

Media Law Briefing from Professor Tim Crook UK Media Law Pocketbook 2nd Edition.

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News Group Newspapers for the Sun successfully defends privacy action to enable them to illustrate their investigation into a couple making substantial profits selling PPE to the government during the COVID pandemic.

A Court of Appeal ruling 19th May 2023 enabled the Sun newspaper and other publications such as the Mail Online and Private Eye Magazine to continue publishing images of Richard and Sarah Stoute while on holiday and in proximity to a villa in the Caribbean they have bought following the profits made by their company Full Support Healthcare Ltd selling PPE in government contracts.

Stoute & Anor v News Group Newspapers Ltd [2023] EWCA Civ 523 (19 May 2023)

See: <https://www.bailii.org/ew/cases/EWCA/Civ/2023/523.html>

Courts and Tribunals Judiciary judgments 'May 19, 2023 Stoute and Stoute -v- News Group Newspapers Limited' See: <https://www.judiciary.uk/judgments/stoute-and-stoute-v-news-group-newspapers-limited/>

Mr Justice Johnson's ruling 17th January 2023 in favour of the Sun's news website sustaining his refusal to restrain publication of two photographs of the Claimants arriving at a restaurant on a public beach and 'the claimants are not likely to succeed at trial in showing that the publication of the two photographs involved a breach of a reasonable expectation of privacy.' See: <https://www.5rb.com/wp-content/uploads/2023/03/Judgment-for-Website-Stoute-v-News-Group-Newspapers-Ltd-.pdf>

See 5RB's analysis of this ruling and report of the Court of Appeal Outcome at:

<https://www.5rb.com/case/stoute-v-news-group-newspapers-limited/> and

<https://www.5rb.com/news/appeal-dismissed-in-stoute-v-ngn/>

The Private Eye coverage has been [online with the headline](#) 'Taking the PPE. Covid profiteering' and printed in the Issue 1599 and the following articles have been published in the Sun and Daily Mail both in their printed editions and online:

Mail Online 1st and 2nd January 2023 'Frolicking at their Caribbean island hideaway: The couple who netted £2 billion from PPE contracts after their firm became the biggest

beneficiary of NHS protective clothing deals.' See:

<https://www.dailymail.co.uk/news/article-11590919/Couple-netted-2-billion-PPE-contracts-splash-Caribbean-surf.html>

Sun 31st December 2022 and updated 5th January 2023 'LIVING IT UP Ex-nurse whose firm netted £2billion PPE contracts enjoys luxury life in Caribbean.' See:

<https://www.thesun.co.uk/news/20909304/nurse-ppe-billions-caribbean/>

Sun 7th January 2023 'HAPPE XMAS Ex-nurse and husband who pocketed billions from NHS PPE deals swig £250 bottles of fizz in winter Caribbean break.' See:

<https://www.thesun.co.uk/news/20974181/nurse-husband-billions-nhs-ppe-caribbean-break/>

In the Court of Appeal ruling Lord Justice Arnold explained at paragraph 1 the key legal issue to be decided:

'The principal issue on this appeal is whether the Claimants ("Mr and Mrs Stoute") have a reasonable expectation of privacy in respect of photographs taken of them by paparazzi on a public beach and published by the Defendant ("NGN") in The Sun on Sunday. Mr Justice Johnson held for the reasons given in his judgment dated 17 January 2023 [2023] EWHC 232 (KB) that Mr and Mrs Stoute were unlikely to establish that they had a reasonable expectation of privacy, and he therefore refused Mr and Mrs Stoute's application for an interim injunction to restrain further publication of the photographs pending the trial of Mr and Mrs Stoute's claim for misuse of private information. Mr and Mrs Stoute appeal with permission granted by Warby LJ.'

In paragraphs 2 to 5, the ruling sets out the background of why the claimants became the subject of media interest:

'The facts

2. The following account of the facts is taken largely from the judge's judgment, which in turn was based on two witness statements made by Mrs Stoute and the correspondence between the parties, NGN not having filed any substantive evidence. I have added a few details from Mrs Stoute's statements.
3. Mrs Stoute was formerly a nurse. In 2002 Full Support Health Care Ltd ("FSH") was incorporated by Mrs Stoute and her parents to sell personal protective equipment ("PPE") to NHS and private hospitals. It is now owned and run by Mr and Mrs Stoute. In the accounting period to March 2019, FSH's profits were just over £800,000. In March to July 2020 there was a huge demand for PPE as a result of the Covid-19 pandemic. FSH secured government contracts worth about £2 billion.
4. Mrs Stoute's evidence is that, since 2021, there has been a lot of press interest in her, Mr Stoute and FSH, and that they have worked hard with their lawyers to protect their privacy. She says that, prior to the events giving rise to the present dispute, there were only a few photographs of them available online from the FSH website, from when she gave evidence to the Public Accounts Committee and in an article in The Sunday Times.

