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LEGAL TOPIC: COMMITTAL ORDERS

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A) INTRODUCTION

Part 53 of the **Consolidated Civil Proceedings Rules 2016** deals with the power of the Court to commit a person to prison or to make an Order confiscating their assets for failure to comply with a Court Order or Undertaking requiring him to do an act within a specified time or restraining or commanding him not to do an act. The relevant provisions of Part 53 of the Consolidated CPR are as follows:

B) THE CONSOLIDATED CIVIL PROCEEDINGS RULES 2016

When committal orders or confiscation of assets Orders may be made;

Rule 53.3 of the Consolidated Civil Proceedings Rules 2016 states;

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:

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“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.

Committal order or confiscation of assets order against an officer of a body corporate

According to Rule 53.4 of the Consolidated CPR;

Neither a committal order nor a confiscation of assets order may be made against an officer of a body corporate unless—

(a) a copy of 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 officer against whom the order is sought;

(b) at the time that order was served it was endorsed with a notice in the following terms:

“NOTICE: If (name of body corporate) fails to comply with the terms of this order it will be in contempt of court and you (name of officer) may be liable to be imprisoned or 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.

Permission to apply for a Committal Order

According to Rule 53.5 (1) of the Consolidated CPR, no Application for a Committal Order may be made without the permission of the Court where the contempt alleged is;

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(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 consists of disobedience to an order of the court or a breach of an undertaking to the court; or*

(ii) *proceedings in an inferior court; or*

(c) *committed otherwise than in connection with proceedings.*

(2) An application for permission to apply for a committal order may be made without notice but must be supported by evidence.

Application for Committal Order

Rule 53.8 (1) explains that 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.*

Rule 53.8 (2) further explains that the application must be verified by an affidavit.

According to Rule 53.8 (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.*

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C) CASE LAW

In the case of CV2016-04358 Yetunde Temilola Ade-John v Mark Sherlock Bernadotte Walker and Druker Development Company Limited the Claimant initiated proceedings against the Defendants for recovery of unpaid fees in the amount of \$115,500.00 pursuant to a Legal Services Agreement dated 22nd September, 2015. Interest on the sum was also claimed. Given that the Defendants failed to enter an Appearance within the stipulated 8 day period from the date of service of the Claim, the Claimant duly requested Entry of Judgment against the Defendants in default of appearance on the 18th January 2017. The request was thereafter granted by Judgment entered on even date in the sum of \$113,441.24 inclusive of interest at the rate of 5% (the “Judgment Sum”).

The Judgment Creditor, Ms. Ade-John, thereafter applied by Notice of Application filed on the 16th March, 2017 for the following Orders under **Part 53 of the CPR Part 53**;

- i. *That the Court specify a time and date within which the Second Judgment Debtor must pay to the Judgment Creditor the Default Judgment debt in the sum of TT\$113,441.24 inclusive of interest and costs within 28 days from the date of the order appearing in a daily newspaper;*
- ii. *That should the Second Judgment Debtor fail to pay the judgment debt inclusive of interests and costs within the time specified in the said order that the court make a committal order against the First Judgment Debtor for a period deemed fit by the Honourable Court;*
- iii. *That permission to apply for the committal order be granted without notice to the First Judgment Debtor;*
- iv. *That notice be given to the First Judgment Debtor of the said order by substituted service by advertisement in a daily newspaper once per week for 2 consecutive weeks;*
- v. *That costs of and incidental to this application be paid by the First Judgment Debtor to the Judgment Creditor.*

The main ground for this application was the continued failure of the Judgment Debtors to pay the Judgment debt with its attendant costs coupled with the fact that the First Judgment Debtor could not be located so as to serve the proceedings.

In the instant case, the Honourable Judge first pointed out that based on the wording of the Judgment in Default, it was apparent that the said Judgment did not specify a date or time by which the Defendants were required to pay the Judgment Sum to the Claimant. He asserted therefore that prior to making any Order under Part 53.3 or 53.4, the Court ought to first specify a time or date by which the Judgment Debtors are to pay the Judgment Sum to the Claimant. He therefore Ordered that the said payment be made by 31st January, 2018.

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Justice Mohammed further stated that having specified the date of payment, pursuant to Part 53.3 and/or Part 53.4 considering that the First Defendant was being sued in his personal capacity and also as an Officer of a body corporate, the Court was then required to serve a copy of the Order made by Justice Mohammed personally on Mr. Walker endorsed with a penal notice as outlined in Part 53.4 (b).

The Honourable Judge thereafter Ordered that in default of the Judgment Debtors complying with the Order, the Claimant shall be given liberty to apply for a Committal Order or a Confiscation of Assets order against the Judgment Debtors.

Additionally, in the case of **CV2012-00999 Andre Mc Donald v Hevron Heights Towers Limited** an Application for Committal was filed by the Claimant due to the failure of the Defendant to comply with a Court Order dated 2nd October, 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 there was a stay of execution on the Order until December 13, 2012. However, the Defendant failed to comply with the said Order and one of the issues raised by the Defendant was that the said Order did not specify a time for compliance in accordance with Part 53 of the CPR.

The Honourable Justice Kokaram indicated however that the Order, which was a money judgment, was made on October 2nd 2012. He added that there was also a Stay of Execution of the Order until December 13th 2012, which could have only meant that the Order must be complied with on December 13, 2012; that is, the date of the expiry of the Stay. Justice Kokaram expressed therefore that it was clear in terms of the date when the money should have been paid to the Claimant and so the specified time for compliance was satisfied under Part 53 of the CPR.

D) POWERS OF THE COURT UNDER THE CONSOLIDATED CPR

Under Rule 53.10 the Court may-

- (a) make a committal order against a judgment debtor who is an individual;*
- (b) make a confiscation of assets order against a judgment debtor who is an individual or a body corporate;*
- (c) make a committal order against an officer of a judgment debtor which is a body corporate;*

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- (d) make a confiscation of assets order against an officer of a judgment debtor which is a body corporate;*
- (e) adjourn the hearing of the application to a fixed date;*
- (f) accept an undertaking from the judgment debtor or an officer of a body corporate who is present in court and adjourn the application generally;*
- (g) make a suspended committal order or confiscation of assets order on such terms as the court considers just; or*
- (h) dismiss the application,*

and may make such order as to assessed costs as it considers to be just.

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