



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD426/2021

JOANNE ELIZABETH DYER

Applicant

SUE CHRYSANTHOU

Respondent

ORDER

JUDGE: JUSTICE THAWLEY

DATE OF ORDER: 12 May 2021

WHERE MADE: Sydney

THE COURT ORDERS THAT:

1. Pursuant to r 1.34 of the *Federal Court Rules 2011* (Cth), the requirement in r 9.05 of the *Federal Court Rules 2011* (Cth) for a party to make an application under that rule be dispensed with.
2. Mr Charles Christian Porter be joined as a party to the proceedings under r 9.05 of the *Federal Court Rules 2011* (Cth).
3. The applicant:
 - a. file her evidence on or before 12.00pm on 13 May 2021;
 - b. file and serve any redacted version of that evidence which the applicant does not object to the parties (personally) seeing by 2.00pm on 13 May 2021; and
 - c. serve the unredacted version of that evidence on the first respondent by 12.00pm on 13 May 2021.
4. The first and second respondents file and serve any concise response on or before 17 May 2021.
5. The first and second respondents file and serve any evidence on or before 19 May 2021.
6. The applicant file and serve any evidence in reply on or before 21 May 2021.
7. The proceedings be set down for hearing on a date to be advised.
8. Pursuant to s 37AI of the *Federal Court of Australia Act 1976* (Cth), publication or disclosure be prohibited other than to the solicitors and counsel for the first respondent and other than any solicitor or counsel of the second respondent that is not acting for the second respondent in proceedings NSD 206 of 2021 of:
 - a. the concise statement other than in the redacted form annexed to these orders;
 - b. any affidavits filed on behalf of the applicant, including exhibits or annexures thereto other than any redacted form of those affidavits filed on behalf of the applicant.
9. Liberty to the parties and Nationwide News to apply on 12 hours' notice.



Date that entry is stamped: 13 May 2021

Sia Lagos
Registrar



Annexure

Concise Statement

Federal Court of Australia
District Registry: New South Wales
Division: General

No. of 2021

Joanne Elizabeth Dyer

Applicant

Sue Chrysanthou SC

Respondent

A. INTRODUCTION AND URGENT NEED FOR NON-PUBLICATION ORDER

1. The Respondent, **Ms Chrysanthou**, is a barrister and senior counsel. She provided professional advice to the Applicant, **Ms Dyer**, in late 2020 and early 2021. On 20 November 2020, Ms Dyer, her solicitors, a junior barrister and another person, attended Ms Chrysanthou's chambers for a conference. Within the confines of that lawyer-client relationship, the participants in the conference candidly discussed a number of matters. [REDACTED]
[REDACTED]
[REDACTED] Ms Chrysanthou is acting for Mr Porter. She took the brief for Mr Porter after the conference with Ms Dyer. She did not seek Ms Dyer's consent to act for Mr Porter. She drafted, or assisted with the drafting of, the relevant allegations made by Mr Porter.
2. Despite repeated requests from Ms Dyer's solicitors, Ms Chrysanthou has refused to cease acting for Mr Porter.
3. Ms Dyer seeks by this proceeding to restrain Ms Chrysanthou from continuing to act for Mr Porter. Ms Dyer also seeks urgent non-publication orders to prevent disclosure of information concerning the subject matter of her lawyer-client relationship with Ms Chrysanthou.

B. IMPORTANT FACTS GIVING RISE TO THE CLAIM

Background

4. Ms Dyer, was a close friend of a person referred to in this concise statement as "**AB**". AB committed suicide in June 2020. Prior to her death, AB alleged that she had been raped by Mr Porter in 1988. The reporting of those allegations by the ABC has given rise to a defamation action by Mr Porter against both the ABC and Ms Milligan, a journalist employed by the ABC.
5. On 9 November 2020, the ABC broadcast an episode of the program "Four Corners" entitled "Inside the Canberra Bubble". In preparing that episode, Ms Milligan interviewed Ms Dyer several times informally by telephone and once formally in person; the latter being recorded on



camera. The topics discussed in the interviews included AB's allegations against Mr Porter. Those allegations did not ultimately form part of the Four Corners episode, however brief excerpts from the recorded interview with Ms Dyer were included.

6. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
7. Ms Dyer sought legal advice [REDACTED] from a firm of solicitors (**Marque Lawyers**). Ms Chrysanthou and Mr Matthew **Richardson** also advised Ms Dyer in relation to [REDACTED]. [REDACTED] Ms Chrysanthou indicated that she was initially prepared to act pro bono but if proceedings were commenced then the basis on which she and Mr Richardson were acting would need to be revisited.
8. On 20 November 2020, the Applicant attended a conference in Ms Chrysanthou's chambers for the purposes of seeking advice in relation to [REDACTED]. Mr Richardson, Mr Michael **Bradley**, a solicitor employed by Marque Lawyers, [REDACTED] [REDACTED] were also in attendance at that conference.
9. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
10. During the conference, Ms Chrysanthou came into knowledge of facts, matters and circumstances that were, and continue to be, the subject of her obligations to preserve the confidentiality of her client's, or former client's, information. Ms Chrysanthou was, and continues to be, under an obligation not to act in conflict with her client's, or former client's, interests or any duties owed to her client or former client.
11. Ms Chrysanthou did not inform Ms Dyer that she was accepting a brief on behalf of Mr Porter, nor did Ms Chrysanthou obtain Ms Dyer's consent to do so. Since some time after 20 November 2020, Ms Chrysanthou has advised Mr Porter in connection with the commencement of Mr Porter's proceedings, has prepared the pleading filed in that proceeding and continues to conduct the retainer in that proceeding. Ms Chrysanthou is under an obligation to inform Mr Porter, as her client, of everything Ms Chrysanthou knows will be of assistance to Mr Porter within the scope of her retainer.



