THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2019-02544

WARRENVILLE UNITED TABLE TENNIS CLUB

Claimant

AND

HEERADAYE GAINPAULSINGH

Defendant

Before the Honourable Madame Justice Margaret Y Mohammed

Date of Delivery January 08, 2021

APPEARANCES

Mr. Darryl Heeralal instructed by Mr. Umesh D. Maharaj Attorneys at law for the Claimant.

Mr. Dinanath Ramkissoon instructed by Mr. Toolsie Ramdin Attorneys at law for the Defendant.

RULING

1. There are three applications for determination before the Court. The Claimant filed an application for committal dated 5 March 2020 ("the committal application"). In support of the committal application is an affidavit of Sharaz Ali ("the Ali Affidavit") and Deochan Samuel ("the Samuel Affidavit") both filed on 5 March 2020. The Claimant also filed an application for leave to bring committal proceedings on 2 September 2020 ("the leave application"). The Claimant relied on the Ali Affidavit and the Samuel Affidavit to support the leave application. On 25 September 2020, the Defendant filed an affidavit in opposition ("the Defendant's September Affidavit"). By the order dated 9 March 2020 ("the Final Order"), the Defendant was directed to file and serve this Affidavit on or before the 9 April 2020. No Application was filed by the

Defendant to extend time to file and serve the Defendant's September Affidavit, neither was an order made by the Court extending time for filing it.

2. The Defendant filed an application on the 8 July 2020 ("the Defendant's Application") where she sought orders to set aside the Final Order; to extend time to file a Defence and to obtain relief from sanctions. In support of the Defendant's Application was an affidavit of the Defendant ("the Defendant's July Affidavit") which was filed on the 8 July 2020.

3. Due to the nature of the orders sought in the three applications, it is prudent to deal with the Defendant's Application first, then the leave application and the committal application. However, to place the said applications in context a brief history of the substantive matter is useful at this juncture.

The procedural history

4. In the substantive matter, the Claimant contended that it and its predecessors have enjoyed for more than forty years since in or about 1978, without interruption, a right of way over a strip of land thirteen feet wide and one hundred feet long, located immediately west of No. 6 Warren Munroe Road, formerly LP 53/223, Warrenville where its building is located.

5. According to the Claimant's case, the Defendant was at all material times the Claimant's neighbour and resided on the northern side of its building and that both parties are occupying State Lands. The Claimant asserted that sometime in 2005, the Defendant paved the right of way and has restricted access to it by erecting a gate at the entrance which is only opened at the Defendant's discretion and that she has fenced the western boundary. The Claimant further asserted that the Defendant put up a fence on the southern boundary of the lands she occupies and erected a gate on the northern end of the right of way, separating it from the land she occupies.

6. In or around May 2018, the Defendant erected a wall alongside the eastern side of the right of way, blocking the Claimant's access to the western entrances of its building. The Claimant subsequently broke down the wall to restore access to the building and as a result of its actions there is a matter before the Chaguanas Magistrate Court.

7. The Claimant stated that the only means of moving equipment to and from its building is via the right of way, as the building's southern entrance is limited to pedestrian traffic only. The Claimant asserted that on the occasions when it has attempted to access the right of way, the Defendant has threatened its members with physical violence and as a result of these threats they have stopped using the right of way.

8. On 23 May 2019, the Claimant served a Pre Action Protocol Letter threatening injunctive proceedings on the Defendant. Shortly thereafter on 24 June 2019, the Claimant filed the instant action together with a notice application for interim relief. On 22 July 2020, the Claimant filed an application seeking leave to dispense with personal service of the claim form, statement of case, notice of application and affidavits in support and to effect service of same at the Defendant's last known place of residence, LP #221 Warren Munroe Road, Warrenville. Permission to dispense with personal service was granted on 26 July 2019 and the Defendant was served on 5 August 2019, as evidenced by the affidavit of compliance filed on 20 August 2019.

