IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

COMMON LAW AND EQUITY DIVISION

Claim No. 2024/CLE/GEN/00729

IN THE MATTER OF the Contempt of Court of Philip Arlington Mitchell and Brenda Mae Mitchell,

AND IN THE MATTER OF Part 51 of the Supreme Court Civil Procedure Rules 2022

BETWEEN

THE ATTORNEY-GENERAL

Claimant

AND

PHILIP MITCHELL

1st Defendant

AND

BRENDA MAE MITCHELL

2nd Defendant

Before: The Honorable Madam Justice Carla D. Card-Stubbs

Appearances: Mrs. Kayla Green-Smith, Ms. Nyanne Olander, Ms. Adele Mangra and Mr. Nevado Frazer of Counsel for the Claimant

No appearance by the Defendants

Hearing dates: October 9, 2024, October 11, 2024 and December 6, 2024

Proceedings in Civil Contempt- Part 51 Supreme Court Civil Procedure Rules, 2022, as amended ('CPR 2022') – Application to commit Defendants for breach of court order – Civil Contempt - Nature and purpose of contempt proceedings -Applicant to prove that Defendants were aware of the court's orders and its terms and that the Defendants breached the order- Appropriate sanction for contempt – Factors to be taken into account by the court.

The Applicant brought an application to have the Defendants committed for breach of a court order which restrained

them from harassing, threatening, pestering or molesting, inter alia, the judges that had presided over their court case and the counsel that represented the other party. The Defendants wrote that they had no intention of abiding by any court order and proceeded to make accusations against several persons, including the presiding judges and counsel. Held: The Defendants were guilty of breach of the court order. The court found that the Defendants were guilty of contempt and that custodial sentences were warranted.

Dictum: It is important for the rule of law that a court has the power to enforce compliance with its orders. Activities aimed at thwarting compliance, if allowed to go unchecked, can have the effect of undermining the administration of justice. It is a contempt to disobey a court order. The law of civil contempt serves to deal with persons intent on breaking the law by disobedience to court orders and who, by such course of action, impede and obstruct the course of justice. Such acts carry with them the risk of undermining confidence in the justice system. It is in the public interest that law breakers be dealt with decisively as a protection for other members of the public who expect and require fair adjudications by impartial tribunals with enforceable results.

RULING

CARD-STUBBS J.

INTRODUCTION

[1.] On October 11, 2024, and again on December 6, 2024 this court delivered its oral rulings on the Claimant's application for an Order of Committal seeking to commit the Defendants to prison for contempt of court. The court conducted the hearing of the application in two parts.

[2.] In this ruling, "the Claimant" will also be referred to as "the Applicant". As far as it concerns this case, the terms will be used interchangeably.

[3.] On October 11, 2024, this court found that both the First Defendant and the Second Defendant were guilty of contempt. The Court set another date to consider the matter of sentencing and to give the Defendants an opportunity to appear, to make representations thereon and to make any plea in mitigation before the court passed sentence on them. The Defendants were at liberty to appear and to show cause why they ought not to be committed.

[4.] The Defendants made no appearance.

[5.] On December 6, 2024, this Court sentenced the First Defendant to immediate imprisonment for a term of 2 years and the Second Defendant to immediate imprisonment for a term of 1 year.

[6.] This is the court's written reasons for its rulings.

BACKGROUND

[7.] By way of Originating Application filed on August 14, 2024, amended on August 15, 2024 and subsequently amended with leave of the Court and filed on October 7, 2024, the Claimant brought an action pursuant to Part 51.1(1) and Part 51.1(2) of the Supreme Court Civil Procedure Rules, 2022 ('CPR') and/or the inherent jurisdiction of the Court, for the following reliefs:

i. An order granting committal for contempt of Court against the Defendants,
ii. Service by email (on the Defendants),
iii. Permanent Injunction and
iv. Such further or other reliefs as this Honourable Court shall deem appropriate.

[8.] The Application stems from an allegation of breach of orders of this Court prohibiting the Defendants from carrying out certain acts.

[9.] The grounds of the application are stated as follows:

i. An order was made by the Court on the 11th July 2021 by Madam Justice G. Diane Stewart inter alia in the matter *Finance Corporation of Bahamas Limited v Phillip Arlington Mitchell and Brenda Mae Mitchell, 2009*.
ii. It was ordered that "An interim injunction is hereby granted restraining the First Defendant, whether by himself, his servants or agents or otherwise howsoever, from harassing, threatening, pestering or molesting: the Plaintiff, its affiliates, servants or agents; the Firm of Higgs & Johnson along with its Partners, Associates, servants or agents; or anyone affiliated with this action or who has presided over these matters until further Order;"
iii. Since the granting of this Order the Defendants have breached the Order made by the Court…

[10.] On August 14, 2024, the Claimant also filed a Certificate of Urgency. The Claimant filed a Notice of Application for an Interim Injunction on August 15, 2024. On August 16, 2024, this court made an interim order in the following terms:

AND UPON THE CLAIMANT UNDERTAKING:

(i) If the Court later finds that this Order has caused loss to the Defendants and decides that the Defendants should be compensated for that loss the Claimant undertakes to comply with any Order the Court may make so as to compensate the Defendants for any reasonable loss or damage which the Defendants may prove has resulted from the granting of this Order.

(ii) Anyone notified of this Order will be given a copy of it by the Claimant's attorneys.

PENAL NOTICE

If you, Phillip Mitchell and Brenda Mae Mitchell disobey this Order, you may be held to be in contempt of Court and liable to be imprisoned or fined.

Any other person who knows of this Order and does anything which helps or permits the Defendants to breach the terms of this Order, may also be held to be in contempt of Court and may be imprisoned, fined or have their assets seized.

NOTICE TO THE DEFENDANTS

1. You should read the terms of this Order very carefully and you are advised to consult an attorney as soon as possible.

2. You have the right to ask the Court to vary or discharge this Order.

3. If you disobey this Order you may be found guilty of contempt of Court or may be sent to prison or fined or your assets may be seized.

IT IS ORDERED THAT:

1. that an interim injunction be granted to restrain the Defendants and StandBahamas, whether by themselves, their servants or agents or otherwise howsoever, from harassing, threatening, pestering or molesting: Madam Justice Indra Charles and her family, Madam Justice G. Diane Stewart (retired) and her family, along with their affiliates, servants or agents until further Order;

2. that an interim injunction be granted to restrain the Defendants and StandBahamas, whether by themselves, their servants or agents or otherwise howsoever from: (i) publishing whether via the internet, e-mail, flyers, newspapers, signs, radio and television or by any other means howsoever; and/or (ii) causing or permitting to be published or communicated, defamatory remarks and/or untrue statements and/or statements that have yet to be determined as true by a Court of lawful jurisdiction, regarding the disputes which have arisen between the parties hereto with respect to the Action herein and in particular Madam Justice Indra Charles and her family, Madam Justice G. Diane Stewart (retired) and her family, along with their affiliates, servants or agents until further Order,

3. that an interim injunction be granted to restrain the Defendants and StandBahamas, whether by themselves, their servants or agents or otherwise howsoever from publishing, via the internet, e-mail, flyers, newspapers, signs, radio and television, or by any other means howsoever, materials, documents, photographs or other items belonging to, along with her affiliates, servants or agents whether or not protected by copyright, until further Order;

4. that an injunction be granted mandating that the Defendants and StandBahamas, whether by themselves, their servants or agents or otherwise, immediately remove any publication which they have made, or had made, relating to: Madam Justice Indra Charles and her family, Madam Justice G. Diane Stewart (retired) and her family, along with their affiliates, servants or agents and in particular the publication made on the social media site known as YouTube which was published on or about the 10th day of August, A.D., 2024;

5. that an interim injunction be granted mandating that the Defendants and StandBahamas, whether by themselves, their servants or agents or otherwise howsoever, immediately cease and desist from making any further publication, remove any publication which they have made, or had made, relating to: Madam Justice Indra Charles and her family, Madam Justice G. Diane Stewart (retired) and her family, along with their affiliates, servants or agents, which contains any defamatory remarks and/or untrue statements and/or statements that have yet to be determined as true by a Court of lawful jurisdiction until further Order;

6. that an interim injunction be granted restraining the Defendants and StandBahamas, whether by themselves, their servants or agents or otherwise howsoever, from seeking any personal information in relation to: remove any publication which they have made, or had made, relating to: Madam Justice Indra Charles and her family, Madam Justice G. Diane Stewart (retired) and her family, along with their affiliates, servants or agents, until further Order;

7. that provision be made for the usual undertakings; and

8. that provision be made for the costs of this application.

