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Case No: HQ10X04600

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 1 December 2010

Before :

THE HONOURABLE MR JUSTICE EADY

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Between :

KGM	**Applicant**
- and -	
(1) NEWS GROUP NEWSPAPERS LIMITED **(2) MGN LIMITED** **(3) ASSOCIATED NEWSPAPERS LIMITED**	**Respondents**

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Hugh Tomlinson QC (instructed by **Schillings**) for the **Applicant**
Adrienne Page QC and **Jacob Dean** (instructed by **Farrer & Co**) for the **First Respondent**
William Bennett (instructed by **MGN Legal Department**) for the **Second Respondent**
Victoria Jolliffe (instructed by **Reynolds Porter Chamberlain LLP**) for the **Third Respondent**

Hearing dates: 17-18 November 2010

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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 HONOURABLE MR JUSTICE EADY

Mr Justice Eady :

1. On 17 and 18 November 2010 the Claimant, through Mr Tomlinson QC, launched an application for an interim injunction against three publishing groups. [redacted]

2. [Redacted]

3. [Redacted]

4. The matter had originally come before the court on the morning of 16 November on the application of News Group Newspapers Ltd, through Ms Page QC, who sought to have the original injunction set aside on the ground that her client wished to publish information about the Claimant which would otherwise undoubtedly fall within the scope of the restrictions imposed by Sir Charles Gray. When the new application was launched, of course, her arguments were developed by way of response to Mr Tomlinson's application for a fresh injunction.

5. In the light of such well known cases as *Campbell v MGN Ltd* [2004] 2 AC 457 and *Re S (A Child)* [2005] 1 AC 593, it is clear that an applicant who seeks to restrain publication of personal information will need to approach the matter in two stages. First, it is necessary to demonstrate that he has a reasonable expectation of privacy in respect of the subject-matter in question, having regard to Article 8 of the European Convention on Human Rights and Fundamental Freedoms. If that hurdle is overcome, it next has to be shown that there is no countervailing public interest sufficient to outweigh his right to protect that information. At the second stage, the court will apply what has been termed "an intense focus" to the particular circumstances of the case, in order to arrive at a determination of where the balance lies between the competing rights concerned. In this case, it is for the Claimant to show, if he can, that the information of which publication has so far been prohibited is still properly to be regarded as private and that there is no reason why the competing interests of the Respondents, or any of them, under Article 10 of the Convention should prevail.

6. I was told in the course of the hearing that MGN Ltd had no intention of publishing relevant material and it resisted any order being made on that ground alone. Ms Jolliffe on behalf of Associated Newspapers Ltd seemed to be without instructions as to any intention on the part of her client. I was referred to the well known words of Lord Dunedin in *Att.-Gen. for Canada v Ritchie Contracting and Supply Company Ltd* [1919] AC 999, 1005 to the effect that no one can obtain a *quia timet* injunction by merely saying "*Timeo*"; he must aver and prove that what is going on is calculated to infringe his rights. It is not enough to show an unwillingness to offer an undertaking.

7. After the hearing, Mr Tomlinson went away and did a little dredging. He came up with a Chancery case from February 1887: *Shafto v Bolckow, Vaughan & Co* (1887) 34 Ch D 725, 728-9. He relied on the judgment of Chitty J for the proposition that, " … where persons claim to have a right to do a thing, even though saying they have no present intention of doing it, they are proper parties to a bill for a declaration and for an injunction". The factual scenario, however, was somewhat removed from the present. The Ecclesiastical Commissioners were lords of the manor, from whom a lease was held by the First Defendants. They claimed to be entitled to work coal

under the Plaintiff copyholder's land by virtue of their rights under the lease. The Commissioners were in those circumstances held to be properly joined as Second Defendants, since they claimed the right to work coal themselves – although not having done it *modo et forma*. Chitty J added:

> "I have always understood it to be the settled practice that when a person claims a right, that is a ground for making him a party to an action for an injunction."

Moreover, the Commissioners were alleged on the statement of claim to be taking profit with respect to the wrong done.

