

Privacy: Dead or Alive?

Readers of British newspapers could be forgiven for jumping to the conclusion that the judge in the recent Zeta-Jones/Douglas v Hello! case drove a sword through what the media portrays as a dreaded monster, privacy law.

Negative headlines abounded. The red-top tabloids were the worst. The Sun ran an article under the headline 'Hollow!', and the article beneath it said in its introduction '...she LOSES on privacy'. The Mirror echoed these sentiments with its headline, 'Victory for Sense Over Star Vanity', and said, 'No privacy law exists in this country and nor should it'. Indeed, the Mirror Group was so vehement in its proclamation that the UK's nascent privacy law had been still-born by the Human Rights Act 1998 that a Sunday Mirror column proclaimed: 'Thank God justice and good sense prevailed and [Zeta-Jones] and husband Michael Douglas lost their ludicrous claim against Hello! magazine for invasion of privacy'.

The broadsheets were little better in their analysis of the case. The Times said: 'The judge threw out their invasion of privacy claim'. The Financial Times came nearer the reality of the matter when it said '[The judge] rejected any need to find that the film stars were entitled to damages under a separate and more recently mooted privacy right'.

But even comment such as that obscures the fact that the judgment in the case actually and unequivocally indicated that far from privacy law being dead, it is alive, growing and soon will be established law. Privacy law simply was not needed to win the Douglases' case. As OK! and Hello! had bid for exclusive rights to photograph the wedding and the Douglases had insisted on guests respecting the privacy of their wedding, the law of confidentiality was applied by the judge rather than the law of privacy.

This is very different from saying that privacy law is dead. What the judge (Mr Justice Lindsay) actually said was that the law of confidence was adequate for this case but in other cases privacy law may be needed. In no part of the judgment did he say that privacy law did not exist. Indeed, he stated that privacy law could be applied 'when a case arises in which the existing law of confidence gives no or inadequate protection'. However, he warned that privacy law in the UK did not go far enough and urged Parliament to introduce legislation.

Notwithstanding the judge's concerns about the current shortcomings and uncertainties in UK law, people who want to protect their privacy should also take heart from the Douglases' case because it indicates how far the law of confidence can be used to protect privacy. The judge in the case said: 'I... regard photographic representation of



Darling Bud to thorn in the side of Fleet Street - Catherine Zeta Jones

the wedding reception as having had the quality of confidence about it... As I have said, the very facts that Hello! and OK! competed for exclusivity as they did and that each was ready to pay so much for it points to the commercial confidentiality of coverage of the event. The event was private in character and the elaborate steps to exclude the uninvited, to include only the invited, to preclude unauthorised photography, to control the authorised photography, and to have had the Claimants' intentions in that regard made clear all conduce to that conclusion... Everyone there knew that was so.'

The judge also scotched any argument that being famous reduces a person's right to the law of confidence protecting their privacy, or that welcoming the press in

other situations meant the press had a right to intrude whenever it chose. He did say, however, that the context surrounding any given situation would be taken into consideration. The judge said that in this case the Douglasses had shown 'a genuine and reasonable belief' that their steps to maintain the confidentiality of their wedding would ensure that 'an offensive media frenzy would be avoided'.

When deciding the case, the judge weighed the right of the press to freedom of expression against the claimant's right to confidentiality over their private affairs. He looked to the Press Complaints Commission's Code - similar codes exist for other areas of the media, such as broadcast, and would no doubt hold the same sway in future cases - and found that, 'I do not hold the intrusion to have been justified'. This demonstrates that the human right of freedom of expression does not have a presumptive priority over other rights.

What also gave the claimants' case weight was that it was clear on the facts that the case was not about money for the Douglasses. What they set out to do was obtain an injunction against Hello! to stop it publishing the photographs. This was refused by the Court of Appeal in November 2000, which set aside the injunction granted by the court below and said the Douglasses should look for financial compensation. The High Court has now re-imposed an injunction to stop future publication of the offending photographs and financial compensation has been left for a hearing at a future date.

