

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

MEDIA AND COMMUNICATIONS LIST

B E T W E E N:

(1) ANDREW KEITH WAIN
(2) JULIE KELLY

Claimants

-and-

CHANNEL 5 BROADCASTING LIMITED

Defendant

STATEMENT IN OPEN COURT

Alex Cochrane, Hamlins LLP, Solicitor for the Claimants

1. My Lord/Lady, in this action for misuse of private information, I appear on behalf of the Claimants, Mr Andrew Keith Wain and Ms Julie Kelly. My friend, Mr. Tim James-Matthews, appears on behalf of the Defendant, Channel 5 Broadcasting Limited.
2. The Claimants are private individuals.
3. The Defendant is a national broadcaster which broadcasts Channel 5, and also 5HD, 5 + 1, Spike, 5Star and 5USA. It also owns and operates My5; a free video on-demand internet service via which it makes selected programmes available to view.
4. In September 2020, the Claimants issued proceedings against the Defendant for the misuse of their private information in respect of the filming, making and multiple broadcasts from 2017 until late 2020 of an episode of the television programme *'Can't Pay? We'll Take it Away!'* by the Defendant which showed the Claimants in their home in a state of considerable distress. The Claimants sought an injunction restraining the Defendant from further broadcasting the episode complained of, or any similar broadcasts in which they are featured, and a payment in damages for the misuse of their private information.

5. The relevant background to the dispute is as follows. In 2002, Mr Wain borrowed a sum of money from a private individual to invest in a new business. Unfortunately, the business failed and Mr Wain was unable to repay the money to the individual, who subsequently brought a claim against Mr Wain in the County Court obtaining a judgment against him in January 2012. However, the individual subsequently agreed not to press Mr Wain for payment of the sum owed.
6. More than five years later, and without warning, on 11 May 2017 two High Court Enforcement Agents (“HCEAs”) attended the home Mr Wain shared with Ms Kelly to enforce the debt. Mr Wain owed the debt in issue. Ms Kelly, the second Claimant, did not owe the debt. The enforcement proceedings were not against her.
7. A film crew was in attendance with the HCEAs. Initially only Mr Wain was present. He made it clear that the film crew was not to enter his home or to film him or Ms Kelly. The film crew agreed not to enter the property. They knew from Mr Wain’s refusal to permit them entry that he did not want them to film him, the inside of the home he shared with Ms Kelly or what took place in the home.
8. Ms Kelly then returned home, by which time the film crew had withdrawn to the pavement at the end of the drive. The film crew remained there throughout the time the HCEAs were in attendance.
9. However, the HCEAs wore bodycams and radio microphones. They were recording video footage and audio of what was taking place in the Claimants' home. The video and audio recordings obtained in this way were then included in the programme. The section of the programme that featured Mr Wain and Ms Kelly was nearly wholly comprised of recordings made in this way.
10. The film that was recorded by the HCEAs was then edited and incorporated into an episode of Can’t Pay (Series 5 Episode 16), which also included a limited amount of film obtained by the film crew. The episode which depicted the Claimants was first broadcast by Channel 5 on 6 September 2017.
11. The Defendant has confirmed in its Defence that the programme has been broadcast to over 2.5 million people in a form in which the Claimants' faces were shown, and to a further 4.2 million people in a form in which the Claimants' faces were blurred and their names removed.
12. The broadcast of the programme has caused the Claimants immense upset and distress. The Claimants’ case is that the programme wrongly revealed matters that were private to them which took place in their home. They are both very private individuals and they live in a

small community and word soon spread about the programme amongst people they know through work and socially. It is the Claimants' case that the filming of them within their own home and subsequent publication of the private information obtained in that way to 6.7 million people amounted to a grave misuse of their private information.

13. The Defendant has served a Defence denying the Claimants' case but I am pleased to report that the parties have been able to resolve their dispute by agreement. The Claimants have accepted an offer made by the Defendant to resolve their claim on terms which involve the Defendant agreeing to pay substantial damages to the Claimants as well as their reasonable legal costs of bringing the claim. The Defendant has also undertaken not to broadcast the programme again, or to make it available via the internet. It has also agreed to join in this statement to apologise to the Claimants publicly for the considerable distress caused to them by the programme.

Mr. Tim James-Matthews, Counsel for the Defendant

14. My Lord/Lady, it is the Defendant's case that it has at all times believed that this programme forms part of a series of real public interest, where each of the stories involves a careful balancing exercise between matters of public interest and the right to respect for privacy. It is prepared to accept, however, that on this occasion, in relation to the Claimants, it may well have got that balance wrong and for that reason it is prepared to settle their claim and also apologise to them for the distress caused to them by the broadcast of the episode in question.

Alex Cochrane, Hamlins LLP, Solicitor for the Claimants

15. My Lord/Lady, in light of the order that has been made, and this public statement, the Claimants consider that the matter is now concluded.

Hamblins LLP

Lee & Thompson LLP

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Hamlins LLP
Solicitors for the Claimants

Lee & Thompson LLP
Solicitors for the Defendant