Neutral Citation Number: [2010] EWCA Civ 1315

Case No: B4/2010/0540

IN THE HIGH COURT OF JUSTICE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM
The Honourable Mrs Justice Baron
FD06D03137

Royal Courts of Justice
Strand, London, WC2A 2LL
Date: 19/11/2010

Before :
THE RIGHT HONOURABLE LORD JUSTICE THORPE
LORD JUSTICE STANLEY BURNTON
and
LORD JUSTICE TOMLINSON

- -

Between :

	Sally Ann Lykiardopulo	**Appellant**
	- and -	
	Panaghis Nicholas Fotis Lykiardopulo	**1st Respondent**
	- and -	
	Michael Lykiardopulo	**Interested Party**

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Richard Spearman QC and **Tim Bishop** (instructed by **Hughes Fowler Carruthers LLP)** for the Appellant
Desmond Browne QC, Adam Wolanski and Stewart Leech (instructed by **Atkins Thomson** for the 1st Respondent
David Balcombe QC (instructed by **Manches**) for the **Interested Party**

Hearing date: Thursday 7th October 2010

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Judgment

LORD JUSTICE THORPE :

The Issue

1 This appeal raises a narrow point: how should a Family Division judge decide whether or not to publish an ancillary relief judgment at the conclusion of a trial during which one of the parties conspired to present a perjured case.

2 The question arises out of ancillary relief proceedings between Sally Ann Lykiardopulo and Panaghis Nicholas Fotis Lykiardopulo. The proceedings culminated in a ten day trial before Baron J which commenced on 26th January 2009. She handed down her judgment on 13th February 2009.

3 In her judgment she found that the husband, his brother and another influential family member had conspired to manufacture, for the purposes of the trial, documents which, on their face, were written in 2005 in order to terminate the husband's involvement with the family business and to divest himself of his interest therein.

4 The judge's findings are grave given that the Lykiardopulo family are amongst the most prestigious and ancient of Greek ship owning families. Having rejected the false case presented by the family, Baron J ordered the husband to transfer to the wife assets and cash amounting to some £20 million.

Development of the Issue

5. It is instructive to trace the development of the issue as to whether or not her judgment should be made public.

6. On 26th February, junior counsel appeared before the judge to deal with the form of the order and some other outstanding issues. Mr Stewart Leech for the husband submitted: "There is one matter of substance…which is the publication of the judgment."

7. He continued that it would be a matter of great significance to his client if a published judgment identified the parties.

8. Baron J responded: "I would never do that."

9. Mr Leech informed the judge that Mr Bishop, for the wife, was seeking a report identifying the parties. This exchange ensued:

> "**Baron J**: What is the point of that Mr Bishop?
>
> **Mr Bishop**: There is a very strong public policy reason to do that, My Lady, this is the worst case of non-disclosure ever before the English courts.
>
> **Baron J**: I doubt it.

> **Mr Bishop**: It unquestionably is, My Lady. It is a fraud involving £46.5 million to £100 million, it is an unrepentant fraud, it's a matter where your Ladyship has found that there has been an attempt to involve others in the perversion of justice. There are very strong public policy reasons.
>
> **Baron J**: It is nothing like the case that I dealt with a year ago that has been published on an anonymised basis. That was far worse than this and I do not see at first blush, just so that you can think about it, that what you said is anything other than simply name and shame, and I do not see the point of it. There is a family involved in here, there are children involved. It just is ridiculous. "

10. On that date the payment of the lump sum was still in the air. The judge surmised that Mr Bishop's position might be "part of a tactic in order to make Mr Lykiardopulo pay up." The husband's proposals were awaited and all issues were adjourned to a further hearing on 16th March.

