

**COMMONWEALTH OF THE BAHAMAS**

**2011/CLE/gen/00452**

**IN THE SUPREME COURT**

**Commercial Division**

**BETWEEN**

**IN THE MATTER** of a contract dated 15<sup>th</sup> day of July, A.D. 2010 and made between Colin Degregory and Annamaria Degregory for the sale and purchase of a Lot of Land comprising approximately nine- tenths (0.9) of an acre situate on Dawkins Street, in the Settlement of Stafford Creek, on the Island of Andros.

**COLIN FRANCIS DEGREGORY  
ANNAMARIA CLARA DEGREGORY**

**Judgment Creditors**

**AND**

**PRESCOTT SMITH**

**Judgment Debtor**

**Before: The Hon. Madam Justice G. Diane Stewart**

**Appearances: Mr. Branville McCartney with Ms. Syann Thompson for the  
Judgment Creditors  
Mr. Keod Smith for the Judgment Debtor**

**Judgment Date: 14<sup>th</sup> April, 2023**

**RULING**

**BACKGROUND FACTS**

1. This action was originally commenced by Originating Summons filed 8<sup>th</sup> April 2011, by the Plaintiffs and now Judgment Creditors, Colin F. Degregory and Annamaria C. Degregory against the Defendant and Judgment Debtor, Prescott Smith,

pursuant to section 4(1) of The Conveyancing and Law of Property Act. The Plaintiffs claimed the following relief:-

- i. A Declaration that the Defendant has been unable to provide a good and marketable title to the property known as a lot of land comprising approximately nine-tenths (0.9) of an acre situate on Dawkins Street, in the Settlement of Stafford Creek, on the Island of Andros pursuant to the terms of the agreement in writing dated 15<sup>th</sup> July 2019.
  - ii. A Declaration that the Plaintiffs are entitled to the said deposit \$7,850.00 paid to the Defendant's Attorney as stakeholder of the Defendant on the 13<sup>th</sup> May 2010.
  - iii. The return of the deposit of the sum \$7,850.00 by the Defendant.
  - iv. The repudiation of the sales agreement.
  - v. Damages against the Defendant for breach of the said agreement.
  - vi. Interest on the said deposit and/or damages against the Defendant pursuant to the Civil Procedure (Award of Interest) 1992 Act.
2. By virtue of a Sales Agreement made in writing between the Plaintiffs and the Defendant on or about 15<sup>th</sup> July 2010, the Defendant purported to sell a parcel of land situate in Stafford Creek Andros to the Plaintiffs as the Purchasers for \$157,000.00. The Plaintiffs paid to the Defendant's attorney the deposit price of \$7,850.00.
  3. The Plaintiff's attorneys, on several occasions, wrote to the Defendant's attorneys raising requisitions regarding the Defendant's title to the property. In every instance, the Defendant and/or his attorney failed to and/or refused to provide the requested title documents relative to the property described in the Agreement for Sale.
  4. On 2<sup>nd</sup> October 2010, the Defendant's attorney served the Plaintiff's attorneys with a perfected Deed of Conveyance which purported to complete the sale. The Defendant's having failing to provide a good and marketable title, the Plaintiffs refused to take any steps towards completion of the Agreement for Sale and requested a return of the paid deposit. The Defendant and/or his attorney withheld the funds.
  5. As a result, the Plaintiffs brought an action against the Defendant and later his attorney, Ian Jupp & Co., who was added to the proceedings. On 14<sup>th</sup> November 2013, Justice Milton Evans ordered that the Defendant's attorney return the deposit sum of \$7,850.00 to the Plaintiff's and cost of the proceedings to be paid by the Judgment Debtor.
  6. Throughout the course of the proceedings, the Plaintiffs' had made several attempts to effect service of various pleadings on the Defendant. The Plaintiffs believed that the Defendant had made all efforts to evade service. On 28<sup>th</sup> October 2011, the Judgment Creditors filed an Ex- Parte Summons pursuant to Order 61 Rule 4 of the Rules of the Supreme Court seeking leave to effect service on the

Judgment Debtor by advertising the Originating Summons in the Nassau Guardian News Paper which was duly granted.

