



Case No: HCO100644

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Neutral Citation Number [2003] EWHC 786 (Ch)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11th April 2003

Before :

THE HONOURABLE MR JUSTICE LINDSAY

Between :

- (1) MICHAEL DOUGLAS
(2) CATHERINE ZETA-JONES
(3) NORTHERN & SHELL PLC

Claimants

- and -

- (1) HELLO! LTD.
(2) HOLA, S.A.
(3) EDUARDO SANCHEZ JUNCO
(4) THE MARQUESA DE VARELA
(5) NENETA OVERSEAS LTD.
(6) PHILIP RAMEY

Defendants

Mr M. Tugendhat Q.C. and Mr D. Sherborne (instructed by Messrs Theodore Goddard) for the Claimants
Mr J. Price Q.C. and Mr G. Fernando (instructed by Messrs Charles Russell) for the 1st to 3rd Defendants
Miss H.T.M. Mulcahy (Solicitor Advocate of Messrs Reed Smith) for the 4th and 5th Defendants

Hearing dates : 3rd -5th February 2003, 7th February 2003,
10th-14th February 2003, 17th-21st February 2003,
24th-26th February 2003, 3rd March -7th March 2003,
10th March -12th March 2003

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
Mr. Justice Lindsay

Mr Justice Lindsay:

An outline

1. The well-known film stars Mr Michael Douglas and Miss Zeta-Jones married at the Plaza Hotel in New York on the 18th November 2000. It was, said one witness, the event of the year. Extensive security arrangements had therefore been made, intended to ensure that access to the ceremony and reception would be denied to all but the family members and friends who had been invited and the attendant staff, who had been put on terms to keep the wedding confidential. The bride and groom hired their own selected photographers and it was made plain that other photography was not to be permitted. In making such arrangements the bride and groom were doing as they were bound by contract to do as they had sold exclusive photographic rights of the event to OK! magazine, although they had retained control over the selection of such pictures, taken by their own photographers, as they should choose to release to OK!. The security arrangements thus were intended to serve the three-fold purposes of confining the event to family and friends, of ensuring that only authorised photographs were taken and of preserving the exclusivity of the photographic rights for which OK! had paid £1m.
2. The wedding passed off as a great success, enjoyed by all present but, unknown to any as the events unfolded, it soon thereafter transpired that one intruder, a photographer, had eluded security and had surreptitiously taken relatively poor photographs which were then bought for publication in OK!'s rival magazine, Hello!. The Douglases and OK! , then, as now, represented by Mr Tugendhat Q.C. and Mr Sherborne, quickly moved in England for an injunction to restrain publication and they obtained that relief. However, the Court of Appeal acceded to Hello!'s arguments and lifted the injunction, leaving the Claimants to claim in damages.
3. In the result, Hello! published the unauthorised photographs on the same day as that on which OK!, having had to bring its arrangements forward, published parts of the full authorised portfolio of photographs covering the event, approved by the Douglases, for which it had paid.
4. As the litigation developed other parties were added as defendants and other causes of action beyond the initial claims were added. The parties to the action now, as Claimants, are, as they were from the outset, Mr Douglas and Miss Zeta-Jones (now Mrs Douglas) as 1st and 2nd Claimants and the publishers of OK!, Northern & Shell plc, as 3rd Claimant. It will be convenient to refer to the 3rd Claimant simply as "OK!".
5. On the Defendants' side, Hello! Limited, the 1st Defendant, is a subsidiary of the 2nd Defendant, Hola SA; the 2nd Defendant publishes Hello! magazine and the 1st Defendant distributes it in the United Kingdom. The 3rd defendant is Eduardo Sanchez Junco, a director of and controlling shareholder in Hola SA and Editor-in-Chief of Hello! magazine. I will call the first three Defendants "the Hello! Defendants". They appear by Mr James Price Q.C. and Mr Fernando. The 4th defendant, the Marquesa de Varela, is a person who has frequently supplied features for use in Hello! magazine and in Hola, its Spanish sister publication. The 5th defendant is a company owned by the Marquesa de Varela. They appear by Miss Mulcahy. The 6th defendant, Philip Ramey, is a paparazzo photographer who also has a photographic agency in California. He was not the photographer of the unauthorised photographs but it was he who sold them to the Hello! Defendants. He has not been represented and has taken no part before me. The Claimants propose to move against him later and do not seek relief against him at this stage.
6. A split trial was ordered so at this stage I am concerned only with whether there is liability in one or more of the first five defendants to one or more of the Claimants. If I find there to be such a liability I shall not be concerned with attempting to ascribe some monetary figure to that liability or even with determining how that should be done.

The procedural history

7. The procedural history is more complicated than one might expect as, quite apart from collateral skirmishes, there have been, as I shall relate below, two interlocutory hearings at first instance followed by one abortive appeal to a two man Court of Appeal and then a successful appeal to a three man Court of Appeal. Then, a good deal later and only shortly before the trial began, there was an unsuccessful application to the Vice-Chancellor for the striking out of the defences of the Hello! defendants, an application on which Senor Sanchez Junco and three witnesses for the Hello! Defendants were cross-examined.

Paparazzi

8. As I shall explain in the course of the narrative, the photographer who took the unauthorised photographs, a Mr Rupert Thorpe, was in some form of loose association, the details of which are not known, not only with the 6th defendant, Mr Ramey, but also with two others, Frank Griffin and Randy Bauer. All carry on business as paparazzi, a term especially used and which I shall use to include those photographers whose business it is to take photographs of events and celebrities where access to photographers generally to the event is forbidden or limited and where the consent of the celebrities to be photographed is known or likely to be refused and is thus dispensed with by the paparazzi concerned. In varying degrees, as may become necessary for them to obtain the photographs they seek, they turn to deception, to intrusion and, occasionally, to unlawful behaviour. Mr Ramey, in particular, has a reputation of being able to get in where others were unlikely to be able to.