9. On 20 August 2019 ("the Injunction Order"), the Defendant failed to appear in court and in her absence, the Court made the following order:

    (i) The Defendant whether by herself, her servants and/or agents otherwise howsoever are restrained from damaging, destroying, fencing off, placing or allowing to be placed on the right of way over a strip of land immediately west of No. 6 Warren Munroe Road, Warrenville, approximately thirteen (13) feet wide and one hundred (100) feet long, anything substantially restricting, preventing or otherwise interfering with the use and enjoyment of the right of way by the Claimant, its servants and/or licensees on foot and /or with motor vehicles;

(ii) The Defendant whether by herself, her servants and/or agents are restrained from using obscene language, assaulting, harassing, threatening, molesting or otherwise interfering with the claimant, its servants and/or licensees;

(iii) The Defendant to pay the Claimant's cost of the application assessed in the sum of Nine Thousand Dollars ($9,000.00).

(iv) Liberty to apply

(v) The order is to be served at the Defendant's last place of residence at LP 221 Warren Munroe Road, Warrenville.

10. The Defendant was served with the Injunction Order on 4 October 2019. On 20 November 2019, the Claimant filed an application for judgment in default which was served on the Defendant on 17 February 2020, as evidenced by the affidavit of service filed on 3 March 2020. On 6 February 2020, the Defendant filed a Notice of Appointment of Attorney.

11. The Defendant filed an application for an extension of time to file and serve her Defence on 6 March 2020 ("the March 2020 Application"). The said application was dismissed on the 9 March 2020. The Court also granted the Claimant the relief which it sought in it application for judgment in default and made the following orders:

(i) The Claimant is entitled to the use and enjoyment of a right of way over a strip of land immediately West of No. 6 Warren Munroe Road, Warrenville, approximately thirteen (13) feet wide and (100) feet long located on State Lands and back over the said right of way for itself, its servants and/or licensees whether on foot and/or with motor vehicles;

(ii) The Defendant is not entitled to possession of the said right of way;

(iii) The Defendant is restrained whether by herself, her servants and/or agents or howsoever otherwise from fencing off, damaging, destroying, placing or allowing to be placed on the said right of way anything substantially restricting, preventing or otherwise interfering with the reasonable use and enjoyment of the right of way by the Claimant, its servants and/or licensees whether on foot and/or with motor vehicles;

(iv) The Defendant whether by herself, her servants and/ or agents is hereby ordered to break and remove all structures constructed and/or being constructed on the said right of way, inclusive of the gateway at the entrance to the said right of way and the western side fence on or before twenty-one (21) days from the date of this order;

(v) The Defendant is restrained whether by herself, her servants and/ or agents from using obscene language, assaulting, harassing, threatening, molesting or otherwise interfering with the Claimant, its servants and/or licensees.

(vi) The Defendant to pay the Claimant damages and costs to be assessed by a Master in Chambers at a date, time and place to be fixed by the Court Office.

The Defendant's Application

12. It was submitted on behalf of the Defendant that she has a meritorious defence and a high/realistic prospect of success in defending the claim. The Defendant asserted that she acted as soon as is practical, as she filed the Defendant's Application on 8 July 2020 wherein she sought to have the Final Order set aside and extend time to file a Defence. The Defendant also asserted that she had "spent some time acquiring and obtaining documents relative to this claim" and had provided the Court with good and sufficient reasons for her delay in bringing the Defendant's Application. She denied that the Defendant's Application was an abuse of process and stated that she was unable to give full instructions to her Attorneys at Law, due to the impact of the Covid-19 pandemic, which had also affected the normal scheme of operation in the Judiciary.

13. Counsel for the Claimant argued that the Defendant's Application must be dismissed on the basis that it is an abuse of process and that the Defendant has failed to satisfy the test of promptitude and a realistic prospect of success as required under Rule 13.3 Civil Proceedings Rule 1998 (as amended). The Claimant asserted that the Defendant had been served with the Claimant's application for judgement in default of defence and had sufficient knowledge that the Claimant was seeking an order for judgment in default. The Claimant further asserted that the Defendant had been personally present in Court when the Final Order was made and had ample opportunity to make an application to set aside the Final Order, but failed to do so.

