Judgment 13 / 2004 **IFS Investments Ltd. v Manor Park (Guernsey) Ltd., Manor Park Guaranteed Investment Funds Ltd., Williams and Dinning – Royal Court - (Civil Action file 817) 22nd April 2004.**

Tort – injunction proceedings – allegation of conspiracy etc. – application that certain interlocutory matters be heard in private – open justice a fundamental principle – circumstances in which a restriction on disclosure may be appropriate – application dismissed.

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 22nd day of April, 2004 before Andrew Christopher King Day, Esquire, C. B. E. Lieutenant Bailiff; sitting alone

IFS INVESTMENTS LIMITED

Plaintiff

v

MANOR PARK (GUERNSEY) LIMITED

First Defendant

MANOR PARK GUARANTEED INVESTMENT FUNDS LIMITED

Second Defendant

ALAN WILLIAMS

Third Defendant

GILLIAN SARAH DINNING

Fourth Defendant

WHEREAS on 13th April, 2004 the Lieutenant Bailiff considered the Fourth Defendant's application that certain Interlocutory matters in litigation be heard in private and heard thereon Advocates R. J. Collas and P. T. R. Ferbrache Counsel for the Fourth Defendant and Plaintiff respectively.

The Bailiff this day handed down judgment in the terms attached hereto and

1. DISMISSED the application

2. AWARDED costs to the Plaintiff on the standard recoverable basis.

S.M.D. ROSS
Her Majesty's Deputy Greffier

Approved Judgment

22nd April 2004

IN THE ROYAL COURT OF GUERNSEY

ORDINARY DIVISION

Between:	**IFS INVESTMENTS LIMITED**	**Plaintiff**
	v	
	MANOR PARK (GUERNSEY) LIMITED	**First Defendant**
	MANOR PARK GUARANTEED INVESTMENT FUNDS LIMITED	**Second Defendant**
	ALAN WILLIAMS	**Third Defendant**
	GILLIAN SARAH DINNING	**Fourth Defendant**

Judgment of Day L.B. on the Fourth Defendant's application that certain interlocutory matters in this litigation be heard in private.

Advocate R.J. Collas appeared for the Fourth Defendant.
Advocate P.T.R. Ferbrache appeared for the Plaintiff.

Hearing date: 13th April, 2004
Judgment handed down: 22nd April, 2004

Cases referred to:

Scott (otherwise Morgan) v Scott [1913] AC 417

R v. Legal Aid Board, ex p Kaim Todner (a firm) [1998] 3 WLR 925

Jersey Evening Post Ltd. v. Thani [2002] JLR 542

G v. A [2000] JLR 56

Attorney General v. Leveller Magazine Ltd. [1979] AC 440

P, ex parte The Times 31st March 1998; Court of Appeal (Civil Division) Transcript No. 431 of 1998, CA

A. Background

1. The Plaintiff, a company incorporated in Guernsey (on 22nd March 2002) and duly authorised to carry on restricted activities in connection with investment funds, provides, amongst administrative and other services, a guaranteed fund service to institutional

clients. The Second Defendant carries on business as an investment company and in particular operates an "umbrella" fund ("the MP Fund") consisting of a number of sub-funds. The First Defendant provides management services to the MP Fund (in effect the Second Defendant). Both of these companies are again incorporated in Guernsey and have as a director the Third Defendant, who is the ultimate beneficial owner of the First Defendant and the principal controller of the Manor Park group of companies. The Fourth Defendant is a Guernsey Advocate and partner in the firm of Carey Olsen. At the material times she was the legal advisor to the other three Defendants.

2. On the 1st June 2001 International Fund Services (Guernsey) Ltd. ("IFSG"), at that date called FnP Fund Services Ltd., entered into a Distributor Agreement with the First and Second Defendants to provide services in relation to the latter, and at the same time entered into an Administrative Agreement with the First Defendant in respect of the Second Defendant. IFSG was specifically incorporated in Guernsey (on the 23rd February, 2001) for those purposes and is related to the Plaintiff, a loose description intended solely to indicate there are those with an interest in both.

