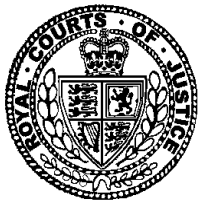

Neutral Citation Number: [2019] EWHC 2525 (QB)

Case No: QB-2019-002419

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30 September 2019

Before :

THE HONOURABLE MR JUSTICE NICKLIN

- -

Between :

(1) AAA
(2) BBB
(3) CCC
(4) DDD
(5) EEE
(6) FFF
(7) GGG
(8) HHH
(9) III
(10) Spearmint Rhino Companies (Europe) Limited
(11) Sonfield Developments Limited **Claimants**

- and -

(1) Dr Sasha Rakoff
(2) Not Buying It Limited
(3) Philip Charles Rashbrook
(4) Jeffrey Mitchell Hill **Defendants**

- -

Chris Quinn (instructed by **Judge Sykes Frixou**) for the **Claimants**
Beth Grossman (instructed by **Saunders Law**)
for the **First and Second Defendants**
Jane Phillips (instructed by **DWF Law LLP**) for the **Third and Fourth Defendants**

Hearing date: 30 July 2019

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

THE HONOURABLE MR JUSTICE NICKLIN

The Honourable Mr Justice Nicklin :

1. This is a claim for misuse of private information and breach of the Data Protection Act 2018. At this early stage in the proceedings, the Claimants seek an order that the individual Claimants (the First to Ninth Claimants) should be anonymised in the proceedings and an order for an expedited trial of the claim. I refuse both applications for the reasons set out below.

Background

2. The First to Ninth Claimants are employed as performers in venues, owned and operated by the Tenth and Eleventh Claimants, under the name *Spearmint Rhino* ("Spearmint Rhino"). Spearmint Rhino is well-known and recognised as operating sexual entertainment venues ("SEVs"), more commonly known as lap-dancing or strip-clubs, in the UK and in other jurisdictions. Subject to complying with the terms of any licence, it is lawful to operate, or for adults to work as performers in, an SEV.

3. Typically, an SEV will require a licence to operate from the relevant local authority ("Operating Licence"). If granted, the licence will usually contain prohibitions on physical contact between the performers and customers, prostitution or solicitation and/or sexual activity or simulated sexual activity undertaken by the performers themselves, with other performers or with customers.

4. The First Defendant is the Chief Executive Officer of, and spokesperson for, the Second Defendant. The Second Defendant is the corporate body of a campaigning organisation ("*Not Buying It*"). In a witness statement for the proceedings, the First Defendant states:

> "*Not Buying It* campaigns against sexual entertainment venues ('strip clubs or lap dancing clubs') in particular where these breach the regulatory framework and specific conditions attached to their licences. We are concerned that such breaches cause harm to those who work within such venues and society generally."

5. A particular concern of the *Not Buying It* campaign is what the group considers is the risk of exploitation of those who are employed as performers. More generally, *Not Buying It* contends that the public has a right to know about what actually takes place in an SEV. The First Defendant states: "*It is essential for the local democratic process that any decision to continue to license these venues is subject to proper scrutiny*".

6. As part of its campaigning, *Not Buying It* has carried out undercover investigations (including covert filming) at various SEVs operated by Spearmint Rhino. They have done so to gather evidence of what they allege are breaches of the Operating Licence at a number of Spearmint Rhino venues. In her statement, the First Defendant states of the *Not Buying It* campaign generally:

> "A number of venues have lost licences in recent years in consequence of breaches of their licensing conditions. These venues include the Windmill Theatre in Soho and LA Confidential in Ealing. In both cases, the decision to revoke the [Operating Licence] was only taken by the local authorities as a consequence of undercover investigations… which revealed these breaches…"

7. *Not Buying It* has recently focused its campaign on Spearmint Rhino SEVs in the London Borough of Camden and in Sheffield. The Operating Licences for these premises are apparently due for renewal later in 2019. The First Defendant states in her evidence that, at a previous licensing renewal hearing for the Sheffield Spearmint Rhino, objectors had alleged that the venue had been in breach of its Operating Licence. It was denied that there were any breaches of the Operating Licence and evidence presented at the hearing was described as "*anecdotal*". *Not Buying It* contends that the objections to the Operating Licence were rejected, and the licence renewed, as a result of a lack of evidence of the alleged breaches.