Intrusion, in context

9. These proceedings have already attracted a good deal of public and press attention such that there are two points that I should mention as to be borne in mind. The first is the extent to which celebrities of the status of Mr Douglas and Miss Zeta-Jones, whilst, of course, welcoming much of the publicity that surrounds them, can also find their privacy or ordinary life severely curtailed. Thus the undisputed evidence before me includes, for example, that Miss Zeta-Jones has been frightened by a photographer jumping out of a doorway at night to photograph her, that on another occasion she swerved her car into a lamp-post trying to escape from a paparazzo and that the Press got hold of and published the fact of her pregnancy even before she had had all the medical tests she had wanted to take and before even she had told her close family of it, including her mother. When she was in hospital after the birth of her son, journalists tricked their way into the hospital by pretending to be members of her family. When she was wheeled from the delivery room back to her room in the hospital she was covered by a sheet to avoid being photographed by the photographers who had tricked their way in. In one remarkable incident when her son was only one week old he, with his nanny, was in a car driven in California by Miss Zeta-Jones. Photographers for a British tabloid newspaper deliberately ran into the car. Under Californian law Miss Zeta-Jones had to get out of the car to exchange details. Her evidence continues, of the photographers:-

“They immediately jumped out of their car and took photographs of me looking furious at the side of the road. They then published them in an article about me being consumed by road rage.”

Hardly surprisingly, her evidence continued:-

“This incident made me very angry.”

It is easy to see, against such a background, how celebrities may become especially defensive, though I add that this case is nothing to do with photography of either Mr Douglas or Miss Zeta-Jones in public.

10. The other point I make is that whilst the Claimants' case is now chiefly for money it was not always so and it was not by their choice that it became so. What all Claimants first moved for was an injunction to restrain publication. The case only became chiefly for monetary compensation after the three-man Court of Appeal had ruled that the existing injunction was to be undone and that the Claimants would have to be satisfied with claims in damages.

The Magazines

11. Hola has been published in Spain for over 50 years and the three versions, "Hola" in Spanish, "Hello!" in English and "Oh La" in French are sold in almost 60 countries. Hello! has been circulated weekly in the United Kingdom for some 12 years and is bought by an average of some 456,000 people per week, leading, it is said, to a readership of some 2.2 million people per week. It is sold through about 55,000 outlets in the United Kingdom, going on sale on Tuesdays in London and on Wednesdays in the rest of the country. It is printed in Spain and published by Hola SA. The cover price in 2000 was £1.55.
12. OK! is printed in England and published weekly by the 3rd Claimant. It is a more-recently-established magazine than Hello!, that being broadly reflected in the issue numbers at the time of the Douglas wedding, namely number 639 for Hello! and No. 241 for OK!. Its cover price in 2000 was £1.85. It normally comes out on Thursdays in London and on Fridays throughout the rest of the United Kingdom. In November 2000 OK! sold about 455,000 copies per issue on average.
13. Whilst, no doubt, each magazine has especial characteristics which commend it to particular prospective customers, less discerning readers will find much that is common to both. Indeed, there is some strong feeling amongst London staff at Hello! that OK! is a copycat. Both magazines are of similar size and shape and provide a regular diet of photographs and text of and about Royal but, more usually, entertainment, sporting and social celebrities, with photographs taking precedence over text. Many of the main features are in the highest degree posed and show, for example, the celebrity's yacht or home or show his or her engagement or wedding. Many such features will have been commissioned by arrangement with the subjects and paid for by the magazine in question, the more celebrated or newsworthy celebrities being able to command, should they wish, higher fees than the less celebrated. Other photographs, whilst such that the subjects can be seen to be very aware of and, as it would seem, content with the camera, are far less formal and record, for example, arrivals at a party or at the opening of a film. Each magazine includes from time-to-time photographs taken, so far as one can judge, without the subject's knowledge or consent but they represent a minority overall.
14. There are brief passages about travel, cooking, "lifestyle" and health advice and as to current television programming. There are short features on particular celebrities in the news in the current week. The texts generally are, if not unquestioning or flattering, at least warm as to the celebrities featured, no doubt for the practical reason that if that were not so the supply of willing celebrities might dry up.
15. The two magazines are plainly keen rivals in the same market and were so in 2000.

Evidence

16. On the Claimants' side I heard oral evidence from Miss Zeta-Jones, Mr Michael Douglas, Mr Allen Burry (Mr Douglas' Executive Assistant and Publicist), Miss Simone Martel Levinson (the Event Planner engaged by the Douglasses to organise their wedding), Ms Cece Yorke (Miss Zeta-Jones' Publicist), Mr Martin Townsend (formerly Editor of OK! magazine, in office at the time of the wedding) and Mr Paul Anderson (Picture Editor of OK! magazine). The evidence of Miss Levinson and Ms Yorke was given by video link to and from the United States.

