

**IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION**

MEDIA AND COMMUNICATIONS LIST

BETWEEN:

BRIAN HITCHIN

Claimant

-and-

CHANNEL 5 BROADCASTING LIMITED

Defendant

STATEMENT IN OPEN COURT

Felicity McMahon, Counsel for the Claimant

1. My Lord/Lady, in this action for misuse of private information, I appear on behalf of the Claimant, Mr Brian Hitchin. My learned friend, Tim James-Matthews, appears on behalf of the Defendant to the claim, Channel 5 Broadcasting Limited.
2. The Claimant is a private individual.
3. The Defendant is a national television broadcaster which broadcasts Channel 5, 5HD, 5 + 1, 5Star, 5SELECT, Paramount Network 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 November 2021, the Claimant notified the Defendant of a claim he wished to raise against it. The claim was for the misuse of the Claimant's private information in respect of the filming, making and multiple broadcasts from October 2016 until April 2021 of an episode of the television programme *Can't Pay? Well Take it Away!* on television channels owned by the Defendant as well as via its My5 platform. The programme showed the Claimant in his business

premises and in a state of distress. The Claimant asked the Defendant for an undertaking that the episode complained of would not be broadcast further, for a payment of damages to be made, and for a Statement in Open Court.

5. The relevant background to the dispute is as follows. In 2016, the Claimant ran a business practice as an Optometrist. An equipment supplier to the Claimant's business obtained a Writ of Control from the High Court against the Claimant to seize goods unless he paid the sum of money owed with which the Writ of Control was concerned.
6. Sometime between 22 April 2016 and 16 June 2016, two High Court Enforcement Agents ("HCEAs") attended the Claimant's business premises to enforce the Writ of Control against the Claimant.
7. A film crew attended the Claimant's business premises with the HCEAs and filmed the enforcement. It is the Claimant's case that he asked the film crew to leave. It is also the Claimant's position that he did not know he was, at the same time, being filmed by bodycams worn by the HCEAs. They were recording video footage of what was taking place on the Claimant's business premises; this included some moments that had not been captured by the main film crew. The video and audio recordings obtained by the bodycams were then edited and incorporated into an episode of *Can't Pay*, together with footage captured by the main film crew. The episode depicting the Claimant (Series 4, Episode 16) was first broadcast by Channel 5 on 19 October 2016.
8. The Defendant has confirmed that the programme was broadcast from 19 October 2016 onwards, and to over 5.7 million people in a form in which the Claimant's face was shown, and subsequently to almost a further 6.2 million people in a form in which the Claimant's face was blurred and his name removed.
9. The Court subsequently recognised that the debt was not owed by the Claimant to the entity on whose behalf the enforcement process took place.
10. On 29 November 2016 Deputy District Judge Rank, sitting at Stafford County Court, ordered that the equipment supplier had "*acted unreasonably*" by issuing a claim against the Claimant "*for money which was not owing*" and the Court formally struck out the claim which had given rise to the Writ of Control. Once the Defendant was informed that the judgment against the Claimant had been struck out, the epilogue to the programme was updated to make viewers aware of this.

11. The broadcast of the programme has caused the Claimant immense upset and distress. The Claimant's case is that the programme wrongly revealed matters that were private to him which took place on his business premises. It is the Claimant's case that the filming of him and subsequent publication of the private information obtained in that way to over 11.9 million people amounted to a grave misuse of his private information.

12. The Defendant denies the Claimant's case but I am pleased to report that the parties have been able to resolve their dispute by agreement. The Claimant has accepted an offer made by the Defendant to resolve his claim on terms which involve the payment of substantial damages to him as well as to pay his reasonable legal costs of raising the claim. The Defendant has also undertaken not to broadcast the programme again, or to make it available via the internet. The Defendant has also agreed to join in this statement to apologise to the Claimant publicly for the distress caused to him by the programme.

Tim James-Matthews, Counsel for the Defendant

13. 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 Claimant, it may well have got that balance wrong and for that reason it is prepared to settle his claim and also apologise to him for the distress caused to him by the broadcast of the episode in question.

Felicity McMahon, Counsel for the Claimant

14. My Lord/Lady, in light of the order that has been made, and this public statement, the Claimant considers that the matter is now concluded.

Solicitors for the Claimant: Hamlins LLP

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