IN THE SUPREME COURT OF BELIZE, A.D. 2007

CLAIM NO. 142 OF 2007

	(CHRISTINE PERRIOTT	CLAIMANT
	(	(JUDGMENT CREDITOR)
BETWEEN	(AND	
	(	
	(BELIZE TELECOMMUNICATIONS LTD	
		DEFENDANT
		(JUDGMENT DEBTOR)

Coram: Hon Justice Sir John Muria

Hearing: 11 and 17 May 2007
Judgment: 13 June 2007

Advocates:
Ms Lois Young S.C. for the Claimant
Mr. Marshalleck for the Defendant

JUDGMENT

Contempt of Court – civil contempt – defendant ordered to reinstate claimant pending determination of substantive claim – claimant put on "special paid leave" and not allowed into work place – whether placing employee on "special paid leave" complies with order of reinstatement – order shown to defendant but refused to accept service - whether service effective – penal notice not endorsed on the front page of the order – whether time to do an act be specified in the order – meaning of "reinstate" – whether committal appropriate – whether fine is available as a punishment for contempt of Court under the Rules

MURIA J.: Following the order of this court made on 5 April 2007 wherein the Court ordered the defendant to reinstate the claimant to her previous position in the defendant company, the claimant has now returned to the Court and applied to commit Mr. Dean Boyce the Chairman of the Executive Committee of the Board of Directors of the company to prison for failing to comply with the said order of the Court.

The Brief Background

The background to this case was also set out in the judgment made on 5 April 2007. For our present purpose, I need only briefly refer to that background of the case.

The claimant has been an employee of the defendant's company for some 17 years. At the time she was terminated, on 27 February 2007, she was working at the defendant's Internet Department and held the post of Technician Grade 6. On the next day 28 February 2007, her position was filled by another employee named Leon Usher. The claimant took her grievance to Executive Committee on 28 February 2007 pursuant to grievance procedure under the Collective Bargaining Agreement (CBA).

The matter had not been resolved and so the claimant came tot his court with her grievance.

The Interim Order

On 5 April 2007, the court ordered the defendant to reinstate the claimant pending the determination of the substantive action in this case. The order is in the following words:

> "An interim order is granted directing the defendant to reinstate the claimant with her full employment entitlements and benefits from 27/2/07 until trial or further order of the court."

The formal order was not drawn up until 18 April 2007 and is said to have been served on Mr. Dean Boyce who is the Chairman of the Executive Committee of the defendant on 19 April 2007. The drawn-up formal order had a Penal Notice endorsed on it, although that was made at the back of the copy of the order. It directed the defendant to reinstate the claimant to her employment as Technician Grade 6 with effect from 27 February 2007 with her full entitlements and benefits. The claimant now claims that the defendant has not complied with the order of the Court and seeks to commit the Chairman of the Executive Committee to prison for contempt of Court.

Service of the Court Order

The evidence of service of the Court order came from Mr. Armand Lennon, a Supreme Court Marshall. Basically his evidence is that, on the 18 April 2007 he attempted service on Mr. Boyce at the BTL Esquivel Telecom Centre. He was not able to effect service on Mr. Boyce at the Esquivel Telecom Centre. On 19 April 2007 in the morning, he (Mr. Lennan) accompanied by George Lightfoot, another Supreme Court Marshall, went to Mr. Boyce's house at Bella Vista, Belize City, where he served the copy of the Court order on Mr. Boyce. The evidence of Mr. George Lightfoot confirmed service of the order on Mr. Boyce.

Mr. Boyce denied being served with a copy of the Court order. On the evidence, it is obvious that no service of the order took place on Mr. Boyce at the Esquivel Telecom Centre on 18 April 2007. What has to be determined is whether service was effected on Mr. Boyce at his home at Bella Vista on the morning of 19 April 2007. Mr. Boyce denied being served with the Court order at his home at about 7:00 a.m. on 19 April 2007.

