[2021] JMSC Civ.165

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. SU2020CV04555

BETWEEN	**GARFIELD SINCLAIR**	**1ST APPLICANT**
AND	**LYNSETTA SINCLAIR**	**2ND APPLICANT**
AND	**KEVIN SUDEALL**	**1ST RESPONDENT**
AND	**JOYCE RAMDEEN-SUDEALL**	**2ND RESPONDENT**

IN OPEN COURT

Mr. Andre Earle, QC and Ms. Dawkins instructed by Earle & Wilson, Attorneys-at-law for the Applicants

Mrs. Denise Senior-Smith, instructed by Oswest Senior-Smith & Co., Attorneys-at-law for the Respondents.

Contempt proceedings - Motion to commit - criminal standard - nature and quality of conduct - interference with administration of justice - Part 53 Civil Procedure Rules, 2002, section 2

Heard: September 16, 29 & 5th October, 2021

WINT-BLAIR, J

[1] The Claimants filed a Notice of Application for Court Orders on July 7, 2021 seeking the following orders:

1. A declaration that the 1st Defendant is in contempt of court.

2. An order that the 1st Defendant pays a fine of One Million Dollars ($1,000,000.00).

3. An order that the 1st Defendant pays into a joint bearing account [sic] the sum of Three Million Dollars ($3,000,000.00) as security against frustrating the administration of justice.

4. Alternatively, an order that the 1st Defendant be committed to prison for contempt of court for such period as the court deems just.

5. An order that the 1st Defendant pays the costs of this application on an indemnity basis.

6. Such further or other relief as this Honourable Court deems fit.

[2] The parties are referred to interchangeably as Claimants/Applicants and Defendant/Respondent. It is agreed that the claimants operate a supermarket and are the registered proprietors of all that parcel of land at number 16 West Street, Port Antonio, in the parish of Portland. They are the registered proprietors of land comprised in the Certificate of Title registered at Volume 1457 Folio 930, and land comprised in the Certificate of Title registered at Volume 1408 Folio 862 both parcels are held together as one holding. 16 West Street, Port Antonio comprises 2 lots, the applicants occupy Lot 1 and the respondents occupy Lot 2.

[3] It is also agreed that the applicants store their goods in a warehouse which is situate on land comprised in the Certificate of Title registered at Volume 1457 Folio 930 of the Register Book of Titles. Access to this warehouse has always been obtained by way of land known as a common area. The common area is situated on lands registered at Volume 1501 Folio 316 in the Register Book of Titles (formerly Volume 33 Folio 78). This common area is presently the subject of orders made in this court.

[4] Lot 2 is occupied by the defendants' car rental and other businesses. Lot 2 is also situate at 16 West Street, Port Antonio in the parish of Portland and is comprised in the Certificate of Title registered at Volume 1501 Folio 316 (formerly Volume 33 Folio 78 of the Register Book of Titles).

[5] The Law

Both sides are agreed on the applicable rules and the case law.

Part 53 of the Civil Procedure Rules ("CPR"), section 2 provides as follows:

> *"53.9 (1) This Section deals with the exercise of the power of the court to punish for contempt.*
>
> *(2) In addition to the powers set out in rule 53.10, the court may-*
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> *(a) fine the contemnor;*
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> *(b) take security for good behaviour;*
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> *(c) make a confiscation of assets order;*
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> *(d) issue an injunction.*
>
> *(3) Nothing in this Section affects the power of the Court to make an order of committal of its own initiative against a person guilty of contempt in the face of the court.*

[6] Part 53 was examined by the Court of Appeal in two cases between **Gordon Stewart v Noel Sloley et al**, the first was reported at [2011] JMCA Civ. 28 and was affirmed in the second case reported at [2013] JMCA App 4. In the first of these cases, Morrison, JA (as he then was) sets out the general principles relating to contempt proceedings at paragraph 37; the meaning of "within the proceedings" at paragraphs 43 and 44; the application of the overriding objective at paragraph 54 and section 2 of Part 53 at paragraph 58.

