COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law and Equity Division
Claim No. 2025/CLE/gen/FP/00185

IN THE MATTER of a Condominium Declaration dated 4th day of October, A. D. 1988 made in the name of Albacore Development Limited by virtue of the provisions of The Law of Property and Conveyancing (Condominium) Act, respecting the property called Lucayan Towers South Condominium Association situate in the City of Freeport on the Island of Grand Bahama in the Commonwealth of The Bahamas.

AND IN THE MATTER of a Notice of Intention to Revoke Occupancy Certificate respecting the property called Lucayan Towers South Condominium Association given in a letter dated 2nd July 2024.

AND IN THE MATTER of The Hawksbill Creek, Grand Bahama (Deep Water Harbour and Industrial Area) Act, and The Hawksbill Creek, Grand Bahama (Deep Water Harbour and Industrial Area) (Amendment of Agreement) Act, and The Hawksbill Creek, Grand Bahama (Deep Water Harbour and Industrial Area) (Amendment of Agreement) (No. 2) Act.

AND IN THE MATTER of Bye-laws 11, 12, and 14 and other provisions of The Freeport (Building Code and Sanitary Code) Bye-laws.

AND IN THE MATTER of an application by Lucayan Towers South Condominium Association and Lawrence Investments Limited for permission to make application for an Order of Committal.

AND IN THE MATTER of an *Ex Parte Order* made by the Hon. Mr. Justice Loren Klein dated 18th day of July, A. D., 2024 and a subsequent Order dated 14th day of August, A. D., 2024.

BETWEEN:

(1) LUCAYAN TOWERS SOUTH CONDOMINIUM ASSOCIATION
(2) LAWRENCE INVESTMENTS LIMITED

Claimants

AND

GRAND BAHAMA UTILITY COMPANY LIMITED

Defendant

Before: The Honourable Mr. Justice Loren Klein
Appearances: Ms. Meryl Glinton for the Plaintiff
Mr. Edward Marshall II for the Defendant

Hearing dates: 1, 10 December 2025

RULING

KLEIN, J

Contempt of court—Application for Leave to Commit—Injunction preventing Defendant disconnecting water supply until trial or "further Order"—Water disconnected and restored after approach to Court by claimants—Whether Order breached—Whether leave should be granted to commence committal proceedings—Meaning and scope of term "until further order" in judicial proceedings—Pro-tem injunction granted in related proceedings restraining defendants from disconnecting water supply for 6 months—Whether a "further order" or co-existing order—Practice and Procedure—CPR Parts 50 and 51—Whether leave required to enforce court's order by contempt—What is the procedure for seeking leave under CPR Part 51—Interrelation between CPR 50 and 51—Fine as alternative to committal as sanction for contempt

INTRODUCTION AND BACKGROUND

1. This is an application for leave to commit or, in the alternative, impose a fine against the defendant company and/or its officers and directors for contempt of court associated with the alleged breach of an injunction granted by this Court. The injunction was originally granted on 18 July 2024 on an *ex parte* application but continued in effect on the return date at an *inter partes* hearing by order dated 14 August 2024 (collectively "the Order").

2. The primary terms of the Order restrained the defendant, along with several associated entities, from disconnecting the water supply to the condominium managed by the first claimant pending trial of the claim in which the injunction was sought or "*until further order*".

3. In addition to the usual issues thrown up by contempt proceedings, the application raises procedural concerns of some significance. The main issue is: what is the procedure for making a contempt application to enforce an alleged breach of a court order and whether permission is required, having regard to the provisions of CPR Parts 50 and 51 of the *Civil Procedure Rules 2022* (CPR 2022) (the "new rules") and their antecedents in the *Rules of the Supreme Court 1978* (R.S.C. 1978) (the "old rules")?

Adjudicative context

4. Before looking at the procedural and substantive issues, it is important to provide some adjudicative context for the application. The claim out of which the Order arises is the most recent in a lengthy saga of claims and applications by the first claimant against the Grand Bahama Port Authority ("GBPA") and its associated companies. They are all concerned with satellite litigation arising out of an acrimonious legal dispute between rival boards of the claimant Association over the right to manage the condominium complex located in Freeport, which dates back to 2013. This is now my eighth judgment arising directly or indirectly out of this legal dispute, including associated costs rulings.

5. As I pointed out in my judgment issued 31 March 2025 (*Lucayan Towers South Condominium Association v. Grand Bahama Utility Company et. al*., 2018/CLE/gen/01480)—which I will refer to by shorthand as "**the water arrears judgment**"—this protracted litigation has crippled the Association financially and deeply divided its membership. It has also stripped its ability to pay for utilities and carry out maintenance and repairs to the building. In fact, the water arrears judgment was a claim for arrears of over $400,000.00 owed to the defendant by the first claimant for the supply of water and sewerage services accumulated since 2014, and the court granted a claim in *quantum meruit* to the defendant for the sum of $427,878.49. The order made in that case is of some significance for this application, and I will return to that.

6. The Order which falls for consideration in this application was obtained in a claim in which the claimants sought to challenge a notice issued by the GBPA (1st defendant) and associated entities, the Grand Bahama Power Company Ltd. ("GBPC") (2nd defendant) and the Grand Bahama Utility Company Ltd. ("GBUC") (3rd defendant), to revoke the occupancy certificate of the condominium. The notice, by letter dated 2 July 2024, was issued on the purported basis that the building no longer complied with the Freeport Building Code and other safety requirements (Claim No. 2024/CLE/gen/00119). I will refer to this as the "**revocation of occupancy action**".

7. The claimant Association sought to prevent the GBPA and its entities taking any action pursuant to the notice by seeking various declarations as to the legality of such action in the context of the Hawksbill Creek Agreement ("HCA"), the quasi-statutory legal arrangement which provides government-like powers to the GBPA, and by seeking injunctive relief in the interim, which resulted in the Order with which this application is concerned.

8. It is not necessary to consider the legal intricacies of the HCA for the purposes of this judgment. As far as may be relevant for understanding, I will repeat my summary of the legal arrangements constituting the HCA in the water judgment as follows [1]:

> "The HCA is a rather complex arrangement under which the colonial Government in 1955 granted (among other rights) a monopoly to a private company…(GBPA) to supply utility services (including water, electricity and sanitation) and the right to carry out quasi-governmental functions within a demarcated area of Freeport ("the Port Area") in exchange for various tax and developmental concessions."

The Order

9. I now turn to look at the main terms of the Order made in the revocation of occupancy action. The Order contained the standard penal notice along with other important notices which stated (so far as is relevant):

"Penal Notice

> If you…Grand Bahama Utility Company Limited…disobey this Order you may be held in contempt of court and may be imprisoned, fined or have your assets seized."

Important Notice to the Defendant/Respondent

[…]
(2) If you disobey this Order you may be found guilty of contempt of Court and any of your directors may be sent to prison or fined and your assets may be seized.

The Effect of this Order

[…]

(2) A Defendant/Respondent which is a company or corporation and which is ordered not to do something must not do it itself or by its directors, officers, employees or agents in any other way."

