THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL CLAIM NO. 240 OF 2005

BETWEEN:

YVONNE RAYMOND

Applicant

v

VASILKA HULL

Respondent

Appearances:
Ms. Paula David for the Applicant
Mr. Ronald Marks for the Respondent

2005: July 22, 29

JUDGMENT

[1] **Thom, J**: This is an application for an Order of Committal for Contempt of Court.

[2] On the 19th day of May 2005 the Applicant filed a claim against the Respondent in which she claims:

(i) damages for assault;

(ii) an injunction restraining the Defendant from assaulting the Claimant by threatening her, making annoying telephone calls to her, besetting her, striking her or causing her mental distress or physical harm in any manner whatsoever;

(iii) further or other reliefs;

(iv) costs.

[3] On the 10th day of June 2005 Master Brian Cottle heard an application by the Applicant for an interim injunction restraining the Respondent from assaulting the Applicant by threatening her, making annoying telephone calls to her besetting her striking her or causing her mental distress or physical harm in any manner whatsoever.

[4] At the hearing of the application Master Cottle granted the injunction in terms of the draft Consent Order signed by the Respondent, the Respondent's solicitor at that time Mr. Arthur Williams and the Applicant's solicitor. At the said hearing the injunction was made perpetual. The Respondent was not present at the hearing.

[5] On the 19th day of June 2005 the Applicant filed an application for an Order of Committal of the Respondent for contempt of Court. The Applicant alleged that the Respondent telephoned her and threatened her in breach of the Order of the Court made on June 10, 2005.

[6] The Applicant in paragraph 4 in her affidavit dated 16th June 2005 in support of her application deposed as follows:

> "I am advised by my solicitor Ms. Paula David and I verily believe the information which she gave me that a draft of the Order of 10th June 2005 was prepared by her Chambers and sent to the Chambers of Williams and Williams to be signed by the Respondent. The draft Order included a penal notice. The draft Order was returned to my solicitor's Chambers on 15th June 2005. It had been signed by the Respondent. The draft order was lodged with the Registrar of the High Court to be settled that same day. The draft Order has not yet been settled.

[7] At the trial the Applicant and the Respondent gave evidence on their own behalf. No witnesses were called.

[8] The Applicant testified that during the year 2004 she had an intimate relationship with one Mr. Mapp. The relationship started about ten years ago. In 2004 she realized that the Respondent had an intimate relationship with the said Mr. Mapp. She met the Respondent at Mr. Mapp's residence and Mr. Mapp introduced the Respondent to her as a friend. On

the evening of August 26, 2004 the Applicant and Mr. Mapp were in Mr. Mapp's vehicle proceeding to Ratho Mill where Mr. Mapp has a house. While in the vicinity of Ratho Mill they met the Respondent in her car. The Respondent assaulted her. On the 27th August the Respondent telephoned her at her office and visited her at the office later that day and they spoke. In March 2005 the Applicant went to Karib Cable and she saw the Respondent. On her way out the Respondent said to her, "Troublemaker". On the 16th June 2005 the Respondent telephoned her at her office and said, "Me and my agent will deal with you. It ain't done, it will never done you know."

[9] The Respondent in her testimony stated that she had an intimate relationship with the said Mr. Mapp. She agreed that she was introduced to the Applicant by Mr. Mapp at his residence. She also agreed that on the evening of August 26, 2005 she saw Mr. Mapp and the Applicant at Ratho Mill but denied assaulting the Applicant. She stated that she offered to give the Applicant a ride in her vehicle. The Applicant asked her how long she knew Mr. Mapp, she told the Applicant she would not discuss the matter and left. On August 27, 2004 Mr. Mapp gave her the telephone number for the Applicant at her office and requested her to telephone the Applicant and apologize. She telephoned the Applicant at her office on August 27, 2004 and later the said day she visited the Applicant at her office and apologized to her for the incident at Ratho Mill. She agreed that she saw the Applicant at Karib Cable in March 2005 and she called her "troublemaker" twice. She denied that she made nuisance telephone calls to the Applicant and specifically denied that she telephoned the Applicant on June 16, 2005 and said:
"Me and my agent will deal with you, it ain't done it will never done you know."

