

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
London WC2
22nd February 1994

Before:

HIS HONOUR JUDGE SUMNER

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CHURCH OF SCIENTOLOGY RELIGIOUS EDUCATION INC

v.

ROBIN SCOTT
SON, LAWLEY & ORS.

.....
J U D G M E N T

REVISED

.....
MR. A. NEWMAN, Q.C. and MR. A. ALYAZY (Instructed by Allen
Ticehurst and Bird (West Sussex) appeared for the
Plaintiff.

THE DEFENDANTS APPEARED IN PERSON.

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J U D G M E N T

A JUDGE SUMNER: There was before me on the first day of a trial
 of two actions listed to last some 20 days, an
 application by the plaintiffs to discontinue. That
 B application is opposed. It gives rise to some
 interesting points of law in relation to the practice
 upon such applications at this stage of proceedings in
 relation to two actions which have been running for many
 C years and secondly, in relation to rights over copies of
 documents where those documents have come unlawfully into
 the possession of defendants.

D It is a case where unfortunately neither party has
 confidence in the integrity of the other and where
 certainly on behalf of the defendants feelings run high.
 The plaintiffs have been represented before me on the
 application yesterday and at its continuance today, by
 E Mr Newman QC and Mr Algazy. The defendant Mr Scott and
 Mr Lawley are acting in person. They are respectively
 the first and second defendants out of a total of four
 defendants in the first action and Mr Lawley is the
 F second of three defendants in the second action, the
 actions being referred to, quite shortly, as the 1984 and
 the 1986 actions. As I shall mention in slightly greater
 detail, the other defendants in both actions have settled
 G the plaintiff's claim against them on terms to which I
 was referred as recently as last week. It is not a
 matter which I have found entirely straight-forward.
 H That is no reflection upon Mr Newman's advocacy because
 he has properly taken points on behalf of not only of

A course the plaintiffs but of the defendants and addressed
A the court in admirably persuasive and courteous manner,
but at the end of the day I have reached a clear
conclusion and I shall endeavour now to set out that
conclusion that the reasons for it.

B The plaintiffs to this action are a Danish, maybe
company or corporation representing that part of the
C Church of Scientology which has its origins in
California. Both defendants are former members of that
D Church of Scientology which is itself a religious cult
that has received quite considerable publicity in the
past much of it adverse in relation to its practices.
E The two defendants were engaged with, or involved by, the
plaintiffs for some years. Mr Scott I think from about
1973 to 1981 and Mr Lawley from about 1978 to 1982. When
they left they both felt, or certainly they both feel
now, strongly that they have been victims of this cult
and regard certain of its activities as dishonest and
dangerous in effect that it is basically evil.

F Mr Scott's belief is, as appears from his subsequent
action, that certain of its tenets and practices are
beneficial.

G Mr Lawley does not agree with that but they both
consider that what can perhaps be described as the higher
levels of teaching and training are dangerous, that they
quite wrongly take money from the weak and the vulnerable
and the means that are used to retain members and keep
them faithful to the cult are unlawful and repressive.
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is right to mention those matters at this stage before taking up the relevant history so far as I need to of the particular proceedings.

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In about 1983 Mr Scott decided to set up in Scotland what appears to have been a splinter group of the plaintiffs using what he had regarded as the best points of Scientology, but charging a tenth or a hundredth of the rate which he claims the plaintiffs were charging. An unusual feature of this cult is that certain documents relating to what might be described as its higher practices and training are regarded by them as confidential. It has not been necessary to go into the reasons for this and it may be that the plaintiffs accept that those practices in wrong or unskilful hands might be harmful. The defendants, needless to say, now regard it as much more sinister than that.

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It is to be noted that when persons join this cult they sign quite elaborate agreements relating to the confidentiality of certain of the documents and no doubt practices as well.

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In 1983 Mr Scott, and in this he was joined by Mr Lawley, wished to obtain certain of those confidential documents, that is documents claimed by the plaintiffs to be confidential, in order to ensure at that time the purity, as I think he describes it, of their processes and indeed Mr Lawley in not dissimilar terms supported that.

