



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD426/2021

JOANNE ELIZABETH DYER

Applicant

SUE CHRYSANTHOU and another named in the schedule

Respondent

ORDER

JUDGE: JUSTICE THAWLEY

DATE OF ORDER: 19 May 2021

WHERE MADE: Sydney

THE COURT ORDERS THAT:

1. By 5:00pm on 20 May 2021, the First Respondent give verified discovery, excluding any privileged communications, to the Applicant of the following categories of documents:
 - a. Any documents recording or constituting communications between the First Respondent and another person in relation to:
 - (i) whether the First Respondent should accept the brief to act for the Second Respondent in Federal Court of Australia proceedings NSD 206 of 2021 having regard to her position vis-à-vis the Applicant; and
 - (ii) information the First Respondent received from the Applicant, Mr James Hooke, Mr Matthew Richardson or Mr Michael Bradley during the course of her dealings with the Applicant.
 - b. Any documents recording or referring to communications that took place between the First Respondent and the Applicant, Mr Michael Bradley, Mr James Hooke and Mr Matthew Richardson on 20 November 2020.
2. By 5:00pm on 20 May 2021, the First Respondent and the Second Respondent give verified discovery, excluding any privileged communications, to the Applicant of the



following categories of documents: any documents recording or constituting communications between the First Respondent and the Second Respondent (or his solicitors) in relation to:

- a. any communications between the First Respondent and the Applicant; and
 - b. the informed consent alleged in paragraph 23(a) of the Concise Response of the Second Respondent.
3. Subject to variation or revocation of Order 1 made by Jagot J on 10 May 2021 to permit the operation of this order, by 5:00pm on 20 May 2021, the Second Respondent give verified discovery to the Applicant of:
 - a. the proposed interrogatories of the Second Respondent in Federal Court of Australia proceedings NSD 206 of 2021 referred to during the Case Management Hearing on 14 May 2021 in proceedings NSD 206 of 2021;
 - b. the submissions of the Second Respondent in Federal Court of Australia proceedings NSD 206 of 2021 filed in support of the interrogatories and signed by the First Respondent;
 - c. the defence filed by the Australian Broadcasting Corporation in Federal Court of Australia proceedings NSD 206 of 2021.
4. Pursuant to rule 1.34 of the *Federal Court Rules 2011* (Cth), the requirement in rule 20.13 of the *Federal Court Rules 2011* (Cth) for a party to make an application for discovery under that rule be dispensed with.
5. 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 Federal Court of Australia proceedings NSD 206 of 2021 of the Concise Response of the First Respondent, other than in the redacted form annexed to these orders.
6. Pursuant to s 37AI of the *Federal Court of Australia Act 1976* (Cth), publication or disclosure be prohibited, other than to counsel for the Applicant and any person to or by whom publication or disclosure is permitted in the Federal Court of Australia proceedings NSD 206 of 2021, of the document referred to in Order 3(c).



7. By 5pm on 20 May 2021, the Applicant give verified discovery to the First Respondent and the Second Respondent of the following categories of documents:
 - a. Any notes or records of any communications between the Applicant and First Respondent of the communications or discussions that took place between the Applicant and the First Respondent and Mr Bradley, Mr Hooke and Mr Richardson on 20 November 2020.
 - b. Any document that has come into existence on or after 1 January 2020 which records or evidences the Applicant disclosing or discussing, in a manner which did not expressly or implicitly require the disclosure or discussion to be kept confidential, with any person who was not present at the 20 November 2020 conference with the First Respondent, the information or any part thereof that the Applicant contends constitutes confidential information disclosed to the First Respondent at that meeting.
8. Pursuant to s 37AI of the *Federal Court of Australia Act 1976* (Cth), any discovery given pursuant to Order 7 be limited to the solicitors and counsel for the First Respondent and any solicitor or counsel of the Second Respondent that is not acting for the Second Respondent in the Federal Court of Australia proceedings NSD 206 of 2021.
9. The Applicant has leave to issue the subpoena in the form annexed to these orders.

