CLAIM NO QB-2018-006323

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST

BETWEEN:

JOHN CHRISTOPHER DEPP II

Claimant/ Applicant

-and-

(1) NEWS GROUP NEWSPAPERS LTD
(2) DAN WOOTTON

Defendants

-and-

AMBER HEARD

Third Party Respondent

THIRD PARTY'S SKELETON ARGUMENT: CPR 31.17 APP: 29 JUNE 2020

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1. DP QC was instructed yesterday (26/6). By email at 18:16 he informed the Judge's clerk of his instructions. The email included:

   "The evidence supporting the application notice does not appear to comply with the dual requirements of CPR 31.17(3) which are the gateway to the exercise of the court's discretionary power to order disclosure:

   (a) the documents of which disclosure is sought are likely to support the case of the applicant or adversely affect the case of one of the other parties to the proceedings; and

   (b) disclosure is necessary in order to dispose fairly of the claim or to save costs."

2. The relevant principles governing CPR 31.17 are set out in the White Book Notes at 13.17.1 to 31.17.6. The obligation is squarely on the applicant to provide the court with sufficient information to satisfy (3)(a) and (b), which are separate requirements. The "case" of any party for this purpose is identified by the contested issues on the statements of case and not by reference to matters raised elsewhere, including in witness statements.[1]

3. At 19:23 DP sent a letter to Schillings which stated:

   "I write further to my earlier letter and my email to the Judge's clerk at 18:16 in which I referred to the dual requirements of CPR 31.17(3).

[1] See the notes at 31.6.3.

In relation to the "raw files" in paragraphs 1a. to c. of the draft Order, paragraph 49 of Ms Afia's statement states:

"49. The Claimant seeks an order for third party disclosure and production of the original and complete recordings (raw files) of all three of the above conversations. Each of them concerns the nature and state of Mr Depp's relationship with Ms Heard and they are all highly relevant to the issues in this claim and it is necessary to have complete documents to dispose fairly of the proceedings."

This does not even purport to address the requirement in sub-paragraph (a) of CPR 31.17(3).

Nothing in the preceding paragraphs gives rise to any grounds for satisfying sub-paragraphs (a) or (b), the latter being stated baldly in paragraph 49.

In relation to "all photographs" in paragraph 1d. of the draft Order, there is no attempt to assert even in bald terms that sub-paragraphs (a) and (b) are satisfied. In any event, there is nothing in paragraphs 50 to 56 of the statement to support such a case.

The same applies to "all communications" in paragraphs 1e. and f. of the draft Order, to which paragraphs 57 to 62 of the statement are purportedly directed.

Your client is therefore invited to make clear by reference to contested issues on the statements of case how his application can satisfy the dual gateway requirements in CPR 31.17(3).

This letter should not be treated as restricting any other grounds on which the application should fail. However, given the short time available and the obvious defects in the evidence supporting the application it appears cost effective and proportionate in terms of court resources for your client to address this issue first."

4. No response has been received. It is appropriate to make the following further observations:

Lateness

5. The disclosure sought in paragraph 1a. of the draft order in relation to the recording on 22/7/16 is the only part of the application apparently prompted by recent events. No explanation is given as to why the disclosure in 1.b to f. is being sought so late. Lateness in application is inherently inconsistent with necessity in disclosure and consistent with perceived tactical gain.

The recording of 22/7/16

6. It appears that the key section of the recording is the extract cited in SMAB's letter of 16/6/20 (JA6 ex16) relating to a "head-butt". C's stance appears contradictory. JA6 [25]-[29] records a unparticularised disagreement with the transcription provided by SMAB. Whereas Schillings' letter of 18/6 (ex 38) makes the following unparticularised assertion:

"**The extract**

We have taken our client's instructions on the short extract of the recording that you have identified. We are satisfied that when you listen to the recording of the full conversation between him and Ms Heard, and understand the context in which it was made, far from contradicting our client's evidence, in fact it supports his position and his account of Ms Heard's behaviour."

7. As a starting point for any application under CPR 31.17 in this context, it is necessary for C to identify material disputes in relation to the transcript provided by Ds and state his belief as to what is missing from the recording that has been provided to Ds.

Communications between AH and man in elevator and Elon Musk

8. It appears from JA6 [57] that the "matter" on which the disclosure at 1e. and f. is grounded is whether AH has had "extra-marital relationships". This does not appear to be a contested issue on the statements of case. The Court will be aware of the importance of ensuring that any litigation attack on a woman alleging domestic violence is genuinely probative of whether the domestic violence took place. All the more so where the woman is not a party, the litigation is high profile and the man and/or his agents have been feeding information to the media. Footage from the elevator referred to in JA6 [59] has been widely available online for some time.[2]

David Price QC
For the Third Party Respondent
27 June 2020

[2] See, for example, https://www.youtube.com/watch?v=Yuf3ZT7Pj4M