

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE OF
GUYANA
REGULAR JURISDICTION

2019-HC-BER-CIV-SOC-51

BETWEEN:

MARILYN ALETHA REYNOLDS nee FRASER

Claimant

-and-

LAMBERT FELIX

Defendant

The Honourable Justice Navindra A. Singh, Puisne Judge

Mr. Joel Persid Edmond for the Claimant/ Applicant

Mr. Ramesh Rajkumar for the Defendant/ Respondent

Delivered December 2nd 2020 via electronic mail

DECISION

The Claimant instituted this Claim on April 23rd 2019, thereafter the Claimant applied for interlocutory injunctive relief against the Defendant on June 10th 2019 which were granted on June 19th 2019 by Justice Morris-Ramlall [**Exhibit ‘A1 - A4’**] in the presence of the Claimant and Defendant.

That order was entered on June 27th 2019 and served on the Defendant herein by a Marshal of the Supreme Court, on April 14th 2016.

On June 24th 2020 the Claimant caused an Application to be filed praying for an Order committing the Defendant to prison for disobeying the order of Justice Morris-Ramlall by;

1. Entering on to the land described in the injunctive order.

II. Interfering with the Claimant's peaceful enjoyment of the land by denying her access thereto.

III. Executing construction works on the said property.

A trial was conducted by this Court with respect to the Application for an order committing the Defendant to prison on August 26th 2020.

LAW

The aspect of contempt concerned with the enforcement of orders of court is known as civil contempt and although it is known as civil contempt it has been said to be of a criminal nature and so many of the rules that apply when seeking to prove an accused guilty of a crime, apply when seeking to show that a defendant has committed civil contempt and, therefore, any rules safeguarding the alleged contemnor's rights must be strictly complied with.

The power of contempt, though drastic, is necessary not just as a means of enforcing a court order but also to maintain the authority of and respect for the court and therefore the sanctions that can be imposed are not only coercive but are also punitive.

The Court must protect its process from being disrespected, denigrated and ignored for if it is perceived that in the administration of justice the power of the Courts to issue orders to remedy wrongs is impotent and ineffective then person will believe that their recourse is to take the law into their own hands resulting in anarchy.

An injunction is a form of order made by the court expressly enjoining a party either to do a particular act, in which case it is a mandatory injunction, or directing a party to refrain from doing a particular act, in which case it is a prohibitory injunction.

It is imperative that injunctive orders be absolutely observed, as was aptly stated by Wood V-C in **Spokes v Banbury Board of Health** (1865) LR 1 Eq 42 @ 48; “*the simple and only view is that an order must be obeyed ... So long as it exists, the order must be obeyed, and obeyed to the letter.*”

Because strict observation of the rules safeguarding the alleged contemnor’s rights must be observed, Courts will only punish a person for contempt upon proof beyond a reasonable doubt of the following elements;

1. It must be established that the terms of the injunction are clear and unambiguous;
2. It must be shown that the Defendant had proper notice of such terms;
3. There must be clear proof that the terms have been broken by the Defendant and the standard of proof is beyond a reasonable doubt;

As per Lord Denning MR in **Re Bramblevale** [1969] 3 All ER 1062, “*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 all reasonable doubt. It is not proved by showing that, when the man was asked about it, he told lies. There must be further evidence to incriminate him. Once some evidence is given, then his lies can be thrown into the scale against him. But there must be some other evidence.*”;

4. The mens rea, as required in each case must be established;

Section 2 (a) of the Contempt of Court Act; CAP 5:05 of the Laws of Guyana provides that contempt of court includes “*the wilful disobedience to, or disregard for, any judgment, decree, direction or order of a court.*”

It must be noted that this differs from the applicable law of England and Wales where the word “wilful” is absent from that jurisdiction’s legislation. Therefore in Guyana it must be proven that the act that resulted in a breach of the Order of Court was voluntary and intentional though not necessarily malicious.

Generally, intention is a fact that must be established from the evidence and is found in the action and the manner in which the action was carried out by the alleged contemnor.

FACTS

The Claimant and Zanah George testified in support of the Application.

They both testified that a building is being constructed on the land that is the subject matter of the injunctive order and in fact the Defendant confirms that there is a building being constructed on the land.

Proof of the construction is also found in [the copies of] the photographs tendered in the trial [**Exhibits ‘B1 - B2**].

They also both testified that the Defendant is preventing the Claimant from accessing the rice lands which are the subject of the injunctive order.