### **PROCEDURAL HISTORY**

7. A Certificate of Taxation was granted on 6<sup>th</sup> October 2015 to the Plaintiffs certifying their costs awarded by order of Evans J in the sum of \$32,230.00. The Defendant failed to pay the costs owed to the Plaintiff.
8. The Judgment Creditors filed an application for leave to commit the Judgment Debtor for his contempt of the Court by failing to comply with the Order to pay costs of and occasioned by these proceedings.
9. By Order dated 24<sup>th</sup> February 2020, Justice Stewart ordered that the Judgement Creditors have leave to commence Committal Proceedings against the Judgment Debtor for his contempt of Court in failing to comply with an Order of the Court and failing to pay the costs certified by the Certification of Taxation.
10. By order made on the 4<sup>th</sup> February 2021 an order for committal ("**Committal Order**") was granted to the Judgment Creditors. The Judgment Debtor did not appear.
11. On 4<sup>th</sup> February 2021, a Warrant for Committal was also issued to the Provost Marshal to have the Judgment Debtor committed to prison for a period of 14 days and which committal was to be suspended for 30 days to enable the said Judgment Debtor to pay the said \$32,230.00 to purge his contempt. It was further Ordered that the Judgment Debtor pay the Judgment Creditors their costs of and incidental to the motion.
12. The Warrant was not executed until the 21<sup>st</sup> September 2021 when the Judgment Debtor was arrested in Andros and brought to Nassau. He spent the night at the Central Police Station and taken to the Department of Corrections the following day.
13. The Judgment Debtor filed a Notice of Motion for issue of a Writ of Habeas Corpus Ad Subjiciendum on 23<sup>rd</sup> September 2021 for his release from prison and for an order that he be brought before the Courts.
14. On 26<sup>th</sup> September 2021, Justice Loren Klein, acting in his capacity as duty Judge found that the Judgment Debtor was in fact never served with the Committal Order until his arrest, and as such exercised his discretion to vary the Committal Order by suspending it for a further period of 30 days to enable the said Judgment Debtor to comply with its terms. The practical consequence was to give effect to the initial 30- day suspension contemplated by the Order. The Committal Order continued in effect subject only to extend the suspension period, running from the date of Justice Loren Klein's Order. At the end of that period, if the Judgment Debtor had

still failed to comply with the Order, or to exercise any other legal rights that may be available to him, the Committal Order was to be reactivated and the Judgment Creditors could take necessary steps to have the same enforced.

15. By Release Order of Justice Loren Klein, made 24<sup>th</sup> September 2021, The Judgment Debtor was ordered released from prison.
16. The Judgment Creditors filed a Notice of Motion on 30<sup>th</sup> September 2021 to have the Order made 26<sup>th</sup> September 2021 stayed and/ or varied and that the Warrant for Committal be restored and the Judgment Debtor be condemned to prison until he had purged his contempt of Court.
17. The Judgment Debtor filed a Notice of Motion on the 6<sup>th</sup> October 2021 seeking inter alia leave to appeal the Committal Order and a stay of the action pending the appeal.
18. The Court granted the Judgment Debtor a stay for 14 days to enable the applicant to make an application to the Court of Appeal for an extension of time to appeal the committal order. If the leave was granted and the appeal was filed the stay was to remain in place.
19. The balance of the Judgment Debtor's Notice of Motion was dismissed.
20. On the 16<sup>th</sup> March, 2022 the Court of Appeal issued a Certificate certifying that the Appellant / Judgment Debtor had withdrawn his appeal, and his appeal was accordingly dismissed.
21. The Judgment Debtor filed an Amended Notice of Motion (Judgment Debtor's Liberty to Apply) on 8<sup>th</sup> August 2022 seeking an Order:-
  - i. Dismissing the Committal Order
  - ii. Declaring that there is not yet any entered Order by which this Court made a finding of Contempt of Court against the Judgment Debtor in pursuance of Notice of Motion dated 26<sup>th</sup> February 2020 and filed on 27<sup>th</sup> February 2020
  - iii. Setting aside the Committal Order of 4<sup>th</sup> February 2021 and filed on 9<sup>th</sup> February 2021
  - iv. Declaring that the corresponding Warrant of Committal dated 9<sup>th</sup> February 2021 and filed on 16<sup>th</sup> February 2021, ought not to have been executed on the Judgment Debtor
  - v. Declaring that the Court's committal jurisdiction as provided for under Order 52 of the Rules of The Supreme Court was not yet properly invoked in accordance with its provisions particularly the mandatory requirements of the Judgment Creditor
  - vi. Declaring that the Court had not yet invoked its jurisdiction to commence committal proceedings against the Judgment Debtor as

- there was no regard to the statutory restrictions as provide for under Sections 3 and 4 of the Debtor's Act 1870; and
- vii. Requiring the Judgment creditor to pay all costs of and occasioned by this action

22. The issue to be determined is whether the Judgment Debtor is able to challenge the Committal Order made under a liberty to apply provision in the Order or otherwise.
23. It is accepted that the Committal Order was made in the absence of the Judgment Debtor, but affidavits of service were filed averring that he had been served with notice of the hearing.
24. The Judgment Creditor seek to reinstate the Committal Order on the ground that the Judgment Debtor withdrew his appeal.