3. To state the matter starkly, by the summer of 2003 the First and Second Defendants had fallen out with the Plaintiff, IFSG, and four individuals, particularly in relation to the activities of another fund, the Acumen Guaranteed Fund. The first two Defendants instituted injunctive proceedings on the 25th July, 2003, against the Plaintiff and the five other connected parties, seeking to restrain the use and disclosure of information which they alleged to be confidential to those two Defendants and thus in breach of the 2001 Agreements. Undertakings were given by both sides, the litigation was "fast-tracked" for full hearing in November, but in the event was settled by the signing, on the 7th November 2003, of a Settlement Agreement between all the interested parties. That Agreement was stated to be in full and final settlement of the litigation and all other claims and disputes between the parties (save in certain limited circumstances which are irrelevant for present purposes). In effect, in matrimonial parlance, a clean break was effected between the two sides, all commercial relations were severed and each was free to go their respective ways, with the terms of that Agreement, inter alia, to be kept confidential unless otherwise agreed.

4. Peace did not break out for long. The relevant events between early November, 2003, and the end of January, 2004, and the participation and role of various players therein, may well be the subject of much future evidence and argument. I therefore tread circumspectly, but I think I can sufficiently summarise the main features of events in this way.

5. The Plaintiff has entered into, and as I understand it is currently engaged in, commercial dealings with Norwich Union International Ltd. ("NUIL") a company based in

Dublin, in relation to the launch of an open ended fund which could be sold as one of NUIL's products. That, on the face of it and all other things being equal, would appear to be an unobjectionable relationship provided, perhaps, it commenced after the completion of the Settlement Agreement on the 7th November, 2003.

6. However, the Third Defendant alleges that since that date he has learnt that contact was established between the Plaintiff and NUIL back in the summer of 2003 and therefore the First and Second Defendants might have justified grounds of complaint. Namely, that such contact would have been in breach of the 2001 agreements (which were then still extant), that it might have been in breach of undertakings given to the Royal Court in July, and thereafter, 2003, and that, if such contact had been made between those two parties, then the disclosure obligations of the Plaintiff in the 2003 substantive proceedings should have revealed that fact. Moreover, there might also have been a breach of the terms of the Settlement Agreement itself.

7. Certainly there has been contact between the Third Defendant and NUIL on this matter, upon which he has also sought advice from the Fourth Defendant; and on the 16th January, 2004, there was what would appear to have been a lengthy telephone conversation between, principally, the Fourth Defendant, as advocate of the other three Defendants, and officers and/or advisors of NUIL, which was followed up by a letter of the 26th January from Carey Olsen to NUIL. The thrust of the Fourth Defendant's advice to NUIL was that, on the basis of certain clearly set out assumptions (the accuracy of which NUIL would have the knowledge to assess) certain legal consequences would follow so as to justify, in her opinion, full complaint by the First and Second Defendants as to the activities of the Plaintiff.

8. For its part the Plaintiff asserts that the contacts and communications with NUIL on the part of the Third Defendant, and other colleagues of the First and Second Defendants, were maliciously motivated, seeking to interfere unlawfully with proper business relations between the Plaintiff and NUIL. In the event, on the 26th January, 2004, the Plaintiff made application to the Court for injunctive relief, both mandatory and prohibitory, against the first two Defendants alone. The relief sought consisted, firstly, of the provision of a "letter of comfort" to be sent to NUIL to the effect that the First and Second Defendants did not have cause for complaint against the Plaintiff in respect of its contacts and relationship with NUIL and would not be taking any legal action in that regard. Thus NUIL would be given the "green light" to continue and finalise its business relations with the Plaintiff, vital to the latter, which otherwise NUIL was reluctant to do because of the potential damage which these allegations might cause (to the fund and thus NUIL). Secondly, the Plaintiff sought to restrain any unlawful interference by the First and Second Defendants in business relations between the Plaintiff and NUIL.

9. As a consequence of a direction from the Deputy Bailiff, the Fourth and Third Defendants filed affidavits, in the case of the Fourth Defendant on the 5th February in which she provided a full statement with regard to her telephone communication with NUIL of the 16th January, 2004, and her firm's file note thereon. At this time, also, she and her firm ceased to act in these disputes for the Manor Park interests. In due course when the matter came before him on the 10th February, the Bailiff ordered that the proceedings should be formally, and he considered properly, instituted by the filing of a Cause in the Ordinary Court, as what was being sought was an injunction of a permanent nature and not one of an interim kind pending other substantive proceedings. Those substantive proceedings were instituted, I understand, on the 12th February and the Cause formally filed in Court on the 5th March, 2004.