[11.] That interim order subsequently was extended by this Court pending the hearing of the substantial application.

[12.] On September 26, 2024, this court granted leave to the Claimant to serve the Defendants by email. This court was satisfied that attempts at personal service had failed. This court accepted the evidence of the Claimant that the Defendants had hitherto been communicating with named persons by email from the addresses specified in the order made. The evidence by Affidavit is that notice of this court's interim order issued on August16, 2024 had been sent to the relevant email addresses on August 19, 2024. On August 19, 2024 and again on August 20, 2024, further emails emanated from the Defendants, over the hand of the First Defendant, from one of the email addresses used for service.

[13.] On September 26, 2024, this court also made an order for this file to remain sealed. In similar vein, at the substantive hearing, the court heard the matter in person in private pursuant to Rule 51.4, CPR. This meant that only the parties to the matter and their legal representatives were to have access to the court proceedings.

[14.] The court heard the substantive application on October 9, 2024.

[15.] On the occasion of the hearing, the names of the First Defendant and Second Defendant were called in the court, and in the corridors of the court, as well as in the proximity of the court. There was no answer. This court is satisfied by affidavit evidence that the relevant documents and notice of the proceedings were served on the First and

Second Defendants by email. This court is also satisfied by affidavit evidence that both Defendants were served with the hearing date of October 9, 2024.

[16.] For the reason that the file is sealed and that the matter was heard in private, this ruling will not recount the factual evidence presented to it in detail but will make reference to those facts in general, and expressly only where necessary. Specifically, the several matters set out in the documents emanating from the Defendants will not be published in this ruling given this court's finding that the contents are scurrilous and unfounded.

[17.] This court accepted the evidence of the Claimant as contained in the following affidavits and orders:

i. The First Affidavit of Randolph Dames filed August 14, 2024
ii. The Second Affidavit of Randolph Dames filed August 27, 2024
iii. The Third Affidavit of Randolph Dames filed September 25, 2024
iv. Affidavit of Service filed October 8, 2024
v. Affidavit of Service filed October 10, 2024
vi. The Sixth Affidavit of Randolph Dames filed October 22, 2024
vii. The Order filed the 15th June 2021
viii. The Order filed the 20 July 2021

Summary of Facts

[18.] The facts presented by the Claimant/Applicant may be summarized as follows.

[19.] In 2009, the Finance Corporation Of The Bahamas Limited ('the bank') commenced suit against Phillip Arlington Mitchell and Brenda Mae Mitchell via suit number 2009/CLE/gen/01398 for breach of a mortgage agreement, secured by charge over the residence of the Defendants. As a result of the suit, a series of orders were made in favour of the bank. On April 15, 2014, a judge of this court made an order awarding judgment to the bank as well as an order for vacant possession should the Defendants fail to pay the judgment amount in the stipulated time. The Defendants appealed to the Court of Appeal. On March 21, 2021, the Court of Appeal dismissed the Defendants' appeal, with costs to the bank. The Defendants then sought leave to appeal to the Privy Council. The Privy Council refused the application. In the meantime, the Defendants had sought a stay of the judgment pending appeal. That stay was refused by yet another judge of this court, Justice Charles, who delivered that judgment on February19, 2021. The evidence laid out by the Applicant is that shortly thereafter the Defendants "began a smear campaign against the Court, the Bank and their attorneys".

[20.] As a result, yet another judge of this court, Justice Stewart, issued an interim order on June 15, 2021 to restrain the Defendants from continuing the acts complained of. Part of the terms of that order restrains:

> "…the First Defendants whether by himself, his servants or agents or otherwise howsoever, from "harassing, threatening, pestering or molesting: the Bank, its affiliates, servants or agents; the Firm of Higgs & Johnson along with its Partners, Associates, servants or agents;

or anyone affiliated with this action or who has presided over these matters until further Order".

[21.] That interim Injunction was directed at the First Defendant and "to parties other than …the First Defendant". It was made permanent by order of Justice Stewart on July 11, 2021 and perfected on July 20, 2021.

[22.] By emails dated August 3, 2024 and August 7, 2024, the Defendants sent email correspondence addressed to one of the judges that presided over the supreme court action, as well as to the law firm that had represented the bank. Attached to the email were an 8-page letter and a "33-page intended complaint to the Judicial and Legal Service Commission" The 8-page letter has consecutive captions. One reads, "Unethical & Criminal Complaints, Inter Alia". Another reads, "Intent to Publish".

[23.] In the 8-page letter, certain scandalous and spurious allegations were made against the judges that presided over the case and, indeed, the courts in general. In the 8 page letter, sitting judges as well as attorneys for the bank were accused of *"theft, corruption, misconduct, and ethical violations" and of stealing "by reason of service the sole marital dwelling home….property of Philip & Brenda Mitchell"…..*

[24.] The letter also reads,

"We no longer intend to honor any unlawfully obtained gag or restraining orders designed to suppress our constitutional rights and cover-up acts committed by your client RBC Finco, Charles JA et al. It is in the public interest to publish these matters, supported by primary evidence we will release on the publication date".

[25.] The Applicant's case is that the Defendants have breached the court orders of June 15, 2021 and July 11, 2021 and have evinced an intention to further breach the orders.

ISSUES

[26.] The questions for this court are:

1. whether the Applicant has proven a contempt of court by the named Defendants and
2. if so, whether the court should exercise its power to commit the Defendants.

LAW

[27.] The relevant rules are to be found in Part 51 CPR. That part provides:

PART 51 – COMMITTAL

51.1 Committal for contempt of court.

(1) The power of the Court to punish for contempt of court

may be exercised by an order of committal.

(2) Where contempt of court —

(a) is committed in connection with—

(i) any proceedings before the Court including but not limited to the making of a false statement of truth in a witness statement or breach of duty of a party or his attorney in relation to disclosure; or

(ii) 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

(b) is committed otherwise than in connection with any proceedings, then, subject to paragraph (4), an order of committal may be made by the Court.

(3) Where contempt of court is committed in connection with any proceedings in the Court, then, subject to paragraph (2), an order of committal may be made by a judge of the Court.

(4) Where by virtue of any enactment the Court has power to punish or take steps for the punishment of any person charged with having done anything in relation to a court, tribunal or person which would, if it had been done in relation to the Court, have been a contempt of that Court, an order of committal may be made by a judge of the Court.

(5) An application for committal under rule 51.1(2)(a)(i) may be made only with the permission of the court dealing with the claim.

51.2 Application for order.

(1) The application for the order must be made by originating application to the Court and, unless the Court or Judge granting leave has otherwise directed, there must be at least eight clear days between the service of the originating application122 and the day named therein for the hearing.

(2) Unless within fourteen days after such leave was granted the originating application123 is entered for hearing the leave shall lapse.

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

(4) The Judge may dispense with service of the originating application125 under this rule if he thinks it just to do so.

51.3 Saving for power to commit without application for purpose.

Nothing in the foregoing provisions of this Order shall be taken as affecting the power of the Court to make an order of committal of

its own motion against a person guilty of contempt of court.

51.4 Provisions as to hearing.

(1) Subject to paragraph (2), the Court hearing an application for an order of committal may

sit in private in the following cases, that is to say —

(a) where the application arises out of proceedings relating to the wardship or adoption of an infant or wholly or mainly to the guardianship, custody, maintenance or upbringing of an infant, or rights of access to an infant;

(b) where the application arises out of proceedings relating to a person suffering or appearing to be suffering from mental disorder within the meaning of the Mental Health Act;

(c) where the application arises out of proceedings in which a secret process, discovery or invention was in issue;

(d) where it appears to the Court that in the interests of the administration of justice or for reasons of national security the application should be heard in private, but, except as aforesaid, the application shall be heard in open court.

(2) If the Court hearing an application in private by virtue of paragraph (1) decides to make an order of committal against the person sought to be committed, it shall in open court state —

(a) the name of that person;

(b) in general terms the nature of the contempt of court in respect of which the order of committal is being made; and

(c) if he is being committed for a fixed period, the length of that period.

(3) Except with the leave of the Court hearing an application for an order of committal, no grounds shall be relied upon at the hearing except the grounds set out in the originating application under rule 51.2.

(4) The foregoing provision is without prejudice to the powers of the Court to amend a statement of case, make case management orders and rectify matters under rule 26.9.

