BARBADOS

[Unreported]

IN THE SUPREME COURT OF JUDICATURE
HIGH COURT

CIVIL DIVISION

Civil Suit No: 1160 of 2012

BETWEEN:

COACH HOUSE LIMITED

Claimant

AND

JOSEPH K. JORDAN III

Defendant

Before:

The Hon. Madam Justice Jacqueline A. R. Cornelius, Judge of the High Court

Appearances:

Mr. Wilfred A. Abrahams, in association with Ms. Tamesha A. A. Watkins and Mrs. Duana Peterson, Attorneys-at-Law for the Claimant

Mr. Errol Niles, in association with Mr. Ernest Jackman, Attorney-at-Law for the Defendant

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2012: November 6, 15, 16, 21 and 23

December, 19

JUDGMENT ON APPLICATION FOR CONTEMPT

[1] **Cornelius, J**: The Defendant, Joseph K. Jordan III, is by his own admission a substantial property owner in Saint James. In this application for contempt brought against him by

the Claimants he has, it is first important to say, admitted his contempt and apologized to the Court. The sole point for this Court is therefore to determine the penalty which Mr. Jordan should face.

[2] There are two applications for contempt filed by the Claimant in this matter. The first application was filed on October 19, 2012 while the second was filed on November 15, 2012.

[3] In both applications the Claimant applied to the Court for an Order that:

(i) The Defendant is guilty of contempt of the Order of this Honorable Court made by the Honorable Justice Elneth Kentish in Chambers on July 4, 2012 and entered on July 5, 2012;

(ii) The Defendant do stand committed to Her Majesty's Prison at Dodds for contempt and breach of the Order of the Court;

(iii) There be liberty to apply; and

(iv) The costs of this application be the Claimant's in any event.

[4] The first application was primarily supported by the Affidavit of Gary Palmer dated and filed on October 19, 2012. Mr. Palmer is one of the Directors of the Coach House Limited. However, it was also supported by the Affidavits of Ken Roy Lewis and Ervan Hyvesta Small, both dated and filed on October 22, 2012.

[5] The second application was supported by the following affidavits:

1. Affidavit of Gary Palmer dated November 14, 2012 and filed on November 15, 2012;

2. Affidavit of Margaret Licorish, an employee of the Claimant, dated November 14, 2012 and filed on November 15, 2012;

3. Affidavit of Lester Gilbert, an employee of BARE Development Inc. which has an office at the Beach House, dated November 14, 2012 and filed November 15, 2012;

4. Affidavit of Shervon Gilbert, an employee of BARE Development Inc. which has an office at the Beach House, dated November 14, 2012 and filed November 15, 2012; and

5. Affidavit of Tamesha A. A. Watkins, Attorney-at-law for the Claimant, dated and filed on November 15, 2012.

[6] The Court takes note of the fact that neither Margaret Licorish, Lester Gilbert, Shervon Gilbert nor Tamesha Watkins were cross-examined on their affidavits.

[7] The Defendant has filed one Affidavit in response - an Affidavit dated the November 22, 2012 deposed by himself in response to the two Affidavits of Gary Palmer filed in support of the Claimant's applications.

Background to the Application

[8] The facts of this matter are largely undisputed. On July 3, 2012, the Claimant, Coach House Limited, filed a Notice of Application for an Interlocutory Injunction. This Notice was filed under a Certificate of Urgency and was supported by the Affidavits of Mr. Austin Hickey, Mr. Gary Palmer and Mr. Shevron Gilbert.

[9] The Notice of Application and supporting documents were all served on the Defendant at his residence at Flamboyant Avenue, Sunset Crest in the parish of Saint James late on the evening of the same day on which they were filed.

[10] The application came on for hearing before Kentish, J. of the High Court on the very next day, July 4, 2012. The Claimant, Coach House Ltd, was represented by his Attorneys-at-law while the Defendant appeared in person.

