



Neutral Citation Number: [2011] EWHC 249 (QB)

Case No: HQ11X00462

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15/02/2011

Before :

THE HONOURABLE MR JUSTICE TUGENDHAT

Between :

Stephanie Hirschfeld

Claimant

- and -

James McGrath

Defendant

Mr Godwin Busuttil (instructed by **Payne Hicks Beach**) for the **Claimant**
The Defendant appeared in person

Hearing dates: 11 February 2011

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 HONOURABLE MR JUSTICE TUGENDHAT

Mr Justice Tugendhat:

There is an Order restraining publication of information concerning this case, other than the information contained in this judgment and in the Order of the Court made in this action

1. The parties to this action were formerly married. On 4 February 2011 the Claimant obtained an interim injunction from Teare J sitting out of hours to restrain publication of confidential information. He also made an anonymity order, and other orders to protect the confidentiality of the hearing papers. The Defendant was not heard on 4 February because, as Teare J recorded, the Claimant had taken all practical steps to notify the Defendant, but had been unsuccessful.
2. Today is the return date. The Defendant has appeared in person, and has offered undertakings to the Court. These are substantially to the same effect as the order made by Teare J, with some variations to the drafting.
3. The issue that I have had to decide is what information should be made public concerning these proceedings, and, in particular, whether I should continue the anonymity order.
4. Mr Busuttill informed me that he had not found these questions easy, and neither do I. Mr Busuttill candidly stated to Teare J (as appears from the note that was kept of the hearing) that he was not sure that it would be essential for there to be an anonymity order in this case, but that it was necessary over the short period before the return date. Teare J himself expressed doubt as the necessity for an anonymity order. But he took time to read the relevant authorities and to consider the matter and was ultimately persuaded that it was necessary until the return date.
5. If Teare J had not made the anonymity order, the court at the return date would not have been able to consider all the possible options, as I have been able to do. He was therefore entitled to apply a lower test on the interim application before him than I can apply today: See *Cream Holdings Ltd v Banerjee* [2005] 1 AC 253, [2004] UKHL 44 para [22]. If I decide not to make an anonymity order that does not in any way reflect upon the correctness of the order of Teare J.
6. What prompted the Claimant's application to the Court was her learning that the Defendant is proposing to publish an autobiographical book. He confirmed to me that he is proposing to write it together with his new wife.
7. While they were still married the parties suffered bereavement. The Claimant accepts that she cannot prevent the Defendant from setting out that fact if he chooses. What she does seek to prevent is publication concerning the intimate relationship of the parties and their family, and information about her health. She has not expressed any fear that the Defendant was intending to make revelations of a sexual nature. That is not what this case is about.
8. Since this application relates to marital confidences it is being made in accordance with principles that have been an established feature of English law since at least *Argyll v Argyll* [1967] 1 Ch 302. There can be little doubt that the Defendant was well

advised to give the undertakings that he has given relating to the substance of the claim.

9. On the issue of anonymity, Mr Busuttil reminded me of a number of recent cases. The two most recent in the Court of Appeal are *Ntuli v Donald* [2010] EWCA Civ 1276 and *JIH v News Group Newspapers Ltd* [2011] EWCA Civ 42, handed down as recently as 31 January. The principles to be applied are set out in para 21 of the judgment of Lord Neuberger MR. It is sufficient to set out the following:

“(1) The general rule is that the names of the parties to an action are included in orders and judgments of the court.

(2) There is no general exception for cases where private matters are in issue.

(3) An order for anonymity or any other order restraining the publication of the normally reportable details of a case is a derogation from the principle of open justice and an interference with the Article 10 rights of the public at large.

(4) Accordingly, where the court is asked to make any such order, it should only do so after closely scrutinising the application, and considering whether a degree of restraint on publication is necessary, and, if it is, whether there is any less restrictive or more acceptable alternative than that which is sought.

(5) Where the court is asked to restrain the publication of the names of the parties and/or the subject matter of the claim, on the ground that such restraint is necessary under Article 8, the question is whether there is sufficient general, public interest in publishing a report of the proceedings which identifies a party and/or the normally reportable details to justify any resulting curtailment of his right and his family's right to respect for their private and family life.

(6) On any such application, no special treatment should be accorded to public figures or celebrities: in principle, they are entitled to the same protection as others, no more and no less.”

10. The Defendant did not ask for anonymity, and he did not raise any objection to it either.
11. The argument advanced by Mr Busuttil for anonymity is that the Claimant is at risk of attracting press interest, and thereby suffering further intrusion into her private life, from which she is entitled to be protected. And an anonymity order would have the advantage that the Court could disclose to the public more details of the information which is the subject of the Defendant's undertakings than would otherwise be the case.

12. A particular feature of this case is the Defendant's book. On 6 February the Defendant wrote that he had consulted solicitors about the content of his book and he claimed that he was entitled to write it. Having given the undertakings that he has, the Defendant is likely to need advice as to the details that may be published in the book, if they relate in any way to the Claimant. There is nothing more that I can say about that.
13. The significance of the Defendant's intention to publish his book is that if today the court publishes details of the information which the Claimant seeks to protect, then there is a risk that the purpose of an anonymity order will be defeated. If details of the information the subject of today's order are publicised, there is a risk of jigsaw identification of the parties following the publication of the Defendant's book.
14. There is also the danger that the effect of the order I make will lack the degree of clarity and precision that is required. The Claimant does not ask for an order restraining the publication of the Defendant's book, and the form of the order I make must not interfere unnecessarily with the Defendant's rights.
15. As Maurice Kay LJ said in *Ntuli* at para [26], it is axiomatic that any injunction

"should be to the highest degree clear and precise so that no publisher would be in any doubt whether he was infringing it or not." (*Times Newspapers Ltd v MGN Ltd* [1993] EMLR 443 at page 447, per Sir Thomas Bingham MR).
16. For these reasons I decided not to continue the order for anonymity, and to give only those details about the subject matter of the injunction which appear in this order and in this judgment.
17. The terms of the Defendant's undertaking are that he will :

"... not publish, republish, syndicate, use, communicate or disclose to any person:

 - (a) any information concerning the intimate former relationship of the parties, their family life and/or the Claimant's health save for that contained in the public judgment of the Court in relation to the Application; and/or
 - (b) any of the information set out in the Confidential Schedule to this Order

and will not cause or authorise any other person, firm or company to do any of those acts

PROVIDED THAT nothing in this Order shall prevent the use, disclosure, communication or publication of any of the Information:

 - (i) by the Defendant (1) to legal advisers instructed in relation to these proceedings for the purpose of obtaining legal advice in relation to these proceedings or (2) for the purposes

of carrying this Order into effect provided that any person to whom such information is disclosed must first be either given a copy of this Order or notified of its substance and effect;

(ii) by the Defendant of any part of the Information that is in the public domain as the result of national media publication (otherwise than as a result of breach of this Order).

AND PROVIDED FURTHER THAT nothing in this paragraph of this Order shall prevent the Defendant from disclosing to or discussing with any member of his family, or any doctor or counsellor, any of the information referred to in paragraph (i) or (ii) of the Confidential Schedule to this Order.”