[REDACTED]

12. Mr Porter commenced proceedings against the ABC and Ms Milligan by way of Statement of Claim filed on 15 March 2021 (**Porter Statement of Claim**). [REDACTED]

[REDACTED]

[REDACTED]

13. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

14. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

15. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

16. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

17. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

18. [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]



19. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
20. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
21. [REDACTED]
[REDACTED]
[REDACTED]

Ongoing risk in Ms Chrysanthou's future conduct of the proceeding

22. In addition to the matters identified in the preceding section, the following information was disclosed to Ms Chrysanthou by Ms Dyer and others during the 20 November conference:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

23. There is the real prospect that the matters identified in paragraph 22 will be relevant to facts in issue or, alternatively, the credibility of witnesses called to give evidence in Mr Porter's defamation proceeding. The disclosure of these matters to Ms Chrysanthou, along with those identified in the preceding section, have put her in a position to form an overall opinion as to Ms Dyer's strengths, weaknesses, honesty, knowledge and beliefs. That opinion amounts to confidential information that should not be disclosed or used against Ms Dyer.

C. PRIMARY LEGAL GROUNDS FOR RELIEF

24. Ms Chrysanthou was in a lawyer-client relationship with Ms Dyer and owes a fiduciary duty to her. Ms Chrysanthou, by entering into a lawyer-client relationship with Mr Porter, also owes a duty to Mr Porter to utilise any information available to her for the benefit of Mr Porter.
25. There is the real (and obvious) possibility that the information disclosed by Ms Dyer to Ms Chrysanthou in conference will be relevant to Ms Chrysanthou's carriage of the defamation



proceeding on behalf of Mr Porter. In addition, there is a real (and obvious) possibility that the fact that information was known to Ms Dyer, and at what points in time it was known to Ms Dyer, and Ms Dyer's views about that information, would be relevant to Ms Chrysanthou's carriage of the defamation proceeding.

26. By her conduct in advising and acting for Mr Porter to date, including by preparing the Porter Statement of Claim, Ms Chrysanthou has failed, and continues to fail, to avoid a conflict between her duty to Mr Porter and her duty to Ms Dyer. In addition, there is the real and sensible possibility of that Ms Chrysanthou, by continuing to act for Mr Porter, would be required by her duty to Mr Porter to disclose to him matters that are confidential to, and subject to legal professional privilege for the benefit of, Ms Dyer.

D. SUMMARY OF RELIEF SOUGHT FROM THE COURT

27. Ms Dyer seeks the relief set out in the accompanying Originating Application, comprising an injunction restraining Ms Chrysanthou from continuing to act for Mr Porter and non-publication orders to protect Ms Dyer's confidentiality and privilege in respect of the information disclosed to Ms Chrysanthou.
28. Ms Dyer's solicitors delivered three affidavits and a draft summons to Ms Chrysanthou's solicitors on 30 April 2021. In the accompanying letter, they foreshadowed an intention to file in the Supreme Court of New South Wales, said that Ms Dyer would seek to avoid drawing public attention to the foreshadowed proceedings so as to protect the confidential subject matter and asked Ms Chrysanthou not to draw public attention to the foreshadowed proceedings. Ms Chrysanthou's solicitors responded and said that they considered the proceedings should be commenced in this Court. They also said on behalf of Ms Chrysanthou:

"You have requested that Ms Chrysanthou not draw public attention to the proceedings. That is unrealistic and unfair in the circumstances. In any event, Mr Porter has been informed of the threatened proceedings and is entitled to comment upon them."

29. The reasonable inferences from those statements are that there is a real possibility that Ms Chrysanthou or Mr Porter will wish to draw public attention to these proceedings to restrain Ms Chrysanthou. In the circumstances, Ms Dyer seeks urgent non-publication orders pursuant to s 37AF *Federal Court of Australia Act 1976* (Cth) to prevent disclosure of information concerning the subject matter of her lawyer-client relationship with Ms Chrysanthou.

E. HARM TO MS DYER

30. There is the real possibility that Ms Dyer's legal professional privilege and confidentiality will be compromised by Ms Chrysanthou's continued representation of Mr Porter. In addition, Ms Dyer will be called by the ABC as a witness in Mr Porter's defamation proceedings. She is therefore likely to be subject to cross-examination by counsel for Mr Porter. The Applicant is at real risk of being at a disadvantage or suffering detriment as a witness in that proceeding if Ms Chrysanthou continues to act for Mr Porter.



This pleading was prepared by Michael Hodge QC and Shipra Chordia, of counsel.

Date:

A handwritten signature in blue ink, appearing to be "N. Mattock", is written over a horizontal line.

Signed by Nathan Mattock

Marque Lawyers

Solicitors for the Applicant

Certificate of lawyer

I Nathan Mattock certify to the Court that, in relation to the Origination Application filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 11 May 2021

A handwritten signature in blue ink, appearing to be "N. Mattock", is written over a horizontal line.

Signed by Nathan Mattock

Lawyer for the Applicant