The Court's Finding

14. I have decided to dismiss the Defendant's Application for the following reasons.

15. It is an abuse of process. In this jurisdiction, the Court of Appeal in **Anthony Ramkissoon v Mohanlal Bhagwansingh**[1], considered the issue of whether it was an abuse of process to file a subsequent application to set aside a judgment in default after an application for an extension of time was dismissed. The Court found that where an application for an extension to time to file a Defence failed and judgment in default is granted, the proper procedural step to be taken is to appeal the dismissal of the extension of time application. At paragraph 4 of his judgment Jamadar JA (as he then was) explained:

> "It is clear that the request for the entry of a judgment on the 26th March, 2013 was as a consequence of the failed application (the second application) by the defendant for an extension of time to file a defence. The defendant and his attorney knew of the request on the 26th March, 2013 yet nothing was done in relation to the decision and order of the judge. This was clearly a procedural decision from which a procedural appeal would lie. Such an appeal must be filed within seven days of the date of decision. No such appeal having been filed, the judge's decision on the second application to extend time for the filing of a defence stood unchallenged. That is, the judge's ruling that no permission to file a defence in this matter stood unchallenged. It is clear that pursuant Rule 10.2 a defendant who wishes to defend all or part of a claim must file a defence. Further, extensions of time to file a defence beyond the single three-month period that can be agreed between parties, can only be granted by court order."

16. At paragraph 5 Jamadar JA (as he then was) stated:

> "It is clearly an abuse of the court process to seek an extension of time for the filing of a defence, fail on the application, choose not to appeal knowing that a request for default judgment is to be made and to sit by and wait for that judgment

[1] Civil Appeal No. S-163 of 2013

to be entered and then seek to set it aside and also an extension of time to file a defence. By whatever way one chooses to describe it, this is an attempt to circumvent the court process and avoid the consequences of an unchallenged decision and order of the judge. What the defendant is really seeking is an opportunity to file a defence and therefore an extension of time for so doing; which he has already sought twice and failed to obtain after due consideration." (emphasis added)

17. Although the Defendant's July Affidavit was noticeably silent on her knowledge of the application for judgment in default of Defence which was filed on 20 November 2019, according to the affidavit of service of Nerissa J Bala filed on 3 March 2020, the said application was served on the Defendant's then Attorney at Law on 17 February 2020. The Defendant's July Affidavit did not dispute the issue of service. Indeed at paragraph 3 of the Defendant's July Affidavit, she admitted that she was in the jurisdiction from 15 September 2019 when she became aware of the nature and seriousness of the action against her and she contacted and retained her Attorney at Law Mr Steven Mawer with respect to the filing of a Defence. Therefore, based on the Defendant's own evidence she knew about the action since at least 15 September 2019, she was aware that she needed to file a Defence, and she retained an Attorney at Law to take steps to do so. It was also not in dispute that the Defendant was served with the Claimant's application for judgment in default of Defence on 17 February 2020 and both the Defendant and her Attorney at Law had at least 3 weeks' notice, that the Claimant was seeking an Order for judgment in default at the hearing on 9 March 2020.

18. The Defendant's July Affidavit is silent on her being present in Court when the Final Order was made. However, she attached a copy of the Final Order as H.G. 1 to the Defendant's July Affidavit. The Final Order clearly stated that the Defendant and her Attorney at law Mr Mawer were present in Court when the Court heard and dismissed the March 2020 Application, in which she had sought an extension of time to file and serve her Defence. Therefore, it was not in dispute that both the Defendant and her Attorney-at-Law were personally present in Court when the Court dismissed the

March 2020 Application and granted the Claimant judgment on its application for judgment in default filed on the 20 November 2019. In my opinion, the Defendant's Application is an abuse of process. The Defendant had already sought and failed to obtain an extension of time to file a Defence, in circumstances where she was fully aware of the need to obtain the said extension and the consequences of not obtaining it. Further, there was no evidence that the Defendant had appealed the Court's decision to dismiss the March 2020 Application for an extension of time to file a Defence.

19. Even if the Defendant's Application was not an abuse of process, the Defendant has failed to satisfy the requirements as set out in Rule 13. 3 of the CPR which states:-

> (1) The court may set aside a judgment entered under part 12 if –
>
> *(a)* The defendant has a realistic prospect of success in the claim; ***and***
>
> *(b)* The defendant acted as soon as reasonably practicable when he found out that judgment had been entered against him.