10. The operative parts of Order (headed "**the Injunction**") provided as follows:

> "(1) Until the 15th August 2024, inclusive, or the *inter partes* hearing of the application by Notice of Application filed 15th July 2024 (the "*Inter Partes Hearing*"), that is fixed for 14th August 2024, whichever is sooner, or further order, Grand Bahama Port Authority Limited ("GBPA"), and Grand Bahama Power Company Limited ("GBPC") and Grand Bahama Utility Company ("GBUC") and each of them, are hereby restrained from taking any steps further to the Notice of Intention to Revoke Occupancy Certificate by letter dated 2nd July 2024 (the "Revocation Notice") respecting the Lucayan Towers South Condominium building (the "Building") and its surrounding areas or otherwise interfering with the Claimants: right of enjoyment of the Building constructed on the Property and situate in the City of Freeport/Lucaya located in the Port Area (as defined by *The Hawksbill Creek, Grand Bahama (Deep Water Harbour and Industrial Area) Act* ("the Premises"), whether by way of entry upon the Premises or by threatening and purporting to revoke the said Occupancy Certificate or otherwise impeding the Claimant's carrying out their duties and responsibility to operate and manage the affairs of Lucayan Towers South Condominium (the Body Corporate) in which vest the said duties and responsibility or serving another such Revocation Notice upon the Body Corporate, for entry upon the Premises or to otherwise interfere with the Claimant's enjoyment of the Premises whether by terminating or interrupting electricity and/or water and sewage supply to the Premises.
>
> (2) GPBA and GBPC and GBUC and each of them are prohibited and restrained whether by their subsidiaries or affiliates or Licensees or managers or officers or directors or agents or servants or otherwise howsoever, from any further acts of actual or threatened revocation of the Occupancy Certificate and or the disconnection and interruption of electricity and water and sewage supply to the Premises; or, if such disconnection or interruption as aforesaid has been carried out, GBPA or GBPC shall forthwith restore or cause the same to be restored and reconnected until 15th August 2024, or further order; and
>
> (3) GBPA and GBPC and GBUC and each of them are restrained from engaging in the conduct of preemptively or punitively disconnecting or interrupting electricity and water and sewage supply being provided to the Premises without prior notice to the Claimants, the effect and/or purpose of which is to cause further harm and loss and damage to the Claimants and the operation of the Premises."

11. It was further provided in the Order that it was to be served on the defendants/respondents at their registered office or at their main offices in Freeport, Grand Bahama, along with the material on which it was based.

12. As mentioned, this Order was kept on foot by a subsequent Order made 14 August 2024, the material terms of which provided that "*The injunction granted by the Ex Parte Order be and is hereby continued in full force and effect until trial of the action or further order*."

This Application

13. This application was made by originating application ("OA") filed 9 December 2025, along with a statement in support filed the same day. It was supported by the Affidavit of Godfrey Bowe filed in the revocation of occupancy action on 21 October 2025, and the affidavits of Stephanie V. Cox filed 16 July and 13 August 2024.

14. The main reliefs sought in the OA were as follows:

(i) An Order pursuant to CPR Parts 50.3 (1)(b) (iii) and 51.2 (2)(a)(i) and 51.1(5) granting the claimants permission to apply for an order of committal against the officers and/or directors of the Defendant and/or agents thereof;

(ii) An Order of committal as against the officers and directors of the Defendant and/or agents thereof or, alternatively, that the said defendant and/or its officers and/or directors be made to pay a fine.

15. There was also an application for an Order pursuant to CPR Part 71.8 (1)(a) directing that the defendant's attorney of record pay the costs of the application, whether fixed or to be assessed, and/or an order for the defendant to pay the claimants' costs.

16. As set out in the statement, the specifics of the relief sought and the grounds on which it was sought was set out in the Statement as follows:

> "2. The relief sought is an Order of committal for contempt of court by the Defendant, Grand Bahama Utility Company, Limited, whose principal place of business is situate at Grand Bahama Port Authority Headquarters, Pioneer's Way and East Mall Drive, Freeport, Grand Bahama, The Bahamas; and/or that a fine be imposed on the said Defendant and/or its Officers and/or Directors: Sarah L. St. George, Rupert Hayward, Ian B. A. Rolle, Deann E. Seymour, Karla S. McIntosh, and/or Hadassah A Swain, all of whom reside in the City of Freeport on the island of Grand Bahama, The Bahamas.
>
> 3. The grounds for the application are that on 16th October 2025, Grand Bahama Utility Company, Limited, through its servants, agents, officers and/or directors, disobeyed and refused or neglected to comply with the Ex Parte Order made by the Hon. Mr. Justice Loren

Klein dated 18th day of July, A. D., 2024, and the subsequent Order made by the said Judge, dated 14th day of August, A. D., 2024, in that, *inter alia*, the said Defendant and/or its said servants, agents, officers, and/or directors:

i. Interfered with and impeded the Claimants' right of enjoyment of the Condominium building and its surrounding areas ("the Property");

ii. Interfered with and impeded the right and ability of the first named Claimant to carry out its functions, duties and responsibilities to operate and manage the affairs of the Condominium in relation to the Property in accordance with the said Act;

iii. Terminated, disconnected and disrupted water and sewage supply to the Property, pre-emptively and/or punitively, by unauthorized entry onto the Property or otherwise, and without adequate or proper notice (if any)."

17. It is important to interpose here that the application was originally made by notice of application ("NOA") filed 20 October 2025, which in the main sought the following relief:

(i) an Order pursuant to CPR Part 17.1 (1)(b) requiring the Third Defendant to reconnect the water supply to the Lucayan Towers South Condominium Property with immediate effect (called the "Enforcement Application");

(ii) an Order pursuant to CPR 51.3 for an order of Committal against the officers and/or directors of the Third Defendant and/or agents thereof; or in the alternative;

(iii) an Order pursuant to CPR Parts 50.3(1)(b)(iii) and 51.1 (2) (a)(i) and 51.1 (5) granting permission to apply for an order of committal against the officers and or directors of the Third Defendant (the latter two were the "Breach Applications").

18. I mention this because, as foreshadowed, an important point of procedure arises out of the form in which the initial application was made, in particular because of the wording of CPR 50 and CPR 51, as adapted from their predecessors in the *R.S.C.* 1978, respectively Ord. 45, r. 5 and Ord. 52. In fact, a preliminary ground of challenge taken by counsel for the defendant was that the application for committal was premature, as no leave had been sought to commence the application.

19. At the outset there was some discussion as to whether leave was required to make the application, and the procedure that should be followed in that regard. During an initial hearing on 1 December 2025, the Court gave the claimants leave to file an originating application and the statement required by CPR Part 51.1. This explains why the instant application has a different number (185 of 2025) from the action out of which it arises (119 of 2024), and why only GBUC (the alleged contemnor) is named as the single defendant. In any event, the application proceeded on the basis of it being an application for permission, but the claimants maintained their application

for committal of the directors or, in the alternative, the imposition of a fine (on the hypothesis that no leave was required).

The procedural issue

20. The procedural issue arises from a possible inconsistency or uncertainty created by the wording of CPR Part 50 and CPR Part 51, in respect of the procedure for making an application for contempt. Firstly, and as noted, the claimants applied under both CPR 50.3 ("*Enforcement of judgment to do or abstain from doing any act*") and CPR 51.1(2)(a)(i) ("*Committal for contempt of Court*). Those respective provisions will be examined shortly, but the arguments (or observations) made by counsel for the claimants, as far as I understand them, were threefold:

(i) that CPR 50.3 provides a self-contained method to enforce the court's judgments or orders requiring a person (among other things) to refrain from doing an act, when such orders are breached in circumstances amounting to contempt;

(ii) that the procedure for making an application under CPR 50.3 and 51.1(2)(a)(i) are different, in that leave is not required under the former and the form of application is an application under Part 11 (Notice of Application), while the latter requires an application to be made by Originating Application and leave appears to be required; and

(iii) the provisions of Part 51.2 providing for the "application for the *order*" to be made by an originating application is rather ambiguous and/or creates some uncertainty as to whether it relates to the application for leave or the substantive application for committal (although it logically must relate to the latter).

CPR Part 50

21. What is now CPR Part 50 was formerly Ord. 45, r. 5 of the RSC 1978. The material parts of CPR 50 are as follows (underling supplied for emphasis):

> **50.3 Enforcement of judgment to do or abstain from doing any act**.
>
> (1) Where —
>
> (a) a person required by a judgment or order to do an act within a time specified in the judgment or order refuses or neglects to do it within that time, or, as the case may be, within that time as extended or abridged under these Rules; or
>
> (b) a person disobeys a judgment or order requiring him to abstain from doing an act; then, subject to the provisions of these Rules, the judgment or order may be enforced by one or more of the following means —
>
> (i) with the leave of the Court, a writ of sequestration against the property of that person;

(ii) where that person is a body corporate, with the leave of the Court, a writ of sequestration against the property of any director or other officer of the body;

(iii) subject to the provisions of the Debtors Act (Ch. 70) an order of committal against that person or, where that person is a body corporate, against any such officer.

