

GRENADA

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 13 of 1991

BETWEEN:

FRED TOPPIN
JONAS BROWNE & HUBBARD
(GRENADA) LIMITED

Appellants

and

RUDOLF'S LIMITED

Respondent

Before:

The Rt. Hon. Sir Vincent Floissac - Chief Justice
The Hon. Mr. C.M. Dennis Byron - Justice of Appeal
The Hon. Mr. Satrohan Singh - Justice of Appeal

Appearances:

Mr. Derek Knight, Q.c. for the Appellants
Mr. Lloyd Noel for the Respondent

1993: November 11, and 22.

JUDGMENT

SATROHAN SINGH, J.A.

On December 12, 1990, the respondent, on an ex parte application, obtained from St. Paul J mandatory injunctive relief:

- "1. compelling the appellants to replace two gas bottles at the respondent's premises within a prescribed time
2. compelling the appellants to reconnect the two gas bottles within the said prescribed time at the said premises
3. restraining the appellants from further interference with the said gas bottles and/or
4. restraining the appellants from further interference with the rented premises."

The Order which was properly served on the appellants on the said day had this sanction endorsed on it directed to the first-named appellant:

"TAKE NOTICE that unless you OBEY the directions contained in this Order, you will be guilty of Contempt of Court and will be liable to be committed to prison."

By a Motion dated December 14, 1990, the respondent applied to the High Court for an Order:

"That the Defendants be committed to Her Majesty's Prison in Richmond Hill, St. George's Grenada for their contempt of Court in breach of the injunction made by the order of

the Honourable Mr. Justice Lyle St. Paul dated the 12th day of December 1990."

This application was made pursuant to O.66 R.5(1)(iii) of the Rules of the Supreme Court (Revision) Order 1972. Order 73 Rule 2 of the Rules prescribes the form for such an application:

"2.(1) Where an application for an order of committal may be made to the Court, the application must be made by motion and be supported by an affidavit.

(2) Subject to paragraph (3), the notice of motion, stating the grounds of the application and accompanied by a copy of the affidavit in support of the application, must be served personally on the person sought to be committed.

(3)"

An affidavit was sworn to and filed by the manager of the respondent in support of the Motion in which it is stated *inter alia* that "up to today - 14th December, 1990 at 9 a.m. no gas bottles were replaced or reconnected as ordered by this Honourable Court".

At the hearing of the Motion before St. Paul J, Queen's Counsel, Mr. Derek Knight submitted in *limine* that the Notice of Motion was irregular in that it did not contain the grounds on which the application to commit was made and that where applications to the Court involve the liberty of the subject, prescribed procedures must be strictly followed. The learned trial judge found no merit in that submission and overruled the objection. This appeal is from that ruling and the appellants' aforesaid submission, suitably worded, was argued before this Court as the appellants' main ground of appeal.

Indisputably, what was before St. Paul J and what is now before this Court are proceedings that concern the liberty of the appellants. The primary point therefore in this Appeal is whether in applications to the Court concerning the liberty of the subject, there should be strict compliance with prescribed procedures. If the answer is in the affirmative then the

Motion is irregular because, in the context of this matter, where the mandates imposed on the appellants by the injunctive order are fourfold and not singular, it would have been necessary for the appellants to know within the four corners of the Notice of Motion for which breaches of those mandates they were to be deprived of their liberty. The notice of motion only stated that they breached the injunctive Order without specifying the breach or breaches complained of.

