



Neutral Citation Number: [2019] EW Misc 1 (CrownC)

Case No: U20170287

IN THE CROWN COURT AT SOUTHWARK
IN THE MATTER OF s. 45 OF THE CRIME AND COURTS ACT 2013

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22 January 2019

Before :

THE PRESIDENT OF THE QUEEN'S BENCH DIVISION
(THE RT. HON. SIR BRIAN LEVESON)

Between :

SERIOUS FRAUD OFFICE
- and -
TESCO STORES LIMITED

Applicant

Respondent

Sasha Wass QC, Esther Schutzer-Weissmann and Vincent Scully for the S.F.O.
Clare Montgomery QC and Clare Sibson QC for Tesco Stores Ltd
Nicholas Purnell QC and Jonathan Barnard; Adrian Darbishire QC and Tom Doble; Ian Winter QC and Jocelyn Ledward for Carl Rogberg, Chris Bush and John Scouler respectively
Jude Bunting for Times Newspapers Ltd., Associated Newspapers Ltd, the Press Association, News Group Newspapers, Guardian News and Media Ltd
The Financial Times Ltd made written submissions

Hearing date: 18 January 2019

Judgment Approved

Sir Brian Leveson P:

1. By a judgment dated 10 April 2017, I approved a Deferred Prosecution Agreement (“DPA”) between the Serious Fraud Office (“SFO”) and Tesco Stores Ltd at a time when criminal proceedings were pending against three former employees, Carl Rogberg, Chris Bush and John Scouler (“the defendants”). I then permitted representations to be made by them to ensure that those proceedings were not jeopardised and orders were made under s. 4(2) of the Contempt of Court Act 1981 and para 12 of Schedule 17 of the Crime and Courts Act 2013 restricting publication both of the DPA, the Statement of Facts and that which was said at the public hearing surrounding the application under para 8 of the Schedule.
2. On 5/6 December 2018, in the Crown Court at Southwark, Mr Bush and Mr Scouler were acquitted after Sir John Royce (supported by the Court of Appeal Criminal Division) had ruled that there was no case to answer. By reason of ill health, Mr Rogberg was not part of that trial. Having considered the judgment of the Court of Appeal, the SFO has announced that, on 23 January 2019, no evidence will be offered against Mr Rogberg so that a verdict of Not Guilty will be entered in his case as well. As a result, leading counsel on behalf of each of the defendants has submitted that there is an inherent unfairness in the juxtaposition of the acquittals and the Statement of Facts which ascribes wrongdoing to them. By skeleton argument, it was suggested that the Statement of Facts should be redacted or be made the subject of an addendum.
3. Counsel who appeared for the SFO and Tesco Stores both challenged the locus of the defendants either to intervene or to seek to alter a concluded DPA or Statement of Facts which potentially form the basis of an admission under s. 10 of the Criminal Justice Act 1967. The press also challenges any amendment as offending the principle of open justice and potentially limiting the ability to comment fully on the DPA and its background all of which is and has been a matter of real public interest.
4. I have no doubt that I have no jurisdiction now to alter or modify either the terms of the DPA or its supporting Statement of Facts; having approved the agreement, the role of the Court is limited to enforcing its terms. As a consequence of the statutory scheme, however, it was always common ground that the defendants were not involved in or parties to any agreement in relation to the DPA or Statement of Facts. Furthermore, at the time of the order, I permitted to be placed into the public domain the fact that the DPA (and thus the Statement of Facts) related only to the potential criminal liability of Tesco Stores Ltd and did not address whether liability of any sort attached to Tesco plc or any employee, agent, former employee or former agent of Tesco plc or Tesco Stores Ltd. That remains the case.
5. For the avoidance of doubt, the orders restricting publication will lapse when the criminal proceedings come to an end.