8. Leaving aside the context of property rights, I do not believe that the doctrine for which Mr Tomlinson contends would be consonant with modern Strasbourg jurisprudence on Article 10 of the European Convention. It is incumbent upon this Claimant to show that it is necessary and proportionate to impose restraint on MGN Ltd and Associated Newspapers Ltd because of evidence of an apprehended wrong *on their parts*. It would be a new, and rather retrograde, development if one could obtain an injunction against someone merely because he claimed the right to exercise his freedom of speech. In that context, the jurisdiction to grant an injunction has always been regarded as "delicate". If it is necessary to resort to late Victorian case law, then there are well known authorities to support this approach from that era: see e.g. *Quartz Hill Consolidated Mining Co v Beal* [1882] 20 Ch D 501, *Coulson & Sons v James Coulson & Co* (1887) 3 TLR 846, CA, and *Bonnard v Perryman* [1891] 2 Ch 269, CA.

9. Mr Tomlinson was unable to provide any substantive evidence of an intention or threat to publish on the part of either of these groups and accordingly the applications against them must be dismissed. The application was primarily directed to News Group Newspapers, where the intention was not in dispute.

10. The information in respect of which the Claimant seeks to maintain confidentiality falls within a very narrow compass. In 1968 he married a lady with whom he had four children, who are now grown up. The marriage still subsists. In the meantime, from about 1976 he developed a relationship with another woman with whom, in 1979 and 1981 respectively, he had two children. Obviously, they too are now adults. For many years, however, the Claimant managed to keep the information about his "second" family secret, to a greater or lesser extent. How far he succeeded in this intention has been a matter of debate in the light of the limited evidence available. The position now is that, finally, all members of the Claimant's "first" family are aware of the situation, although I am told that one of his daughters was only informed two or three weeks ago. She was told by her husband, who himself had known of the "second" family only since the beginning of last year.

11. The Claimant's case is that the information is no more widely known than among his two families and that it is not public knowledge. He says that he still has a reasonable expectation of keeping his "second" family secret, in the sense that he should not be identified as being the father of the two children in question or as having had a relationship with their mother.

12. I need to explain how it is that the information has become of interest at this point and why *The Sun* newspaper wishes to make it public by way of an "exclusive" story.

13. It so happens that the daughter who only found out recently about her father's "second" family is married to the chef and businessman Gordon Ramsay. The Claimant was until recently associated with Gordon Ramsay in business. He was the chief executive of Gordon Ramsay Holdings Ltd and Gordon Ramsay Holdings International Ltd which, together with various subsidiaries, constitute the Gordon Ramsay Group. In October of this year, however, the Claimant was dismissed.

14. Since that time, there has been a very public slanging match between Gordon Ramsay and the Claimant in the columns of various newspapers. Each of them has been making unappetising allegations about the other. This has not been confined to business matters. I was shown, for example, an "open letter" from Gordon Ramsay to the Claimant's wife in which he refers to her estrangement from her daughter (Mrs Ramsay) and her grandchildren and calls for a degree of reconciliation. On the other hand, the Claimant for his part puts the blame for the estrangement on Gordon Ramsay.

15. So far, one topic that has not been deployed is the fact of the Claimant's "second" family, although some of Gordon Ramsay's remarks could be taken by those with knowledge of it as being "broad hints". He has referred to the Claimant's "complex" lifestyle in the *Evening Standard* on 10 November and apparently linked it to the grounds for dismissal. *The Sun* wishes to take this further, on the basis of an unidentified "source", who must clearly be very close to Gordon Ramsay, and to explore also the potential relevance to this public row of the impact of Mrs Ramsay's recently acquired knowledge about the "second" family.