11. In the interim, letters passed between solicitors. On 4th March the husband's solicitors offered instalment payments to be completed by 31st March 2010. On 10th March the wife's solicitors refused the offer. However, on 12th March the wife's solicitors gave notice of the two issues upon which they would seek rulings at the adjourned hearing. In response to notice from the husband's solicitors that they sought the court's ruling on the publication or reporting of the judgment the wife's solicitors wrote: "We do not seek publication of the judgment in either an anonymised or unanonymised form."

12. On 16th March, during discussion as to dates by which money could be found, Mr Leech said: "Matters have been facilitated by the concession that the wife is not pressing your Ladyship to order a public judgment but that concession only came on Friday."

13. To that the judge made this significant response: "As yet. I might take it on board myself if I felt that there was not assistance with the enforcement of my order to consider whether this should be published or not. I have made an order. I expect that order to be obeyed. If I do not feel that this family are cooperating with the enforcement of this order, I might find of my own motion that it was part of my duty that the public should know how this family have operated. I do not want to do that, because I do not want to ruin their business. I am sure it would have a long term effect, potentially, on their business. Nevertheless, I have made pretty strong findings in this case and I want my order obeyed."

14. Mr Leech then enquired whether submissions were required on the public judgment point to which the judge responded that it was going "into the long grass, but it, no doubt, will resuscitate itself if things do not go smoothly."

15. A further hearing was necessary on 3rd April at which Mr Leech made plain that the threat of public reporting was causing stress to the husband and his brother.

16. These exchanges demonstrate that public reporting for public policy reasons suggested by Mr Bishop on 26th February had slid into public reporting as an aid to enforcement. It is reasonable to infer that, having heard the judge's observations the wife's advisers felt that they were freed of their concession. For, when the judgment had still not been satisfied by the hearing on 25th September, Mr Mostyn QC, leading Mr Bishop referred to the judge's observations transcribed on 16th March thus: "…and we have reacted to that particular observation and the truth that the husband has not shown any assistance, any meaningful assistance, with implementation since you uttered those words in circumstances where we can confidently conclude he is doing everything in his power to avoid payment. Now it is interesting, My Lady, how fearful the husband is of publication and he is prepared to pay for (specialist counsel) to be here to try and prevent it."

17. The judge then ruled that the publication issue should be adjourned to a future date and that skeleton arguments should be exchanged in advance.

The Hearing Below

18. That hearing took place on 21st December 2009. In preparation the husband filed a statement in which he responded to the wife's application for public reporting. He suggested that the children of the family were mortified at the prospect of publication. In paragraph 8 he stated: "I can confirm that, as the judge noted during the hearings earlier this year, the effect of publication would be extremely damaging to the family business. There is much information in the judgment of considerable commercial sensitivity. There is no doubt that publicity would cause a great many difficulties, which may well ultimately adversely affect my children financially."

19. As to himself he emphasised that he was not a public figure, had never courted publicity and was not "a celebrity of any sort, either in the UK or in Greece."

20. Finally he emphasised that he had been dogged by a health condition for some years and that "the effect of having my private affairs exposed to media scrutiny would be to exacerbate my condition yet further."

21. In her reply statement, sworn on the day of the hearing, the wife explained her motivation thus:

> "I have been in two minds about making this application and have only done so because of his shocking attempts to cheat me by his sustained lies to the court by complying with the judgment promptly and in full (sic). The first respondent has shown a cynical approach to the question of compliance with the judgment and the court order…I now firmly believe it to be appropriate for the first respondent's litigation misconduct to be publicly known. This is principally because I feel it to be most unfair for his reputation to be preserved having behaved (and continuing to behave) so very badly towards me."

22. At the hearing on 21st December Mr Spearman QC led for the wife and Mr Browne QC for the husband. The judge reserved and on the 3rd February 2010, handed down a characteristically thorough judgment in which she dealt fully with the context in which she exercised her discretion.

