

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/06/2013

Before :

THE HONOURABLE MR JUSTICE TUGENDHAT

Between :

AVB

Claimant

- and -

TDD

Defendant

William Bennett (instructed by **Daryl Ingram & Co Solicitors**) for the **Claimant**
Philip Engelman (instructed by **Teacher Stern**) for the **Defendant**

Hearing dates: 5 June 2013

Judgment

Mr Justice Tugendhat :

1. In this action the Claimant is an elderly solicitor and the Defendant is a younger woman with whom he had had a relationship. On 24 May the Claimant applied to me without notice to the Defendant for a non-disclosure injunction. I granted an injunction to restrain the publication of information alleged to be private and confidential, and of information which was liable to or might identify the Claimant or the Defendant as a party to the proceedings. The information concerned the personal relationship that had existed between them, and communications to and about family members.
2. I granted the application without notice because communications had taken place between the parties, and it appeared from the response of the Defendant that, if the Claimant gave notice, there was a risk that the purpose of the proceedings might be defeated. I decided that it was necessary for the parties to be anonymised in these proceedings in accordance with CPR 39.2, and that no copies of the confidential schedules to the statements of case or of the witness statements and the applications should be provided to non-parties without further order of the Court. I also made consequential orders for the protection of the hearing papers. In the light of the allegations made by the parties in pre-action communications, I decided that these orders were necessary in the interests of justice if the purpose of the proceedings was not to be defeated.

3. The extent to which each of these provisions derogating from open justice remains necessary is a matter which will have to be reviewed as the proceedings progress.
4. On the return date, 5 June, the Defendant appeared by solicitors and counsel. She had made a witness statement. There is a dispute of fact on a number of matters. And the Defendant raised complaints of her own against the Claimant who, she alleged, had disclosed, or threatened to disclose, private and confidential information about herself. The Claimant agreed that the court could consider the complaints of the Defendant, notwithstanding that she had not issued an application notice. I adjourned the proceedings in order to give the parties an opportunity to agree the terms of any order.
5. In due course the parties submitted an agreed form of order, which included undertakings to be given to the court by both parties. However, I declined to make the order sought in the form in which it was first submitted. This was not because of the terms of the proposed undertakings. It was because there was no provision in the draft order for directions, or for any time limit on the undertakings.
6. Since the Practice Guidance: Interim Non-Disclosure Orders issued in August 2011 and the decision of the Court of Appeal in *Hutcheson v Popdog Ltd* [2011] EWCA Civ 1580, [2012] 1 WLR 782 the court has declined to make interim non-disclosure orders unless they provide for case management which will bring the matter to a trial, or other final determination by agreement. The Practice Guidance includes:

“37. Interim non-disclosure orders, as they restrict the exercise of the Article 10 Convention right and, whether or not they contain any derogation from the principle of open justice, require the court to take particular care to provide active case management. ...

41. Where an interim non-disclosure order, whether or not it contains derogations from open justice, is made, and return dates are adjourned for valid reasons on one or more occasions, or it is apparent, for whatever reason, that a trial is unlikely to take place between the parties to proceedings, the court should either dismiss the substantive action, proceed to summary judgment, enter judgment by consent, ...”
7. In actions which are not progressed in accordance with the CPR the court will require the parties to show cause why the injunction should continue: see *JIH v News Group Newspapers Ltd* [2012] EWHC 2179 (QB).
8. A further draft order was submitted which included both directions for the progress of the action and a date on which the undertakings are to expire if not renewed or discharged in the meantime. I made an order substantially in the terms submitted.