The Defendant has denied preventing the Claimant from accessing the rice lands and has also denied that he is the person responsible for the construction of the building on the land.

ANALYSIS

The Defendant's Counsel has raised what he describes as two procedural irregularities which he submits are fatal to the Application.

Firstly, Counsel submitted that the injunctive order was not served on the Defendant.

The Claimant averred in her affidavit in support of the Application, her affidavit in support thereto and her witness statement that the Defendant was served by a Marshall [Von Trapp] at his home in Weldaad, West Coast Berbice and the Defendant did not at any time expressly deny being served.

In any event, the law requires that the Defendant is aware of the order and the Defendant admits that he was in Court when the order was made by Justice Morris-Ramlall.

The Court is satisfied so that it is sure that the Defendant is fully aware of the terms of the order since he was present in Court with his Attorney when the order was made by Justice Morris-Ramlall and further the Court accepts the testimony of the Claimant and is satisfied so that it is sure that the Defendant was served with the order.

Secondly, Counsel submitted that the injunctive order did not specify the consequences of failure to comply with the order in accordance with **Part 5:02 (2) of the Civil Procedure Rules 2016; CAP 3:02.**

Counsel refers to the case of **Ramdat Sookraj v Comptroller of Customs and Excise** [1992] 48 WIR 163 and **Order 35 rule 5 of the Rules of the High Court; CAP 3:02** [which have been replaced with the **Civil Procedure Rules 2016**].

It must be noted that the requirement of a penal clause to be endorsed in accordance with **Order 35 rule 5 of the Rules of the High Court; CAP 3:02** was specifically for orders requiring a person to do an act within a stated time and therefore not required in orders prohibiting an act/s.

Part 5:02 (1) (a) of the Civil Procedure Rules 2016 mandates the form of the order to be in accordance with **Form 5A of the Civil Procedure Rules 2016**

The use of the word '*comply*' in Form 5A is a clear indication that the intent was as it was under the previous rules to be absolutely necessary only when the order requires a person to do an act and not necessary when the order prohibits an act.

This is further demonstrated in the provisions of **Part 5:02 (2) of the Civil Procedure Rules 2016**, which provides;

*'The Court must, **whenever practicable**, specify the consequences of a failure to comply with the order, unless it is a judgment'*.

The Defendant was not required to do anything, there was nothing for him to comply with. He was simply required to refrain from doing specific acts, to not act.

It is absurd to suggest that only if a person is made aware that he can be penalised then that person is under a compulsion to obey an order prohibiting him from doing an act/s.

Where a person is being ordered or compelled to perform an act within a certain time it is reasonable to require the insertion of the penal clause since it is possible that an individual would believe that once he performs the act he is in compliance notwithstanding it is performed after a time set for the performance of the act.

The Defendant has not submitted that he did not understand the terms of the injunctive orders and the Court finds as a matter of fact that the terms of the injunctive orders are very clear and unambiguous.

The Court rejects the Defendant's denial that he is the person responsible for the construction on the land.

It is disingenuous for him to represent to this Court that despite the fact that he is actively involved in litigation concerning the land yet he is uninterested as to who is building on the land.

The Court finds the Defendant to be an incredible witness.

On the other hand the Court find the Claimant and her witness to be truthful and believable.

In this regard, the Court finds that the Claimant has established beyond a reasonable doubt that the terms of the injunctive order were broken by the Defendant.

The Court further finds that to construct a permanent structure such as the building shown in **Exhibits 'B1 - B2'**, the Defendant displayed a clear intention to disregard the terms of the injunctive order and therefore wilfully breached same.

Similarly, the Court finds that the Defendant's act to actively prevent the Claimant from entering on to the land the Defendant demonstrated that he wilfully breached the injunctive order.

CONCLUSION

The Court finds that the Claimant has established beyond a reasonable doubt that the Defendant has wilfully breached the injunctive order granted by Justice Morris-Ramlall on June 19th 2019.

In the circumstances the Court finds the Defendant guilty of contempt and orders that the Defendant do pay a fine \$250,000.00 which fine shall be paid to the New Amsterdam sub-Registry and which shall be paid into the Consolidated Fund by the Registrar of the Supreme Court.

This fine shall be paid on or before January 4th 2021 failing which the Defendant shall stand committed to prison for 21 days.

The Court awards the sum of \$100,000 as costs to the Claimant against the Defendant.

Justice N. A. Singh