[GB] Judgement in the case Sir Cliff Richard v. BBC

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Sir Cliff Richard OBE (Sir Cliff), a popular singer whose career spans over 50 years, was awarded damages and costs in the High Court of Justice against the British Broadcasting Corporation (BBC) for their infringement of his privacy during a South Yorkshire Police (SYP) investigation against him concerning an alleged historic sex crime which was not pursued. Mr Justice Mann presided over a twelve-day trial during which he balanced Sir Cliff's right to privacy flowing from Article 8 of the European Convention on Human Rights (ECHR) introduced into English law by the Human Rights Act 1998 (the Act) and the BBC's right to freedom of expression under Article 10 ECHR. Sir Cliff also claimed under the Data Protection Act 1998 but Mr Justice Mann made no finding as Sir Cliff's privacy claim succeeded.

London's Metropolitan Police Service (MPS) conducted an enquiry, Operation Yewtree, into alleged sex crimes perpetrated by well-known persons which led to successful convictions. Some investigations culminated in no further action being taken. The MPS pursued an allegation that Sir Cliff had committed a sexual offence against an underage boy at a Christian Evangelist event during the 1980s. As it was a single allegation, MPS transferred the case to SYP.

On 9 June 2014, BBC reporter Daniel Johnson understood that the police were investigating Sir Cliff. After speaking with Mr Johnson, SYP decided to co-operate with him to prevent the premature publication of a story and to avoid the investigation being comprised. On 15 July 2014, SYP met with Mr Johnson and, based on the trial evidence, felt compelled to inform him of their intention to search Sir Cliff's apartment. The information was provided on the condition that the BBC did not report it in order not to compromise the investigation or invade Sir Cliff's privacy.

The BBC emails showed a marked disrespect for the police investigation, seeing this as an opportunity to beat its rivals with the story. The BBC filmed the police search of Sir Cliff's appartment in a private estate from a helicopter. All the footage from the helicopter would be shared between the BBC and its competitor, ITN, which received a late notification, thus ensuring that the BBC would be the first to broadcast. Sir Cliff was in Portugal when the BBC teams were sent there. The BBC tried to contact Sir Cliff, but it was difficult to reach him. When Sir Cliff learned of the search and filming, he was shocked and waited for advice from his

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lawyers. The BBC gave Sir Cliff little time to respond, including bringing injunction proceedings, before the first broadcast. The police search appeared on the BBC's live rolling news channel, on its website and on terrestrial channels.

When balancing Article 8 and Article 10 ECHR, reference was made to section 12 of the act, which determines whether it is in the public interest for material to be published. The court recognised the "duty" of the press to disseminate information, subject to its obligations and responsibilities, on all matters of public interest. Factors when balancing a person's privacy against the public interest include the degree of contribution to a debate of general interest; the degree of notoriety of the person and the subject of the report; the past conduct of the person concerned; the method of obtaining the information and its veracity; the content, form and consequences of publication; and whether the sanction to prevent disclosure is a proportionate interference with freedom of expression.

Section 12(4)(b) of the act provides that the court must take into account any relevant privacy code, such as the BBC's editorial guidelines which, in the section entitled "The Public Interest", state that private information should not be brought into the public domain unless there is a public interest that outweighs the expectation of privacy. There is no single definition of the term "public interest", but this includes the exposure or detection of a crime and the disclosure of information that helps people better comprehend or make decisions on matters of public importance. Essentially, under the guidelines, the greater the intrusion, the greater the public interest required to justify it.

The sequence of events suggests the desire to obtain a scoop by showing helicopter shots of the search, and the disclosure of Sir Cliff's identity exceeded the public interest in knowing the identity of the person under investigation. The BBC failed to prove the public interest that justifies the revelation of Sir Cliff's name and the filming of the search. The BBC's counsel contended that Sir Cliff's claim risked undermining the long-standing freedom of the press to report police investigations. Mr Justice Mann said the Human Rights Act gave legislative authority to restrain the press when the balancing act was justified, as in Sir Cliff's case, whereby Article 8 ECHR took precedence over Article 10 ECHR on freedom of expression.

Mr Justice Mann determined that damages for loss of reputation were inherent to the tort of privacy and awarded Sir Cliff GBP190 000 (approximately EUR 210 139) for general damages. The BBC's conduct was not reckless but negligent, and their submitting the coverage for an award caused Sir Cliff additional distress given their "pride and unrepentance" and the repetition of the invasion of privacy. The amount of GBP20 000 (approximately EUR 22 110) was awarded as aggravated damages. Mr Justice Mann determined that SYP should contribute to the damages. Although SYP had disclosed details of the search to the BBC, their motive was not personal gain, but rather to deflect the BBC from prematurely reporting and

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potentially prejudicing the investigation. The judge determined that the damages would be apportioned 35/65% between SYP and the BBC respectively, with the BBC paying all aggravated damages.

Richard v. The British Broadcasting Corporation (BBC) & Anor [2018] EWHC 1837 (Ch) (18 July 2018)

http://www.bailii.org/ew/cases/EWHC/Ch/2018/1837.html

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