[11] Upon reading the affidavits filed in support of the application and hearing the Attorney-at-Law for the Claimant, as well as the Defendant, and upon the Claimant giving the usual undertaking to the Court as to damages, Kentish, J. ordered, *inter alia*, that:

(i) An injunction is granted restraining the Defendant whether by himself or by his servants or agents or otherwise howsoever from harassing, threatening, abusing or molesting the Claimant or its employees, any other persons claiming rights of access or occupation under the Claimant and legitimate users of the property formerly known as the Sunset Crest Beach Club but currently occupied by the

Coach House Limited and more particularly described in the Schedule to the Order and carrying on business there as the Beach House until the determination of the substantive action to be filed herein or until further Order;

(ii) The Defendant is hereby prohibited whether by himself, or by his servants or agents or otherwise from trespassing on to the aforementioned property; and

(iii) The Defendant is prohibited from approaching and/or remaining within fifty (50) metres of the aforementioned property.

[12] The Defendant was present at the hearing on July 4, 2012 when the Order of Kentish, J. was made. There is no dispute as to that. Mr. Gary Palmer was present as the representative of the Claimant while Ms. Tamisha A. A. Watkins was present in her capacity as Attorney-at-Law for the Claimant.

[13] It is the evidence of Ms. Watkins, who as I noted was not cross-examined, that at the hearing on July 4, 2012, the Court advised the Defendant that, should he desire, the matter could be adjourned until he obtained legal representation. According to Ms. Watkins, the Defendant informed the Court that he wished to proceed with the matter in the absence of legal advice and representation.

[14] Mr. Jordan alleged in his oral evidence to the Court that at the hearing on July 4, 2012 before Kentish, J. he was not given an opportunity to address the Court, but merely informed that he needed to obtain an attorney. It is his assertion, however, that no opportunity was afforded him to adjourn the matter to obtain legal representation. On this point, the Court prefers the evidence of Ms. Watkins and does not accept the oral evidence of Mr. Jordan that he was given no opportunity to adjourn the matter to obtain legal representation. His protestations may have been given more weight by this Court had Ms. Watkins, who is an officer of the Court, been examined and his case put to her. He failed to do so.

[15] The Defendant does not deny, however, that the Court read the Order being made and asked him whether he understood it. Ms. Watkins deposes that on being asked by the Court whether he understood the Order made, he assured the Court that he did. In his oral evidence, however, the Defendant asserted that not only did he not understand the

Order but that he informed the Court that he did not understand it when the Court enquired whether or not he understood it. He states in his own words, astonishingly, that he considered the proceedings were "*a joke*".

[16] Again, the Court preferred the evidence of Ms. Watkins and rejects the evidence of Mr. Jordan that he did not understand the nature of the Order being made. The Court considers that his attitude to the proceedings was well illuminated by his perhaps inadvertent comment on the stand that he considered the proceedings to be a joke. Mr. Jordan is a man who, by his own evidence herein, pays careful attention to legal documents and is also the owner of substantial property and a man of considerable intelligence. The Court absolutely rejects his evidence that he did not understand the nature of the Order being made.

[17] The Order made by Kentish, J on July 4, 2012 was duly perfected on July 5, 2012 and on or around that same day, the Defendant was also served with a copy of the Order at his residence at Flamboyant Avenue, Sunset Crest in the parish of Saint James.

[18] A copy of the Affidavit of Service deposing to the service of that Order is exhibited to the Affidavit of Gary Palmer as **"Exhibit GP2"**.

[19] On September 1, 2012, the Defendant wrote a letter to the Directors of Golden Anchorage Limited. In that letter he advised the persons to whom the letter was addressed to desist from placing locks on two entrances at the rear and front of the property formerly known as the Sunset Crest Beach Club on which he was prohibited from trespassing or approaching (hereinafter referred to as "the property"). He also stated, and I quote,:

> *"*Furthermore, after fourteen (14) days from the date of this latter and the ill-advised locks are observed, those locks and doors WILL BE REMOVED and placed against the building, which sits on the said "Land*"*.

