

JERSEY / JUDGMENT

AG v Jersey Evening Post [2007]

JRC 063A (14 March 2007)

[2007] JRC 063A

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JUDGMENT

THE COMMISSIONER: 1. This is an application for costs by the Jersey Evening Post following a decision by the Attorney General not to proceed in criminal contempt proceedings against the company. The investigation came about because on the 20 th January 2007 the Jersey Evening Post carried an article on page 5 of the paper under the heading "Accountant's '£14m' are frozen." In its opening paragraphs the following statement is made:- "Michel and his co-accused assistant, Simone Gallichan, were found guilty at the end of last year of breaking the Proceeds of Crime (Jersey) Law by helping clients cheat the UK taxman through a complicated web of companies and payments. They both return to the Royal Court on Monday to hear the remaining nine charges against them under the Proceeds of Crime (Jersey) Law ." 2. The heading under a photograph of Mr Michel leaving court was unambiguous. It reads "Peter Michel and co-accused Simone Gallichan have both been convicted of one count of breaking the Proceeds of Crime Law " . 3. The lawyer acting for the defendant Michel applied on the 22 nd January for the two Jurats then sitting to be discharged. The application was supported by the Attorney General and was granted. The Commissioner then sitting was Sir Geoffrey Nice QC. On the same day counsel for the defendant Michel then made an application for the trial to be stayed because of the report of the 20 th January. 4. The Learned Commissioner asked Crown Advocate Whelan to address him on the question of the law of contempt within the Island of Jersey. On the same day as the application, 22 nd January, the following article appeared in the Jersey Evening Post:- "Accountant Peter Michel and his assistant Simone Gallichan were back in the Royal Court this morning for the next part of their money laundering trial. The pair were found guilty of the count of breaking the Proceeds of Crime (Jersey) Law 1999 by helping clients to hide money from the UK taxman last year. Michel has been in custody since and Gallichan has been on bail as the pair await the next nine charges by the prosecution." 5. There was also a report on Channel 103 but, of course, that company is not now taking any part in this application. We say that because the Learned Commissioner said (and I entirely agree with him) "Both of them, frankly, are astonishing". 6. The Editor of the Jersey Evening Post was in Court on the 22 nd January to hear the Commissioner (having heard from Crown Advocate Whelan) deliver a forceful judgment on the matter where he was concerned not only on the manner of the reporting but also to preserve the -integrity of the future trial. He said in part of his judgment:- "As to whether the present

publications gives rise to the need for further action, I am, firmly of the view that they do." The Learned Commissioner then proceeded to have an Act of Court prepared. It reads in its conclusion (and is dated the 25 th January):- "Now this day upon hearing Crown Advocate Cyril Edward Whelan and the advocates for the parties the Court ordered: 1. That a copy of this Act of Court be served by the Viscount upon the Senior Editor of the Jersey Evening Post and the Managing Director of Channel 103, convening them to appear before the Court at 10 a.m. on Friday 2 nd February 2007; and 2. Ordered that the parties be convened to appear before the Court on the said day." 7. On the 2 nd February, because the Jersey Evening Post did not admit to being in contempt the Court ordered that the Attorney General make further investigation and adjourned the matter to the 2 nd March. On that Friday (the Samedi Court sitting) an unusual happening occurred. 8. A statement was read in open Court by Crown Advocate Le Cocq. It said that the Attorney General, on receipt of the Court's order had instructed the police to carry out an investigation. The Jersey Evening Post (and the other company) co-operated fully. 9. The Attorney General found that the media had made a mistake - but there was no malice on the part of the companies nor of their employees. The reporting did not mean that the defendants would not have had a fair trial on the remaining nine counts. 10. As part of the statement read out in open Court by Crown Advocate Le Cocq were these significant words:- "In the circumstances, the Attorney General has resolved not to take proceedings for contempt on this occasion, though he does intend to write a more detailed letter to the two media companies pointing out their errors so that changes of policy can be adopted." 11. It is in these words that the total variance of opinion between Advocate Santos-Costa and the Attorney General lies. 12. Let me summarise for a moment. It is clear that the Learned Commissioner felt that there had been a contempt of court. As Crown Advocate Whelan said in his address to him:- "There is no equivalent of the 1981 English statute nor are there rules of court dealing with the topic in Jersey. The publication of the fact that a defendant standing trial does have a previous conviction is prima facie a contempt of court and it has been said in an English case that every reporter should know that such material should not be published." 13. The Learned Commissioner made some caustic comments about the way the media had reacted to the story and then said in part of his detailed commentary:- "As to whether the present publications give rise to the need for further action I am firmly of the view that they do. This is a large trial and it attracts attention in part because of its scale-. It has cost the authorities in Jersey, I have no doubt, a great deal of money, money which would be wasted if the trial could not be seen through to the conclusion one way or another. I am advised that the appropriate course of action or an appropriate course of action that should be pursued is for there to be an Act of Court served by the Viscount on the newspaper and that that will eventually bring this matter before the Court." 14. So it was that an Act dated the 25 th January was prepared. It contained a gagging order and it authorised the Viscount to serve the order upon the Senior Editor of the Jersey Evening Post convening him to appear before Court at 10 a.m. on Friday 2 nd February 2007. The Order was served on the 31 st January and it said inter alia , " that the Editor of the Jersey Evening Post shall be convened to appear before the Court to account for the publication of an article stating that the accused had been convicted on one count, two days preceding the commencement of the trial on the remaining nine counts" . 15. Mr Santos-Costa says that this was no more or less than an indictment summoning the Editor to Court. He argued

