

STATE OF MICHIGAN  
IN THE COURT OF APPEALS

IN RE MANUEL J. MOROUN and  
DAN STAMPER,

Court of Appeals No. 308053

Appellants,

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MICHIGAN DEPARTMENT OF  
TRANSPORTATION,

Wayne County Case No.  
09-015581-CK

Plaintiff,

v

DETROIT INTERNATIONAL BRIDGE  
COMPANY, and SAFECO INSURANCE  
COMPANY OF AMERICA,

Defendants.

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**BRIEF IN SUPPORT OF MANUEL J. MOROUN AND DAN STAMPER'S  
EMERGENCY MOTION FOR PEREMPTORY REVERSAL AND/OR FOR STAY  
OF ENFORCEMENT OF TRIAL COURT'S JANUARY 12, 2012 ORDER**

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## **STATEMENT OF BASIS FOR JURISDICTION**

Jurisdiction exists in this Court pursuant to MCR 7.203(A), MCR 7.204 and MCR 7.202(6)(a).

## **STATEMENT OF QUESTION PRESENTED**

Whether this Court should grant preemptory reversal and/or stay enforcement of the January 12, 2012 Order incarcerating Manuel J. Moroun and Dan Stamper?

## **INTRODUCTION**

The Trial Court's January 12 Order should be preemptorily reversed and/or stayed for the following reasons: First, neither Manuel Moroun nor Dan Stamper were given their due process rights required by the Federal and Michigan Constitutions, the Michigan Court Rules and Michigan statutes, as detailed below. They have been ordered to jail without having had a hearing or an opportunity to defend themselves and without the Trial Court providing notice through a show cause order or otherwise that they were at risk of imprisonment. Second, the January 12 Order orders Mr. Moroun and Mr. Stamper to remain in jail until DIBC fully complies with the Court's February 1, 2010, Order, a process that all parties agree will take at least 9 to 12 months to complete. Moreover, the parties do not agree, and the Court has not specifically directed, what acts need to be done in order for DIBC to "fully comply" with the February 1, 2010 Order. The January 12 Order is, in essence, an indefinite prison sentence without providing either Appellant with the proverbial key to their own release that is the hallmark of civil contempt. The January 12 Order can only reasonably be construed as a punitive, criminal contempt order.

## STATEMENT OF FACTS AND PROCEEDINGS

On January 12, 2012, Appellants Manuel J. Moroun and Dan Stamper were jailed by Wayne County Circuit Court Judge Prentis Edwards, who directed that they be held in the custody of the Wayne County Sheriff until the Detroit International Bridge Company (“DIBC”) fully complies with the Court’s February 1, 2010 Order. See January 12 Order (Exhibit 1). Mr. Moroun and Mr. Stamper moved for release pending appeal and to stay the January 12 Order. The Trial Court denied both motions. See Order Denying Release Pending Appeal (“Release Order”) (Exhibit 2) and Order Denying Stay Pending Appeal of Order Directing that Manuel J. Moroun and Dan Stamper Be Imprisoned in the Wayne County Jail (“Stay Order”) (Exhibit 3).

The basis for the Court’s order imprisoning Mr. Moroun and Mr. Stamper was the Court’s determination that incarceration for an indeterminate period of time was necessary to ensure that DIBC fully complies with the terms and provisions of the Court’s February 1, 2010 Opinion and Order (“February 1 Order”) (Exhibit 4). The February 1 Order stated in part: that DIBC shall “complete construction of its portion of the Gateway Project in accordance with the plans attached to the Performance Bond and the Maintenance Agreement.” February 1 Order at 15. The January 12 Order imprisons Mr. Moroun and Mr. Stamper until there is “full” compliance by DIBC. The January 12 Order states:

IT IS ORDERED THAT Manuel “Matty” Moroun and Dan Stamper shall be imprisoned in the Wayne County Jail until the Detroit International Bridge Company complies with the February 1, 2010 Order of this Court.

IT IS ORDERED THAT the imprisonment of Manuel “Matty” Moroun and Dan Stamper shall cease when the Detroit International Bridge Company has fully complied with the February 1, 2010 Order of this Court or they no longer have the power to comply with the February 1, 2010 Order of this Court.

