

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**San Fernando**

**Claim No. CV2019-00617**

**BETWEEN**

**SOUTHERN MEDICAL CLINIC LIMITED**

**RUPERT INDAR SNR**

**ROMNEY THOMAS**

Claimant

**AND**

**CHERRY ANN RAJKUMAR**

Defendant

**Before the Honourable Mr. Justice Frank Seepersad**

**Date of Delivery:** May 16, 2019

**Appearances:**

1. Russell Martineau S.C. instructed by Faarees Hosein, Roger-Mark Kawalsingh-Kar and Melissa Sinanan for the Claimant.
2. The Defendant in person.

## Decision

1. Before the court for its determination is the Claimants' application for contempt of court filed on February 10, 2019.
2. On or about **February 7, 2019**, the Claimants wrote a pre-action letter (hereinafter referred to as "**the pre-action letter**") in which they complained of, inter alia, publications by the Defendant and called upon her to cease and desist.
3. On or about **February 8, 2019**, after the delivery of the pre-action letter the Defendant placed a banner outside of the first Claimant's hospital and one outside of the second Claimant's office. Thereafter, the Defendant posted several statements on her Facebook page in which she alleged inter alia that she suffered radiation poisoning at a southern hospital.
4. On **February 12, 2019**, the Defendant hand delivered a letter addressed to the third Claimant requesting "Computer/Data (this may be known by other names) as well as associated efforts, to enable the determination of radiation that entered my body on the said day".
5. The Defendant after delivery of the letter proceeded to put up a banner in close proximity to the third Claimant's offices from approximately 2:00pm to 3:26pm saying "**ROMNEY THOMAS (DIRECTOR SOUTHERN MEDICAL CLINIC) HAND OVER THE CT SCAN MACHINE LOG**". The banner bore a photograph of the third Claimant.
6. On **February 13, 2019**, the Claimants filed an application seeking injunctive relief and on February 14, 2019, the emergency Judge issued the following orders:
  - (i) "An interim injunction pursuant to Part 17.1(1)(a) and 17.1(1)(c) of the Civil Proceedings Rules 1998 (as

amended) (“the Rules”) restraining the Defendant, her servants, agents or howsoever otherwise, whether by themselves or otherwise from further publishing or causing to be published and/or posted on any forum on the Worldwide Web of the Internet and/or newspaper and/or print publication posts and/or publications containing the same libel or similar words and/or images defamatory of the Claimants.

(ii) An interim injunction pursuant to Part 17.1(1)(a) and 17.1(1)(c) of the Civil Proceedings Rules 1998 (as amended) (“the Rules”) restraining the Defendant, her servants and or agents and/or otherwise howsoever, whether by themselves or howsoever, from erecting any banners, signs and/or any pictorial displays of any kind at, on and/or within 100 metres of the First Claimant’s hospital and/or the workplaces and/or residences of the Second and Third Claimants.

(iii) An order compelling the Defendant, her servants, agents or howsoever otherwise, whether by themselves or howsoever to remove and/or take down any post and /or social media and/or placards and/or banners and/or signs and/or any pictorial displays of any kind displaying any picture and/or images and/or names and/or defamatory comments relating to this action within 24 hours of date of service on the Defendant of the order made herein.”(hereinafter referred to as “the Order”)

7. On **February 14, 2019** the Order was corrected (hereinafter referred to as **“the Corrected Order”**). The Corrected Order with the penal clause duly

endorsed thereon was served personally on the Defendant on 14 February 2019 at 1:30pm and an affidavit of service was subsequently filed.

8. On Sunday **February 17, 2019** after service of the Corrected Order at approximately 9:11 p.m., the Defendant posted on her personal Facebook Page "CHERRY ANN RAJKUMAR – PERSONAL BLOG" (hereinafter referred to as "**the Facebook Post**") a link to an article published in the Trinidad and Tobago Newsday online publication on February 17, 2019 with the headline:

***"Doctor, WASA chairman file defamation claim  
After woman claims radiation therapy overdose"***

9. The Facebook post contained the caption included by the Defendant:  
**"WHERE THE RECORDS? WHY YOU SO HURRY TO RUN TO COURT?????"**
10. On **February 17, 2019** the Defendant also posted on her personal Facebook Page "CHERRY ANN RAJKUMAR – PERSONAL BLOG" a video with the caption "Marvin Ramnarine exposes FALSE ADVERTISING which led to his spouse's poisoning" (hereinafter referred to as "**the Video**").
11. In the Video, Marvin Ramnarine who described himself as the spouse of the Defendant, and her servant and/or agent made statements of and concerning the first Claimant and invited members of the public to make comments on same.
12. The Video was also posted to the personal page of Marvin Ramnarine with the caption "False advertising – radiation poisoning"
13. After the above mentioned posts the Contempt Application was filed.
14. The Contempt Application and the Interim Injunction application were assigned to be heard before this court on February 18, 2019.

15. On **February 18, 2019**, this court discharged the interim injunctions as outlined in the Corrected Order in respect of the first and second Claimants but continued the interim injunction in respect of the third Claimant.