16. I have seen a witness statement from Christopher Pharo, Head of News at *The Sun*, which contained the following passages:

> "10. On Wednesday 10 November 2010 one of the reporters in my team told me that he had spoken to one of his sources about the Claimant and the reasons for his dismissal from Gordon Ramsay Holdings. I cannot reveal the identity of the source because the information they had provided to the reporter was given on a confidential and/or 'off the record' (ie not for publication) basis. However, I am aware of the identity of the source and can confirm that the source is a reliable and regular source, having provided us with information previously which has been accurate, reliable and resulted in published stories.
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> 11. The reporter went on to tell me that during his conversation with the source, the source confirmed to my reporter that the reason the Claimant was sacked from Gordon Ramsay Holdings was because it had been alleged that the Claimant had been using company monies to fund his 'second family', namely a second family outside of his marriage.

> 12. The same reporter subsequently sought 'on record' (ie for publication) confirmation from the Claimant's PR representative, Phil Hall of Phil Hall Associates, in respect of the allegation that the Claimant was sacked from Gordon Ramsay Holdings because the Claimant had been using company monies to fund his 'second family'. My reporter told me that when he put this allegation to Mr Hall, Mr Hall simply referred my reporter to the Order [*i.e. that of Sir Charles Gray in January 2009*] and refused to answer any further questions in respect of the allegation. … "

17. Against that background, Mr Tomlinson submits that nothing has changed since the order was granted in January 2009 and that his client is still entitled to protect the existence of his "second" family from the prying eyes of *Sun* readers. Ms Page, on the other hand, submits in the first place that there is no reasonable expectation of privacy in respect of this "second" family. In any event, she argues that the Claimant has introduced a whole lot of private family matters into the public domain together with his own side of the story about his recent dismissal. She argues that the two are inextricably intertwined and that it would be unfair for his account to remain before the public without the full story coming to light. As I have recorded, the evidence of Mr Pharo indicates that *The Sun* has information to the effect that the dismissal was connected to breaches of duty on the Claimant's part, whereby company funds were misused in ways that were linked somehow to his "second" family

18. I have no idea whether this allegation is true. It is certainly denied by the Claimant. On the other hand, if this were an application founded on a cause of action in libel (which it is not), it would be quite clear in the light of the rule in *Bonnard v Perryman*, cited above, that the Claimant could not prevent publication of such allegations if the newspaper intended to prove their truth. The hurdle is not quite so high in the context of privacy, since in the light of s.12(3) of the Human Rights Act 1998 an applicant only has to demonstrate that he would be "likely" to succeed in obtaining a permanent injunction at trial. A judge in such circumstances has to come to a conclusion on the basis of the limited evidence available at the time the application is made. This principle was considered by the House of Lords in *Cream Holdings v Banerjee* [2005] 1AC 253, where guidance was given.

19. One of Ms Page's arguments is that, if there is evidence available of wrongdoing on the Claimant's part in relation to the discharge of his duties to the Gordon Ramsay Group, that is a matter which *The Sun* is entitled to draw to the attention of its readers. Even if there is a *prima facie* right to privacy in the information, she suggests that it could be overridden in these circumstances because of the public interest in exposing wrongdoing or misfeasance. In any event, there is a risk of the public being misled unless they are given the other side of the story. Moreover, without the benefit of disclosure or cross-examination, it would be very difficult for a judge to be satisfied on the balance of probabilities that the Claimant was going to be in a position at trial to demonstrate that the source's allegations were false. The basis of the allegations remains somewhat hazy at the moment, but as a matter of principle it would be for *The Sun* to make its judgment on the source's reliability and to take the consequences.

20. Logically, the first issue to be determined is whether the Claimant is able to persuade the court that he has a reasonable expectation of privacy in respect of the information about his "second" family.

21. Mr Tomlinson has submitted that it is well established that the law will recognise an entitlement to privacy in respect of personal relationships, including those which happen to involve adultery. That has been demonstrated in a number of cases since the House of Lords decision in *Campbell v MGN Ltd*, cited above: see e.g. *ASG v GSA* [2009] EWCA Civ 1574. Even then, of course, much will depend on the facts of the particular case. Generalisations are best avoided. The court may have to consider the extent to which the relationship in question has been conducted in secrecy. In the recent case of *Donald v Ntuli* [2010] EWCA Civ 1276, for example, the Claimant had been unable to demonstrate in the light of conflicting evidence that the relationship had *not* been conducted openly, in the sense of being seen together in public places and at social gatherings. It was not suggested, however, that it had attracted media publicity. Even so, the injunction was refused.