10. There are now four named Defendants against whom damages in the sum of €32 m are claimed, as also injunctive relief of both a mandatory and prohibitory nature similar to that sought in the injunctive proceedings instituted at the end of January, 2004 against the first two Defendants alone. Further, the Plaintiff seeks a declaration from the Court that it may continue its business as a consultant providing a guaranteed fund service to institutions without the unlawful intervention of the Defendants, and in particular its proposed business with NUIL, and that in carrying on its proposed business with NUIL it will be acting lawfully and not in breach of the Settlement Agreement.

11. It is, I think, necessary, or at least helpful, to summarise briefly the complaints and allegations made against the Defendants in the substantive proceedings, being the basis upon which the damages and injunctive and declaratory relief are being sought. Firstly (para. 26), the First and Second Defendants (together with their consultant) are alleged wrongfully and maliciously to have conspired and combined together with intent to injure the Plaintiff and so cause loss to him on or around the 7th November, 2003. No further details of that allegation are provided at this stage. Secondly (para. 27), it is alleged against all four Defendants that in furtherance of the alleged conspiracy of the 7th November or thereabouts they have, since that date, falsely and maliciously undertaken actions by which the Plaintiff has been injured or is likely to be injured – particulars thereafter being provided, though with no specific allegations in regard to the Fourth Defendant. Thirdly (para. 29), it is alleged against the First and Second Defendants that, having become aware on the 24th December, 2003, of the prospective "fund" agreement between the Plaintiff and NUIL they thereafter have wrongly conspired and combined together with intent to injure the Plaintiff and/or cause loss to it. Fourthly (para. 30), it is alleged against all four Defendants that between the 24th December, 2003, and the 26th January, 2004, they falsely and maliciously undertook actions by which the Plaintiff was injured. Particulars of that allegation are then provided, being allegations generally against

the Defendants that in twelve separate ways they have made representations to NUIL which were false and without foundation in fact and to their knowledge. Fifthly (para. 32), it is alleged against all the Defendants that the particulars of the two conspiracies, either together or individually, amount to unlawful interference with the business interests of the Plaintiff, with intent to injure the Plaintiff, which has caused loss and continues to do so. In addition, it is alleged against all the Defendants that they have defamed the Plaintiff, though no further details whatsoever are provided.

12. Thus by these unlawful acts and conspiracies, as the Plaintiff alleges, the launch of the new fund, which was to be effectively, and lawfully, the joint venture of NUIL and the Plaintiff has been frustrated, so far; and unless satisfactory comfort is given to NUIL, which has not been forthcoming from the Defendants, then the launch will be cancelled, and the Plaintiff will not receive the fees which would have been otherwise payable to it in the estimated sum over a ten-year period of €32 m.

13. I would make the neutral observation that the Plaintiff and the first three Defendants are business competitors, who may both be seeking the favour of NUIL and for that reason are both crying "foul". The stakes are high.

14. On the 5th March the Cause was placed on the pleading list with regard to the First and the Second Defendants, and leave was obtained to serve the Third Defendant out of the jurisdiction (he is resident in Scotland), and placed on the pleading list against him on the 28th March.

B. <u>The Fourth Defendant's current application</u>

15. On the same date and at the same sitting of this Court, the Fourth Defendant filed three separate applications. The first of these seeks to recuse Ozannes from continuing to act for the Plaintiff, on grounds to which I need not refer ("the rescusation proceedings")The second application, brought pursuant to Rules 34 and 36 of the Royal Court Civil Rules 1989, is for an order that the proceedings instituted by the Plaintiff against the Fourth Defendant be struck out and/or amended and/or that she cease to be a party, again on grounds to which I need not refer ("the strike-out application"). The third application, of which I am presently seized ("the privacy application"), seeks:-

> *"an Order that the application brought by her pursuant to Rules 34 and 36 of the Royal Court Civil Rules 1989 be heard by the Royal Court in private before the proceedings instituted by IFS Investments Limited against Manor Park (Guernsey) Limited, Manor Park guaranteed Investment Funds Limited, Alan Williams and Adv*

Dinning are tabled in public court, in the circumstances set out in the supporting affidavit of Adv Dinning.".