The affidavit evidence of both Mr. Lennan and Mr. Lightfoot show that at about 7:00 a.m. on 19 April 2007 they went to Mr. Boyce's home at Bella Vista to serve him with a copy of the Court order. Upon reaching Mr. Boyce's home, Mr. Lightfoot rang the bell from the gate. Mr. Lennan stated that Mr. Boyce came out of the front door wearing a grey shirt without sleeves Mr. Lennan asked if he was Mr. Boyce who answered "yes." Mr. Lennan told Mr. Boyce that he had something for him to which Mr. Boyce replied, "I don't want it." According to Mr. Lennan, he then held out the paper (Court Order) for Mr. Boyce to see. Mr. Boyce then turned around and went back to the house. Mr. Lennan then said to Mr. Boyce "Consider it served." He left the copy of the Court order on the cement driveway.

Mr. Lightfoot supported Mr. Lennan's evidence and added that when he rang the bell, it took about five minutes for Mr. Boyce to come out of the house with two brown dogs. Mr. Lightfoot also described Mr. Boyce as wearing a grey sleeveless shirt. He also stated that Mr. Boyce was shown the paper (Court Order) which Mr. Lennan left on the cement driveway before he and Mr. Lightfoot drove away in their vehicle.

Mr. Boyce's evidence is that he was not served with a Court order that morning by anybody. He, however, sated that he was awakened in the early morning of 19 April 2007 by his dogs barking at someone outside the gate. He was expecting air-conditioning engineers but when he came out to the porch area, through the front door he clearly saw two people, although he did not recognize them. As he put it -

> "I briefly went out through the front door and saw a person I did not recognize, and someone that was not the air-condition engineer."

Mr. Boyce evidence confirmed that he returned back into the house and looked back to see the people who came drove away in their vehicle. Mr. Boyce made no mention of the matters stated in Mr. Lightfoot's affidavit, although in his third affidavit sworn to on 25 April 2007, Mr. Boyce stated that the person who was at the gate outside his house on the morning of 19 April 2007 could be Mr. Lightfoot, as his (Mr. Lightfoot) build was not as "large bulk" as that of Mr. Lennan. Mr. Boyce appeared to have some idea of Mr. Lennan's stature being "large physical build," as he said in paragraph 13 of his third affidavit.

It is submitted on behalf of the defendant that the evidence of Sharlene Jones, Sherry Kemp and Dean Molina supported the defendant's contention that Mr. Boyce was not personally served with the Court order. I agree that the evidence of the three witnesses mentioned do support the suggestion that Mr. Boyce was not served with the Court order on 18 April 2007 at the Esquivel Telecom Centre. In my view, though, their evidence do support that of Mr. Lennan's attempt to serve Mr. Boyce at the Esquivel Telecom Centre on 18th April 2007.

To suggest, however, that the evidence of Sharlene Jones, Sherry Kemp and Dean Molina support Mr. Boyce's denial of being served on 19 April 2007 at his home at Bella Vista, cannot be accepted. The evidence of the three named witnesses, has no relevance to what had happened at Mr. Boyce's home at about 7:00 a.m. on 19 April 2007. The only witnesses who can depose to what happened at Mr. Boyce's place at Bella Vista that morning of 19 April 2007 are Mr. Boyce himself, and the two Supreme Court Marshalls, Mr. Lennan and Lightfoot. The choice which the Court has to make in connection of 19 April 2007 is to decide whose evidence ought to be believed, Mr. Boyce's story or those of Mr. Lennan and Mr. Lightfoot.

I have read and considered the evidence of Mr. Lennan and that of Mr. Lightfoot. I have also read and considered the two affidavits of Mr. Boyce sworn to on 23 April 2007 and 25 April 2007. Having done so, I am quite convinced in my mind and I have no reason to doubt the truth of the story related in the affidavits of Mr. Lennan and Mr. Lightfoot. I am satisfied so that I am sure that Mr. Lennan accompanied by Mr. Lightfoot went to Mr. Boyce's home at about 7:00 a.m. on 19 April 2007 to serve Mr. Boyce with the Court order in question, after an unsuccessful attempt at service upon Mr. Boyce at Esquivel Telecom Centre on the previous day 18 April 2007. I am also satisfied so that I am sure that when Mr. Boyce came out of his house on the morning of 19 April 2007, he spoke to Mr. Lennan who held up the piece of paper containing the Court order and showed it to Mr. Boyce. I am further satisfied so that I am sure that when shown the copy of the Court order, Mr. Boyce refused to accept service saying " I don't want it" and turned back into his house. I have no doubt that, not only did Mr. Boyce saw the copy of the Court order shown to him by Mr. Lennan, but he also knew of it. No ingenuity is needed to reach these findings of facts when one read and piece together the picture revealed by the evidence of two Supreme

Court Marshalls and those of Mr. Boyce and the three named witnesses who supported the denial of service on Mr. Boyce.