23. She traced the origins of the rule of privacy in ancillary relief proceedings and its justification. She recorded the significant rule changes which came into effect on 27th April 2009 opening ancillary relief proceedings to accredited journalists. She cited the leading authorities concerning Articles 6, 8 and 10 of the European Convention of Human Rights which had to be applied to the issue before her. Finally in paragraphs 49 to 58 she struck the balance and announced her conclusion that the judgment should be reported after anonymisation. This was the middle path between public reporting sought by the wife and no reporting sought by the husband and his brother.

The Appeal

24. On 5th March the wife filed her appellant's notice and on 26th April, Lord Justice Wilson granted permission to appeal.

25. In preparation for the hearing of the appeal, Mr Spearman QC and Mr Bishop for the wife, Mr Browne QC, leading Mr Wolanski and Mr Leech for the husband and Mr Balcombe Q.C and Mr Sherborne for the husband's brother all filed skilful skeleton arguments. Thus it emerges that between 26th February 2009 and October 2010 a great deal of legal expertise, no doubt at great cost to the parties, has been devoted to the struggle to establish either full public scrutiny or no public scrutiny of the outcome of the hard fought ancillary relief proceedings. The effort and expense hardly seems proportionate. I have groped to understand what has driven the fight. Clearly the answer is not to be found in the sworn statements of the parties. I conclude that the wife's motivation has been to use any available tactic or weapon to recover the unpaid balance of her award, about £12 million. For the husband and his brother, I conclude that they have been driven partly by an understandable desire to cloak their misconduct and partly by revulsion at the potential loss of the traditional privacy of matters affecting their shipping business.

Submissions

26. Mr Spearman asks what in principle should be the approach of the court to a deliberate presentation of a dishonest case? Second, how does that approach fit in with the privacy regimes operating in other civil proceedings? He submits that, whilst the court has the power to refer the criminality to the Crown Prosecution Service, it is very unlikely that a prosecution would result. Publication of the court's findings within the judgment would more effectively support the administration of justice. Those who lie to the court are entitled to no protection. Their rights under Article 6 and Article 8 of the Convention are simply not engaged.

27. Mr Browne responds that the business interests of the family are entitled to Convention protection. The principal judgment contained detailed information about the family's commercial activities. Further, the risk of injury to the husband's health had to be safeguarded. If there is a cautionary tale for the guidance of future litigants it can be told without identifying the family. If the threat of a public report had any bearing on the time table for instalment payments that was only in spring 2009 and by December had become what the judge had described as "a bolt that had been shot."

28. Mr Browne emphasised the implied undertaking given in return for the duty of full and frank disclosure. Breach of that duty does not automatically destroy confidentiality. Baron J was plainly within the ambit of her discretion in preventing identification in order to uphold the implied undertaking and/or the Article 8 rights of the families. In the light of the parties' expectations, based on the law and practice as it was before February 2009, it would be disproportionate to report publicly to satisfy the wife's asserted sense of fairness.

29. Mr Balcombe focused his submission on:

i) The nature of the exercise conducted by the judge.

ii) The pact between the court and the parties subject to the duty of disclosure.

iii) The undesirable consequences of introducing a practice of public reporting in all or even significant misconduct cases.

Conclusion

30. As Baron J carefully recorded, the importance of open justice must never be diminished. The practice of privacy has grown up in the Family Division to protect the welfare of children, to deny an inspection that is only prurient and to respect the fact that the financial affairs of any family are essentially private and not a matter of legitimate public interest.

31. The practice in this jurisdiction is compliant with Article 6 rights as is established by the decision of the Strasbourg Court in *B v The United Kingdom* [2002] EHRR 19 which sanctions not only the private hearing but also the private judgment.

32. Recently the campaign for open justice in Children Act proceedings has culminated in the rule changes recorded by Baron J. However this debate has not focused on ancillary relief proceedings. Public interest has never been in the administration of justice in this special field. It is easier to identify public curiosity concerning the lives and fortunes of either the famous or the rich.