## **SUBMISSIONS**

### **JUDGMENT DEBTOR**

25. The Judgment Debtor maintained that he was not served with the Leave Order or the Committal Order and related documents after –they had been made. He only was served with the Committal Order at the time of his arrest. He also submitted that he was never served with the Notice of Motion for the application to commit him.
26. He was arrested based on an unsealed warrant some seven months after the Committal Order had been made.
27. No evidence was produced to prove that he had been served with the Certificate of Taxation and the Taxation documents or of an order perfecting the Certificate.
28. The Judgment Debtor submitted that the court was mistakenly led to believe that the Judgment Debtor had been served with Notice of the hearings when in fact he was not.
29. As a result, the Judgment Debtor was not able to exercise his constitutional right to be heard on the liberty to apply provision. The Judgment Debtor could not advance the position that the Judgment Creditors were required to prove that he had the means to pay the money and refuses to do so.
30. The liberty to apply provision formed a part of the inherent jurisdiction of the court. He relies on **Cristel v Cristel** where Somervell LJ stated:

**“Prima facie, Liberty to apply is expressed, and if not expressed will be implied where the order drawn up is one which requires working out, and the working out involves matters on which it may be necessary to obtain the**

**decision of the court. Prima facie, certainly, it does not entitle people to come and ask that the order itself shall be varied”**

Further LJ Denning stated:-

**“I agree. If there were an unforeseen change of circumstances... I should have thought that the “Liberty to apply” would enable the court to remedy the position. Abbot v Abbot would appear to be sufficient authority for that. But where there is no change of circumstances, I do not think that the Court can alter or vary the agreement of the parties under the “Liberty to apply””**

31. He submitted that the liberty to apply in the Committal Order was inserted by the court to afford the absent Judgment Debtor the opportunity to challenge the Committal Order.

32. When addressing whether an order for committal, made in open court in the absence of the person being committed, when there is evidence of service, constitutes an ex parte order, the Judgment Debtor stated that there was no evidence that the Notice of Motion was served on him. The only evidence provided was the evidence of the service of the Notice of Adjourned Hearing and not the Notice of Motion itself.

33. The Rules expressly require that the Notice of Motion must be served on the Judgment Debtor and as it was not served, the leave would have lapsed unless the court expressly dispensed with the requirement for personal service.

34. As there was no notice to the other party, and the hearing was held outside of their presence, it was an ex parte hearing.

35. Ex parte hearings will only be allowed where a party seeks relief that is urgent and where there is not enough time to inform the other party or in cases where to inform the other party would lead to severe prejudice.

36. As the liberty of the subject is affected by this application, there must be strict compliance with the provisions of Order 52 of the Rules of the Supreme Court.

37. There was no evidence that the Judgment Creditor had caused the Judgment Debtor to be examined as to his means.

38. The Notice of Motion is required to have a penal notice endorsed on it so that when personally served, the party would know that if he did not show up, he nevertheless could go to prison.

39. The Judgment Debtor was imprisoned for 6 ½ days before he was released.

40. The court therefore had the power to set aside the Committal Order pursuant to Order 32 Rule 6 as the same was an ex parte order.