[7] In the second case Phillips, JA stated at paragraph 39[1]:

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[1] [2013] JMCA App 4

> *"Section 2 of Part 53 clearly speaks to the court's general power to commit for contempt. As provided for in rule 53.10(10)(1)(a), where the contempt is committed within the proceedings, an application for contempt can be made by a notice of application for court orders under Part 11 of the CPR as specified…"*

[8] There is no dispute that this application is an interlocutory matter brought within the proceedings and that the respondents have been properly served. An interim injunction had been granted on January 8, 2021 by Carr, J (Ag.) (as she then was) at an inter parties hearing. This application was brought under section 2 of Part 53 by way of notice of application pursuant to Part 11 of the CPR, in respect of a part of that injunction.

[9] The court has set out only that which was found to be material in arriving at the decision below. The entirety of the submissions made and material placed before the court has been reviewed and considered.

[10] Counsel Mrs. Senior-Smith made very strident submissions on the view to be taken by the court of police reports which she contended contain double hearsay and information presented by the claimants which she argued fell into a similar category. The hearsay nature of the evidence is not a reason to exclude the evidence at this stage as it is a matter of weight and these are interlocutory proceedings to which rule 30.3 applies.

[11] The resolution of this matter turns on the facts the court will find proven. The court has weighed the evidence presented in the affidavits filed by both sides in order to determine the facts. The court has also examined the evidence placed before it to decide whether or not there has been an interference with the administration of justice. The affidavit evidence has to establish both the mens rea and the actus reus in order for the court to find that there has been a breach within the meaning of section 2 of Part 53. The powers of the court include

committal to prison and therefore the standard of proof is the criminal standard of proof beyond a reasonable doubt.

[12] In the case of **Great Future International Limited and Others v Sealand Housing Corporation and others** [2004] EWHC 124 (Ch) Lewison, J said:

> *"The burden of proof is, of course, on the applicant. The standard of proof is a criminal standard - - that is proof beyond a reasonable doubt."*

[13] **The Approach of the court**

This court adopts the approach as set out by McDonald-Bishop, J (as she then was) in the case of the **Legal Officers' Staff Association and Tasha Manley and Mellisa Simms et al** [2015] JMFC FC 3 in which my learned sister held where a declaration is being sought:

> *"It has always been said to be an established rule of practice of very long standing that a declaration is a judicial act and ought not to be made on default of pleading, or on admissions of counsel, or by consent, but only if the court is satisfied by evidence. This rule of practice has been justified on various grounds, including the ground that declarations of legal rights may affect third parties who are not bound by the declaration".*

This court adopts the approach set out above applying it to the instant application in which declarations have been sought.

[14] The applicants are business people carrying on the business of operating a supermarket in the parish of Portland. They own a warehouse which supplies that business. This warehouse is accessed through lands known as the common area and is used by the applicants for delivery of goods to the warehouse. Delivery trucks traverse that area on a daily basis to access the door to the warehouse which opens into the common area.

[15] The first applicant avers that the first defendant has repeatedly and deliberately parked motor vehicles from his car rental business in the common area and by so doing blocked ingress and egress for delivery trucks. The first respondent's actions have prevented delivery trucks from having access to the warehouse, causing goods, including goods in cold storage to have to be transported over a longer distance. In addition, the first defendant has both erected and locked a gate to the common area and on several occasions, prevented entry or exit by the delivery trucks.

[16] The first applicant avers that these actions were further compounded when correspondence from their attorneys to the first respondent went without response. The first defendant also used language and behaved in a manner when engaged in this conduct, which is described by the first applicant as contumacious.

[17] In response, the first defendant said that his address is also at 16 West Street, Port Antonio, Portland. In his evidence, he raises issues relating to title, boundaries, transfer, access to the warehouse and hearsay. He admitted that he erected a gate to the common area for security of the businesses which operate there, as the claimants have failed to hire a security guard. He further argues that the claimants have erected containers in the common area which restrict the available space upon which tenants, customers and both parties operate. In addition, the claimants have built a shed for deliveries in the area which is for parking, as this is the restrictive covenant endorsed on the title.