[20] The Defendant also indicated in his letter dated September 1, 2012 that he intended to bring the matter before the Supreme Court of Barbados and, I quote, "*with a born Barbadian citizen and resident male or female to act as Judge*".

[21] The Defendant's letter dated September 1, 2012 was sent to a number of entities, including Counsel for the Claimant, Mr. Wilfred Abrahams, the Nation and Advocate newspapers, Barbados Today and Kentish, J. of the High Court.

[22] The Defendant then through his attorney-at-law, Mr. Errol Niles, sought to discharge the Order made by the Court by filing an Application dated September 6, 2012.

[23] The day after this Application was filed, Mr. Abrahams responded to the Defendant's letter dated September 1, 2012, informing him that the actions he threatened to undertake in his letter would breach the Order of the Court made in his presence on July 4, 2012. Mr. Abrahams advised the Defendant to obtain legal advice and also warned him in very clear terms that:

> "If you breach any of the provisions of the said Order I have instructions to immediately apply to have you committed to prison for contempt of the Order of the Court."

[24] This letter was returned to its sender on September 27, 2012, but was not returned unopened or unmarked. Instead, the words "*This Document is deemed rubbish*" had been stamped upon it while the words the "*said Order I have instructions to immediately apply have you committed to prison*" were highlighted. These facts are not disputed by Mr. Jordan and weigh particularly heavily on the Court.

[25] The Defendant testified that he could not remember whether he had highlighted any words in the letter, but did indeed admit to stamping the letter in the manner described above. It is amazing, not only that Mr. Jordan has an actual stamp that states "*This Document is deemed rubbish*" but that this should be his reaction to a clear warning from the Attorney-at-Law for the Claimant, is further evidence of the fact that he clearly understood the nature of the proceedings against him and fully intended to ignore or breach the Order. Again, he gave evidence that he did not understand the letter and believed it to be a joke and also that he did not consult his attorney-at-law as he was advised to do. The Court does not know whether he consulted his attorney-at-law but it certainly rejects his evidence that he did not understand the law.

[26] When the letter from Mr. Abrahams was returned to its sender, it was accompanied by a letter from the Defendant dated September 8, 2012 and addressed to the Honorable

Marston Gibson (as he then was), Chief Justice of the Supreme Court of Barbados. Like his previous letter, this letter from the Defendant was copied to a number of persons, including Kentish, J., Mr. Abrahams, local and international media, the Prime Minister of Barbados, the Leader of the Barbados Opposition and both of the primary political parties in Barbados.

[27] In the letter dated September 8, 2012, the Defendant complained about the hearing before Kentish, J. on July 4, 2012 and the failure of the Court to satisfy his "*high expectations of clarity and justice*". In describing the proceedings before the Court, his words mocked the Court and all persons involved in the Court process. The manner in which he complained about the proceedings clearly demonstrated a complete lack of respect for the Court and the position entrusted to Kentish, J. Of particular note is the fact that he used every opportunity in the letter to insult her in an especially distasteful manner.

[28] On October 18, 2012, the Defendant arrived at the property. He did not arrive alone but was accompanied by 3 or 4 workmen, as well as a reporter and photographer from the Nation Publishing Company Limited. It is clear from his evidence that he was responsible for the workmen in his company. He described these men in cross-examination as "*his agents*". It is less clear who advised the Nation Publishing Co. Ltd. that the Defendant, Mr. Jordan, would be at the property.

[29] The Defendant proceeded to instruct the workmen accompanying him to remove a gate on the property which led from the property to Highway 1. He also directed them to damage the lock on the gate which led from the property to the beach. He explained in cross-examination that he had done so because he was denied access to the beach. Once these instructions were carried out, the Defendant and the persons accompanying him left the property.

[30] The next day, one of the two local newspapers on the Island, the Weekend Nation, contained on page 5 an article entitled "*Property Owner Takes Action*". The top of the front page of this edition, which was dated October 19, 2012, showed a small photograph of the Defendant accompanied by the caption "*Gate-crasher at Sunset Crest*" which then directed readers to the article on page 5 of the paper.