41. The Judgment Debtor relied on WEA Records Ltd. v Visions Channel [1983] 2 AER 589 in support of this submission where Donaldson LJ stated:-

**“there is no doubt that the High Court has power to review and to discharge or vary any order which has been made ex parte. This jurisdiction is inherent in the provisional nature of any order made ex parte and is reflected in RSC Ord 32, r. 6. Whilst on the subject of jurisdiction, it should also be said that there is no power enabling a judge of the High Court to adjourn a dispute to the Court of Appeal which, in effect, is what Peter Gibson J seems to have done. The Court of Appeal hears appeals from orders and judgments. Apart from the jurisdiction (under RSC Ord 59, r 14(3) to entertain a renewed ex parte application, it does not hear original applications save to the extent that they are ancillary to an appeal.**

**As is have said, ex parte orders are essentially provisional in nature. They are made by the judge on the basis of evidence and submissions emanating from one side only. Despite the fact that the applicant is under a duty to make full disclosure of all relevant information in his possession, whether or not it assists his application, this is no basis for making a definitive order and every judge knows this. He expects at a later stage to be given an opportunity to review his provisional order in the light of evidence and argument adduced by the other side, and, in so doing, he is not hearing an appeal from himself and in no way feels inhibited from discharging or varying his original order.”**

### **JUDGMENT CREDITORS**

42. The Judgment Creditors submit that liberty to apply is a legal device which normally accompanies the main provisions of an order or judgment.

43. There are two arms of this provision. They are firstly to assist counsel whether to appeal an order and to secondly apply to the court for further orders or directions if the decision is unworkable without the court's assistance.

44. The Judgment Creditors submit that the Judgment Debtor consistently evaded service as evident throughout the action.

45. The Notice of Adjourned Hearing was sufficient notice as the Judgment Debtor had been willfully evading service.

46. The Judgment Debtor was served with the Certificate of Taxation which confirmed the amount of the costs ordered in their favour and which gave him notice of the Judgment Creditors' right to receive their costs. The Certificate had a penal notice endorsed thereon.

47. Committal orders have been and are when necessary made ex parte. They are made when persons show utter contempt for the process of the court.

48. Contempt proceedings must be distinguished for when someone is incapable of paying a debt. It is involved where there is continuous contempt toward orders of the

court.

49. They submit that the Warrant for Committal be reinstated.

### **DECISION**

50. It has been well established that the Court's jurisdiction in contempt proceedings arises from its inherent jurisdiction to enforce its own orders. Proceedings of this nature arise where there has been a civil disobedience of a party who has been ordered by the court to do or refrain from doing an act. In this case, there was an order made that the Judgment Debtor pay the costs of the action to the Judgment Creditors. The costs were taxed and certified in the amount of \$32,230.00.

51. Counsel for both the Judgment Creditors and the Judgment Debtor have referred to the **Rules of The Supreme Court (RSC) Order 52 Rule 3** which provides:-

**“(1) When leave has been granted under rule 2 to apply for an order of committal, the application for the order must be made by motion to the Supreme Court and, unless the Court or judge granting leave has otherwise directed, there must be at least 8 clear days between the service of the notice of motion and the day named therein for the hearing.**

**(2) Unless within 14 days after such leave was granted the motion is entered for hearing the leave shall lapse.**

**(3) Subject to paragraph (4), the notice of motion, accompanied by a copy of the statement and affidavit in support of the application for leave under rule 2, must be served personally on the person sought to be committed.**

**(4) Without prejudice to the powers of the Court or judge under Order 65, rule 4, the judge may dispense with service of the notice of motion under this rule if he thinks it just to do so.”**

52. Further **Order 52 Rule 4**, states that:-

**“Nothing in the foregoing provisions of this Order shall be taken as affecting the power of the Supreme Court to make an order of committal of its own motion against a person guilty of contempt of court.”**

53. By this provision, the inherent jurisdiction of the court to control and protect its process and powers is emphasized.

54. The Court has the power to commit a party who has been guilty of contempt of a Court order. The finding of contempt in these committal proceedings is based on the fact that the Judgment Debtor had failed to pay the costs ordered and certified by the Certificate of Taxation.

55. While Counsel for the Judgment Debtor has raised several objections to the Committal Order and Warrant for Committal made against the Judgment Debtor,



one point which was specifically highlighted by Counsel was the Judgment Creditors' failure to effect proper service of the Order for Committal and Warrant for Committal on the Judgment Creditor.