(2) Where a judgment or order requires a person to do an act within a time therein specified and an order is subsequently made under rule 50.4 requiring the act to be done within some other time, references in paragraph (1), to a judgment or order shall be construed as references to that order made under rule 50.4.

(3) Where under any judgment or order requiring the delivery of any goods the person liable to execution has the alternative of paying the assessed value of the goods, the judgment or order shall not be enforceable by order of committal under paragraph (1) but the Court may, on the application of the person entitled to enforce the judgment or order, make an order requiring the person so liable to deliver the goods to the applicant within a time specified in that order, and that order may be so enforced.

(4) An application for committal or sequestration under this rule is to be made in the proceedings in which the judgment or order was made or the undertaking was given by an application in accordance with Part 11.

(5) Where an application to commit or for sequestration under paragraph (4) is made against a person who is not an existing party to the proceedings, then the committal application is made against that person by an application under Part 11.

(6) The application must —

(a) set out in full the grounds on which the application is made and must identify, separately and numerically, each alleged act of contempt including, if known, the date of each of the alleged acts; and

(b) be supported by one or more affidavits containing all the evidence relied upon.

(7) Subject to paragraph (8), the application notice and the evidence in support must be served personally on the respondent.

(8) The court may —

(a) dispense with service under paragraph (7) if it considers it just to do so; or

(b) make an order in respect of service by an alternative method or at an alternative place."

22. CPR 50.5 also sets out certain pre-requisites for the enforcement of "*an order requiring a body corporate to do or abstain from doing an act*" under CPR 50.3 (1)(ii) or (iii). The relevant ones for this application are: (i) a copy of the order must be served personally on the officer against whom an order of committal is sought; and (ii) there must be endorsed a notice on the order informing the person that if he disobeys the order, he is liable to the process of execution to compel him to obey it (a penal notice).

CPR Part 51

23. What is now CPR Part 51 was formerly Order 52 of the RSC 1978. The material parts of CPR 51 are as follows (underlining supplied for emphasis):

> **"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) <u>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</u>; 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) <u>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.</u>
>
> **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 notice of the originating application and the day named therein for the hearing.

(2) Unless within fourteen days after such leave was granted the originating application 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 application 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

24. It is also useful to set out, by way of comparison and to provide some clarity and context, a portion of the UK Civil Procedure Rules which deals with "How to make a contempt application".

"81.3 How to make a contempt application.

(1) A contempt application made in existing High Court or County Court proceedings is made by an application under CPR Part 23 in those proceedings, whether or not the application is made against a party to those proceedings.

(2) If the application is made in the High Court, it shall be determined by a High Court judge of the division in which the case is proceeding. If it is made in the County Court, it shall be determined by a circuit judge sitting in the County Court, unless under a rule or practice direction it may be determined by a district judge.

(3) A contempt application in relation to alleged interference with the due administration of justice, otherwise than in existing High Court or County Court proceedings, is made by an application to the High Court under CPR Part 8.

(4) Where an application under CPR Part 8 is made under paragraph (3), the rules in CPR Part 8 apply except as modified by this Part and the defendant is not required to acknowledge service of the application.

(5) Permission to make a contempt application is required where the application is made in relation to—

(a) interference with the due administration of justice, except in relation to existing High Court or County Court proceedings;
(b) an allegation of knowingly making a false statement in any affidavit, affirmation or other document verified by a statement of truth or in a disclosure statement.

(6) If permission to make the application is needed, the application for permission shall be included in the contempt application, which will proceed to a full hearing only if permission is granted.

(7) If permission is needed and the application relates to High Court proceedings, the question of permission shall be determined by a single judge of the division in which the case is proceeding. If permission is granted the contempt application shall be determined by a single judge or divisional court of that division.

(8) If permission is needed and the application does not relate to existing court proceedings or relates to criminal or County Court proceedings or to proceedings in the Civil Division of the Court of Appeal, the question of permission shall be determined by a single judge of the King's Bench Division. If permission is granted, the contempt application shall be determined by a single judge of the King's Bench Division or a divisional court."

Discussion on the procedural issue

25. As indicated, the predecessor of CPR Part 51 was RSC Ord. 52, introduced in 1978. It is useful to quote RSC Ord. 52, rules 1-3, in full to understand how the rule was adapted and became CPR Part 51.

Ord. 52
Committal
(R.S.C. 1978)

"1. (1) The power of the Supreme 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) <u>any proceedings before the Supreme Court;</u>

(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 <u>otherwise than in connection with any proceedings</u>,

then, subject to paragraph (4), an order of committal may be made by the Supreme Court.

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

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

2. (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.

3. (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 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.

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

26. Initially, part of the issue with the interpretation of the procedure outlined at CPR 51.2 stemmed from counsel for the claimants' reference to the original printed version of the rule, which mistakenly used the term "*notice of motion*" or "*motion*" after the first use of "*originating application*". For example, the original version of 51.2(1) read as follows:

> "(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 ~~*notice of motion*~~ [originating application] and the day named therein for the hearing."

27. The references to "notice of motion" and "*motion*" were all corrected to "originating application" in the amended version, and in any event a motion is no longer a form of commencing proceedings under the CPR. But even the amended version did not remove the ambiguity. From a drafting perspective, it is relatively easy to see what may have gone wrong. Rule 52.2 of the *R.S.C.* specified the procedure for obtaining leave (which was by *ex parte* application) before the application for "*the order*"—the order for committal—was entered for hearing. The latter was by notice of motion, as is provided in Rule 52.3. However, CPR Part 51.2, which adapts RSC Ord. 52, r. 3, omits the original language contained in Rule 52.3 of "*when leave has been granted…to apply for an order of committal…* " and Part 51 omits what was Ord. 52, r. 2 setting out the *ex parte* procedure for obtaining leave. This has resulted in uncertainty as to the current form for making the application for leave.

28. A further change made by CPR 51.2 is that it now refers to two specific instances connected with proceedings in court for which permission is required to commence committal proceedings: (i) in connection with the making of a false statement of truth in a witness statement; and (ii) a breach of duty of a party or his attorney in relation to disclosure. However, the requirement for permission is not limited to those two circumstances and includes "*any proceedings before the Court*", which potentially opens it up to the same ground covered by Ord. 50, r. 5 dealing with enforcement of orders by contempt in existing proceedings.

29. The phrase "*in connection with any proceedings before the court*" encompasses basically any conduct that has a real and substantive link to specific court proceedings. It includes breaches of orders or injunctions where the breach is intended to impede or prejudice the administration of justice in the relevant proceedings (see, **FW Aviation (Holdings) 1 Ltd. v Vietjet Aviation Joint Stock Company** [2025] EWCA Civ 1458). In other words, Parts 50 and 51 provide for contempt proceedings for potentially the same category of contempt, but prescribe a very different procedure for the application.

30. By comparison, the Rules which largely pertain in the Caribbean (Barbados, Eastern Caribbean States, and Trinidad and Tobago) do not require permission to start contempt proceedings for failure to comply with an order or undertaking requiring a person to do an act within a specified time, or not to do an act (CPR 53.1 in all the referenced jurisdictions). In Trinidad, permission is specifically required where the alleged contempt is in relation to:

(a) disobedience to a writ of habeas corpus, or is committed in connection with the application for such a writ, or is in disobedience to an order of mandamus, prohibition or certiorari;
(b) committed in connection with

(i) criminal proceedings, except where the contempt is committed in the face of the court or consists of disobedience to an order of the court or a breach of undertaking to the court;
(ii) proceedings in an inferior court; or
(c) committed otherwise than in connection with proceedings.