January 12 Order at 6.

The underlying dispute between DIBC and the Michigan Department of Transportation (“MDOT”) arises out of the parties’ differing interpretations of their respective contractual obligations in connection with a portion of the Ambassador Bridge Gateway Project. Mr. Moroun and Mr. Stamper are not and were not parties to the action in which the January 12 Order of imprisonment was entered. Neither has been held to have personally violated any order of the Court, and at no point throughout the proceedings have Mr. Moroun or Mr. Stamper ever been ordered to show cause why they personally should not be held in contempt or imprisoned for DIBC’s contempt. MDOT sought no relief against Mr. Moroun or Mr. Stamper, as evidenced by its October 21, 2011 Proposed Findings of Fact and Conclusions of Law (Exhibit 5), and each of the show cause orders entered by the Trial Court have been directed solely to DIBC. *See e.g.*, 4/27/2010 Order to Show Cause (Exhibit 6); 6/13/2011 Order to Show Cause (Exhibit 7).

Prior to the January 12, 2012 hearing, Mr. Moroun never appeared, nor was he ever required to appear, in Court relative to the underlying litigation. Mr. Stamper appeared whenever directed to do so. The Trial Court order directing Mr. Moroun to appear at the January 12, 2012 hearing was not to adjudicate Mr. Moroun’s conduct, either within or without the presence of the Court. *See* November 3, 2011 Order (“November 3 Order”) (Exhibit 8). The November 3 Order, which found DIBC in contempt, scheduled the January 12, 2012 hearing to determine “the appropriate sanctions to be imposed.” *See* “November Order” at 13. In the November Order, Mr. Moroun, whom the Court incorrectly referred to as the “owner of DIBC,” was ordered to appear “to ensure that the proper decision makers for DIBC are present.” *See* November Order at 13. The only other reference to Mr. Moroun in the November Order related to an “option” urged upon the Court by MDOT to appoint “a Receiver to stand in the place of the

owner of DIBC Manual “Matty” Moroun and its officers with authority to make decisions regarding ... implementation of the ... Order.” November Order at 12.

In a motion seeking to excuse his appearance from the January 12 hearing, counsel for Mr. Moroun demonstrated that he is not the owner of DIBC, a fact MDOT later admitted. *See* MDOT Response to Motion to Excuse (“MDOT Resp.”, attached as Exhibit 9) at 2 (admitting that DIBC Holdings “owns DIBC” and is the “sole owner of DIBC”) and MDOT Resp. at 3 (attaching as Ex. 4 a March 30, 2010 corporate disclosure statement attesting that DIBC is wholly owned by DIBC Holdings). Mr. Moroun also confirmed what DIBC’s president and director, Dan Stamper, had advised the Trial Court all along: that authority over the Gateway Project – and subsequently the underlying litigation – had been delegated to Mr. Stamper, who was fully empowered to obtain compliance with the Court’s orders. *See* Mr. Moroun’s Brief in Support of Motion to Excuse (Exhibit 10) and Mr. Moroun’s Reply in Support of Motion to Excuse (Exhibit 11). Mr. Stamper has repeatedly made clear his intention to comply with the Trial Court’s orders and DIBC believes it has complied. However, based upon the work MDOT asserts remains to be performed, incarceration could continue for a minimum of nine to twelve months to complete the project. This means that the Court has meted out a lengthy term of imprisonment to Mr. Moroun and Mr. Stamper, *neither of whom has been found to be in contempt of any court order*, for a minimum of nine to twelve months.



## ARGUMENT

### **I. The Grounds for Error in the Trial Court’s Incarceration Order Are So Manifest That Immediate Reversal Should Be Granted Without Formal Argument or Submission.**

#### **A. The Standard of Review is De Novo.**

Constitutional issues that arise in the context of a contempt proceeding are considered under a *de novo* standard of review. *DeGeorge v Warheit*, 276 Mich App 587, 591; 741 NW2d 384 (2007). Questions of law are also reviewed *de novo*. *Porter v Porter*, 285 Mich App 450, 455; 776 NW2d 377 (2009) .