20. It is settled law that a Defendant must satisfy both limbs of the test as set out in Rule 13.3 [2].

21. In my opinion, the Defendant failed to demonstrate that she has any realistic prospect of success with her Defence. Mendonca JA described the test of "realistic prospect of success" at paragraph 9 of his judgment in **Anthony Ramkissoon v Mohanlal Bhagwansingh[3]** as:

> "Rule 13.3 (1) (a) requires a defendant to show that he has a realistic prospect of success. The rule directs the Court to determine whether there is a realistic as opposed to a fanciful prospect of success (see **Swain v Hillman and Anor. [2001]**

[2] See paragraph 11 of **Nizamodeen Shah v Lennox Barrow,** Civil Appeal No. 209 of 2008**.**

[3] Civ Appeal No S 163 of 2013

1 ALL ER 91). A **'**realistic prospect of success' is therefore to be distinguished from prospects that are fanciful."

22. The burden of proving this realistic prospect of success in defending the claim is on the Defendant[4].

23. As set out aforesaid, the Claimant's case against the Defendant is grounded in trespass. The reliefs which the Claimant sought in the substantive claim were declarations that it was entitled to the use and enjoyment of a right of way immediately west of the Claimant's headquarters and that the Defendant was not entitled to possession of it.[5]

24. According to paragraph 10 of the Statement of Case, the Claimant pleaded that the entire parcel of land including the right of way, the Claimant's and Defendant's land are situated on State Lands. At paragraph 12 of the Statement of Case, the Claimant asserted that the Defendant's land is fenced off separating it from the right of way. The Claimant also asserted in paragraphs 4 and 5 of the Statement of Case that its servants an predecessors have been using the said right of way for the past 40 years[6] and that the Defendant forcibly prevented the Claimant's free use of the said right of way by fencing it, putting up a gate at its entrance since 2005, locking the gate with a padlock which she opens at her discretion.

25. In order to show that the Defendant has a realistic prospect of success, in defending the claim for trespass against her, the Defendant must realistically show that she has a right to exclusive use of the right of way or at least to the exclusion of the Claimant. The Defendant must also realistically show that she has a right to fence and block off the entrance to the right of way thus preventing the Claimant access.

[4] See paragraph 35 of CV2016-02807 **Marouf PVC Professional Construction Limited v Majilla Maria Mahabir**
[5] Paragraphs 1 and 2 of the Claim Form

[6] Paragraphs 4 and 5 of Statement of Case

26. The Defendant annexed to the Defendant's July Affidavit as H.G.2 her draft Defence. In it, the Defendant averred that her father gave up lands he occupied to the Claimant's predecessor and the community to be used as a right of way[7]. The Defendant admitted that the right of way is situated on State Lands and is fenced off and separated from the property she occupies by her main gate[8] and that the Claimant had continuous use of the right of way[9].

27. The Defendant also admitted that her father gave up his lands to be used as the right of way by the Claimant's predecessor, its members and members of the community at large and that since that time it has been in continuous use as a right of way. She further admitted that the Defendant's land is fenced off from the right of way, so the right of way exist independently of the Defendant's land and lastly she admitted at paragraph 9 and 12 of the Draft Defence that she locks off the Claimant's access to the right of way.

28. In my opinion, based on the admissions made by the Defendant in her Draft Defence annexed as "H.G.2" she has failed to demonstrate that she has any realistic prospect of defending the action, as she admitted that the right of way was created by her father to facilitate the Claimant's predecessor and the wider community and that the right of way has been in continuous use up to present. By this admission she has failed to demonstrate that she had exclusive use of the right of way so that she could unilaterally block it or control its use. By her admitting that she has constructed a gate which she locks she has admitted to trespassing on the right of way.

29. The Defendant has also failed to demonstrate that the Defendant's Application was made promptly. As I have already set out aforesaid, the Defendant was present in Court on the 9 March 2020 when the Final Order was made. However, she waited for approximately 4 months thereafter, before she took steps to file the Defendant's

[7] Paragraphs 4 c, d,e, f of "H.G.2"

[8] See paragraph 10 of draft defence

[9] See paragraphs 8 and 17 of draft defence

Application and she has failed to put forward any proper reason for the 4 month delay in filing it.