In *Chiltern District Council v Keane* (1985) 2 A. 'E.R. 118, a matter of a similar nature in the Civil Division of the Court of Appeal in England, *Sir John Donaldson MR*, having observed "that where the liberty of the subject is involved this Court has time and again asserted that procedural rules applicable must be strictly complied with" said at p.119:-

"The notice of motion was personally served on Mr. Keane, but it only stated the grounds of the application to commit in general terms. It recited the undertaking and the injunction, and then alleged that there had been a breach. This, on the authorities, is not sufficient. It has been said in many cases that what is required is that the person alleged to be in contempt shall know, with sufficient particularity to enable him to defend himself, what exactly he is said to have done or omitted to do which constitutes a contempt of court. The particular undertakings and injunctions in this case cover a wide range of activities. Mr. Keane was entitled to know whether it was said by the council that he was in breach of every single requirement of those orders or only some, and if so which of them and the notice failed to give him that information. Every notice of application to commit must be looked at against its own background. The test, as I have said, is: *does it give the person alleged to be in contempt enough information to enable him to meet the charge?* If, for example, a defendant is subject to an injunction to leave a stated house not later than a particular time on a particular day, then it would be sufficient to say that he had failed to comply with that order, because it only permits of one breach, namely, failure to leave the house by the time stated. But where the order is not in such a simple form and it is possible for the defendant to be in doubt what breach is alleged, then the notice is defective."

In *Dorrel v Dorrel* (1985) FLR 1098, *Sir John Arnold P*, in considering in the Court of Appeal a judge's decision dismissing a committal application said at pp.1090 and 1091:

"All that appears in the application to commit is this: '...an order that the respondent be committed to prison for breach of the order dated 26 June 1984 restraining him

from molesting the petitioner and from entering or attempting to enter 234 Davidson Road, East Croydon, Surrey.' There is no allegation whatsoever as to the nature of the action which it is said amounts to a breach of that order upon which the committal application is based. This matter is not without authority. In a case called *Wooley v Wooley* (1974) 124 NLJ 768) ... the brief note of the matter in the New Law Journal reads thus ... 'In *Wooley v Wooley* an application was made to commit a former husband to prison for writing letters to his former wife in breach of an undertaking given to the Court not to speak to her in the street or on the telephone and to communicate with her only through solicitors. A question arose as to what matters should be pleaded to support such an application. It was held that pleaders should set out seriatim the acts alleged to be in breach of the undertaking. A person whose liberty was in jeopardy was entitled to know the precise charges made against him. It should be apparent on the face of the summons whether or not there were breaches of the undertaking".

Sir John Arnold continued:

"It seems to me that that correctly states the law and that that aspect of the law was quite fatal, and always was quite fatal, to the success of this application. On that basis he dismissed the appeal."

Booth J agreed. That was a case where the application contained no particulars at all of the alleged breach.

The Order relevant to the instant matter, is not an order in simple form. As mentioned earlier, it contains four different mandates requiring compliance by the appellants. Learned Counsel for the respondent whilst not conceding any defect in the motion, argued that the affidavit filed in support thereof was capable of remedying such a defect if in fact the motion was defective. The affidavit filed recited the history of the matter and concluded that the gas bottles were not replaced or reconnected.

In *Harmsworth v Harmsworth* (1987) 3 A.E.R. 816, again a matter dealing with committal proceedings *Nicholas L.J.* having referred to the above learning in *Chiltern District Council v Keane* said at p.821:

"So the test is, does the notice give the person alleged to be in contempt enough information to enable him to meet the charge? In satisfying this test it is clear that in a suitable case if lengthy particulars are needed, they may be included in a schedule or other addendum either at the foot of the notice or attached to the notice so as to form part of the notice rather than being set out in the

body of the notice itself. But a reference in the notice to a wholly separate document for particulars that ought to be in the notice seems to me to be a quite different matter. I do not see how such a reference can cure what otherwise would be a deficiency in the notice. As I read the rules of court and as I understand the decision in the *Chiltern* case the rules require that the notice itself must contain certain basic information. That information is required to be available to the respondent to the application from within the four corners of the notice itself. From the notice itself the person alleged to be in contempt should know with sufficient particularity what are the breaches alleged. A fortiori, in my view, where the document referred to is an affidavit, which does not set out particulars in an itemised form, but which leaves the respondent to the committal application to extract and cull for himself from an historical narrative in the affidavit relevant dates and times and so forth, and to work out for himself the precise number of breaches being alleged and the occasions on which they took place. I do not think, therefore, that if there are deficiencies in the notice issued on 22 June, those deficiencies should be regarded as having been cured by reason of the references in para 1 to the affidavit attached to the notice and, in paragraph 2, to the affidavit accompanying the notice".