(5) If on the hearing of the application the person sought to be committed expresses a wish to give oral evidence on his own behalf, he shall be entitled to do so.

51.5 Power to suspend execution of committal order.

(1) The Court by whom an order of committal is made may by order direct that the execution of the order of committal shall be suspended, for such period or on such terms or conditions as it may specify.

(2) Where execution of an order of committal is suspended by an order under paragraph (1), the applicant for the order of committal must, unless the Court otherwise directs, serve on the person against whom it was made a

notice informing him of the making and terms of the order under that paragraph.

51.6 Discharge of person committed.

(1) The Court may, on the application of any person committed to prison for any contempt of court, discharge him.

(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.

51.7 Saving for other powers.

Nothing in the foregoing provisions of this Order shall be taken as affecting the power of the Court to make an order requiring a person guilty of contempt of court, or a person punishable by virtue of any enactment in like manner as if he had been guilty of contempt of the Court, to pay a fine or to give security for his good behaviour, and those provisions, so far as applicable, and with the necessary modifications, shall apply in relation to an application for such an order as they apply in relation to an application for an order of committal.

Preliminary Matters

Permission to proceed with Committal proceedings

[28.] As a preliminary matter, this Court notes that the allegations are in relation to the matter Finance Corporation of Bahamas Limited v Phillip Arlington Mitchell and Brenda Mae Mitchell, 2009. The evidence, by way of the affidavits in support of the Original Application, is that that matter was effectively determined on February 19, 2021. I note, as a matter of judicial notice, that none of the several presiding judges in that matter currently sit in this court. One of the judges has since retired and two are sitting members of the appellate bench.

[29.] The Applicant has also shown by way of affidavit of Perry McHardy filed November 27, 2024 that one of the presiding judges filed a police report "against the 1st Defendant based on his actions from the decision made in the claim." In those circumstances, this court dispenses with the requirement for permission pursuant to Rule

51.1(5) CPR there being no court currently seized of the claim in that matter. In any event, it is my view that the filed police complaint of the last presiding judge is good evidence that 'permission of the court dealing with the claim' would likely have been granted had that court still been sitting. In such a case, it is unlikely that had that judge still been seized of that matter, that that court would have withheld permission. In my view, it is also unlikely that a sitting court could reasonably withhold permission in the face of the case presented by the Applicant.

[30.] It is my view that the purpose of the provision in Rule 51.1(5) CPR is to prevent the pursuit of contempt proceedings in another court which would affect the substantive proceedings in the primary court. In such an instance, another court may not be sufficiently seized of the matters that obtain in the court where the substantive proceedings are being conducted. That is not the case here.

[31.] The claim which gave rise to this ruling has been resolved. The acts constituting contempt, as I have found, arose during the now-concluded proceedings and subsequently in connection with those proceedings. The committal proceedings for contempt now arise before me, a court of concurrent jurisdiction. This court is not barred from determining the Application.

[32.] In those circumstances, the Applicant obtained the permission of this Court to proceed with the committal proceedings now before me.

Failure to appear

[33.] These proceedings were conducted in two parts: the finding of contempt stage and the sentencing stage. Given the potential gravity of a finding of contempt and of a sanction of committal, it was important that the Defendants were made aware of these proceedings, that they were notified of the possible consequences of any findings against them and that they were given the chance to make representations and to show cause why they ought not to be committed. I am satisfied on affidavit evidence before me that the First and Second Defendants were served with these proceedings and were notified of each court sitting. They have chosen not to appear. They have filed nothing in response to the affidavits lead before the court. They have made no plea in mitigation.

Nature and Purpose of Civil Contempt

[34.] *"My Lords, in any civilised society it is a function of government to maintain courts of law to which its citizens can have access for the impartial decision of disputes as to their legal rights and obligations towards one another individually and towards the state as representing society as a whole. The provision of such a system for the administration of justice by courts of law and the maintenance of public confidence in it, are essential if citizens are to live together in peaceful association with one another. "Contempt of court" is a generic term descriptive of conduct in relation to particular proceedings in a court of law which tends to undermine that system or to inhibit citizens from availing themselves of it for the settlement of their disputes. Contempt of court may thus take many forms.*

One may leave aside for the purposes of the present appeal the mere disobedience by a party to a civil action of a specific order of the court made on him in that action. This is classified as a "civil contempt." The order is made at the request and for the sole benefit of the other party to the civil action. There is an element of public policy in punishing civil contempt, since the administration of justice would be undermined if the order of any court of law could be disregarded with impunity; but no sufficient public interest is served by punishing the offender if the only person for whose benefit the order was made chooses not to insist on its enforcement."

per **Lord Diplock** in **Attorney-General v Times Newspapers Ltd.** [1974] A.C. 273 at pages 307 – 308

[35.] The principles of law in the area of contempt of court are fairly well-settled. The court's power to punish for contempt of its process is inherent to its jurisdiction. It is an important power because the effective administration of justice in part depends on compliance with orders of the court.

[36.] It is important for the rule of law that a court has the power to enforce compliance with its orders. Activities aimed at thwarting compliance, if allowed to go unchecked, can have the effect of undermining the administration of justice. It is a contempt to disobey a court order. The law of civil contempt serves to deal with persons intent on breaking the law by disobedience to court orders and who, by such course of action, impede and obstruct the course of justice. Such acts carry with them the risk of undermining confidence in the justice system. It is in the public interest that law breakers be dealt with decisively as a protection for other members of the public who expect and require fair adjudications by impartial tribunals with enforceable results.

[37.] It is also a contempt of court to level unfair, unfounded and baseless attacks against a court. The law of contempt does not serve to restrain fair criticism of the judicial system. However, unsubstantiated attacks on judicial officers serve to undermine their authority and can wreak havoc on the justice system. Scurrilous, unfounded accusations, which serve to undermine confidence in the administration of justice are punishable by contempt proceedings: **Donna Dorsett-Major v. The Director of Public Prosecution and the Attorney General,** SCCivApp No. 156 of 2021. In that case, in the judgment of the Court of Appeal delivered by the Honourable Sir Michael Barnett, P, he noted at paragraph 43:

> "As judges are expected to be unbiased arbiters of the law, swearing an affidavit that a judge is biased in a particular cause (or generally biased) undoubtedly carries a real risk of undermining public confidence in the administration of justice."

[38.] Therefore, proceedings in civil contempt, where warranted, form part of the fabric of the administration of justice.

Legal Discussion and Analysis

Issue 1: Whether the Applicant has proven a contempt of court by the named Defendants.

[39.] The Claimant submits that the Defendants should be held in contempt of court pursuant to Part 51 of the CPR because the Defendants have willfully disregarded the two orders made by Justice Stewart and have 'boldly, publicly and repeatedly threatened a sitting justice of the Court of Appeal by writing threatening letters and launching a public smear campaign.'

[40.] An Applicant must prove (1) that the acts complained of were committed and (2) that those acts were in breach of an order of the Court. Contempt of Court proceedings are quasi-criminal and the standard of proof is beyond a reasonable doubt: **Hydropool Hot Tubs Ltd. v Roberjot and another** [2011] EWHC 121 (Ch). In that case, the Court determined that defendants were in contempt of court by their failure to comply with court orders for disclosure and by swearing a false affidavit. Justice Arnold observed at paragraph 30:

> [30] Before proceeding further, I remind myself that the applicable standard of proof is the criminal standard: Hydropool must prove its allegations beyond reasonable doubt.

[41.] If a breach of a court order is proven, the Applicant must also prove that the Defendants were aware of the court order and its terms.

[42.] In this case, the Applicant must prove that the Defendants were aware of the orders of Justice Stewart, that they were aware of its terms, that they did the acts prohibited by the court's orders and they did so knowingly.

[43.] The evidence before me is that proceedings were commenced against the Defendants by Finance Corporation of The Bahamas Limited. The suit alleged a breach of mortgage by the Defendants and sought several reliefs. On April 15, 2014, the Plaintiff Bank received judgment in their favor, an order for damages and an order for vacant possession. The Defendants appealed the decision unsuccessfully. The Defendants also failed to obtain a stay of the judgment. The Defendants then embarked on a smear campaign that gave rise to the orders of prohibitory injunctions on June 15, 2021 and on July 20, 2021.

[44.] The June 15, 2021 order was unambiguous and comprehensive in its terms. It contained a penal notice addressed to the First Defendant as well as a notice to parties other than the Plaintiff and First Defendant. It read, as far as is relevant for these purposes:

> **PENAL NOTICE**
>
> If you, Phillip Mitchell, disobey this Order, you may be held to be in contempt of Court and liable to be imprisoned or fined or have your assets seized.