#### **B. Because There is No Lawful Basis for the Trial Court’s January 12 Order Incarcerating Mr. Moroun and Mr. Stamper, the Order Violates the Constitutional Rights of Mr. Moroun and Mr. Stamper and Conflicts With the Well-Settled Procedures Established by Statute and Court Rule For Finding and Punishing Contempt.**

The United States and Michigan Constitutions (U.S. Const, Am V and XIV; Mich Const 1963, art 1, §17), MCL 600.1711(2), and MCR 3.606 all require that, except as to matters of summary criminal contempt, before any person may be incarcerated for civil or criminal contempt they must be given fair notice that they are being charged with contempt and a meaningful opportunity to be heard. The right to be heard at a meaningful time and in a meaningful manner is, in fact, the most basic of an individual’s right to due process of law, guaranteed by both the Michigan and United States Constitution. In *Mathews v Eldridge*, 424 US 319, 333; 96 S Ct 893; 47 L Ed 2d 18 (1976), the United States Supreme Court explained “[t]he fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time in a meaningful manner’”(cite omitted; emphasis added). Except in cases of summary criminal contempt, this right specifically applies in *all* cases of alleged contempt. In the well-known case of *In re Oliver*, 333 US 257, 275; 68 S Ct 499; 92 L Ed 682 (1948), a case arising

out of Michigan's discredited "one-man grand jury" practice, the United States Supreme Court made it clear that

*due process of law ... requires that one charged with contempt of court be advised of the charges against him, have a reasonable opportunity to meet them by way of defense or explanation, have the right to be represented by counsel, and have a chance to testify and call other witnesses in his behalf, either by way of defense or explanation.*

(emphasis added). *See also, Lawrence M Clarke, Inc v Richco Constr, Inc*, 489 Mich 265, 274-275; 803 NW2d 151 (2011); *United Mine Workers v Bagwell*, 512 US 821, 827; 114 S Ct 2552; 129 L Ed 2d 642 (1994) ("civil contempt sanctions ... may be imposed in an ordinary civil proceeding upon *notice and an opportunity to be heard*"(emphasis added); *Porter v Porter*, 285 Mich App 450, 456-457; 776 NW2d 377 (2009) (where this Court stated that "in a civil contempt proceeding, the accused must be accorded rudimentary due process, i.e., *notice* and an opportunity to present a defense" (emphasis added); *People v Johnson*, 407 Mich 134, 149 fn 15; 283 NW2d 632 (1979). These rights have not been afforded to Mr. Moroun or Mr. Stamper.

MCR 3.606(A) is equally explicit in requiring that the alleged contemnor receive notice that he is personally being charged with contempt. The rule provides in relevant part that

For a contempt committed outside the immediate view and presence of the court, on a proper showing on ex parte motion supported by affidavits, the court shall either

- (1) order *the accused person* to show cause, at a reasonable time specified in the order, why *that person* should not be punished for the alleged misconduct; or
- (2) issue a bench warrant for the arrest of *the person*.

(emphasis added). Notably and understandably, the rule does *not* treat notice to an alleged contemnor as notice to the alleged contemnor's agents or employees. In *In re Contempt of Auto Club Ins Assoc*, 243 Mich App 697, 712-713; 624 NW2d 443 (2000), the Court of Appeals not

only emphasized that a civil contempt proceeding “must follow the procedures established in MCR 3.606,” it also reversed a finding of contempt against the ACIA where the order to show cause named only its *attorney*, not the association itself, as an alleged contemnor. Likewise, MCL 600.1711(2) states that “[w]hen any contempt is committed other than in the immediate view and presence of the court, the court may punish it by fine or imprisonment, or both, *after proof of the facts charged has been made by affidavit or other method and opportunity has been given to defend*” (emphasis added).