33. In this field a distinction can be validly drawn between the privacy of the hearing and the privacy of the judgment. A judgment considering a point of law or practice has generally been released to the specialist series of law reports. There have been many first instance judgments so reported in addition to appellate decisions selected by the reporters. Without this collaboration between the judiciary and the reports the evolution of ancillary relief law and practice by the judges would hardly have been possible.

34. If a case in advance and during its course has generated press interest and speculation the judge may release the judgment or a summary to the press. In such cases it is questionable what is gained by anonymisation. The identity of the family has been the generator.

35. The conduct of the parties during their relationship is very seldom an issue in the ancillary relief case. Thus seldom does the judge investigate and pronounce upon the history of the relationship and the causes of its failure.

36. However ancillary relief proceedings are marked by features absent in other civil proceedings:

i) The proceedings are quasi-inquisitorial. The judge must be satisfied that he has, or at least that he has sought, all the information he needs to discharge the duty imposed on him to find the fairest solution.

ii) The parties owe the court a duty, a duty of full, frank and clear disclosure. The duty is absolute.

iii) Sadly the duty is as much breached as observed. The payer's sense of the obligation is distorted by the emotions aroused by the payee. Breaches take many forms.

iv) Breach by omission is commonplace. A bank account or some other asset is not declared. That tactic gives rise to the counter, filching and copying the contents of desk, briefcase or computer (now proscribed by the decision of this court in *Tchenguiz v Imerman* [2010] EWCA Civ 908, the effects of which have yet to be worked out).

37. Breaches by commission are more serious. An omission once detected can be excused as an oversight. A breach by commission is plain perjury and thus risks serious consequences. The present case is a good example. The conspiracy within the family to protect the family business resulted in the presentation to the court of forged and back-dated documents.

38. What has been, and what should be, the judicial response to unearthing such a fraud on the court? Each case will depend on its particular context and the degree of iniquity. Thus a response of general application is hardly possible.

39. The judge may pass the papers to the Crown Prosecution Service. However many considerations will point to the impracticality of a criminal trial.

40. The judge may release the judgment for publication in the hope that public scrutiny and condemnation may bring shame to the offender and solace to the offended. Mr Justice Munby publicly recorded his judgment in the case of *Al Khatib v Masry* [2002] 1 FLR 1053.
41. I am not aware of judges having published ancillary relief judgments in the past with that objective. Judgments recording as part of the narrative deliberate breach of the duty have generally been anonymised which is a clear sign that naming and shaming was not the objective. As instances of this practice Mr Balcombe cited the cases of *J v J* [2004] I FLR 1042; *WF v NF* & *Ors* [2007] EWHC 3050 (Fam) and *K v K* [2005] EWHC 1070 (Fam).
42. It is suggested that publication in such cases should be encouraged for policy reasons: the fear of future publication would or might deter litigants from iniquity. That objective would not be achieved by anonymised publication.

43. The present appeal raises questions as to the purpose and the practice of anonymising judgments. In the public debate surrounding the move towards more open family justice, anonymisation offers the opportunity to scrutinize the operation of the family justice system whilst protecting the children and families directly involved.

44. However for those who are much in the public eye anonymising a judgment achieves nothing. In an extreme case the notion is simply absurd. By way of example the choice for Bennett J in the case of *McCartney* was either to sanction or to refuse publication.

45. An anonymised judgment ordinarily flows from the classic direction that the court gives to the press: any report of this case must not reveal the identities of the children or of the parties. Once given, the transcriber will substitute initials for names (witnesses as well as parties) and additionally the identity of counsel and solicitors may be withheld if those details would point to a locality.

46. What Baron J had in mind in ordering anonymisation was not clearly stated nor was it subsequently investigated.

47. Paragraph 1 of her order of 2nd February directs anonymisation.

48. Paragraph 2 sets out deadlines to be met with provision for a short appointment before the judge in the event of dissent. That last stage has never been reached since the application for permission to appeal checked the process of anonymisation.

