

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 88 OF 1985

BETWEEN:

JANICE LYTTLE,
(Administratrix of the Estate of
Albertha McFee, deceased) Plaintiff

and

VAL LITTLE
HUBERT LITTLE Defendants

Appearances:

Mr. Samuel Commissiong for the Plaintiff
Mr. Cecil Williams for Jeffrey Little

2001: February 15, 22, March 1

JUDGMENT

- [1] **Webster, J. [Ag.]:** By Notice of Motion filed on January 30, 2001 pursuant to Order 73 of the Rules of the Supreme Court the Plaintiff/Applicant applied to this Court for an order to commit Jeffrey Little ("the Respondent") to Her Majesty's Prison, Kingstown, St. Vincent, for being in contempt of court in failing to obey an order of this Court made against the defendants on April 24, 1986. The Motion is supported by the affidavit of the Applicant sworn on January 30, 2001.

FACTS

- [2] On February 5, 1955, in previous proceedings in High Court Suit No. 24 of 1954 between the Applicant's mother, Albertha McFee as plaintiff, and Leroy Little as defendant, the Honourable Mr. Justice Gordon granted a perpetual injunction restraining Leroy Little, his

servants or agents, from trespassing on the plaintiff's property at Montrose Estate, St. Vincent. On May 6, 1956 an injunction in identical terms was granted by Mr. Justice Gordon against the defendants in Suit 5 of 1956 - Albertha McFee v. Val Little, Hubert Little and Joseph Little. The defendants in both suits are siblings and the Respondent is the son of Leroy Little.

- [3] On April 24, 1986 the High Court granted the injunction which is the subject matter of this application. The injunction is set out in the Motion and is repeated below because of the importance it will play in this decision. The Court ordered as follows:

"IT IS ORDERED that there be judgment for the Plaintiff for damages for trespass on the basis of perpetual injunction made by Mister Justice Gordon in Suit No: 24 of 1954 and dated the 5th day of February, 1955. No evidence having been led as to the quantum of damages, the Court awards none.

'IT IS FURTHER ORDERED that the Defendants do forthwith pull down and remove all or any buildings, erections and construction which they have built or caused to be built on the said land.

'AND IT IS FURTHER ORDERED that the execution of this judgment be stayed for 6 weeks to enable the Defendants to bring a new suit.

'COSTS to the Plaintiff to be taxed, if not agreed".

This order is referred to in this judgment as "the 1986 Injunction".

- [4] At the hearing Counsel for the Applicant, Mr. Commissiong, agreed that the reference in 1986 Injunction to the perpetual injunction granted by Mr. Justice Gordon in Suit No. 24 of 1954 does not incorporate that injunction into the 1986 Injunction. The perpetual injunction was referred to as the basis for ordering damages for trespass against the defendants. This cleared the way for focusing on the 1986 Injunction which ordered the

defendants in this suit to remove all or any buildings they had built or caused to be built on the land at Montrose Estate.

[5] A copy of the 1986 Injunction, endorsed with a penal notice, was served on the Respondent on November 4, 2000. A copy of the Injunction, without a penal notice, was sent by registered mail to the Respondent in September 1987 enclosed in a letter dated September 30, 1987 addressed to the Respondent from the Applicant's solicitors (exhibit JL 9A to the Applicant's affidavit). The letter warned the Respondent to stop trespassing on the land, and to demolish the building he was building on the land. The Applicant has never filed proceedings against the Respondent in respect of these activities.

[6] The Respondent admitted in his evidence that he received the September 1987 letter, and I find that he was aware of the 1986 Injunction since then.

[7] The Respondent's case is that he built his house on the land in 1979 and has been living there since. In October 2000 he started work on the house by changing the floor of the kitchen. He contends that he is not erecting a dwelling house or any other new structure on the land, and that he was not aware of the 1986 Order until 6th November, 2000 when he was served with the Injunction. On becoming aware he ceased all further construction.

[8] I accept the evidence that the Respondent has been living in his house on the land since 1979, and that he is not building another house on the land. He started renovating the kitchen in October 2000, and continued up to January 2001 as stated in paragraph 9 of the Applicant's affidavit.

[9] The court is being asked to commit the Respondent to prison for not obeying the 1986 Injunction on the basis of this evidence.