31. Thus, it may be seen that the Trinidadian rules do not require permission where the alleged contempt consists of disobedience to a court order or breach of an undertaking, where the contempt is committed in relation to proceedings before the court, or where it is committed in the face of the court ("*in facie curiae",* as the Latin expression goes). It is also notable that the rules in the Caribbean condense and locate the essence of what was Ord. 45, r. 5 of the *R.S.C.*, which provides (*inter alia*) for the enforcement of an injunction, under the rubric of CPR Part 53 dealing with "Committal and Sequestration (or Confiscation) of Assets". They contain no equivalent to Part 50 separately dealing with enforcement in relation to an injunction and proceedings relating to possession of land and delivery of goods.

32. Furthermore, it is to be noted that the UK rules require permission "*except in relation to existing High Court or County Court proceedings*". Importantly, in the UK context the rules allow for the application for permission to be included in the contempt application itself, which may potentially shed some light on how the application for permission was intended to operate under 51.1(5), since no specific provision is made for making an application for leave. Interestingly, in the commentary to Rule 51.1(5) of the CPR 2022 in the Practice Notes, it states that the application for permission is "*made in accordance with Part 11*" (i.e., Notice of Application), although this does not appear anywhere in the Rules. It is also to be noted by comparison that in the UK, applications in existing proceedings are made under Part 23 (Notice of Application), while applications where permission is required are made under Part 8 (Originating Application).

33. In my view, the observations of counsel for the claimants relative to the ambiguity in the rules are well placed. It is clear that an application under 50.3 to enforce a prohibitory injunction does not require the permission of the court (and neither did its predecessor 45, r. 5), as it arises out of alleged breaches of the Court's own orders. It is also to be noted that under CPR 51.1, the requirement to seek permission does not apply to disobedience to an order of the court or the breach of an undertaking, which means that the claimants are right to point out that even under CPR 51.5, they do not require permission.

34. This rewording perhaps corrects an historical error in the original Ord. 52, which provided generally that: "*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*." Thus, the historical position was that leave was always required to commence committal proceedings under *R.S.C. 1978* (even though this was contrary to the English practice and case law, and indeed what was prescribed in Ord. 45, r. 5 itself), with the notable exception of where

the court acted of its own motion to make an order of committal against a person guilty of contempt (*R.S.C. Ord*. 52, r. 4; CPR 51.3).

35. The general requirement for leave appears to have been improperly adapted from O.52, r. 2 of the UK RSC, which provided that: "*No application to a Divisional 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*." The transposition of the rule appears to have overlooked the fact that applications to the "Divisional Court" for permission in the UK context did not apply to *all* contempt applications, but was intended to allocate jurisdiction and apply different procedural rules depending on the nature of the contempt. In the UK, applications were made to the Divisional Court (a multi-judge court) in cases where the contempt was committed in connection with proceedings before a divisional court of the Queen's [King's] Bench Division, criminal proceedings, proceedings in an inferior tribunal, or "*committed otherwise than in connection with any proceedings*" (O. 52, r.1(2)).

36. That paragraph was also made subject to paragraph 4 of that rule, which allowed for a *single judge* of the QB Division to grant leave where the contempt was committed before an inferior court and where the High Court had power to punish that contempt by an enactment. The High Court always had the ability to deal with contempt arising in proceedings before it and for breaches of court orders or undertakings, which did not require permission. Ironically, the *R.S.C. 1978* retained the reference to "*subject to paragraph 4*" and provided for committal in the case of contempt arising in relation to inferior tribunals to be made by "a single judge of the court", again oblivious to the different meaning that provision bore in the context of the UK court system.

37. In addition to the issues highlighted by counsel for the claimants, there are some additional anomalies with CPR 51, some of which appear to be original errors in *R.S.C.* Ord 52. In this regard, it is of some significance that the requirement for permission under CPR 51 is only made applicable to applications under rule 51.1(2)(a)(i). This has the (perhaps unintended) consequence of exempting contempt committed "*otherwise than in connection with any proceedings in the Court*" (e.g., stand-alone interference with the administration of justice not tied to any proceedings) as well as other categories of contempt which traditionally required permission (and which arguably still ought to require permission) from the requirement to obtain permission. These include criminal contempts as well as contempts committed in inferior tribunals cognizable in the Supreme Court (e.g., courts martial).

38. In light of the above observations, the comment on Part 51.1 in the Practice Notes to the CPR 2022 that "*With some minor exclusions this rule mirrors the same Order in the English CPR and retains many of the features of Order 52 of the old Rules of the Supreme Court*" is obviously incorrect and will probably need to be updated. At the time CPR 2022 took effect, the old UK Rules had long been replaced with Part 81 of the UK CPR, which provided a very different procedure than that set out in *R.S.C. Ord. 52* for making a contempt application, although it is correct to say it did not alter the scope and the extent of the jurisdiction of the courts determining contempt proceedings.

39. It will fall to the draftsman to remove any ambiguity between the procedures in 50.3 and 51.1, to clarify the cases in which it was intended that permission be required for starting committal proceedings, and generally to remove the repetition and excess from the rules. As examples of the latter, 51.2 (a)(i) provides for committal for contempt of court committed in connection with "*any proceedings before the Court*", while 51.3 provides for the same thing. Also, CPR 50.3 and 51.1(2) (iii) both cover the same ground with respect to disobedience to an order of the court. However, as observed, it is likely that the drafting of Rule 51.1 to remove the requirement for permission in respect of criminal proceedings, proceedings committed otherwise than in connection with any proceedings, and contempt arising out of proceedings in inferior tribunals or courts, was likely inadvertent.

<u>The application for permission: Relevant Law and Legal Principles</u>

General principles

40. The breach of an order in circumstances which might arise to contempt of court may be punished by committal. As was memorably stated in **Isaacs v Robertson** [1985] A.C. 97, disobedience to an interlocutory injunction made by a court of unlimited jurisdiction may amount to a contempt of court, even if the order itself is irregular. It is well known that because the liberty of the individual is potentially at stake, the test for committal is the criminal standard (that is, beyond a reasonable doubt) and the procedural rules regarding committal for the most part require strict compliance.

41. We are not, in dealing with the application for permission, concerned with the requirements for the committal itself (subject to what the court has to say below on this point). What we are concerned about is the test for the grant of permission or leave to bring committal proceedings. CPR 51 and its predecessor RSC Ord. 52 are silent as to the principles or test for granting permission to bring committal proceedings. Those principles have been supplied by the common law, and the leading authorities identify four main requirements:

(i) a strong *prima facie* case against the alleged contemnor;
(ii) it is in the public interest to bring the proceedings;
(iii) the committal proceedings must be proportionate; and
(iv) it must be in accordance with the overriding objective.

42. In **Northern Linconshire & Goole NHS Foundation Trust v KAE Burnell-Chambers** [2024] EWHC 1901 (KB), Mr. Jonathan Glasson KC, sitting as a Deputy High Court Judge, cited with approval [at para. 36] the summary of the principles by the UK Court of Appeal in **Tinkler v Elliott** [2014] EWCA Civ 564, in relation to an application for committal for knowingly making a false statement, but which are equally apposite here:

"23. […] (iv) Permission should not be granted unless a strong prima facie case has been shown against the alleged contemnor—see *Malgar Limited v RE Leach (Engineering) Limited* [1999] EWHC 843 (Ch), *Kirk v Walton* [2008] EWHC 1780 (QB), Cox J at paragraph 29 and *Berry Piling Systems Limited v Sheer Projects Limited* (ante), Paragraph 30 (a);

(v) Before permission is given, the court should be satisfied that:

(a) the public interest requires the committal proceedings to be brought;
(b) the proposed committal proceedings are proportionate; and
(c) the proposed committal proceedings are in accordance with the overriding objective—see *Kirk v Walton* (ante) at paragraph 29;

(vi) In assessing proportionality, regard it to be had to the strength of the case against the respondents, the value of the claim in respect of which the allegedly false statement was made, the likely costs that will be incurred by each side in pursuing the contempt proceedings and the amount of court time likely to beg involved in case managing and then hearing the application but bearing in mind the overriding objective—see *Berry Pilings Systems Limited v Sheer Projects Limited* (ante) at Paragraph 30(d):

(vii) In assessing whether the public interest requires that permission be granted, regard should be had to the strength of the evidence tending to show that the statement was false and known at the time to be false, the circumstances in which it came to be made, its significance, the use to which it was actually put and the maker's understanding of the likely effect of the statement bearing in mind that the public interest lies in bring home to the profession and through the profession to witnesses the dangers of knowingly making false statements—see *KJM Superbikes Limited v Hinton* [2008] EWCA Civ 1280, Moore-Bick LJ at Paragraphs 16 and 23; and

(viii) In determining a permission application, care should be taken to avoid prejudicing the outcome of the application if permission is given by avoiding saying more about the merits of the complaint that is necessary to resolve the permission application—a see *KJM Superbikes Limited v Hinton* (ante) at Paragraph 20."