forcefully that the expression 'to account' means no more and no less than 'to answer for his contempt'. When the matter came before the Deputy Bailiff, he asked the summonsed parties if they admitted the contempt. Advocate Santos-Costa replied for the Jersey Evening Post that the contempt was not admitted (Mr Santos-Costa argued that this was a plea of 'not guilty') and the Deputy Bailiff ordered the Attorney General to investigate and to report back in four weeks to the Royal Court. It was at the sitting of that Friday Court on the 2nd March (over which I presided) that the letter from the Attorney General was read out by Crown Advocate Le Cocq and the initial application for costs was made by Advocate Santos-Costa. 16. The argument has been strongly argued by both sides but I am not convinced that the Act of court of the 23rd January is, as Advocate Santos-Costa put it, 'an indictment'. 17. A contempt of court is an offence of a criminal character and falls within Article 1(2) of the Costs in Criminal Cases (Jersey) Law 1961. 18. The Act of Court is strangely worded. How it came to be drafted in that way is not known. It says (as I have said before) at paragraph 3:- That the Editor of the Jersey Evening Post shall be convened to appear before the Court to account for the publication of an article stating that the accused has been convicted on one count two days preceding the commencement of the trial on the remaining court." 19. The Court could, as I understand it, have taken immediate action against the Jersey Evening Post at the trial. It did not do so. It could have invited the Attorney General to investigate contempt proceedings and to bring an action before the Court. It did not do so. It seems to me that on the 2nd February, when the Jersey Evening Post was ordered to be convened, the Court took the only step that it could. It ordered the Attorney General to carry out a full investigation and to bring a charge of contempt if he thought it expedient to do so. 20. We must not vent our displeasure at the actions of the Jersey Evening Post to apply what was held in *Cahours v AG* 2001/253 at para 12, to be the redundant ancient verdict of "plutot innocent que coupable". It is simply that I cannot read into the words 'to account' - the explanation put there by Advocate Santos-Costa, 'to answer for his contempt'. The paper was made the subject of an investigation. There was no discharge or acquittal because there were no proceedings of contempt in train. Of course the Learned Commissioner believed that he was 'setting up the trial process' but in my view he was not well advised by those who drafted the wording of the Act. 21. I am not prepared to order costs simply because I do not have the jurisdiction to do so. Authorities *Proceeds of Crime* (Jersey) Law 1999. *Costs in Criminal Cases* (Jersey) Law 1961. *Cahours v Attorney General* 2001/253. Page Last Updated: 20 Jul 2016 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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