[10] Mr. Marks submitted that the Court should dismiss the Application for the following reasons:

(i) There is not sufficient evidence on which the Court could find that the telephone call of June 16, 2005 was made to the Applicant and if made that it was made by the Respondent.

(ii) The Order made by Master Cottle on June 10, 2005 was not served on the Respondent.

[11] In support of his submission Mr. Marks stated that the Applicant did not produce telephone records to show that the calls were made by the Respondent and further the Applicant could not recognize the voice of the Respondent since they only spoke a few times.

[12] Contempt proceedings are by their nature criminal. The standard of proof required is the same as in criminal matters. Lord Denning M.R. in **Re Bramblevale Ltd [1969] 3 AER 1062 at 1063** stated the standard of proof as follows:

> "A contempt of Court is an offence of a criminal character. A man may be sent to prison for it. It must be satisfactorily proved. To use the time honoured phrase, it must be proved beyond reasonable doubt.

[13] An examination of the testimony of the Applicant shows that she spoke to the Respondent on several occasions between 2004 and March 2005 i.e. before the telephone call in issue was made.

[14] The Applicant testified that she spoke to the Respondent when they were introduced by Mr. Mapp at his residence in 2004. The Respondent confirms this in her testimony and stated further that the Applicant asked her to repeat her name and she did.

[15] The Applicant heard the Respondent speak at Ratho Mill on August 26, 2004. The Respondent in her examination-in-chief testified:
"I saw Ms. Raymond in his vehicle. He said she bothered him..... I came out of the car and said I wanted to hit her ..... we then left in our vehicles. I offered Ms. Raymond a ride. She asked how long I know Mr. Mapp. I told her I would not discuss this matter and left."

[16] The Respondent under cross-examination stated:
"I have made calls to her. Mr. Mapp gave me a number to call her. I called her and so I went to see her."

[17] In relation to March 2005 the Respondent testified:

"I am a customer of Karibe Cable. I was dealing with my internet. I left before her. I told her she was a troublemaker. I told her so twice."

[18] The Applicant under cross-examination testified:
"She spoke to me about three or four times. I can recognize her voice. I recognized that voice. She spoke with me on 26th August when she tried to assault me. I recognize her voice."

[19] The evidence shows that the Respondent agreed that she spoke to Ms. Raymond on the evening they were introduced by Mr. Mapp, the evening of August 26, 2004 at Ratho Mill, the 27th August when the Respondent telephoned the Applicant at work and later when the Respondent visited the Applicant at her place of employment and apologized, and in March 2005 when the Respondent saw the Applicant as she was leaving Karibe Cable.

[20] Having considered the evidence on this issue I have no doubt that the Respondent made the telephone call to the Applicant on the 16th June and said the words,
"Me and my agent will deal with you. It ain't done, it will never done you know."
The Respondent and the Applicant had intimate relationship with the same person and all of the conversations surrounded their relationship with Mr. Mapp. I have no doubt that in the circumstances the Applicant recognized the voice of the Respondent on June 16, 2005. I accept the evidence of the Applicant.

[21] The Applicant agrees that the Respondent was not present when the Order of June 10, 2005 was made by Master Brian Cottle.

[22] The Applicant submits that in accordance with Rule 53.5 the Court should exercise its discretion and dispense with service of the Order on the Respondent and relies on the case of **Davy International Ltd and others v Tazzyman and others 1997 3 AER p. 183**.

[23] Rule 53.5 reads as follows:

(1) This rule applies where the judgment or order has not been served

(2) If the order requires the judgment debtor not to do an act, the Court may make a committal order or sequestration order only if it is satisfied that the person against whom the order is to be enforced has had notice of the terms of the Order by being

(a) notified of the terms of the Order by post, telephone, fax or otherwise; or

(b) present when the order was made.

(3) The Court may make an order dispensing with service of the judgment or order under rule 53.3 or 53.4 if it thinks it just to do so.

[24] It is a requirement of Rule 53.5 that the court must be satisfied that the contemnor had notice of the terms of the Order by being

(i) notified by post, telephone, fax or otherwise; or

(ii) present when the Order was made

[25] In this case it is agreed that the Respondent was not present and that she was not notified by post, telephone or fax. Therefore in order for the Applicant to succeed the Court must be satisfied beyond a reasonable doubt that the Respondent had notice of the terms of the Order by being "otherwise" notified within the meaning of Rule 53.5 (2) (a).