[18] It is patently clear from the decision of the Court of Appeal in **Gordon Stewart v Noel Slole**y[2] that neither the overriding objective nor the application of judicial discretion is permissible pursuant to rules 26.1(8) and 26.9(3) of the CPR in an application under section 2 of Part 53 of the CPR.

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[2] [2011] JMCA Civ 28

[19] The following factors fall to be considered in light of the foregoing:

a) Whether the orders of the court were vague or unenforceable;

b) Were there acts or conduct on the part of the alleged contemnor which can be accepted by the court as forming the actus reus;

c) In what context did these acts/incidents occur, if any;

d) The public nature of the acts/conduct/incidents if any;

e) Whether these acts/conduct/incidents accepted by the court tended to undermine the authority of the court;

f) What explanations if any have been raised by the respondents; and

g) Has the mens rea been established.

[20] Issues

a) Was there a court order which was vague or unenforceable

[21] Queen's Counsel for the applicants' in written submissions filed on July 30, 2021 contended that the relevant court order was made at an inter partes hearing on January 8, 2021 by Carr, J (Ag.) who had granted an interim injunction.

[22] Counsel for the respondents in written submissions filed on September 16, 2021 contended, that the order of the court had been made valid up to a specified period of time which ended when the oral judgment in respect of the interlocutory application was delivered on February 19, 2021. She submitted that the order which is now in force was made on February 19, 2021 and not on January 8, 2021 as was submitted by the applicants' counsel. The order of February 19, 2021 referred to by Mrs. Senior-Smith has not been produced to this court by the first respondent. The court takes the view that this submission was not being seriously pursued as the court was not seised of the said order as a part of the application or material before it.

[23] The application before the court exhibits the order of January 8, 2021 and that is the order which is before the court for consideration. The terms of the injunction are neither unclear, vague nor ambiguous. There was no issue as to procedural irregularity. There is no indication on the evidence that either party returned to this court in relation to any of the terms of the injunction or raised any issues regarding the order before it was perfected. The relevant portions of the order of Carr, J (Ag.) has been set out below:

1. *"Interim injunction restraining the respondents, whether by themselves their servants and/or agents from preventing or restricting the Claimants and their servants and or/ agents access to the common areas of the lands comprised in the Certificate of Title registered at Volume 1501 Folio 316 formerly Volume 33 Folio 78 of the Register Book of Titles, for the purpose of parking and delivery so as to be a nuisance to the Claimants' use and enjoyment of the land comprised in the Certificate of Title registered at Volume 1457 Folio 930 of the Register Book of Titles.*

2. *Interim injunction granted restraining the Registrar of Titles from registering any dealings or transferring any interest in the lands comprised in the Certificate of Title registered at Volume 1501 Folio 316 formerly Volume 33 Folio 78 of the Register Book of Titles and from removing caveat numbered 2266814 lodged on behalf of the Claimants.*

3. *Interim injunction granted restraining the Defendants' their servants and or agents from dealing, selling or transferring any interest in the lands comprised in the Certificate of Title registered at Volume 1501 Folio 316 formerly Volume 33 Folio 78 of the Register Book of Titles."*

There can be no question that the status quo must be preserved until the determination of the substantive matter.

[24] It is open on the facts to find that having been represented by counsel when the orders of January 8, 2021 were made, that the first respondent is aware that he, his servants and/or agents are the subject of an injunction in relation to the land referred to as the common area.

b) Were there acts or conduct on the part of the alleged contemnor his servants and/or agents which can be accepted by the court as forming the actus reus

[25] Counsel for both sides produced several photographs to bolster their assertions. The applicants contended that the first respondent prevented access to the common area, whether by his servants and/or agents by parking cars in a manner such as to block entry or exit by delivery trucks. The evidence also disclosed that a gate had been erected barring access to the common area. There was no evidence that keys to this gate had been given to the applicants.

