

28 June 2020

Claim No.: QB-2018-006323

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

BETWEEN

JOHN CHRISTOPHER DEPP II

Claimant

and

(1) NEWS GROUP NEWSPAPERS LTD
(2) DAN WOOTTON

Defendants

EIGHTH WITNESS STATEMENT OF JENNY CAMPBELL AFIA

I, Jenny Afia, a Partner in the firm of Schillings, 12 Arthur Street, London EC4R 9AB, solicitors for the Claimant, will say as follows:

1. I am a solicitor of the Senior Courts of England and Wales and a Partner in the firm of Schillings International LLP ("Schillings") of the above address. I have conduct of this matter on behalf of the Claimant.
2. I confirm that save where otherwise appears the facts stated in this witness statement are within my own knowledge and that those facts are true to the best of my knowledge and belief. Where facts are not within my own knowledge, I confirm that they are true to the best of my information and belief and the source of that information is set out.
3. I make this witness statement in support of the Claimant's application pursuant to CPR r.3.9 for relief from sanction, and in particular to respond to further allegations made in the Seventh Witness Statement of Louis Charalambous which was served this afternoon, in response to the

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Claimant's application for relief from sanction, due to be heard tomorrow morning.

4. There is now produced and shown to me a paginated bundle of documents marked "JA8". All references to documents in this statement are to Exhibit JA8 unless otherwise stated.

The audio recording "Argument 2"

5. The Defendants accept that this recording was disclosed to them on 20 February 2020.
6. At the time that the recording was provided to me, and at the point that I signed my First Witness Statement on 21 February 2020, my instructions were that the Claimant had not previously held the recording. There was no intention to mislead the Defendants or the Court. Indeed, the Claimant's US lawyers disclosed the tape in their libel proceedings on 20 February 2020 (Depp Production 009), on the basis that it had just been discovered.
7. I understand from my colleagues who have carried out the disclosure review, which I am ultimately responsible for as the senior partner on the case, the page of the Extraction Report which shows the file name of the recording as "Argument 2" / "20150926163469.m4a" and a reference to "Source: iPhoneRecordings", referred to and exhibited at page 42 of Mr Charalambous' Exhibit LC7, was reviewed as a standalone document on the US e-Discovery platform. As an isolated document, a pdf of an Extraction Report did not appear to contain any relevant information to be disclosed. It was not "*purposefully removed*", as Mr Charalambous asserts. It was never attached to the other documents in the Extraction Report; all of the documents are uploaded and reviewed as individual documents within Depp Production 009. The hyperlink in the pdf to the relevant audio recording is inactive.

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8. Mr Charalambous says that it should have been apparent from the pdf that the Court had been misled as to the provenance of the recording. As an isolated document uploaded onto the e-Discover platform, it was not clear. Each extraction report is a standalone document on that platform. The tag at the bottom of the page reads "DEPP00008169", which is a single page document. I accept that when reviewed as a page within a 505-page document, in the form that Mr Charalambous has received it from Ms Heard's US Counsel, the reference to the recording is put into proper context.
9. On further review of this evidence that states the recording emanated from an iPhone, it has become clear that it was not correct to say that it was not in the Claimant's possession.
10. This was not a conscious intention to withhold the recording, or to be untruthful about its provenance. That argument does not stand up as the recording is one that is indisputably helpful to the Claimant. His US representatives would have undoubtedly wanted to rely on it much earlier, had it been picked up.
11. I understand that at the time of the Claimant's extraction of his devices, the data was disclosed in the US libel proceedings in quite a crude "data dump". Individual recordings were not properly analysed, they were just disclosed, as the Claimant's instructions were (and remain) that he had nothing to hide. It was not until early this year that it was discovered and disclosed in both the English and the US libel proceedings. In effect, this means that it was disclosed for the second time in the US proceedings, the first being incorporated in the original "data dump" when the devices were first extracted.

Text messages

12. Mr Charalambous says at paragraph 13 of his statement that the
"primary breach of the unless order with which the Court was concerned

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at the hearing on 25 June 2020 was the Claimant's failure to disclose the text messages referred to as "the Australia drug texts". In fact, the Defendants did not raise any other breach at the hearing, and this was the only issue the Court was concerned with.

13. At paragraph 15 and 18, Mr Charalambous presents two further text messages that he says fall within CPR 31.6 and should have been disclosed. The text message at paragraph 16 from Mr David Heard was already disclosed and is in the trial bundle within the composite text message schedule agreed between the parties prior to our instruction.
14. The Defendants are aware that the Claimant has many thousands of text messages. They are also aware that the Claimant signed a N265 disclosure statement on 9 January 2020 in which it is stated that keyword search terms were applied to messages taken from the Claimant's mobile device and that of others. Those keywords do not include the words "fight", "hit" or "control". The text messages referred to therefore were not returned as a result of the keywords searched at the time and were not disclosed as a result of that exercise. Again, there was no deliberate attempt to withhold documents; this was the exercise set out by the Claimant's solicitors in January 2020 to which the Defendants are aware. I enclose the Claimant's N265 form at pages 1 to 6 of Exhibit JA8.
15. These texts will be formally disclosed by the Claimant following the hand down of the judgment, together with the previous messages referred to at the hearing on 25 June 2020.

Emails between US lawyers

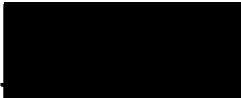
16. Mr Charalambous refers to an email from the Claimant's US lawyer, Ben Chew, and Ms Heard's new US lawyer on 25 June 2020.

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17. This matter has been dealt with via correspondence with the Defendants' solicitors this evening. Our letter is enclosed at page 7 to 8 of Exhibit JA8. There has been no attempt by the Claimant to prevent the Defendants obtaining documents by Ms Heard, even if the provision of those documents is apparently in breach of US procedural law.

STATEMENT OF TRUTH

I believe that the facts stated in this witness statement are true.

Signed..........

JENNY CAMPBELL AFIA

Dated: 28 June 2020

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Ref: JA/JR/VA/D0185/001

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