49. However the first draft was completed by Mr Bishop within the deadline date of 31st March 2010. It goes to unprecedented lengths to disguise the family. The original family seat is shifted from Cephalonia to St Petersburg. Many anomalies emerge in consequence. This product is not an anonymisation of the judgment but a falsification.

50. It was suggested that the judgment of Mostyn J in *FZ v SZ and Others* [2010] EWHC 1630 (Fam) delivered on 5th July 2010 vindicates Mr Bishop's originality. I disagree. Mostyn J labelled the country at the heart of his case "Zenda". He might as well have left a blank in the text or referred to the country as "Z". It is anonymisation and not falsification precisely because "Zenda" does not exist.

51. I cannot approve counsel's ingenuity, however well intentioned. Anonymisation has very clear limits which do not extend to falsification.

52. Redaction is an alternative which the judge will consider when balancing the case for publication against the protection of privacy. Redaction is equally apposite whether the primary decision is for anonymised or public reporting. In most judgments there will be much detail capable of redaction without losing the essential narrative, the findings and the conclusions. In the present case it is common ground that two sensitive areas can easily be redacted. They are irrelevant to the account of the family's business and to the litigation conspiracy.

53. From these generalisations I turn to the judgment of Baron J. As I have said it is a model of conscientious and clear review of the law and its application to the facts. Particularly impressive is her review of the effect of the rule changes introduced on 27th April 2009. With great care and thoroughness she identifies the articles of the European Convention of Human Rights that were engaged and then balances them to arrive at her final conclusion.

54. I emphasise that:

i) The outcome resulted from the exercise of either a broad discretion or a proportionate judgment.

ii) Having heard oral evidence and submissions over the course of a ten day trial, albeit some 12 months earlier, no one could be in a better position than Baron J to make that judgment.

iii) The conclusion which she reached accorded with the practice of the Division. The number of ancillary relief judgments published without an anonymisation direction has been tiny in recent times.

iv) Nevertheless, her reasoning must be scrutinised.

55. Her preference for the middle way has a three fold rationalisation.

56. First she concluded that publication without the shield of anonymity would damage the commercial interests of the miscreants and their wider family.

57. In paragraph 44 she said: "A general submission was made that the business would be affected adversely if the judgment were published in full – presumably as a result of the sensitive information contained within it. The Husband did not produce any specific evidence in support of this contention. Given my comprehensive knowledge of the case and, despite this lack of evidence, I accept the general proposition that the business would be adversely affected if details were available to the public at large including business rivals. I also take judicial notice of the general market conditions in the light of the current recession which have been particularly apparent in Greece."

58. Then in paragraph 46 she said:

> "Mr Balcombe QC attended before me as an 'interested party' to make submissions as to why the judgment should not be published in an unanonymised form (if at all). On behalf of his client he was concerned, in particular, that the business would suffer. Although, as I have found, these brothers behaved disgracefully so far as the Wife's claim was concerned I have no evidence to suggest that their business dealings in the world market place are other than honest. In this sense I do not believe that I have a duty to protect members of the public at large as a result of the perjured evidence that they placed before me."

59. In paragraph 52 she said: "I accept that the knowledge, if published, that the Husband and his brother lied and conspired in an attempt to deceive the Court, might cause them future harm. But that would be the truth as I perceived it and so I am not minded to protect them from the consequences of their deliberate lies. It would probably reflect upon the relevant children in the sense that their father and uncle would be branded in this way. However, many children have an unsatisfactory parent whose lives are exposed in the press. Courts do not offer them protection and so I do not consider that it is my role to do so. Accordingly, I do not consider this point weighs heavily in the balancing exercise."