On the evidence, I am satisfied so that I am sure, that is to say, I am satisfied beyond reasonable doubt that service of the Court order was effected on Mr. Boyce at his house at Bella Vista, at about 7:00 a.m. on 19 April 2007 by Mr. Lennan and witnessed by Mr. Lightfoot.

Effective Service

It may be argued that Mr. Boyce, although shown the copy of the order, did not accept service. Mr. Lennan, having shown the copy of the Court order to Mr. Boyce who refused to accept it, said "Consider it served" and left the copy of the Court order on Mr. Boyce's cement pavement on the driveway before returning to the office on the morning of 19 April 2007. Was this effective service on Mr. Boyce personally?

The rules relating to service of judgments or orders of the court are set out in Part 6 of the *Supreme Court (Civil Procedure) Rules 2005* (CPR). Service effected by the Court Marshall upon Mr. Boyce, in this case, was done in accordance with Rule 6 .1 (1) which provides that "*Any judgment or order*

which requires service must be served by the court." That was what happened in this case on 19 April 2007.

It must also be observed that service of the Court order in this case was to be effected upon Mr. Boyce personally, he being the Chairman of the Executive Committee of the Board of Directors. This was not service on BTL, the corporate body and defendant in this action, although as the defendant in the case, service of the Court order could be effected as well upon the defendant company at its place of business. We are concerned with the service upon Mr. Boyce personally. No address for service was given by Mr. Boyce and in all fairness, he was not expected to give his personal address for service since the defendant in the claim is BTL who has given its address for service. However, this is a contempt of court proceedings and the person to be served is the officer/Director of the company. Such person may be served at his place of residence and the Rules allow that to be done (See Rule 6.4 – *Service of documents where no address for service is given*) on a person who is not a party to the action but an interested party in the case.

In the present case, a copy of the Court order was produced and shown to Mr. Boyce at his place of residence. He refused to take the document so the

Court Marshall had to leave it on the cement pavement on Mr. Boyce's driveway. An affidavit of service was filed by the Court Marshall thereafter as proof of service. I am satisfied that Mr. Boyce was reasonably notified of the Court order, sufficiently to apprise him of the nature of the proceedings now being taken against the defendant, but more especially against him as Chairman of the Executive Committee of the Board of Directors of the defendant. In terms of the Rules, I find that there had been effective service on Mr. Boyce of the Court order on 19 April 2007.

Display of penal notice

Mr. Marshalleck argued that the penal notice was not prominently displayed on the copy of the Court order in this case. While Mr. Boyce evidence denies the existence of the Penal Notice on the Court order, Counsel's main contention is that the order was not endorsed with a Penal Notice displayed prominently on the front of the Order. On the evidence, I find that the Formal Order as drawn up on 18 April 2007 which Mr. Lennan served on Mr. Boyce had a Penal Notice endorsed on it, at the back page of the Order. The more contentious issue is whether the endorsement of the Penal Notice at the back of the Order satisfies the rules.

The requirement of the Penal Notice to be endorsed on a Court Order of the nature with which we are concerned here is provided in Rule 53.4 of our CPR which states as follows:

> "53.4 Subject to Rule 53.4, the court may not make a committal order or a seizure of assets order against an officer of a body corporate unless –
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> ---
>
> (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 seized."**

This Penal Notice is to warn a corporate defendant and its officers or directors that any failure by them to comply with the order of the court will subject the officers or directors of such corporate body to a penal sanction of

imprisonment or seizure of assets. It is in the light of such warning that Mr. Marshalleck pressed the argument that the penal notice endorsed at the back of the order did not satisfy the requirements under the Rules. Inherent in that argument, if I may add, is the suggestion that for the penal notice to be effective under the Rules, it must be endorsed on the front page of the order so that the defendant could see it without difficulty. Counsel sought to support his contention by relying on O.45 r 7 (4) of the English Rules which states:

> "There must be prominently displayed on the front of the copy of an order served under this rule a warning to the person on whom the copy is served that disobedience to the order would be a contempt of court punishable by imprisonment, or (in the case of an order requiring a body corporate to do or abstain from doing an act) punishable by sequestration of the assets of the body corporate and by imprisonment of any individual responsible."

