

# Media Law – Privacy – Elton John – Failed Injunction

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*Article by: Rosanna Cooper*

A bid by Sir Elton John to prevent the Daily Mail publishing a photograph of him walking with his driver from his car to his London home was rejected by the High Court. If Sir Elton had been successful in obtaining this injunction, it would have completely revolutionised British newspaper and magazine practice.

Sir Elton had his picture taken by a freelance photographer whilst walking from his Rolls Royce to the front gate of his West London home. He then heard that the Daily Mail was planning to publish the picture, and he applied for an injunction to prevent publication on the ground that it was an unwarranted infringement of his privacy. The picture merely showed him casually dressed, but he complained that it showed his baldness was returning.

In his application, Sir Elton argued that the photo in question, which was surreptitiously acquired, was taken without consent, made no contribution to any matter of public interest, and its publication would be a breach of the Press Complaints Commission code. He supported his bid with the decision in the European Court of Human Rights case of *Von Hannover v Germany* [2004] ECHR, which involved Princess Caroline of Monaco. It was held in this case that her right to a private family life had been violated by sustained paparazzi photography of her and her children.

Another case which sheds light on this situation is *Campbell v MGN*, which involved the supermodel Naomi Campbell. The House of Lords awarded her damages and compensation against the Mirror for breach of confidence in relation to the publication of photographs of her outside a Narcotics Anonymous meeting. It was stressed, however, that the activity photographed must be private. With reference to Naomi Campbell, Lady Hale said:

“Readers will obviously be interested to see how she looks if and when she pops out to the shops for a bottle of milk. There is nothing essentially private about that information nor can it be expected to damage her private life. It may not be a high order of freedom of speech but there is nothing to justify interfering with it.”

Sir Elton's case is the first case where the inconsistency between *Von Hannover v Germany* and *Campbell v MGN* has been highlighted before the court. The question in this case was:

Did Sir Elton have a reasonable expectation of privacy in respect of the information in the photographs and, if he did, did his right to 'respect for his privacy' outweigh the 'right to freedom of expression'?

Sir Elton's application for an injunction was rejected by the High Court on the grounds that the photograph, which the Daily Mail subsequently published, did not convey any private information which could, for instance, call into question Sir Elton's health or his sexual relationships.

Comment: The court also highlighted the fact that the Princess Caroline case involved an element of harassment from the photographers which caused suffering as she went about her daily business. This factor was lacking in Sir Elton's application. This decision for Sir Elton means that where a celebrity's photograph is taken in a public place, his/her lack of consent cannot prevent its publication. There would have to be a special element to make the court consider the issue of privacy.

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