56. On the 24<sup>th</sup> February 2020 the court granted the Judgment Creditors leave to commence committal proceedings against the Judgment Debtor for his failing to comply with the order made 14<sup>th</sup> November 2013.
57. The order made on the 14<sup>th</sup> November 2013 was that the Judgment Creditors recover their costs against the Judgment Debtor.
58. The Judgment Creditors had their costs taxed and a Certificate was issued on the 6<sup>th</sup> October 2015 certifying that their costs were \$32,230.00.
59. After the leave to commit was granted, a Notice of Motion was filed on 27<sup>th</sup> February, 2020 which was eventually heard on the 4<sup>th</sup> February 2021 and an order of committal was made in the absence of the Judgment Debtor which was suspended for 30 days to enable the Judgment Debtor to pay the sum owed and the costs of the committal proceedings.
60. The Judgment Debtor was only served with the Committal Order when he was arrested on the 21<sup>st</sup> September 2021.
61. It was ordered by Justice Klein on the 30<sup>th</sup> September 2021 that the Order of Committal be suspended for a further 30 days from the date of his Order to enable the Judgment Debtor to pay the said sum in addition to costs in the Order of Committal. It was further ordered that the Warrant for Committal be cancelled and the Judgment Debtor be released from the Department of Corrections in respect of his committal.
62. The sums owed still have not been paid by the Judgment Debtor.
63. The Order of Justice Klein included a liberty to apply provision for the Judgment Debtor. The Judgment Debtor exercised his liberty to apply by filing a Notice of Motion on 6<sup>th</sup> October 2021, seeking leave of the Court to have his appeal heard before the Court of Appeal and to seek a stay of the Committal Order. The Judgment Debtor was granted a further 30 day extension to appeal to the Court of Appeal and a stay once the appeal was filed, but he later withdrew his appeal.
64. The Judgment Creditors submit that the Judgment Debtor has now exhausted his liberty to apply provision in the Orders handed down by both this court and Justice Klein.
65. The Judgment Creditors filed their Notice of Motion on 30<sup>th</sup> September 2021 seeking that the Order of Justice Klein be stayed and/or varied and that the warrant

for committal be restored and the Judgment Debtor be committed to the Department of Corrections until he had purged his contempt.

66. Having reviewed all of the evidence, I accept and find that there was a lack of proper service of the Committal Order and Warrant for Committal prior to the Judgment Debtor's arrest. Lack of proper service meant that the Judgment Debtor was not afforded the 30 day suspension as ordered. The Warrant as a result was wrongly executed and was properly cancelled by Justice Klein.
67. The question to be addressed in these proceedings, is whether an Order for Committal made in open Court in the absence of the person being committed when there was evidence of service of the hearing constitutes an Ex- parte Order. There is no appeal of the order and accordingly the court can only address the Committal Order if there is some rule or law which allows this court to reopen the hearing.
68. I also accept that there is no evidence that the actual Notice of Motion was served on the Judgment Debtor although the Notice of Adjourned Hearing of the Notice was served on him.
69. The Court must determine whether or not the Judgment Creditors' failure to serve the Notice of Motion for Committal on the Judgment Debtor invoked the Court's jurisdiction to vary, strike out or release the application for Committal and Warrant for Committal as the same would have constituted an ex parte order.
70. The statutory framework governing committal proceedings in civil litigation is set out in **Order 52** of the Rules of the Supreme Court. Committal Proceedings are a two stage process.
71. Order **52 Rule 2(2)** provides:-  
“(1) **No application to the Supreme Court for an order of committal against any person may be made unless leave to make such an application has been granted in accordance with this rule.**  
  
**(2) An application for such leave must be made ex parte to the Supreme Court, and must be supported by a statement setting out the name and description of the applicant, the name, description and address of the person sought to be committed and the grounds on which his committal is sought, and by an affidavit, to be filed before the application is made, verifying the facts relied on.”**
72. The first stage of the committal proceedings is the leave stage and it is an ex parte process. Normally, a proposed contemnor will not be heard at the ex-parte stage. However, the court hearing the application has a discretion to determine whether the application is heard ex parte or inter partes. (**Chuan Huat Hin v Yap Chee Seng [1996] 1 MLJ 141**).

73. The second stage of the proceedings, is the hearing of the Notice of Motion to obtain an order for committal. By virtue of Order 52 Rule 3(3) the Notice of Motion and accompanying documents must be served personally unless an order is made for the dispensing of service of the Notice of Motion. No application to dispense with service was made in this matter.

74. The issue then is what is the effect of the hearing of the notice in the absence of the Judgment Debtor having been personally served? I am satisfied that the order was made ex parte.