8. In consequence, *Not Buying It* engaged two private investigators – the Third and Fourth Defendants – to visit the Spearmint Rhino SEVs in Camden and Sheffield and record video footage of what they saw. The Sheffield premises were visited on 9 and 28 February 2019 and the Camden premises were visited on 16 February 2019. Covert video recordings were made by the Third and Fourth Defendants during these visits ("the Footage").

9. The First Defendant states in her evidence that, by carrying out this covert surveillance, *Not Buying It* did not wish to expose any personal performer to criticism or potential harm. However, she contends that efforts to capture evidence of alleged breaches of an Operating Licence inevitably involved recording footage of individual performers. In her statement, the First Defendant identified various measures that *Not Buying It* took to protect the performers, including strict limits on circulation of the Footage.

10. It is not necessary, or appropriate, in this judgment to recount what *Not Buying It* says is shown in the Footage. It suffices for present purposes to note that *Not Buying It* contends that the footage shows that there have been several breaches of the Operating Licence.

11. *Not Buying It* intends to use the Footage as evidence in forthcoming licensing hearings in Sheffield and London. More generally, as a campaigning organisation, it wishes to publicise (and has publicised) what it says it has discovered. It has several platforms through which it campaigns, including a website and a Twitter account. Nevertheless, the First Defendant has stated in her witness statement that *Not Buying It* will not, without consent, disclose any footage or include in written evidence anything which identifies any individual performer.

The Interim Injunction Application

12. On 4 July 2019, the Claimants issued an Application Notice seeking an interim injunction to restrain the Defendants from circulating, publishing or causing the publication of any of the Footage or make any use of them that "*infringed their rights under Article 8…*". The Application Notice also sought directions for a speedy trial and "*for the identities of the First – Ninth Applicants to be anonymised.*"

13. The draft Order accompanying the Application Notice including the following paragraphs:

"**Anonymity**

2. Pursuant to section 6 and/or CPR 39.2 the Judge, being satisfied that it is strictly necessary, ordered that:

2.1 the Claimants be granted retrospective permission to issue these proceedings naming the First-Ninth Claimants as AAA-III respectively;

2.2 there be substituted for all purposes in these proceedings in place of references to the First-Ninth Claimants by name, and whether orally or in writing references to the letters AAA-III respectively.

Injunction

3. Until the speedy trial or further Order of the Court the Defendants, whether by themselves, their officers, directors, partners, employees, agents or otherwise however, are not to circulate, publish or cause the publication of any recordings made of the First – Ninth Claimants or make any use of them that infringes their rights under Article 8 of the European Convention on Human Rights"

14. In terms of expedition, the draft Order provided a tight timetable of directions that sought a trial fixed for the first available date after 14 October 2019 with a time estimate of 4 days.

15. The injunction application came before me on 11 July 2019. On that date, only the Claimants and the First and Second Defendants were represented. Subsequently, it became apparent that the Third and Fourth Defendants had not been notified of the hearing. In the event, on the day of the hearing, after the hearing had commenced, the Claimants and the First and Second Defendants reached agreement as to the terms of undertakings to be provided by the First and Second Defendants and so the Court was not asked to make any adjudication on the merits of the claim for interim relief.

16. The operative part of the undertaking given by the First and Second Defendants was in the following terms:

"The First and Second Defendant undertake:

Not to further circulate, publish or cause to be published the Footage (whether in whole or part) without pixellation (sic) of the faces of the performers contained in the footage except:

(a) to investigating officers of Camden and Sheffield Local Authorities in the course of those officers' duties and subject to instructions that those officers should not circulate further any copies or retain for any longer than necessary;

(b) to their legal advisers or insurers;

(c) as required by court order

until the conclusion of trial or any further Order of the Court."

17. The undertaking provided various exceptions to the general prohibition on use of the Footage, as long as no individual performer was identified.