APPROACH TO MOTION

[10] In approaching this matter the court is guided by the following general principles:

(i) Committal proceedings affect the liberty of the subject and committal orders will only be made if procedural rules are strictly complied with: **Gordon v. Gordon (1946), All E.R. 247**; and the offence, being criminal in nature, must be proved beyond reasonable doubt: **Re Bramblevale Ltd.** [1969] 2 All E. R.1062. In Civil Appeal No.1 of 1997 – **Elsee v Grenada Telecommunications Ltd**, on appeal from this Court, Mathew, J.A., referring to the previous decision of the Court of Appeal in **Fred Toppin and Jonas Browne & Hubbard (Grenada) Ltd v Rudolph's Ltd.** (Civil Appeal No. 13 of 1999 from Grenada), summed up the position as follows:

“But the court (in the Toppin case) was unanimous that where the liberty of the subject is involved, procedural rules must be strictly complied with. Singh J.A. in his judgment attributed some wise words uttered by the Chief Justice during the hearing of the matter thus

‘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’.

(ii) The Notice of Motion must state exactly what the Respondent is alleged to have done or omitted to do which constitutes the contempt of court, with sufficient particularity, to enable the Respondent to meet the charge against him. The basis of this requirement is **RSC Order 73 Rule 2(2)** which states that the motion must state the grounds of the application. **Order 73 Rule 2** was considered by the Court of Appeal in the **Fred Toppin Case** (supra). Both the majority judgment delivered by Singh, J.A., and the dissenting judgment of Byron, J.A. (as he then was) emphasized the importance of including the grounds of the application in the Motion. Singh J.A. put the matter this way:

“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 be left in no doubt as to what the charges are.”

And Byron J.A. put it this way:

"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 the affidavit in support.

Byron J.A. did however go on to qualify his view as follows:

"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 to answer."

- [11] In summary, the Court must be satisfied that there is strict compliance with the proper procedures, and that the charge is proved beyond reasonable doubt. In doing this the Court must look to the Notice of Motion, and not the affidavit in support, nor in my opinion the oral evidence, to see what are the grounds of the application. The Motion must set out in its four corners the case against the Respondent.

THIRD PARTY CONTEMPT

- [12] The Respondent is not a party to this action and it is axiomatic that he is not bound by the 1986 Injunction. The only persons who are bound by the Injunction, in the sense of being in a position to breach it, are the persons enjoined (the defendants). If the defendants breach the Injunction they commit a civil contempt, or a contempt of procedure.
- [13] While a third party cannot breach an injunction and be liable for civil contempt, he can commit a criminal contempt by not obeying an injunction in two ways.

[14] Firstly, if A, with knowledge of the terms of an injunction, willfully incites, aids or abets the person enjoined (B) to disobey the injunction, A can be guilty of a contempt. The classic example of this is the case of **Seaward and others v. Paterson** (1895-9) All E. Rep. 1127 where one Murray (a third party) was found guilty of contempt in aiding and abetting the defendant to breach an injunction granted by the court against the defendant. Mr. Commissiong agrees that the case against the Respondent is not concerned with aiding and abetting a breach of the Injunction, there being no allegation of breach by the defendants.

[15] Secondly, if A, with knowledge of the terms of an injunction against B in an action between B and C, and with the intention of impeding or prejudicing the administration of justice by the court in the action, disobeys the injunction, he is guilty of a contempt of court: **Attorney General v. Times Newspapers Ltd.** [1991] 2 W.L.R. 994 per Lord Brandon at p. 1001.

[16] The matter is dealt with by the learned authors of **Arlidge, Eady and Smith on Contempt** 2nd edition paragraph 6–81 as follows:

“Since the test of contempt is not the breach of the order but interference with the administration of justice, it follows that at common law a contempt may be committed even if no specified order has been made by the court affecting anyone other than those involved in the proceedings. At common law, if the court makes an order regulating its own procedure, and the purpose of order is plainly to protect the administration of justice, then anyone who subverts the order will be guilty of contempt” (my emphasis).

