

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL CLAIM NO. 306 of 2002

BETWEEN:

MICHAEL DASENT

Claimant/Respondent

AND

BERKELEY KING

Defendant/Applicant

Appearances: Mr. Cecil Williams for the Applicant/Defendant
Mrs. Kay Bacchus-Browne for the Respondent/Claimant

2008: May 5th
May 27th

JUDGMENT

[1] **THOM, J:** This is an application for an order of committal for contempt of Court.

BACKGROUND

[2] On July 16, 2002 the Respondent/Claimant (hereinafter referred to as “the Respondent”) instituted proceedings against the Applicant/Defendant (hereinafter referred to as “the Applicant”) in which he sought inter alia a declaration that he was the fee simple owner of a dwelling house and a parcel of land situate at Mesopotamia. The Applicant in his counterclaim sought inter alia a declaration that he was the fee simple owner of the said dwelling house and land.

- [3] On October 20, 2003 the Court ordered as follows:
- “(1) The Defendant is declared to be the owner of property described in Deed No. 381 of 1954 and is entitled to the property.
 - (2) The Claimant is not the lawful owner of property described in Deed No. 381 of 1954 and is not entitled to any interest in the said property.
 - (3) The Claimant is to deliver up possession of the said property to the Defendant on or before 1st December 2003.
 - (4) The Claimant is to pay costs in the sum of two thousand dollars (\$2,000.00)”
- [4] In August 2005 the Respondent’s belongings were removed from the property pursuant to a writ of possession.
- [5] On an application by the Applicant on March 16, 2007 the Court ordered that the order dated October 20, 2003 be endorsed with a penal notice. The Order endorsed with a penal notice was served on the Respondent on the 23rd day of May 2007. On the 18th December, 2007 the applicant made an application to the Court for an order of committal against the Respondent for contempt of Court. The applicant alleged that the Respondent was in breach of the order dated October 20, 2003 and the order dated 16th March 2007.
- [6] The application was supported by two affidavits of Ms. Luzette King the Attorney on Record for the Applicant dated December 18, 2007 and April 7, 2008. Ms. King deposed that in August 2005 the Respondent’s belongings were removed from the land. In February 2007, she observed the Respondent had committed acts of trespass on the said land, being, causing an outhouse toilet to be erected on the land, cultivating the land, removing produce from the land, destroying fruit trees, erecting a clothes-line, keeping an aggressive dog and a kennel on the land and placing building materials on the land.
- [7] At the trial Ms. King testified that the Respondent had not complied with the order of October 20, 2003. He was still cultivating the land.

- [8] Under cross-examination Ms. King testified that she witnessed the Respondent's belongings being removed from the property in August 2005. However since then the Respondent has built a toilet on the land and cultivates the land.
- [9] Two affidavits in response were filed on behalf of the Respondent in which it is stated that the order stated that the Judge was sitting in Chambers when the order was made when in fact the order was made in Open Court. The Respondent was not present when the order was made in Court. The Respondent was informed that judgment was given in his favour. The Respondent did not testify at the hearing or call any witnesses.
- [10] Learned Counsel for the Applicant submitted that the Applicant has proved that the Respondent breached the Order of Court. After the Respondent's belongings were removed from the property the Respondent reoccupied the property. The Court Order endorsed with penal notice was served on the Respondent on May 23, 2007. The Defendant failed to comply with the Order. Learned Counsel referred the Court to Part 45 4 (1) (a) which provides that an order for possession of land may be enforced by a committal order under Part 53.
- [11] Learned Counsel for the Respondent submitted that the Order was irregular since it stated that the Judge was sitting in Chambers when the matter was heard in Open Court. It was impossible for the Respondent to comply with the order since the order was served on the Respondent on May 23, 2007. The Respondent was not present when the order was made. The Respondent believed judgment was given in his favor. The Court must consider his culpability. Learned Counsel referred the Court to **Halsbury Laws** Volume 9 paragraph 63-67 and the Cases of **R v Thompson Newspapers Ltd** [1968] 1 AER, 267; and **Re Bramble Vale** 1970 chp.128
- [12] Contempt proceedings are by their nature criminal. The standard of proof required is the same as in criminal matters. Lord Denning in **Re Bramble Vale 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] Under Part 45.4 of CPR 2000 an order for possession may be enforced by a committal order. However an order for committal may only be made if the order specified a date or time within which possession must be given. Part 45.4 reads as follows:

- “1. A judgment or order for the possession of land may be enforced by –
 - (a) a committal order under part 53;
 - (b) a sequestration of assets order under part 53 or;
 - (c) a writ of possession of land.
2. An order for committal or sequestration of assets under paragraph (a) or (b) may be made only if the court has given a judgment or made an order requiring possession of land, to be given within a specified time or by a specified date.”

[14] I find that there is no merit in the submission of Learned Counsel for the Respondent that the application should be dismissed since the order is irregular because it states that the Judge was sitting in Chambers when the matter was in Open Court. Part 42.10 provides for such errors to be corrected at any time. Part 42.10 reads:

- “(1) The Court may at any time (without an appeal) correct a clerical mistake in a judgment or order, or an error arising in a judgment or order from any accidental slip or omission.
- (2) A party may apply for a correction without notice.”

[15] In relation to the submission that the order was not served on the Respondent prior to December 1, 2003 and that it was therefore impossible to comply with the order. The relevant provisions are Parts 53.3 and 53.5 of CPR 2000. Part 53.3 provides in effect that where the court makes an order requiring a person to do an act within a specified time or not to do an act then the Court may not make a committal order unless the order with the penal notice endorsed was served personally on the judgment debtor in sufficient time to give the judgment debtor a reasonable opportunity to do the act before the expiration of the time. While Part 53.5 provides in effect that the Court may make a committal order when the judgment has not been served personally if the judgment debtor was notified of

the terms of the order by post, telephone, fax or otherwise or he was present when the order was made.

[16] It is not disputed that the order which was made on October 20, 2003 and entered on October 7 2004 and subsequently endorsed with a penal notice was served on the Respondent on May 23, 2007. Ms. King in her testimony stated that the Defendant was present in Court when the order was made on October 20, 2002, after the parties had given their evidence at the trial. The Respondent contends that the order was not made on the date when the evidence was given but at a subsequent date. The record of the Court shows that the decision was reserved on 25th September 2002 when the evidence was taken and the order made on October 20, 2002 after submissions were made on both sides. I found that Ms. King was mistaken on this issue. The Respondent was not present when the order was made. The order was not entered until October 7, 2004 some nine months after the Respondent should have delivered up possession. No variation of time for compliance was made pursuant to Part 53.7 (1). The order was enforced by the Respondent being removed from the property in August 2005 pursuant to a writ of possession. Ms. King in her evidence stated that in February 2007 she observed the Respondent committing acts of trespass on the property. This was almost two years after the order was enforced by writ of possession. The appropriate action is for a claim for damages for trespass and an injunction prohibiting the Respondent from trespassing on the property. The scope of Part 53 reads as follows:

“This part deals with the power of the Court to commit a person to prison or to make a sequestration order for failure to comply with an –

(a) Order requiring that person to do; or

(b) Undertaking by that person to do;

An act within a specified date or by a specified date or not to do an act.”

[17] The application is dismissed, no order as to costs.

.....
Gertel Thom
High Court Judge