16. Without, I trust, doing any injustice to the Fourth Defendant, her affidavit basically relates to the irreparable damage to her professional standing and career which publication of the substantive allegations against her now would cause.

17. Originally, in written skeleton argument, the submission was advanced that if the strike out application was successful then the allegations against the Fourth Defendant contained in the Cause – the matters to be struck out – should never see the light of day. She was concerned that if the Cause was tabled in public against her, as it would be in normal course, the detriment to her reputation by any potential publicity – bearing in mind the seriousness of the allegations made against her which go to the very heart of legal professional conduct – could never be remedied if this Court subsequently determined that she had no case to answer or otherwise the action against her should be struck out. Mr. Collas helpfully clarified in argument, and very much refined, exactly what his client was seeking by means of the privacy application.

18. It was now accepted by the Fourth Defendant that, whatever the result, any decision with regard to her strike-out application must then become a matter of public record, which in turn would mean that the contents of the Cause itself against her would also be made public (otherwise that decision could lack clarity). So the purpose, and therefore ultimate effect, of the privacy application was merely to delay publication of the allegations against her as identified in the Cause so that they could be simultaneously viewed in the light of any decision on her strike-out application. This application was therefore as simple and as limited as that. It was a matter of timing.

19. Because of the initial stance adopted by the Fourth Defendant, it seemed to me that the strength of her case regarding a strike out might be relevant to this application itself. Hence in argument I raised the issue with Counsel, Mr. Collas suggesting that that issue might indeed be a relevant one for my determination of this matter, with Advocate Ferbrache, rightly, reminding me of the height of the hurdle which had to be surmounted by a defendant to achieve the striking out of proceedings at this stage of a case (referring me to the appropriate passages of the White Book 1999 relating to the former English rules comparable to our Rule 36). In the event, it was and is not necessary to explore this aspect of the case in any greater depth.

20. Similarly it has not been and is not necessary to examine other original submissions of Mr. Collas that the allegations against his client had not been properly particularised in the Cause, that they were so vague as to cause speculation that his client had done something

even more serious than in fact alleged in the Cause, and that, in the light of the information currently available with regard to whether NUIL would proceed with its new fund or not, it could well be that damages were excessively inflated in the Cause, and indeed that causation as between the alleged torts and the alleged monetary damages was not established

C. Legal principles

21. In Guernsey (as apparently also in Jersey) the principle of open justice has not yet found statutory expression. In my view that is unnecessary, as it is and always has been a fundamental principle of our administration of justice. Apart from one or two statutory provisions which require proceedings be held in private (for example, criminal committal proceedings before the Magistrate), there a number of matters where the Royal Court in the exercise of its inherent jurisdiction conducts hearings in private; for example, cases concerning children or incapables, matrimonial or trust matters and *ex parte* injunction applications. Apart from such well founded and accepted exceptions, the fundamental principle is unfailingly applied (though a few years ago there was some confusion as to whether general interlocutory matters were held in private or in public). Counsel have not referred me to, nor am I aware of, any Guernsey cases which provide assistance, certainly not of authority binding upon me, as to when exceptions to the basic principle may be appropriate. I have, however, been helpfully referred to two English and two Jersey cases, the former of which are of particularly persuasive authority not least because they have also guided the Jersey courts in their decisions.

22. The leading English case is that of Scott. As Lord Woolf MR stated in Kaim Todner (at p. 933 D) *"…it is always necessary to start with the guidance given by the House of Lords in Scott…".* The basic principle was authoritatively stated by Viscount Haldane LC as follows (p. 437):-