[31] That article reports that the Defendant claims to be the rightful owner of lands at Sunset Crest, St. James and to also have the benefit of certain rights of way, easements or quasi easements. In the article itself, the Defendant is quoted as saying:

> "This is the second time that I am removing this gate. **Let them take me to Court. I don't care.** This is a right of way to the beach for us property owners."[Emphasis added]

[32] However, in his oral evidence before the Court, the Defendant denies that the statements attributed to him in the article appearing in the Weekend Nation were entirely his own as he alleged that he had been somewhat misquoted, although he did not specify what part of his statements had been incorrectly reported. As a result, however, this Court does not put undue stress on the actual words reported. There is no evidence from the Nation reporter that these words were actually said by the Defendant. What the Court does take into account is that the Defendant clearly displayed himself for the benefit of the media, holding up various legal documents and allowing photographs to be taken and published of him posing in this manner.

[33] Gary Palmer, the director of the Claimant, deposes in his affidavit that he received a letter dated October 19, 2012 from the Defendant on October 25, 2012. The said letter was addressed to the directors of Golden Anchorage Limited but, like all the other letters from the Defendant, it had been copied to a number of entities including local and international media and local politicians. In this letter, the Defendant indicated that he had requested the removal of 3 blue metal gates located at the entrances of the Sunset Crest Beach Club and that since his request had not been complied with, he "*had no other choice but to remove the gates*". The Defendant also warned that if the gates were once again installed without his written permission, the gates would be "*permanently removed and carted to the metal dump for disposal*". All of these actions took place after Mr. Jordan had been written to by Counsel for the Claimant, presumably sought legal advice from his attorney and an application for discharge of the injunction had been filed.

[34] The Application for contempt filed by the Claimant on October 19, 2012 came on for hearing before Kentish, J. on November 6, 2012. The Defendant appeared in Court as he had been brought there by the Marshalls and the attorneys-at-law for the Claimant were

also present. However, the application was not heard on that date as Kentish, J. recused herself from the application.

[35] Gary Palmer deposes in his affidavit filed on November 15, 2012 that on November 5, 2012, the day before the first hearing of the contempt application, he witnessed the Defendant entering the Claimant's property through the main gate near the pool area.

[36] On November 7, 2012, Margaret Licorish, a maid employed by the Claimant saw the Defendant in the pool area of the property. She deposes this in her Affidavit and was not cross-examined, although she was tendered for cross-examination by the Claimant. She deposed that she saw the Defendant leave the pool area and head towards the main gate which he opened and began to shake vigorously. It is her evidence that the gate shaken by the Defendant, was the same gate he had removed on October 19, 2012 but had been welded on that same morning.

[37] Shevron Gilbert and Lester Gilbert, both of whom have an office situate on the property, depose in their respective Affidavits that on November 11, 2012, Shevron Gilbert was placing lounge chairs in the pool area and Lester Gilbert was draining the pool when they saw the Defendant enter the property from the main gate and linger by the pool for about 10 to 15 minutes before he exited onto the boardwalk.

[38] In his oral testimony, the Defendant indicated that he may have entered the property on the specified dates alleged by the witnesses for the Claimant. He claimed that he did so in order to access the beach where he walked and swam regularly on mornings. He also contended that he was accustomed to accessing the property as he had an easement and a right of way to the beach and a right to enjoy the beach club facilities by virtue of owning land and condominiums in Sunset Crest. He indicated that he was only using the facility as he was accustomed to doing and did not understand that doing so would offend the Court.

Issues

[39] As I pointed out at the start of this judgment, the Defendant has admitted his contempt and apologized to this Court. Accordingly, the Court does not have has to determine

whether the Defendant has breached the Order of Kentish, J. issued on July 4, 2012, and whether his breaches of the Order constitute contempt of Court.

[40] Instead the sole issue before the Court is what sanction, if any, would be most appropriate on the circumstances of the case. I have, however, rehearsed all of the facts, although briefly, as it is important for the Court to place the contempt in its fullest context before exercising its discretion.

