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1st October, 1986

ROYAL COURT

Before P.L. Crill, Esq., C.B.E., Bailiff,  
P.G. Misson, Esq., and  
P.G. Baker, Esq.

BETWEEN

Michael O'Brien

PLAINTIFF

AND

The Jersey Evening Post Limited

DEFENDANT

Advocate W.J. Bailhache for the Plaintiff  
Advocate M.H. Clapham for the Defendant

**BAILIFF:** This case this arises from an Order of Justice brought by Mr. Michael O'Brien who was employed by a company called Prime Products Limited, as their manager, for approximately 15 years until his employment terminated in or about October, 1984. The Order of Justice discloses that the plaintiff is contemplating proceedings against the company for unlawful dismissal or unfair dismissal and in order to prove such dismissal, he will rely, partly, not completely, on an advertisement which he says appeared in the Jersey Evening Post on the 8th August, 1984, under a box number and which was to fill the position of general manager for a local business engaged in the catering trade - I quote from paragraph 4 of the Order of Justice.

The plaintiff therefore asks the Court to order the disclosure of the name of that advertiser of the box number. It is only fair to say that although Mr. O'Brien is in Court and could have been called had the Court wished to hear him, we think as a matter of practice that it would be better if applications of this sort were supported by affidavits in order that the Court may be in full possession of what is suggested will support the action in addition to the suggestion that there was this advertisement. We accept what Mr. Clapham has said - it is inconceivable the action should be brought merely on the basis that there was an advertisement in the Evening Post sometime in August, 1984.

The Court has in the past, in one case only, in the matter of the representation of Donald Charles Lucas, accepted that in particular circumstances it would be prepared to make an order along the lines asked for by the plaintiff in this case. That case was heard by me on the 6th July, 1981, that

was the day on which the judgment was given and the Court ruled that in that case, certain documents should be shown to the defendant and not the plaintiff because it would be a denial of justice to refuse him because he had pleaded justification and he was unable to present his defence at the trial which had been set down if not indeed partly heard, without looking at the whole of the rating lists in the Parish of St. Brelade, and taking such extracts as might be necessary to support his general defence. Now, what we have to ask ourselves is whether we could bring this application within the Lucas principal. Now it is quite clear, as Mr. Bailhache has said, that in the Lucas case the Court considered the leading English case, that of Norwich Pharmacal Co. & ors -v- The Commissioners of Customs & Excise, [1973], 2 All E.R. 943. That case was concerned with an application to discover the names of importers of a chemical compound, from the Commissioners of Customs and Excise by a plaintiff who was so entitled to import them or at least issue licences for their importation. There, a name had to be obtained and all the cases show and the earlier cases on which that decision was based show that the plaintiff is seeking a name. He has a wrong but he cannot sue anybody until he knows whom he is going to sue. This is not the position here at all. The plaintiff, Mr. O'Brien, knows whom he is going to sue, it is quite clear whom he wants to sue so it is not a question of not knowing who the defendant should be. On the other hand, Mr. Bailhache has pointed out that although our rules which are very similar to the White Book allow for a discovery and inspection of documents, discovery by interrogatories and admissions, an order is not generally made until the close of pleadings. Nevertheless, we find it difficult to make the order asked for in this particular case - we do not think we can bring these facts within the four corners of the Lucas case at all. We think we can distinguish the Lucas case as I have said because the plaintiff in this case does not rely alone on the advertisement whereas as far as Lucas was concerned the particular defence of justification which was part of other defences of course, but for the particular defence of justification, he needed access to the parish rating list. Therefore, we do not think we are able to bring this case within the four corners of Lucas which itself extended the Norwich Pharmacal case somewhat to include denial of justice. We do not think that if we refuse an order that would, Mr. Bailhache, be a denial of justice to your client. He can start the proceedings and at a subsequent time can call in the Evening Post and furthermore, if he has a good claim then the cost which he will have incurred in starting the proceedings of course, can be recovered, if he succeeds, from the defendant. As to whether he will succeed or not, of course, we can make no conjecture or say anything at all

about that.

So it only leaves two matters - we refuse the application Mr. Bailhache but we are concerned with the point that was made that if this advertisement was inserted and it is not denied that it was, the records of the Jersey Evening Post might, quite innocently, in the ordinary course of business, be destroyed after a certain time and it may well be their commercial practice to do so and there is nothing whatever wrong in that position but we would like Mr. Clapham to have an undertaking, if that is possible for you to give, that if you do have the documents or if the company does have the documents it will keep them for such time as they may be needed. This application having failed and the company, the Evening Post, having been brought in as an innocent party, we think it right that the ordinary rules, on costs, unless you wish to address me on that Mr. Bailhache, should follow the event. Very well, you shall have your taxed costs Mr. Clapham.