The judge said: 'I have no doubt but that Mr Douglas and Miss Zeta-Jones both suffered real distress, though it is no present task of mine to attempt to put some compensatory cash value upon it. An aspect of their distress, which led

Miss Zeta-Jones to tears, was their wondering, if it was a guest, which of their guests it was that had betrayed them.'

In fact the photographer was a paparazzo named Rupert Thorpe who had infiltrated the wedding without anyone knowing and surreptitiously taken the pictures.

What this case has established is that no one, whether famous or not, should have to endure unjustifiable invasions into their private lives, and that the law will do its best to protect them. This can be through the law of confidence or the law of privacy, depending on which is the most relevant for the case in hand.

Another lesson of the case, and the media reaction to it, is that perhaps people should not always take at face value what they read in newspapers. The press likes to portray itself as an entity that fights injustice and exposes the truth. These are noble aspirations, but the ability to achieve them requires liberty, and unlimited liberty can curtail the freedom of others. That is why the legal system imposes checks on the power of the press via laws such as defamation, contempt of court and confidence. A new and increasingly potent weapon in this armoury is the law of privacy.

Ryan Dunleavy

In the Douglas/Hello case the legal teams of both parties were headed by Carter-Ruck trained lawyers - Maninder Gill, the Group Secretary and Legal Director of Northern & Shell Media (the publishers of OK! magazine) and Chris Hutchings at Charles Russell (who represented Hello!)

£61,000 Trial Victory for Tunisian Leader over Al Qaeda Slurs

A High Court jury has awarded Sheikh Rashid Ghannouchi, leader of the moderate Tunisian opposition party An Nahda, £61,000 in libel damages following publication of untrue allegations linking him with Osama bin Laden and Al Qaeda.

The offending article, which was published only a matter of weeks after the September 11th atrocities, appeared in the London-based Arabic daily newspaper *Al Arab*. Proceedings were issued shortly after publication, under Carter-Ruck's "no win, no fee" scheme, by managing partner Cameron Doley.

Al Arab, the longest established of the pan-Arab newspapers, refused to apologise and made strenuous efforts to defend its article. However, it proved unable to present the Court with a shred of evidence in support of its allegations. The newspaper's defence was therefore struck out and judgment entered for Sheikh Ghannouchi on the eve of trial, leaving damages to be assessed by a jury. A four-day hearing then followed, during which *Al Arab* somewhat unusually sought to persuade the Court that

it did not have the large readership across the Arabic-speaking world previously believed and that it was, on the contrary, a small circulation publication whose articles were seen by, at best, a few thousand readers. Given the damages that were awarded, it would appear that the jury found this hard to swallow.

Following the jury's verdict, Mr Justice Gray granted Sheikh Ghannouchi an injunction prohibiting further publication of *Al Arab's* allegations and ordered the Defendants to pay his costs of the case.

This was the fifth case out of five in which Carter-Ruck has been able to secure a successful outcome for Sheikh Ghannouchi and An Nahda, who have consistently opposed all forms of terrorism and political violence. A sixth case, against leading German newspaper *Die Zeit*, will be tried in November.

Carter-Ruck Successful in Landmark Election Lawcase

March saw the end of a lengthy libel battle involving officers at Bedford Borough Council, when the Court of Appeal overturned part of last year's decision by Mr Justice Gray and found in favour of Borough Solicitor

Michael Gough.

Mr Gough (represented by Carter-Ruck partner Ruth Collard) had sued local newspaper Bedfordshire on Sunday and Conservative Party agent Stewart Lister over allegations published in May 2000, which accused him of being grossly incompetent in his handling of an application to court.

After hard fought litigation lasting 18 months, the action went to trial in February/March 2002 and, at the end of 13 days, Mr Justice Gray found against Mr Gough. However, a year later, the Court of Appeal (Lords Justices Simon Brown and Keene and Mr Justice Bell) unanimously allowed Mr Gough's appeal.