From these authorities I would conclude that a notice initiating a committal application was required, within the four corners of the notice itself, to give the person alleged to be in contempt enough information to enable him to meet the charge against him. He must not be left in doubt as to what the charges are. If lengthy particulars were required it was permissible to include them in a schedule or addendum to the notice provided they formed part of the notice itself but it is not permissible to refer in the notice to a completely separate document for particulars that ought to be in the notice.

The learned judge in overruling the objection in *limine* said:-

"I find no difficulty in determining from the notice of motion and the affidavit filed in support, the grounds on which the application to commit is made and what part is played by fed Toppin and the Company in the affair."

Here, the judge had to use the affidavit as a supplement to the motion to assist him in determining the grounds for the application. From the authorities referred to above, this approach, in a matter of this nature is impermissible.

In my judgment, the motion in its present form is defective. It does not state the precise charges made against the appellants. It leaves the appellants in doubt as to what breaches are alleged. I would hold that where the liberty of the subject is involved, procedural rules must be strictly complied with. Adopting some wise words uttered by the learned Chief Justice during the hearing of this matter, "the Constitution of Grenada, the Rules of the Supreme Court and judicial principles have all shown great sensitivity where the liberty of the subject is concerned and the Court must be ever so vigilant in matters of this kind". *Nicholas L.J.* in *Harmsworth v Harmsworth* in expressing an obiter opinion whether such an irregularity can be waived under the non-compliance rule had this to say at p.822:

"a defect in the notice initiating a committal application stands on no different footing from a comparable defect in any other application to the court. The court has in each case a discretion to waive the irregularity, either under CCR Ord 37, r.5(1) in the case of the county court, or under RSC Ord 2 in the case of the High Court. But there is this difference between a committal application and other applications. Such is the importance which the law attaches to the liberty of the subject that normally the procedural rules must be strictly complied with in the case of a committal application, and it would only be in an exceptional case that in the absence of the consent of the respondent it would be just to waive an irregularity in a committal application. Hence it would only be in an exceptional case that, in the absence of such consent, the court would exercise its discretion and waive such an irregularity."

For these reasons I find merit in this appeal. I would therefore allow the appeal. I would strike out the notice of motion with costs in this Court and the Court below to the appellants to be taxed if not agreed.


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SATROHAN SINGH
Justice of Appeal

BYRON, J.A.

On 12th December 1990 St.Paul J. granted an interlocutory injunction ordering the appellants:

"no later than by 10.00 am on Thursday 13th December 1990 to replace and reconnect the two gas bottles which were disconnected from the plaintiff's cooking appliances on Monday 10th December 1990 at rented premises"

and restraining them from

"further interference with the said gas bottles and or the said rented premises".

There has been no appeal against the order.

On 14th December 1990 the respondent applied to the court for an order that:

"The defendants be committed to Her Majesty's Prisons in Richmond Hill, St.George's Grenada for their contempt of court in breach of the injunction made by the order of the Honourable Mr. Justice Lyle St.Paul dated the 12th day of December 1990."

This application was supported by affidavit.

On 9th April 1991 when the application for committal came on for hearing the appellants took objections in limine on the ground that the respondent had failed to comply with the relevant procedural requirements. On 21st June 1991 St.Paul J. overruled the objections and ordered the proceedings to continue.

It is against this interlocutory order that this appeal has been filed. Apparently hearing on the motion was consequentially discontinued pending the outcome of the appeal. Although no point was raised on this issue, I should point out that the Court of Appeal Rules 1968 Rule 30(1) specifically provides that an appeal does not operate as a stay of proceedings under the judgment appealed from except so far as the court may order.