22. On the other hand, in *Lord Browne of Madingley v Associated Newspapers Ltd* [2008] QB 103, at [61], the Court of Appeal thought that " … there is potentially an important distinction between information which is made available to a person's circle of friends or work colleagues and information which is widely published in a newspaper". This rather suggests that the ambit of privacy might extend to a relationship which had been conducted "openly" but among a limited circle of friends or acquaintances. It is not easy to see how far this would go. The Court of Appeal was not purporting to lay down any general rule about it. It certainly cannot be taken to mean that there is always a reasonable expectation of privacy in respect of any personal information merely because it has not been "widely published in a newspaper".

23. In the present case, there is evidence of a somewhat limited nature from the Claimant himself as to his relations with the "second" family and he asserts quite strongly that secrecy has been largely maintained over all these years. On the other hand, in one of his witness statements he claimed to have played a full part in the upbringing of the two children concerned.

24. Ms Page argues that being the father of a family is rather different from conducting a clandestine affair, since it inevitably has an element of what one might call "public interface". One would expect a parent who played a full part in his children's lives to have been acquainted from time to time with the children's teachers, with their school friends and, in turn, with their parents.

25. The Claimant expanded on the degree of his involvement in a supplemental statement of 18 November:

> "Aside from professional advisors to whom I had to disclose the information so as to make financial provision for my second family no one outside of my second family knew of the existence of my second family until I began the process of informing my immediate family, by which I mean the children of my marriage and my wife. So far as I am aware the only people, save for professional advisors (and those who now

> know the information as a result of these proceedings), who know of the existence of my second family are my children and their spouses and my wife. Aside from Gordon, I am not aware that anyone within Gordon Ramsay Holdings knows."

He later qualified the last sentence. There is apparently one other person within the Group who knows about the "second" family, although she originally came to hear of it in a professional capacity. She was at one time the Claimant's accountant.

26. It is to be noted also that the two children of that family bear the Claimant's surname and, indeed, that the son has his father's first name as well. The mother too adopted his name by way of deed poll. Thus, she and the children all share his surname. As to their birth certificates, however, she chose not to identify the Claimant as their father.

27. Ms Page suggested that the original and primary reason for maintaining secrecy was that the Claimant's wife and "first" family should not find out. That need has now, finally, been extinguished.

28. Now, much of the emphasis is put by the Claimant on the adverse impact of any publicity on the members of his two families. Indeed, he has said in his evidence that he is, for himself, largely indifferent to what people in general, and *Sun* readers in particular, may think of him. There is, in this case, no evidence from any other family members as to what he or she thinks might be the personal consequences of press intrusion for them (as there has been in some other cases), but it is not difficult to imagine how distressing and inconvenient this might be. Sometimes, where a parent becomes the centre of media attention, whether willingly or not, there will inevitably be an element of unwelcome fallout for the children. It is clearly right to take such matters into account: see e.g. *Donald v Ntuli*, cited above, at [24]. That is because their Article 8 rights are likely to be engaged. Yet it is a consideration that is likely to be given more weight in the case of younger or more vulnerable children, or where there is, for example, evidence of particular mental or emotional fragility, as in *CC v AB* [2007] EMLR 312. Sometimes, the fallout of publicity on innocent bystanders may be unavoidable.

29. One must not confuse, so it seems to me, the question of whether there is a reasonable expectation of privacy in relation to certain information, such as the existence of a family or family connection, with that of whether tabloid publicity would be likely to involve harassment or intrusion in the immediate aftermath. They appear to be distinct issues. In the case of an everyday uncomplicated familial relationship, a paterfamilias who attracts adverse media attention could hardly seek to protect his wife and family from that outcome by claiming a right to keep their relationships with him confidential. Is it appropriate that a double or serial paterfamilias should in this respect be placed in a stronger position? I would have thought not. One has to ask the question, aside from potentially adverse outcomes, whether the mere fact of the family relationship in itself should be regarded as private information.