Whilst the suggestion to have a penal notice displayed on the front page of the court order is attractive and meets the common sense, I am not persuaded by it for two principal reasons. First, the placement of a penal notice on the front page of an order does not guarantee that the defendant will read it if he chooses to ignore it; and secondly, the defendant may simply refuse to

accept or see the document order and may well discard it without even reading it. Any penal notice on the Court order, in those situations would make no difference, even if it were endorsed on the front page of the order in sterling colours. In any event, our Rule 53.4 for the moment, in my view, only requires that the order be endorsed with a penal notice. The positioning of the endorsement on the order is not critical.

A case of some relevance arose in Hong Kong in 2003 in the case of *Sino Wood Investment Limited v Wong Kam Yin* (14 April 2004) High Court, Action No. 307 of 2002. In that case, following an on-going litigation between the plaintiff and Miss Wong over alleged misappropriation of large sums of money by Miss Wong when she was a Director of the Plaintiff's Company. On 23 May 2003, on application by the plaintiff, the Court granted a restraining order against Miss Wong from leaving Hong Kong. The formal order was signed on 24 May 2003, with a penal notice endorsed by the Plaintiff's solicitors on the back sheet of a number of copies of the order, intended for personal service. A process server, one Mr. Cheng, was instructed to serve Miss Wong who was trying to evade service. When Mr. Cheng finally caught up with Miss Wong, and he was only about one foot

away from Miss Wong, when he held up a copy of the order in front of Miss Wong and said

> "Wong Kam Yin, this is Court Prohibition Order prohibiting you not to leave Hong Kong. You can ask your solicitor for the details."

Miss Wong refused to accept service and pushed the document away. A companion of Miss Wong by the name of Mr. Lee, asked Mr. Cheng if he could see the document. Mr. Cheng gave him the document. Mr. Lee took the document, screwed it up, and three it away on the ground. When Mr. Cheng tried to serve Miss Wong again, he was prevented by Mr. Lee. When queried by the Immigration Officers about the Prohibition Order, she claimed that she was ignorant of it. It was argued on her behalf that as she did not read the document, she could not be aware of the terms of the penal notice and that the process server did not bring it to her attention. As such she could not be guilty of contempt.

The Court held that Miss Wong was properly served with the Court Order with the penal notice on it. She chose simply to glance at the front page only

and then disregarded and threw the document away. The process server was not obliged to take further steps in explaining the effect of the penal notice. As the Court pointed out that in such a case, lack of knowledge of the consequences cannot be the answer where a person deliberately chooses not to read the terms of an order. Here Miss Wong chose not to see the terms of the order and chose to act without seeing the terms of the order. She must take the consequences. In further response to Miss Wong's Counsel, the Court said

> "To accept Mr. Griffith's submission would be to grant a charter to anyone served with an order to merely disregard it, never read it, to close their mind and ears to anything said to them, and then plead that they had no knowledge of the matter, thereby avoiding any responsibility. …. Here Miss Wong was duly informed of the terms of the penal notice by actual service of the order containing the penal notice. She elected not to read it."

Thus the position in law is that where an order of the Court, whether prohibiting or commanding an act to be done, with a penal notice endorsed

on the Order, and the order has been served on the person required to be served in accordance with the rules, that person is obliged to read the order so as to know the precise terms of the order. If he chooses not to read it, then he cannot be heard to say that he is ignorant of the terms of the order.

Whether the Claimant has been reinstated.