Date that entry is stamped: 20 May 2021


Registrar



Schedule

No: NSD426/2021

Federal Court of Australia

District Registry: New South Wales

Division: General

Second Respondent CHARLES CHRISTIAN PORTER



Annexure



Concise Response of the First Respondent

No. NSD 426 of 2021

Federal Court of Australia

District Registry: Sydney

Division: General

Joanne Elizabeth Dyer

Applicant

Sue Chrysanthou SC

First Respondent

The Honourable Charles Christian Porter

Second Respondent

1. In answer to the allegations in the Concise Statement dated 11 May 2021 (CS), the first respondent (**Chrysanthou**) says that she has only been provided with the redacted version and does not know and cannot admit any of the material that she cannot see and read because it is redacted.
2. In answer to the allegations in paragraph 1 of the CS, Chrysanthou:
 - (a) admits that she is a barrister and senior counsel;
 - (b) admits that she provided advice to the applicant (**Dyer**) on 20 November 2020 and 27 and 28 January 2021;
 - (c) says that the advice referred to in the preceding paragraph was limited to [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
 - (d) admits that she met with Dyer, Michael Bradley and James Hooke on 20 November 2020;
 - (e) says that she attended the conference referred to in the preceding sub-paragraph at the request of Matthew Richardson, and as a favour to him;



- (f) says that her recollection of that conference will be set out in an affidavit filed by her in this proceeding;
 - (g) admits that she is acting for the second respondent, the Honourable Christian Porter (**Porter**) and has held that brief since 10 March 2021;
 - (h) admits that she did not seek Dyer's consent to act for Porter and says that she did not need to seek such consent;
 - (i) says that she notified Dyer of her brief for Porter by informing Michael Bradley shortly after 9am on 15 March 2021;
 - (j) admits she drafted the Originating Application, Statement of Claim and Reply for Porter in his proceedings in consultation with and on instructions from Rebekah Giles, solicitor;
 - (k) otherwise denies the allegations in paragraph 1 of the CS.
3. In answer to the allegations in paragraph 2 of the CS, Chrysanthou says that:
- (a) on 15 March 2021 Dyer, by her solicitor Michael Bradley asserted that Chrysanthou had confidential information of Dyer, but did not at that time ask her to return the brief for Porter;
 - (b) on 24 March 2021 Dyer, by her solicitors, asked Chrysanthou to undertake to not do further work on the Porter brief, and Chrysanthou refused to give that undertaking;
 - (c) on 23 April 2021 Dyer, by her solicitors, advised that if Chrysanthou did not return the brief by 4pm on 26 April 2021, she would approach the Court without further notice;
 - (d) at about 4:30pm on 30 April 2021 Dyer, by her solicitors, advised that if Chrysanthou did not return the brief by 5pm on 2 May 2021 (a Sunday), she would commence proceedings in the Equity Division of the Supreme Court of New South Wales by approaching the Duty Judge on Monday 3 May 2021;
 - (e) at about 11:30 am on 10 May 2021 Dyer, by her solicitors, notified Chrysanthou that she would be commencing proceedings;
 - (f) she is of the view that, by reason of the cab rank rule, she is prevented from returning the brief for Porter;



- (g) she has not been provided with any information by Dyer that would require her to return the brief in the Porter matter.
- 4. Chrysanthou does not plead to paragraph 3 of the CS which makes no allegations of fact.
- 5. In answer to the allegations in paragraph 4 of the CS, Chrysanthou:
 - (a) does not know and cannot admit the nature of the relationship between Dyer and AB;
 - (b) understands that AB committed suicide on about 24 June 2020;
 - (c) admits that it is alleged that AB made claims that she had been raped by Porter in 1988;
 - (d) admits that the ABC published an article written by Louise Milligan that identified and defamed Porter by the repetition of allegations said to have been made by AB;
 - (e) admits that Porter has sued the ABC and Louise Milligan in relation to the publication of the Article referred to in the preceding sub-paragraph.
- 6. In answer to the allegations in paragraph 5 of the CS, Chrysanthou:
 - (a) admits that on 9 November 2020 the ABC broadcast an episode of Four Corners entitled "*Inside the Canberra Bubble*";
 - (b) admits that Dyer engaged in a filmed interview for that broadcast;
 - (c) does not know and cannot admit what other interviews and contact Dyer engaged in with Milligan;
 - (d) admits that the filmed interview included Dyer discussing the allegations said to have been made by AB against Porter;
 - (e) admits that the allegations said to have been made by AB against Porter were not included in the November Four Corners episode; and
 - (f) admits that parts of the filmed interview of Dyer were included in the November Four Corners broadcast.
- 7. In answer to the allegations in paragraph 7 of the CS, Chrysanthou:



- (a) does not know and cannot admit what, if any advice Dyer sought from Marque Lawyers;
 - (b) does not know and cannot admit what matters Mr Richardson advised Dyer in relation to, save for what is set out below;
 - (c) admits that she [REDACTED]
[REDACTED]
[REDACTED]
 - (d) says that [REDACTED]
 - (e) says that she attended the conference [REDACTED] as a favour to her friend Matthew Richardson;
 - (f) admits that she did not issue an invoice for the advice she gave [REDACTED]
[REDACTED] and never intended to do so given the matters set out in the preceding sub-paragraph;
 - (g) says she never agreed to act in any proceedings.
8. In answer to the allegations in paragraph 8 of the CS, Chrysanthou:
- (a) admits that Dyer, Michael Bradley and James Hooke attended her chambers at about 10am on 20 November 2020;
 - (b) says that Matthew Richardson attended shortly after 10am;
 - (c) says that the purpose of the conference was to advise Dyer in relation to [REDACTED]
[REDACTED]
[REDACTED]
9. In answer to the allegations in paragraph 10 of the CS, Chrysanthou:
- (a) relies on the content of her affidavit that will be filed in these proceedings as to her recollection of what was said during the conference on 20 November 2020;
 - (b) admits that she has an obligation to preserve any confidential information of Dyer's that was imparted to her during that conference;
 - (c) says that she gave an undertaking to Dyer on 30 March 2021 and 26 April 2021, inter alia, that should any confidential information come to her mind, she would never disclose it to any person;



- (d) says she gave an undertaking on 26 April 2021 that she would not cross-examine Dyer or Hooke should they become witnesses in the Porter proceedings;
 - (e) says that Dyer is not her client, and was not her client on 10 March 2021;
 - (f) says that Dyer is not a party to the Porter proceedings and does not have a relevant legal interest in it;
 - (g) denies that she is acting in conflict with Dyer's interest by acting for Porter against the ABC and Milligan.
10. In answer to the allegations in paragraph 11 of the CS, Chrysanthou:
- (a) admits that she did not inform Dyer that she was accepting the brief to act for Porter, prior to accepting that brief;
 - (b) admits that she did not seek Dyer's consent to accept the brief for Porter, and says that she did not need to seek such consent;
 - (c) admits that she has advised and appeared for Porter in his proceedings against the ABC and Milligan;
 - (d) admits that she prepared the pleadings in the Porter proceedings in consultation with and on instructions from Rebekah Giles, solicitor;
 - (e) admits that she is still briefed in the Porter proceedings;
 - (f) admits that she is under an obligation to inform Porter, as her client, of everything she knows will be of assistance to Porter within the scope of her brief, subject to matters about which Porter gives informed consent that she not use for his benefit.
11. In answer to the allegations in paragraph 12 of the CS, Chrysanthou admits that Porter commenced proceedings against the ABC and Milligan by way of Originating Application and Statement of Claim filed in the Federal Court on 15 March 2021.
12. In answer to the allegations in paragraph 22 of the CS, Chrysanthou relies on the content of her affidavit that will be filed in these proceedings as to what she recalls was said during the conference on 20 November 2020.
13. In answer to the allegations in paragraph 23 of the CS, Chrysanthou:



- (a) says that given the challenge to Schedules 1, 2 and 3 of the Defence, the identity of the witnesses in the Porter proceedings to be called in support of any defences is unknown;
 - (b) says that in the little time she spent with Dyer on 20 November 2020, she formed no view or opinion on Dyer's strength, weaknesses, honesty, knowledge and/or beliefs;
 - (c) says that, despite the matters set out in the preceding sub-paragraph, on 26 April 2021, she offered an undertaking not to cross-examine Dyer if she becomes a witness in the Porter proceedings;
 - (d) denies that she has any confidential information of Dyer relevant to the Porter proceedings.
14. In answer to the allegations in paragraph 24 of the CS, Chrysanthou says that these are matters of law and she does not plead to them.
15. In answer to the allegations in paragraph 25 of the CS, Chrysanthou:
- (a) denies that any information disclosed by Dyer to her on 20 November in conference (that she can recall) is relevant to the Porter proceedings;
 - (b) denies that there is a real and obvious possibility that any such information will be used by her for Porter's benefit in the Porter proceedings;
 - (c) denies that Dyer's state of mind as to any information or otherwise, is relevant to the Porter proceedings.
16. In answer to the allegations in paragraph 26 of the CS, Chrysanthou:
- (a) denies that there is any conflict between her duty to Porter and her interaction with Dyer;
 - (b) says that Dyer has no relevant interest in the Porter proceedings given she is not and will never be a party to it;
 - (c) denies that she has in any way failed in her duties as a barrister in relation to Porter, Dyer, or otherwise;
 - (d) denies that she is in possession of any relevant confidential information of Dyer's;



