[IE] High Court grants injunction preventing broadcast of businessman's banking details

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On 21 May 2015, a High Court judge granted an injunction preventing the public broadcaster RTÉ from broadcasting confidential banking information concerning an Irish businessman. The judge announced that he would publish a "redacted" judgment at a later date and ruled that some of his conclusions could not be reported by the media until lawyers agreed on which parts of the judgment should be redacted. The 48-page redacted judgment was published on 3 June 2015.

But, on 29 May 2015 and before the redacted judgment was published, a Member of Parliament disclosed some of the confidential banking information concerning the businessman in the lower house of parliament (Dáil Éireann) under parliamentary privilege. Some Irish media organisations (including RTÉ) decided not to report the MP's statements, due to uncertainty over whether doing so might breach the High Court's injunction. RTÉ and The Irish Times newspaper applied to the court to seek confirmation they could report the MP's statements. On 2 June 2015, in an unpublished ruling, the High Court judge confirmed he "never intended to, nor could he", restrain MPs from making statements in Parliament or to restrict the fair and accurate reporting of such statements by the press.

On 3 June 2015, the judge published his redacted judgment, taking account of the information already disclosed by the MP. Setting out the background, the Court noted that, in April 2015, RTÉ had written to the businessman Denis O'Brien and the nationalised bank IBRC informing them that RTÉ intended to broadcast a news report which included confidential banking information concerning O'Brien and the bank and asking for comment. The businessman's lawyers wrote to RTÉ requesting that the broadcaster not publish any confidential information and, when RTÉ refused, O'Brien and the bank applied to the High Court seeking an injunction.

RTÉ argued that the businessman was a "public figure" who was a "very major debtor" to the nationalised bank and there was a "public interest" in "the manner in which IBRC, both before and after its liquidation has dealt with substantial debtors". Its broadcast would divulge certain confidential information concerning O'Brien and the bank, including "the original amount of his indebtedness to IBRC, the amount repaid by him as of October, 2013, and his request for an extension of

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the period of repayment of the balance due". In particular, RTÉ argued that a request for a loan extension "may not have properly processed within IBRC in so far as Mr. O'Brien alleged that he had a verbal agreement with the then CEO in relation to the duration of an extension of the period for repayment of the balance of his loan, in circumstances where any such agreement was reached without credit committee approval".

On the other hand, O'Brien argued that he would "suffer irreparable harm bother personally and financially" if the information was disclosed and a banking expert submitted an affidavit to the Court that the disclosure "is likely to be sufficient to damage Mr. O'Brien's relationship with his bankers and impact on the terms of credit available to Mr. O'Brien".

First, the Court noted that the businessman was of "national and international renown" and "undoubted status as a public figure". The Court then reviewed the case law on injunctions and the press and held that the proper test should be the "convincing case" test, namely, that it is necessary "to demonstrate, by proper evidence, a convincing case to bring about a curtailment of the freedom of expression of the press". The Court said that the businessman's entitlement to privacy in the documentation both under Article 8 of the European Convention and the Irish constitution had to be balanced against the broadcaster's right to freedom of expression under Article 10 of the European Convention on Human Rights and the Irish constitution. But, in conducting this balancing exercise, the Court held that "the Court must take account of the fact that very little, if any, connection has at this stage been established between the public interest in alleged failures of corporate governance at IBRC and O'Brien's personal dealings with IBRC." In the "absence of such a connection", the Court ruled that the plaintiffs had "established a convincing case" that they will succeed at trial. The Court concluded that the "balance of convenience" favours the plaintiffs as, if injunction was not granted, "significant details of the private banking affairs" of the businessman would be placed in the public domain and would cause him "incalculable loss".

O'Brien v RTÉ [2015] IEHC (21 May 2015)

https://static.rasset.ie/documents/news/dob-v-rte-redacted-judgement.pdf

RTÉ, "Denis O'Brien granted injunctions against RTÉ", 21 May 2015

http://www.rte.ie/news/2015/0521/702794-denis-obrien-rte/

RTÉ, Catherine Murphy outlines details of IBRC-O'Brien business relationship in Dáil", 29 May 2014

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