> *"…While the broad principle is that the Courts of this country must, as between parties, administer justice in public, this principle is subject to apparent exceptions, such as those to which I have referred (*wards, lunatics and litigation as to a secret process). *But the exceptions are themselves the outcome of a yet more fundamental principle that the chief objects of the Courts of justice must be to secure that justice is done. In the two cases of wards of Court and of lunatics the Court is really sitting primarily to guard the interests of the ward or the lunatic. Its jurisdiction is in this respect parental and administrative, and disposal of controverted questions is an incident only in the jurisdiction. It may often be necessary, in order to attain its primary object, that the Court should exclude the public. The broad principle which ordinarily governs it therefore yields to the paramount duty, which is the care of the*

ward or the lunatic. The other case referred to, that of litigation as to a secret process, where the effect of publicity would be to destroy the subject-matter, illustrates a class which stands on a different footing. There it may well be that justice could not be done at all if it had to be done in public. As the paramount object must always be to do justice, the general rule as to publicity, after all only the means to an end, must accordingly yield. But the burden lies on those seeking to displace its application in the particular case to make out that the ordinary rule must as of necessity be superseded by this paramount consideration. The question is by no means one which, consistently with the spirit of our jurisprudence, can be dealt with by the judge as resting in his mere discretion as to what is expedient. The latter must treat it as one of principle, and as turning, not on convenience, but on necessity.".

23. To which should be added, again on the advice of Lord Woolf (at p. 933 G), the comment of Earl Loreburn (at p.446 in Scott) on the exceptions to the general rule that justice must be done publicly:-

"It would be impossible to enumerate or anticipate all possible contingencies, but in all cases where the public has been excluded with an admitted propriety the underlying principle as it seems to me, is that the administration of justice would be rendered impracticable by their presence whether because the case would not be effectively tried, or the parties entitled to justice would be reasonably deterred from seeking it at the hands of the court.".

24. I should also cite a short passage from the speech of Lord Diplock in Leveller Magazine (a case concerned with the power to permit a witness to remain anonymous), as again enjoined by Lord Woolf MR. Lord Diplock stated (at pp. 843 – 844):-

"However, since the purpose of the general rule is to serve the ends of justice it may be necessary to depart from it where the nature or circumstances of the particular proceeding are such that the application of the general rule in its entirety would frustrate or render impracticable the administration of justice or would damage some other public interest for whose protection Parliament has made some statutory derogation from the rule.".

25. In Kaim Todner, a case concerned with a solicitor's application for anonymity, the facts, as stated in the head note, were as follows:-

"The Legal Aid Board informed the applicants, a firm of solicitors, that the legal aid franchise at two of their offices was to be terminated following allegations of dishonesty by former employees. The applicants sought leave to apply for judicial

review of that decision and applied for an order under section 11 of the Contempt of Court Act 1981 forbidding the disclosure of their identity in the proceedings on the ground that they would be caused incalculable damage if the reasons on which the board relied for cancelling their franchise were to be made public. The judge granted the applicants leave to apply for judicial review but refused to make an order affording them anonymity. The applicants appealed and, at the start of the appeal, made a further application for anonymity in respect of the appeal whatever its outcome, indicating that if such an order were not made they would withdraw the appeal or consent to its dismissal. The Court of Appeal refused to make the order and indicated that it would not consent to the withdrawal of the appeal.". The appeal was dismissed.

26. Lord Woolf MR stated nine matters which should guide the general approach as to whether exceptions should or should not be made in particular cases to the principle that justice must be done publicly (see pp. 933 – 935). I propose to précis or cite those nine principles, which partly relate, inevitably in view of the facts of that case, to the particular situation of solicitors.

27. There can be no justification for singling out the legal profession for special treatment.

28. The facts in that case did not fall within any of the four specific situations identified in section 12 of the Administration of Justice Act, 1960, where publication of information relating to proceedings for a court sitting in private is given statutory protection; thus any protection against identification of a party must depend upon some exception to the general principle that all proceedings should be conducted in public. Lord Woolf MR then proceeded to refer to the cases of Scott and Leveller Magazine and the speeches of their Lordships, which I have already cited, and the principles enunciated.

29. Whilst the limits to the exceptions to the general principle should *"not depend on the individual discretion of the judge"* (as per Viscount Haldane LC in Scott), there are an immense variety of situations in which it is appropriate to restrict the general rule. These situations depend very much on their individual circumstances. So, if a judge adopts a correct approach in determining any particular application, the Court of Appeal will not interfere with the decision of a judge on an issue of this nature.