No such show cause order was ever entered against Mr. Moroun or Mr. Stamper and they have not been given an opportunity to defend. Mr. Moroun and Mr. Stamper have had no notice whatsoever that they were personally at risk of being jailed for *DIBC’s* contempt. The Trial Court’s January 10, 2011 Order (attached as Exhibit 12) and November Order found *DIBC*, *not* Mr. Moroun or Mr. Stamper, in contempt. Mr. Moroun and Mr. Stamper were not directed, personally or otherwise, to take or refrain from taking any action. Neither has personally failed to take any action he was obligated to take by Court order. For these reasons, even though a finding of non-party contempt is permissible in certain limited circumstances, *e.g.*, MCL 600.1701(e)-(g), no such circumstances are present here, and there was no basis whatsoever for the Trial Court to believe otherwise.

Mr. Moroun and Mr. Stamper are not *DIBC*. “It is well-established that a corporation is an entity separate from that of its individual shareholders, officers, and directors.” *M&M Aerotech, Inc v Department of Treasury*, 1999 Mich App LEXIS 2745 at \*13, unpublished opinion per curiam of the Court of Appeals, issued November 23, 1999 (Docket No. 211460), *citing*, *Schusterman v Employment Security Comm’n*, 336 Mich 246, 259-260; 57 NW2d 869 (1953). MCL 450.1317(4) provides that “[u]nless otherwise provided in the articles of

incorporation, a shareholder of a corporation is not personally liable for the acts or debts of the corporation except that he or she may become personally liable by reason of his or her own acts or conduct.” *See also*, Schulman, Moscow & Lesser, Michigan Corporation Law & Practice (2012 Supp), §3.9(a), p 3-17 fn 57, *citing*, *Gledhill v Fisher & Co*, 272 Mich 353, 358; 262 NW 371 (1935), which states “A refusal to recognize the ordinary immunity of stockholders not only overturns a basic provision of statutory or common law, but is also contrary to a vital economic policy underlying the whole corporate concept,” *quoting*, Powell, Parent and Subsidiary Corporations, p 6.

Neither MDOT nor the Trial Court has never alleged, let alone proven, that Mr. Moroun’s or Mr. Stamper’s acts or conduct make them personally liable for the asserted violations by DIBC. Nor is there any other basis for the Court’s incarceration Order against them. Neither Mr. Moroun nor Mr. Stamper have been made a party to this litigation, and nothing in the substantive or procedural context of this proceeding subjects them, as non-parties, to the contempt power of this Court. Shareholders and directors who do not actively participate in a corporation’s violation of a court order are not subject to contempt for the corporation’s conduct. *See* 17 Am Jur 2d, Contempt, §48 (“However, simply because a corporation has failed to comply with a court order, it does not necessarily follow that all corporate agents or officers are in contempt because of their agent status. There must be evidence in the record that the corporate agent charged with contempt was somehow personally connected with defying the authority of the court or disobeying its lawful decrees”).

Again, DIBC has been found in contempt, and the only stated purpose of the January 12, 2012 hearing was for a determination regarding the appropriate sanctions to be imposed against *DIBC*. The November 3 Order gave no notice to Mr. Moroun or Mr. Stamper that they would be

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at risk of being personally sanctioned for DIBC's contempt or that they should be prepared to defend themselves. The November 3 Order contemplated three options: ordering the surety, Safeco, to complete the project; allowing MDOT to retain another construction company to complete DIBC's portion of the project; and appointing a receiver to stand in the place of DIBC's owners. November Order at 12-13. If the Court intended to imprison any specific individuals, the Court should have accorded them notice and an opportunity to defend in accordance with their federal and state due process rights.<sup>1</sup> Neither Mr. Moroun nor Mr. Stamper were given notice that they would be imprisoned without an opportunity to defend.

Moreover, by ordering that Mr. Moroun and Mr. Stamper be incarcerated until "the Detroit International Bridge Company has fully complied with the February 1, 2010 Order of this Court or they no longer have the power to comply", the Court has directed their imprisonment for an extended period of time far beyond the time that each could possibly take *any* action to attempt to secure DIBC's compliance with the order. That is, even if Mr. Moroun and Mr. Stamper do everything in their power to obtain compliance with the Trial Court's Order, until those individuals responsible for the actual construction *complete their* work, Mr. Moroun and Mr. Stamper would remain in the Wayne County Jail by the terms of the Court's Order. The Order is, therefore, manifestly punitive, not coercive, and, for that reason, patently beyond the Trial Court's authority pursuant to MCL 600.1715.