[26] The order of the court of January 8, 2021 specifically states that the claimants shall use the land for "***the purpose of parking and delivery."***

Evidence

[27] Vehicles belonging to the first respondent were parked in the section of the common area used for deliveries. The first applicant said that "*the licences expired from March 2020 and were thus deliberately taken from the 1st Defendant's fleet for the purposes of obstruction. Further we saw the 1st Defendant removing the motor vehicles one by one from his car rental section and placing them in our delivery bay."*[3] The first respondent responded with a general denial and averred by way of answer, that the vehicles were not part of a new fleet and that the applicants did not see him removing the vehicles one by

[3] para. 8 affidavit of first applicant filed July 7, 2021

one. There is no answer in response to the averment that the vehicles belonged to him nor that these vehicles bore expired licences.

[28] The 1st Defendant's response to the fact of the interim injunction is that the order is being appealed. The first respondent has filed a notice of appeal, however, the valid and subsisting order of this court remains in place. This point is well settled, in the case of **Hadkison v Hadkison** [1952] 2 All ER 567 at 596, Romer, L.J. stated as follows:

> "*It is the plain and unqualified obligation of every person against, or in respect of whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends to cases where the person affected by an order believed it to be irregular or even void:*
> *(Per Lord Cottenham LC in Chuck v Cremer)*
> *"A party who knows of an order, whether null, valid, regular or irregular, cannot be permitted to disobey it…it would most dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null or valid - whether it was regular or irregular. That they should come to the court and not upon themselves to determine such a question: That the course of a party knowing of an order which was null and irregular, and who might be affected by it was plain. He should apply to the court that it might be discharged. As long as it existed it must not be disobeyed."*

[29] In the case of **Isaacs v Robertson** [1984] 43 WIR 126, the Privy Council cited **Hadkison v Hadkison** with approval and held:

> *"An order made by a court of unlimited jurisdiction (in this case, the High Court of St. Vincent and the Grenadines) must be obeyed*

> *unless and until it has been set aside by the court. Any attempt to distinguish in such a context between 'void' and 'voidable' orders of the court would be misleading."*

At page 130 Lord Diplock said"

> *The contrasting legal concepts of voidness and voidability form part of the English law of contract. They are inapplicable to orders made by a court of unlimited jurisdiction in the course of contentious litigation. Such an order is either irregular or regular. If it is irregular, it can be set aside by the court that made it upon application to that court; if it is regular, it can only be set aside by an appellate court upon appeal (if there is one to which an appeal lies).*

[30] The first applicant avers that the vehicles have not been removed from the common area despite the court order of January 8, 2021, instead more vehicles have been added to area customarily used for deliveries[4]. In response, the first respondent averred that, "*In order to ensure there is no chaos or damage to motor-vehicles and to ensure all tenants of Lot 2 have access to the common area and ensuring the claimants have access to the common area, I have tried my very best to ensure all have access in an orderly manner."* There is no denial that the motor vehicles remain in the delivery area. In fact, the first applicant goes on in response to say that he has no other place to park the vehicles.[5]

[31] The first respondent has admitted that he has erected a gate for security purposes[6]. This is supported by the first applicant in his affidavit of July 7,2021 at

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[4] para 10, affidavit of first applicant filed July 7, 2021
[5] paras 16 and 17 and 23, affidavit of first respondent filed August 9, 2021
[6] para. 9

paragraph 17 which refers to a police report exhibited to his affidavit and marked GS-4.

> "This gate is opened at 8:00am and closed at 7:00pm by the first respondent his servants and/or agents[7] and the inference can be drawn that it is within his exclusive control as there is no mention of a key or other means of access given to the claimants."

[32] The first respondent said that he tried to ensure all have access in an orderly manner.[8] The inference can be drawn that access depends on the subjective view of the situation held by the first respondent his servants and/or agents whenever access is being allowed by him or them.