18. The applications for an anonymity order and for a speedy trial were adjourned to be heard on 30 July 2019.

The Claim Form

19. An unsealed copy of the Claim Form was provided to the Court at the hearing on 11 July 2019. It was accompanied by Particulars of Claim dated 3 July 2019. It emerged at the hearing on 30 July 2019 that the Claimants had not been able to obtain a sealed copy of the Claim Form. CPR 16.2 and Part 16 PD §§2.2 and 2.6 require the address and name of each Claimant to be stated in the Claim Form. Paragraph 2.5 of the Practice Direction provides that if the Claim Form does not show a full address, including postcode, "*the Claim Form will be issued but will be retained by the court and will not be served until the claimant has supplied a full address, including postcode, or the court has dispensed with the requirement to do so.*"

20. This unsatisfactory state of affairs has arisen because the Claimants failed to make an application for anonymity of the First to Ninth Claimants (and the corresponding permission to issue the Claim Form without having to include the names of the Claimant) before seeking to issue the Claim Form. Such applications are routinely made to the Practice Masters in the Queen's Bench Division. Although the belated anonymity application seeks to regularise this position, currently none of the Defendants has been served with a Claim Form, although they have been provided with an unsealed copy.

Anonymity Application

21. In his skeleton argument for the hearing on 11 July 2019, Mr Quinn stated that the order for anonymity the Claimants sought was based on the model order provided in the ***Practice Guidance (Interim Non-disclosure Orders)*** **[2012] 1 WLR 1003** ("the INDO Guidance"). It may have been "based on" the model order, but it departed from it in material respects. In particular, the Claimants' draft omitted the wording that would have granted the required permission to allow the First to Ninth Claimants to issue the Claim Form without giving their names and addresses. Further, when dealing with applications for anonymity orders, it is important to appreciate that they have two distinct parts: (1) an order that withholds the name of the relevant party in the proceedings and permits the proceedings to be issued replacing the party's name with a cipher under CPR 16.2 (e.g. naming the claimant as 'XPZ') ("a CPR 16 Order"); and (2) a reporting restriction order prohibiting identification of the anonymised party ("the Reporting Restriction Order"). Mr Quinn's draft contained only the first element and not the second. The difference was explained by Tugendhat J in ***CVB -v- MGN Ltd*** **[2012] EMLR 29**:

> [47] … [a CPR 16] Order by itself is not an injunction of any kind, and is not an 'interim remedy' under CPR Pt 25. It is permissive only. This view is supported by the observations of Henderson J in ***HMRC -v- Banerjee*** **[2009] EWHC 1229 (Ch)** [39].
>
> [48] The practical effect of a [CPR 16] Order is that the defendant, or anyone else who happens to know the identity of the claimant, if they do disclose

> to the public the identity of the party who is referred to in the title to the action, is unlikely by that fact alone to be committing a contempt of court or interfering with the administration of justice.

See also the discussion in [17]-[25] and ***Khan -v- Khan*** **[2018] EWHC 241 (QB)** [81].

22. The model order in the INDO Guidance contains both elements. The CPR 16 Order is contained in Paragraph 3 of the model order. The Reporting Restriction Order is actually part of the injunction in the model order – see paragraph 6(b). The interim injunction restraining identification of the anonymised party binds third parties with knowledge of the order under what is called the *Spycatcher* principle: ***Attorney General -v- Newspaper Publishing Plc*** **[1988] Ch 333, 375** and **380** (and see also ***JIH -v- News Group Newspapers Ltd*** **[2012] EWHC 2179 (QB)** [32]; the INDO Guidance p.1009H; and ***Jockey Club -v- Buffham*** **[2003] QB 462**). That is a feature particular to interim non-disclosure orders. In other cases, where it is sought to impose both a CPR 16 Order and a Reporting Restriction Order, the terms of the order must expressly provide for both.

23. Mr Quinn's draft (although it stated that the order was being made pursuant to CPR 39.2) in fact only sought a CPR 16 Order anonymising the First to Ninth Claimants. He confirmed at the hearing that this was his intention and that the Claimants were not applying for any Reporting Restriction Order.

24. As made clear in ***CVB***, both CPR 16 Orders and Reporting Restriction Orders are derogations from open justice, the latter being more significant than the former. The principles that apply when seeking any derogation from open justice are summarised conveniently in the INDO Guidance:

> *Open justice*
>
> [9] Open justice is a fundamental principle. The general rule is that hearings are carried out in, and judgments and orders are, public: see article 6.1 of the Convention, CPR r. 39.2 and ***Scott -v- Scott*** **[1913] AC 417**. This applies to applications for interim non-disclosure orders: ***Micallef -v- Malta*** **(2009) 50 EHRR 920** [75]ff; ***Donald -v- Ntuli (Guardian News & Media Ltd intervening)*** **[2011] 1 WLR 294** [50].
>
> [10] Derogations from the general principle can only be justified in exceptional circumstances, when they are strictly necessary as measures to secure the proper administration of justice. They are wholly exceptional: ***R -v- Chief Registrar of Friendly Societies, Ex p New Cross Building Society*** **[1984] QB 227, 235**; ***Donald -v- Ntuli*** [52]-[53]. Derogations should, where justified, be no more than strictly necessary to achieve their purpose.
>
> [11] The grant of derogations is not a question of discretion. It is a matter of obligation and the court is under a duty to either grant the derogation or refuse it when it has applied the relevant test: ***M -v- W*** **[2010] EWHC 2457 (QB)** [34].
>
> [12] There is no general exception to open justice where privacy or confidentiality is in issue. Applications will only be heard in private if and to the extent that the court is satisfied that by nothing short of the exclusion

> of the public can justice be done. Exclusions must be no more than the minimum strictly necessary to ensure justice is done and parties are expected to consider before applying for such an exclusion whether something short of exclusion can meet their concerns, as will normally be the case: ***Ambrosiadou -v- Coward*** **[2011] EMLR 419** [50]-[54]. Anonymity will only be granted where it is strictly necessary, and then only to that extent.
>
> [13] The burden of establishing any derogation from the general principle lies on the person seeking it. It must be established by clear and cogent evidence: ***Scott -v- Scott*** (above) **438–439, 463, 477**; ***Lord Browne of Madingley -v- Associated Newspapers Ltd*** **[2008] QB 103** [2]-[3]; ***Secretary of State for the Home Department -v- AP*** **(No.2) [2010] 1 WLR 1652** [7]; ***Gray -v- W*** **[2010] EWHC 2367 (QB)** [6]-[8]; and ***H -v- News Group Newspapers Ltd (Practice Note)*** **[2011] 1 WLR 1645** [21].
>
> [14] When considering the imposition of any derogation from open justice, the court will have regard to the respective and sometimes competing Convention rights of the parties as well as the general public interest in open justice and in the public reporting of court proceedings. It will also adopt procedures which seek to ensure that any ultimate vindication of article 8 of the Convention, where that is engaged, is not undermined by the way in which the court has processed an interim application. On the other hand, the principle of open justice requires that any restrictions are the least that can be imposed consistent with the protection to which the party relying on their article 8 Convention right is entitled. The proper approach is set out in ***H's case***.

25. The principle of open justice can be engaged in different ways: e.g. a decision by a court to sit in private, the imposition of reporting restriction orders, anonymisation of parties or witnesses and restrictions of access to documents on the court file by non-parties. In each of these areas, derogations from open justice must be justified by clear and cogent evidence and any restriction imposed must be the least restrictive form justified by the particular circumstances that justify the derogation.

26. In ***R (Guardian News & Media Ltd) -v- City of Westminster Magistrates' Court*** **[2019] QB 618**, Lord Reed identified the proper approach [85]:

> "Whether a particular departure from the principle of open justice was justified in any particular case would depend upon the facts of that case. As Lord Toulson observed in ***Kennedy -v- Information Commissioner*** **[2015] AC 455, 525** [113], the court has to carry out a balancing exercise which will be fact-specific. Central to the court's evaluation will be the purpose of the open justice principle, the potential value of the information in question in advancing that purpose and, conversely, any risk of harm which its disclosure may cause to the maintenance of an effective judicial process or to the legitimate interests of others."

27. In ***Dring -v- Cape Intermediate Holdings Ltd*** **[2019] 3 WLR 443**, the Supreme Court considered the open justice principle in the context of access to court documents, but the principles apply equally to other derogations from open justice. Baroness Hale,

referring to Lord Reed's statement of principle from ***Guardian News & Media Ltd***, explained: [46]:

> "There may be very good reasons for denying access [to documents on the court file]. The most obvious ones are national security, the protection of the interests of children or mentally disabled adults, the protection of privacy interests more generally, and the protection of trade secrets and commercial confidentiality…"

28. These authorities demonstrate that there are principally two categories of case in which derogations from open justice can be justified: maintenance of the administration of justice and harm to other legitimate interests. The first category of case is where, without the relevant order being made, the administration of justice would be frustrated: ***Attorney-General -v- Leveller Magazine Ltd*** **[1979] AC 440, 457E**. This principle was derived from ***Scott -v- Scott*** **[1913] AC 417** in which Viscount Haldane LC made it clear (pp.437-439):

> "… the exceptions [to the principle of open justice] are themselves the outcome of a yet more fundamental principle that the chief object of courts of justice must be to secure that justice is done … As the paramount object must always be to do justice, the general rule as to publicity, after all only the means to an end, must accordingly yield. But the burden lies on those seeking to displace its application in the particular case to make out that the ordinary rule must as of necessity be superseded by this paramount consideration … I think that to justify an order for hearing in camera it must be shown that the paramount object of securing that justice is done would really be rendered doubtful of attainment if the order were not made."