75. In Sheila Narine v The Representative of the Estate of the Late Terry Fernander (2016) CLE/gen/0607, Justice Charles opined that:-

**“[36] Failure to comply with the proper procedure, such as personal service, is not necessarily fatal to the lawfulness of a contempt order. The court has complete discretion to perfect an invalid Committal Order in a contempt case, but the power should only be used in exceptional cases and should be dictated by the need to do justice having regard to the interests of the contemnor, the victim of the contempt and other court users. Where the contemnor has not suffered any injustice by the failure to follow the proper procedures (such as service) the Committal Order could stand subject to variation to take account of any technical or procedural defects.**

**[37] An alleged contemnor is entitled to know, before the hearing of the committal application, of what he is accused and the supporting evidence. Thus, where he had not been served with the notice of motion to commit him, and did not know until the day of the hearing (save indirectly) what was alleged against him, the judge erred in refusing an adjournment for service of the relevant documents. Even where an alleged contemnor is legally represented, he must nevertheless be given the opportunity to mitigate the proposed penalty, where the judge has the intention of imposing a term of imprisonment: Taylor v Persico (1992) The Times, February 12, CA”**

In that case, the objection was taken at the actual hearing of the motion to commit.

76. In this case, the court order has already been made. It was made without service of the Notice of Motion. No appeal of the order was pursued. I adopt the findings of Justice Charles however that: -

**“Since committal orders affect the liberty of subject, such rules that exist in relation to them must be strictly obeyed. However, disobedient the party against whom the order is directed may be, unless the process of committal has been carried out strictly in accordance with the rules, that party is entitled to his freedom.”**

77. According to Halsbury Laws, it is stated:-

**“The circumstances or the nature of a judgment or order often render necessary subsequent applications to the court for assistance in working out the rights declared. All orders of the court carry with them inherent liberty to apply to the court, and there is no need to reserve**

expressly such liberty in the case of orders which are not final. Where in the case of a final judgment the necessity for subsequent application is foreseen, it is usual to insert in the judgment words expressly reserving liberty to any party to apply to the court as he may be advised. The judgment is not thereby rendered any the less final; the only effect of the declaration is to permit persons having an interest under the judgment to apply to the court touching their interest in a summary way without again setting the case down. It does not enable the court to deal with matters which do not arise in the course of working out the judgment, or to vary the terms of the order except possibly on proof of change of circumstances should the declaration be omitted, application may be made to have the judgment rectified by inserting it. It will not, however, be made or implied in favour of a defendant as against whom the claim has been dismissed for any other purpose than for enforcing the terms of the order, nor in favour of a claimant whose cause of action disappeared before trial but who fears that the circumstances giving rise to the cause of action may recur.”

78. Even if the Judgment Debtor was served with the Notice of Adjourned Hearing, he was not served with the Notice of Motion which was a mandatory requirement unless leave was obtained to dispense with it which was not obtained. Upon a review of the Notice of Adjourned Hearing I am satisfied that it did not make mention of the Notice of Motion or the purpose of the hearing.
79. The Judgment Debtor has suffered an injustice due to the failure to serve him with the requisite notice.
80. The Judgment Debtor was also not served with the Committal Order as required under the rules.
81. By virtue of Order 52 Rule 7 (2) the Supreme Court is empowered to discharge any person committed for contempt This provision states:-

**“(2) Where a person has been committed for failing to comply with a judgment or order requiring him to deliver anything to some other person or to deposit it in court or elsewhere, and a writ of sequestration has also been issued to enforce that judgment or order, then, if the thing is in the custody or power of the person committed, the commissioners appointed by the writ of sequestration may take possession of it as if it were the property of that person and, without prejudice to the generality of paragraph (1), the Court may discharge the person committed and may give such directions for dealing with the thing taken by the commissioners as it thinks fit.”**

82. Order 32 Rule 6 also expressly provides that the Court may set aside an order made ex parte.

83. Having considered all of the evidence and the submissions of the parties, I am satisfied that the Committal Order made was in effect an ex parte order and the court may set it aside. Further I am satisfied that by Order 52 Rule 7 the court is empowered to discharge the order made on the 4<sup>th</sup> February, 2001. The general liberty to apply provision does not apply in this instance as the Rules of the Supreme Court specifically empower the court to review the order made in an ex parte hearing. I refer to the finding of Donaldson LJ in WEA Records referred to above.
84. I hereby order that the Committal Order is set aside pursuant to Order 32 Rule 6.
85. The Judgment Debtor is awarded his costs of this application to be taxed if not agreed.

**Dated this 14<sup>th</sup> day of April, 2023**



**The Hon. Madam Justice G. Diane Stewart**