Submissions to the Court

[41] Submissions for the Claimant: Much of the written submissions made by Counsel for the Claimant, Mr. Abrahams, related to the issue of service and how it was to be effected where the individual to be served was uncooperative. Much discussion had also arisen around the issue of service during the hearing of the application, but in so far as the Defendant has admitted his contempt it is not necessary for the Court to deal with that issue in detail.

[42] At the hearing of the application, Mr. Abrahams abandoned his submissions on contempt in the face of the Court since the applications were no longer being heard before Kentish, J. Therefore, this application for contempt excludes the issue of the offensive letter written by Mr. Jordan as that is a matter that needs to be raised by and before my sister, Kentish, J. The fact of the letter is included in my rehearsal of the facts for the purposes of placing, as I said, all of the issues relating to the admitted contempt within its context.

[43] Mr. Abrahams submitted that the English decision of ***Spectravest Inc. v Apernit Ltd [1988] FSR 161*** was authority for the principle that in order to establish contempt, it was necessary to prove that the Defendant was aware of the Order and all the facts which made it a breach of the Order, but it was not necessary to prove that he appreciated that his conduct breached the Order.

[44] According to Mr. Abrahams, it was essential that a person against whom an application for contempt was brought should be not be punished for his actions until the accusation against him is distinctly stated and he is provided with a reasonable opportunity of being heard in his own defence. The Defendant, he says, had obtained a fair hearing before the Court when the applications for committal were both jointly heard.

[45] It was the further submission of Mr. Abrahams that committal was a sanction of last resort and was only appropriate where there was a serious, contumacious flouting of the Orders of the Court. In support of this submission he referred to the cases of ***Ansah v Ansah [1977] Fam 138 per Ormrod, LJ*** and ***Gulf Shipping v IDC [2001] EWCA Civ 21 per Lord Philips, MR***. Mr. Abrahams argued that committal was the only appropriate sanction on the facts of the case as the Defendant had made it unapologetically clear that he had no intention of abiding by the Order of the Court and had blatantly and publicly flaunted his disobedience, deliberately inviting representatives from the media to witness and publish his breach of the Order. He pointed out that the breach of the Order did not arise from a single act but from a series of acts that could not in any way be considered casual, accidental or unintentional.

[46] Mr. Abrahams noted that Barbados did not possess any statutory guidance on the duration for which a person may be committed to prison for contempt and the discretion of the judge was therefore at large. Counsel pointed out, however, that ***section 3*** of the ***Debtors Act, Cap. 198 of the Laws of Barbados*** permitted a Court to commit a person to prison for a term not exceeding six weeks. It was his submission that although the ***Debtors Act*** was not directly applicable, the Court could still have regard to it in determining the maximum time period for which it could commit a person for civil contempt.

[47] Mr. Abrahams also accepted that it was open to the Court to impose a fine for the contempt and submitted that if the Court was minded to consider a fine, the fine should be one that was so significant that it reflected the gravity and frequency of the contempt. He drew a parallel to fines for drugs, pointing out that these fines ranged from hundreds of dollars to thousands of dollars. He submitted that the Court should also bear in mind that the Defendant was the owner of property worth millions of dollars and suggested that any fine imposed should be no less than $50,000.00 for both applications.

[48] Submissions on behalf of the Defendant: In his written submissions, Counsel for the Defendant, Mr. Niles, urged the Court to dismiss the applications for contempt. Using ***Isaac v Collie and Norman (1967) 12 WIR 381*** as authority, he had submitted that as contempt was a serious charge, it was necessary for the application and all supporting

affidavits to be served personally on the Defendant and contended that personal service had not been effected in the instant case.

[49] However, in his oral submissions to the Court, Mr. Niles withdrew his argument in relation to the service of the documents and, further, conceded that his client had breached the Order and that these breaches by his client had been serious and constituted contempt of the Court. He stressed, however, that his client had apologized to the Court and submitted that this was a significant mitigating factor in his favor. Another mitigating factor, he argued, was the fact that there was a concurrent application to discharge the injunction made on July 4, 2012.