This is a question of both fact and law. The claimant deposed in her affidavit evidence that immediately following the interim order of the Court to reinstate her, with her full employment entitlements and benefits from 27 February 2007, the defendant within an hour, announced through the company's "*Employee Bulletin"* that it reinstated her and put her on "special paid leave." Among other things, the Bulletin states:

> "As you know, it is the Company's position that Christine Perriott's contract of employment was lawfully terminated. Her previous position at the Company is now being performed by others. In addition, there has been a complete breakdown in trust and confidence between the Company and Christine Perriott. In these circumstances, although the Company is reinstating Chistine Perriott in accordance

> with the Court Order, the Company has decided to put her on "special paid leave" until the trial of this claim, or further Order of the Court. Christine Perriott will not therefore be required to attend the Company's offices for work. Indeed if she does so, she will not be permitted to enter the premises."

Ms Lois Young strongly argued that the defendant's action in putting the Claimant on "special paid leave" and banning her from entering her place of work is a breach of the Order of the Court made on 5 April 2007, and as such it amounts to a civil contempt of court. On the other hand Mr. Marshalleck is determined that the actions of the defendant, was in compliance with the order of the Court.

The answer to the disputes between the parties on this point lies in the meaning of "*reinstatement*" as ordered by the Court. The case law has now come to a settled position on the meaning of "reinstatement." As far back as 1944, the Courts had had, to deal with the issue of "reinstatement" of dismissed employees to their employment. In *Jackson –v- Fisher's Foils Limited* [1944] IRB 316. In that case, one Messias was dismissed by his employer, the respondent for alleged serious misconduct. The Court found

that his termination was not justified and ordered the employer to reinstate him. Mr. Messias then presented himself for work but he was not given work, although the employer put him on the pay-roll. The reason being, another person had been up-graded and put in his position. The Court of Appeal held that the employer did not comply with the order of the Court by simply putting Mr. Messias on the pay-roll without putting him back to his position of work in his employment. Hamphrey's J. had this to say:

> "My view is that a man is not 'reinstated in his employment' when he is just put on the pay-roll any more than it could be argued that a man was reinstated in his employment if what the employer did was to say: 'We will not let you come near the premises, but we will give a pension for life equal to the wages that you were getting before.' "

The Court was able to distinguish the case of *Hodge –v- Electric Ld* [1943] K.B. 462 which held that the respondent did not breach the order of reinstatement of the employee when they did not employ the appellant, instead the company only paid her wages, the reason being that no work was available.

In *William Dixon Limited –v- Patterson* [1943] S.C.(J)78, the Court reiterated the meaning of the word "reinstate" as to put a person back to the position from which he was dismissed, so as to restore the *status quo* ante the dismissal. That of course, as pointed out in *Filt-Air Engineering Ltd –v- Mr. A. Wilkinson* [1998] UK EAT 807, does not mean simply restoring the employee to his or her contractual terms and conditions and doing nothing more. He or she must be put back to his/her work.

In *R (L (A Minor)) -v- Governors of J School* [2003] 2 WLR 518, a case referred to by both Counsel in this case, a student was excluded from the school for assault on another student. The panel ordered the student's reinstatement. The Teachers Unions threatened to take industrial action if the student was to be reinstated. Arrangement was then made to have the student taught elsewhere by a retired teacher. The student applied for judicial review. The Court held that the decision of the head teacher to exclude the student from the school was done in good faith and, represented the best arrangement in the circumstances. The student's appeals to the Court of Appeal and House of Lords were unsuccessful. However, the House of Lords decision was a majority decision. Lord Bingham of Cornhill and Lord Hoffman found that the decision of the head teacher in taking the

student back but placing him under an arrangement whereby he would have to be taught elsewhere by a retired teacher did not amount to reinstatement. The majority held that "reinstatement" was fulfilled by restoring the formal legal relationship between the school and the pupil or by restoring the formal resumption of responsibility of the school for the education of the pupil. Other cases were referred to by both Counsels on this aspect of the case, including the cases on whether the employer was obliged to find work for the employee. Counsel for the defendant referred to the cases of *Turner –v- Sawdon & Co.* [1901] 2 KB 653 and *Colliar –v- Sunday Referee Publishing Company Limited* [1940] 2KB 647. Those cases, however, are not relevant for our present purposes in this case, in the face of an order of the Court to reinstate the Claimant.