- (e) denies that she would be required by her duty to Porter to disclose to him matters that are confidential to, and subject to legal professional privilege of Dyer.
17. In answer to the allegation in paragraphs 27-29 of the CS, Chrysanthou:
- (a) admits that her solicitor sent a letter that contained the words in paragraph 28;
 - (b) says that the Concerns Notice sent by Dyer to Nationwide News in November 2020 has been the subject of media reporting last week;
 - (c) agrees that any information in the court documents or affidavits that contain material that is privileged should be the subject of suppression orders.
18. In answer to the allegations in paragraph 30 of the CS, Chrysanthou:
- (a) denies that there is a real possibility that Dyer's legal professional privilege will be compromised by her continued representation of Porter;
 - (b) denies that she has in her possession any confidential information of Dyer's that is relevant to the Porter proceedings and thus denies that there is a real possibility that it will be compromised;
 - (c) does not know and cannot admit that Dyer will be called by the ABC as a witness in Porter's proceedings against the ABC and Milligan;
 - (d) says that on 26 April 2021 she offered an undertaking not to cross-examine Dyer if she does become a witness in the Porter proceedings;
 - (e) says that Dyer is not disadvantaged or likely to suffer detriment as a witness in that proceeding by the fact that she acts for Porter, as opposed to any other competent counsel.

This pleading was prepared by Patrick George solicitor, and settled by Noel Hutley SC

A handwritten signature in black ink, appearing to be "P. George", is written over a horizontal line.

Patrick George

Solicitor for the first respondent

17 May 2021



Form 43B
Rule 24.13(1)(b)

Subpoena to produce documents

No. NSD426 of 2021

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

Joanne Elizabeth Dyer

Applicant

Sue Chrysanthou SC & anor named in the Schedule

First Respondent

To: Mr Matthew Richardson
153 Phillip Barristers
Level 3, 153 Phillip Street
Sydney NSW 2000

You are ordered to produce this subpoena or a copy of it and the documents or things specified in the Schedule of documents. See next page for details.

Failure to comply with this subpoena without lawful excuse is a contempt of court and may result in your arrest.

Please read Notes 1 to 13 at the end of this subpoena.

The last date for service of this subpoena is 21 May 2021. (See Note 1)

Date:

Signed by an officer acting with the authority
of the District Registrar

Filed on behalf of (name & role of party) Joanne Elizabeth Dyer, the Applicant
Prepared by (name of person/lawyer) Nathan Mattock
Law firm (if applicable) Marque Lawyers
Tel (02) 8216 3000 Fax (02) 8216 3001
Email nathanm@marquelawyers.com.au
Address for service Level 4, 343 George Street, Sydney NSW 2000
(include state and postcode)

[Version 4 form approved 02/05/2019]



Issued at the request of the Applicant, Joanne Elizabeth Dyer, whose address for service is:

Place: Level 4, 343 George Street, Sydney NSW 2000

Email: nathanm@marquelawyers.com.au



Details of subpoena

You must comply with this subpoena:

- (a) by attending to produce this subpoena or a copy of it and the documents or things specified in the Schedule of documents below at the date, time and place specified for attendance and production; or
- (b) by delivering or sending this subpoena or a copy of it and the documents or things specified in the Schedule of documents below to a Registrar at the address below, or if there is more than one address below, at any one of those addresses, so that they are received not less than 2 clear business days before the date specified for attendance and production. (See *Notes 5–9*)

Date, time and place at which you must attend to produce the subpoena or a copy of it and documents or things, unless you receive a notice of a later date or time from the issuing party, in which case the later date or time is substituted:

Date: 24 May 2021

Time: 10:15am

Place: Federal Court of Australia, Law Courts Building, 184 Phillip Street, Queens Square, Sydney NSW 2000

Address, or any address, to which the subpoena (or copy) and documents or things may be delivered or posted:

The Registrar
Federal Court of Australia
New South Wales District Registry
Law Courts Building
Level 17/184 Phillip Street, Queens Square
Sydney NSW 2000

Schedule of documents

In this subpoena, the following definitions apply:

Mr Bradley means Mr Michael Bradley, Managing Partner of Marque Lawyers.