Any other person who knows of this Order and does anything which helps or permits the First Defendant to breach the terms of this Order, may also be held to be in contempt of Court and may be imprisoned, fined or have their assets seized.

NOTICE TO THE FIRST DEFENDANT

1. You should read the terms of this Order very carefully and you are advised to consult an attorney as soon as possible.

2. You have the right to ask the Court to vary or discharge this Order upon 48 hours written notice to the Plaintiff.

3. If you disobey this Order you may be found guilty of contempt of Court or may be sent to prison or fined or your assets may be seized.

IT IS HEREBY ORDERED that:

1. an interim injunction is hereby granted restraining the First Defendant, whether by himself, his servants or agents or otherwise howsoever, from harassing. threatening, pestering or molesting: the Plaintiff, its affiliates, servants or agents, the Firm of Higgs & Johnson along with its Partners, Associates, servants or agents; or anyone affiliated with this action or who has presided over these matters until further Order;

2. an interim injunction is hereby granted restraining the First Defendant, whether by himself, his servants or agents or otherwise howsoever from: (i) publishing whether via the internet, e-mail, flyers, newspapers, signs, radio and television or by any other means howsoever, and/or (ii) causing or permitting to be published or communicated, defamatory remarks and/or untrue statements and/or statements that have yet to be determined as true by a Court of lawful jurisdiction, regarding the disputes which have arisen between the parties hereto with respect to the Action herein and in particular against: the Plaintiff, its affiliates, servants or agents; the Firm of Higgs & Johnson along with its Partners, Associates, servants or agents; or anyone affiliated with this action or who has presided over these matters, until further Order;

3. an interim injunction is hereby granted restraining the First Defendant, whether by himself, his servants or agents or otherwise howsoever from publishing, via the internet, e-mail, flyers, newspapers, signs, radio and television, or by any other means howsoever, materials, documents, photographs or other items belonging to: the Plaintiff, its affiliates, servants or agents; the Firm of Higgs & Johnson along with its Partners, Associates, servants or agents; or anyone affiliated with this action or who has presided over these matters, whether or not protected by copyright;

4. that unless this Order is discharged on the return date, the First Defendant, whether by himself, his servants or agents or otherwise, shall immediately remove any publication which he has made, or had made, relating to: the Plaintiff, its affiliates, servants or agents; the Firm of Higgs & Johnson along with its Partners, Associates, servants or agents; or anyone affiliated with this action or who has presided over these matters, on the social media site known as Facebook which was published on or about the 21st day of February, A.D., 2021;

5. an interim injunction is hereby granted restraining the First Defendant, whether by himself, his servants or agents or otherwise howsoever, immediately cease and desist from making any further publication, in any manner whatsoever, in relation to: the Plaintiff, its affiliates, servants or agents; the Firm of Higgs & Johnson along with its Partners, Associates, servants or agents; or anyone affiliated with this action or who has presided over these matters, which contains any defamatory remarks and/or untrue statements and/or statements that have yet to be determined as true by a Court of lawful jurisdiction until further Order, and

6. an interim injunction is hereby granted restraining the First Defendant, whether by himself, his servants or agents or otherwise howsoever, from seeking any information in relation to: the Plaintiff its affiliates, servants or agents, the Firm of Higgs & Johnson along with its Partners, Associates, servants or agents; or anyone affiliated with this action or who has presided over these matters, until further Order.

…..

PARTIES OTHER THAN THE PLAINTIFF AND FIRST DEFENDANT

Effect of this Order, It is a contempt of this Court for any person notified of this Order knowingly to assist in or permit a breach of the Order. Any person doing so may be sent to prison, fined or have their assets seized.

[45.] That order was followed by an order of the court made on July 11, 2021 and filed and perfected on July 20, 2021. By that order, the injunction was ordered to "continue until further Order". That injunction was never discharged.

[46.] The evidence is that in defiance of those court orders, the First Defendant, on behalf of himself and others, published and emailed an 8-page letter dated August 2, 2024 and emailed on August 3 and 7, 2024, together with a 33-page attachment, addressed to Hon. Madame Justice Charles (one of the learned judges who presided over the proceedings) and to the law firm Higgs and Johnson (attorneys for the Plaintiff Bank in the proceedings).

[47.] The email and its contents specifically make reference to the 2009 suit (CLE/gen/1398/2009) brought against the Defendants. If one were in doubt as to the nature of the suit being referenced, the letter spells out:

'Subject Matter Property: Lot No.78 Tropical Avenue, with dwelling house thereon *inter alia*, house NO. 31, Twynam Heights, situated in the Eastern District of New Providence.'

[48.] At page 7 of the letter, it reads:

Enforcement of Injunction

We no longer intend to honor any unlawfully obtained gag or restraining orders designed to suppress our constitutional rights and cover-up acts committed by your client RBC Finco, Charles JA et al. It is in the public interest to publish these matters, supported by primary evidence we will release on the publication date.

[49.] The inference to be had from reference to the court suit, and reference to "Enforcement of Injunction" as well as the use of the words "gag" and "restraining order" is that this letter is written against the backdrop of an order obtained by the court to prevent the very course of action that the Defendants, by way of the letter, is giving notice of embarking on.

[50.] That letter at page 5 claims "Damages pursuant to Injunctions" and makes reference to injunctions of June 11, 2021 and October 4, 2021.

[51.] The letter attaches a 33-page "Complaint" document. At paragraph 27 of that document, under the heading "Further Conflict of Interest & Injunction Irregularities", the First Defendant makes reference to "injunctive relief" and "Interim Orders (gag order inter alia) on 11th June A.D. 2021, 15th June A.D 2021 and a Final Order on 19th October A.D. 2021".

[52.] I am satisfied that the references show beyond a reasonable doubt that the Defendants were aware of the Court orders and of their terms prior to the issuing of the letter and the attachment. The references, taken together with the contents of the letter and its attachment, make it clear beyond reasonable doubt that the Defendants were aware of the nature of the acts prohibited by the Injunction and were intent to set about on a course to disregard its terms.

[53.] The Defendants by injunction are restrained from "harassing, threatening, pestering or molesting". These are plain English words and not terms of art. They are defined in the online Merriam-Webster dictionary (at https://www.merriam-webster.com) as follows.

> Threaten - to cause to feel anxious or insecure; to portend evil.
> Harass – to annoy persistently; to create an unpleasant or hostile situation for especially by uninvited and unwelcome verbal or physical conduct.
> Pester – annoy, harass with petty irritations.
> Molest – annoy, disturb, or persecute (a person or animal) especially with hostile intent or injurious effect.

[54.] On a perusal of the letter, it is a notice of "intention to publish" the accusations made by the Defendants against the law firm and the judges. It is accompanied by a letter of complaint to the Judicial and Legal Service Commission.

[55.] I accept the submission of the Applicant, and find that the letter makes "unsubstantiated and salacious accusations … against a sitting judge and against the law firm which acted for the other party in the subject proceedings." I will not reproduce those matters in detail here. One example should suffice. In the letter, the Defendants write of their intention to lay "over 35 indictable criminal charges" including:

> **Nature of Offence- 1**
> **Defendants:** Higgs & Johnson, Oscar N. Johnson Jr. Audley D. Hanna Jr., Tara

> A. Archer- Glasgow, Finance Corporation of Bahamas Limited, Mrs. Indra H-Charles, The Supreme Court, The Court of Appeal, The Office of the Attorney General et al.
> "**Stealing by Reason of Service"-** CONTRARY TO SECTION 340 (4) OF THE PENAL CODE CHAPTER 84. PARTICULARS ARE: - That you in February A.D. 2021, being concerned together with others, while remotely at the Bahamas Supreme Court, New Providence in the Supreme Court case no. CLE/gen/1398/2009, did steal by reason of service the sole marital dwelling home valued at $890,000.00, the property of Philip & Brenda Mitchell situated at lot no. 78, Twynam Height, Nassau, New Providence.

[56.] It is clear from the wording of the draft "criminal charge" that the objects of the charge are the very persons that the Defendants were enjoined "from harassing, threatening, pestering or molesting".