The leave application

30. Part 53 CPR deals with committal and confiscation of assets. Rule 53.3 deals with when a committal order or confiscation of assets order may be made. It provides:

> 53.3 Neither a committal order nor a confiscation of assets order may be made unless—
>
> *(a)* the order requiring the judgment debtor to do an act within a specified time or not to do an act has been served personally on the judgment debtor;
>
> *(b)* at the time that order was served it was endorsed with a notice in the following terms:
>
> "NOTICE: If you fail to comply with the terms of this order you will be in contempt of court and may be liable to be imprisoned or to have your assets confiscated.", or in the case of an order served on a body corporate in the following terms:
>
> "NOTICE: If you fail to comply with the terms of this order you will be in contempt of court and may be liable to have your assets confiscated"; and
>
> *(c)* where the order required the judgment debtor or do an act within a specified time or by a specified date, it was served on the judgment debtor in sufficient time to give him a reasonable opportunity to do the act before the expiration of that time or before that date.

31. It was submitted on behalf of the Claimant that permission of the Court must be granted pursuant to Rule 53.5(1) (a), before an application can be made for a committal order. Rule 53.5(1) provides:

53.5 (1) No application for a committal order may be made without the permission of the court where the contempt alleged is—

(a) in disobedience to a writ of *habeas corpus*, or is committed in connection with an application for such a writ, or is in disobedience to an order of *mandamus*, prohibition or *certiorari*;

(b) committed in connection with-

(i) criminal proceedings, except where the contempt is committed in the face of the court or consist of disobedience to an order of the court or a breach of an undertaking to the court; or

(c) committed otherwise than in connection with proceedings.

32. It was submitted on behalf of the Defendant that under Rule 53.5 (1) (a), no leave is required from the Court to bring committal proceedings.

33. **Halsbury's Laws of England/Civil Procedure (Volume 11 (2015), paras 1 - 503; Volume 12 (2015), paras 504 - 1218); Volume 12A (2015), paras 1219 - 1775)/21. Power to Grant Injunctive Relief/(4) The Nature of the Relief/(i) General Types of Injunction/1098. Meaning of 'injunction'**[10] states:

"An injunction is a judicial remedy by which a person is ordered to refrain from doing or ordered to do a particular act or thing. In the former case it is called a prohibitory or restrictive injunction, and in the latter a mandatory injunction. Either type of injunction may be interim or perpetual. An injunction is a remedy of an equitable nature, and therefore acts in personam. Accordingly, an injunction affecting land does not run with the land."

34. Rule 17.1 (1) (a) CPR empowers the Court to grant interim injunctive relief. It states:

[10] Sourced via https://www.lexisnexis.com/uk.

"17.1 (1) The court may grant interim remedies including—

(a) an interim injunction;"

35. The aforesaid power is applicable for both private and public law matters, as there is no limit on the Court's jurisdiction. In the instant case, the Injunction Order was a prohibitory or restrictive injunction and for this reason leave is required to bring committal proceedings.

The committal application

36. Rule 53.8 sets out the information which must be contained in the Committal application and the elements which the applicant seeking the order must satisfy before a committal order is made. It states:

53.8 (1) The application must specify—

(a) the precise term of the order or undertaking which it is alleged that the judgment debtor has disobeyed or broken; and

(b) the exact nature of the alleged breach or breaches of the order or undertaking by the judgment debtor.

(2) The application must be verified by an affidavit.

(3) The applicant must prove—

(a) service of the order endorsed with the notice under rule 53.3*(b)* or rule 53.4*(b)*;

(b) f the order required the judgment debtor not to do an act, that the person against whom it is sought to enforce the order had notice of the terms of the order under rule 53.3*(b)* or rule 53.4*(b)*; or

(c) that it would be just for the court to dispense with service.

37. Rampersad J in **Glanville and Walcott v Heller Security Services**[11] referring to the procedure set out in Chapter 6 'Civil Contempt' **Borrie and Lowe: The Law of Contempt,** stated at paragraph 9 of his judgment that:

> **"Borrie and Lowe: The Law of Contempt**, Chapter 6 'Civil contempt' highlights that the penal sanctions that apply to civil contempt has been said to 'partake of a criminal nature' and many of the rules that normally apply when seeking to prove an accused guilty of a criminal offence apply when seeking to show that the defendant has committed civil contempt. As such, breach of the court's order must be proved beyond all reasonable doubt and courts are reluctant to exercise their powers and will do so only in the clearest cases. Thus, although persons are under a duty to comply strictly with the terms of an injunction, the courts will only punish a person for contempt upon adequate proof of the following matters. First, it must be established that the terms of the injunction are clear and unambiguous; second, it must be shown that the defendant has had proper notice of such terms; and third, there must be clear proof that the terms have been broken by the defendant."