Whether there is a strong prima facie case

43. The starting point and perhaps the most important consideration for the judge is whether or not there is a strong *prima facie* case. In **El Makdessi v Cavendish Square Holdings BV et. al.** [2013] EWCA Civ 1540, the Court of Appeal said that: "*It is axiomatic that, upon an application for permission, the judge is required to find whether there is a strong prima facie case, not whether that case is established*." As part of this exercise, I am required to review the evidence filed so far, as well as considering the particulars of the contempt alleged and the relevant terms of the Order.

44. I must also have regard to the legal principles for establishing breach of an order in circumstances which may amount to contempt. In order to establish a breach, it is not necessary to prove that the breach was contumacious or contumelious, to use the old language. But the breach must have been "deliberate", in the sense that the act was consciously done and was not accidental.

As said in **Absolute Living Developments Ltd. v DS7 Ltd. & Ors.** [2018] EWHC 1717 (Ch) (05 July 2018) by Mr. Justice Marcus Smith:

> "30. "(1) Of critical importance is the order which is said to have been breached. As has been seen, the order generally must have been personally served on the defendants and must be capable of being complied with in the sense that the time for compliance is in the future. Additionally, the order must be clear and unambiguous.
>
> (2) The breach of the order must have been deliberate. This includes acting in a manner calculated to frustrate the purpose of the order. A difficult question relates to what 'deliberate means. It is not necessary that the defendant intended to breach the order, in the sense that he or she knew its terms and knew that his or her conduct was in breach of the order. It is sufficient that the defendant knew of the order and that his or her conduct was deliberate as opposed to inadvertent. The point was put extremely clearly by Millet J. in *Spectravest Inc. v Aperknit* [1988] FSR 161 at 173:
>
> 'To establish contempt of court, it is sufficient to prove that the defendant's conduct was intentional and that he knew of all the facts which made it a breach of the order. It is not necessary to prove that he appreciated that he did breach the order.'
>
> (3) Deliberate breach of an order, in the sense described, is very significant. It is clearly in the public interest that court orders be obeyed."

Evidence

45. The primary evidence relied on by the claimants was the affidavit of Godfrey Bowe filed 20 October 2025. Mr. Bowe is a director and property manager of the first claimant, and he also resides in the condominium. He swore the affidavit in support of the relief sought in the Notice of Application, which was said to be necessitated by the "*apparent breach of Orders made in this action…on 18th July 2024 and 14th August 2020 ("the restraining Orders*")."

46. The material evidence of Mr. Bowe was that he received some calls at about 5:30 p.m. on Thursday, 16 October 2025, from several residents of the condominium that they were not receiving any water in their units. On investigation, he discovered that a locking device had been placed on the water by persons then unknown, but whom he assumed were agents or servants of the GBUC. He avers that neither he, nor any other officer of director of the claimant, received notice from GBUC of its intention to disrupt the water supply, so the residents were unable to make any alternative plans or accommodations.

47. He immediately informed the President of the Association, Mr. Maurice Glinton KC and the Association's counsel-and-attorney, Ms. Meryl Glinton, who engaged with counsel from the GBUC to try to have the water restored. However, up to the point at which he swore the affidavit (20 October 2025, which was the following Monday) the building was still without water.

Responsive affidavit evidence

48. The defendant responded with the affidavit of Karla S. McIntosh, who described herself as the Vice-President of the "Port Group of Companies", which was said to include the third defendant. A preliminary objection was taken to the capacity in which she swore the affidavit, on the grounds that the affidavit did not set out her corporate relationship (if any) to GBUC (the 3rd defendant in the revocation of occupancy action), but this was later clarified in her third affidavit, in which she identified herself as the secretary of the 3rd defendant.

49. The defendant did not deny shutting off the water. Much of the first affidavit of Karla McIntosh set out the procedural history of revocation action as well as the related water arrears judgment, in which the Court granted a *pro-tem* injunction also restraining disconnection of the water supply, and sought to explain why it was that the water was shut off and why it believes it was justified in doing so. Not much of this is relevant to the current application, and some would be better situated as submissions. However, the material paragraphs are as follows:

> "24. I have read the Affidavit of Godfrey Bowe and the exchanges between Counsel for the Claimant and Counsel for GBUC on 20 October 2025. Mr. Bowe has been less than fair in his characterization of what transpired.
>
> 25. Since judgment was entered in the Action Regarding Non-Payment on 31 March 2025, the Claimant has not paid one single cent to GBUC for the services it has and continues to receive. I am now convinced that the reason it has not made a single payment is because it believed it did not have to. That cannot have been the intention of this Honourable Court granting the injunction in this Action Regarding Revocation of the Certificate of Occupancy.
>
> 26. Based on the belief that the Order for Injunction in the Action Regarding Non-Payment expired on 1 October 2025, water supply services to LTS was disconnected on Thursday 16 October 2025, at 4:00 p.m. due to non-payment. This was not an unreasonable belief based on the order made in the Judgment in the Action Regarding Non-Payment.
>
> […]
>
> 30. Upon a review of its terms, [the Order of 18 July 2024], it was clear that (i) it was put in place to prevent the disconnection of water supply services to LTS in circumstances where the Occupancy Certificate was revoked which is the subject matter of this Action (ii) it was to remain in place until a further order was made and a further order had been made in the Action Regarding Non-Payment on 31 March 2025, in relation to GBUC and (iii) the earlier Orders for injunction were overtaken by the Order in the Judgment in the Action Regarding Non-Payment it being the most recent one.
>
> […]
>
> 36. GBUC has not intentionally breached any order made in this or any other Court. GBUC has abided by repeated orders made against it preventing it from enforcing its rights

> while suffering financial loss and damage. The suggestion that, after all of these years of obeying such orders, GBUC willfully breached this Order has no basis."

50. The water was eventually restored at about midday on Tuesday, 21 October 2025, by the defendant based on communication with the court and the claimants.

The grounds/particulars

51. As set out above, the main particulars relied on were simply that the defendants disobeyed the Orders of the 14 August and 18 July 2024, with the result that:

(i) it interfered with and impeded the claimant's rights of enjoyment of the condominium building and surrounding areas;
(ii) it interfered with and impeded the ability of the first-named claimant to carry out its functions related to the management of the condominium property; and
(iii) it terminated water and disconnected water and sewerage supply "pre-emptively or punitively" by unauthorized entry onto the property and without prior notice.

52. As a general observation, and as I pointed out to counsel during the hearing, because of the quasi-criminal nature of contempt proceedings, the particulars of the alleged contempt have to be set out with some particularity. Each also has to be considered separately. In my view, these allegations did not set out with the requisite particularity one would expect of contempt allegations the manner in which the Order was said to be breached. In **The Secretary for Transport (HS2) v Cuciurean** [2020] EWHC 2614 (13 October 2020), Mr. Justice Marcus Smith said (in relation to the requirements of CPR 81.10(3)(a) of the UK CPR):

> "The application must 'set out in full the ground on which the committal application is made and must identify separately and numerically, each alleged act of contempt including, if known, the date of each of the alleged acts'. The importance of stating precisely and specifically the grounds of contempt was emphasized in *Ocado Group plc v McKeeve* [2020] EWHC 1463 (Ch) at [18] to [36]."