[57.] The contents of the letter and draft complaint are clearly designed to portend evil, to cause the objects to feel anxious or insecure. The matters set out therein, including the threat to pursue the disparagements on social media, through a publication machinery as well as more formal channels such as the Judicial and Legal Service Commission and criminal prosecution, represent a persistent annoyance and create an unpleasant and hostile situation by uninvited and unwelcome conduct. The effect is to disturb those under attack with hostile intent. The Defendants, by their behavior, have subjected the objects of their campaign to persistent and unwanted attention. They have subjected those persons to intimidating, offensive and humiliating 17ehavior. This amounts to "harassing, threatening, pestering or molesting".

[58.] The allegations made in the letter and in the draft complaint are, in my view, clearly calculated to harass, threaten, pester and molest" those persons. This is done by way of publication by email and threat of publication on social media.

[59.] Further hostile intent and harassment is also displayed in the letter in the following 'invitation' to settle the demands of the Defendants made by way of itemization of damages. That paragraph reads:

> **Settlement Proviso**
> We welcome resolutions and are open to communications via email or Zoom meetings to address and potentially settle the claims if you wish to do so. In the event you choose to make payment, we will not stop you. Payments can be made to any of the cryptocurrency wallet addresses below.
> **Bitcoin:** bc1----6at0ml----ygy7fzhj---vp3p6zgd---wwx8
> **USDT:** THH---3ZxwL2AyZ—XkdsFhGFK2---j5v – (TRX/Tron Network)
>
> [redacted]

[60.] I have, for the purpose of this ruling, omitted some of the characters that identify the accounts. In the letter, the Defendants set out the full particulars of cryptocurrency wallet addresses.

[61.] The clear import of the "Settlement Proviso" is that the allegations being made by the Defendants and the threatened publications will "go away" on payment of the requisite funds. This is an unabashed attempt to extort and extract funds from a sitting member of the court as well as from a law firm and their attorneys (officers of the court). This proposed deposit of funds is to be paid notwithstanding judgments rendered by the court in favour of the Plaintiff bank that sued the Defendants. Quite apart from an attempt at extortion, the request for funds, in those circumstances, serves as invitation (and intention) to pervert the course of justice.

[62.] If the settlement proviso is not met, the Defendants set out their "publication machinery" which will go into effect:

> **Our Publication Machinery**
> We have developed an extensive publication system (plus mirror websites) capable of reaching hundreds of thousands via multiple channels in a matter of minutes. These include our flyer distribution network, emails server at https://app.hostplex.com, our SMS server at https://bulksmszone.cloud, local and social media (Facebook Groups, YouTube, X-Formerly Twitter, Rumble, Paid Ads & more), our website (https://standbahamas.com) protected mode until the publication date. If you wish, you can see a preview of our publication video at…..
> **Safety Precautions**
> We have established safety measures to protect my team and I from retaliation, including automated information release cronjobs & AI protocols (inter alia) in the event of any threats or harm.
> **Take Notice**
> We will publish the factual information and supporting evidence without further notice to you, on publication date (10.Aug.2024). This information, once placed in the public domain cannot be later retracted, and it may be shared or utilized lawfully by any person.

[63.] The injunction granted by Justice Stewart specifically prohibits:

> "…publishing whether via the internet, e-mail, flyers, newspapers, signs, radio and television or by any other means howsoever, and/or (ii) causing or permitting to be published or communicated, defamatory remarks and/or untrue statements and/or statements that have yet to be determined as true by a Court of lawful jurisdiction, regarding the disputes which have arisen between the parties hereto with respect to the Action herein and in particular against: the Plaintiff, its affiliates, servants or agents; the Firm of Higgs & Johnson along with its Partners, Associates, servants or agents; or anyone affiliated with this action or who has presided over these matters."

[64.] The letter issued by the Defendants threatens the release of a Youtube video aimed at repeating the unsubstantiated allegations and implicitly launching a new social media smear campaign.

[65.] The evidence is that on August 10, 2024, the Defendants did upload a video on Youtube which was set to be premiered on August 17, 2024. Subsequent to the Court's hearing on October 11, 2024, another video was uploaded to a Youtube channel, as previously threatened by the Defendants. Notice of the upload was sent to several persons, including the attorneys representing the Claimant in these contempt proceedings.

[66.] The August 2, 2024 letter appears to be signed over the hand of the First Defendant but is written referring to "We" and is purported to be sent on behalf of "a team". There are also repeated references to the Second Defendant. The "We" employed in the letter is to be contrasted with the references to "I" in the draft complaint attached to the letter.

[67.] I am satisfied that the letter and email purport to represent the First Defendant as well as the Second Defendant, wife of the First Defendant. While a court must be careful with the attribution of liability, it seems to me, given the circumstances of the communications in the prior suit and the content of the emails and attachments, that the Second Defendant ought not to escape culpability because of the absence of direct communication. The First Defendant has, at all material times, made communication on behalf of himself and the Second Defendant. This has not been refuted by the Second Defendant. The orders granted were directed at the First Defendant and at other parties with notice of the terms. This includes the Second Defendant. Penal notices as well as a secondary notice of the possible sanction of imprisonment following contempt proceedings are clearly set out in the order of June 15, 2021 issued by the learned Judge.

[68.] In the premises, I am satisfied beyond reasonable doubt that both Defendants were aware of the injunction against them.

[69.]

[70.] I find that despite being cognizant of the orders of Hon. Madame Justice Stewart, the Defendants have persisted in the very actions retrained. The letter from the Defendants reads "*We no longer intend to honor any unlawfully obtained gag or restraining orders … It is in the public interest to publish these matters…*". I understand that to be a reference to the orders already made and, perhaps, any other court order to be obtained.

[71.] The letter explicitly expresses the First Defendant and his team's defiance of the court orders and of their intention to flout any court order. They have, it appears, become emboldened over time and have set up on an amplified and media-enhanced smear campaign.

[72.] A failure to comply with a court order does not automatically attract contempt proceedings. The failure to comply may not be deliberate and/or it may easily be remedied by compliance or other means of enforcement. However, where the failure to comply is

shown to be deliberate and intentional and where there is clear evidence that another order court is likely to be met with the same disregard, then contempt proceedings are appropriate. In my opinion, where there is explicit defiance of the authority of the court, the jurisdiction to commit for contempt is properly invoked. And I find that it is properly invoked here.

[73.] I am satisfied beyond reasonable doubt that the First and Second Defendants were aware of the orders of Justice Stewart, that they were aware of its terms, that they did the acts prohibited by the court's orders and that they did so knowingly.

[74.] This court finds that the named First and Second Defendants are in contempt of court.

ISSUE 2

Issue 2: Whether the court should exercise its power to commit the Defendants.

Appropriate sanctions

[75.] Having determined that the First and Second Defendants are guilty of contempt of court, this court had to determine an appropriate sanction. This is often referred to as the sentencing stage of the proceedings.

Factors to be taken into account

[76.] There are several cases that consider the factors to be taken into account at the sentencing stage. The case of **Crystal Mews Ltd v Metterick and others** [2006] EWHC 3087 (Ch) has been relied on in this jurisdiction. In that case, the judge found the Defendants guilty of contempt for the breach of the court's orders, namely freezing orders. After considering factors for appropriate sanctions, the court determined that a custodial sentence was appropriate in that case. In coming to a determination, Lawrence Collins J opined:

> **[8]** ***In contempt cases the object of the penalty is both to punish conduct in defiance of the court's order as well as serving a coercive function by holding out the threat of future punishment as a means of securing the protection which the injunction is primarily there to do (see Lightfoot v Lightfoot [1989] FCR 305 at 308, [1989]*** 1 FLR 414, [1989] Fam Law 188; *Robinson v Robinson* [2001] EWCA Civ 2098 at para 11; *Hale v Tanner* [2000] 1 WLR 2377 at 2381, [2000] 3 FCR 62, [2000] 2 FLR 879).
>
> **[9]** So far as the penalties are concerned, first, the court may impose an immediate

custodial sentence limited to a two-year maximum (s 14(1) of the Contempt of Court Act 1981). A person committed to prison for contempt of court is entitled to unconditional release after serving half of the sentence (Criminal Justice Act 2003, s 258). **A committal order is appropriate where there is serious contumacious flouting of orders of the court**: *Gulf Azov Shipping Co v Idisi* [2001] EWCA Civ 21 at para 72, which was a case of a breach of freezing injunctions where the sentence was three months suspended on condition that the contempt was purged.