[17] This statement of the law was accepted *verbatim* by Lloyd L.J. in **A.G. v Newspaper Publishing plc** [1988] 1Ch. 333 at page 380 as “*an accurate statement of the law.*” The learned authors continue:

“Thus, anyone who has knowledge of an order made by the court, and the purpose for which it is made, whether formally served with it or not, could be in contempt in

publishing material inconsistent with that purpose. This would not, however, be on the basis of having been in breach of the order to which he or she was not, ex hypothesi, a party, but rather because, assuming the necessary mens rea, such a person would be within one of the categories of criminal contempt. Accordingly, once again we submit that this is not inconsistent with Lord Eldon's principal" (that the court acts *in personam*) (my emphasis and addition).

[18] The following principles relating to criminal contempt emerge from the foregoing statements of the law:

- Service of the injunction disobeyed on the alleged contemnor is not necessary.
- The *mens rea* of the offence is knowledge of the order AND the intention to frustrate the purpose of the order so as to impede or prejudice the administration of justice. This is to be compared with the *mens rea* for civil contempt which is simply knowledge of the order, a form a strict liability.
- The *actus reus* is the commission of the act complained of, in this case the construction activities that took place between October 2000 and January 2001.

[19] The classic example of this type of contempt is the decision of the House of Lords in **Attorney General v Times Newspapers Ltd.** (supra). The Attorney General obtained an interlocutory injunction restraining the defendants from publishing confidential material relating to the British Secret Service M.I.5. from the book "*Spycatcher*". Notwithstanding the injunction, the Observer and Guardian newspapers, with full knowledge of the injunction against the defendants, published the confidential material. The House of Lords affirmed the decisions of the High Court and Court of Appeal that the purpose of the injunction was to keep the information confidential until the trial of the action for breach of confidence. The publication by the appellants nullified the trial because the information

was now in the public domain. This conduct constituted the *actus reus* of impeding or interfering with the administration of justice, and since *mens rea* was conceded by the appellants, the necessary elements to constitute contempt of court had been established.

APPLICATION OF THE PRINCIPLES

[20] It now remains for me to apply the foregoing principles to the facts of this case. I have already found that the Respondent was aware of the 1986 Injunction since 1987, and that he carried out limited construction activities up to and including the laying of blocks in the kitchen in January 2001.

[21] The 1986 Injunction mandates the defendants to “...pull down and remove all or any buildings erections and construction which they have built or caused to be on the said land.” This is a mandatory injunction. Its purpose was the removal of the buildings constructed on the Applicant’s land. It is safe to assume that the defendants complied with the Injunction because there has been no application to the Court to commit the defendants for contempt. Therefore, the purpose of the Injunction has been satisfied, and there can be no question that the Respondent’s conduct, at its worse, nullified the purpose of the Injunction with the intention of impeding or prejudicing the administration of justice in the trial between the parties in the action. This is the test for the *actus reus* of criminal contempt which the Applicant has clearly failed to establish.

[22] Mr. Commissiong invited me to treat the construction activities as a trespass. But I am not sure how far this would take Applicant’s case. Trespass is not an issue that is enjoined by the 1986 Injunction, and I have already indicated that this application must be determined by reference to that injunction and the principles set out above. The 1956 injunction relating to trespass is not an issue in this case.

[23] I also find that the Motion does not charge the Respondent for a contempt that he can be found guilty of on these facts. The Motion charged him with contempt in disobeying the 1986 Injunction, or, put negatively, did not charge him with a criminal contempt. At the hearing he was proceeded against as if he had committed the criminal contempt of

impeding or interfering with the administration of justice. That offence is not charged. I am mindful of Justice of Appeal Byron's caveat in the Fred Toppin Case (*supra*) that the court should not adopt a literalistic approach in these matters. But equally, a person cannot be charged with one type of contempt, and be found guilty of another. The Motion did not provide the Respondent with sufficient particulars to defend himself against a charge of criminal contempt.-

- [24] Having regard to my finding that it is not proved that the Respondent committed the *actus reus* of the alleged contempt, it is not necessary to make a finding on the issue of *mens rea*. But if I had to, it would be that I am not satisfied that the Respondent's conduct shows a clear intention to thwart the purpose of the 1986 Order and impede or prejudice the administration of justice by the Court in this action.

CONCLUSION

- [25] In conclusion I find that the Applicant has failed to establish that the Respondent has committed a contempt of court and the Motion is dismissed.

COSTS

[26] The Applicant will pay the Respondent's costs of the Motion to be taxed if not agreed.

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Paul Webster
High Court Judge [Ag.]