

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO.445 OF 1999

BETWEEN:

**MIRA DOSHI
KEITH FORDY**

Plaintiffs

and

RICHARD GIBSON

Defendant

Appearances:

Ms P David for the Plaintiffs

Mr RC Jack for the Defendant

1999: November 4, 25, 30

JUDGMENT

- [1] **MITCHELL, J.:** This is a Motion in Contempt. The Plaintiffs complained that the Defendant refused to obey an injunction granted against and served on him. The Defendant denied that he did so. The facts were as follows. The Plaintiffs were medical practitioners on contract to the Government of St Vincent. They had rented the house of the Defendant on 24th October 1998 for one year from a rental agency. The monthly rent was \$2,000.00. Towards the end of the tenancy, the Defendant had caused several loads of soil to be dumped on the front garden. He was apparently doing work to build a wall and to reconstruct the road up to the house. He took down parts of the fence to the yard for him and his workmen to gain access to a room where he kept construction tools. The

Defendant visited the garden and picked the fruit without first speaking to the Plaintiffs. When the Plaintiffs objected to the invasion of their privacy, he retorted that his visits to the house and garden could not possibly inconvenience them. The Defendant brought workmen onto the premises without first alerting the Plaintiffs. Batches of cement were mixed by the workmen in the front garden without discussion with the Plaintiffs. As relations broke down, locks on gates were destroyed and others had superglue placed in them to make them not operable. Gates were unhinged and taken down. The Defendant placed a sign on the storm shelter saying it was private property, keep out. Complaints made by the Plaintiffs to the rental agency and directly to the Defendant were ignored.

- [2] After other incidents, the Plaintiffs applied for and on 7th September 1999 obtained an injunction against the Defendant. It was in these terms:

It is hereby ordered and directed that the Defendant Richard Gibson by himself his servants or agents or howsoever otherwise be restrained from entering or crossing over the demised premises and from conducting construction work of any kind upon the demised premises or in any way committing a breach of the lease until after the hearing of a summons returnable on the 17th day of September, 1999.

- [3] This injunction, together with the writ of summons, the statement of claim and the summons for the continuation of the injunction were served personally on the Defendant by the Bailiff of the Supreme Court on 8th September 1999. On 23rd September 1999 the Defendant entered an appearance by his solicitor. On 11th October 1999 the injunction was renewed until after the trial of the action.

- [4] On 15th September the Plaintiffs took out a motion for committal for

contempt. The evidence of the Bailiff was that he tried on three separate occasions to serve the notice of motion on the Defendant. He was told by the Defendant's brother that the Defendant was out of the State. Enquiries indicated the Defendant was not out of the State. Other attempts by the Bailiff and the Plaintiffs to locate the Defendant to serve him failed. It appeared that the Defendant was in the State but was hiding from the Bailiff. The Plaintiffs obtained leave to serve the notice of motion on the Defendant by substituted service on the Defendant's solicitor. This was duly done.

- [5] On 4th November 1999 the matter came up for hearing in open court. The Defendant was not present. His solicitor had not been able to contact him personally, but had left a message with a member of his family of the service of the notice of motion and the date of hearing. The Plaintiffs were about to leave the State as their contract had come to an end. They gave evidence and were cross-examined. They confirmed and repeated their affidavit testimony that the Defendants' workmen had been repeatedly crossing and re-crossing the enclosed garden and yard, and breaking down gates and fences after the injunction had been granted and served. The evidence of the Plaintiffs was that in defiance of the order of the court, the Defendant continued to have cement mixed in the garden after the order was served on him. After the service of the order, the Defendant's workmen continued on later days to cross the yard with wheelbarrows. The Defendant turned off the pump and locked the room that held the pump. At a meeting at the premises on 10th September with the two solicitors present, the Defendant was persuaded to give the Plaintiffs a key to the room where the switch for the pump was housed. The following day the workmen were back on the premises and the gate was shortly thereafter taken down on the Defendant's instructions. The back fence was broken down. The pump stopped working after that. At the request of the Defendant's counsel, a bench warrant was not issued

for the arrest of the Defendant. The matter was adjourned to 11th November to give the Defendant a chance to appear.

[6] On 11th November counsel had not been able to secure the attendance of the Defendant. The Defendant was absent without explanation. On the plea of Defendant's counsel, a bench warrant was still not issued for his arrest. The Defendant was given a last chance to appear and to explain himself, and the matter was fixed for 25th November.

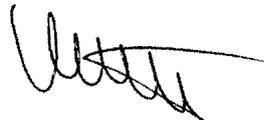
[7] On 25th November the Defendant appeared in court with his counsel and was sworn and gave his evidence. He denied he had breached the injunction. His explanation was that he had dismissed the workmen. They had continued their work, but as employees of his neighbour, Mr Bonadie. He and Mr Bonadie were building a road jointly for their use. But, the workmen were no longer employed by him, they were only employed by Mr Bonadie. In that way, he was no longer responsible if they disobeyed the order of the court. He had not personally returned to the premises, so he had not breached the order.

[8] Counsel for the Defendant manfully strove to explain and excuse his client. The lease had now expired. The Plaintiffs' contracts with the Government of St Vincent have expired, and they have left the State. The Defendant is living back in his house. The Plaintiffs had shown themselves to be cantankerous; they stayed in the State an extra week after the expiration of their lease only to give evidence against the Defendant. Their story should not be believed.

[9] The behaviour of the Defendant towards his tenants was outrageous. He clearly demonstrated either that he did not know what are or he did not care about the obligations of a landlord to his tenants. But, we are not concerned in these proceedings with the Defendant's treatment of the

tenants. Just as he treated the tenants, so also he treated the order of the court. It is his playing games with the order of the court that we are concerned with here. He thinks that by the stratagem of firing the workmen, or at least claiming he had fired the workmen, for there was no evidence other than his say so that he had ever terminated his workmen, that would exempt him from liability on a charge of contempt of court if the workmen continued to trespass on the rented premises. The workmen were building his road, and were with his permission venturing into the rented premises in contravention of the court order. They were not doing this contrary to his instructions. I have no doubt whatsoever that the Defendant willfully disobeyed the order of 7th September 1999 in the ways described by the Plaintiffs. The Defendant's repeated evasion of service by the Bailiff and his avoidance of the court fixtures described above, for which he gave no explanation, only highlighted the cavalier way in which he was prepared to treat the order of the court.

[10] The High Court, once it is satisfied beyond reasonable doubt of the willful disobedience of a party on whom an injunction had been served, has power to find the party to be in contempt of court and to impose a fine or imprisonment. A term of imprisonment of one month would not be out of order in this case. However, I consider that a fine of \$4,000.00 payable in one month or one month's imprisonment would also be appropriate and would have the advantage of not making the Defendant a burden on the State. This fine is to be paid by the Plaintiff into the Registry of the Supreme Court and a copy of the receipt sent immediately thereafter to the solicitor for the Plaintiffs. The Defendant having consented, the Plaintiff has leave to withdraw the proceedings after the fine and costs have been paid. The Plaintiffs shall have their costs to be taxed if not agreed.



Ian Donaldson Mitchell, QC
High Court Judge