29. Examples of this type of justification for derogations from open justice would include cases involving trade secrets or other confidential information. In such cases, if no derogations from open justice were granted, the proceedings themselves would destroy that which the claimant was seeking to protect.

30. Restrictions on open justice to protect the legitimate interests of others raise more difficult issues. The starting point is the recognition that open justice (and probably of greater practical significance, the privilege that attaches to media reports of proceedings in open court) will frequently lead to some interference with the legitimate interests of parties and witnesses. Media reports of proceedings in open court can have an adverse impact on the rights and interests of others, but, ordinarily, "*the collateral impact that this process has on those affected is part of the price to be paid for open justice and the freedom of the press to report fairly and accurately on judicial proceedings held in public*": ***Khuja*** **-v-** ***Times Newspapers Ltd*** **[2019] AC 161** [34(2)] *per* Lord Sumption.

31. Although witnesses in proceedings might have a more powerful claim for protection of their legitimate interests, the parties (particularly claimants) would ordinarily have to expect their names to be made public: ***R -v- Legal Aid Board ex parte Kaim Todner*** **[1999] QB 966, 978E-G**:

> "It is not unreasonable to regard the person who initiates the proceedings as having accepted the normal incidence of the public nature of court proceedings. If you are a defendant you may have an interest equal to that of the plaintiff in the outcome of the proceedings but you have not chosen to initiate court proceedings which are normally conducted in public. A witness who has no

> interest in the proceedings has the strongest claim to be protected by the court if he or she will be prejudiced by publicity, since the courts and parties may depend on their co-operation. In general, however, parties and witnesses have to accept the embarrassment and damage to their reputation and the possible consequential loss which can be inherent in being involved in litigation. The protection to which they are entitled is normally provided by a judgment delivered in public which will refute unfounded allegations. Any other approach would result in wholly unacceptable inroads on the general rule."

32. Similarly, in ***R -v- Evesham Justices ex parte McDonagh*** **[1988] QB 553, 562A-C**, Tasker Watkins LJ, when considering reporting restrictions made by Magistrates under s.11 Contempt of Court Act 1981, noted

> "… There are undoubtedly many people who find themselves defending criminal charges who for all manner of reasons would like to keep unrevealed their identity, their home address in particular. Indeed, I go so far as to say that in the vast majority of cases, in magistrates' courts anyway, defendants would like their identity to be unrevealed and would be capable of advancing seemingly plausible reasons why that should be so. But, section 11 was not enacted for the benefit of the comfort and feelings of defendants. The general rule enunciated in the passage I have quoted from ***Attorney-General -v- Leveller Magazine Ltd*** **[1979] AC 440, 450**, may not, as is there stated, be departed from save where the nature or the circumstances of proceedings are such that the application of the general rule in its entirety would frustrate or render impracticable the administration of justice…"

33. Why is the public identification of the parties and witnesses involved in court proceedings important? Other jurisdictions have answered this question differently, but in England & Wales two main answers have historically been given:

i) In ***ex parte Kaim Todner***, Lord Woolf MR explained the practical importance of the names of the parties and witnesses being publicly available: evidence may become available which would have been unavailable "*if the proceedings were conducted behind closed doors or with one or more of the parties' or witnesses' identity concealed*" (@ p.977F).

ii) A more general justification for naming those involved in litigation was identified by Lord Rodger in ***In re Guardian News and Media Ltd*** **[2010] 2 AC 697** [63]:

> > "What's in a name? 'A lot', the press would answer. This is because stories about particular individuals are simply much more attractive to readers than stories about unidentified people. It is just human nature. And this is why, of course, even when reporting major disasters, journalists usually look for a story about how particular individuals are affected. Writing stories which capture the attention of readers is a matter of reporting technique, and the European court holds that article 10 protects not only the substance of ideas and information but also the form in which they are conveyed: ***News Verlags GmbH & Co KG -v- Austria*** **31 EHRR 246 , 256** [39]... More succinctly, Lord Hoffmann observed in ***Campbell -v- MGN Ltd*** **[2004] 2 AC 457** [59], 'judges are not newspaper editors'. See also Lord Hope of Craighead in ***In re BBC***

