of the breach constitutes the action in breach of the court order or the failure to perform an act that the court order requires. As outlined above in 32 of the subject Undertakings, I have found that Saroya breached the court orders (see “C. Alleged Deficiencies – 35 Undertakings”, above). Notwithstanding his obligation to address the Undertakings, Saroya effected a pattern of delay in his purported attempts to address his obligations. In most cases, he was advancing a façade of compliance.

[274] The need for *mens rea* in mandatory court orders has been established by the jurisprudence: see **Lafrentz** at para 21. Where someone is ordered by the court to do something, they must use a sufficient degree of diligence to perform, or to have the act performed: **Lafrentz** at para 21; see also **Broda v Broda**, 2004 ABCA 72 at para 7; and **Kelemen** at para 42. The *mens rea* is the intention of Saroya (the alleged contemnor) to commit the prohibited act or the intentional, willful or reckless failure to perform the required act: **Kelemen** at para 41. In this case, I find that Saroya intentionally and willfully failed to perform and appropriately pursue 32 of the 35 Undertakings. This finding is evidenced by the delays effected by Saroya and his artful attempts to make it look like he was doing something when in substance he was not. In particular, Saroya was ordered by the court to do something. As a result of the various orders, he had to use a sufficient degree of diligence to perform, or to have the act performed. He did not do so, which evidences the necessary *mens rea*: see **Lafrentz** at para 21; see also **Broda v Broda**, 2004 ABCA 72 at para 7; and **Kelemen** at para 42.

[275] In my view, this element is satisfied on beyond a reasonable doubt.

## VI. Conclusions

[276] In closing, I note for the record that Saroya repeatedly provided additional particulars to Reddy just days prior to the continuation of the various contempt applications. In most cases, he was advancing a façade of compliance. I construe these actions of dumping information and data to constitute a pattern of activity in his ongoing efforts to delay matters.

[277] I also note that the subject Undertakings involved information and data associated with business endeavours in which Saroya and his corporation were involved. That being the case, he had a responsibility to maintain books and records for income tax reporting purposes and also for the benefit of his stakeholders, including Reddy. In my view, his failure to keep and maintain proper books and records is a serious shortfall in business. I further note that if he had maintained proper books and records, that information could have been provided to Reddy within a reasonable time after each of the subject Undertakings was granted.

[278] In summary, Saroya has substantively failed to provide bank and accounting records and other requested information, notwithstanding multiple Court Orders. Reddy asserts that this failure has impeded him from advancing this Action against Saroya. This type of delay and deferral effected by a person such as Saroya is not to be tolerated in these circumstances.

[279] To put this into a global context, a litigant who violates a Court order cannot be given infinite chances to modify their behaviour. In this regard, a person in the position of Saroya must

take positive steps that are within their means. Regrettably, the efforts Saroya took in 32 of the 35 subject Undertakings were far short of what I would expect of “best efforts” by a reasonable person. At some point, a final solution must be imposed: **Envacon** at para 28. As a result, my conclusions are as follows.

[280] Concerning the four issues framed as questions above, based on my review of the evidence and analysis of the law, I am satisfied that Reddy has satisfied the necessary tests beyond a reasonable doubt. According, my conclusions, are as follows:

- (a) I hold Saroya in civil contempt for willfully failing, neglecting, or refusing to supply answers to Undertakings 14, 34, 91, 106, 107, 128, and 135 in violation of the Alberta *Rules of Court* and in breach of the Consent Order granted on November 8, 2013.
- (b) I hold Saroya in civil contempt for willfully failing, neglecting, or refusing to supply answers to Undertakings 14, 34, 91, 106, 107, 128, 135, 149, 151, 153, 154, 155, 163, 164, 167, 168, 175, 177, 181, 184, 186, 205, 255, 277, 309, 312, 399, 400, 447, 453, 459, and 462, in violation of the Alberta *Rules of Court* and in breach of the Case Management Order granted on June 28, 2016.
- (c) I hold Saroya in civil contempt for willfully failing, neglecting, or refusing to supply answers to Undertakings 14, 34, 91, 106, 107, 128, 135, 149, 151, 153, 154, 155, 163, 164, 167, 168, 175, 177, 181, 184, 186, 205, 255, 277, 309, 312, 399, 400, 447, 453, 459, and 462, in violation of the Alberta *Rules of Court* and in breach of the Order granted on April 16, 2018.
- (d) I hold Saroya in civil contempt for willfully failing, neglecting, or refusing to supply answers to Undertakings 14, 34, 91, 106, 107, 128, 135, 149, 151, 153, 154, 155, 163, 164, 167, 168, 175, 177, 181, 184, 186, 205, 255, 277, 309, 312, 399, 400, 447, 453, 459, and 462, in violation of the Alberta *Rules of Court* and in breach of the Order granted on January 11, 2022.

[281] Given my contempt findings, I now need to consider the appropriate punishment or sentence. I acknowledge that Reddy is asking that I impose a fit and proper punishment or sentence on Saroya. A sentence option that Reddy suggests includes, but is not limited to, the striking out the pleadings of said Defendant and judgment in favor of the Plaintiff/Applicant.

[282] Notwithstanding my findings in favor of Reddy on 32 of the 35 undertakings that I reviewed in this Application, I need more detail before I can consider the proper punishment or sentence. As at the date of the Third Contempt Application, Sayora was alleged to have provided 35 inappropriate answers to the Undertakings. That equated to an overall failure rate of approximately 7%. As noted above, my determination in this Application is that 32 of the outstanding Undertakings are deficient. That equates to an overall failure rate of approximately 6.64% overall (calculated by reference to 32/482).

[283] The reason I seek these additional submissions is because I need to balance the requested punishment or sentence in this case against, amongst other matters, the significance of the deficiencies that the 32 adverse findings equate to in this case. The adverse findings based on a simple 6.64% rate does not provide me with a meaningful basis on which to ground the appropriate punishment or sentence. I need more context so that I can consider all elements appropriately.

[284] I direct the parties provide me with their respective sentencing submissions as follows:

- a. Reddy will provide its sentencing submissions on or before August 30, 2024;
- b. Saroya will provide its response sentencing submissions on or before September 13, 2024; and
- c. Reddy will provide its reply sentencing submissions on or before September 20, 2024.

**VII. Costs**

[285] Costs may be spoken to if the parties cannot otherwise agree.

**Heard** on the 27<sup>th</sup> day of July 2023.

**Additional Affidavits** filed February 23 and February 29, 2024.

**Dated** at the City of Calgary, Alberta this 2<sup>nd</sup> day of August 2024.

---

**D.B. Nixon**  
**A.C.J.C.K.B.A.**

**Appearances:**

Ivan Ioudine of Hajduk LLP  
for the Applicant

Clint G. Docken, K.C. of Guardian Law Group  
for Parminder Saroya & Jyoti Saroya