

00000REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV NO. 2012 -00490

BETWEEN

**RALPH
MICHELLE**

**ALI
ALI**

Claimants

AND

**ROBERT
GISELLE**

**MATTHEWS
MATTHEWS**

Defendants

BEFORE THE HONOURABLE MADAM JUSTICE JONES

Appearances:

Mr. R. Mungalsingh for the Claimants

Ms. M. Maharaj-Mohan for the Defendants.

Reasons (Oral)

The Claimants seek the enforcement of an order made by me on the 15th January 2013 and the punishment of the Defendants for what they allege are breaches of the order. The application was filed on 10th September 2013. The evidence in support, and in opposition to the application was completed on the 11th December 2013. Thereafter, directions with respect to the filing and service of written submissions by the 5th February, 2014 was given and extensions of time granted to the parties until the 5th of March 2013.

The parties are neighbours. By my order an injunction was granted restraining the Defendants from carrying on the business of a commercial car wash facility in such a manner as to cause noise and noxious smells or fumes to interfere with the Claimants use and enjoyment of their premises and in particular restraining the Defendants from the use of heavy duty pressure washers, industrial vacuum cleaners and buffing machines on the said premises.

By this application the Claimants particularise the following relevant breaches as follows:

- (i) the Defendants have continued to operate the carwash in such a manner as to cause noise and noxious smells or fumes to interfere with the Claimants use and enjoyment of their property;
- (ii) the Defendants continue to use the heavy duty pressure washer, the industrial vacuum cleaner and buffing machine.

Insofar as Part 53 of the rules requires the Claimants to comply with certain procedural prerequisites in order to maintain an application for contempt and seek the relief of committal I am satisfied that the Claimants have complied with these prerequisites. In this regard let me say that despite the Second Defendant's claim of not having been served with the order I am satisfied that notice of my order came to the attention of the Second Defendant in accordance with part 53.6 (2)(a) of the rules in that the Second Defendant was in court when the order was made.

I am also satisfied that the terms of the order are clear and unambiguous.

Accordingly I am required to determine whether the Defendants are in fact in contempt of my order, and if so, the appropriate order to be made. On the issue of whether the Defendants are in

breach of my order it is an issue of fact for my determination. In this regard the burden of proof is on the Claimants and they are required to satisfy me beyond a reasonable doubt that the Defendants are in breach of the order.

On the evidence before me I am satisfied that the Defendants have breached the order insofar as they have operated the business of a commercial carwash facility in such a manner as to cause noise and noxious smells or fumes to interfere with the Claimants use and enjoyment of the premises. In this regard I accept the evidence of the Claimants, and in particular the evidence of the Second Claimant.

I am also satisfied that insofar as the order specifically restrains the Defendants from the use of heavy duty pressure washers, industrial vacuum cleaners and buffing machines the Defendants are also in breach of this restriction.

In this regard I accept the evidence of the Claimants, and in particular the evidence of the Second Claimant. I also note that in her affidavit of 22nd November at paragraph 4 the Second Defendant admits the continued use of the vacuum cleaner which was used by them at the time of trial. With respect to the heavy duty pressure washer she says “the heavy duty pressure washer is a rarely used if ever at all I say it is mainly used to wash around the house and sometimes on vehicles. I say, on average, about four times a month.” The First Defendant admits that they have continued to use the same pressure washer in their business as was used at the time of the trial. I am satisfied that the attempt by them to now classify the pressure washer as a commercial pressure washer rather than a heavy duty pressure washer is an attempt to bamboozle the court.

I am satisfied that on the evidence before me the Defendants have admitted to the use of a heavy duty pressure washer and the vacuum cleaner subsequent to the order made by me in these proceedings. As we have seen my order strictly prohibits the use of this equipment. As to the distinction attempted to be made by the First Defendant, under cross-examination between buffing and polishing I reject such distinction. The First Defendant also admits under cross-examination the continued use of the same chemicals that were being used by them at the time of trial.

At the end of the day therefore I accept the evidence of the Claimants and find that since the issue of the order the Defendants have continued to operate the carwash in such a manner as to cause noise and noxious smells or fumes to interfere with the Claimants use and enjoyment of their property and that they continue with the use of the heavy duty pressure washer, the vacuum cleaner and buffing machine all in breach of my order dated 15th January 2013. I am also satisfied that the Defendants knew that they were acting in breach of my order but deliberately continued to operate their business in a manner prohibited by my order so as to make money. Perhaps under the mistaken impression that the positions taken by the EMA subsequent to my order affected the operation of my order.

The court has always had an inherent jurisdiction to commit a person in breach of its orders to prison for the contempt or to fine such person.¹ While I am satisfied that the actions of the Defendants are deliberate, given the particular circumstances of this case and the length of time it has taken to determine this application and the First Defendant's obvious disability, I will not order the committal of the Defendants nor will I order the confiscation of the equipment I will

¹ Phonographic Performance Ltd. v Amusement Caterers (Peckham) Ltd. [1963] 3 All E.R. 493

however fine the Defendants and order that this fine be paid to the Claimants. Indeed the appropriate fine may very well require that the Defendants sell the offending equipment. In any event given the length of time it may very well be that the Defendants have by now disposed of the equipment.

In arriving at the amount to be paid by the Defendants I take into consideration their deliberate flouting of my order and the fact that they profited from the breaches as well as the nuisance and inconvenience to the Claimants. In the circumstances I fine the Defendants \$15,000.00 and order that that sum be paid to pay to the Claimants on or before the 30th April 2014.

Dated this 14th day of April, 2014.

Judith Jones
Judge