



Neutral Citation Number: [2012] EWHC 272 (QB)

Case No: HQ12X00490

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/02/2012

Before :

THE HONOURABLE MR JUSTICE TUGENDHAT

Between :

(1) Jacqueline Gold & (2) Ann Summers Ltd

Claimants

- and -

(1) Allison Cox & (2) Leanne Bingham

Defendants

Godwin Busuttil (instructed by Henri Brandman & Co) for the Claimants
The Defendants did not appear and were not represented

Hearing dates: 15 February 2012

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.

.....
THE HONOURABLE MR JUSTICE TUGENDHAT

Mr Justice Tugendhat :

1. On 15 February 2012 I heard, and adjourned part heard, an application for an injunction to prohibit the defendants from publishing confidential information about the first claimant. I granted an order prohibiting such publication until the adjourned hearing or further order. I stated that I would give short reasons why I had made the order in a judgment to be handed down in writing. These are they.
2. The first defendant consented to the making of the order. She authorised the Claimants' solicitor to communicate that to the court. The second defendant did not give her consent. She had sent a detailed e-mail to the court setting out her position, and had spoken by telephone to the claimants' solicitors. She said that she was in Thailand and wished for an adjournment. That is why I adjourned the hearing.
3. The claim form was issued on 9 February 2012, together with the application notice. The application notice was served in accordance with CPR Part 23, so that this was the effective hearing of the application. If the second defendant had not said that she was abroad and wished for an adjournment the matter could have been fully disposed of in this single hearing. This is not a case of an application made on short notice, or with no notice, where a return date is required.
4. The proceedings before me were heard in public. I made only the most limited derogation from open justice in the form of provisions protecting those parts of the evidence which relate specifically to the private information of the first claimant.
5. The first claimant is a director of the second claimant and well known as a business woman.
6. The first defendant was until October 2010 employed as her nanny for her infant daughter. The terms of the employment were set out in writing and included a personal confidentiality agreement.
7. The second defendant is a friend of the first defendant and had also worked temporarily both for the first and the second claimant. In her case there is no written confidentiality agreement, but there is a strong case for saying that she is subject to the implied terms as to confidentiality which are commonly found to bind employees, whether they be temporary employees or otherwise.
8. Insofar as the defendants came into possession in the course of their employment of private information concerning the first claimant and her daughter, there is a strong case for saying that they would each be bound by a duty of confidentiality. Given the nature of their work for the First Claimant, and the fact that the First Claimant has a young child, it appears to me likely that the defendants did come into possession of confidential and private information.
9. There is a strong case that the defendants are also bound by the general law of privacy.
10. On 4 March 2011 the first defendant was convicted at Guildford Crown Court upon her guilty plea of attempting to poison the first claimant. She was sentenced to twelve

months imprisonment. On 3 June 2011 she was released from prison on licence after serving three months of her sentence.

11. On 30 January 2012 it came to the attention of Mr Hall, the first Claimant's public relations agent, that an associate of the first defendant was seeking help to publish a book. A short manuscript was read by Mr Hall's source who expressed to Mr Hall the view that it was likely to constitute a breach of the duties of confidentiality owed by the defendants to the claimants.
12. There has been publicity concerning the first defendant in the recent past. On 8 June 2011 following her release from prison, there appeared in The Sun an article about her under the title 'Poison Nanny Jumps for Joy'. It was illustrated by a photograph of her. There had been previous articles in the media about her case.
13. It was on 10 February 2012 that the second defendant telephoned solicitors for the claimants saying she was in Thailand, and that she would be abroad until 17 February. She said that she had had read to her the papers served at addresses she had previously occupied in England.
14. On 14 February, that is the day before the hearing, she sent her detailed email to the court, which was copied to the claimants' solicitors and which I read. She states that she is writing a book based upon her time working for Ann Summers and the events surrounding the very public court case of the first defendant. She states that the first defendant has provided no material for this. She does not consent to the injunction sought because she feels she is entitled to express her views and observations over the events of the last two years.
15. She states:

“During the time of working at the household I witnessed many situations that I feel need to be used in the proposed book as they contribute to events later on and as I am not legally bound by a confidentiality agreement I have started with my time there which is what I believe has been passed without my permission to [the first claimant] through the sheer stupidity of The book is not just about working for [the first claimant], that is a small part as the majority is regarding the emotions and events of the public court case both parties being mentioned in the book [the first defendant and the first claimant] have had a very difficult year and by no means do I wish to add to the stress any further for either of them. My sole intention is to let the general public know other facts that have not been in the press regarding the scenario and reasons behind the way things have been dealt with by both parties....”.
16. She then sets out some criticisms of what she says is the way that the first claimant has responded publicly to these events. But she does not, in that e-mail, identify any particular instances, still less exhibit any copies of any public statements which she alleges the first claimant has made.

17. The order that I have made includes a provision in common form that nothing in the order should prevent the disclosure by the defendants of any information:

“that was already in or that thereafter comes into the public domain in England and Wales as the result of publication in the national media (other than as a result of a breach of this order or a breach of confidence or privacy)”.
18. What the second defendant has written demonstrates that there is a real risk that she will breach a duty of confidentiality owed to the claimants unless restrained by an order of the court.
19. The second defendant may need advice as to what that proviso permits her to do, and what information is, and is not, covered by the injunction. If she seeks a variation of the order to permit publication of any information not covered by that proviso, then she will have to put before the court the evidence relevant to such other information. As I have already said, there is a strongly arguable case that she is mistaken in her view that she not legally bound by any confidentiality agreement. An employment agreement with an implied term as to confidentiality is none the less an agreement. And an obligation of confidentiality may exist independently of an express or implied agreement.
20. The first defendant has also put before the court a letter received by the court on 14 February 2012, but which I read only after the hearing. It is hand written by her over four pages. It had not been seen by the Claimants’ representatives.
21. She explains that she has not sought publicity for her case but has been followed by a photographer. She states that she has not and does not intend to publish anything in breach of her confidentiality agreement. The book being prepared by the second defendant has nothing to do with her, she says.
22. She also refers to publications in the national newspapers which are attributed to the first claimant. She complains that it is unfair that she herself should be sued if the first claimant is free to speak. But she does not put before the court any material on the basis of which the court could determine that there should be any relaxation of the order other than the public domain proviso.
23. The defendants will have an opportunity to advance arguments, and adduce evidence, at the adjourned hearing. This is expected to be on 22 February. If they wish to submit that there should be further provisos to the order, or no order at all, that will be the time at which those submissions will be heard. But any such submissions must be based on evidence, and not on general statements.
24. In the meantime I made the interlocutory order prohibiting the disclosure of private and confidential information specified in the order.
25. There was no application for anonymity.