I need only refer to another recent case on this issue. In the case of *Blackadder v Ramsey Butchering Services Pty Ltd* [2005] H.C.A. 22 (27 April 2005). The issue before the High Court of Australia was whether a reinstatement order requires an employer to provide an employee with work or simply with the wages earned by a person in the position of the employee. At the hearing before the Australian Industrial Relation Commission (AIRC) the employer was ordered to reinstate the employee to the position in which

he was employed prior to the termination of his employment. The case then went to the Federal Court of Australia (single Judge) where the court reiterated that *reinstatement* involved a return of the employee to actually performing the work in the position he held prior to termination. On appeal by the employer to the Full Court of the Federal Court of Australia, the Court by majority (2-1), held that the employer has no obligation to find work for the employee unless the contract of employment said so. On Appeal by Blackadder (employee) to the High Court of Australia, all five (5) Judges decided that "*reinstatement*" means reinstatement to the previous employment position, by providing the worker with actual duties of that position. That case clearly spells out three matters which "reinstatement" order entails, namely, first, reinstatement means putting the worker back in his or her former position at the same place and with the same duties, remuneration and working conditions as existed before the termination; second, paying wages to the dismissed employee is not enough – the employer must provide work; and third, it is not permitted to impose conditions on the reinstatement. That case also makes it clear that an order of reinstatement go beyond the common law position.

To return to the present cases, the order of the Court is to reinstate the Claimant with her full employment entitlements and benefits with effect from 27 February 2007. That can only mean reinstating the Claimant to her job, which she previously held before termination, with her full employment entitlements and benefits. Nothing can be clearer than that. What the defendant did in this case was in effect saying that, "we will reinstate the Claimant but we will put her on *special paid leave* so that she will not enter her place of work." That cannot be reinstatement within the meaning of that word. In fact in this case, the defendant did not reinstate the claimant to her previous job with same duties, remuneration and working conditions as existed before her termination. The defendant decided on its own that putting her on special paid leave would be the answer to the Court order. Viewed in another way, the defendant is in effect now placing its own terms and conditions for the implementation of the Order of the Court. Those actions, taken by the defendant are clearly in contravention of the Order of the Court made on 5 April 2007.

Should Committal Order be Issued.

Having found that the defendant had breached the Order of the Court as pronounced on 5 April 2007, the next question must be whether the officer concerned, Mr. Dean Boyce ought to be committed for contempt of Court.

It is well-established that punishment for contempt is only imposed where the order contravened is clear and unambiguous: *Redwing Ltd v Redwing Forest Products Ltd* (1947) 177 LT 387; *Iberian Trust Ltd v Founders Trust and Investment Co Ltd* [1932] 2 KB 87. This is to ensure fairness to the defendant and to avoid punishment where the order fails to make it sufficiently clear what must or must not be done in order to avoid its contravention. This is particularly so where the order is in mandatory terms: *Wood Investment Limited v Wong Kam Yin (*8 December 2005) Court of Final Appeal of Hong Kong Special Administrative Region, Appeal No. 3 of 2005.

There can be no doubt that the order of the Court in this case is sufficiently clear as to what the defendant was ordered to do. It must *reinstate* the claimant to her previous job with her full employment entitlements and benefits. The defendant did not do that. Instead, the defendant put the

claimant on special paid leave. The defendant sought to justify its actions also by relying on the comments by the court wherein it said:

> "The defendant company is a large operation and I have no doubt the management would come to some practical arrangements to ensure that the interim order of the Court is complied with."

The practical arrangements there mentioned were to ensure that the claimant be reinstated to her job, not to put her on special paid leave. Placing her on *special paid leave* was not, and can never be an act of reinstatement. It was an act done in contravention of the order of the court.

Then there is the argument advanced by Mr Marshalleck, namely that the Rules require that time must be specified for the defendant to do the act ordered to be done and that only after the time has lapsed without complying with the order can the defendant be found to be in contempt. Counsel relied on Rule 53.5 of the CPR. While I accept that the Rules do provide for time to be specified in the order, which requires an act to be done, I cannot accede to the suggestion that the court is required in all cases to specify time for

doing an act before contempt can be grounded. The Court must retain the power to exercise its power to protect its order in clear cases of disobedience without having to wait for any time lapses before doing so. In any case, Rules 42.8 and 42.9 provide that the judgment or order of the Court takes effect immediately and must be complied with immediately, unless the court specifies different time for it to take effect.