30. The importance of not making an order, even where both sides agree that an inroad should be made on the general rule, if the case is not one where the interests of justice require an exception, has been overlooked. Here the comment of Sir Christopher Staughton in *ex-parte P* is relevant. His Lordship stated: *"when both sides agreed that information should be kept from the public that is when the Court had to be most vigilant.".*

31. The need to be vigilant, Lord Woolf MR advised, arises from a natural tendency for the general principle to be eroded and for exceptions to grow by accretion as the exceptions are applied by analogy to existing cases. This is the reason it is so important not to forget why proceedings are required to be subjected to the full glare of a public hearing. It is necessary because the public nature of the proceedings deters inappropriate behaviour on the part of the Court. It also maintains the public's confidence in the administration of justice. It enables the public to know that justice is being administered impartially. It can result in evidence becoming available which would not become available if the proceedings were conducted behind closed doors or with one or more of the parties' or witnesses' identity concealed. It makes uninformed and inaccurate comment about the proceedings less likely. If secrecy is restricted to those situations where justice would be frustrated if the cloak of anonymity is not provided, this reduces the risk of the sanction of contempt having to be invoked, with the expense and the interference with the administration of justice which this can involve.

32. Lord Woolf then identifies the situations which, in that jurisdiction, by statutory provision (s 12 of the Administration of Justice Act, 1960) are candidates for special protection (see also para. 25 above).

33. It is appropriate to take into account the extent of the interference with the general rule which is involved in any application for protection from disclosure. Thus interference for a limited period is less objectionable than a restriction on disclosure which is permanent. A restriction limited only to the identity of a witness or a party is similarly less objectionable than restriction which involves the proceedings being conducted in whole or in part behind closed doors.

34. The nature of the proceedings is also relevant.

35. Whilst a distinction can be made depending upon whether what is being sought is anonymity for a plaintiff, a defendant or a third party, in general they have to accept the consequences of being involved in litigation.

36. There can, however, be situations where a party or witness can reasonably require protection, for example, victims of rape and blackmail. Outside such well-established cases, the reasonableness of the claim for protection is important. Although the foundation of the exceptions is the need to avoid frustrating the ability of the courts to do justice, there must be some objective foundation for the claim which is being made.

37. The two further cases to which Counsel referred me, and which are helpful, are decisions of the Royal Court of Jersey, namely Jersey Evening Post and GvA, the reasoning of the judgment in the latter being followed in the former. In G v. A the Court

emphasised that the question to be asked was whether the paramount objective of securing that justice was done could not be obtained if the *in camera* order were not made. That question turned on necessity not convenience (reiterating the statement of Viscount Haldane in Scott to which I have already referred). The potential embarrassment or the preference of the parties was not a sufficient reason to justify a hearing in private. These principles were also substantially in accordance with Article 6 of the European Convention on Human Rights. For completeness, I would add that G. had instituted proceedings against the estate of her former doctor, whom she alleged had prescribed anabolic steroids to her over a number of years causing extensive adverse physical and mental side-effects, particularly certain phobias. She submitted that if proceedings were conducted in public her phobias would increase in severity and such aggravation of her condition would not be reflected in her damages if she succeeded in the action. The Royal Court of Jersey not only agreed with that submission but held that her condition could also affect the proper evaluation of liability and causation. The case was ordered to be heard in private.

38. Finally, for what it is worth it appears to me that under the CPR 1998 the provisions in England and Wales relating to hearings in private, as exceptions to the general rule, are effectively, as Mr. Ferbrache submitted, a distillation of previous practice and existing legal principle, the roots of which are to be found in Scott.

39. I expressed the view, with which Counsel concurred, that, in simple terms, legal principle required that justice must be done in public, but that where justice itself would be thus frustrated, privacy should prevail, but only to the extent necessary.

D. Conclusions

40. I preface my conclusion by making certain observations.

41. Advocate Collas, in his very helpful introduction to the background to this privacy application, referred me to correspondence, encompassing the period 20th January to 1st April, 2004, which had been exchanged by, initially, Carey Olsen and Ozannes and then Collas Day and Ozannes, together with a short exchange of correspondence, between Collas Day and A. and L. Goodbody the NUIL's solicitors in Dublin. I do not intend to refer to the details of that correspondence, as I do not consider the details assist me. In that sense I concur with the description of Advocate Ferbrache that that correspondence was irrelevant. However, I specifically take note of one theme of the correspondence with Ozannes, from which, Mr. Collas submitted, I could draw certain inferences, namely that the Plaintiff was seeking to bring pressure on the Fourth Defendant by the threat of being publicly exposed to litigation, to persuade her former clients to produce for NUIL what was requested; an argument obviously rejected by Mr. Ferbrache..