[33] It is the first respondent who decides when the gate opens and closes as there was no security guard.[9]

[34] "***I have no other place to park the vehicles*.**" Referring to the vehicles parked in the common area. This is an admission which is worthy of notice, it is also found in paragraph 23 of the first respondent's affidavit.[10]

[35] The first respondent admits that "*One of my workers was removed from the common area by the police. He was never charged*"[11]. This is an admission that the police who were called by the first applicant had to intervene in an issue with the first respondent's worker who was using a car to block entry into the common area.

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[7] para. 19
[8] para. 16
[9] para. 19
[10] para.17
[11] para. 22

[36] The first respondent admits to being aware of a letter from Earle & Wilson to Oswest Senior-Smith & Co.[12]. There is no reference to a response from his attorneys in this paragraph and no attachment has been provided by the first respondent in support of this assertion.

[37] The first respondent admits that the gate is closed before 8:00am and after 7:00pm. Any delivery before 8:00am could not enter the common area unless it had been communicated first to the respondent who said, "*I am not aware of the Claimants having delivery trucks coming after their warehouse closes and before the warehouse opens. This was never communicated to me. It appears the Claimant is suggesting that this occurs before 8:00am in the morning and after 7:00pm. I* ***admit that during this time the gate would be closed…****At no time did I believe that delivery would have been done during those hours*." [13]

[38] Most telling are letters exhibited by the applicants from suppliers of goods. In a letter exhibited by the first applicant at G-9, Mr. Linval Francis, Distribution Manager, Rainforest Seafoods complains of having issues with delivery: "***On several occasions the truck has to be parked alongside the road or nearby and push the products from a distance onto the complex. It is becoming increasingly tedious for our drivers****…*"

[39] Exhibited at G-10 is a letter from Mr. Trevin Narine, Sales Manager of The Best Dressed Chicken dated June 8, 2021 which similarly states: "*It has been brought to my attention that our Best Dressed Chicken trucks are being denied proper access in delivering our products to your supermarket at 12[14] West Street, Port Antonio. The inconvenience is causing significant delays in delivery resulting in* ***compromised goods as the cold chain break is longer than acceptable****. As I*

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[12] para. 24
[13] para 25
[14] The court notes that the address is incorrect, however the letter is addressed to Mr. Garfield Sinclair. This is viewed as a typographical error.)

understand it sir, our truckers are being prevented from delivering to the rear of your building and are asked to deliver from the front entrance on West Street resulting in our ***trucks blocking traffic and subjecting them to traffic tickets and fines by the authority****…."*

[40] Also at G-10 is a letter dated June 11, 2021, from Mr. Craig Clare, Head of Operations, Wisynco Group Ltd who states: "…*The pathway to your storeroom is encumbered with a few obstacles that resulted in incidents during the delivery process. On May 12, 2021, a, gate was damaged which resulted in us having to pay for repairs. On May 25, 2021 an electrical stanchion was damaged resulting in an additional payment. On May 31, one of our drivers was accused of scratching a car.* ***Subsequent to the above events, our trucks are no longer able to make deliveries at the storeroom, but instead were asked to transport hundreds of items on a trolley, approximately one hundred and thirty metres…*****"**

[41] It is agreed by both sides that the first respondent said that one of his vehicles was scratched by a delivery truck, this is confirmed by the letter from Wisynco. This court finds that the letter from Wisynco describes the first respondent's response to that incident as access for delivery trucks from that company were denied thereafter by him.

c) In what context did these acts/incidents occur

[42] The application before the court can be placed within the context of commerce. Both parties are businessmen. There are also affected third parties who supply goods to the parties, the police who see about public order and are concerned with matters such as traffic management, tenants on the property of the first defendant and delivery trucks. In order to understand the application of section 2 of Part 53 to these proceedings, the court has weighed the evidence and applied the law to the facts found within this framework.

d) The public nature of the acts/conduct/incidents

[43] The applicants have exhibited a letter from the Superintendent of Police in charge of the Portland Division dated May 14, 2021. It is addressed to the first applicant and it describes an incident on March 25, 2021 in which the police responded to a report made by the first claimant. The police attended upon the common area and observed a Toyota Corolla blocking the access road, a delivery truck was blocked in on the premises, with other trucks waiting to get in. The officers were shown the order from the Supreme Court. The first respondent was contacted by telephone, he was informed on the phone about the court order. The police received the response from the first respondent that the property is not owned by the court and the phone was hung up.