[10] In *Pospischal v Phillips*, The Times 20 January 1988, the Court of Appeal held that where property was sold, and assets dissipated in breach of a Mareva injunction, an immediate prison sentence was necessary to both protect the Plaintiff and punish the Defendant, per Taylor LJ at p 7 of the transcript. In that case the Court of Appeal substituted a sentence of six weeks' imprisonment for the ten weeks imposed by the judge because the Defendant was able to raise a loan and the money could be placed in the names of solicitors which would enable the Mareva injunction to be discharged. In *Hudson v Hudson* [1996] 1 FCR 19, [1995] 2 FLR 72, [1995] Fam Law 550 where the Defendant withdrew and spent £20,000 in breach of a Mareva injunction an immediate prison sentence of nine months was imposed. But any custodial sentence imposed should be as short as possible consistent with the circumstances of the case (see *Aquilina v Aquilina* [2004] EWCA Civ 504 at para 14.

[11] Second, the court may impose a custodial sentence, the execution of which may be suspended for such period or on such terms as the court thinks fit (CPR Sch 1, RSC Ord 52, r 7(1)). In *Hale v Tanner* [2000] 1 WLR 2377, [2000] 3 FCR 62, [2000] 2 FLR 879 at 2381Hale LJ said that suspension was usually the first way of attempting to secure compliance and *Gulf Azov Shipping Co* is an example of such a case where the judge directed that Chief Idisi be committed for three months, suspended on condition that the contempt was purged.

[12] Third, the court may impose a fine of unlimited amount (s 14.2 of the Contempt of Court Act 1981) or order sequestration. If a fine would be the appropriate punishment it is wrong to impose a custodial sentence because the contemnor is unable to pay a fine (see *Re M (Contact Order)* [2005] EWCA Civ 615, [2005] 2 FLR 1006 at para 18). It will also, I accept, be wrong to impose a custodial sentence because of the difficulty inherent in fining a person subject to a freezing injunction where the assets of the person are clearly below the maximum sum in the injunction.

[13] The matters which I may take into account include these. First, whether the Claimant has been prejudiced by virtue of the contempt and whether the prejudice is capable of remedy. Second, the extent to which the contemnor has acted under pressure. Third, whether the breach of the order was deliberate or unintentional. Fourth, the degree of culpability. Fifth, whether the contemnor has been placed in breach of the order by reason of the conduct of others. Sixth, whether the contemnor appreciates the seriousness of the **deliberate breach. Seventh, whether the contemnor has co-operated.**

[Emphasis supplied]

[77.] I have also found guidance in the case of **Liverpool Victoria Insurance Company Ltd v Zafar** [2019] EWCA Civ 392, [2019] 1 WLR 3833, 170 BMLR 1, [2019] All ER (D) 20 (Apr) That case dealt with the making of false statements but the principles are apropos and applicable in this case. The case is useful in setting out the dangers of false claims to the administration of justice as well as setting out the considerations for determining an appropriate penalty.

[78.] **Liverpool Victoria Insurance Company Ltd v Zafar** concerned the making of false statements by an expert witness. At first instance, the judge found the solicitor to have been in contempt of court on 11 grounds, each of which related to assertions made in witness statements supported by statements of truth, which the solicitor knew to be untrue. Such conduct strikes at the heart of the administration of justice, as the court found. In considering the appropriateness of a custodial sentence and the length of same, the court offered useful guidance. At paragraph 47, the learned judges Holroyde LJ Sir Terence Etherton MR and Hamblen LJ of the Court of Appeal opined:

> The seriousness of a contempt of court committed by a claimant who makes a false statement in support of a false or exaggerated claim for compensation has been emphasised in many cases. In *South Wales Fire and Rescue Service v Smith* a fireman injured in an accident at work had made a false claim that he had been unable to work since his accident. In May 2009 he admitted to a District Judge that his claim was false. He was required to repay all the money which he had received from his employers by way of severance and sick pay. Permission to bring contempt proceedings was applied for in February 2010 but not granted until July 2010. There were then delays, including in obtaining legal aid, which had the result that the application for committal was not heard until May 2011. A Divisional Court of the Queen's Bench Division (Moses LJ and Dobbs J) concluded that a committal to prison for 12 months was necessary but that the passage of time meant that the term of committal could be suspended for 2 years. At the beginning of his judgment, Moses LJ (with whom Dobbs J agreed) said –
>
> > "2. For many years the courts have sought to underline how serious false and lying claims are to the administration of justice. False claims undermine a system whereby those who are injured as a result of the fault of their employer or a defendant can receive just compensation.
> >
> > 3. They undermine that system in a number of serious ways. They impose upon those liable for such claims the burden of analysis, the burden of searching out those claims which are justified and those claims which are unjustified. They impose a burden upon honest claimants and honest claims, when in response to those claims, understandably, those who are liable are required to discern those which are deserving and those which are not.
> >
> > 4. Quite apart from that effect on those involved in such litigation is the effect upon the court. Our system of adversarial justice depends upon openness, upon transparency and above all upon honesty. The system is seriously damaged by lying claims. It is in those circumstances that the courts have on numerous occasions sought to emphasise how serious it is for someone to make a false

> claim, either in relation to liability or in relation to claims for compensation as a result of liability.
> 5. **Those who make such false claims if caught should expect to go to prison. There is no other way to underline the gravity of the conduct. There is no other way to deter those who may be tempted to make such claims, and there is no other way to improve the administration of justice.**
> 6. The public and advisers must be aware that, however easy it is to make false claims, either in relation to liability or in relation to compensation, if found out the consequences for those tempted to do so will be disastrous. They are almost inevitably in the future going to lead to sentences of imprisonment, which will have the knock-on effect that the lives of those tempted to behave in that way, of both themselves and their families, are likely to be ruined.
> 7. But the prevalence of such temptation and of those who succumb to that temptation is such that nothing else but such severe condemnation is likely to suffice."
>
> [Emphasis supplied]

[79.] The court in **Liverpool Victoria Insurance Company Ltd v Zafar** went on consider the approach to be taken by the court in determining whether to impose a custodial sentence or a fine. The court also considered the factors to be taken into account in determining how long a custodial sentence ought to be and whether a custodial sentence ought to be suspended. The court opined:

> 59. We say at once, however, that the deliberate or reckless making of a false statement in a document verified by a statement of truth will usually be so inherently serious that nothing other than an order for committal to prison will be sufficient. …
> 64. As we have indicated, an order for committal to prison will usually be inevitable where an expert witness commits this form of contempt of court, and counsel for the respondent realistically accepted that it was inevitable in this case. ***As to the appropriate length of sentence, it is important to emphasise that every case will turn on its particular facts. The conduct involved in a contempt of this kind may vary across a wide range. The court must, therefore, have in mind that the two year maximum term has to cater for that range of conduct, and must seek to impose a sentence in the instant case which sits appropriately within that range. Where more than one contemnor is before the court, as in the present case, it will of course be necessary to make a judgment as to the comparative seriousness of their respective misconduct.*** As we have noted at [49] above, Sir John Thomas P in Bashir had in mind as a starting point sentences "well in excess of 12 months" even for those who played the role of "foot soldiers" in the dishonest claims in that case.
>
> 65. ***In determining what is the least period of committal which properly reflects the seriousness of a contempt of court, the court must of course give due weight***

to matters of mitigation. An early admission of the conduct constituting the contempt of court, before proceedings are commenced, will provide important mitigation, especially if it is volunteered before any allegation is made. So too will cooperation with any investigation into contempt of court committed by others involved in the same proceedings or in other fraudulent claims. Where the court is satisfied that the contemnor has shown genuine remorse for his or her conduct, that will provide mitigation. Serious ill health may be a factor properly taken into account. Previous positive good character, an unblemished professional record and the fact that an expert witness has brought professional and financial ruin upon himself or herself are also matters which can be taken into account in the contemnor's favour. However, in deciding what weight can be given to those matters, it must be remembered that it is the professional standing and good character of the expert witness which enables him or her to act as an expert witness, and thus to be in a position to make false statements of this kind. Breach of the trust placed in an expert witness by the court must be expected to result in a severe sanction being imposed by the court in addition to any other adverse consequences.