17. So far as the Claimants' expert evidence was concerned, I heard oral evidence as to New York law by video link from Professor Arthur J. Jacobson, Max Freund Professor of Litigation and Advocacy at the Benjamin N. Cardozo School of Law in New York City. The claimants' evidence as to Spanish law was given orally by Senor Enric Enrich, Senior Partner of the Barcelona firm of Advocates, Enrich Amat I. Vidal-Quedras, former co-Chairman of the Committee of Intellectual Property of the International Bar Association and currently the Chairman of the Copyright and Image Rights' section of the Barcelona Bar Association.
18. All of the above-described witnesses were cross-examined, each having supplied one or more witness statements or reports.
19. On the Defendants' side the main body of evidence came from the Hello! Defendants. Senor Eduardo Sanchez Junco gave his oral evidence by way of an interpreter as he speaks little or no English. Senor Javier Riera, Managing Director of Hola SA, did the same; he has sufficient command of written English to comprehend untechnical and straightforward documents. His Personal Assistant, Senora Elisa Sanchez-Ferragut Arnau (conveniently and, as I hope, without offence, usually referred to during the hearing as "Senora Elisa") gave her oral evidence through the interpreter. Mr Anthony Luke, co-Ordinating Editor of Hello! magazine, who works in Madrid and has fluent Spanish, spoke in English. Hello!'s Publishing Director, Sally Amanda Cartwright, who also has good Spanish, gave oral evidence, as did Maria José Doughty, a native Spanish speaker but whose English is impeccable. She is Administration and Financial Controller at Hello! Limited in London. Mr Christopher Mark Hutchings, solicitor, a partner in Charles Russell, solicitors to the Hello! Defendants, also gave oral evidence, as did Margaret Koumi, the Editor of Hello! in 2000. All of these witnesses had supplied one or more witness statements and all were cross-examined.
20. The Hello! Defendants' expert evidence consisted of the evidence of Professor Diane L. Zimmerman on New York law and of Senor Miguel Engel Rodriguez on Spanish law. Professor Zimmerman, Professor of law at New York University, gave oral evidence by video link and Senor Rodriguez, a member of the Madrid Bar and until recently associate professor of constitutional law at Universidad Autonoma at Madrid, gave his oral evidence here in London through an interpreter. Both had put in one or more written reports.
21. Oral evidence on behalf of the 4th and 5th Defendants consisted of the evidence of the 4th defendant herself, Maria J. Marin, also known as the Marquesa de Varela, and her personal assistant, Pirjetta Mildh, both of whom had a complete command of English despite its being the mother tongue of neither. No expert evidence was put in on behalf of the 4th and 5th Defendants. Each of the Marquesa and Miss Mildh put in one witness statement; a second was prepared for the Marquesa but did not find its way into evidence.
22. In a category of her own amongst those who gave oral evidence was Sue Neal, no longer an employee of Hello! or Hola SA but formerly a Picture Editor working in London for Hello!. She had prepared two witness statements; one was prepared by the solicitors for the 4th and 5th defendants, one by the solicitors to the Claimants. Neither the 4th and 5th Defendants nor the Claimants chose either to call Miss Neal or to put in either or both of her witness statements but at a late stage in his case Mr Price Q.C. chose to put in her witness statements as hearsay evidence under CPR 32.5 (5). That led Mr Tugendhat Q.C. to apply to cross-examine on her statements under CPR 33.4 (1). I ruled that he could do so and the Court of Appeal, in an interlocutory ruling, upheld that decision. Accordingly Miss Sue Neal was cross-examined by Mr Tugendhat and re-examined by Mr Price.
23. Mr Phillip Ramey, the 6th Defendant, a photographer well known as a paparazzo and who also conducts a photographic agency, has put in a defence (with a statement as to its truth) and a witness statement but otherwise, as I have mentioned, has taken no part in the proceedings. Much of his witness statement is uncontroversial or is confirmed by other evidence but in the absence of his having submitted himself for cross-examination I do not feel able to attach weight to his assertions that he

offered European rights to the unauthorised pictures to the Marquesa or that she bought them from him, either on arms' length commercial terms or at all.

24. There have been several other witness statements by or on behalf of individuals who have not given oral evidence, some on topics which do not yet need to be pursued, and notice as to hearsay evidence has been given in respect of some but I have not felt that any either displaces or adds significantly to conclusions formed on the basis of the other documentary evidence and the evidence given by witnesses whose evidence has been tested by cross-examination.

The Narrative begins

25. A chronological order will occasionally have to be departed from but I shall attempt, as far as practicable, to set out the facts I find in that order.
26. Miss Zeta-Jones and Mr Douglas met in September 1998. A relationship developed. Later they had a holiday together. Articles began to appear in the Press about them as a couple. That they might become engaged and marry began to occur to OK! as, doubtless, it did to Hello!. Such events would be exactly the kind each would want to cover. On the 6th September 1999, before any engagement had been announced, OK! offered £1m "subject to contract" for exclusive photographic rights for the engagement, wedding, honeymoon and for Miss Zeta-Jones' 30th birthday party.
27. In September 1999 OK! acquired exclusive photographic rights by contract to the wedding in California and honeymoon of the television presenter Jenny McCarthy and John Asher for \$100,000. A term of the contract was that the bride and groom should, at their own expense, provide such reasonable security at the wedding as was reasonably necessary to ensure that unauthorised photographers, journalists and members of the public would be unable to gain access to the grounds and premises so as to minimise the risk of photographs of the wedding being made available to the media. OK! was to make a full feature of the events. Nonetheless, Hello! acquired and published photographs of the wedding, one at least of which has the appearance of being an out-of-focus shot, surreptitiously taken from a low level by a camera of which the bride and groom appear ignorant. Invoices sent to Hello! in respect of the pictures it used were from, respectively, Messrs Ramey, Griffin, Bauer and Thorpe, all photographers to whose names I shall need to return. The invoices bear words, added in handwriting at Hello!'s office, such as "Ordered by Marquesa and Eduardo" and "Commissioned by Marquesa and Eduardo". Mr Ramey makes reference to a "Day Rate" in his invoice and does not identify the event photographed, referring instead to a "Special Project". The others openly refer to the McCarthy wedding. Mr Bauer's invoice refers to "2 days". The invoices bear marks indicating that they were processed in London. These details came to light only in the course of the trial, after the Marquesa's evidence was concluded. There was no application for her recall. That she had (with Senor Sanchez Junco) an involvement in the arrangements made for the unauthorised photographs is plain not only from the superscriptions on the invoices but also from the fact that Hello! paid her a "fee for Jenny McCarthy wedding" of £5,000. Although such photographs of paparazzi type were not her usual style, that she could and would take a hand in arrangements for them is plain. OK!'s big feature on the wedding in their issue of 24th September 1999 had some, at least, of its exclusiveness diminished by the unauthorised photographs in Hello!'s Issue 579. The Marquesa was able to crow to Anthony Luke, the co-ordinating Editor in Madrid, that:

"My paparazzi spoiled OK!'s Jenny McCarthy wedding."

In respect of aspects of the handling of the Douglas wedding, both sides made reference back to the McCarthy wedding, to emphasise similarities (as did the Claimants) or differences (as did the Hello! Defendants).