[44] Sometime later, Mr. Leaford Davidson entered that Toyota Corolla motorcar started the engine, put the windows up and left the vehicle there. He was instructed by the police to remove the vehicle to allow the trucks to move freely but he refused, leaving the compound at 9:30am and returning at 11:00am whereupon he was arrested and taken to the police station.

[45] This is an incident referred to by the first claimant[15] and the first respondent[16] in their affidavits. Neither party was in attendance at the time the police went to that location. The court will therefore accept the police report as accurately reflecting what transpired on the premises on the date indicated therein. The first respondent admitted that **"*one of my workers was removed from the common area by the police*."** This would be Mr. Leaford Davidson, the servant and/or agent of the first respondent. This worker had access to the Toyota Corolla, was able to start the engine and yet refused to move it when directed by the police so to do, instead he left and returned at 11:00am. This means there

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[15] para 17 of the affidavit of the first claimant
[16] para 22 of the affidavit of the first respondent

was no ingress or egress for delivery trucks even despite the intervention of the police. The view formed by this court is that traffic congestion would have resulted from the failure to allow the flow of delivery trucks into and out of the premises and that public order was placed in jeopardy.

[46] In addition, the letters from third party suppliers show that the nature and conduct of the first respondent was such as to cause a disruption in the flow of business between the applicants and their suppliers; to cause a build-up of traffic on West Street by the parking of delivery trucks thereon which would incur traffic tickets for the drivers; inconvenience members of the public; leading to the expending of police resources; third party resources; it meant longer distances to transport goods from the main street through the common area to the warehouse by trolley, including goods which are temperature sensitive which in turn led to potentially compromised goods on the part of products from one company.

e) Reasonable explanations or any defence raised by the respondent

[47] The first respondent has purchased Lot 2 but found himself unable to obtain a registrable instrument of transfer as a caveat has been lodged against the title and the injunction of January 8, 2021 bars registration. The first respondent has said that the claimants could utilize an empty lot next to Lot 1 for his deliveries. This demonstrates the thinking and mindset of the first respondent despite the injunction dictating where deliveries should take place.

[48] It is in the affidavit of the first respondent that he sought to manage the delivery process and to ensure that his tenants and his vehicles were not blocked by the delivery trucks. The learned judge at the hearing of the injunction, having found that there were serious issues to be tried, took these matters into account and granted the injunction nevertheless. These explanations before this court would be tantamount to a re-hearing of the issues raised at the injunction stage, they do not in the view of this court amount to a defence or reasonable explanation.

[49] I rely upon and restate the dictum of my learned brother, Laing, J in the case of **Stewart Brown Investments Limited v Alton Washington Brown et al** reported at [2020] JMCC COMM. 36 where he states that the test is one of strict liability. The absence of negligence or an intention to disobey will not amount to a defence. Court orders must be obeyed, any motive for disobedience is irrelevant for the purposes of establishing a case of contempt.

f) Whether these acts/conduct/incidents accepted by the court tended to undermine the authority of the court.

[50] The evidence of actions of the first respondent has led this court to form the view that the administration of justice has been brought into disrepute. The first respondent has elected to conduct himself in a manner which lends itself to the view that the orders of the court are of no moment and that he can interpret the terms of the injunction as he sees fit. The police and applicants were incapable of preventing the first respondent from behaving in the contumacious manner that he did. The court order in place did not play a part in dissuading the first respondent from erecting a gate, locking out the applicants and, disregarding the presence of delivery trucks when the gate was locked among other factors. The nature and quality of the first respondent's actions were such as to tend to undermine the authority of the court and to diminish the orders of the court in the eyes of right thinking members of the public.

g) Mens rea

[51] Having had knowledge of the injunction the first respondent elected whether by himself, his servants and/or agents, to interfere with and prevent access by delivery trucks. This is clear from the affidavit evidence.

