

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 03/12/2010

Before :

Mrs Justice Sharp DBE

Between :

XJA	<u>Claimant</u>
- and -	
NEWS GROUP NEWSPAPERS LIMITED	<u>Defendant</u>

James Price QC (instructed by **Charles Russell**) for the **Claimant**
Richard Spearman QC (instructed by **Farrer & Co.**) for the **Defendant**

Hearing date: 26 November 2010

Judgment

Publication of any report as to the subject matter of these proceedings or the identity of the Claimant is limited to that contained in this judgment

Mrs Justice Sharp:

1. I am asked to approve a consent order agreed between the parties. It contains provisions (in particular relating to anonymity) which require the approval of the court since they derogate from the principle of open justice.
2. I have heard oral submissions from James Price QC on behalf of the Claimant, and written submissions from Richard Spearman QC on behalf of the Defendant.
3. All of the hearings to which this judgment refers, were held in private. I was satisfied it was necessary for the hearings which were held before me, to be held in private pursuant to CPR 39.2(3)(a)(c) and (e) because otherwise the applications would be self-defeating.
4. The Claimant, XJA made an application on short notice to the Defendant for an interim injunction, restraining the publication of certain information, which the Defendant had informed XJA earlier that day, it intended to publish. It was said that publication would be a misuse of private information. The application was heard by Calvert-Smith J, and was opposed. The judge granted the relief asked for (including

that the Claimant be anonymised) and provided for a very short return day for a full hearing between the parties, 2 days later. The matter then came before me, on an application for the continuation of the injunction, which was opposed. After Mr Price had made submissions on behalf of the Claimant however (including, to the effect that the central information with which the action was concerned was false) Mr Spearman, on behalf of the Defendant asked the court to adjourn the matter part-heard, for 7 days to enable further investigations to be carried out. This application was not opposed, and I granted it. The investigations were on-going, and on the day before the adjourned hearing was due to take place, the Defendant asked again, for a further 7 day adjournment. This was not opposed, and again, I granted the application.

5. By the time of the next adjourned hearing date, the parties had agreed a consent order, subject to the court's approval in relation to the provisions concerning open justice, which provided, amongst other matters, for the continuation of the interim relief granted by Calvert-Smith J until trial or further order.
6. On behalf of the Claimant, Mr Price submits that following the decision of the Court of Appeal in *Ntuli v Donald* [2010] EWCA Civ 1276, the relevant question on anonymity which has to be answered is that posed in the judgment of Lord Roger in *Home Secretary v AP (No 2)* [2010] 1 WLR 1652 at [7]:

“...the court must ask itself ‘whether there is a sufficient general public interest in publishing a report of the proceedings which identifies [AP] to justify any resulting curtailment of his right and his family’s right to respect for their private and family life.’ The court [in *Re Guardian News & Media*] emphasised that the answer will depend on the facts of the particular case.”
7. Mr Price emphasises that the Court of Appeal reiterated in *Ntuli* at [54] that “this is an essentially case-sensitive subject”. It follows therefore that reference to earlier or other cases is unlikely to be of significant assistance in answering the relevant question.
8. On the facts of this case, he submits it is clear that the Claimant has a reasonable expectation of privacy in relation to the information that he is the person who brought these proceedings and obtained an injunction to protect his privacy. The Claimant is a well-known person. If the Claimant’s identity became public it would lead to intrusive questions and speculation which would be extremely distressing for him and his family. The Claimant would be placed in a particularly invidious position because the central information with which this action is concerned is (on the Claimant’s case) fictional. The Claimant would either have to remain silent when faced with questions and speculation, including questions from family and friends, which would lead to people supposing the information in issue was true, and very likely of an embarrassing or humiliating nature (in short, that he had acted appallingly and was trying to cover it up). Or he would have to explain, by saying the information is false which would to that extent, defeat the purpose of the injunction. Either way, publication of the information would seriously affect the harmony of his family.
9. Mr Price also submits that the bare fact that a named claimant has obtained a privacy injunction covering unspecified private information serves no public purpose: it

contributes nothing to the useful stock of public knowledge or to a debate of public interest. On the contrary, it would simply feed useless and potentially damaging speculation. It is not a case of a report being disembodied (as in *Re Guardian News & Media* [2010] 2 WLR 325, see in particular paragraphs [63] and [64]): there is nothing to report about the case since the injunction is being continued by consent.