30. One factor mentioned was that the daughter of the Claimant's "second" family was married in the United States a while ago and his name appears on her marriage certificate. That is something that can be established with diligent research, but I do not believe it carries much weight in the present circumstances. Twenty years ago, when the Calcutt Committee was looking at issues of privacy and making

recommendations to Parliament about possible changes in the law, it was thought that no protection could be extended by law to information that was placed, or required to be placed, on a publicly accessible register (e.g. births, marriages and deaths): *Report of the Committee on Privacy and Related Matters* (1990 Cm 1102). It would make for a clear and comprehensible distinction. That which was to be made publicly available was viewed by the authors of the report as being the antithesis of private information. Yet, as the years have gone by, it has become apparent that Convention jurisprudence and developments in English law allow for much greater flexibility (and thus entail also greater uncertainty). It all depends upon a close analysis of the facts. It has to be recognised, for example, that information available on the Internet is not necessarily of itself to be regarded as beyond the law's protection. It is appropriate to ask whether the material has become so public that there is no longer any realistic prospect of maintaining privacy: see e.g. *Att.-Gen. v Greater Manchester Newspapers Ltd* (2001) 145 SJLB 279 at [28]-[33].

31. In this particular case, it would be unreal to suggest that the mere fact that the Claimant was identified on an American marriage certificate means, of itself, that any expectation of privacy has gone.

32. It is often an important factor, on applications of this kind, to make an assessment of the individual claimant's own attitude towards the maintaining of privacy or secrecy and the importance he seems to attach to it in the light of the evidence. Ms Page drew attention to this Claimant's personality, as it emerges from the interview he gave in the *Mail on Sunday*, which she characterises as "robust". He appears to be a man who is able to look after himself and give "as good as he gets". I rather agree. It is a factor to be taken into account, but it does not necessarily mean that he is not entitled to seek the protection of the court in respect of matters in his life that are genuinely private.

33. Here, I should also bear in mind the content of a witness statement from the Claimant's solicitor, Mr Gideon Benaim, which was prepared with the original purpose of meeting Ms Page's application to discharge the injunction granted by Sir Charles Gray. In paragraphs 8 and 9, he indicated that the Claimant had instructed him, albeit with reluctance and partly with costs in mind, that he would be prepared to consent to the lifting of his anonymity. It would be a consequence of that, at least, that his extra-marital relationship would come to light, since Sir Charles referred to it in his publicly available judgment (although the Claimant himself neither admitted nor denied it). It is important to note, however, that " … he is reluctantly consenting in the face of the pressure placed on him by the media". It may, therefore, not be entirely fair to interpret that consent as indicating that he no longer attaches importance to maintaining privacy. Why else would he now be applying afresh?

34. Mr Benaim continued in paragraph 10:

> " … I do not believe that the apparent new approach by the court correctly balances Article 8 and Article 10 rights as the lifting of anonymity in these particular circumstances would inevitably cause immense distress to the Claimant and his family. In my view this situation is a wholly foreseeable consequence of the new regimen which is now being exploited by certain elements of the media not in relation to matters of

> genuine public importance, but in relation to inherently private matters such as is the case here".

35. Against this background, has it been established that the Claimant has a reasonable expectation of continuing to keep secret the fact of his "second" family? I am not so persuaded.

36. I would accept that Article 8 is certainly engaged so far as concerns the Claimant and the members of both his families. Yet there is no question of intruding, by any proposed publication, into intimate matters internal to the "second" family or to the Claimant's extra-marital relationship. It is a "bare fact" case; that is to say, the court is concerned only with the bare fact of the familial relationship (as was the case, for example, in *Donald v Ntuli*). Factual information of that kind may sometimes involve a relatively low degree of intrusion. It may be reasonable to treat it discreetly, but that is not the same as enforcing a right to keep it secret *vis-à-vis* the right of another to exercise freedom of speech by referring to it. In the circumstances of this particular case, I would hold that there is, at this stage, no reasonable expectation of privacy as to the fact of the "second family".