38. Kokaram J (as he then was) described the role of the Court and the approach which should be taken in committal applications at paragraph 3 of his judgment in **Carlene Denis Adams v Milly Ramkissoon**[12] as:

> "The Court in exercising its disciplinary jurisdiction on committal proceedings must ensure that its orders are obeyed and not contemptuously flouted. Proceedings for contempt are intended to uphold the authority of the Court. However, equally, such a jurisdiction is sparingly to be used and is considered to be the "Court's ultimate weapon in securing compliance with orders". To this extent the Court will ensure that there was scrupulous observation of all the prescribed steps antecedent to the exercise of that jurisdiction."

39. At paragraphs 24 and 25 Kokaram J (as he then was) continued:

[11] CV 2013-03429
[12] CV 2012-00884

"Lord Denning in **McIlraith v Grady** [1967] 3 All ER 625 observed at 627 "no man's liberty is to be taken away unless every requirement of the law has been strictly complied with".

"These procedures are designed to ensure, as Lord Donaldson observed in **M v P and others (contempt: committal); Butler v Butler** [1992] 4 All ER 833 that:

> "(1) no alleged contemnor shall be in any doubt as to the charges which are made against him; (2) **he shall be given a proper opportunity of showing cause why he should not be held in contempt of court;** (3) if an order of committal is made, the accused (a) knows precisely in what respects he has found to have offended and (b) is given a written record of those findings and of the sentence passed upon him." (Emphasis added).

40. In order for the Claimant to succeed with the committal application, it must prove that it was verified by an affidavit; the Injunction Order was served; the Injunction Order was endorsed with a penal notice; it must show that the terms of the Injunction Order were clear and unambiguous; the Defendant had proper notice of the Order and that it was clear to the Court that the terms of the Order had been broken by the Defendant.

41. Before the Court makes any order based on a committal application, the Defendant must be aware of the charges which are made against her; she must be given a proper opportunity of showing cause why she should not be held in contempt of court; and if an order of committal is made, she knows precisely in what respects she has been found to have offended and is given a written record of those findings and of the sentence passed upon her.

42. It was submitted on behalf of the Claimant that although it has proven that the Defendant was served with the Injunction Order, it was endorsed with a penal notice and its terms were clear, in keeping with fairness, the Court should extend the time for the filing and service of the Defendant's September Affidavit and give the Claimant permission to file an affidavit in reply. Counsel also argued that the Defendant should

be given another opportunity to be heard to show cause, as on the last occasion the matter was called which was 2 October 2020, the Defendant did not have the opportunity to be heard due to technical difficulties on the part of the Defendant's attorney.

43. It was submitted on behalf of the Defendant that the service of the Injunction Order was irregular as she was not served personally. The Defendant asserted that the Claimant was aware that she was outside of the jurisdiction, but had deposed otherwise in its application for substituted service. Therefore, at the time service was effected she was still outside of the jurisdiction and unaware of the Injunction Order.

44. I agree with the position submitted on behalf of the Claimant for the following reasons. The committal application was supported by two affidavits, the Ali Affidavit and the Samuel Affidavit. On the 25 September 2020, the Defendant filed an Affidavit in opposition. Although there was no application for an extension of time for the Defendant to file the affidavit in opposition, due to the relief sought in the committal application, the Court on its own motion, in furthering the overriding objection of the CPR has decided to formally extend the time for the filing of the said affidavit to the 25 September 2020. I will also give the Claimant permission to file and serve an affidavit in reply to address any new matters.

45. The committal application was verified by the Ali Affidavit and the Samuel Affidavit. The Samuel Affidavit deposed that he served the Defendant personally with the Injunction Order on the 4 October 2019. He also indicated that the copy of the Injunction Order he served the Defendant was endorsed with a penal notice and he exhibited a copy of it as "D.S.1" to the Samuel Affidavit.