10. In *JIH v News Group Newspapers Ltd* [2010] EWHC 2818, (*JIH (No 1)*), Tugendhat J refused anonymity to a claimant, though the parties had consented to an order being made to that effect. Mr Spearman in his written submissions says that *JIH (No 1)* is currently listed before the Court of Appeal for permission to appeal, with the appeal to follow if permission is granted. There is also a direction that the application for permission is to be heard as soon as possible. In those circumstances, it does not seem sensible from the Defendant's perspective, to embark upon an argument on anonymity without the guidance that the Court of Appeal may give in that case; and the Defendant considers its position is fully protected by the terms of the consent order which provides for liberty to apply, which is unqualified.

Discussion

11. In *Ntuli*, Maurice Kay LJ said at [52] that "as part of its consideration of all the circumstances of a case, a court will have regard to the respective and sometimes competing Convention rights of the parties." He went on to say this 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."

12. Nothing in the judgment should be taken as a comment on the merits of this case either way. As Tugendhat J said in *JIH (No 1)* at [24], it is open to the parties to compromise their rights; the only concern therefore is whether those terms affect the duties of the court and the rights of third parties. In *JIH (No 1)* it appears that while the consent order provided that the interim order should be continued until final judgment or further order in the meantime, in light of other provisions agreed between the parties, that order might well be the last order the court is asked to make in that action (see paragraphs [26] to [27] of the judgment). In this case however, the parties have agreed to the continuation of the order made by Calvert-Smith J, until trial or further order; and there is nothing to suggest that this case will not, in fact progress to a trial.
13. Although it is rare for cases such as these to go to trial, in my view, at the interim stage, and in particular before there has been a full return day hearing, both as part of its consideration of the overall circumstances which apply in the particular case, and of the general public interest in open justice, the court may need to consider what might happen in the future. Naming a claimant may well have an impact on what if anything can be said in a later public judgment, including after a trial. There may be cases (*McKennitt v Ash* [2005] EWHC 3003 (QB); affd, [2008] QB 73, is one such

example) where even if the claimant is named in an action in which he is ultimately successful, the nature of the information or the subject matter of the information could be revealed in a public judgment after a trial in general terms, without revealing the private information the action is brought to protect.

14. If however the case is one in which it would not be possible as a matter of reality, for the court to indicate the nature of the information without revealing it (and in my view, this is such a case) naming a claimant at the interim stage may produce an undesirable restriction on what could be said in a subsequent judgment, including a fully reasoned public judgment after a trial.
15. In this case, I have concluded on the facts, and having regard to the considerations to which I have referred above that there is no sufficient general public interest in identifying the Claimant at this stage of the proceedings, to justify any resulting curtailment of his right and his family's right to respect for their private and family life. The article 8 rights of the Claimant are engaged in my view, both as to the subject matter of the action and as to the information that the Claimant is the person who brought these proceedings and obtained an injunction to protect his privacy. Identification of the Claimant could on the evidence before me, seriously affect his family life. It is material in my view, that the central information with which this action is concerned is said to be false, for the reasons Mr Price gives. The issue of truth or falsity is yet to be determined. But it seems to me it is a factor in this case which is relevant to the seriousness of the interference with the article 8 rights of the Claimant, and to the need for an anonymity order. As against that, there is nothing to report about this case, apart from the bare fact that an identified claimant has obtained a privacy injunction, and the court's consideration on the issue of anonymity, which cannot feed on itself to create a justification for identifying the Claimant.
16. I find therefore in all the circumstances, that disclosure of the Claimant's identity would be an unjustifiable interference with his private and family life, which outweighs the rights of the public under article 10 and the need for open justice; and that it is necessary therefore to continue the order that the Claimant shall not be identified. I make the order which the parties have put before me and agreed, which includes an order that there be no report of these proceedings or the subject matter of these proceedings which is not included in this judgment.