

Case No: HQ15X04235

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 16/10/2015

**Before :**

**THE HON MR JUSTICE BLAKE**

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**Between :**

“JPH”	<b><u>Claimant</u></b>
- and -	
(1) “XYZ”	<b><u>Defendants</u></b>
(2) Persons Unknown	

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**Ms Christina Michalos** (instructed by **Schillings Int. LLP**) for the **Claimant**

Hearing dates: 16 October 2015  
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**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.

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**The Hon Mr Justice Blake:**

1. On 10 October Popplewell J sitting mainly in open court made orders on a without notice application at the instigation of J (I will refer to the parties by their first initial) restraining X from publishing intimate images of a sexual nature. He gave his reasons in a short judgment that he handed down the next working day.
2. This is the return day of that injunction. Three issues arise
  - i. Should the injunction preventing restraint of publication continue to trial or further order?
  - ii. Should the identity of J continue to be withheld in the interests of justice pursuant to CPR 39.4 ?
  - iii. Are any other variations of the order required?
3. As to the first issue, I am satisfied like Popplewell J that the images were taken in private of private acts and with every expectation on the part of both parties that they should remain private. They are a significant aspect of J's private life and there is an obligation on the court to respect J's private life so far as necessary and proportionate and subject to the evaluation of competing considerations of freedom of expression.
4. X does not claim any right to publish this material in the written response made to J's solicitors.
5. There is no public interest in publishing such images, and every public interest in preventing publication. Indeed, if publication were to be seen as part of a course of conduct intimated in the email traffic that preceded this application, publication by X would mostly probably be a crime.
6. I take account of J's public profile as an actor and the fact that the making of this injunction has been the subject of media reporting. I am conscious that what interests the public is not the same as what is in the public interest.
7. I have considered s.12 HRA and am satisfied that:
  - i) it is highly likely that J will succeed at trial in prohibiting future publication.
  - ii) In the particular circumstances of this case there is little or no public interest in publication of these images and any restraint on freedom of expression this injunction results in is justified proportionate and necessary in the interests of justice.
8. I will therefore continue the prohibition until trial or further order.
9. The second issue is whether anonymity should continue for the same period. This is a distinct question to whether the publication should be restrained. The

leading authority of JIH v News Group [2011] EWCA Civ 42 makes plain that:

- i. The judge on the return date must reconsider the issues for himself.
  - ii. The outcome of the decision is highly fact sensitive.
  - iii. There may be a balance between hearing a case in public and giving a judgment in public as both Popplewell J and I have and the making of an anonymity order.
10. I have considered what it is that constitutes the private life that is being protected in this case. It is not the fact that J had a sexual relationship with X, but images resulting from that relationship.
11. Popplewell J was satisfied that anonymity was necessary as J's identity was part of a jigsaw that could connect J to the images where some limited pre publication of the images had taken place.
12. As far as is known no further publication has taken place, but there remains a risk of further publication because of the apparent transfer of the images to others by X. I asked for submissions from Ms Michalos on the issue.
13. The problem was considered by Tugendat J in AMM v HXW [2010] EWHC 2457 (QB) but there the decisive consideration was that the party restrained was in effect blackmailing the claimant with threatened publication. There has always been a strong public interest in protecting the victims of blackmail by affording anonymity.
14. I do not read the email exchanges between the parties as quite amounting to a threat to do something unless the claimant acted in some way, which is the classic blackmail situation. What X was threatening was publication out of a sense of bitterness at the ending of the relationship. It may be that the public interest in protecting victims of blackmail and victims of revenge publication of sexual images are similar.
15. I further accept that there is substance in three other submissions made on behalf of the claimant:
  - i) the risk of jigsaw identification of J remains high given some of the characteristics of the relationship with X and the fact that some material was published pre-publication on a web site.
  - ii) that risk is enhanced by the fact that X said the material had been provided to others and X has not complied with the obligation to reveal who has been provided with the material.
  - iii) an aspect of private life that is subject to protection is the fact that photographs and videos were taken with a sexual content in the course of a private relationship and as this is now in the open because an open hearing has been held and an open judgment given, anonymity is needed.

16. Having raised the matter with counsel, by the time the hearing concluded I was satisfied that it was necessary in the interests of justice to make the anonymity order. Members of the press were present at the hearing and aware I had raised the question whether representations against anonymity were to be made by anybody. They have not been.
17. I am accordingly satisfied that the orders made by Popplewell J preventing disclosure of J's identity directly or indirectly should remain in place. This obligation binds anyone else who has knowledge of this order.
18. As to the third issue I accept that the court should identify the sanction of debarring from defending the claim when served unless X complies with the outstanding obligation to make a statement revealing the detail of who has copies of the material. This is without prejudice to X's liability to be committed to prison for breach of an obligation imposed with a penal order attached.