[GB] High Court awards damages against Channel 5 for failing to obtain consent and infringing filmed parties' privacy

IRIS 2018-5:1/18

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On 22 February 2018, Mr Justice Arnold of the High Court awarded GBP 20 000 in damages to Shakir Ali and Shanida Aslam (the Claimants) against Channel 5 Broadcast Limited (Channel 5), for breaching the Claimants' privacy and not satisfactorily obtaining their consent to be filmed for the reality television show Can't Pay? We'll Take It Away (CPWTIA). The series is made by Brinkworth Films Ltd (BFL) with broadcaster Channel 5 having final editorial responsibility.

CPWTIA follows Direct Collection Bailiffs Ltd (DCBL) as they enforce court judgments against debtors and eviction orders against tenants in rent arrears. The episode which was first transmitted on 4 April 2015 depicted the enforcement of a court eviction order against Mr Ali and Mrs Aslam and their family, thus making them homeless. Their landlord was Rashid Ahmed. Mr Ali's health issues prevented him from working; however, he had a certain profile within his community for his involvement with a Pakistani political group. The episode was screened 36 times up to December 2016, with an accumulative audience of 9.56 million viewers.

BFL granted DCBL consent to film the bailiffs (who were also wearing body cameras - GoPros). BFL did not fully comply with their production bible about what to do if people refused their consent to being filmed. The eviction of Mr Ali and Mrs Aslam occurred on 2 April 2015 between 8.23 a.m. and 9.47 a.m. At 8.23 a.m., DCBL's representatives, Mr Bohill and Mr Short, were let into the premises by the landlord's son. They proceeded to the bedroom where Mr Ali had just awoken and was wearing his pyjamas. Mr Bohill explained the repossession but made no mention of the fact that they were being filmed. Mr Ali got dressed and asked about the filming. The cameraman, Mr Rea, tried to explain but was interrupted by Mr Bohill, so no explanation was given. Mr Bohill explained to Mr Ali that the property had been repossessed. Mr Ali phoned his wife who was returning from the school run. Mr Ali said his wife had refused to be filmed. Mr Ahmed, the landlord, arrived and an argument ensured between him and Mr Ali over the rent sum due and the possession date; Mr Ali denied the landlord's allegation of subletting. The cameraman, Mr Rea, suggested that Mr Aslam give his version of events to the camera, however, Mr Ali beckoned the crew to leave their bedroom. At 9.03 a.m., Police Constable Stowers arrived and consented to being filmed. The

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cameraman attempted to interview Mr Ali and Mrs Aslam but they refused to be filmed. At 9.31 a.m., PC Stowers persuaded Mr Ali to be interviewed by the cameraman. Mr Ali objected to the landlord's son filming, so the tenants vacated the house. The landlord's son's footage was posted on social media, thus prompting Mr Ali to contact BFL who said that they had no control over social media footage, whilst decisions on broadcasting remained with Channel 5. The tenant's daughter was also bullied at school.

Mr Justice Arnold first held that Mr Ali had unequivocally withdrawn consent before the first broadcast, and that the consent given at 9.31 a.m. had been effectively given under protest and not informed, as the couple had had absolutely no knowledge of the programme being filmed, of who would broadcast it or of the body cameras worn by the bailiffs. Mr Justice Arnold recognised that the question was whether the claimants had a reasonable expectation of privacy in respect of the information in question, and noted that, according to Lord Hope in Campbell v MGN Limited (see IRIS 2011-3/1) "The question is what a reasonable person of ordinary sensibilities would feel if she was placed in the same position as the claimant and faced with the same publicity." Mr Justice Arnold held that Mr Ali and Mrs Aslam and their children had a right (pursuant to Article 8 of the European Convention on Human Rights - ECHR) to respect for their private and family life and their home, even whilst being evicted, and this had to be balanced against Channel 5's Article 10 ECHR right to freedom of expression. First, Channel 5's freedom to report on court proceedings was upheld, but the Court considered that there was a limit as to the necessary disclosure of information so as to preserve a person's privacy. Secondly, the programme CPWTIA did not focus upon public interest issues such as homelessness or the judicial process allowing eviction, but instead on the conflict between landlord and tenant. Thirdly, the Court held that Channel 5's editorial discretion did not allow use of private information unless justified as contributing to a debate of general interest. In this regard, Rule 8.1 of the Ofcom Broadcasting Code states that infringement of privacy must be warranted for public interest purposes such as crime detection.

Mr Justice Arnold concluded that the Claimants had a reasonable expectation of privacy concerning inclusion of private information and that Channel 5 had no justification to include the details as it was not of general public interest. A restriction on freedom of expression was therefore proportionate in this case. The Court awarded damages for misuse of private information and subsequent distress, and aggravated damages for Channel 5's handling of the claim. The factors taken into account were: the viewing figures; the use of the fairly sensitive information; the voyeuristic quality of CPWTIA; and the Claimants' standing in the community.

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Shakir Ali and Shahida Aslam v Channel 5 Broadcast Limited [2018] EWHC 298 (Ch), 22 February 2018

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