[52] It is the view of this court, that the first respondent disregarded the injunction and did so in a high-handed manner intending to willfully disobey its terms. It can be said that based on the evidence, the first respondent has chosen to flout and give

scant regard to the orders of this court and in so doing has fallen into the hands of the court.

[53] Discussion

It is the duty of the court to give effect to the plain and unambiguous meaning of the rules in section 2 of Part 53. In the case at bar, the first defendant is both party to the cause and subject to the injunction. However, he is not being proceeded against as a party to the order of the court which is said to have been breached. The first defendant is being proceeded against under section 2 which concerns the wider and more general category of contempt which is said to involve interference with the due administration of justice. These are distinct applications in part 53 of the CPR.

[54] It is the nature and quality of the first defendant's conduct which is in issue. In **Ambard v. Attorney-General of Trinidad** [17], Lord Atkin at page 74 said:

> *"Everyone will recognize the importance of maintaining the authority of the Courts in restraining and punishing interferences with the administration of justice, whether they be interferences in particular civil or criminal cases or take the form of attempts to depreciate the authority of the Courts' themselves. It is sufficient to say that such interferences when they amount to contempt of Court are quasi-criminal acts, and orders punishing them should, generally speaking, be treated as orders in criminal cases…"*
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> *… jurisdiction to punish for contempt of Court is undoubted. It has been exercised for a very long time … and it is a punitive jurisdiction founded upon this, that it is for the good, not of the plaintiff or of any party to the action, but of the public, that the orders of the Court should not be*

[17] (1936) 105 L.J.P.C. 72, PC

disregarded, and that people should not be permitted to assist in the breach of those orders in what is properly called contempt of Court."

[55] Halsbury's sets out the common law position as follows:

"At common law superior courts of record assert an inherent power to make orders dealing summarily with contempt affecting their own proceedings, and even proceedings of inferior courts[18]. There are two broad categories of contempt at common law: criminal contempt, consisting of words or acts which interfere with the administration of justice or are likely to do so, and civil contempt, consisting of disobedience to judgments, orders or other process of the court and involving private injury.[19]"

[56] The Supreme Court of Canada explained it this way in the case of **McMillan Bloedel Ltd. v Simpson**[20]**:**

"How is the fact that non-parties can be found guilty of violating court orders and sent to prison therefor to be reconciled with the assertion of the English authorities that only parties to the litigation can be bound by court orders? On the level of theory, these apparently contradictory positions are reconciled by the distinction between being bound by an injunction as a party to the action and being guilty of contempt of court by obstructing justice. Only parties are "bound" by the injunction. ***But anyone who disobeys the order or interferes with its purpose may be found to have obstructed the course of justice and hence be found guilty of contempt of court****. Thus in* ***Seaward v. Paterson****, [1897] 1 Ch. 545 (C.A.), Lindley L.J. wrote (at p. 555): (emphasis mine)*

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[18] 9(1) Halsbury's Laws of England (4th ed.) Reissue, para. 454
[19] 9(1) Halsbury's Laws of England (4th ed.) Reissue, para. 402
[20] [1996] 2 SCR 1048 at paras. 27 to 29

> *'A motion to commit a man for breach of an injunction, which is technically wrong unless he is bound by the injunction, is one thing; and a motion to commit a man for contempt of Court, not because he is bound by the injunction by being a party to the cause, but because he is conducting himself so as to obstruct the course of justice, is another and a totally different thing.'*

On the level of practice, the distinction seems to be a distinction without a difference since in either case, a person not named in the action who violates the injunction may be brought before the courts, tried, and penalized. The difference vanishes in the Canadian context where the practice is to charge non-parties with contempt rather than for violating the injunction. In the case at bar, for example, the 626 people convicted under the various injunctions were convicted not of violating the injunction, but of criminal contempt.