53. Whilst the requirements of the UK CPR do not apply to our context, the case law also requires the same degree of specificity in allegations of contempt. In **Attorney-General for Tuvalu and Another v Philatelic Distribution Corporation Ltd. and Ors.** [1990] 1 WLR 926, Woolf LJ, giving the judgment of the UK Court of Appeal said (pg. 934-935):

> "The essential point which the cases establish is that an alleged contemnor should be told with sufficient particularity to enable him to defend himself, what exactly he is said to have done or omitted to do which constitutes a contempt of court. The cases make clear that compliance with this rule will be strictly insisted upon since the liberty of the subject is at stake, but they also show that the nature or background of the case is important."

54. Despite these drafting failings in the contempt allegations, I am satisfied, however, that the charges contain sufficient particulars to enable the defendants to defend themselves, and the defendants made no complaint as to the lack of, or imprecise, particulars. They were always aware of the nature of the contempt allegations being made, as is evident from their vigorous defence of the allegations and willingness to proceed to a substantive hearing.

Approach to construction of Order

55. The defendants cited the well-known UK Supreme Court authority of **JSC BTA Bank v Ablyazov** [2015] UKSC 64 for the principles relating to the construction of court orders where contempt is alleged. The claimants did not take any issue with these principles and they are presumed to be common ground. There (at paras. 16-26), Lord Clarke, with whom the other Judges agreed, distilled the applicable principles as follows:

> "(1) The question for the Court is what the Ex Parte Injunctive Order made means. The answer to the question of construction does not depend upon the analysis of the Second Defendant's conduct. Issues such as whether the Order should have been granted and if so what terms ought to have been imposed are not relevant to construction.
>
> (2) In considering the meaning of the Ex Parte Injunctive Order granting an injunction, the terms in which it was made are to be restrictively construed. Such are the penal consequences of breach that the Order must be clear and unequivocal and strictly construed before the Second Defendant will be found to have broken the terms of the Order and thus be in contempt of Court.
> (3) The words of the Ex Parte Injunctive Order are to be given their natural and ordinary meaning and are to be construed in their context, including their historical context and with regards to the object of the Order."

The parties' arguments in summary

56. The claimants filed "consolidated submissions", which took preliminary objections to the defendant's application for a strike out and/or a stay of the committal application on various grounds—including the fact that the claimant had not paid any of the sum ordered paid by the Court in the water arrears judgment, 1 March 2025—and also made arguments directed to the substantive issue of the alleged breaches. The arguments relating to the question of leave were primarily made in oral submissions.

57. The main argument of the claimants in this regard is that the terms of the restraining Order are clear, and that it restrained the defendant from terminating the water supply to the condominium, which they breached on 16 October 2025. They submit that the defendant has not refuted the breach, but in fact has admitted it in its submissions and defence to the contempt allegations. In this regard, the positive defence to the claim seems to be twofold: (i) that the effect of the Order was only to prevent GBUC from disconnecting the supply of water in furtherance of the revocation notice, and as it was not taking any action pursuant thereto, there was no breach;

and (ii) the duration of the Order was only until "*further order*", which was supplied by the court's injunction in the water arrears judgment, which was limited to six months and which had expired.

58. In oral submissions, counsel submitted that the terms of the Order were wider that the revocation remit, as signaled by the inclusion of the terms which restrained the defendants from "*otherwise*" interfering with the claimants' enjoyment of the property. She also submitted that the order in the water arrears judgment did not expressly vary or discharge the Order, and could not by implication supersede it. Therefore, the claimants had on the facts clearly established a "*prima facie*" case for the grant of leave, although she was reminded by the Court that the standard adopted by all the modern authorities is a *strong* prima facie case.

59. The defendant submitted that when the Order is construed in its context and having regard to the object of the Order, it is clear that it was never intended to operate in circumstances other than those connected to the revocation notice, which was the foundation upon which the prohibition was originally imposed. It was contended further that the phrase "*until further order*" as used in the Order extending the *ex parte* order, created ambiguity in that it is not clear whether that phrase meant that the subsequent order was confined to an order made in the same proceedings or in related proceedings involving the same subject matter. In oral submissions, Mr. Marshall submitted that, in any event, even if there was a breach of the Order, it was only a transient breach, as the water was restored on a voluntary undertaking by the defendants within a few days and any breach was remedied.

60. Against this background, I now come to consider the specific allegations of contempt and whether the claimants have made out a strong prima facie case for commencing committal proceedings.

Contempt 1

(1) This alleges that the defendant's act of shutting off the water (presumably contrary to the terms of the Order, since this is not stated) interfered with the claimant's enjoyment of the condominium, and it is also left to be assumed that the interference with the enjoyment related to the deprivation of water supply.

Contempt 2

(2) The allegations here are that the defendant's act of shutting off the water supply impeded the ability of the first-named claimant to carry out functions relating to the management of the condominium, and again it is left to be presumed that the lack of water created an impediment to the carrying out of management functions.

Contempt 3

(3) This alleges that the defendant's disconnection of the water supply was either pre-emptive or punitive and without notice, and that its effect and/or purpose was to cause further harm and loss and damage to claimants' operation of the premises, presumably again contrary to the terms of the Order.

61. Contempts 1 and 2 are predicated on term 1 of the Order. In summary, that restrained the defendants (until trial or further order) from taking any steps "*further to the Notice of Intention to Revoke the Occupancy Certificate by letter dated 2 July 2024 ("the revocation Notice")… or otherwise interfering with the claimant's right of enjoyment of the Building…whether by way of entry upon the premises or by threatening and purporting to revoke the said Occupancy Certificate or otherwise impeding the Claimant's carrying out their duties and responsibility to operate and manage the affairs of the Lucayan Towers South Condominium…or to otherwise interfere with the Claimant's enjoyment of the Premises whether by terminating or interrupting electricity and/or water and sewage supply to the Premises*."

62. It is clearly the case that the restraint was primarily directed at activities associated with the revocation notice. In this regard, one cannot lose sight of the claim out of which the injunction arose. In the affidavit in support of the injunction, the affiant Stephanie Cox stated:

> "4. I make this affidavit in support of the Company's application (jointly with the Body Corporate) in light of the Revocation Notice, for an injunction against each of the Defendants the Company being the beneficial owner of property in the Building against which the Port Authority threatens, to 'commence revocation of the Occupancy Certificate for [the building]…that will result in the termination of all utility services in the building and units' after 14 days of the 2nd July 2024 letter."

63. In other words, the feared event which necessitated the claim for the injunction was the threatened revocation notice. It is noted, however, that the disconnection of water and other utilities were stated to be the *consequences* of revocation of the occupancy certificate, not actions precipitating it. There was no evidence before the Court that the defendant in shutting off the water was acting in furtherance of the revocation notice, and it seems to be common ground that they were not. As noted, the defendants asserted that they disconnected the water supply because they were of the view that the water arrears judgment of 31 March 2025, which imposed a 6-month injunction on the disconnection of water supply, was a "further order" which superseded or dissolved the Order granted in the revocation of occupancy action, and therefore cleared the way for disconnection.

64. I accept the contention of the claimants that the remit of the Order was wider than a prohibition relating only to action in pursuance of the revocation notice. While it was grounded on the revocation notice, the terms specifically enjoined the defendants from "*otherwise*" interfering with the enjoyment of the building by disconnecting water and electricity, etc. On a plain reading, this prevented any disconnection of the water pending the trial of the revocation of occupancy claim or until further order.

65. In my judgment, the claimants have clearly established a strong *prima facie* case in respect of contempts 1 and 2 for a committal application, although the alleged breach of the restraint against impeding and interfering with management functions can only apply to the first claimant, and not the second.

66. Term 3 of the Order restrained the defendants from "*preemptively or punitively disconnecting or interrupting electricity and water supply…without prior notice to the claimants, the effect of which is to cause further harm and loss and damage to the claimants and the operation of the premises*." The essence of this order is that it restrained the defendants from disconnecting the water without "prior" notice. I am not of the opinion that the words "preemptively" or "punitively" add much to the order, and there was no allegation or evidence that shutting off the water was intended to be punitive. Again, the assumed loss and damage to the claimants is the loss of water supply for roughly four and a half days. As has been indicated, there is no basis on which the second claimant can assert a claim in relation to any loss from operation of the premises, as it is described as a "unit owner" of the condominium and said to be a "constituent member" of the Body Corporate.