December 1999

28. In December 1999 Miss Zeta-Jones became pregnant with Mr Douglas' child. At a millennium party they agreed they would marry. They started to plan their wedding. They picked New York as a venue roughly central between the United Kingdom to the east and California to the west. The Plaza Hotel was chosen as it had a proven track record for hosting large-scale events which required security. It was also a place where guests could stay and, as Miss Zeta-Jones planned to stay there, she could procure that her arrival at the wedding would not (as she put it) be turned into a media circus.
29. Miss Zeta-Jones did not want to be forced to have her wedding in secret. She had always wanted it, she said, to be a very special day and it was important to her that her family, in particular, would be there to share it with her. There was concern that media intrusion might destroy the intimacy and joy of the event. Miss Simone Martel (Levinson) was brought in, an experienced event planner. She was told that the bride and groom wanted the wedding to be personal, romantic, intimate and unforgettable.
30. Miss Zeta-Jones's pregnancy was thought to be a closely guarded secret but in January 2000, only some 7-8 weeks into the pregnancy and, as I have touched on already, before Miss Zeta-Jones had either had all of the medical tests which she wished to have or had told her close family, she found that the Sun newspaper had learned of the pregnancy and was going to publish the story. She was forced into announcing the pregnancy to her family before she was ready to do so. As this was to be her first child she had particularly wanted to have every possible test before giving the news to her family. Her enquiries suggested that paparazzi had obtained the information from an assistant in the office of the lawyers then acting for her. Her pregnancy became public knowledge.
31. OK!'s offer for an exclusive was accordingly modified to include a sum for photographs of both parents and the baby. From about March 2000 Hello! was also in contact with Mr Allen Burry, Mr Douglas' Publicist, but Mr Burry had not found it easy to deal with Senor Sanchez Junco's calls because of the language difficulties. The prospective bride and groom had not yet decided whether to permit a feature to be published either of the baby or of the wedding.

April 2000

32. The Marquesa entered the lists in April 2000. Her personal assistant, Pirjetta Mildh, was in contact with Mr Burry, from whom she heard of his dissatisfaction with his dealings with Madrid. Mr Burry was not averse, though, to dealing with the Marquesa, who made contact with him. The Madrid office of Hello! and Senor Sanchez Junco continued to approach Mr Burry but to no effect save that Mr Burry's displeasure with Madrid grew. The Marquesa felt strongly that Senor Sanchez Junco was mishandling matters, that Hello!'s bid would be far better conducted by her and that, left to itself, Madrid was likely to drive any "exclusive" into the hands of OK!. The thing that Mr Burry had not been able to get Madrid to grasp, as he put it to Miss Mildh and as she related to the Marquesa, was:-

"Money is not the point! The point is doing it with the magazine they like and trust and have a good working relationship with so they can have a lovely wedding without any worries."

Both OK! and Hello! continued to make offers but Miss Zeta-Jones and Mr Douglas remained undecided not only as between those offerors but as to coverage of the prospective events at all, the events, by May, being, of course, not only the wedding but the earlier birth of Miss Zeta-Jones' first child, expected in August 2000.

33. On the 3rd May 2000 the Marquesa, for Hello!, wrote to Mr Burry to say that Senor Sanchez Junco offered \$500,000 for exclusive pictures of the mother and father with their baby and £1m for the wedding. Mr Burry, though, had wanted clear written proposals from Hello!. That elicited a further

offer from Senor Sanchez Junco, now put at \$1½m for the wedding alone. His proposals, which he described as “The biggest investment ever made by our magazine”, included that Hello!’s own photographers should cover the event as well as those selected by the bride and groom. He was also keen to ensure that the one approved picture, which the couple were going to release generally and gratis to the media on the day, should not be released until Hello! had appeared on the market. He also wanted that free picture to be “a medium shot” rather than a close-up or full-length photograph. Neither of those provisions was likely to commend itself to the couple.

34. At Hello! it was felt, rightly as it transpired, that negotiations were going OK!’s way. The Marquesa felt that if the exclusive for the baby was lost to Hello!, it would be likely to lose the wedding as well. Hello!, by way of the Marquesa, on the 21st July increased its offer to \$600,000 for the baby pictures and £1m for the wedding but to no avail.

August 2000

35. On the 8th August 2000 Senor Sanchez Junco, disappointed and feeling that Hello! would not get the exclusive, telephoned the Marquesa, who was in New York trying to encourage Mr Burry to deal with Hello!. She told Senor Sanchez Junco that if the couple would not deal with Hello! then the only option was to contact, and buy pictures from, paparazzi. There was nothing new about that as a possibility to Senor Sanchez Junco; he has bought pictures from paparazzi including the two I shall next mention, for years. Senor Sanchez Junco told her that Sue Neal, the Hello! Pictures Editor in London, was already in contact with two paparazzi, Phil Ramey and Frank Griffin. In so holding I have preferred the evidence of the Marquesa to that of Senor Sanchez Junco. Of the two photographers, both had wide reputations as paparazzi. Mr Ramey, in particular, a difficult man to deal with, was renowned as an aggressive photographer; as the Marquesa put it:-

“You know, he can get into anyone’s house and do the pictures.”

Sue Neal described him as a confident gatecrasher. Senor Sanchez Junco knew of his reputation. The Marquesa volunteered to get in touch with the paparazzi and did so. It suited both Senor Sanchez Junco and the Marquesa that it should be the Marquesa who should contact the paparazzi. Senor Sanchez Junco might well have felt disappointed at his own handling so far of the Douglas wedding and would in any event have been willing to pass it to the Marquesa but more probable was it that he, in this respect a cautious or even fearful man, saw it to be unwise to be seen to be in direct contact with paparazzi whose means of obtaining photographs, certainly any inside the wedding, might well be at best dubious or at worst unlawful. The Marquesa, whose star had been waning at Hello!, was not unwilling to have the chance of emerging as the “fixer” who could come up with some solution where all others had failed, thus hoping to restore herself more fully to Senor Sanchez Junco’s favour.

36. The Marquesa told each of Ramey and Griffin that Senor Sanchez Junco was keen to get first refusal on any pictures that might be obtained of the Douglas wedding. Each said that he already dealt with Sue Neal and that the wedding had already been discussed with her.

The \$10,000

37. Mr Ramey asked the Marquesa whether Senor Sanchez Junco would be prepared to pay \$10,000 as a sign of goodwill, because expenses would be incurred. In her witness statement the Marquesa says:-

“I assured Mr Ramey that I did not think this would be a problem but I would ask Eduardo if he was willing to accept Phil Ramey’s request.”

