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Case No: HQ10X00390

Neutral Citation Number: [2010] EWHC 3064 (QB)

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24/11/2010

Before :

Mrs Justice Sharp DBE

Between :

KJH
- and -
HGF

Claimant

Defendant

Hugh Tomlinson QC (instructed by Harbottle and Lewis LLP) for the Claimant

Hearing date: 23 November 2010

Judgment

Mrs Justice Sharp:

It is ordered that publication of any information as to the subject matter of these proceedings or the identity of the parties to these proceedings, is limited to that contained in this judgment

1. This judgment concerns an application heard in private at a with notice hearing, for the continuation until trial or further order of an interim injunction, in privacy and confidence. The order was first granted by Eady J and has been continued twice since then, by myself and then Eady J.
2. I heard submissions on behalf of KJH from Hugh Tomlinson QC and evidence has been put before me in witness statements from two solicitors from Harbottle & Lewis and in a confidential witness statement from KJH and in exhibits to those witness statements. The Respondent to the application, HGF was given notice of this hearing but was not present or represented.
3. In considering whether KJH is entitled to the relief asked for I have applied the principles of law referred to in paragraphs 13 to 19 of my judgment in *DFT v TFD* [2010] EWHC 2335 (QB). I am also required to consider section 12(4) of the Human Rights Act 1998 (HRA) and whether the threshold test for interim relief affecting the convention right to freedom of expression in section 12(3) of the HRA is satisfied in accordance with the approach of the House of Lords in *Cream Holdings v Banerjee* [2005] 1AC 253.
4. The evidence establishes to a high degree of probability that KJH was the victim of blackmail involving the threat of the revelation of stolen private and confidential information. In those circumstances, I am satisfied that KJH is likely to establish at trial that publication of the information in question should not be allowed. I am similarly satisfied that there has been no waiver of KJH's privacy rights, and that there is no public interest justification for the publication of the information.
5. In my judgment the privacy interests engaged are strong, as is the claim in breach of confidence, but for the avoidance of doubt the information does not reveal (by way of example) that KJH was conducting an extra marital affair, or any other affair, nor does it reveal wrongdoing of any description (whether sexual or otherwise) by KJH or any other person. I am also satisfied that there is a continuing risk that the private and confidential information stolen from KJH will be made public, and that an interim injunction is therefore necessary.
6. I have considered whether it is possible to give more details as to the underlying narrative of the case. However, in the particular circumstances of this case it is not possible in my view, to give more details than the extremely limited ones I have referred to already without there being a significant risk that notwithstanding the other orders which I have made, which are referred to in paragraph 12 below, KJH's identity will become public, as will the private and confidential information which this action is brought to protect.
7. The circumstances in which it is necessary to derogate from the principle of open justice, in particular by holding hearings in private, ordering the anonymisation of

the parties, ordering that there should be no report of the existence of the proceedings themselves or by restricting the information in public judgments have been considered in a number of recent cases including *Terry (previously LNS) v Persons Unknown* [2010] EWHC 119 (QB); *DFT v TFD* [2010] EWHC 2335 (QB); *AMM v HXW* [2010] EWHC 2457 (QB); *Bernard Gray v UVW* [2010] EWHC 2367 (QB); *JIH v News Group Newspapers* [2010] EWCA 2818; *JIH v News Group Newspapers Ltd* [2010] EWHC 2979 (QB) and *Ntuli v Donald* [2010] EWCA Civ 1276.

8. As Maurice Kay LJ said in *Ntuli* at [54]:

“This is an essentially case-sensitive subject. Plainly Mr Donald is entitled to expect that the court will adopt procedures which ensure that any ultimate vindication of his Article 8 case is not undermined by the way in which the court has processed the interim applications and the trial itself. On the other hand, the principle of open justice requires that any restrictions are the least that can be imposed consistent with the protection to which Mr Donald is entitled.”

9. In *AMM*, Tugendhat J considered those principles in the context of a blackmail case, and said this at [21]:

“...where a claimant alleges he is being blackmailed, the court may be faced with limited choices. One choice is to refuse an anonymity order. But in that case, if the blackmailer's threat is to be thwarted, the court will restrict publication of the information which is the subject matter of the action. The alternative is for the court to grant the anonymity order. The court can then permit publication of some of the facts about the action, including the allegation of blackmail. If the court adopts that course, then the anonymity order should suffice to prevent publication of the fact that it is the applicant who has been blackmailed.”

10. He went on to say this at [38] to [39]:

“The fact that a person is making unwarranted demands with threats to disclose information does not of itself mean that that person has no right to freedom of expression. As Lord Atkin pointed out in *Thorne*, the blackmailer may even be under a duty to disclose the information. But if a person is making unwarranted demands with threats to publish, that is a factor in deciding whether that person has any Art 10 rights, and, if so, then the weight to be accorded to them in balancing them with the applicant's Art 8 rights.

In my judgment, the need to have regard to the Art 8 rights of the Claimant, and to promote the public interest in preventing and punishing blackmail are both factors which

weigh strongly in favour of the grant of an anonymity order. There is a strong case that Defendant has no right to publish the information which she seeks to publish ...On this view her Art 10 rights are not strong. And as an alleged blackmailer, her Art 10 rights are much weaker. If the Claimant fails at trial to establish any part of his case, then position of the Defendant and her rights will fall to be considered afresh.”

11. The strong public policy considerations to which Tugendhat J referred, and which justify the protection of the identity of victims of blackmail arise in both criminal and civil proceedings: such persons should not be deterred from seeking the protection of the courts for fear that the information which the blackmailer has threatened to reveal will be exposed or their identity as the victim of blackmail will be made known. Although as Tugendhat J said, a final determination of the matter must await trial, granting anonymity at the interim stage serves not only the interest of the applicant in protecting his or her Article 8 rights but the public interest as Tugendhat J also said, in promoting the prevention and punishment of blackmail.
12. Having regard to those matters, and in all the circumstances I am satisfied it has been necessary to derogate from the principle of open justice by holding the hearing in private in accordance with CPR 39.2(3)(a)(c) and (e). I am also satisfied that it is necessary that both parties to the application should be referred to by their initials rather than by their names. I have for the same reasons continued the order already made restricting access to documents on the court file, so that none of the witness statements or annexures to the witness statements or the names of the parties would be provided to non parties without further order of the court.
13. I have ordered that KJH is not required to provide the material provided to the court, or a note of the hearing to those third parties served with the order unless they specifically ask for that material and give undertakings to protect the use of that material and the information it contains. It should be noted however that I have been told that KJH does not intend to serve copies of the order on any media organisation at present, and intends to serve the order on a third party only if there is a threat of publication by that third party.
14. I have also ordered that publication of any information as to the subject matter of these proceedings or the identity of the parties to these proceedings is limited to that contained in this judgment. I made an order to the same effect in *DFT*, as the Court of Appeal did in *Ntuli* and as Tugendhat did in *JIH (No 1)*. I have drawn attention to that part of my order at the beginning of this judgment.