

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No. CV2012-00999**

**BETWEEN**

**ANDRE MC DONALD**

**Claimant**

**AND**

**HEVRON HEIGHTS TOWERS LIMITED**

**Defendant**

**Before the Honourable Justice V Kokaram**

**Date of Delivery: 15<sup>th</sup> May 2013**

**Appearances:**

**Mr. Stephen Singh instructed by Ms. Shalini Rampersad-Campbell for the Claimant**

**Mr. Faris Al Rawi and Mr. Anand Singh instructed by Mr. Mendes for the Defendant**

**REASONS**

1. On May 15<sup>th</sup> 2013, I made a suspended order on the Claimant's application for committal filed on April 5<sup>th</sup> 2013 and delivered an oral judgment. The reasons for making the order are as follows.
2. The application for committal was filed by the Claimant due to the failure of the Defendant to comply with the Court's order made on October 2, 2012. The order expressly stated that the Defendant do pay to the Claimant the sum of five thousand dollars (\$5000.00) together with interest and that there was a stay of execution on that order until December 13, 2012. There has been no compliance with the order and the Defendant failed to pay the said sums after December 13, 2012 or within a reasonable period of time thereafter.

3. At the hearing the Defendant's position was twofold. First that the order did not specify a time for compliance and that the Defendant needed additional time to file an affidavit in response to the application for committal.
4. In relation to the time specified for compliance with the Court's order, the order was a money judgment and was clear in terms of the date when the money should have been paid to the Claimant. A party must comply with an order immediately unless the order specifies some other date for compliance. See r 43.9 CPR. In this case the order was made on October 2, 2012 and there was a stay of execution of that order which could only mean that the order must be complied with on December 13, 2012, the date of the expiry of the stay.
5. I took into account the Defendant's continued failure to comply with the Court's order made on October 2, 2012. There was no application made to the Court to extend the time for compliance with the order or any approach under the liberty to apply implied in such an order. There was an exchange of correspondence by the Claimant demanding payment and the Defendant failed to pay the said judgment sum.
6. The Defendant filed evidence in response to the application but it in no way addressed the issue of whether a committal order should be made. It set out essentially, reasons for an adjournment of the committal application. I refused to give the Defendant permission to file any further affidavit or adjourn the hearing for the following reasons: First the Claimant objected to the application and in my view there was no merit in adjourning an application of this nature unless there was good reason to do so. There was none in this case as the affidavit to be filed would have submitted to the Court evidence as to when or how the judgment is to be satisfied. That is no answer for the clear breach of the Court's order. Second there was no application by the Defendant to vary the Court's order or seek an extension of time for compliance. Third if the Defendant was having difficulties complying due to some third party transaction, that may be relevant to a new claim to set aside the consent order on the basis that the Defendant labored under a mistake of fact on his ability to pay but does not affect the instant application. Fourth a Defendant in default of the Court's order must take its obligation seriously and must be prepared to deal with the application when it comes on for hearing.

“Punishment for a civil contempt of court is not in itself a remedy: it is a means of enforcing a remedy. A civil contempt of court is prosecuted as a matter between

parties to proceedings and is punishable primarily in order to enforce compliance with an order of the court, for the benefit of the party who obtained the order. There is also a penal element in the punishment, which serves the public purpose of enforcing respect for court orders and for the rule of law, which is an essential element of our civil society.” (**Re S. (A Child)** (Contact Dispute: Committal) [2004] EWCA Civ 1790, [2005] 1 FLR 812).

7. Admittedly the making of a committal order is a draconian order. But no other challenge was made to the application for the committal. No issues were raised as to the service of the order on the Defendant nor its officers nor directors. No issue was made as to the formal requirements in r 53.3 CPR. In fact the Defendant’s Attorney-at-Law was quite candid with the Court and indicated that his client needed more time to comply with the order. However he was unable to say how much time was required. I also indicated that there will be expressed a “liberty to apply” provision and invited Attorney for the Defendant to make an application to the Court if there were further difficulties in complying with the Court’s order to obtain any further extension if needed. In my view it was established that conduct of the Defendant was intentional and it knew of all the fees that made that conduct a breach of the order. See **Heatons Transport v Transport and General Workers Union** [1973] AC 15.
8. There was nothing submitted to the Court by the Defendant which prevented its exercise of its powers of committal. Counsel for the Defendant was quite candid and plain that the only issue is that of time. In those circumstances the Court gave effect to the overriding objective by dealing with the matter expeditiously and fairly by balancing the interests of the Claimant who is denied the fruits of his judgment and the interest of the Defendant who needed more time to comply yet was in plain breach of the Court’s order. In the circumstances I made the suspended order for committal.

**Vasheist Kokaram**  
**Judge**