> **[2010] 1 AC 145** [25]. This is not just a matter of deference to editorial independence. The judges are recognising that editors know best how to present material in a way that will interest the readers of their particular publication and so help them to absorb the information. A requirement to report it in some austere, abstract form, devoid of much of its human interest, could well mean that the report would not be read and the information would not be passed on. Ultimately, such an approach could threaten the viability of newspapers and magazines, which can only inform the public if they attract enough readers and make enough money to survive."

34. The principle identified by Lord Reed in ***Guardian News & Media*** (see [26] above) has led to submissions being made that the balance between the competing interests could be struck by permitting full reporting of the proceedings in open court but preventing the naming of a particular individual. Lord Sumption addressed this argument in ***Khuja***:

> [29] In most of the recent decisions of this court the question has arisen whether the open justice principle may be satisfied without adversely affecting the claimant's Convention rights by permitting proceedings in court to be reported but without disclosing his name. The test which has been applied in answering it is whether the public interest served by publishing the facts extended to publishing the name. In practice, where the court is satisfied that there is a real public interest in publication, that interest has generally extended to publication of the name. This is because the anonymised reporting of issues of legitimate public concern are less likely to interest the public and therefore to provoke discussion. As Lord Steyn observed in ***In re S*** **[2005] 1 AC 593** [34]:
>
> > "… from a newspaper's point of view a report of a sensational trial without revealing the identity of the defendant would be a very much disembodied trial. If the newspapers choose not to contest such an injunction, they are less likely to give prominence to reports of the trial. Certainly, readers will be less interested and editors will act accordingly. Informed debate about criminal justice will suffer."
>
> "What's in a name?", Lord Rodger memorably asked in ***In re Guardian News and Media Ltd*** before answering his own question, at [63]… The public interest in the administration of justice may be sufficiently served as far as lawyers are concerned by a discussion which focusses on the issues and ignores the personalities, but ([57]):
>
> > "… the target audience of the press is likely to be different and to have a different interest in the proceedings, which will not be satisfied by an anonymised version of the judgment. In the general run of cases there is nothing to stop the press from supplying the more full-blooded account which their readers want".
>
> Cf. ***In re BBC; In re Attorney General's Reference (No.3 of 1999)*** **[2010] 1 AC 145** [25]-[26] (Lord Hope of Craighead) and [56], [66] (Lord Brown of Eaton-under-Heywood).

> [30] None of this means that if there is a sufficient public interest in reporting the proceedings there must necessarily be a sufficient public interest in identifying the individual involved. The identity of those involved may be wholly marginal to the public interest engaged. Thus Lord Reed JSC remarked of the Scottish case ***Devine -v- Secretary of State for Scotland*** (unreported) 22 January 1993, in which soldiers who had been deployed to end a prison siege were allowed to give evidence from behind a screen, that "*their appearance and identities were of such peripheral, if any, relevance to the judicial process that it would have been disproportionate to require their disclosure*": ***A -v- BBC*** **[2015] AC 588** [39]. In other cases, the identity of the person involved may be more central to the point of public interest, but outweighed by the public interest in the administration of justice. This was why publication of the name was prohibited in ***A -v- BBC***. Another example in a rather different context is ***R (C) -v- Secretary of State for Justice (Media Lawyers Association intervening)*** **[2016] 1 WLR 444**, a difficult case involving the disclosure via judicial proceedings of highly personal clinical data concerning psychiatric patients serving sentences of imprisonment, which would have undermined confidential clinical relationships and thereby reduced the efficacy of the system for judicial oversight of the Home Secretary's decisions."

However, when balancing the relevant competing interests against the principle of open justice, Lord Sumption cautioned [23]:

> "[***Campbell v MGN*** **[2004] 2 AC 457** and ***In re S***] are the principal English authorities for an approach to the balancing exercise which is fact-specific rather than being dependent on any *a priori* hierarchy of rights. On some facts, the claimant's article 8 rights may be entitled to very little weight. On some facts, the public interest in the publication in the media may be slight or non-existent. None the less, in deciding what weight to give to the right of the press to publish proceedings in open court, the courts cannot, simply because the issues arise under the heading 'private and family life', part company with principles governing the pre-emptive restraint of media publication which have been accepted by the common law for many years in the cognate areas of contempt of court and defamation, and are reflected in a substantial and consistent body of statute law as well as in the jurisprudence on article 10 of the Human Rights Convention.

