

JERSEY / JUDGMENT

Crociani -v- Crociani [2016]

JRC 216A (22 November 2016)

[2016] JRC 216A

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judgment

the commissioner: 1. The plaintiffs apply for an order that a copy of the letter written by the fifth defendant to Mr Fleming QC on or around 20 th May, 2013, which is presently held at the Court of Appeal Greffe, and the response sent by the Court should be released to the plaintiffs and indeed to the other parties. 2. The circumstances under which this arose are set out in Bedell Cristin's letter of 17 th December, 2014. On 21 st May, 2013, a hearing took place before Mr Fleming QC sitting as a single judge of the Court of Appeal to hear applications for leave to appeal and a stay pending appeal made by Advocate MacRae on behalf of the first to fourth defendants. At the outset of the hearing he asked for the Court to be cleared and he explained that he had received a letter at his hotel in Jersey on the previous day, the contents of which appear to concern the case before him. He said that as soon as he appreciated the letter related to this case he immediately stopped reading it. Later on during the same day a lady approached him in the hotel lounge. He said she explained that she had written the aforementioned letter and attempted to discuss the present case with him face to face. Judge Fleming immediately withdrew from the conversation and it is now clear that the lady in question was the fifth defendant and it was she who wrote the letter to him. 3. On 23 rd October, 2013, the Court of Appeal directed that the plaintiffs' application, that copies of the letter sent to Mr Fleming 20 th May, 2013, be provided to all parties forthwith, be remitted to the Royal Court to be determined by the Royal Court trial judge. 4. Since then the Master has ordered the fifth defendant to make discovery of the letter or a copy of it and any reply she would have received from the Court, but not its inspection and this apparently out of deference to the Court of Appeal's ruling that disclosure should be left to the trial judge to determine. 5. The fifth defendant in her affidavit of discovery said that she does not have a copy of the letter but she describes in some detail the circumstances under which she handed that letter to Mr Fleming QC. The fifth defendant is no longer represented in these proceedings, although I believe she may be a witness, but she is actively involved in the proceedings in Mauritius. I am satisfied from documentation that I have seen that she has received notice of this application and she has not communicated with the Court in any way over it. 6. Advocate Lewis argues with justification that the letter, having been the subject of an order for discovery and which is held by the Court, should now be inspected but in my view it should be disclosed in any event. There are very prescribed circumstances in which the Court will entertain confidential

communications from a party, but in general terms and in order to maintain confidence in the court process there should be transparency of any communications between parties and the Judiciary. 7. Accordingly any communication received from one party would in ordinary course be copied to the other party or parties. Parties need to know and have confidence that this is the case and that there is no question of a judge being privately influenced in any way. Advocate Lewis referred me to the case of In the matter of Ludlow Charities

[1837] CR 316 where this practice was made very clear. It has always been my understanding of the position and it is fundamental. 8. In this case the letter was written to a Court of Appeal Judge in advance of the hearing long since completed and there is no evidence of any attempt to communicate privately with the designated trial Judge and Jurats. I have seen the letter concerned and doubt whether it has much relevance to the trial of the main proceedings, but even so in the interests of transparency I do order its disclosure together with that of any reply written by the Court. 9. The plaintiffs are to provide a copy of the letters to all instructed parties in the case. 10. In terms of costs I am going to order that costs should be in the cause. Authorities In the matter of Ludlow Charities

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