…

…

68. ***Having reached a conclusion that a term of committal is inevitable, and having decided the appropriate length of that term, the court must consider what reduction should be made to reflect any admission of the contempt.*** In this regard, the timing of the admission is important: the earlier an admission is made in the proceedings, the greater the reduction which will be appropriate. …

69. ***The court must, finally, consider whether the term of committal can properly be suspended.*** In this regard, both principle and the caselaw to which we were referred lead to the conclusion that in the case of an expert witness, the appropriate term will usually have to be served immediately, and that one or more powerful factors justifying suspension will have to be shown if the term is to be suspended. We do not think that the court is necessarily precluded from taking into account, at this stage of the process, factors which have already been considered when deciding the appropriate length of the term of committal. Usually, however, the court in deciding the length of the term will already have given full weight to the mitigation, with the result that there is no powerful factor making it appropriate to suspend the term. If the immediate imprisonment of the contemnor will have a serious adverse effect on others, for example where the contemnor is the sole or principal carer of children or of vulnerable adults, that may make it appropriate for the term to be suspended; but even then, as Bashir shows, an immediate term – greatly shortened to reflect the personal mitigation – may well be necessary.

…..

[Emphasis supplied]

[80.] In the Court of Appeal case of **Lightfoot v Lightfoot [1989] 1FLR 414,** the Appellant had been sentenced to 18 months for disobedience of a court order. The court had ordered the Appellant not to dispose of money received in the course of matrimonial proceedings and to deposit the funds in a joint account. In disobedience to the order, the

Appellant did not deposit the money into the specified account and withdrew funds. In dismissing his appeal against the custodial sentence imposed for his disobedience, Lord Donaldson MR opined at pages 416 to 417:

> The question which then arises is whether the sentence of 18 months' imprisonment was appropriate in the circumstances. As Mr Brooks has reminded us, each case has to be dealt with on its own facts, but it is difficult to see any extenuating circumstances whatever in this case if, as the judge found, knowing of the court order and knowing that the money was to be paid into a joint account pending a decision as to how much should be paid to his wife and how much he should retain for himself, he simply hid it. The judge thought that the appropriate sentence was 18 months' imprisonment.
>
> For my part, I cannot see that that can possibly be faulted, but I would like to say a word about sentences of this sort. **Sentences for contempt really fall into two different categories. There is the purely punitive sentence where the contemnor is being punished for a breach of an order which has occurred but which was a once and for all breach.** A common example, of course, is a non-molestation order where the respondent does molest the petitioner and that is an offence for which he has to be punished. In fixing the sentence there can well be an element of deterrence to deter him from doing it again and to deter others from doing it. That is one category.
>
> **There is a second category which I might describe as a coercive sentence where the contemnor has been ordered to do something and is refusing to do it. Of course, a sentence in that case also has a punitive element since he has to be punished for having failed to do so up to the moment of the court hearing, but, nevertheless, it also has a coercive element.**
>
> **Now, it is at that point that it is necessary to realize that in earlier times the courts would in such circumstances have imposed an indefinite sentence. That is to say a man would be committed to prison until such time as he purged his contempt by complying with the order.** Under the Contempt of Court Act 1981 a limit has been placed on such sentences, that limit being 2 years. It would be consistent with the previous practice of the courts and give full effect to the modification required by statute if courts considered imposing a 2-year sentence when the contemnor was in continuing and wilful breach of court orders. Whilst there might be cases in which such a sentence would be disproportionately severe, any wilful defiance of the court and its orders is necessarily a very serious offence and if the contemnor is aggrieved he has a remedy in his own hands – he can seek his immediate release by ceasing his defiance, complying with the order and thereby purging his contempt.
>
> The judge in this case only imposed a sentence of 18 months rather than 2 years and I do not criticize him in any way for doing that. But I do say that, in all the circumstances, I see no grounds whatsoever for reducing that sentence in any way at all…
>
> [Emphasis supplied]

[81.] **Lightfoot v Lightfoot** is good guidance on considerations as to the purpose of the sentence imposed.

[82.] The final case that I will refer to is **Templeton Insurance Ltd v Thomas and another** [2013] EWCA Civ 35**.** In that case, the Defendants received an immediate custodial order for breach of an injunction, viz a freezing order. They appealed the sentence. The Court of Appeal dismissed the appeals against the findings of contempt but allowed the appeals against sentence "to the extent of suspending for two years the sentences of imprisonment imposed by the judge." This was said to be a "merciful conclusion" given the personal mitigation undertaken by the Defendant, the lack of proof of private harm, the illness befalling the contemnors and the "possibly irremediable hardship "which the families might suffer."

[83.] However, in that case, Rix LJ set out the general principles of law at paragraphs 42 to 44:

> [42] In my judgment, whereas **it will always remain appropriate to consider in individual cases whether committal is necessary, and what is the shortest time necessary for such imprisonment, and whether a sentence of imprisonment can be suspended, or dispensed with altogether: nevertheless, it must now be accepted that the attack on the administration of justice which is made when a freezing order is breached usually merits an immediate sentence of imprisonment of some not insubstantial amount.** Of course, courts will bear in mind that the maximum sentence which can be handed down on any one occasion is two years; and will make due allowance for the encouragement of, or rewarding of, better thoughts and the purging of contempt, and for the credit due in the ordinary way for an admission of responsibility and remorse. Nevertheless, it must be borne in mind that breaches of freezing orders, unlike many other contempts, are nearly always spawned in darkness, and therefore will be hard, and sometimes impossible, to detect, until it is too late.
>
> [43] In the present case, there have been no second thoughts, no acceptance of responsibility, no apologies, no remorse. Even after the judge's careful contempt judgment, there have been appeals on every conceivable point: appeals which, if there had been no committal, would not have been as of right and for which in all probability permission would not have obtained in respect of all the points run, if any of them.
>
> [44] In these circumstances, subject to issues of personal mitigation and the absence of any finding of actual harm, I do not consider that there is anything wrong with the sentences of immediate imprisonment which the judge has handed down, or with their length. The breaches of the freezing order were committed in the context of serious commercial frauds: they were deliberately undertaken, almost immediately, in a brazen attempt to avoid the consequences of the potential discovery of those frauds; they were persisted in over a significant length of time; and they amounted to nothing less than an attempt to remove the impeached business of Motorcare from the restraint of the court's freezing order into clear open country where the phoenix of Motorcare Elite could fly with impunity.

[Emphasis supplied.]

[84.] The principles for consideration by this court are captured in the cases cited.

[85.] This court must take several factors into account in considering the appropriate sanction for a contempt of this sort. A custodial sentence is not to be imposed when a fine will do. A custodial sentence is appropriate for an egregious breach as both a punitive and coercive sentence where the contemnor has been ordered to do something and persists in refusing to do it. Imprisonment is appropriate for serious, contumelious flouting of orders of the court.

[86.] A court must consider whether any harm caused is capable of remedy, whether the contemnor acted under pressure and whether the breach was deliberate or unintentional. A court must also consider the degree of culpability of each Defendant and whether the breach came about because of the action of others. A court must take into account mitigating and aggravating circumstances. For example, a court may consider a public apology and attempts to lessen the impact of any harm inflicted as mitigating circumstances that will lessen any sentence. Conversely, a court may consider the absence of an apology, lack of remorse and persistence in the breach of the order as factors which would attract a more severe penalty.

[87.] Immediate imprisonment is an appropriate sanction where the contempt is ongoing and, in an instance, where the contemnor has not shown any indication to otherwise purge his contempt. An appropriate length of sentence is to be considered on a case-by-case basis. I note that this court is not constrained by legislation as exists in the United Kingdom as to a statutory maximum of a sentence. A court must also consider whether the circumstances of the case merit a suspended sentence.

[88.] In this case, Applicant makes the following submissions on sentencing:

1. The Claimant submits that public opinion is extremely important for a judge as an administrator of justice as they must be seen to be fair when they preside over a trial. The Defendants have been trying to sway public opinion about Justice Charles by spreading unproven and unfounded allegations. However, once these allegations are in the public domain, no matter if they have been proven to be false, some persons opinions would have been swayed. There is no remedy that would be able to compensate Justice Charles for damage done to her reputation.

2. The Claimants further submit that the Defendants were under no pressure to threaten Justice Charles and are acting solely on their own.

3. The breach of the Order was a deliberate act done on the Defendants own accord and in defiance of the Orders, in an effort to harm the reputation of Justice Charles and extort money from her for their silence.

4. Additionally, there is a high degree of culpability with the Defendants as the threatening letters have been signed by them and sent from their email addresses. with the intention of swaying public opinion in order to have her removed as a Justice in the Commonwealth of The Bahamas.

5. The Defendants have breached the Order of the Court on their own accord and from their own actions and not by the conduct of the Claimant. Justice Charles has had nothing to do with this matter since 2019 and has done nothing to provoke these unwarranted attacks.

6. The Defendants are well aware of their actions but seem to have no regard to the consequences of breaching the Orders.