35. As explained in ***Khan -v- Khan***, the issue of anonymisation arises frequently in privacy cases, but it can be contrasted with other claims.

> [88] In the area of media and communications law, issues concerning exercise of the Court's jurisdiction to sit in private and to anonymise one or more parties arise most frequently in privacy claims. When parties are anonymised, or hearings take place in private, that is because the Court has been satisfied that it is strictly necessary to do so. Usually, that is because, if the parties were named and the hearing took place in public, there is at least a risk (and in most cases an inevitability) that the Court by its proceedings would destroy that which the Claimant was, by those very proceedings, seeking to protect. That would be to frustrate the administration of justice.

> [89] There are very few privacy claims, in which interim injunctions are sought to prevent disclosure, where the parties are named. That is because, if the parties are named, the Court will inevitably have to deal in any public judgment with the private matters (the disclosure of which the claimant seeks to prevent) at a level of generality to ensure again that that which the claimant is seeking to protect is not destroyed by the proceedings themselves. The most important factor in favour of anonymising one or more of the parties is usually the fact that the Court is better able to explain in a public judgment why an injunction has been granted or refused.
>
> [90] These considerations do not arise in most harassment proceedings. The reason for that is simply that the claim is not usually based upon the protection of private information (the exception is the type of blackmail harassment claim of which [***LJY -v- Persons Unknown*** **[2018] EMLR 19**] and ***ZAM -v- CFW*** **[2013] EMLR 27** are examples (see discussion [39]-[41])). In most harassment claims, the disclosure of private information in open court is simply an incidence of the litigation and that is no different from any other civil case. But, unlike privacy claims, in most harassment claims there is normally no risk that the administration of justice will be frustrated by the proceedings being heard in open court. If a claimant succeeds in a harassment claim and obtains damages and/or an injunction, these fruits are not damaged in any way by publicity of the proceedings. An anonymity order therefore cannot be justified on that basis. If there are discrete pieces of the evidence, that engage significant Article 8 rights, then the way to deal with that is not by blanket anonymisation, but by the sort of targeted measures I have identified in paragraph 85. Put simply, any greater derogation from the principle of open justice is not necessary.

36. In his skeleton argument for the hearing on 11 July 2019, Mr Quinn relied upon ***Kalma -v- African Minerals Ltd*** **[2018] EWHC 120 (QB)**. That was a case in which the claimants sought orders pursuant to CPR 39.2(4) withholding the identities of six witnesses on the basis of fears the witnesses had for their safety were they to be identified.

37. This led him to the submission that there is no public interest in knowing the identities of the First to Ninth Claimants in this case. The public, he argues, will be able fully to understand the issues in this case without knowing their names. That argument could be advanced in a great number of cases that come before the Court. It however fails to recognise that, as a starting point, the open justice principle recognises that there is a public interest in knowing the names of parties and witnesses in all cases.

38. The basis on which Mr Quinn sought anonymity for the individual Claimants shifted somewhat during the hearing. One of the reasons for adjourning the anonymity application on 11 July 2019 was to give the Claimants and opportunity to file evidence in support of their application. At the hearing on 30 July 2019, Mr Quinn suggested that I had 'required' statements to be provided. That is to misunderstand the position. Consistent with the principles I have identified above, it was for the Claimants to justify – by evidence – why an anonymity order was necessary in their case. If I had dealt with the anonymity application on 11 July 2019, it would have been refused for the simple reason that the Claimants had provided no evidence to justify an anonymity order and the case was not the category of case where a refusal of anonymity would frustrate the

administration of justice by destroying that which the Claimants were by the proceedings seeking to protect.

39. Witness statements were provided from each of the individual Claimants. They follow a common structure. Each Claimant explains for how long she has worked at the relevant Spearmint Rhino venue and gives details of the knowledge family and acquaintances have about her work. Some of the Claimants did suggest in their statements that they regarded the fact that they were a performer at Spearmint Rhino was confidential or private information that should not be revealed. For example, AAA explained that, in common with other performers, she had a stage name in order to protect her identity:

> "I have many friends and acquaintances who do not know what I do for a living. If I had to be named as a claimant in this case, I would be devastated at the attention it may bring me. My right to a private life (which I try to keep as private as possible) would be violated. I would not want my reputation damaged in that way as I would certainly suffer a loss of my reputation if anyone could find out what I did for a living. My dancing which was done in private should stay private as should my identity".