37. In case I am wrong about that, however, I shall go on to the "intense focus" and the "ultimate balancing exercise" required at stage two.

38. There seems to me no inherent public interest in the mere fact that the Claimant has for many years had a "second" family. He is not a public figure or someone who has made public pronouncements about private morality. He is an ordinary private citizen. Moreover, it can no longer be convincingly argued that, merely because he has recently "gone public" about some family matters himself, therefore his whole family life is thereby opened up to media exposure. The so-called "zonal" argument has become discredited since at least the decision of the Court of Appeal four years ago in *McKennitt v Ash* [2008] QB 73.

39. There is, on the other hand, a potential public interest in the exposure of wrongdoing such as, for example, breach of fiduciary duty or the misappropriation of corporate funds, so as in certain circumstances to override an otherwise legitimate expectation of privacy: see e.g. *Lord Browne of Madingley v Associated Newspapers Ltd*, cited above. So too, there is a public interest in ensuring, so far as possible, that the public is not misled or given an unduly slanted picture through the public pronouncements of an individual who has become, for one reason or another, the focus of public attention: see *Campbell v MGN Ltd*, again cited above. It will be recalled that Ms Naomi Campbell had made public statements disavowing her involvement in the misuse of drugs. That was a factor which tended to override her reasonable expectation of privacy in relation to her attendances at a drug rehabilitation clinic.

40. In the present case, Ms Page's clients wish to have the opportunity, in reliance upon their well placed source, to publish allegations relating to the supposedly true reason for the Claimant's dismissal from the Gordon Ramsay Group, which was said to involve his having misapplied corporate resources in some way connected with his "second" family. That the newspaper is entitled to do subject, of course, as always, to the constraints of the law of libel. The Claimant cannot rely on the law of privacy to prevent that, any more than could Lord Browne of Madingley in relation to his alleged misdirection of BP personnel and resources.

41. Furthermore, I referred earlier to the Claimant's highly publicised attacks on Gordon Ramsay, both in relation to the way he runs his business and as to his supposed responsibility for the breakdown of relations between his wife and her parents. It seems that there may be another side to this, and that the estrangement may not be wholly unconnected with the Claimant's double life and Mrs Ramsay's recent discovery of the true position. The Claimant can hardly expect to have it all his own way and to use the court's processes to cover up the true position or to prevent Gordon Ramsay from responding to his allegations by using the full facts at his disposal. It can thus be readily understood, in this particular case, that it would be very difficult to draw hard and fast boundaries between "zones" – whether business or familial in nature. According at least to the newspaper's source, the two seem to be intertwined.

42. There is much no doubt in dispute and, at this stage, it is impossible for the court to come to a definitive conclusion as to where the truth lies in relation to these very public quarrels – relating, as they do, to both business and family matters. The appropriate course for the court to take, as in *Donald v Ntuli*, cited above, is to ask in accordance with s.12(3) of the Human Rights Act 1998 whether it is satisfied, on a balance of probabilities, that the Claimant is "likely" to succeed at trial in establishing his entitlement to a permanent injunction to protect the information about his family circumstances; that is to say, because there can be seen *already* to be no justification for overriding his (*ex hypothesi*) right to keep the existence of his "second" family secret. I am not persuaded and, in accordance with my duty under the statutory provisions, I must therefore decline to grant the interim relief now sought. I cannot say that it would be necessary or proportionate, either in the interests of the administration of justice or for the protection of the Claimant's legitimate expectations in respect of Article 8, to restrict the freedom of expression of any of these Respondents. Accordingly, the circumstances are rather different from those confronting Sir Charles Gray in January 2009.

43. On the other hand, as contemplated by Lord Nicholls in *Cream Holdings* at [22], it may sometimes be appropriate to grant an injunction on a temporary basis for the purpose of enabling one or other of the parties to test the issues on appeal. Subject to that consideration, there is obviously no reason why the contents of the judgment should not be publicly available.