38. It has since suited Mr Ramey to describe that conversation to Hello!, including to Sue Neal, as a promise of \$10,000 in any event and it is likely that the Marquesa did express herself to him with some assurance as to the \$10,000 being paid. In an e-mail much later, of the 17th December 2000, she wrote, of the \$10,000, "That I could assure him of that". But I accept also that when she spoke to Senor Sanchez Junco on the point he told her it would not be paid and that she passed the message on to Mr Ramey, but coupled with the encouraging addition that Senor Sanchez Junco would pay (meaning pay well) for good pictures. If there had been a clear promise of \$10,000 in advance either for pictures or for a right of first refusal it was, I hold, soon supplanted by Mr Ramey being left in no doubt, instead, that Hello! was very keen to acquire pictures, however they might be taken, and, as the Marquesa put it, "there's nobody who has paid like Mr Sanchez".
39. On the 16th August 2000 the Marquesa sent a draft contract to Mr Burry under which the deal would not be with Hello! but with a company of hers, Marquesa Productions Limited of the British Virgin Islands. She had not appreciated that Mr Burry would not recommend any contract other than directly with a magazine-publisher.
40. Hello! further harmed its cause when it bought paparazzo pictures of the mother, father and baby after the birth of Dylan Douglas to the couple in August 2000. OK! had succeeded in obtaining exclusive picture rights to photographs of the parents with their new baby. The "shoot" went well and the parents developed a trust in Martin Townsend, OK!'s Editor. The money for the photographs was put into a trust for the infant Dylan Douglas.
41. By contrast, as the couple, the three week old baby and their nurse left the hospital, paparazzi managed to take photographs without the parents' consent nor, so far as one can tell, with their even being aware that they were being photographed. Similar photographs were taken of the mother, father and baby without the nurse. Hello! bought those pictures and published them. When the Marquesa pressed Hello!'s case by referring to how vulgar, she said, had been OK!'s coverage of another celebrity wedding, Mr Burry's response was:-
- "At least OK! was smart enough to turn down the hospital departure pictures when they were offered to them."
42. Hello! was not prepared to give up. It attempted to make fresh contact by other intermediaries; desperation was setting in, with Senor Sanchez Junco not only having in mind, of course, payment to the bride and groom but even payment of substantial sums to an intermediary who might restore contact with them. It was to no avail; on the 6th November Mr Burry indicated that the couple had decided that they would offer the wedding for publication, but to OK!. Mr Burry turned to giving Mr Townsend details of the event.

Autumn 2000

43. The plan, in outline, was for a wedding in New York at the Plaza Hotel with a dinner the night before at the Russian Tea Room for the guests from out of town. The ceremony itself was to be conducted by a judge and was to be non-denominational. There were to be some 360 or so guests, of whom 84 were to be the bride's relatives and friends flying in from the UK and the rest were the groom's family and mutual friends of bride and groom.
44. That was the plan but, for the moment, it lay in the future. In the meantime, Sue Neal, in London had almost daily contact with Phil Ramey and Frank Griffin, part of a clique which included Rupert Thorpe and Randy Bauer. Sometime around August 2000 Mr Ramey told Miss Neal that "Your Marquesa" had told him that Senor Sanchez Junco had asked her to see if it was possible to get photographs of the Douglas wedding. Mr Ramey told Miss Neal that he preferred to deal with someone he knew. By that he meant Miss Neal. Miss Neal got the impression that the Marquesa had had only one or two conversations with Mr Ramey.

Mr Luke told Miss Neal that Senor Sanchez Junco was seeking to obtain pictures of the wedding from *any* source. Miss Neal told Mr Ramey that if he wanted to send pictures of the wedding to Hello! that that was up to him but she did tell him that Senor Sanchez Junco was extremely interested in obtaining them. She left it on the basis that Mr Ramey was not obliged to supply any, nor was Hello! to accept any. Her understanding was that Senor Sanchez Junco was dealing with the Douglas wedding himself instead of the Marquesa.

45. In his frequent calls to Miss Neal on other subjects Mr Ramey would try to find out whether Hello! had managed to get exclusive rights to the wedding. He wanted to know so as to target whichever magazine had not got the exclusive. Sue Neal at that stage knew nothing and told him nothing; it was left as a subject to be reverted to nearer the time of the wedding.
46. Miss Martel Levinson did her best in the course of her arrangements for the wedding, to ensure that the venue of the wedding was kept secret. Suppliers or prospective suppliers of goods and services were asked to sign confidentiality agreements. Many are in the evidence. After the wedding it was found that a few people had not signed such agreements but her evidence, which I accept, was that:-

“... Everyone whom I hired to deal with some aspects of the wedding knew from my discussions with them that the plans for the wedding were confidential and were not to reach the public arena.”

47. Unfortunately one of the florists who had tendered for the work, albeit unsuccessfully, told the New York Post, who then published, that the wedding was going to be held at the Plaza Hotel. The original plan had been to tell invitees only that the wedding was to be in New York City on November the 18th 2000, the precise venue and time then to be given only at the last minute. The florist’s breach required a change of plan. The invitations went out in their original form but on acceptance a second notice was sent indicating that the wedding was to be at the Plaza at 7.0 p.m., coupled with a request from the bride and groom that no photographic equipment should be brought. The message – “We would appreciate no photography or video devices at the ceremony or reception” – whilst not an outright prohibition, was as nearly so as one might reasonably address to family and friends. An entry card was required to be produced at the entrance to the Rose Room on the evening of the wedding. Entrance to the Hotel was to be by way of the Rose Room.

A strategy for the wedding

48. Whilst reflecting on their possible arrangements for the wedding, Miss Zeta-Jones and Mr Douglas looked back on the successful event that had been the presentation to the public of their baby, Dylan. The exclusive rights sold to OK! had led to excellent photographs being published without any real media intrusion. Miss Zeta-Jones’ witness statement says, and I accept, as follows:-

“When considering how to deal with the inevitable media interest in our wedding we ultimately decided to go down the same route that we had chosen in respect of Dylan’s birth. We decided that, with a view to reducing the media frenzy for photographs of the wedding and protecting our wedding day from the inevitable media intrusion, we would reach an agreement with a magazine which we would allow to publish a limited number of our wedding photographs. We hoped that once the rest of the media found out that we had entered into such an arrangement they would be less interested in trying to infiltrate our wedding. This would leave us and our guests free to enjoy the day without worrying about the media. Both Michael and I also accept that as celebrities we have an obligation not to ignore those people who make us celebrities, the people who pay money to watch our movies. One of the reasons that we decided to reach a deal with a magazine was to make contact with our fans and to avoid the accusation that we had shunned them or were too aloof. We wanted to do

so in a context where the choice was ours as to what was and was not published about our wedding, not left to a media free-for-all.”

