

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10/05/2018

Before :

SENIOR MASTER FONTAINE

Between :

**Natasha Douglas (Administrator of the Estate of
Susanne Hinte deceased)**

Claimant

- and -

News Group Newspapers Limited

Defendant

JUDGMENT - CLAIMANT'S APPLICATION DATED 16 APRIL 2018

1. The Claimant applies for permission to read a statement in open court following the settlement of her claim for misuse of private information, breach of confidence, breach of the Data Protection Act 1998 and infringement of copyright in respect of an article and a photograph published in 'The Sun' newspaper in the print version on 3 April 2016, and online, on 2 April 2016. The application is supported by the witness statement of Nick McAleenan dated 16 April 2018.
2. The parties are agreed that I determine the application on paper, and have provided written submissions in response and in reply.
3. The claim was issued on 11 August 2017. On 14 August 2017 the original Claimant, Mrs Hinte, died unexpectedly and the claim is continued on behalf of her estate by Mrs Hinte's administrator, her daughter, Mrs Douglas, who was substituted as the Claimant in the proceedings.
4. The parties agreed terms of settlement on 26 March 2018, before a defence was filed (a number of extensions of time having been agreed). A Tomlin Order dated 29 March 2018 reflected the agreed settlement terms. That Order recorded that the stay

imposed did not apply to any application by the Claimant for a statement in open court, but the terms of any such statement have not been agreed.

5. Mr McAleenan's statement, at paragraphs 15 and 16, states that it is very important to the Claimant that a statement is read in open court, because both she and Ms Hinte suffered enormous embarrassment and distress as a result of the publication of the articles complained of, as did Ms Hinte's 21 year old son. At paragraph 17 Mr McAleenan' states that he was made aware by Ms Hinte before her death that the type of vindication provided by the reading of a statement in open court was very important to her, and that for this reason also Ms Douglas feels strongly that justice will only be achieved for Ms Hinte's estate by the reading of a statement in open court.
6. The Defendant does not oppose the application, save as to the wording of part of the statement. Although it submits: "*Should the Senior Master be minded to take the unusual step of granting permission to Ms Hinte's estate to make a statement in open court on behalf of an individual now deceased....*" no submissions are made as to why that would be inappropriate.
7. It is stated in Gatley at 8.12:

"The general rule is that where a deceased person had a cause of action in tort at the date of his death the claim survives for the benefit of his estate. However, this does not apply to claims for defamation."
8. This claim is not of course a claim for defamation, which is why the Claimant as the Administratrix of Ms Hinte has been able to pursue the claim begin by Ms Hinte before her death. A footnote to this paragraph makes reference to two cases decided by the European Court of Human Rights ("ECHR"), where the question of whether Article 8 was engaged in respect of claims by the family of a deceased person who had been allegedly defamed. In *Putistin v Ukraine Application no 16882/03*, although on the facts the ECHR decided that the impact of the damage to the family was quite remote, and thus the Article 8 rights when weighed against the newspaper's right of freedom of expression were not breached, it did accept that:

“The reputation of a deceased member of the person’s family may, in certain circumstances, affect that person’s private life and identity, and thus come within the scope of Article 8” (at [33]).

9. Also in , *Dzhugashvili v Russia Application No. 41123/10*, a claim in respect of alleged defamation of the applicant’s grandfather, the ECHR, whilst rejecting the complaint on the facts, accepted that the applicant’s reputation, as part and parcel of his family’s reputation, fell within Article 8.
10. Those decisions, whilst not on all fours with this case, provide some guidance when determining whether a statement should be permitted to be read in open court in respect of a breach of confidence/misuse of private information claim relating to a person who is deceased.
11. I consider that it is appropriate on the facts of this case, and on the basis of the evidence referred to above, to permit a statement to be read in open court.
12. The Defendant takes issue with two paragraphs of the proposed statement, Paragraphs 8 and 14.
13. Paragraph 8 states (in the slightly amended version proposed in Reply by the Claimant, as underlined):
“Mrs Hinte was alerted for the first time to the published articles by Ms Douglas who telephoned her on 3 April 2016 to inform her of the publication in The Sun. Ms Hinte was caused serious distress.”
14. The Defendant says that this was not part of the pleaded case and is inaccurate because Ms Hinte made a statement via her PR agent before publication which was contained in the article, and the inter partes correspondence exhibited to Mr McAleenan’s witness statement show the extent of correspondence between the Defendant’s journalist and Ms Hinte’s agent pre-publication.
15. The Claimant says that this is ‘nit picking’, that the statement is not inaccurate because it does not mislead regarding The Sun’s threat to publish. Ms Hinte’s state of

knowledge and her comments on hearing that. It is submitted that there is no “significant unfairness” to the Defendant (per Mann J. in *Sir Cliff Richard OBE v The BBC and the Chief Constable of South Yorkshire Police* [2017] EWHC 1648(Ch) at §11(iv)), but that inserting the word “published” as set out above would be sufficient to make the position clear.

16. I consider that the paragraph should be deleted for the reasons given by the Defendant. I consider that for those reasons the paragraph is likely to be misleading and would therefore pass the threshold of “significant unfairness”.
17. Paragraph 14 states: “*The Defendant has not filed any defence to this action.*”
18. The Defendant submits that the paragraph is misleading as it gives the reader/listener the impression that the Defendant failed or otherwise could not file any defence to the action, and refer me to the inter partes correspondence exhibited to Mr McAleenan’s statement.
19. The Claimant submits that this simply reflects that as a matter of fact the Defendant did not file a defence. It sought multiple extensions of time and then settled before a defence was filed.
20. Although the statement is a statement of fact, when considered in the context of the correspondence it is apparent that it is misleading and would be significantly unfair to the Defendant. The primary reason why the extensions were sought were because the Defendant had applied on 6 February 2018 to Worcester Magistrates’ court for a copy of the documents pertaining to the prosecution in *R v Howard* upon which the Claimant pleads reliance at paragraphs 8 to 11 of her Particulars of Claim, in particular legal advisors’ notes from the trial. The reason given was that the Defendant, after reviewing prosecution documents and discussing the matter with Ms Howard’s criminal lawyer, thought it likely that the CPS had not been provided with relevant information, as outlined in the inter partes correspondence information, which may render the conviction unsafe. There was therefore good reason why a defence was not filed and why extensions were required. Paragraph 14 should therefore be deleted from the statement to be read.

21. The application seeks an order that the Defendant pay the Claimant's costs. The Defendant seeks a "no order for costs" order, on the basis that the application was not resisted in substance, and only requested changes to two short paragraphs. As the Defendant has successfully resisted the inclusion of those paragraphs in the statement I consider that "no order for costs" is the appropriate order.

22. I also agree that the Claimant should give the Defendant 3 working days' notice of the date and time of the reading of the statement in open court, and with a written copy of the statement permitted by the court.