In the present case, even accepting the defendant's argument that time was required to be specified before the defendant could be held in contempt, the defendant itself had proceeded without delay, in fact within an hour of the court handing down its decision, to contravene the order even before any attempts to put a date on the implementation of the order. It would make no sense to insist on the claimant fulfilling the time requirement in such situation.

This now leads me to what I would call a saving plea for the defendant's action in this case. Mr Marshalleck submitted that in the event the Court finds against the defendant, it should take into consideration that the

defendant took the action it did on legal advice. Hence the defendant or its officer should not be held in contempt for acting on legal advice.

The law is that acting genuinely based on legal advice is no answer to contempt of court proceedings. However, *bona fide* reliance on legal advice, though the advice may turn out to be erroneous, is very relevant to mitigation of the contempt. See *Re Tyre Manufacturers' Agreement* [1966] 2 All E R 849, at 862.

I have no doubt that the defendant has had the benefit of professional advice throughout this case from its attorneys. Regrettably the defendant had been given legal advice which in the opinion of the Court is misconceived as to the implementation of the order of the Court. That of course is no answer to the contempt, which I find, established in this case.

As in *Re Tyre Manufacturers Agreement*, the defendant in this case acted on the strength of legal advice, *albeit* in breach of the Court order. It is only this aspect of the defendant's case that spares its officer from the order

which the claimant seeks from the court. Again in *Re Tyre Manufacturers Agreement*, the defendants were held to be in contempt but due to the mitigating factor of *bona fide* acting on legal advice, they were spared of a committal order. However they were fined £10,000.00. In this case, I feel a financial sanction can also be appropriately imposed against the defendant, in addition to other orders which the court will make. In my view a fine of $5,000.00 would be appropriate in this case.

This Court retains its power to ensure that its order is effectively enforced. This being the case, I order that pursuant to Rule 53.2 (2) of the CPR, the order of the Court made on 5 April 2007 and formalized in the order drawn up on 18 April 2007 to *reinstate* the claimant to her previous job be complied with by 8 o'clock tomorrow morning (Thursday 14 June 2007), failing which the claimant is at liberty to return to this court to apply to commit the defendant or its officer to prison.

These proceedings were brought about by the actions of the defendant and as such it must pay the costs of these proceedings.

Order of the Court:

1. The defendant is found to be in contempt of court.
2. The defendant is to pay a fine $5,000.00 to be paid by 2.00 pm today.
3. The defendant must comply with the order of the court to reinstate the claimant to her previous job by 8 o'clock tomorrow morning, Thursday 14 June 2007.
4. The claimant is at liberty to apply to commit the defendant or its officers if the order in paragraph 3 hereof is not complied with.
5. Costs of this application to be paid by the defendant in the sum of $8,000.00 by noon tomorrow 14 June 2007.

[Note: The effecting of the order in paragraph 2 above is suspended until I further hear both Counsel on Wednesday 20/6/07]

Hon Justice Sir John Muria

Before Muria J (In Chambers)

Wednesday, 20 June 2007

Present: Ms Lois Young for Claimant

Mr. A. Marshalleck for Defendant

COURT: At the last hearing, we agreed to deal with Paragraph 2 of the Order of the Court, re $5,000.00 time.

MS. LOIS YOUNG: I have sent in my submissions in writing on the aspect of whether the Court has power to impose a fine on a contemnor.

Mr. Marshalleck and I both agree that the Court has power to impose a fine as it did in this case.

MR. MRSHALLECK: I have also sent in my written submissions. I confirm that we both agree that the Court has power to impose a fine in contempt cases.

COURT: The Court has power to impose a fine in contempt cases. Although the Rules are not specific on this point, the *Supreme Court of Judicature Act* (Cap. 91) says so (See sections 102-106). Section 105, in particular provides that the Court shall have the same powers regarding punishments for all contempts, as those possessed by the High Court of Justice in England and to follow the practice and procedure of that Court as nearly as possible in dealing with the contempt.

This being the case and having now heard Counsel for both parties, I order that paragraph 2 of the Order of the Court made on 13 June 2007 be effected by noon tomorrow, Thursday, 21 June 2007.

Hon Justice Sir John Muria

20 June 2007