49. Mr Douglas’ evidence in the same area was to similar effect though more emphasising control. He said:-

“Eventually, we decided that the best way to control the media and to protect our privacy would be to reach an agreement with a single magazine or newspaper who would have the rights to publish photographs of, and text about, our child and our wedding, and to syndicate the photographs and text to specified and pre-agreed publications around the world.”

50. Miss Cece Yorke, Miss Zeta-Jones’s Publicist, thought the strategy a good one. She said:-

“I really felt that if other publications knew that one magazine was going to have an exclusive story with beautiful photographs and access to Michael and Catherine they would think there was no point in publishing poor quality photographs with no quotes from the bride and groom or the family. It seemed to me that the public would want to see the beautiful photos and to hear the real story and that would be the calculation that the media would also make. I believed that the exclusive arrangement with OK! was the best option in the circumstances. We decided that we would also release one official photograph to everyone else on the actual day of the wedding (since the official photographs would not be published in OK! for a little while).”

51. An initial view, that there should be no press involvement at all and that the media would have to be satisfied with one released authorised photograph, was thought to be unrealistic. The media would try to get their own photographs. Other celebrity weddings had been spoilt by intrusions. Having the wedding at the Plaza eliminated the risk of helicopters that had intruded in other cases but Mr Burry said:-

“..... Having seen the determination and lack of scruples of the media at earlier celebrity weddings, we became more and more convinced that we should provide, on an exclusive basis, official photographs of the wedding personally selected by the bride and groom to a single media organisation who would then syndicate those photographs to other publications of our choice. It was our hope that the rest of the world’s media would be discouraged from trying to infiltrate the wedding as they would know that the official photographs would be published and syndicated exclusively elsewhere. We thought that by providing a limited number of “authorised” pictures of the wedding we would reduce the price that illicitly-obtained photographs of the wedding could command and therefore reduce the incentive of any photographer to take such photographs. In the past I have found that if you give an exclusive to one magazine its rivals tend to be philosophical, hoping that they will get the next exclusive. They will act accordingly, not wanting to damage their chances of an exclusive in the future. We all thought that this would be the best way for Catherine and Michael to retain their privacy and the intimate and private nature of the wedding.”

52. Mr Price cross-examined as to this strategy, broadly suggesting that it was more for money than for privacy, could not be expected or be believed to work and was aimed at control of the media. That it involved control was plain. But, as to money, Mr Douglas pointed out that neither bride nor groom nor publicist approached the magazines but the magazines had approached them. Nor had the bride and groom or their agents negotiated about price. Indeed, they could very readily have organised

transactions so as to have received more than they did. As for the strategy, it worked (as will transpire) for all but one paparazzo and, as Mr Douglas said:-

“ it was not that we did not think that the public would not be interested, we thought that the paparazzi’s desire would be lowered because they would not have very many outlets, and therefore they personally would not be able to make as much money selling them individually, so that they said, “Oh well, I don’t think its worth it.”

On the evidence I hold that the notion of an exclusive contract as a means of reducing the risk of intrusion by unauthorised members of the media and hence of preserving the privacy of a celebrity occasion is a notion that can reasonably be believed in as a potentially workable strategy to achieve such ends and was honestly believed in by Miss Zeta-Jones, Mr Douglas and their advisers. The fact that, because of one lapse, the strategy failed does not disprove its reasonableness, still less that it was believed in. Whilst I would not hold the £1m on offer to be other than a real blandishment even to a couple as rich as Mr Douglas and Miss Zeta-Jones, I see their expectation that an exclusive contract to one selected publisher offered the best strategy for obtaining a wedding of the kind they both wanted and offered also the certainty of fair coverage of it as their chief reasons for making such a contract.

The Contract with OK!; 10th November 2000

53. On the 10th November 2000 basic terms of a contract under Californian law between OK! and Mr Burry on behalf of the bride and groom were agreed in writing. £500,000 was to be paid to each of “MKD” and “CZJ” not later than a week before the wedding. OK! was given exclusive rights to publish photographs selected for the purpose by “MKD” and “CZJ”. Each of “MKD” and “CZJ” was given “copy caption and headline approval over any syndication of the photographs”, such approval not to be unreasonably withheld. The photographs were to be in colour and were to be taken by photographers chosen and paid for by “MKD” and “CZJ”, who were required (clause 6) to:-

“... Use their best efforts to ensure that no other media ... shall be permitted access to the wedding and that no guests or anyone else present at the wedding (including staff at the venues) shall be allowed to take photographs.”

54. Copyright in the photographs was to be in “MKD” and “CZJ”, who were to approve such photographs as they chose to release not later than 22nd November 2000. Text approval was also given to “MKD” and “CZJ”. The Douglases could, had they wished, have chosen to release no photographs or too few to make a feature, but on pain of repayment to OK! (clause 9). If syndication brought in more than £1m the excess was to be split 50% to OK! and 25% each to “MKD” and “CZJ”, but OK! was to have the first £1m. Clause 16 provided:-

“MKD and CZJ will take all reasonable means to provide such security (approved by OK magazine) during the entirety of the wedding proceedings at the wedding venues as is necessary to ensure that third party media and/or members of the public and/or staff hired or employed for the wedding are unable to gain access to the relevant wedding grounds and the venues in order to minimise the risk of photographs and/or footage of the wedding (including but not limited to photographs/footage of the wedding dress, the ceremony and the party) may be made available to third party media.”

55. In the week beginning the 13th November, the week before the wedding, Hello! was alive to a prospect of getting photographs from inside the wedding. Mr Luke told Sue Neal that “We might be getting something”. Senor Sanchez Junco said so to Mr Luke, as did Maggie Koumi, the London Editor. Both Phil Ramey and Frank Griffin told Sue Neal “Don’t forget the weekend”. On Thursday the 16th or Friday the 17th Mr Ramey told Miss Neal that he was trying to get someone into the wedding to take

pictures. She told that to Mr Luke, who asked her to go into work over the weekend. That was so that technical incompatibility problems could be overcome by pictures from the USA going to Madrid via London. There was confidence that at the very least there would be pictures from *outside* the wedding, of the guests arriving.