42. I further note the contrasting allegation being made by the Plaintiff against the Fourth Defendant and Carey Olsen as to the potential financial advantages which might accrue to the latter's "in-house" trust company as administrators, both future or present, of the MP Fund, as also the potential competition between the Plaintiff and the First and Second Defendants for the NUIL business connection.

43. I suspect there may be other undercurrents to this litigation, which could add to the acrimony, but I do not intend to elaborate on them because at the moment they are exactly that, tentative suspicions and no more.

44. The allegations made against all four Defendants, as stated in the Cause, are grave. I have already identified them. They include allegations, with regard to the Plaintiff, of false and malicious actions at various periods of time, of wrongful conspiracy with intent to injure or cause loss, of deliberate false representations, of unlawful interference with business interests, and that the Defendants will continue so to act unless otherwise restrained by the Court. Such allegations go to the very heart of any person's integrity.

45. The seriousness of such attacks is exacerbated when the object of such allegations is not only a professional lawyer but one seeking to establish a reputation in a small community in which the commercial business sector forms an unusually large element. I respect the force of Mr. Collas' argument with regard to the position of the Fourth Defendant in those circumstances, and understand accordingly her desire to be afforded protection by this Court.

46. Mr. Collas rightly concedes that lawyers could not be afforded any greater protection than other professionals in this small community.

47. What was being sought was a limited interference with the general rule against privacy, which would only last until the conclusion of the strike out application. That, Mr. Collas argued, was not a matter of convenience, but was one of necessity in order to provide the fair protection to which his client was entitled; it was that which justice required. For his part, Mr. Ferbrache submitted, in summary, that there was no justification for making any exception in this case to the general rule.

48. I very much bear in mind the guidance given by Lord Woolf MR in Kaim Todner, and his citation from the judgment from Sir Christopher Staughton in *ex parte P*, that it is important to remember not only that proceedings are required, as the general principle, to be subjected to the full glare of a public hearing, but the reasons why that is so. The burden must be on the Fourth Defendant to persuade me, to the normal civil standard, that it would be right in the circumstances of this case to grant her application. In one sense, it might be said that her application, as now refined, is somewhat much ado about nothing

very much, from whatever angle it is viewed. That would be both unkind and unfair. There was nothing improper about bringing the application which has been sensibly and moderately argued by Mr. Collas.

49. Nevertheless, I am not persuaded that this application should be granted. The true test must be whether justice can only be served in this case if the strike out application is heard in private, which must be a matter of necessity not of convenience. I can see no reason why justice requires that the public should be excluded from hearing argument on the strike out application, when they will have in any event the opportunity to read the full decision on it. This claim for protection is not, viewed objectively, founded in reason, which it has to be to succeed.

50. The normal course, and the protection afforded therein to parties and witnesses, is stated by Lord Woolf MR (at p. 935 E) as follows:-

> *"In general, however, parties and witnesses have to accept the embarrassment and damage to their reputation and the possible consequential loss which can be inherent in being involved in litigation. The protection to which they are entitled is normally provided by a judgment delivered in public which will refute unfounded allegations. Any other approach would result in wholly unacceptable inroads on the general rule.".*

51. To allow this application would, in my view, be such an unacceptable inroad; it would be an unjustified exception with the danger of being quoted by analogy in other cases not least involving other professional defendant litigants. One might also pose the question as to why professional persons should be placed in any separate category to those who are not in such a privileged position in society. Being the target for slings and arrows has to be accepted as being part and parcel of professional life, to be balanced against the undoubted benefits which it also brings. Rejecting this application, in my opinion, would in no way frustrate the Court's ability to do justice in this case.

52. The application is dismissed.

53. Notwithstanding that, in the event, the issues in this case fell within a narrow compass, I felt it desirable to address them at length, not only out of regard to the parties and their Counsel, but also because, as far as I am aware, this is the first time that the Royal Court has had to pronounce in this way upon the fundamental issue of the public nature of justice.