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A What they did was to seek to obtain, and did obtain,
by unlawful means, copies of certain documents. I do not
B need to go into the precise nature of those documents
save to note that some are called Upper Level materials
and of those Upper Level materials there are part of them
C which can be described as the Upper Level again. What
the defendants did, by pretending to be senior members of
the cult, was to attend certain of the plaintiffs'
D premises in Denmark and obtain copies of what are
described as short NOTSS or the Upper Level of the Upper
Level to refer back to my description. That their means
of obtaining them were unlawful is undoubted and indeed
E Mr. Scott was convicted in Denmark, of gaining
unauthorised entry to the plaintiffs' building for the
purpose of gaining information and in respect of that he
was given a four month term of imprisonment of which
three months were suspended.

F The plaintiffs were anxious to obtain the immediate
return of those documents, thus unlawfully obtained, and
started proceedings in the Queens Bench Division in March
G 1984. Those proceedings are in the name of the present
plaintiffs, itself a Danish incorporated body. As a
result of starting those proceedings they were able to
obtain a number of injunctive orders, in effect, and by
H them, save with one exception to which I shall come,
obtaining return of the original documents and certain
copies which were handed over by Mr Lawley as a result of
the court Order. There is evidence that other copies
which had been obtained were destroyed.

A In August, 1984, by an Order of Mr Justice Kennedy,
 B as he then was, in Order 14 proceedings, the defendants
 were ordered to return the original documents and ordered
 to pay the plaintiffs damages for their detention and
 taking which were to be assessed. The matters to which
 I have so far referred relate to the 1984 proceedings.

C The 1986 proceedings are somewhat different. In
 D that case the first defendant took certain of the
 plaintiffs' documents, he said, for home study and the
 second defendant, Mr Lawley, and another defendant,
 obtained copies of them. In the event the copies were,
 it is said by the defendants, destroyed and the original
 was returned. As a result of those proceedings and save
 as I otherwise refer to for the purposes of
 discontinuance, I am not immediately concerned with that
 1986 action.

E I do not know, nor has it been necessary for me to
 F ask, nor be informed, of why, after 1984 and the last
 Injunctive proceedings in August of that year, it is not
 until 1994 that the matter has come before the court for
 G hearing, but it is important to note, first of all, the
 way that the plaintiffs' claim is put and, secondly, the
 nature of the defendants' defence, as settled by counsel
 in 1992. The plaintiffs' claim, in essence, is that the
 documents were theirs. They were confidential in nature
 and that by taking them from their premises in Denmark
 the defendants had converted them to their own use and
 they therefore sought their return and the return of any
 H copies which had been taken. The defence, it is of some

A importance to see -- I am not going to quote from it at
any length -- but whilst certain exceptions are made in
relation to the fourth defendant, to which I need not
further refer at this time, a number of important
B admissions are made and the defendants' case is made
reasonably clear. First of all, the circumstances of the
taking of the plaintiffs' documents is accepted. It is
also accepted that the plaintiffs are entitled to the
C originals and indeed that they were the owners and
entitled to possession. Furthermore it is admitted and
averred that the defendants, save for the fourth
D defendant, converted those documents of the plaintiff to
their own use. It is however said in paragraph 12 of the
defence that the contents of those documents taken were
not confidential to the plaintiffs and a number of
E grounds are set out to which I need not refer in detail
in support of that allegation, not least that any
assertion of a monopoly in use of those materials is
inconsistent with the plaintiffs' status as a religion.

F In paragraph 13 it is said that the contents of
those documents are for the benefit of the public at
large and are not exclusive or confidential to the
plaintiffs and certain passages in writings, I think it
G may safely be said, of the plaintiffs' are relied upon in
support.

H In paragraph 14 it is denied that the plaintiffs are
entitled to any Injunction or Order in respect of the
copies of the documents. It is to be noted that it is

A very plainly not the original but the copies to which these various averments refer.