The Russian Tea Room; 17th November 2000

56. As planned, a dinner was held the night before the wedding at the Russian Tea Room. The photographs of this event, later spread over some 8 or 9 pages in Hello!'s Issue 639, show the Press to have been there in massive strength. Mr Douglas and Miss Zeta-Jones paused to pose frequently for photographs, as did members of the respective families and their friends.

Hello! makes arrangements

57. In the meantime, Hello! was planning the Issue (No. 639) of Hello! due to appear next after the wedding, on Saturday the 18th November 2000. It was scheduled to be distributed in London on Tuesday the 21st November and in the rest of the UK on Wednesday the 22nd. It was not unknown in 2000 and earlier for the greater part of the magazine to be printed (in Spain, as then was the case), section by section, over the Thursday and Friday of a given week but with the final centre pages and, if appropriate, the cover and back page to be either re-cast or left to the last convenient time, either so as to cover an unexpected event or some event likely to happen at the weekend concerned. Late changes to the magazine shortly before or even after first going to print had been made on occasions such as the deaths of Jackie Kennedy Onassis and Princess Diana and upon John Kennedy Jr. and his wife going missing. A late special edition added photographs of Madonna's wedding and her baby's christening.

The Tuesday distribution date could not be postponed. Hello! had begun to plan for an Issue 639 which would have on its cover Mr Douglas and Miss Zeta-Jones outside the Russian Tea Room in New York on the Friday evening of the 17th November. Neither OK! nor anyone else had exclusive rights as to that and it could be expected that there would be ample opportunity for photographs of the couple, their family and friends, as they arrived and left. At least photographs for the cover showing the couple could be expected to be obtained (leaving the centre to be filled with a different feature) but even that would leave a tight timetable because of the time difference between Madrid and New York and the time necessarily taken up with processing, selection, printing and movement to London for distribution by the Tuesday. Such movement was, in ordinary course, by lorry.

58. The photographs of the Russian Tea Room event arrived in Spain on Saturday the 18th November. Mr Luke said at first that they arrived on Saturday morning but he settled into saying that they arrived late on Saturday. On that basis, printing of the cover and final section (leaving aside any prospect of later paparazzo photographs taken at the wedding itself) would probably not have started until Sunday the 19th. On the question of whether, on that basis, lorries could not be used but recourse would have had to have been made to aircraft, Mr Luke said:-

“Yes it would have to have flown I think at that stage, because we were getting really late, and being in direct competition with OK! we could not lose any days on the [news] stand.”

On that basis (which I accept) special arrangements would have needed to be made for airfreight even if only the Russian Tearooms photographs had been awaited.

59. Airfreight was arranged, additional copies of Hello! were ordered to be printed and staff were called-in, both in London and Madrid, to deal with the preparation of the magazine over the weekend. Mr Tugendhat argues that all this shows that Hello! was anticipating a high-selling issue and that it points to Hello!'s having commissioned in advance a breach of OK!'s exclusivity and an intrusion upon the

Douglases' privacy. He argued that Hello! had been assured of obtaining unauthorised photographs of the wedding.

There is, I would accept, some documentary support for such a view. The Hello! print records show that the print order was greatly increased; an invoice shows that a freight aircraft was chartered on the 17th November for 173,950 Euros (part of which sum had to be paid whether the plane transpired to be used or not) and there is no doubt but that staff had been called in or retained to work at the weekend. There is, though, a good deal of contrary evidence indicating that there had been no assurance that paparazzo photographs would be available from inside the wedding or even that a right of first refusal had been given to Hello!. Senor Sanchez Junco in cross-examination was emphatic that there had been no prior commitment to any paparazzi to buy any photographs. I have already indicated that there was no un-supplanted agreement even that Hello! should have a right of first refusal (though it would be an obvious course for a paparazzo to approach Hello! first). Mr Luke's evidence was that Senor Sanchez Junco was "a very visual man"; he would not pay anything, he said, for a picture before he had seen it and never paid paparazzi advance fees. Mr Luke also described the Douglas wedding as "an amazing event" for people who read magazines such as Hello! and OK!. It was, he said, the event of the year. Even if no photographs had been obtained from inside the wedding itself and Hello! had had to rely on the Russian Tea Room pictures or ones of guests arriving at the wedding, the publishers could thus be expected to arrange for greater sales than usual.

Moreover, as I have indicated, an aircraft and weekend working would have been necessary even if only the Russian Tearoom photographs had been used. Nor have I any evidence that even an aggressive paparazzo such as Mr Ramey could be *sure* that the elaborate security surrounding the wedding could be overridden and that photographs within the wedding would assuredly become available. These events do not, in my judgment, indicate that Hello! had commissioned the breach and intrusion which I shall come on to describe. The fact that a second freight aircraft was chartered on the Monday the 20th November, only after the unauthorised pictures had arrived, does nothing to support a view that even before they arrived it was known that they would.

60. To the same end a comparison was made with the material relating to the McCarthy wedding. That material, not put to the Marquesa for an explanation, seems to show the Marquesa in a closer relationship with the very same paparazzi as were used in the Douglas case than her own evidence suggested. It also shows creditors' descriptions and the debtor's written additions on the McCarthy invoices to be in some respects like those found on one invoice in the Douglas case. But there are differences; the McCarthy invoices include daily rates payable to the photographers, a system more likely to be indicative of a true pre-commissioning of the paparazzi than is shown on the invoices as to the Douglas wedding, which have no daily rates. Indeed, so little was said in evidence about the rôle of the paparazzi or of the Marquesa in the McCarthy case that I cannot hold that in that case the paparazzi were commissioned in advance and, in turn, cannot hold that, because of the similarities in the two cases, the paparazzi were therefore also so commissioned in the Douglas case.