[50] The primary plank in the submissions of Mr. Niles was that the breaches of the Order by his client had not been deliberate, although some of the breaches may very well have appeared so. He specifically described the trespass on the property as innocuous. He further argued that the Defendant had neither understood what had happened before Kentish, J. on the July 4, 2012 nor had he understood the Order that she had granted. According to Mr. Niles, there was no evidence to indicate that the judge had advised the Defendant of the penalty involved in the breach of the Order. He also pointed out that the Order itself did not indicate that an injunction had been granted and also noted the Order had not been accompanied by a penal notice. He therefore urged the Court to accept that the Defendant was not clearly seized in his own mind of the consequences that would ensue from the breach of the Order.

[51] Mr. Niles also relied upon the case of ***Issac v Collie and Norman (1967) 12 WIR 381*** to submit that another mitigating factor to be taken into account by the Court was the fact that there was a concurrent application to discharge the injunction.

[52] Learned Counsel for Defendant referred to **The Civil Court Practice 2004, Volume 1 (October reissue) at p 1494** and submitted that there were three sanctions available to the Court in a contempt application – committal to prison, the imposition of a fine and/or the giving of security for good behavior. He urged the Court to accept the contrition of the Defendant and argued that the best course of action was for the Court to require him to provide security for his good behavior until the matter was concluded.

The Law

[53] It is trite law that a person against whom or in respect of whom an Order is made by a Court of competent jurisdiction must obey that Order unless and until the Order is either discharged or set aside. Where a person objects to the existence of an Order or to its terms, he must seek to amend the Order or set it aside using the proper channels and until he does so the Order "*must be obeyed and obeyed to the letter*": ***Spokes v Banbury Board of Health (1865) LR 1 Eq 42 at 48 per Wood, V-C***. He is not permitted to simply disregard or deliberately disobey it.

[54] Should a person refuse or neglect to do an act required by a judgment or order of the court within the time specified in the judgment or order, or should a person disobey a judgment or order requiring them to abstain from doing a specified act, their conduct is likely to amount to civil contempt: **Halsbury's Laws of England, Contempt of Court (Volume 22) para 65**.

[55] The law pertaining to contempt is well settled and may be quickly rehearsed. Like all Courts of superior jurisdiction, the High Court of Barbados has an inherent jurisdiction under the common law to punish a person who stands in contempt. This jurisdiction arises from the need to protect public interest by ensuring that the administration of justice is not brought into disrepute by the disregard of Orders made.

[56] The Court's jurisdiction to deal with contempt also has a statutory basis derived from ***section 24(1)*** of the ***Supreme Court of Judicature Act, Cap. 117A of the Laws of Barbados*** which provides that:

> "24. (1) The High Court has the same jurisdiction as heretofore to deal with cases of contempt, and all such jurisdiction as is vested in that Court by this Act or any other enactment."

[57] Its power to punish for contempt and the procedure governing its exercise is also set out in ***Part 53*** of the ***Supreme Court (Civil Procedure) Rules, 1998***.

[58] As punishment for civil contempt may include committal to prison, it is clear that the Court must be satisfied not on a balance of probabilities but beyond reasonable doubt that the Defendant has committed the act or omissions about which the Claimant complains

and that these acts or omissions constitute contempt of Court. As I mentioned earlier, not only is there cogent evidence clearly demonstrating contempt on the part of the Defendant, but the Defendant has himself admitted his contempt.

[59] It is not necessary to establish that the Defendant was intentionally contumacious or that he intended to interfere with the administration of justice: ***Heatons Transport (St Helens) Ltd v Transport and General Workers' Union [1973] AC 15 at 109*** per Lord Wilberforce.

[60] Given that the liberty a person may be at risk if he is found guilty of or admits contempt, the Court must ensure that the accusation of contempt against the Defendant is explicitly and clearly set out and the Defendant provided with a reasonable and fair opportunity to respond to the charge made against him: See for example ***Bayley v Blackman (unreported) High Court of Barbados, Suit No. 73 of 1988, Decision of September 22, 1989***.