46. Further, the committal application was also properly served on the Defendant. Part 6 of the CPR deals with service of other documents. The committal application is not a claim form is therefore an "other document" under rule 6.4 (1) (a) which provides:-

"6.4 (1) Where no address is given for service the document *must* be served by leaving it or posting it at or to—

(a) the business address of any attorney who purports to act for him in the proceedings;"

47. According to the Court's record, on 6 February, 2020, Attorneys at Law Chaka McDowell and Steven Mawer filed a notice of "Appointment of Attorney" wherein they stated that they were appointed as the Attorney at law on record for the Defendant. Their address as the Attorneys at Law on record for the Defendant was stated as "37 Abercromby Street, Port of Spain".

48. In **Her Worship The Learned Magistrate Marissa Gomez v Brent Nunes**[13] Mendonca JA stated at paragraphs 28 and 29 of his judgment: -

"28. Rule 6.7, however, is located in part 6 of the CPR. This part deals with "service of other documents". Part 6 follows part 5. Part 5 is intituled "Service of Claim Form". This gives a clear indication that service of the claim form is governed by part 5 of the CPR whereas service of documents other than the claim form is governed by part 6. It follows from that that the intention of the CPR is that rule 6.7 located as it in part 6, which refers specifically to service of other documents, does not apply to service of the claim form. That that is the intention of the framers of the CPR is made clear form a consideration of other provisions.

29. Rule 6.4 deals with service of documents where no address is given for service. It provides, *inter alia,* that the document may be served by leaving it or posting it at or to the business address of any attorney who purports to act for the person in the proceedings (see rule 6.4(1)(a)). Apart from what is provided at rule 6.4(1) for the service of such documents, rule 6.4(2) specifically applies the provisions of part 5 to the service of such documents. What this demonstrates is that where the CPR intend to apply the provisions of part 5 to service of other documents that is specifically provided for. It seems to me that consistent with that approach it is

[13] Civ Appeal P 123 of 2016

logical to assume that where the CPR intend that the provisions of part 6 apply to service of the claim form that that would be specifically provided for. There is, however, no provision that applies part 6 to the service of a claim form."

49. There is no discretion in Rule 6.4 (1) (a) as it says the "document **must** be served" in the prescribed way. Therefore, by the operation of this rule, the Defendant was personally served at the address given by her attorneys, whom she appointed to act on her behalf. Therefore, the service of the committal application was regular.

50. At paragraph 6 of the Ali Affidavit, he deposed that after the Defendant was served the Injunction Order, she opened the barrier that was blocking access to the right of way and it remained open. Paragraph 8 of the Ali Affidavit stated that on the 21 February, 2020 he discovered that a concrete block wall and iron railing were erected on the right of way. To support this evidence the Ali Affidavit exhibited as "S.A. 2" copies of photographs which he took as "S.A.1" and S. A 2".

51. At paragraphs 4 and 5 of the Defendant's September Affidavit, the Defendant admitted to putting up the concrete blocks and railing. However, she stated that she is not in breach of the Injunction Order.

52. In my opinion, the Claimant has proven that the committal application was verified by affidavit evidence, the Injunction Order was served on the Defendant, it contained a penal notice and that the service of the committal application was regular. Based on the admission made at paragraphs 4 and 5 of the Defendant's September Affidavit, the Defendant clearly understood the terms of the Injunction Order.

53. However, at the virtual hearing of the 2 October 2020, through no fault of the Defendant, she was unable to show cause why she should not be committed to prison for her admission of the breach of the Injunction Order due to some technical difficulties which emanated from the office of the Defendant's Attorney at law. In those circumstances, due to the gravity of the consequences on the Defendant if an

order for committal is made against her, I will give her another opportunity to show cause.

ORDER

54. The Defendant's notice of application filed 8 July 2020 is dismissed. The Defendant to pay the Claimant's costs of the said application to be assessed by the Registrar in default of agreement.

55. Permission to the Claimant to bring committal proceedings.

56. Time is extended for filing of the Defendant's affidavit to the 25 September 2020. The said affidavit do stand.

57. Permission to Claimant to file and serve affidavit in response to address new matters on or before the 12 February 2021.

58. The Claimant's notice of application filed 5 March 2020 is adjourned to the 12 March 2021 at 11:15 am virtual hearing for the Defendant to show cause why she should not be committed to prison for breaching the Order dated 20 August 2020.

/S/ Margaret Y. Mohammed

Judge