Mr Hooke means Mr James Royce Murray Hooke.

The ABC proceedings means *Charles Christian Porter v Australian Broadcasting Corporation & Anor* (Federal Court of Australia proceedings NSD206/2021).

The Applicant means Ms Joanne Elizabeth Dyer.



The Conference means the conference which took place on the morning of 20 November 2020 which you attended with the Applicant, the First Respondent, Mr Bradley and Mr Hooke.

The First Respondent means Ms Sue Chrysanthou SC.

The documents and things you must produce are as follows:

1. Any documents recording or referring to communications between you and the First Respondent arranging the Conference.
2. Any documents recording or referring to communications that took place during the Conference.
3. Any documents recording or constituting communications between you and another person in relation to:
 - a. whether the First Respondent should have accepted the brief to act for the Second Respondent in The ABC Proceedings having regard to her position vis-à-vis the Applicant; and
 - b. information the First Respondent received during the course of her dealings with the Applicant.



Notes

Last day for service

1. You need not comply with the subpoena unless it is served on you on or before the date specified in the subpoena as the last date for service of the subpoena.

Informal service

2. Even if this subpoena has not been served personally on you, you must, nevertheless, comply with its requirements, if you have, by the last date for service of the subpoena, actual knowledge of the subpoena and of its requirements.

Addressee a corporation

3. If the subpoena is addressed to a corporation, the corporation must comply with the subpoena by its appropriate or proper officer.

Conduct money

4. You need not comply with the subpoena in so far as it requires you to attend to give evidence unless conduct money sufficient to meet your reasonable expenses of attending as required by the subpoena is handed or tendered to you a reasonable time before the date your attendance is required.

Production of subpoena or copy of it and documents or things by delivery or post

5. If this subpoena requires production of the subpoena (or a copy of it) and a document or thing, instead of attending to produce the subpoena (or a copy of it) and the document or thing, you may comply with the subpoena by delivering or sending the subpoena (or a copy of it) and the document or thing to a Registrar:
 - (a) at the address specified in the subpoena for the purpose; or
 - (b) if more than one address is specified - at any of those addresses;so that they are received not less than 2 clear business days before the date specified in the subpoena for attendance and production, or if you receive notice of a later date from the issuing party, before the later date or time.
6. If you object to a document or thing produced in response to this subpoena being inspected by a party to the proceeding or any other person, you must, at the time of production, notify a Registrar in writing of your objection and of the grounds of your objection.
7. Unless the Court otherwise orders, if you do not object to a document or thing produced by you in response to the subpoena being inspected by any party to the proceeding, a Registrar may permit the parties to the proceeding to inspect the document or thing.



Production of a number of documents or things

8. If you produce more than one document or thing, you must, if requested by a Registrar, produce a list of the documents or things produced.

Production of copy instead of original

9. You may, with the consent of the issuing party, produce a copy, instead of the original, of any document that the subpoena requires you to produce.

- 9A. The copy of a document may be:

- (a) a photocopy; or
- (b) in an electronic form in any of the following electronic formats:

- .doc and .docx – Microsoft Word documents
- .pdf – Adobe Acrobat documents
- .xls and .xlsx – Microsoft Excel spreadsheets
- .jpg – image files
- .rtf – rich text format
- .gif – graphics interchange format
- .tif – tagged image format

Applications in relation to subpoena

10. You have the right to apply to the Court:
- (a) for an order setting aside the subpoena (or a part of it) or for relief in respect of the subpoena; and
 - (b) for an order with respect to your claim for privilege, public interest immunity or confidentiality in relation to any document or thing the subject of the subpoena.

Loss or expense of compliance

11. If you are not a party to the proceeding, you may apply to the Court for an order that the issuing party pay an amount (in addition to conduct money and any witness's expenses) in respect of the loss or expense, including legal costs, reasonably incurred in complying with the subpoena.

Contempt of court - arrest

12. Failure to comply with a subpoena without lawful excuse is a contempt of court and may be dealt with accordingly.
13. Note 12 is without prejudice to any power of the Court under any rules of the Court (including any rules of the Court providing for the arrest of an addressee who defaults in attendance in accordance with a subpoena) or otherwise, to enforce compliance with a subpoena.



7

Schedule

No. NSD426 of 2021

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

Respondents

Second Respondent: Charles Christian Porter

Date: 19 May 2021