[61] The Court is satisfied that in the instant case the charges of contempt against the Defendant have been very clearly set out in the Applications of the Claimant and its supporting affidavits and that the Court is fully apprised, as is the Defendant, of what he has admitted to. It is also satisfied that the Defendant has been given full opportunity to respond to the charges of contempt against him although he has elected not to do so in relation to some of the witnesses. To the Defendant's credit, he has not denied that he stands in contempt of the Order as a result of his multiple breaches and has in fact apologized for it, although his apology appears extremely weak to the Court and his explanation for his conduct even weaker.

[62] Even if the Defendant had not conceded that he was in contempt of the Court as a result of his multiple breaches of the Order, the Court would have had no difficulty in holding the Defendant guilty of contempt, given the unchallenged evidence adduced on the part of the Claimant. Accordingly, the primary issue before the Court is determining what form of punishment most accurately reflects the gravity of the contempt, bearing in mind all the facts of this case including the Defendant's apology and explanation.

[63] Committal to prison is one sanction available to the Court. As Counsel for the Claimant has rightly pointed out, a committal order for an act of contempt is a sanction of last

resort: ***Ansah v Ansah [1977] Fam 138 at 147, per Omrod LJ***. According to Omrod LJ in ***Ansah (ibid)***, committal orders should be made "*very reluctantly*" and when no other option is available.

[64] Instead of committal, a Court may also punish contempt by issuing a writ of sequestration: ***Pratt v Inman (1889) 43 Ch. D. 175***. Additionally, Cross, J. has held in ***Phonographic Performance Ltd. v Amusement Caterers (Peckham) Ltd [1964] Ch 195 at pp. 198-9*** that in lieu of committal to prison, the Court also has the power to punish an act of civil contempt by the imposition of a fine, which is a lesser penalty. Given the nature of committal, the power to impose a fine has been regularly exercised, at least by the English courts: see, for example, ***Ronson Products Ltd v Ronson Furniture Ltd. [1966] Ch. 603***. The fine which these Courts may impose for contempt has, however, been restricted by statute.

[65] There is no statutory limit as to the amount that a person may be fined for contempt of Court in Barbados but the Court's discretion as to the quantum of the fine imposed must be exercised in a reasonable manner. In assessing the amount of the fine, regard must be had to the seriousness of the contempt and the damage done to public interest: **Halsbury's Laws of England, Contempt of Court (Volume 22) para 114**. In determining the gravity of the contempt, the Court may consider the length or duration of the contempt and its nature: **Barrie and Lowe on the Law of Contempt (Fourth Edition) para 6.60**. The Court should also take into account the means of the contemnor and any mitigating factors in his favor such as the remorse he may have expressed: ***Ibid***.

[66] In view of the fact that there is no statutory limit and that cases of contempt in the High Court which have attracted a fine are thin on the ground, this Court has performed a wide-ranging review of most of the legislation in which fines are determined as an alternative penalty to imprisonment and some in which fines are the only penalty. The Court takes note of the fact that fines may range generally under the jurisdiction of the High Court from $500.00 to $100,000.00 and sometimes above.

[67] The acts of contempt in the instant case have been very persistent and very serious. The Court takes into account all of the circumstances of the contempt as set out in the facts carefully rehearsed above. It notes that the breaches of the Order by the Defendant

continued after the Notice of Application for Contempt dated October 15, 2012 was filed and served on him. It is clear that by that time, the Defendant had also obtained legal representation as his attorney-at-law had filed an Application for variation of the Order. It is therefore clear to this Court that during this case, Mr. Niles has at all times impressed upon his client the gravity of his situation. Whether the Defendant has taken on board that advice is left undetermined for it is clear that the conduct of the Defendant was deliberate and calculated. The act of contempt performed by removing the gates and locks was particularly egregious in nature as the Defendant went out of his way to ensure that it was conducted in as public a manner as possible. This Court cannot find that he invited the media to witness his behavior, but certainly it is clear that he posed and displayed for them in photographs that were carried in the newspaper. Given the gravity and extent of the Defendant's acts of contempt, the Court does not consider that the provision of security for good behavior, as suggested by Counsel for the Defendant, would be appropriate.