67. Mr. Marshall's response to the lack of notice was that the notice of disconnection was provided to the claimants by letter dated 12 November 2021, but that disconnection did not take place at that point or any proximate point because there were various injunctions imposed which prevented the defendants from shutting off the water.

68. I do not accept that a notice of disconnection given in November 2021 could be effective in any way shape or form for a disconnection made in October 2025. In fact, it is counter-intuitive to the concept of giving notice, which requires some proximity to the event or act in respect of which it is given for it to be effective. I therefore accept that factually a claim for breach could be made out in respect of contempt 3, particularly with respect to disconnection without notice. But this is not the end of the matter.

69. Counsel for the defendants cited **Masri v Consolidated Contractors International Co SAL and others** [2011] EWHC 1024, for the principle that the claimants must also prove that the defendants have intentionally or deliberately breached the order to establish a claim for contempt. There, Christopher Clarke J., considering the *mens rea* required to establish contempt, said [at 150]":

> "In order to establish that someone is in contempt it is necessary to show (i) that he knew of the terms of the order; (ii) that he acted (or failed to act) in a manner which involved a breach of the order; and (iii) that he knew of facts which made his conduct a breach."

70. As explained, however, this does not require a subjective intent to disobey the order. The point was neatly explained by Mrs Justice Foster DBE in **The King (on the application of ZOS) v the Secretary of State for the Home Department [2022] EWHC 3567 [at 79]:**

> "It is well established that proceedings for contempt of court are intended to uphold the authority of the Court and make certain its orders are obeyed. I do not need to repeat here paragraphs 55 to 61 in the case of *JS (by his Litigation Friend KS) v Cardiff City Council* [2022] EWHC 707 (Admin), a decision of Steyn J. It is worth emphasizing that it is not necessary to show that the Defendant intended to commit a breach, although the intention or lack of it is relevant to any penalty to be imposed once knowledge of the Order is proved and once it is proved the contemnor knew that she was doing or omitting to do certain things, then it is not necessary for the contemnor to know that his actions put him in breach of the Order. It is enough, as a matter of fact and law, they do put him in breach, per Rose LJ in *Varma v Atkinson* [2021] (Ch.) 180."

71. This principle is well illustrated in contempt proceedings involving a corporate defendant, which necessarily cannot form any intent, as it can only act through human agents. When a company disobeys an injunction, the directors and other officers who constitute the directing mind, will not be liable for contempt simply by virtue of their office or knowledge. The law was summarized in **Attorney-General for Tuvalu and Another v Philatelic Distribution Corporation Ltd. and Ors.** [1990] 1 WLR 236, where Woolf L.J., giving the judgment of the Court of Appeal said (at 936):

> "In our view where a company is ordered not to do certain acts or gives an undertaking to like effect and a director of that company is aware of the order or undertaking, he is under a duty to take reasonable steps to ensure that the order or undertaking is obeyed, and if he willfully fails to take those steps and the order or undertaking is breached he can be punished for contempt. We use the word 'willful' to distinguish the situation where the director can reasonably believe some other director or officer is taking those steps. […]

Later down he said (at pg. 938):

> "There must however be some culpable conduct on the part of the director before he will be liable to be subject to an order of committal under Order 45, r. 5; mere inactivity is not sufficient. In this regard we were referred to the decision of Anthony Lincoln J. in *Director General of Fair Trading v Buckland* [1990] 1 WLR 920, decided on 14 July 1989. In that case, Anthony Lincoln J. having distinguished an earlier case, *Biba Ltd. v Stratford Investments Ltd.* [1973] Ch. 281, which was cited to him in support of the proposition that a director who is merely passive can be liable for contempt of a company went on to say, at pp. 920, 925:
>
> > 'Accordingly I reach the conclusion that Ord. 45, r. 5 does not render an officer of a company liable in contempt by virtue of his office and his mere knowledge that the order sought to be enforced was made. Resort can be had to rule 5 only if he can otherwise be shown to be in contempt under the general law of contempt.'
>
> That remark was however made in a case where there was no finding made against the director of culpable conduct and it should not be taken as meaning that it is only where a director has actively participated in the breach of an order or undertaking that Ord. 45, r. 5 can apply. If there has a been a failure to supervise or investigate or willful blindness on the part of a director of a company his conduct can be regarded as being willful and Ord. 45, r. 5 can apply."

72. I accept, therefore, that there does not need to be an active breach by a director or officer for contempt proceedings to lie. In any event, there are no allegations here that any of the directors or officers actively committed a breach. However, the failure to supervise compliance with the Order, or to turn a blind eye or ignore actions taken by its agents which may have had the effect of breaching the Order, is sufficient to engage contempt proceedings.

"Until further Order"

73. An important part of the defendant's case was that the phrase "*until further order*" created some ambiguity in the terms of the Order, and any ambiguity in the terms of the Order must be resolved in favour of the defendant. In this regard, it was submitted that it is not clear whether the term means a further order in the revocation of occupancy action in which the Order was made, or a further order by the same court in a related action, such as the water arrears judgment. The defendants submit that when those words are given their natural meaning, nothing in them suggests that they contemplated that "further order" be confined to an order made in the original proceedings.

74. Counsel for the claimant referred the Court to the case of **Wells v. Wells Estate** [1981] CanLII 2134, from the Queen's Bench Division of the Saskatchewan Court for the proposition that the phrase "*until further order*" refers to the court's ongoing jurisdiction to discharge or vary an order upon proper application made in those proceedings. There, Gagne J. said [at 15]:

> "15. The order we are dealing with in this case has the words 'or until further order of the court'. In my view, the above words reserve a power to either party to apply to the court for a variation or discharge of the order."

75. I note that this was an order for maintenance arising out of a *decree nisi.* In many family proceedings, the orders are necessarily non-final and further applications can be made to the court in those proceedings to vary their terms (see the principle codified at s. 74 of the Matrimonial Causes Act). So the term "*until further order*" may have a more limited scope in the context of such orders in family proceedings.

76. In my opinion, and based on the case law, the phrase "*until further order*" is not confined only to the proceedings in which the order is made but may also encompass an order made in related proceedings. However, all the cases make it clear that an injunction made "*until further order*" continues to bind the parties unless and until it is *expressly* discharged, varied or set aside by the court. In other words, a subsequent order in related proceedings, even if it relates to the same subject matter, does not by implication override or supersede the earlier injunction unless it contains clear language to that effect.

77. In **Mahim Khan v Alkiviades David** [2025] EWHC 2611 (KB), the Court was concerned with a situation where a new freezing injunction made was in related proceedings concerning the same subject matter as an earlier injunction. The court made it clear that the new order did not

supersede the earlier injunction but was a co-existing order which remained in force and the earlier order had to be complied with until it was expressly set aside (paras. 15, 16, 19).

77. In my judgment, the order granted in the water arrears judgment which prevented the disconnection of the water by the defendant for a period of 6 months was a co-existing order, which did not supersede the terms of the (earlier) Order. Any other interpretation would leave it to parties to discern by implication whether or not a later order dealing with the same subject matter superseded or varied an earlier order which was said to last "until further order". This would create great uncertainty and an impressionistic approach to determining compliance with the court's orders, which cannot be countenanced. Unless and until they have been expressly discharged, superseded or varied, or have expired by effluxion of time, orders of the court continue to be in force according to their terms and must be obeyed.

Whether in the public interest to bring committal proceedings?

78. I am, however, for the reasons set out below, not of opinion that it would be in the public interest or proportional to grant leave to bring proceedings for committal. There is no doubt that the public interest requires that court orders should be obeyed, and that the court should always take the course of action that would uphold and reinforce that principle. However, as explained below, it is not always necessary to make this point by committal proceedings, and I do think advertence to this principle can be achieved by other, more appropriate means.