60. In paragraph 53 she said: "In the final analysis I am convinced that the real harm which would transpire if this judgment were published on an unanonymised basis relates to the family business. Although the submissions in support of this contention were in general terms, I am clear on the basis of my comprehensive knowledge of this case that such an outcome is obvious. Complete information of the kind set out in my Judgment would, in my view, be likely to impact badly upon the business. Such financial harm would affect the Husband, his brother, his wider family and potentially, it could affect the next generation as history would suggest that the boys (at the very least) tend to join the family business. More importantly, I believe that it would probably affect the Wife's ability to obtain the £12.26 million which she is owed. It is accepted that if the prospect of publicity could ever have been used as a tool to aid enforcement, to coin the phrase used by Mr Mostyn QC, that 'bolt had been shot'. As such I need to make no finding as to whether that could ever have been regarded as a legitimate aim."

61. Second, Baron J foresaw an unwarranted impact on the husband's well-being.

62. In paragraph 55 she said:

> "Of course, I accept that neither the Husband nor his brother will be specifically castigated as liars in the public arena. But I remain conscious that the Husband has continuing genuine health problems. I do not believe that the added stress of public censure would assist his recovery. More importantly, I do not consider that it would assist the Wife to recover her just award pursuant to my decision."

63. Third, the judge was influenced to her conclusion by what I will call the "Spencer Factor". Having referred to the decision of Munby J in the case of *Spencer v Spencer* [2009] 2FLR 1418, in paragraph 17 she said: "I must state that, for myself, I have some disquiet that, as a result of Munby J's decision, the Earl and Countess Spencer did not continue with their case before the Court. No one can speculate as to whether the resulting settlement amounted to a denial of justice – at least for one party. I understand his decision has sparked a general debate within the profession as to whether, in all the circumstances, parties will in future be better served by private forms of dispute resolution without recourse to the Courts at least after the FDR procedure (which remains confidential) has been completed."

64. This is the foundation for the conclusion of her penultimate paragraph as follows: "To my mind, the prospect of parties feeling obliged to attend before external arbitrators in order to avoid the potential of automatic disclosure of private matters in the press, deserves to be weighed in the strategic balance. This is another factor which weighs in favour of anonymising the judgment."

65. These citations illustrate that the principal consideration for the judge was the protection of the commercial interests of the family. As the judge acknowledged, that consideration had no evidential foundation other than the general assertion in the husband's statement of 17th December which I have already cited. To my mind, without an evidential foundation, the assumption of commercial harm is implausible. The husband was the first member of his family ever to marry out of the Greek community and the closing of ranks against the wife would be regarded by many in that community more as natural than iniquitous. The commercial standing of the family can hardly be threatened by a public judgment. Litigation misconduct in a justice system that many other jurisdictions regard as fundamentally unfair to husbands, would have no impact on their reputation for fair dealing in business.

66. In so far as anything in the judgment may be said to be commercially sensitive, then it can simply be redacted.

67. Nor do I see that the well publicised woes of the Greek economy have the least bearing on the choice that faced the judge. The family business is truly international and depends upon world shipping demand rather than the domestic economy.

68. As to the husband's health, again the evidential base is thin. The medical report before the judge was from the husband's general practitioner and unspecific. A recent update from the same source, produced before us, recorded the involvement of a consultant. At a minimum a report from a consultant should have been procured if this limb were to sustain the weight of the judge's conclusion.

69. If there be a "Spencer" factor it stems from the reaction of one litigant to the rule change. There is no evidence, and probably can be no evidence, of any wider effect. In any event, I see no public policy objection to parties opting for an arbitrator or what is now known as "private judging". Resolution have presented a strong case for the introduction of binding arbitration in ancillary relief. The abstraction of cases from the family justice system, whether for alternative dispute resolution, collaborative practice or non-binding arbitration is generally to be welcomed.

70. The desire of the children of the family for privacy weighs little since it was so little evidenced. There was nothing but a report from the husband which was contested by the wife.