Arrangements for security at the Plaza Hotel

61. On the 17th November 2000, the day before the wedding, entry cards were hand-delivered to all guests staying in New York and were sent by courier to guests out of town, to arrive on the 17th. This late delivery was to reduce the risk of their being copied. Miss Martel Levinson had marked each card with a code that indicated to her (but only to her) the identity of the guest related to that card and with an invisible ink design on the back which only she knew. The entry cards indicated whether they were for one or two guests.
62. There was a fear that the Plaza's fire alarm system might be tampered with (driving everyone into the street, where they then could be photographed at will) so a specialist fire firm that worked in conjunction with the New York Fire Department was brought in and a technician monitored the fire alarm system of the Hotel throughout the wedding.

63. Three private security companies were employed and there was consultation with the New York Police Department and the Fire Department. The Plaza's own security staff had the task of ensuring that other guests staying at the hotel did not stray from the public areas of the Hotel into those reserved for the wedding. The rooms used for the wedding were regularly "swept" until an hour before the ceremony to ensure there were no hidden sound or video devices. Special arrangements were made for exclusive use of the lifts in the hotel. Guests arriving by car were required to enter a special car tent where the invisible ink on the entry card could be inspected. The car tent was secured at all access points by police. Barriers were erected so that the Press could take photographs of guests entering the hotel but could not get too near the entrance.
64. Guests had to enter the Rose Room of the hotel. There was a sign there reminding them that photography was not permitted. Entry cards were then checked against the code to ensure that appearances corresponded with the invitation. If all was well, on the entry card being handed in a gold wedding pin was given to the guests, the design of which had been commissioned by the bride and groom and had, so far as practical, been kept secret.
65. Arrangements were made so that if it was found at entry that any guest had brought a camera, it would be required to be checked-in at the cloakroom and the guest would be reminded that there was to be no photography. If the camera was discovered inside the wedding, security staff were to remove the film, develop it at the Douglases' expense and return all photographs save for any of the wedding. A computer was on hand so that digital films could be processed so as to obliterate any shots of the wedding but not any other pictures on the film. In some 6 or 8 cases a guest or other person present, without having tried to conceal it, had been found to have a camera or video with him or her and the arrangements I have described were then implemented. In one of the cases the camera had been held quite openly by a member of the Welsh Choir which was to entertain the guests and that led to the whole Choir being "frisked". No other camera was found on them. Comprehensive arrangements were also made to ensure that the copyright in the photographs taken by the official photographers (selected and paid for by the Douglases) belonged to the bride and groom and that no unauthorised copies could be made from their films, which were taken off for processing and processed under the eyes of security staff.
66. Miss Martel Levinson gave oral evidence of how every corridor on the relevant floor in the hotel was, as she put it, "locked down"; to ensure that other hotel guests could not stray into the wedding she blocked off some 30 to 40 rooms and put security staff in for the entire weekend beginning on the Friday night, even in stairwells. It was arranged that only one bank of elevators would serve the floor in question and that was reserved for the bride and groom to move from the suite which they were occupying to the ceremony and, after it, to the reception in the ballroom immediately above. Her evidence in her cross-examination by Mr Price included:-

"... Everyone felt confident that it would be as locked down as we could and that with the presence of security people at all of these posts, it was very clear that this was a private function."

To which Mr Price replied:-

"Oh, I am sure it was."

She had been careful to look at all possible situations, she said, having had security teams and meetings looking at every possible situation and scenario. To Mr Tugendhat's question as to whether Mr Thorpe (the one paparazzo who got in and took photographs, as I shall come on to describe) could have got in to any of the rooms where the wedding or reception was taking place without his realising that he was forbidden to be there, she replied "Absolutely not". I accept her evidence. To the extent that privacy consists of the inclusion only of the invited and the exclusion of all others, the wedding was as private as was possible consistent with its being a socially pleasant event. Equally, the arrangements made to ensure that only authorised photographs could emerge, after their approval by

the bride and groom, of the ceremony and reception, were as comprehensive in design and execution as could be made in relation to such an event. The security bill alone was for \$66,006.

Mr Thorpe, it transpires, was not the only person to have succeeded in making some unauthorised visual or sound recording of the events on the day but no one else's record has led, as it would seem, to any form of publication and, perhaps for that reason, little was said about these other forms of record and I do not hold their existence to be indicative of the security arrangements not having been reasonable.

The Wedding; the evening of the 18th November 2000

67. There are undoubtedly some events not otherwise of interest to the public that become of such interest by reason of the celebrities who attend. Minor celebrities may thus aggrandise their events by inviting major ones. When that is done an intrinsically private event might come to be regarded and be intended to be regarded as a public one. But the Douglas wedding was not such an event. The guest list, which was not publicised at the time, has been made available and there, amongst or alongside the 120 or so members of either the bride's or groom's family, are many names that anyone would recognise as famous or celebrated. However, it was not successfully shown to me that anyone who was not truly family or friend was invited (although, inevitably, there were some cases, where a guest and his or her partner were invited, in which only the guest could be truly described as a direct friend). In that sense the wedding was not a celebrity event and I accept Miss Zeta-Jones' evidence that it was not intended to be one.

68. Further, the Douglases had no need to and did not themselves take any steps to stir up publicity for the event. Even without any "hype" it was going to be, as Hello! later described it, "the showbiz wedding of the year". I accept Mr Douglas' evidence that:-

"We issued absolutely no press releases at all concerning the wedding and none of the pre-wedding press coverage was initiated by us."

69. In the Court of Appeal, Brooke L.J., after referring – page 984 c-d – to the wedding as a private occasion, later said – page 995 a-b – of the bride and groom that:-

"They did not choose to have a private wedding attended by a few members of their family and a few friends in the normal sense of the words "private wedding"."

I would be uneasy at characterising a wedding as not private simply on the basis of numbers, especially where the means of the parties were so ample that even a lavish wedding for 350-360 would not make real inroads, where the couple was popular enough to have many friends and where elaborate security arrangements were in place. But, amongst the evidence which I have had but which was not available before the Court of Appeal, is not only Miss Martel Levinson's as to security arrangements and the guest list itself but also Mr Douglas' which includes:-

"Out of our guest list, approximately 125 of our guests were family members. Both Catherine and I have very extensive families. My mother, for instance, has six brothers and sisters. My father has six sisters. It was therefore impossible for us to invite all the members of my family that I would have liked to have invited. If we had invited all the members of our families that we had wanted to then we would have needed a considerably larger venue or would not have been able to invite any of our friends."

It was, in my judgment, a private wedding.

