Schofield J.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

HOLDEN AT GEORGE TOWN, GRAND CAYMAN

CAUSE NO. 169/92

11-09-92

BETWEEN:	SUSAN WILLIAMS	PLAINTIFF
AND:	(1) TANIA RAMGEET (2) ESTHER EBANKS	DEFENDANTS

For the Plaintiff: Mr. E. Bergstrom
For the defendants: Mrs. E. Maierhofer

JUDGMENT

At the hearing yesterday of the plaintiff's motion to commit the first defendant for contempt of court a number of preliminary issues were raised.

The contempt alleged is breach, on 9th and 25th June 1992, of an ex parte injunction. The order was made on 25th May 1992 and restrained the defendants in relation to the plaintiffs home and place of work, and from assaulting, molesting or otherwise interfering with the plaintiff until further order.

Ex parte injunctions are for cases of real urgency. Yet the ex parte summons was filed on 12th May 1992 for hearing on the 19th. The order itself was dated 25th May, filed on the 27th and served on the 28th. There was ample time within that period for an inter partes hearing. Be that as it may, the order of the court was made, it was in place, and it was served,. The first defendant knew full well of the order at the time of her alleged breaches of it on 9th and 25th June. However, the thrust of her objection is not that the order was not served but that the copy which was served did not bear a penal endorsement. On that basis this case is distinguishable from United Telephone Company v. Dale (1884) 25 Ch D. which in any event arose from a consent order.

for an alleged breach of an order which was served without that

penal notice endorsed thereon." It is that very order committal

judgment or order served under this rule should have the requisite

rule 5 by way of sequestration or committal that the copy of the

necessary condition for the enforcement of a judgment or order under

734 of the 1962 Edition of th Supreme Court Practice "it is a

endorsement need not appear. But, in the words of note 45/7/9 at page

of the order itself, since there will be other copies on which the

part is not that it is "that implies that the order served under the rule".

rule 7 provides that the penal notice must be endorsed on the copy of

and 7 of the Rules of the Supreme Court. Paragraph (4) of Order 45

5 sets out in Order 45 rules

relevant to the present case they are to be found

penal notice and the proceedings relating to it". Insofar as they are

a of earnest of the nature of view of that, I must now indicate my view of the

consequences of that, I must now indicate my view of the nature of

the Guinness

28th May, albeit without the penal notice endorsed. In considering

after the alleged breach. The question of whether service could be

dispensed with in the circumstances of that case was

and the present case. In Lewis the order was not served at all until

issue does not arise in the present case, since the order was served on

There was, however, a significant difference between Lewis v. Lewis

A somewhat similar situation was considered in Lewis v. Lewis (1961) 3

ALL ER 252, a decision on appeal from a decision in the English County

Court. I shall not refer in detail to that case, since in my view what

I have just said is a matter of simple common sense.

justify service being dispensed with) it cannot be corrected by the

service of another document thereafter.

defendants came to know of the matter in any other way which would

alleged incidents complained of (and there is no suggestion that the

enforcement by committal of the order which was served before the

way, but it sufficies now to say that if there was a fatal bar to the

of concern in relation to that which I shall be taking up in another

August, and there is an affidavit to that effect. There are matters

copy of the order, endorsed with the penal notice was served on 21st

a further affidavit that a further

It is however, claimed on behalf of the plaintiff that

necessary condition being complied with - which is being asked for in the motion now before me. That is fatal to the remedy and on that basis I must dismiss the motion today. However, I will make some obervations for the benefit of the first defendant. It is acknowledged by both sides that a copy of the order bearing the penal notice was served on her at the latest by 28th August, and it is not my view that the plaintiff needed the courts leave to do that. Should there be a breach of that order in future, I see at this stage no reason why her whole course of conduct since the order was first served should not then be a matter for consideration by the court.

The breaches, if breaches there were, on 9th and 25th June, have not been investigated at all. All that has been decided today is that for a procedural reason such breaches as there may have been cannot be punished by committal to prison.

That deals with the substance of the motion. There were, however, other matters raised on behalf of the first defendant which call for some observations from me. I was invited to discharge the injunction of my own motion on the ground that it is an abuse of the process of the court. In addition to the matters which I have already dealt, it was submitted that, as well as the injunctive order, a copy of the ex parte summons and the affidavit in support of it should have been served to enable the defendants to consider their response under the liberty to apply.

Moreover, it is said that the writ was not served on the first defendant until 28th August and the second defendant has never been served with the order and the writ at all.

I am bound to say that in my view this problem arises in part at least from the practice which has grown up in this court of granting ex parte injunctions "until judgment or further order" rather than for a short period of days. That has advantages in some cases in a jurisdiction such as the Cayman Islands, but it does put the onus on a defendant to apply to discharge the injunction rather than on the

11th September 1992

Judge

G.E. Harre

now know the issues."

defendants have their liberty to apply if they wish to do so, and they

of my own motion as an abuse of the process of the court. The

difficulty it would be quite wrong, in my view, for me to discharge it

is a non-molestation order and while I appreciate the defendants'

evidence in support with a copy of the ex parte order obtained. This

proposition that it is mandatory to serve a copy of the summons and

served forthwith. I can, however, find no authority for the

injunction obtained before issue of the writ that it be issued and

problems encountered by the defendants, to provide in any urgent

It is also desirable, in my view, in order to avoid the second of the

used on the ex parte application.

trial or further order would be accompanied by the affidavit of merits

the latter case, the summons for continuance of the injunction until

plaintiff to justify its continuance at an inter partes hearing. In