The grounds of appeal could be summarised:

1. service was improper
2. the trial Judge made errors in law in not applying the rules of procedure strictly
3. the omission to specify the grounds of the application in the motion itself was fatal

On hearing of this appeal counsel for the respondent took the preliminary point that the appeal was defective because the appellant did not obtain leave, as is normally required, to permit appeals from interlocutory orders. But he conceded the point when the learned Chief Justice pointed out that proceedings for committal to prison for contempt concern the liberty of the subject and as such are protected by a statutory exception to the general rules, namely section 33(2) of the Supreme Court Act No.17 of 1971:

"No appeal shall lie under this section-

(g) without the leave of the judge or of the Court of Appeal from any interlocutory judgment or any interlocutory order given or made by a judge except-

- i) where the liberty of the subject or the custody of infants is concerned...."

The issue of service was untenable because there was uncontroverted evidence that the injunction, which was endorsed as required by Order 66 of the Rules of the Supreme Court, was personally served on the appellants by Sherna Thomas on 12th December 1990.

On the other hand the proposition that the rules of procedure are to be strictly applied in proceedings for committal to prison is irrefutable. Justice requires, and the authorities establish, that the constitutionally guaranteed liberty of the subject must be vigilantly guarded by the courts, and this gives rise to the well established requirement that in proceedings for committal the rules of procedure must be strictly complied with.

The particular procedural rule which it is contended was broken was that the Notice of Motion failed to specify the manner in which it was alleged that the parties had been in breach of the injunction. The procedure for committal is governed by the Rules of the Supreme Court Order 73.

The question of what satisfies the requirement of sufficient particulars in a Notice of Motion to commit was considered in the case of *Chiltern District Council v Keane* [1985] 2 All E.R. 118. *Sir John Donaldson M.R.* stated at page 120:

"Every notice of application to commit must be looked at against its own background. The test, as I have said, is: does it give the person alleged to be in contempt enough information to enable him to meet the charge? If, for example, a defendant is subject to an injunction to leave a stated house not later than a particular time on a particular day, then it would be sufficient to say that he had failed to comply with that order, because it only permits of one breach, namely failure to leave the house by the time stated. But where the order is not in such a simple form and it is possible for the defendant to be in doubt what breach is alleged, then the notice is defective."

It was argued that a necessary conclusion to be drawn from that passage is that it is only in cases where an order permitted of one breach that it is unnecessary to list particulars of the breaches alleged in the notice of motion.

In my view that interpretation would substitute the example which *Sir John Donaldson M.R.* gave for the test itself. An example only serves to demonstrate the way in which a test can be applied. There was nothing to suggest this particular example was intended to represent the only possible application of the test. In my view it does no more than show a really simple order which an allegation of breaching, without any particularisation, could give rise to no confusion arising from vagueness or ambiguity.

It seems to me that the proper interpretation is that the court must determine whether the notice of motion itself

considered against its own background gave the alleged contemnor enough information to meet the charge without having to consult other documents, including affidavits in support.

In applying that test the factual background to Chiltern's case provides an explanation why particulars were necessary because a wide range of activities were covered in the undertaking and injunction, and in those circumstances it is not difficult to appreciate the probability of prejudice to which the alleged contemnor might have been exposed by the failure to particularise the breaches of which he was accused.

This point was also considered in two matrimonial cases to which we were referred, namely *Dorrell v Dorrell* [1985] F.L.R. 1098 and *Harmsworth v Harmsworth* [1987] 3 All E.R. 816. In both of these cases the court had to consider the degree of particularity which would be necessary to enable a husband to meet the charge that he was in breach of a non-molestation order. It seems clear to me that an allegation of molestation requires particulars of what conduct was alleged to have amounted to molestation, otherwise the issue would be at large.

In the *Harmsworth* case the notice of motion was alleged to contain insufficient particulars because it contained only generalised headings of conduct without identifying dates, or places or the manner in which the conduct was alleged to have been performed. In that case the supporting affidavits contained particulars of the breach.

In my opinion this case demonstrates that the court is not required to adopt a literalistic approach which could produce an unjust result but to examine the notice of motion against the background of its issuance to determine in a fair, sensible and reasonable manner whether it gives the person alleged to be in contempt enough information to enable him to meet the charge

without the need to refer to the supporting affidavits to determine what was the case he had to answer.