16. The Defendant filed her affidavit in response on **February 21, 2019**, (hereinafter referred to as “**the Defendant’s Affidavit**”) to the Contempt Application.

17. On **March 12, 2019** the Defendant filed a Supplemental Affidavit (hereinafter referred to as “**the Defendant’s Supplemental Affidavit**”) in response to the Contempt Application.

## **THE LAW**

18. **Part 53.3 of the Civil Proceedings Rules 1998, as amended 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.”;

**19. Part 53.8 of the Civil Proceedings Rules 1998, as amended provides:**

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) if 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.

**20. Part 53.10 of the Civil Proceedings Rules 1998, as amended provides:**

53.10 The court may—

- (a) make a committal order against a judgment debtor who is an individual;

21. In considering and determining whether to exercise its discretion to punish a person for contempt, the court considered the text **Borrie and Lowe:**

**The Law of Contempt (4<sup>th</sup> Edition), Chapter 6 Section 6.5 page 130** where the applicable principles were outlined as :

**“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.” (emphasis added)**

22. There is no doubt that the disobedience of a judgment or order, which mandates that a certain act is to be engaged or restrains the committal of a certain act, would amount to a contempt.
- 23. The rule of law is heavily dependent upon compliance with orders of the court and the effective administration of justice is dependent upon the court’s ability to properly enforce its orders and judgments. In this society there is a heightened degree of lawlessness and this court will not tolerate the wilful disregard of court orders.**
- 24. Compliance with orders of the court is not optional, it is mandatory and unless or until an order has been set aside, the terms of same must be complied with, even if it is subsequently shown, that the order ought not to have been made. There exists an uncompromising obligation to comply with court orders and the motive or rationale behind a breach is irrelevant.**
25. To establish a breach, three pre requisite conditions must be established beyond all reasonable doubt and the court will only act in the clearest of circumstances. These conditions are:

- I. Firstly, the terms of the injunction/order must be unequivocal and unambiguous.
- II. Secondly, the person against whom the order was directed must have had proper notice of same.
- III. Thirdly, the evidence must prove that the terms of the order have been breached.

26. On the facts before this court, it is evident that the wording of the corrected order was pellucid and unambiguous. The corrected order outlined what was prohibited from publication and it was directed to the Defendant, her servants and agents.

27. The Claimants caused to be filed the Affidavit of Service of Amrit Ajodha on February 15, 2019 wherein he deposed that he served the Defendant with the original Order and then the Corrected Order on February 14, 2019 at 11:14am and 1:30pm respectively.

28. At paragraph 43 of her affidavit, the Defendant admitted that she received both the original Order and the Corrected Order.

29. The Claimants' affidavit of service and the Defendant's affidavit collectively demonstrated that the Defendant had knowledge of the grant of the interim injunctions and the terms of the Corrected Order on which the penal clause was endorsed.

**30. The Claimants relied inter alia, on the affidavit of Andrea Orie which referenced the links to a Newsday article and the Ramnarine video. The content of both publications was capable of attracting the attention of the general public, however the court found that the link to the Newsday article and the caption to same did not breach the corrected order but the Ramnarine video did. The Defendant did not author the Newsday article and the article outlined the factual matrix behind the action. The**



words to the caption were not defamatory and the said words did not breach the terms of the corrected order. The Defendant admitted that she did set up a new Facebook page and that she posted the Newsday link and the video but sought to defend the postings as being justifiable and fair. She further stated that the Ramnarine video spoke out against false advertising.

**31. Although the court ultimately discharged portions of the corrected order, as the court felt that aspects of same infringed upon the freedom of expression, until the said discharge, the Defendant was compelled to obey same and the rationale she adopted in relation to the posts is irrelevant.**

**32. The posting of the Ramnarine video breached the corrected order as the video was made by the Defendant's spouse and referenced matters which were expressly prohibited under the corrected order. Statements were made in relation to the Defendant's allegation that she suffered radiation poisoning and that the first and/or second Claimants had engaged in false advertising. These were matters which were intimately connected to the Claimants' claim in defamation and the repetition or republication of same was covered by the terms of the corrected order. The court found that the Defendant's post of the video breached the corrected order and this breach was occasioned prior to the discharge of same and occurred after the Defendant had been served by Ajodha. Consequently, this court finds that the Claimants have established beyond a reasonable doubt that the Defendant stands in breach of the corrected order as the prerequisite conditions have been established.**

**33. In a case for civil contempt the court has the power to impose a fine instead of issuing an order of committal.**

**34. The court considered inter alia the nature and importance of the issues which will have to be considered during the determination of the substantive matter, the Defendant's conduct, her alleged medical issues and the nature of the breach, and it is not inclined to issue an order of committal. Alternatively, and in lieu of imprisonment, the court orders the Defendant to pay to the Claimants a fine of \$10,000.00 and this sum shall be paid on or before June 30, 2019.**

35. In default, the Defendant shall be committed to 2 days simple imprisonment.

36. The Defendant shall also pay to the Claimants the cost of the instant application to be assessed by the court in default of agreement.

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**Frank Seepersad**  
**Judge**