7. It is further submitted that the Defendants have not cooperated with the Orders from day one and have willfully defied it.

[89.] I bear in mind the several considerations that a court must factor into account.

[90.] The Defendants have breached the orders of this court and have deliberately done so. I find that they are acting under no duress or other impulse save their will and ability to do so. This much is borne out by their letter communicated by e-mail.

[91.] In modern jargon, the Defendants have "doubled down" on what is properly-termed a smear campaign. I note that the Defendants have included in their most recent attacks, not only Justice Charles but Justice Stewart and the law firm of Higgs & Johnson, attorneys for the bank. In the draft criminal charge, the net has widened to include "the Supreme Court and the Court of Appeal." This display is a telling and total disregard for the rule of law and the administration of justice. If one were in doubt, the Defendants have captured their intention to defy the law in their own words:

> *"We no longer intend to honor any unlawfully obtained gag or restraining orders designed to suppress our constitutional rights…"*

[92.] Those words express a total disdain for the court system and the administration of justice. The actions of the Defendants, if left unpunished, would bring the system into disrepute.

[93.] In their letter, the Defendants make a misguided reference to a suppression of constitutional rights. In order that well-thinking and right-minded persons are not misled in this regard, I pause to express that the imposition of a restraining order by way of an injunction on the Defendants is not a curtailment of freedom of expression. Freedom of expression in a free society comes with obligations to that society. The Constitution which guarantees its citizens freedom of expression also recognizes that this is subject to laws "protecting the rights, reputations and freedoms of other persons" and for "maintaining the authority and independence of the court". The Constitutional provision is also subject to

laws reasonably required in the interest of public order. A court must be jealous to protect its processes for the sake of the rule of law and in the interest of an orderly society.

[94.] The motive for the actions of the Defendants is clear. The Defendants mortgaged their home and lost their home as a result of their proven breach of contract in a duly adjudicated case. The Defendants had the opportunity to challenge that decision by appeal. They did so. They were unsuccessful on appeal. The Defendants have since resorted to a strategy of attack outside of the remit of the law. Having lost in their attempt at challenging the decision by legal means, the Defendants have employed a strategy of attacking the decision-makers and other officers of the court. The strategy is to harass, pester, threaten and molest with the hope that the system caves in to their demands.

[95.] It is clear that the Defendants, through their "publication machinery" intend to put into the public purview not established facts but accusations and suppositions that would serve to discredit members of the judiciary. The nature of the accusations made could, if proceeded unchecked, serve to lower the authority of the judges and impair the judges in the discharge of their judicial duties. The intention of the Defendants is clear: to bring the administration of justice into disrepute.

[96.] The Applicant's submissions are well-founded. However, while the Applicant has focused its submissions on the breach of the order as it concerns Justice Charles, I note that the order is the court's order and in enforcing its process, this court is entitled to consider the nature of the order and the extent of the breach. I find that the Defendants have embarked on this appropriately so-called "smear campaign" against two of the judges that presided in that matter as well as the attorneys of the law firm that represented the bank. I do not consider it coincidence that the letter and attachments name and identify persons – including the very persons to whom the court's injunction applies.

[97.] By their communication and actions, the Defendants display absolutely no regard or respect for the administration of justice. While one may be unsatisfied with a certain result in court, there are legal avenues that one may pursue to challenge such results. An obvious route is an appeal. What is not permissible is the blatant attack on counsel representing another party or on the court that made an adverse finding. In this case, the contemnors have cast aspersions against two sitting judges, have launched an attack against a judge and on her family and have disregarded and blatantly disobeyed the orders made in that court.

[98.] The Defendants have made it clear that they intend to obey no order from this court.

[99.] To my mind the actions of the Defendants amount to a most egregious form of contempt. This conduct has its genesis in a matter that concluded in 2021. The Defendants have, in 2024, continued a campaign of harassment and misinformation. They have engaged in behavior which amounts, in my opinion, to attempted extortion of a sitting judge.

[100.] The proven conduct of the Defendants is unacceptable and must attract the greatest of penalties. The appropriate penalty is one which reflects the severity of the conduct. The administration of justice must not be threatened or subject to such threats by litigants who have had the benefit of the legal system, even though an adverse finding had been made against them.

[101.] This sort of conduct must not be tolerated and the court must disabuse anyone of the notion that this sort of conduct will go unpunished. Therefore, it is my determination that both contemnors be committed to prison. This determination considers the nature, persistence and continuation of the Defendants' breaches of the court's orders as well as their clear indication that they will not desist voluntarily.

[102.] I have considered whether this is an appropriate case for the suspension of such a sentence. The orders that are subject of this application were made in 2021. The Defendants renewed their campaign in 2024. There is no reason to suppose that a suspended sentence could cause the requisite compliance. There is no evidence of personal hardship before this court that this court could or ought to take into account.

[103.] There is no factor, in my opinion, that would justify a suspended sentence.

[104.] In this case, there are no mitigating factors before me. There is no remorse shown and no apology offered or received, for example. On the other hand, the Defendants have revived, renewed and reinforced their campaign. They have taken the time to create and draft "over 35 indictable criminal charges" against sitting judges, the Supreme Court, the Court of Appeal, the Attorney General and named attorneys-at-law including a charge of "stealing by reason of service" in relation to a matter where the Defendants were found liable in an action brought against them for their default on a mortgage. The Defendants, via the First Defendant, has drafted complaints to be laid before the Judicial Legal Services Commission. One complaint is the failure of a judge to disclose her age to the First Defendant. The Defendants have indicated their intention to unleash and weaponize their social media armory. I note that such publication would not be limited to publication of content accessible only in this jurisdiction. The Defendants have also sought the payment of "damages" by way of deposit in bitcoin if the objects of their attack wished to avoid activation of the Defendants' publication machinery.

[105.] In terms of the culpability of the Defendants, I consider that the First Defendant has outwardly executed the several acts that run afoul of the court order. I consider the language of the email communication and the draft complaint. The communications, save the draft complaint, are written on behalf of the First Defendant and his wife, the Second Defendant, and his "team". The suit at the heart of the complaint was against the First Defendant and the Second Defendant. It is not unusual that one Defendant takes a step in a matter that binds all Defendants. I consider that the Second Defendant may not act as publicly as the First Defendant but, having been named as a Defendant in the suit and having been captured in the First Defendant's missives, it strains commonsense that the Second Defendant is not "another person who knows of this Order and does anything which

helps or permits the First Defendant to breach the terms of this Order" or "a person knowingly to permit a breach of the Order."

[106.] At the very least, the Second Defendant has made no representation as to these proceedings. Nor has the First Defendant. This is consistent with a position that "***We*** no longer intend to honor any unlawfully obtained gag or restraining orders". [Emphasis supplied.]

[107.] I find that the First Defendant is communicating on behalf of himself and his wife, the Second Defendant, but I must consider the comparative seriousness of their respective conduct. I consider that the First Defendant has assumed a lead role in the aforementioned activities and this lead role ought to attract a greater punishment than that of the Second Defendant.

Sentence

[108.] This sentence of this court is as follows:

The First Defendant be committed to prison for two years forthwith and the Second Defendant be committed to prison for one year forthwith.

Injunction

[109.] This court grants a permanent injunction in terms of its order made on August 16, 2024.

Costs

[110.] The Defendants shall pay the costs of this matter to the Attorney General, such costs fixed in the sum of $15,000.

CONCLUSION AND ORDER

[111.] This is undoubtedly one of the most egregious cases of civil contempt to come before a court. This is not simply a case of failure to comply with a court order made for the sole benefit of another party to an action. The orders in question sought to prevent attacks on members of the judiciary and officers of the court. The Defendants have breached the court orders with temerity and have explicitly indicated their intention to

disobey the orders of a duly constituted court. Their conduct is designed to bring the administration of justice into disrepute. Fair criticism and truthful commentary of the justice system by a citizenry ought to be encouraged and defended. On the other hand, scurrilous and baseless attacks, designed to bring the administration of justice into disrepute, ought to be forcefully addressed lest the justice system be crippled for lack of a response.

[112.] The order of this Court is THAT:

1. The First Defendant be committed to prison for two years forthwith.

2. The Second Defendant be committed to prison for one year forthwith.

3. This court grants a permanent injunction in terms of its order made on August 16, 2024.

4. The costs of this matter are awarded to the Attorney General, such costs fixed in the sum of $15,000.

Dated the 13th day of May, 2025

Carla Card-Stubbs

Justice