In the course of his judgment, Lord Justice Simon Brown said "I ... have found Mr Gough to have reached the *right* answers on most of the important issues and certainly on those concerning the ... application". Lord Justice Keene stated "the allegation against [Mr Gough] of incompetence cannot be held to have been justified."

Mr Gough will now receive awards of damages and costs from the Court of Appeal, to be determined at a later hearing.

At the original trial last year another Bedford officer, Shaun Field, the Chief Executive, was also successful, recovering damages totalling £52,500, part of which resulted from a settlement shortly beforehand. Mr Field, who was also represented by Carter-Ruck, had been accused of political bias in relation to the same court application. In making the finding in his favour, Mr Justice Gray commented that the allegation was "a grave one to make against an officer whose fundamental obligation is to remain apolitical at all times".

Although a libel action, the case has important ramifications in the area of election law. The court application over which the officers were criticised concerned ballot papers overlooked at the 2000 local elections. In endorsing the officers' approach, the Court of Appeal has laid down guidelines to be followed whenever a similar situation arises in the future.

The case was dealt with by Carter-Ruck on its Conditional Fee Agreement scheme.

Berezovsky Settles with Forbes - Now Faces Battle with Russian Government

On 6 March, libel proceedings brought by Boris Berezovsky (the prominent Russian financier and politician) against Forbes Magazine were settled with the reading of a statement in the High Court in London.

Mr Berezovsky (represented by Carter-Ruck senior partner Andrew Stephenson and partner Claire Gill) sued over allegations published in the 30 December 1996 edition of Forbes in an article entitled "Godfather of the Kremlin?" which related to Mr Berezovsky's business activities and his connections with President Yeltsin.

In the agreed statement, Mr Justice Gray was told that Forbes had falsely accused Mr Berezovsky of being



Boris Berezovsky

involved in the murder of political rivals. The magazine accepted that there was no evidence that he was responsible for any murder and that it had been wrong to characterise Mr Berezovsky as a mafia boss. Forbes agreed to publish a correction, both in the magazine and on its website.

The settlement brought to an end prolonged litigation, which began when court proceedings were issued in February 1997.

Forbes, based in New York, had tried to prevent the case from continuing in England, arguing that it should be brought before either the American or Russian courts. Mr Justice Popplewell in October 1997 agreed with Forbes, but his decision was overturned the following year in a unanimous decision of the Court of Appeal. Forbes took the issue to the House of Lords which in a landmark ruling in May 2000 upheld the Court of Appeal judgment, allowing the claim to proceed in England. The case has become a leading authority on jurisdiction in libel proceedings.

Carter-Ruck is now representing Mr Berezovsky in his fight against attempts by the Russian government to extradite him. Mr Berezovsky's case is that the charges against him are politically motivated and without any proper foundation. Once a supporter of President Putin, Mr Berezovsky is now seen as his most vehement opponent.

Carter-Ruck has been consulted by the producers of “Sexual Perversity in Chicago” (starring Friends’ Matthew Perry and Minnie Driver) following publication by the Sun, the Mirror and the Daily Star of unauthorised onstage photographs of members of the cast.