It thus emerges that Wood J.A. correctly asserts the existence of the English rule that injunctions bind only parties to the action. The assertion, however, is of little consequence because third parties who violate or interfere with the injunction may be prosecuted for contempt of court. The case at bar does not raise the issue whether non-parties are bound by an injunction in the technical sense discussed by Wood J.A.; it does raise the issue whether non-parties can be found in contempt of court for violating an injunction. On the English authorities, the answer to that question is indubitably affirmative."

[57] In **Gordon Stewart v Noel Sloley**, Morrison [2011] JA laid down the following propositions at paragraph 37 of the judgment in the first case:

> *(I) The court's jurisdiction to punish for contempt of court is long established, as "a punitive jurisdiction founded upon this, that it is for the good, not of the [parties] to the action, but of the public, that*

the orders of the Court should not be disregarded, and that people should not be permitted to assist in the breach of those orders in what is properly called contempt of Court" (per Rigby L.J., in ***Seaward v Paterson****, at page 558;*

(ii) conduct alleged to be in contempt of court may be classified as "(a) conduct which involves a breach, or assisting in the breach, of a court order and (b) any other conduct which involves an interference with the due administration of justice, either in a particular case or more generally as a continuing process" (per Sir John Donaldson MR, in ***Attorney General v Newspaper Publishing****, page 294);*

(iii) liability for conduct falling into category (b) arises out of the duty of all members of the public "not to interfere with, and not to obstruct the course of justice" (per Lindley L.J. in ***Seaward v Paterson****, at page 554); such conduct amounts to criminal contempt and "both the actus reus and the mens rea must be demonstrated if the offence is to be made out" (per Lord Phillips MR in* ***Attorney General v Punch****, at para. 20 and see Balcombe L.J. in* ***Attorney General v Newspaper*** *Publishing, at page 313);*

(iv) rules of court requiring service of an order with a penal notice endorsed thereon in certain specified circumstances, as a precondition to commital or confiscation of assets as the punishment for breach of the order also have a long history, are not to be regarded as wholly technical and must be strictly complied with (Iberian Trust; Benabo);

(v) any interference with the due administration of justice is criminal contempt proceedings in respect of which should ordinarily be issued by the Director of Public Prosecutions ex officio whenever in

her discretion she thinks it necessary to do so, but generally, except where otherwise provided by statute, a private individual may institute such proceedings of his own motion without the consent of the Director of Public Prosecutions;

(vi) in civil proceedings, the court's undoubted jurisdiction to punish for contempt is now to be invoked in accordance with the provisions of Part 53 of the CPR."

Conclusion

Based on the evidence and the authorities cited there is no doubt in my mind as this court is satisfied so that it feels sure that the first respondent is guilty of criminal contempt of court. This court has the power to punish the first respondent for contempt and the primary purpose of criminal contempt is punitive. The court considers that there is not much which can be said by way of mitigation, given the state of the evidence. The punishment must be one which seeks to right the wrong doer who has interfered with the due administration of justice and depreciated the authority of the court. This court has a vested interest in ensuring that its orders are followed. The evidence of the nature and quality of the actions of the first respondent warrant a coercive sanction.

(II) The court will therefore grant the orders sought in the notice of application filed as follows:

1. The first respondent, Kevin Sudeall is found guilty of criminal contempt .

2. Kevin Sudeall shall pay a fine of One Million Dollars ($1,000,000.00) or be committed to serve thirty (30) days imprisonment.

3. Kevin Sudeall shall pay this fine within seven (7) days of the date of this order, with a surety.

4. Costs of this application awarded to the applicants on an indemnity basis.

5. Formal order to be prepared, filed and served by the applicants' attorneys-at-law.

Costs of this application are to be taxed if not agreed.