[68] The Court recognizes that the primary mitigating factor in favor of the Defendant is that he has apologized to the Court both in his oral evidence and through his attorney-at-law for the contempt he has committed, although the Court notes that he did not do so at the earliest available opportunity and the apology itself was very weak indeed. The Court is mindful of the dictum in the Vincentian case of ***Re: Peacocke, Nora (unreported) High Court of St. Vincent and the Grenadines, Suit No. 202 of 1987, Decision of May 18, 1987*** where in considering the effect of an apology, Singh, J made the following observation:

> "Before I deal with these articles of apology I feel I need to set out the legal position in a matter of this nature where an apology is tendered. An apology is not a defence to the offence, it is **a mere mitigatory factor** that a Court may use in determining penalty and the Court's jurisdiction on penalty in matters of this nature is unlimited and the trend in English Courts has been to impose severe penalties on offenders for this type of contempt [Emphasis added]."

[69] While ***Re Peacocke, Nora*** had not concerned contempt arising from breach of an Order of the Court, the Court finds that the dictum is equally applicable to cases of this type. It takes notice of the fact that in the Bahamian cases of ***Caves Co. Ltd. v Higgs et al (unreported) the Supreme Court of Bahamas, Suit No. 866 of 1986, Decision of***

September 26, 1988 and ***Paradise Island Ltd. v El Condor Enterprises Ltd. (unreported) the Supreme Court of Bahamas, Suit No. 873 of 1992, Decision of March 3, 1995***, the Courts had imposed fines for breaches of Orders made despite apologies being tendered by the contemnors as it had considered that these apologies had either not been voluntarily made or had been "*half-hearted*".

[70] The Court also notes that by his own admission the Defendant is a landowner of some means in the Sunset Crest area. He testified that his properties in the Sunset Crest area were valued between 12 to 15 million dollars. This is a relevant factor to consider when determining the quantum of any fine which the Court may impose.

Conclusion

[71] In the circumstances and for the reasons outlined above, the Court is satisfied beyond reasonable doubt that the Defendant is guilty of not one, but many acts of contempt for his breaches of the Order of this Court made by Kentish, J. on July 4, 2012.

[72] The Court does not consider, however, that imprisonment would be a suitable or appropriate penalty on the circumstances. The Court does make the point that if this application had included the application for contempt in face of the Court, the argument for imprisonment for contempt would have been very high.

[73] The Court is not at all satisfied with the explanation advanced by the Defendant. Despite his apology and the Court's acceptance of the same, the Defendant still sought to make rather spurious explanations of his conduct. This Court cannot tolerate such flagrant and deliberate breaches of its order; it cannot leave his conduct unpunished. It does not believe that in the circumstances of this case an undertaking by the Defendant is sufficient penalty. This Court guards its jurisdiction to penalize a Defendant for serious breaches of its orders very jealously. It is important to the rule of law that Court orders, whatever the Defendant's personal view of the learned judge, whatever the Defendant's view of the system of justice, be obeyed and if they are not obeyed, that the Court punishes such disobedience with some severity.

[74] I particularly wish to comment on the fact that Mr. Jordan indicated that he considered these proceedings to be "*a joke*". If he still persists in that belief, I expect that, despite his means, this will not be a cheap joke.

[75] Given the foregoing, the Court hereby orders:

1) That the Defendant within 30 days of this Order pay a fine of $25,000.00 for the acts of disobedience leading to each application for contempt, comprising a total fine of $50,000.00;
2) That in default, the Defendant be committed to 7 days imprisonment at Her Majesty's Prison at Dodds; and
3) That the Defendant pays the Claimant's costs of the application to be taxed in default of agreement, certified fit for Counsel.

Dated the 19th day of December, 2012

Jacqueline A. R. Cornelius
Judge of the High Court