40. Reading these witness statements before the hearing, I had gained the impression that the principal basis on which they sought anonymity was the harm that would be caused to them (and their family lives) if they were to be revealed as performers at Spearmint Rhino. That impression seems to have been shared by some of the Defendants as an issue that had been raised at the hearing on 11 July 2019 was the extent to which any of the Claimants had engaged in public protests about having been filmed without their consent (conduct that was said to be inconsistent with the desire to keep private the fact that the individual was a performer at Spearmint Rhino). At the hearing, however, Mr Quinn stated that the Claimants were *not* concerned about being identified as Spearmint Rhino performers. Their concern was that, during the proceedings, details from the secretly recorded footage would come into the public domain.

Decision on Anonymity

41. The Claimants' position is difficult to understand. They seek only an order permitting them to issue the Claim Form anonymising their names (and thereafter for initials to be used in place of their names in the proceedings) but do not seek an order that would prohibit their real names being published or being identified as claimants in the proceedings. I struggle to see what the point of such an order would be in this case. Either there is a justification for withholding the Claimants' names from the public in these proceedings or there is not. If there is not, the Court should not artificially place obstacles in the way of reporting of the case by adopting measures that simply make it more difficult for the media to report information upon which the Court has placed no restriction. Here, the Claimants have stated that they do not seek any restriction on reports of these proceedings that identify that they are the Claimants in the proceedings and are Spearmint Rhino performers. I have not been required to make a decision whether an anonymity order would have been justified on this basis.

42. Mr Quinn's submission was, essentially, that there would be unjustifiable interference with the Claimants' Article 8 rights if details from the footage come into the public domain as a result of the prosecution of the claim on behalf of the individual Claimants.

The short answer to this argument is that it is premature, and it does not justify anonymity. An anonymity order is neither a necessary nor proportionate response to the identified concerns. The Defendants have not served a Defence; indeed, until they are properly served with the Claim Form they are not required to do so. From what I know about the issues in the case, there is at least the prospect that one or more of the Defendants will contend that, to the extent that publication of the footage (or description of its contents) is alleged to be a misuse of private information, then this is justified in the public interest. Whether the fair disposal of that issue in the proceedings or at any trial requires any analysis of the detail of what can be seen in the footage remains to be seen. Whether, for example, there is any dispute between the parties as to whether what is shown on the footage is (or is arguably) a breach of the Operating Licence of the relevant SEV, will only be clear once statements of case have been exchanged. If any issue of what the footage shows, and/or what it amounts to, requires to be resolved at a trial, then the Court has the ability to adopt measures that will properly respect any Article 8 issues that arise. In short, the fact that there *may* be an issue that needs to be addressed later in the proceedings does not justify an order anonymising the individual Claimants now.

Expedition

43. I can state my conclusions shortly. Given the undertakings that have been provided by the Defendants, I do not consider that there is any particular urgency that justifies the Court in advancing the determination of this case at a trial ahead of other litigants whose cases are pending before the Court. Given that the Claimants have not yet managed to serve any of the Defendants with a Claim Form, Mr Quinn is perhaps not in the strongest position to be seeking an order for expedition. He argued that, notwithstanding the undertakings given by the First and Second Defendants, there was a risk of some unauthorised disclosure of the Footage, a risk that would be eliminated if his clients are successful in getting a final order following trial requiring the footage to be deleted or delivered up. He was referring, I think, to the fact that the Footage is held digitally on a computer and that there is always a risk of computers being 'hacked'. I reject this risk as fanciful. It is far too remote a risk to justify accelerating the case management stages of this case and the knock-on effect of delay it would likely occasion to other pending civil claims. The Claimants regard the undertakings provided by the First and Second Defendants as sufficient protection on an interim basis. The case will proceed to a trial (if necessary) through the usual case management phases. I refuse to order expedition.

Anonymity pending appeal

44. Notwithstanding my refusal of the anonymity application, this judgment has been handed down without including the names of the Claimants. That has been necessary to preserve the Claimants' appeal rights. If no appeal is lodged, or if an appeal is unsuccessful, a further copy of this judgment will be issued with the Claimants' names included.