B I should just outline the points that are taken. Firstly, that the plaintiffs seek an injunction with unclean hands. Secondly, that the subject matter of the documents is not such as the court should protect. C Thirdly, that refusal of an Injunction is in the public interest. Fourthly, that the interference with the plaintiffs' right is trifling and, fifthly, praying in aid the doctrine of equity does nothing in vain that these documents were so far as the defendants were concerned such that they were able and are able to D propagate the material irrespective of the use of the contents and/or copies of those documents recovered. Finally, and an interesting point which it has not been E necessary to discuss further, that there has been inordinate and inexcusable delay in prosecution of the action.

F In brief what the defendants are saying is that whilst accepting that they obtained the original document G unlawfully, in respect of the copies, a, they are entitled to them because it is for the benefit of the public at large and I note that Mr Lawley at one stage, H would not grant, alternatively, continue any Injunction relating to their restraint and holding by the plaintiffs.

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A further point has been made which it is accepted factually, namely, that in relation to the 1984 action the documents did not pass out of Mr Scott's possession, original or copies, by virtue of any court order, but because the police called in his absence at his home and were handed them and they had therefore returned to the plaintiffs' possession.

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Mr Scott does not accept that that puts him outside the confines of this matter because he says that all the copies that they obtained, whether those of his and the originals, were as a result of him acting in concert with Mr Lawley and that therefore, he says, it is arguable that he has an interest in the copies handed over as a result of court Order by Mr Lawley.

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In relation to the second action, it is not too easy to see what there was remaining to be litigated, bearing in mind that the originals were restored in respect of which no claim was made and the copies destroyed, save that by paragraph 19 of the defence in relation to that action, again settled by counsel, this time in 1986, it is said that:

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"If which is denied the information as confidential to the plaintiffs the defendants will contend there is no breach of confidence by showing the documents to the second and third defendants or by making copies".

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I presume therefore the action would have been, subject to any question of damages arising, based upon an argument on that matter alone.

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I shall come shortly to my powers as set out under Order 21, rule 3, but it is accepted that the court has a discretion in relation to discontinuance and that may

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be sufficient for me to mention at this stage before I come to the various matters which have been put forward by Mr Newman in support of this application. Indeed at the forefront of his submissions is an acceptance that the court has a wide discretion both to allow or not to allow discontinuance, to impose terms, or not to impose terms and indeed in relation to costs as well, but he points out a number of matters which, he says, points to the fact, not only that discontinuance is reasonable and should be allowed, but allowed on terms of each party bears its own costs.

I shall not I fear summarise them with the force or eloquence with which he put them forward, but I hope I shall cover the main grounds upon which he relies. Firstly, he says that this action -- and by that I mean these actions -- were over the return of documents, on any view, unlawfully taken. That has been achieved because not only have the originals been returned but any copies that were in existence have also been returned and there can certainly be no argument whatsoever in relation to the original document in the light of the Judgment in August, 1984, under Order 14 proceedings. He points to the fact that in respect of a potentially 20 day action, that they are seeking, or if they were to seek, an Order at the end of the day and an assessment of damages, the assessment of damages would not appear to be any great sum and indeed they can point to little more than some £800 which it may be the defendants have made as a result of profitably using originals or the copies. Not only

A that, not only are the damages likely to be so limited,
 B it is a matter of great concern for them that the actions
 C are against persons from whom it is most unlikely that in
 D the event of their success they would recover anything
 E but a small proportion, if that, of their costs, let
 F alone the damages that might arise.

G If, they point out, there is any concern about the
 H documents and their safe-keeping, the plaintiffs'
 I solicitors are prepared to give suitable and proper
 J undertakings in relation to holding them to the Order of
 K the court because, they say, it may be that the
 L Californian entity, referred to in short as RTC, may well
 M have a claim in relation to the copyright in those
 N materials, and if that is a matter to be disputed then at
 O a suitable time parties can take their position and the
 P documents can be retained safely until then. That saves
 Q any concern on behalf of the defendants that they might
 R be lost or destroyed.

