

JERSEY / JUDGMENT

AB CD EF and GH -v- Syvret [2013]

JRC 171 (04 September 2013)

[2013] JRC 171

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judgment

the commissioner: 1. This judgment addresses three issues with which I have dealt today, 1st August, 2013. The issues are: (i) the extent to which it is permissible for the contents of the judgment to be reported; (ii) what Order should be made in relation to the costs of the hearing before me on 1 st August, 2013; and (iii) what action, if any, should be taken in relation to breaches of the injunction granted by Commissioner Page on 13 th August, 2012. 2. I shall address these questions in turn. The extent to which the judgment may be reported 3. The importance attached by the Courts of Jersey to ensuring that, so far as possible, proceedings in court, including the judgment of the Court, take place in public and in consequence may be reported in the press and elsewhere is well established: see for example Jersey Evening Post-v-Al Thani

[2002] JLR 542 at paragraphs 14-15. 4. That said there will be cases where it is necessary for not only the judgment but also the antecedent hearing to be heard in private, which necessarily carries with it the consequence that no reports of the proceedings may be published. However, when it comes to the judgment of the court it is open to the court in a suitable case to direct that the judgment may be reported in a redacted form. A recent example where this course was taken is In the Matter of the A Trust

[2012] JRC 169A (unreported, 27 September 2012). As stated in my earlier judgment, in order to prevent further identification of the representors, I have decided that they should be referred to as AB, CD, EF and GH. 5. When I heard the claims of the representors it was clear to me that the respondent had been guilty of persistent and deliberate breaches of orders made by the court since the proceedings were commenced. Examples include the statement made by the respondent by e-mail sent on 2 nd August, 2012, that he did not intend to comply with the stop processes which had been served on him that same day. On 13 th August, 2012, the Court granted the representors an injunction restraining the respondent from failing to comply with the stop processing notices. The Advocates representing the representors warned the respondent that failure to comply with the injunction would be a contempt of court for which he might be imprisoned. 6. On 2 nd November, 2012, I directed that the hearing of the application by the representors for final

injunctions against the respondent should be heard on 13 th May, 2013. I also gave directions. The Advocates acting for the representors wrote to the respondent warning him that he was in breach of directions made by the Court and urging him to serve the evidence on which he intended to rely in accordance with the Order made by the Court. Instead of complying with the directions made by the Court, the respondent on 13 th February, 2013, replied to the letter from the representors' Advocates accusing them of "harassment, obstruction, witness intimidation and conspiracies to pervert the course of justice". As the respondent knew there was no truth whatever in his assertions. I am satisfied that the respondent deliberately failed to comply with the orders made and that he thereby increased substantially the costs which the representors had to incur. 7. In the event the substantive hearing of the representors' claims did not take place until 13 th May, 2013. The respondent did not attend with the result that I had to hear the application in his absence. In consequence the representors' Advocates went to considerable lengths to identify from the voluminous correspondence which they had exchanged with the respondent the arguments which he might have addressed to the Court if he had been present. In consequence additional time and costs were incurred. 8. On 13 th June, 2013, following the hearing I provided to both parties the draft judgment in accordance with Practice Direction RC 10/01. In paragraph 10 of the judgment the Court indicated that the basis for its decision to hear the application in private was as follows:- "This was a case where we are quite satisfied that if any publicity were to be given to facts of the case (including the nature of the relief sought, the evidence given and the terms of the present judgment), the object of the application would be defeated. This means that no reporting of any part of the proceedings is permissible". 9. The Court indicated at the time when judgment was given that it would wish to hear from the parties regarding the extent of any redaction by 18 th June, 2013. 10. The representors through their Advocates complied with my invitation; they also gave notice that they intended to apply for their costs to be paid by the respondent and for an order that parts of the judgment should be redacted. 11. Before turning to the redactions which are sought on behalf of the representors, I should indicate the course which appears to me to be appropriate for the court to adopt in cases such as the present where one party or the other seeks to limit the reporting of the hearing or the judgment or parts of either. The reason that I do so stems from a letter which was sent by the Editor of the Jersey Evening Post to the Judicial Greffe on 22 nd July, 2013. The Editor indicates that his newspaper might wish to seek an opportunity to be heard as to whether or not reporting restrictions should be imposed. 12. I hope that the present judgment will go some way towards explaining why I took the view that the proceedings should have been heard in private and that some redactions to the judgment are also appropriate. 13. I had not seen the Editor's at letter at the time when judgment was handed down. It seems to me that it is appropriate for me to add to my judgment some guidance which may assist in the future. 14. I accept that, when it is practical for the Court to do so, it is desirable that the media should be informed in advance of any hearing where one party or another intend to apply to the Court for an Order that the proceedings or part thereof should be heard in private. It would not be appropriate for me to attempt to give guidance how this

