



Neutral Citation Number: [2016] EWHC 2354 (QB)

Case No: HQ16X03369

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28/09/2016

Before:

Mrs Justice Whipple

Between :

Pippa Middleton

Claimants

James Matthews

- and -

Person Unknown or Persons Unknown

Defendant(s)

Mr Adam Wolanski (instructed by **Farrer and Co**) for the **Claimants**

The Defendant(s) did not appear and were not represented in Court

Hearing dates: 28 September 2016

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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Mrs Justice Whipple

Mrs Justice Whipple:

Background

1. On 24 September 2016, Dove J granted an interim injunction preventing the use publication or disclosure of material defined at Schedule 1 to his order. Schedule 1 listed photographs which were derived from or suspected on reasonable grounds to derive from the iCloud account of the First Claimant. Dove J listed the return date for that injunction for today.
2. At today's hearing, the Claimants sought a continuation of the interim injunction pending trial or further order of the Court. They also sought to broaden the terms of the injunction to encompass, in addition to photographs, "any other information" which is or might derive from the iCloud account of the First Claimant.
3. I granted the Claimants' application and made the order in the terms in which it was sought. By my order, the injunction will remain in place until trial or further order of this Court.
4. My order provides that the Defendant(s) must not use, publish, offer for sale or disclose to any other person (other than (i) by way of disclosure to legal advisers instructed in relation to these proceedings (the Defendants' legal advisers) for the purpose of obtaining legal advice in relation to these proceedings or (ii) for the purpose of carrying this Order into effect) all or any part of the information referred to in Schedule 1 to the Order.
5. Schedule 1 encompasses photographs or any other information which is derived from, or which there are grounds to suspect may derive from, the iCloud account of the First Claimant (the "Information").
6. The order contains other provisions and imposes other obligations on the Defendant(s) too. I do not need to set them all out here. The important feature of my order is the prohibition I have imposed on use, publication, sale or disclosure of the Information.
7. These are my reasons for making the order.

Recent Developments

8. Dove J's order was made on an urgent ex parte basis, the application having been filed outside of court hours, as soon as it became known that the First Claimant's iCloud account had been unlawfully accessed.
9. Since then, the Claimants have issued a Claim Form. It is dated 27 September 2016. By that Claim Form, the Claimants seek injunctive relief on a permanent basis, as well as various ancillary orders.
10. The following causes of action are pleaded in the Claim Form and draft Particulars of Claim which I have been shown (the Particulars remain in draft, because the formulation of the claim may change in some details as a result of the related police investigation):

- a) Misuse of private information
 - b) Breach of confidence
 - c) Infringement of copyright
 - d) Breach of statutory obligations owed under the Data Protection Act 1998.
11. The Claimants have filed witness statements in support of this application from:
- a) Alan Kilkenny dated 26 September 2016. He is the Claimants' communications advisor; and
 - b) The First Claimant (that witness statement is currently undated, but Mr Wolanski who appears for the Claimants has provided an undertaking to the Court to lodge a signed and dated version by the close of business today).

The facts

12. The evidence filed by the Claimants makes clear that:
- a) Someone has apparently accessed the First Claimant's iCloud account and the material held on it.
 - b) Photographs held on that iCloud account have been offered for sale to the national press.
 - c) The person(s) offering the photographs for sale has / have sought to avoid being identified. He or she has, or they have, communicated with the press in ways which are designed to be untraceable.
 - d) The photographs which have been offered for sale are personal to the Claimants. They include photographs of family, friends and places of personal importance.
 - e) Neither Claimant gave permission for those photographs – or any other material stored on the First Claimant's icloud account – to be accessed in this way, disseminated, published, or sold.
13. The First Claimant refers to the fact that the police have arrested a man on suspicion of accessing her iCloud account without authorisation. That person has been named as Mr Nathan Wyatt. He was represented in Court today by Mr Egan, who is assisting him in relation to the police investigation.
14. However, it is as yet not clear who was responsible for accessing the First Claimant's account. The police are investigating. As things stand, the identity of the Defendants remains unknown. For that reason, this application is made against "Person or Persons Unknown" (as indeed was the case when Dove J granted the earlier Order).
15. The First Claimant also states that her iCloud account contains other private information beyond photographs. She fears that this material too has been accessed and for that reason seeks an injunction in wider terms than that granted by Dove J.

Decision

16. The Court's approach to this application is guided by s 12 of the Human Rights Act 1998.
17. Pursuant to section 12(2) I must be satisfied that all reasonable steps have been taken to notify the respondent of this hearing or that compelling reasons exist for not so notifying the respondent. The only person formally notified of today's hearing is Mr Wyatt. He was represented in Court today. I am satisfied that there are compelling reasons why no one else has been notified of today's hearing or of this application: the identity of the defendants (respondents to this application) is currently unknown. Notification is not possible. This statutory criterion has been met.
18. In that connection, Mr Wolanski took me to *Bloomsbury Publishing Group plc v New Group Newspapers Ltd* [2003] 1 WLR 1633. I am satisfied that it is proper in a case such as this to issue an application, and make an order, against person(s) unknown. They are described in the application notice and order as person(s) "who has or have appropriated, obtained and/or offered or intend to offer for sale and/or publication images contained on the First Claimant's iCloud account". This description is sufficiently certain to identify them.
19. As to section 12(3), I must be satisfied that the Claimants are likely to establish at trial that publication should not be allowed. From the evidence before me, it appears that the Information has been obtained by hacking into the First Claimant's iCloud account. If that has occurred, that would be a criminal act. On any view, it is an appalling intrusion into the Claimants' private life. Any use by publication or sale of the information would be misuse of private information. I need go no further. I am satisfied on what is before me that the Claimants are likely to establish at trial that publication of these photographs should not be allowed. This statutory criterion is met.
20. In reaching that conclusion, I have taken account of the factors set out at section 12(4). Perhaps the Defendant(s) would, if he/she/they were here, contend that the Information has some journalistic value to be protected by Article 10 ECHR. The statute sets out specific considerations to be weighed in the balance. As to those: first, the Information does not have any genuine public interest attached to it (public interest being different from material that the public might be interested to see); secondly, none of the Information is already available to the public or about to become available to the public; thirdly, the Editors' Code of Practice (to which I am required to have regard) records that "Everyone is entitled to respect for his or her private and family life, home, health and correspondence, including digital communications" which covers this case precisely.
21. In the circumstances of this case, I conclude that any argument to the effect that Article 10 is infringed by my order would be very weak. By contrast, the Claimants' arguments that their rights to private life under Article 8 are infringed if I do not make this order are very strong. The balance at this stage clearly favours the Claimants. That question will be open to review by this Court, at trial or earlier if appropriate.

Conclusion

22. It is appropriate to widen the terms of the order to extend the injunction to all material and information held on the First Claimant's iCloud account. The First Claimant has good reason to fear that all the information held in her iCloud account has been accessed.
23. I extend time for service of the Claim Form to 28 October 2016. I accept that the Claimants have been unable to effect service of the Claim Form before now, and that some time is needed to identify the Defendant(s). The Claimants will need to make a further application to the Court if more time is needed. In that way the progress of the Claim will be kept under review by the Court.
24. I grant this application for an injunction in the terms in which it is sought.