Nicholls L.J. in delivering his judgment referred to *Chiltern's* case with approval and continued at page 821 as follows:

"So the test is, does the notice give the person alleged to be in contempt enough information to enable him to meet the charge? In applying that test the contents of the notice are to be read fairly and sensibly as they would be read by a reasonable person in the position of the alleged contemnor to whom the notice is addressed. Would such a person, having regard to the background against which the committal application is launched, be in any doubt as to the substance of the breaches alleged?"

Nicholls L.J. when he considered the notice of the motion in accordance with these principles was constrained to order that the trial Judge who had ruled in favour of the sufficiency of the notice was justified in so doing. *Woolf L.J.* who gave a supporting judgment indicated the commonsense approach which a court ought to adopt in these matters and stated at page 823:

"I entirely agree. I only give a short judgment of my own to emphasise one point and draw attention to two other points. What I would emphasise is that in proceedings for contempt the court should always have in mind the fact that the liberty of the subject is involved. However, it should not allow that fact to produce a result which unnecessarily makes a mockery of justice.

In this case counsel for the husband accepts that the points he has taken are of a purely technical nature and that the husband had a perfectly fair trial on the allegations with which he was charged before the judge. In those circumstances I wholly indorse the view which *Nicholls L.J.* has expressed which, properly applying CCR Ord 29, results in a decision that the husband was properly found guilty of contempt by the judge."

The result of these authorities is that in proceedings for contempt the alleged contemnor must be given sufficient particulars in the notice of motion itself. He is not required to deduce the case against him from other documents such as affidavits in support. The court must determine whether the motion contained sufficient particulars to allow the appellant to defend himself, having regard to the background against which the proceedings were launched.

In applying this test to the instant case I have no doubt that the conclusion of *St. Paul J.* reached was correct in that the appellants did not need to read the affidavit or any document other than the notice of motion to know what was the case made out against them.

The injunctive order itself clearly stated that the appellants were to replace and reconnect the gas cylinders disconnected from the respondent's cooking appliances on 10th December 1990 at rented premises no later than 10.00 am on 13th December 1990, and were not to further interfere with the said gas bottles or rented premises. In my opinion this is a very simple order. The time frame that was involved was additional and relevant factor tending to clarify the issues in the case because the order was made and served on the 12th December requiring the replacement of the cylinder on the 13th. It was the next day, on 14th December 1990 that the notice of motion alleging breach was filed. In my opinion one does not need to refer to any other circumstance to know that the allegation was the failure to replace and reconnect the said gas cylinders. In any event there was an affidavit in support which set out the evidence, on oath, which the respondent was adducing in support of his motion.

This is not a case where there was vagueness, ambiguity, duplicity or confusion as to the nature of the breach alleged. In my view the appellants could have been in no doubt as to the substance of the breach alleged. I would rule that *St. Paul J.* was justified in concluding that the proceedings filed enabled the appellants to defend the charge made against them, so that a fair hearing could result.

I would therefore dismiss the appeal with costs.

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C.M. DENNIS BYRON
Justice of Appeal

SIR VINCENT FLOISSAC, C.J.

Having read the judgments of my brothers Singh J.A. and Byron J.A., I must say that I agree with the judgment of Singh J.A.

The injunctive order was a quadruple order requiring the appellant (1) to replace the gas bottles (2) to reconnect the gas bottles (3) not to further interfere with the gas bottles and (4) not to further interfere with the rented premises. The injunctive order therefore permitted of four different breaches.

A Notice of Motion which merely alleges a breach of the injunctive order without stating which part or parts of the quadruple order was disobeyed does not tell the appellant "with sufficient particularity to enable him to defend himself what exactly he is said to have done or omitted to do which constitutes a contempt of court". Accordingly, I agree with Singh J.A. that the appeal should be allowed with costs to the appellant.



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SIR VINCENT FLOISSAC
Chief Justice