5. In late 2021 Mr and Mrs Stoute bought a second home which abuts a public beach in Barbados. They also bought a boat. Mr Stoute's family is from Barbados. Mr and Mrs Stoute have three children now aged 16, 18 and 23. On 26 December 2022 Mr and Mrs Stoute went to stay at their second home, together with their children, several adult friends and their friends' children.'

Lord Justice Arnold's 24 page ruling concludes at paragraph 65 and 66:

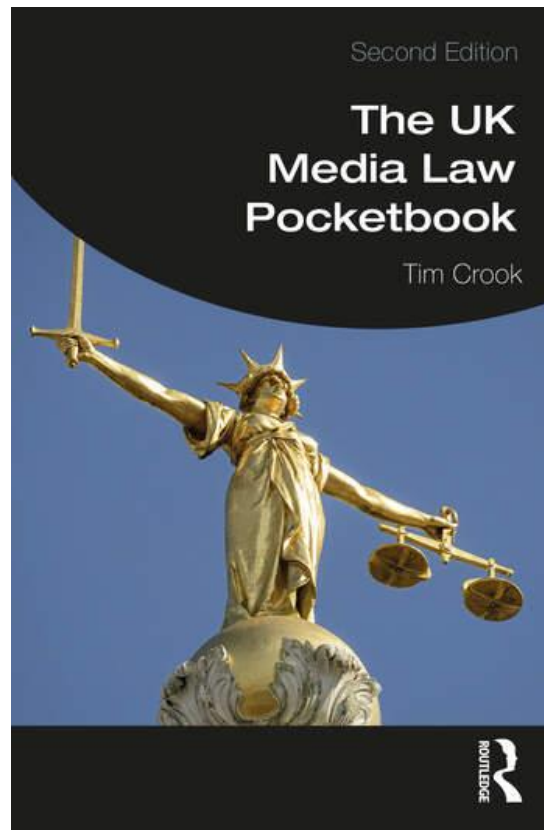
65. It follows that the judge made no error in concluding that it was unlikely that Mr and Mrs Stoute would be able to establish that they had a reasonable expectation of privacy in respect of the publication of the photographs. Even if he was wrong about that, however, he made no error in concluding that the balance of the risk of injustice favoured the refusal of an injunction. Counsel for Mr and Mrs Stoute submitted that the judge had failed correctly to apply PJS as to the effect of further publication of material that has already entered the public domain, but the judge directed himself in accordance with PJS. Given that the photographs had been published three times in two national newspapers, both in print and online, he was entitled to conclude that Mr and Mrs Stoute would suffer little additional irreparable damage in the event of further publication of them before trial and that the balance favoured refusal of an injunction.

Conclusion

66. For the reasons given above I would dismiss this appeal. I would nevertheless endorse what the judge said at [37]:

Judgment Approved by the court for handing down. *Stoute v NGN*

"This does not mean that the defendant or others may publish any pictures of the claimants with impunity. It just means that the claimants have not established their case in respect of the application for an injunction that they have made. It is entirely possible that there are pictures in the possession of the defendant or others which would, if published, amount to an actionable tort."



The second edition of *The UK Media Law Pocketbook* presents updated and extended practical guidance on everyday legal issues for working journalists and media professionals. This book covers traditional print and broadcast as well as digital multimedia, such as blogging and instant messaging, with clear explanations of new legal cases, legislation and regulation, and new chapters on freedom of information and social media law. Links to seven new online chapters allow readers to access all the most up-to-date laws and guidance around data protection, covering inquests, courts-martial, public inquiries, family courts, local government, and the media law of the Channel Islands and the Isle of Man. Tim Crook critically explores emerging global issues and proposals for reform with concise summaries of recent cases illustrating media law in action, as well as tips on pitfalls to avoid.

The UK Media Law Pocketbook is a key reference for journalists and media workers across England, Wales, Scotland, and Northern Ireland. The book's companion website provides downloadable sound files, video summaries, and updates all the developments in one of the most dynamic and rapidly changing fields of law. Visit <https://ukmedialawpocketbook.com>.

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