71. Although in her judgment the judge put aside any consideration of publication as an aid to enforcement (it being a bolt that had been shot) it would be naïve not to see it as the driving force of this expensive satellite litigation. The judge spoke her mind on 16th March and I cannot believe that the wife would have fought so hard for a public judgment had the husband's proposals for instalment payments been acceptable.

72. Should public judgment or the threat of public judgment be used as an aid to enforcement? I think not. There are statutory and other remedies both for enforcement within the jurisdiction, enforcement within Europe and enforcement worldwide. For European enforcement I recognise a distinction is

drawn between maintenance orders and orders encompassing the property consequences of divorce. Nevertheless the question of publication should, in my judgment, be kept quite separate from questions of enforcement.

73. It follows that I reluctantly conclude that the judge erred in placing unwarranted weight on the risk of future harm to the family's old established business were the family's perjury in ancillary relief proceedings published. This court is therefore at liberty to exercise an independent discretion. I believe that the true choice lies between the outcome advocated for the wife and the outcome advocated for the husband. Either there should be no report or there should be a public judgment. I favour the latter. However, the judgment must be redacted to protect the privacy of the husband and the family wherever that protection can be given without reducing or veiling the scale of their litigation misconduct. If this signals a shift in the practice in cases in which the judge has found significant breach of the duty by commission then I believe that the shift is both principled and practical. Anonymisation, unlike redaction, is not an easy tool whoever wields it.

74. For those reasons I would allow the appeal and strike out the provisions for anonymisation.

Lord Justice Stanley Burnton :

75. I agree that the appeal should be allowed for the reasons given by Thorpe LJ. I add a few words of my own.

76. Parties to a matrimonial dispute who bring before the Court the facts and documents relating to their financial affairs may in general be assured that the confidentiality of that information will be respected. They are required by the Court to produce the information and documents, and it is a general principle, applicable to both civil and family proceedings, that confidential information produced by those who are compelled to do so will remain so unless and until it passes into the public domain. That confidence will in an appropriate case be protected by the anonymisation of any reported judgment.

77. Mr Balcombe submitted that the protection of this confidence is the result of a pact between the litigant and the court. That may be a helpful description of the principle. But if so, the Husband and the Interested Party did not keep to their part of the pact. In matrimonial ancillary proceedings, the obligation of the parties is to disclose the facts regarding their finances. In this case, what was put forward by the Husband and the Interested Party was, in substance, not the facts but fiction. The judge found that they had both sought to mislead the court, to the extent of producing and relying on documents that had not been sent on the dates they purported to bear, and which they testified had been sent and received. She said: "The Husband was civil, polite and likeable but he was untruthful and the only reason for his obfuscation was his need to conceal his true worth."

78. Of the Interested Party, the judge said:

> "Michael gave me clear and very precise evidence when it suited but was vague when it did not. I am absolutely clear that he knew all about the business and had full details about Sigma, he just chose to disguise and complicate matters because he did not want the truth to emerge.
>
> I am quite sure that his actions were motivated by what he considers is good for the Lykiardopulo family. In the final analysis he was a charming but unreliable witness who was prepared to be untruthful in order to support his brother's cause."

79. I start from the premise that, as Article 6 requires, justice should be seen to be done, and in general the judgment of the court should be public unless there is good reason for it not to be published or for the identities of the parties not to be disclosed. Litigants have a right to respect for their private life under Article 8, but that right is qualified and in many, indeed most, cases the interests of justice, and of justice being seen to be done, require facts that would otherwise remain private to be made public in a judgment. The general practice of the Family Division is for judgments in ancillary relief cases not to be published, or if published to be anonymised. That is done out of respect for the private life of the litigants and in order to promote full and frank disclosure, and because the information in question has been provided under compulsion.

80. However, different considerations apply where the information and documents provided by a litigant are false. That litigant has no entitlement to confidentiality in respect of that information or those documents. They do not evidence his private life. In general, there is no good reason why his conduct should not be public. In such a case, the court may order publication of a judgment without anonymisation, not as a sanction or punishment, but because there is no right to confidentiality in relation to that conduct.