Proportionality and the overriding objective

79. The modern cases all hold that there must be a balancing exercise conducted as to whether the committal proceedings are proportionate in the circumstances and accord with the overriding objective. In **Sectorguard plc v Dienne plc** [2009] EWHC 2693 (CH), Briggs J. stated (a passage worth setting out in some detail):

> "44. It is now well established, in light of the new culture introduced by the CPR, and in particular with the requirements of proportionality referred to in CPR 1.1 2(2) [CPR Part 1.1] as part of the overriding objective, that it is an abuse of process to pursue litigation where the value to the litigant of a successful outcome is so small as to make the exercise pointless, viewed against the expenditure of court time and the parties' time and money engaged by the undertaking…
>
> 45. The concept that the disproportionate pursuit of pointless litigation is an abuse takes on added force in connection with committal applications. Such proceedings are a typical form of satellite litigation, and not infrequently give rise to a risk of the application of the parties' and the court's time and resources otherwise than for the fair, expeditious and economic determination of the underlying dispute, and therefore contrary to the overriding objective as set out in CPR 1.1. The court's case management powers are to beg exercised so as to give effect to the overriding objective and, by CPR 1.42 (2)(h) [CPR 1.2(2)] the court is required to consider whether the likely benefit of taking a particular step justifies the cost of taking it…

> 46. It has long been recognized that the pursuit of committal proceedings which leads merely to the establishment of a purely technical contempt, rather that something of sufficient gravity to justify the imposition of a serious penalty, may leave the applicant having to pay the respondent's costs…
>
> 47. Committal proceedings are an appropriate way, albeit as a last resort, of seeking to obtain compliance by the party with the court's orders (including undertakings contained in orders), and they are also an appropriate means of bring to the court's attention serious, rather than technical, still less involuntary, breaches of them. In my judgment the court should, in the exercise of its case management powers, be astute to detect cases in which contempt proceedings are not being pursued for those legitimate ends. Indications that contempt proceedings are not so being pursued include applications not directed at the obtaining compliance with the order in question, and applications which, on the face of the documentary evidence, have no real prospect of success. Committal proceedings of that type are properly to be regarded as an abuse of process, and the court should lose no time in putting an end to them, so that the parties may concentrate their time and resources on the resolution of the underlying dispute between them."

80. In my judgment, even if a deliberate breach (in the sense described in the case law) is factually made out, it would be wholly disproportionate to allow the claimants to pursue the committal claim when viewed against the time and resources of the court and parties involved that could be deployed to the underlying dispute. It would not be in keeping with the overriding objective.

81. In this regard, I accept that the breach is by no means technical or trivial. The interruption of water supply to a building housing multiple residents is serious, considering the health implications, particularly in circumstances where the water supplier operates a monopoly. However, the interruption was of limited duration and the defendant voluntarily corrected the breach before judicial intervention was needed, after a period of about four days. This obviated the need for the claimant's application for compliance with the order.

82. I would therefore refuse permission to proceed further with the committal application, but I emphasize that I do so mainly on public interest and proportionality grounds.

83. However, while the court was required to dispose of the application for permission, to some extent it was an academic exercise. As will be apparent from the foregoing discussion on procedure, permission was *not* required to commence an application for committal to begin with (as rightly contended by the claimants all along), although they agreed to proceed on a permission hearing *ex abundanti cautela.*

85. What this means, then, is that I have before me a properly constituted application for contempt for breach of the court's Order, and the application also appears to have been regularly served on the defendant as required by CPR 50.5. In any event, the defendant did not take any objection to service. I had, as well, a complete response from the defendant and their lawyers to the substantive contempt allegations, and full written submissions from both parties on the

substantive application. The parties also addressed the substantive points in some detail during their oral submissions before the court, and it would be a waste of judicial time and contrary to the overriding objective to require the parties to remake those arguments.

86. The application also complied procedurally with 50.3 (6) and, while there was no evidence of personal service on the officers and directors, it was clear that counsel for the defendant was not contesting the service point and was content to proceed to a substantive hearing and waive any procedural breaches (to the extent any existed), on the basis that such steps would be rectified by the claimants. In any event, the court has a discretion to waive personal service if it considers it just to do so (CPR 50.5(7)), and I would have waived such service had it become an issue. However, as the Court has decided that it is not in the interest of justice to pursue a committal application against the officers and directors of the defendant, the issue of personal service becomes otiose.

87. I have found on the facts that there was a breach of the Order, and while it does not in my view merit committal proceedings, it was not a technical or inadvertent breach. It was a deliberate breach—in the sense used in the case law—although I fully accept that the defendant did not set out intentionally to breach the court order. In fact, it was admitted that the water was disconnected because the defendant and its legal representatives thought the water arrears judgment superseded the earlier order.

88. I am conscious of the full litigation background to this application, and in this regard one may feel a considerable degree of sympathy for the position of the defendant in light of the significant unpaid arrears for water and the multiplicity of proceedings by the claimants, which has made it impossible for it to discontinue the supply, though they would otherwise have a legal right to do so in the absence of any payment being made for their commercial services. In some respects, the defendant has found itself—like "Gulliver" at the hands of the "Lilliputians"—tied up in knots.

89. But the defendant had (and has) various legal options open to it to deal with this matter. Firstly, it could have brought an application to set aside or vary the Order on any number of grounds, including the failure of the claimants to timeously pursue the underlying claim. The claim and statement were filed on 15 July 2024, the defence on 15 August 2024, and no significant action was taken to progress the claim to a hearing. A claimant who has obtained interlocutory relief against a defendant pending trial does not have the luxury of sitting on its laurels. As this court observed in **Kevin Alexander Holden v The Ministry of Tourism & Aviation et. al.** (CLE/gen/01304, 22 July 2025) [at 25]:

> "A plaintiff who obtains an injunction that limits the liberty or freedom of the defendant to take lawful actions is under a duty to proceed with diligence so as to limit as far as possible the period during which the defendant's liberty is restricted, and the court will grant an order to vary or discharge such an order where the plaintiff did not proceed with alacrity in pursuing the claim (*Richardson Computers Ltd. v Flanders* (1992) FSR 391, (1992) IP & T Digest 28)."

90. Further, the defendant could have taken out proceedings alleging abuse of process in respect of the revocation claim, which raised issues very similar to, if not the same, as those which the court has already considered in the water arrears judgment. In fact, on this note, the defendant has an extant application seeking to have the GBUC struck out of the revocation of occupancy action on the grounds that there is no claim properly made against it, and that it raises issues which have already been adjudicated and therefore are an abuse of process. Further, it remains available for the defendant to bring an application for enforcement of the water arrears judgment.

91. Although I am of the opinion that committal proceedings are not the appropriate response in the circumstances of this case, I have given mature consideration as to whether some other action is not required to mark the breach of the court's order. The court's order has been breached in circumstances which, as set out above, amount to contempt, and I find defendant's contempt to be established beyond a reasonable doubt. As noted, the defendant does not deny disconnecting the water supply in circumstances that would be a *prima facie* breach of the Order, and amount to a contempt on the facts and the law of this case. Its primary defence is that it was operating under the belief (now known to be mistaken) that another order had intervened and released it from its obligations under the Order.

92. The claimants seek, in the alternative to an order for committal, an order that the defendant and/or its officers and directors be made to pay a fine. I bear in mind also that these are civil contempt proceedings, and that the imposition of the contempt sanction is primary remedial, as the order was voluntarily complied with following the breach and there is no longer any need for coercion (see **Scott v Scott** [1913] AC 417). I have come to the conclusion that a fine would be sufficient and proportionate to mark the breach of the court's Order in this case, and I would impose a fine of $6,000.00 on the defendant by way of contempt sanction.

93. I would also order that the costs of this application be paid by the defendant, to be summarily assessed on written submissions made within 21 days of this Ruling.

94. I will also give directions for the expedited hearing of the revocation of occupancy claim and any outstanding interlocutory applications.

Klein J.

15 January 2026