should be done. Much will turn on the nature of the case. There may be cases where the Court may have to undertake this task, where for example all parties want proceedings to be heard in private. It is important to bear in mind the important principle that justice should not only be done but also be seen to be done. 15. The Editor asks in his letter for notice to be given of any further hearings in order to enable the Jersey Evening Post to consider whether it is appropriate for them to apply to be heard. As far as I know there will be no further hearings in the present case. I have already handed down judgment in this case. That did not appear to me to be a good reason why I should not address the Editor's concerns in the context of my judgment. 16. I return to the first issue on which I heard argument on 1 st August, namely my reason for directing that the hearing of the claims brought by the four representors should be heard in private. I was satisfied that, if any publicity were to be given to the issues arising for my decision were to be given publicity, the whole object of the representors in bringing the proceedings would have been defeated. I was persuaded that a hearing in private was necessary in order to secure the proper administration of justice: see *Jersey Evening Post-v-Al Thani* [op cit]. 17. Now that I have given judgment in the present case, the question arises what publicity, if any, should be given to the contents of the judgment. It goes without saying that no court will forbid the publication of any part of its judgment unless a clear case is established that publicity should not be given to the judgment or at least to certain parts of it. 18. On 4 th July the representors instructed Appleby to indicate what redactions they were inviting me to make from the judgment. It is submitted on behalf of the representors that I should follow the practice adopted in *In the Matter of A Trust* , to which I have already referred. In that case the hearing took place in private but, in view of the scarcity of reported cases in the relevant area, the Court sanctioned the publication of edited extracts from the full judgment. 19. I understand that in the present case the Data Protection Commissioner has indicated that she considers it to be likely that similar cases to the present may arise in future and that guidance from the Court as to the approach to be adopted would be welcome. 20. I am satisfied that that names of the four representors should be redacted. In my judgment it would subvert the object of the representors in bringing these proceedings under the Data Protection Act if their identities were to be publicly disclosed in this judgment. I so direct. 21. The representors further contend that certain other passages should be redacted from the judgment, including for example certain biographical facts relating to the respondent, Mr Syvret. However, Advocate Robertson accepted in argument there is no reason why those facts should not be disclosed in the

judgment.

Nor do I accept that the name of the defendant should be redacted from the narrative in the judgment. There is no reason why the reference to Mr Syvret standing for election as a Senator in 2004 should be redacted. 22. However, I do accept that the detail of Mr Syvret's previous convictions of offences under the Data Protection Law should be redacted from the judgment. I further accept that the passage in paragraph 48 of the judgment where I identify one of the

representors as having suffered damage and distress should be redacted. I direct that in place of the existing opening words in that paragraph there should be substituted "One of the Representors explains ...". Further the words in paragraph 48 from "including ..." to the end of the paragraph should also be redacted in order to avoid the representor to be identified. What Order should be made in order in relation to the costs incurred by the representors in relation to the hearing on 1 st August, 2013 23. In the course of his helpful submissions on behalf of the representors Advocate Robertson indicated that his clients might have applied for an order that their costs be paid by Mr Syvret on an indemnity basis. He referred me to Dixon-v-Jefferson

[1998] JLR 47 , PS-v-C

[2010] JLR 645 and to citations in the latter case from Pell Frischman-v-Bow Valley

[2007] JLR 479 . 24. However, Advocate Robertson made clear that his clients did not wish to pursue an application for costs to be paid on an indemnity basis. That was a generous concession for him to have made, not least in the light of the reprehensible manner in which Mr Syvret has conducted this litigation. 25. The application that the costs of the representors be paid by Mr Syvret on a standard basis is clearly established. I so direct. The question arose during argument whether this might be a case where I should direct that a payment on account of costs. This might have avoided the expense of a taxation of costs. Advocate Robertson explained that his clients did not seek such an order. What action should be taken in relation to the numerous breaches of the interim injunction initially granted in August 2011 26. The case for the representors is that Mr Syvret has persistently failed to adhere to the various orders relating to the preparation of this case for trial. 27. The breaches and failures on the part of Mr Syvret are set out in Advocate Robertson's skeleton argument at paragraph 17 from (a) to (u). It appears to me to be clear that Mr Syvret has deliberately adopted a policy of obstruction: he has failed to comply with numerous orders of the court; he has put the representors to unnecessary expense and has failed to engage with the litigation and he has repeatedly breached the order. The consequence of this conduct has been that the representors have been put to unnecessary expense. 28. The question arises what action the court should take to the continuing flouting by Mr Syvret of court orders including the order of Commissioner Page made as long ago as August 2012 and my order of th May, 2013. As I believe the representors accept, albeit with reluctance, there is little to be achieved by their committing further funds to the attempts which have been made to impress on Mr Syvret the need to obey court orders. Accordingly, I have decided, with some reluctance, that no further action should be taken. Authorities Jersey Evening Post-v-Al Thani

[2002] JLR 542 . In the Matter of the A Trust

[2012] JRC 169A . Dixon-v-Jefferson

[1998] JLR 47 . PS-v-C

[2010] JLR 645 . Pell Frischman-v-Bow Valley

[2007] JLR 479 . Page Last Updated: 16 Sep 2016 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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