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<sup>1</sup> Further, because the Court cannot employ its civil contempt power to address past violations, Mr. Moroun and Mr. Stamper should have been heard on the question of whether the Court's past findings of contempt continued. Civil contempt is not supposed to be punitive; it is designed to coerce compliance with the Court's order and must be capable of being avoided if compliance is achieved. *United Mine Workers*, 512 US at 827-829; *Porter*, 285 Mich App at 455-456. Mr. Moroun and Mr. Stamper were not permitted to be heard on this issue.

Lest there be any question of Appellants' interpretation of the Trial Court's Order, language at page 4 of the Order makes it clear: The Trial Court Judge explicitly characterizes Mr. Moroun and Mr. Stamper as the "key decision makers [who] have the power to *complete* DIBC's portion of the Project" (emphasis added). By wording his order as he did, the Trial Court expressed the intent that Mr. Moroun and Mr. Stamper remain incarcerated until the project is completed, not just until they have done all they can do to see to its completion.

**II. Alternatively (and Additionally if Necessary While the Peremptory Reversal Motion is Pending), Enforcement of the January 12 Order Should Be Stayed Pending Appeal.**

As explained above, the grounds for appeal demonstrate manifest error, and Mr. Moroun and Mr. Stamper have more than a substantial likelihood of successfully obtaining reversal of the January 12, 2012 incarceration order. Pursuant to MCR 7.209(A), this Court should, if it does not immediately peremptorily reverse, stay enforcement of the January 12 Order as necessary to permit consideration of the peremptory reversal motion and/or pending appeal of the January 12 Order.

In prior pleadings, MDOT has suggested that the four factors applicable to requests for injunctive relief be evaluated in determining whether to issue a stay pending appeal. These factors include: (1) whether the moving party has made a strong showing that it is likely to succeed on the merits, (2) whether the moving party will be irreparably injured absent a stay; (3) whether the issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies. *State Employees Ass'n v Dept of Mental Health*, 421 Mich 152, 157-158; 365 NW2d 93 (1984); *Detroit Firefighters Ass'n IAFF Local 344 v City of Detroit*, 482 Mich 18, 34-35; 753 NW2d 579 (2008); *M & S, Inc v Attorney General*, 165 Mich App 301, 307; 418 NW2d 441 (1987). *See also, In re Temporary Order to*

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*Implement*, 2010 Mich App LEXIS 1939 at \*7, unpublished opinion per curiam of the Court of Appeals, issued October 14, 2010 (Docket No. 290640) (applying the four factors). All of these factors compel a stay of enforcement here.

For the reasons expressed above, Mr. Moroun and Mr. Stamper have demonstrated a very strong likelihood of success on the merits of the appeal. Further, it cannot be veritably disputed that wrongful incarceration constitutes irreparable harm. Irreparable harm exists when there is no adequate remedy at law, *Pontiac Firefighters Union Local 376 v City of Pontiac*, 482 Mich 1, 8-9; 753 NW2d 595 (2008), and the threatened injury cannot be compensated monetarily. The wrongful loss of liberty certainly falls within that standard. Deprivation of constitutional rights in contempt proceedings that lead to incarceration can cause irreparable harm. *McKinstry v Genesee County Circuit Judges*, 669 F Supp 801, 812 (ED Mich 1987). Further, Mr. Moroun is in his eighties and has had two heart procedures. There is a very real danger that his continued incarceration could lead to grave consequences.

MDOT could not be possibly be harmed if Mr. Moroun and Mr. Stamper are released from jail. Nor will the release of Mr. Moroun and Mr. Stamper harm the public interest. The public interest is advanced, not harmed by this Court's immediate intervention prohibiting the continued incarceration of Mr. Moroun and Mr. Stamper in clear violation of their federal and state constitutional rights. They are long-time Michigan residents and deeply rooted to the community. There is no danger whatever that staying the enforcement of the incarceration order would harm the public. Indeed, it was not one of the options initially contemplated by the Court or ever sought by MDOT.