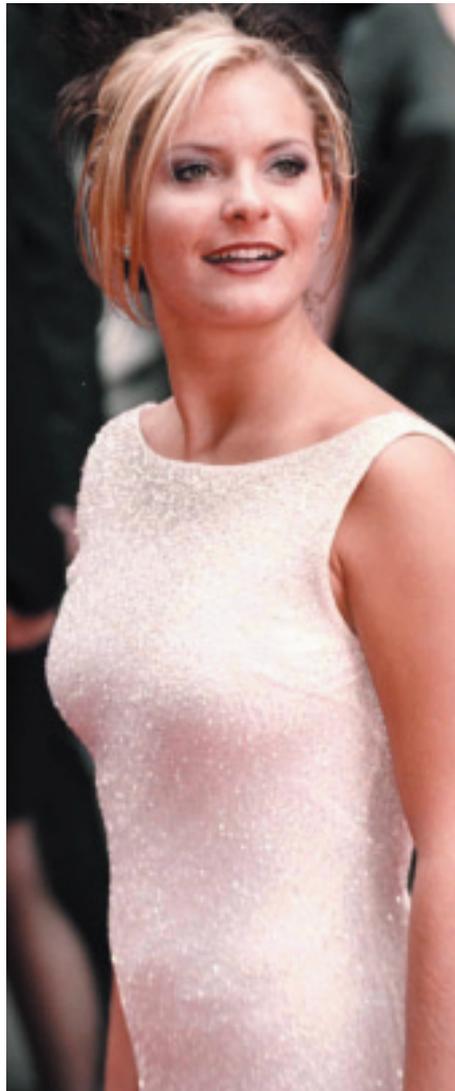
The Sun has run a full-page apology to former Coronation Street star Tracy Shaw following publication of an untrue story alleging that she had had plastic surgery prior to appearing naked onstage in The Blue Room. Ms Shaw was represented by Carter-Ruck partner Mark Thomson.

The Sun has apologised to David Gazley, whom it wrongly accused of being a convicted paedophile. Apologies were published not only in two separate issues of the Sun but also, unusually, in advertisements placed by the Sun in two of Mr Gazley’s local newspapers. The Sun has also agreed to pay Mr Gazley (who is advised by Nigel Tait and Jennifer Epworth) damages to be determined by the court and costs.

Leading film and television director Steve Shill (advised by Guy Martin) has recovered damages and costs against Granada Television in proceedings relating to the highly successful Dawn French show “Ted and Alice”. Mr Shill claimed that Granada had breached the contract he entered into with it at the time he devised the series.

Alasdair Pepper continues to be instructed by the Football Association in relation to a number of matters. Meanwhile, the FA’s Compliance Officer Graham Bean has succeeded in libel proceedings brought following publication of a Sunday People article which made untrue allegations concerning the FA’s conduct of an investigation into racism. Mr Bean (represented by Nigel Tait) received an apology, substantial damages and his legal costs.

Castaway TV, the makers of the reality show “Survivor”, have settled their claim against Granada TV arising out of the latter’s “I’m a celebrity....get me out of here”. The terms of settlement are confidential. Carter-Ruck’s



Tracy Shaw - the genuine article.

Mark Thomson and Hanna Basha acted for Castaway.

Caprice Bourret has settled her libel action against the Daily Star, with the newspaper agreeing to pay her substantial damages and costs and to publish a three-quarter page apology. The Star had published allegations concerning Caprice’s private life which it accepted were wholly untrue and for which it apologised.

Libel wins have been secured for Ken Bates, Chairman of Chelsea Football Club, against the Daily Express and Evening Standard. Both newspapers apologised to Mr Bates (represented by Alasdair Pepper) and paid him agreed damages and his legal costs.

Labour MP Tony McWalter (represented by Barton Taylor) has recovered substantial damages and costs from the Sunday Times following publication of a libellous item in the newspaper’s Atticus column. The Sunday Times also published an unreserved apology for the piece.

Carter-Ruck partner Alasdair Pepper has successfully concluded libel proceedings brought by Mark MacGregor, the former Chief Executive of the Conservative Party, against the Mail on Sunday in respect of untrue allegations concerning his time as chairman of the Federation of Conservative Students. The newspaper apologised to Mr MacGregor and agreed to pay him substantial damages, as well as costs.

Labour party election agent Keith Bennett has won an action against the Sunday Telegraph, concerning an article wrongly alleging that he misused his privileged status as a passholder at the Palace of Westminster and breached House of Commons’ rules. Mr Bennett (advised by Ruth Collard) received an unreserved apology, together with substantial damages and payment of his costs.

If you have any comments on this Newsletter, or if you require any other information, please contact Adam Tudor on: 020 7353 5005 or e-mail Adam.Tudor@carter-ruck.com