81. In the present case, in my judgment there is no good reason for anonymity. There is and was before the judge no evidence justifying her assumption that publication of the judgment would damage the shipping business of which the Husband was found to have a half share. The evidence of potential injury to his health was and is unsatisfactory and inadequate.

82. I have read in draft the judgment of Tomlinson LJ, with which I also agree.

83. Finally, I comment on the process of anonymisation that was attempted in this case. In order to disguise the parties, their nationalities and locations were changed. Greeks became Russians; Cephalonia became St Petersburg. This was not anonymisation as provided for by a court order such as that made by the judge. It went beyond anonymisation and involved the creation of a work of fiction.

Lord Justice Tomlinson:

84. I agree with both judgments.

85. As Thorpe LJ has set out, after handing down her main judgment in February 2009 the judge expressed her confidence that publication of her "pretty strong findings" would potentially have a long-term ruinous effect on the family business. Indeed, when she revisited this aspect in her judgment of February 2010, she regarded this outcome as "obvious". Nonetheless, the judge indicated that she might, of her own motion, publish her judgment if she felt that "the family" was not co-operating with enforcement of the monetary judgment against the husband in favour of the wife. I think that the judge was unwise to give this indication. In my view the question whether the judgment should be published was one to be resolved having regard to its content and to the conduct of the parties at trial.

86. However I also consider that the judge's premise was in any event unsound.

87. First, leaving aside litigation involving well-known public figures or celebrities, it is I think unrealistic to assume that the revelation of dishonesty or other misconduct in the course of the litigation of a private dispute, particularly a matrimonial dispute, will necessarily attract any great interest from those not immediately affected by the outcome. I agree that dishonesty is not ordinarily entitled to confidentiality, but that is a different matter.

88. Second, the relevant business here is a shipping business, which at the time of the judgment involved the international trading of nine large tankers and eleven bulk carriers. The suggestion that the continued successful trading of these vessels will be affected by disclosure that two of the principal members of the owning family have been found to have attempted to mislead a Family Court in London in proceedings concerned with the question of ancillary relief to be awarded to the former wife of one of them is, in my view, fanciful.

89. There was a faint suggestion that, quite apart from the description of the misconduct in the litigation, the judgment contains information which is commercially sensitive, which competitors would be likely to exploit to the disadvantage of the brothers' business. I agree with Thorpe LJ that any genuinely commercially sensitive material in the judgment can simply be redacted. I would however urge the judge to be robust in that regard, and it is important that the process of redaction should not itself lead to further protracted litigation. I have struggled to

discern anything in the judgment which is commercially sensitive as opposed to being material which the husband and his brother would prefer is not generally known.

90. The information contained in the judgment about the business is necessarily at a very high level of generality. Much of it, such as the value of the vessels and the circumstance that each is owned by a one-ship company, is either within the public domain or is quite unremarkable. True there is some information about the level of borrowings, which the judge did not accept is necessarily accurate, but this will be of little interest or value to competitors. In the absence of any proper evidence the judge drew the inference that the husband and his brother each had a fifty per cent beneficial interest in the net value of the vessels. This was an entirely reasonable inference for the judge to draw for the purpose of these proceedings and for relevant purposes it is binding as between the parties. It is however unlikely to be of any interest or effect beyond the confines of these proceedings. Moreover the judge expressly recognised, at paragraphs 128 and 129 of her main judgment, that her conclusion in this regard might well in fact be wrong, as there were aspects of the ownership structure which she could not "begin to unravel". That was in my view a very realistic observation. It will come as no surprise to anyone to learn that senior members of the Lykiardopulo family, active or at one time active in the management of the family shipping business, enjoy a direct or indirect beneficial interest in the vessels whose legal ownership is vested in a series of one-ship companies.