[26] The evidence is that the Respondent was not present at the hearing of the Application for an injunction on June 10, 2005 when Master Brian Cottle made the Order. However, the Respondent had signed the draft Consent Order, her solicitor and the Applicant's solicitor also signed the Order. The Applicant's solicitor sent a copy of the Order made by Master Cottle on June 10, 2005 to the Respondent's solicitor at that time, Mr. Williams. The copy of the Order was signed by the Respondent and her solicitor and returned to the Applicant's solicitor on June 15, 2005. The Respondent testified that her solicitor Mr. Williams called the Applicant's solicitor in her presence about her signing the copy of the Order, she read the Order and she understood the Order. The Respondent is a teacher by profession. The Respondent at no time in her testimony denied that she was aware of the terms of the Order of June 10, 2005 prior to June 16, 2005. She testified that she was not

present at the hearing on June 10, 2005. I have no doubt that the Respondent was aware of the terms of the Order since a copy of the Order was sent to her solicitor and she read the Order, understood it signed it and it was returned to the Applicant's solicitor on June 15, 2005. I find that by sending a copy of the order to the solicitor of the Respondent, the Respondent having read the Order and signed it, she had notice of the terms of the Order of June 10, 2005 by means "otherwise" within the meaning of Rule 53.5.

[27] This case can be distinguished from the case of **Lalibau Thakurdas Pagarani et al v T. Chaithram International S.A. et al** a decision of the Eastern Caribbean Court of Appeal Civil Appeals Nos. 10, 11 and 15 of 1997 British Virgin Islands. In Pagarani's case the Appellants' solicitors had proposed an undertaking to the trial judge. The Respondents were not in agreement with the terms of the undertaking. At the request of the Judge each party submitted a draft undertaking. The undertakings were not ad idem. The judge considered both drafts and chose one and entered the one he chose on July 11, 1997 in accordance with the one he chose. The Appellent was found to be in contempt of Court for breach of the Order of June 11, 1997. The acts were committed on May 24, 1997. The Respondents had founded their motion on the undertaking of January 22, 1997 and then amended same to the date of the Order July 11, 1997. The Court of Appeal in allowing the appeal stated at page 5:

> "We consider that at the time of the alleged contempt, the undertaking the Appellants were alleged to be in breach of did not exist. Before the Order of Georges J of July 11, 1997 it was not possible to discern from the transcript the exact terms of any undertaking purportedly given by the Appellants. We therefore hold that at the time of the alleged breach there was no effective undertaking in existence."

[28] In the present case the evidence is that the Respondent and her solicitor signed a copy of the Order made by Master Cottle on June 10, 2005 and returned it to the Applicant's solicitor on June 15, 2005. The telephone call was made on June 16, 2005. Rule 42.8 of CPR 2000 provides:

"A judgment or order takes effect from the day it is given or made, unless the court specifies that it is to take effect on a different date."

[29] In **Davy International Ltd v Tazzyman [1997] 1 WLR 1256** the issue before the Court was whether the Court pursuant to Order 45 r. 7 could dispense with service of a copy of an order under this rule if it thinks it just to do so in respect of a mandatory order retrospectively. The Court of Appeal found that the discretion could be exercised retrospectively. This may be done where it is clear that a contemnor was aware of the Order at the time he committed the breach.

[30] This is a case fitting for the exercise of the Court's discretion under Rule 53.5 and I so do and dispense with service of the Order.

[31] Having considered the evidence I find that the Applicant has proved beyond reasonable doubt that the Respondent telephoned her on June 16, 2005 and said, "Me and my agent will deal with you, it ain't done it will never done you know." This act was in breach of the Order of Master Brian Cottle made on June 10, 2005 and the breach is deliberate. I find the Respondent to be in contempt of the Court Order dated June 10, 2005.

[32] It is ordered:

(1) The Respondent shall pay a fine of $500.00 to the Court on or before the 31st day of October 2005.
(2) The Respondent shall pay to the Applicant costs in the sum of $1,000.00.

.....
Gertel Thom
HIGH COURT JUDGE