S They point out that this particular action is only
 T part of what apparently has been litigation in a number
 U of other jurisdictions which has cost the plaintiffs, so
 V I am told, a great deal of money against parties,
 W including these defendants, and said to run into millions
 X of pounds. The point of that, I think, being that to
 Y continue with this litigation, bearing in mind the costs
 Z already incurred, and further costs which would simply
 not be recovered if they were successful, simply does not
 make it anything like a commercial proposition. Further,
 it is pointed out, it is not as if at the end of the day,

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the defendants are going to get back their documents. They have not claimed the return of the copies, so to what end would this litigation go? It is said, bearing in mind part of the extracts of affidavits already filed, what are the defendants hoping to do but to sling mud, as it were, at the plaintiffs and use the court procedures for that reason. That, they say, is plainly shown by the fact that only last week the defendants disclosed some three bundles of documents -- which I confess I have not had regard to -- which they say, and I have no reason to doubt, simply are an attempt to discredit the plaintiffs and to show that they are, as the defendants believe, an evil organisation. What therefore is the point, where the action has already had its results, in pursuing this claim further when the defendants appear to be more interested in either mud slinging or an expose, whichever way it might be put, and can hope to recover little, if anything, by it.

The plaintiffs point out further that though there is a dispute about the question of confidence, the defendants' case being that there can be no confidence in iniquity, that is only one of the ways that the plaintiffs put their case. Once more, it must be reasonable to discontinue where the other defendants, in both proceedings, have come to terms only as recently as last week and where the discontinuance would yield, as it were, no fruits for the plaintiffs and no loss for the defendants. In those circumstances, and upon their solicitors giving suitable undertakings, and they

A themselves undertaking to issue the necessary summons,
they ask for leave to discontinue.

B The defendants were unprepared for such an
application, but nevertheless have resisted because,
quite apart from the fact that they do wish to say a
great deal about the plaintiffs and none of it in their
C favour, they wish to put forward certain grounds, as I
understand it, in relation to the right to have the
copies of the original documents which they are prepared
to undertake not to use for any financial gain by running
training courses or anything of that nature.

D It is plainly, in my judgment, a strong case that
the plaintiffs present for discontinuance.

E I now consider in a little more detail the relevant
rule and certain passages set out in them in the White
Book in relation to it. Order 21, rule 3, sub. rule 1,
reads as follow:

F "Except as provided by rule 2 a party may not discontinue
an action whether begun by Writ or otherwise, or
counterclaim, or withdraw any particular claim made by
him therein without the leave of the court and the court
hearing an application for the grant of such leave may
Order the action or counterclaim to be discontinued, or
any particular claim therein to be struck out as against
any or all of the parties against whom it is brought or
made on such terms as the cost of bringing the subsequent
action or otherwise as it thinks just".

G In notes on page 394, this is said:

"The principle underlying the requirement for leave is
that after proceedings have reached a certain stage the
plaintiff who has brought his adversary into court should
not be able to escape by a side door and avoid the
contest since he is no longer dominus litis and it is for
the Court to say whether the action should be
discontinued and upon what terms".

H There is then reference to the case of Fox v Star
Newspapers, [1898] 1 Q.B. 636. The facts of that case

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which I have considered are far removed from the circumstances with which I am concerned here and I do not think I need trouble with that any further. However, the note continues:

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"Nevertheless it is not desirable that a plaintiff should be compelled to litigate against his will; the Court will normally grant him leave to discontinue if he wants to, provided no injustice will be caused to the defendant nor will he be deprived of any advantage which he has already gained in the litigation, which so far as possible should be preserved, but the order of the Court must take effect from the date on which such leave is granted".

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That and the case cited thereafter again are not directly germane to the issues before me.

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In my Judgment and in the exercise of the discretion granted by that rule, I consider that I should permit the plaintiffs to discontinue, unless it can be shown that the plaintiffs had gained some advantage from the litigation to date, or the defendants have suffered some disadvantage from the litigation until this stage which it would not be right and proper that either party should have to bear or should have the advantage of taken. If I make the Order for discontinuance at this stage and without any further order or directions, and Mr Newman is correct, the plaintiff will retain the copies, that is, the copies surrendered by Court Order by Mr Lawley. Even now there is a dispute about whether the plaintiffs have or have not complied with an Order made only a few weeks ago by providing the defendants with those copies, but I do not know the rights and wrongs of that. I do not go into it further. It is important to note that it is the defendants' case that, though they unlawfully possession

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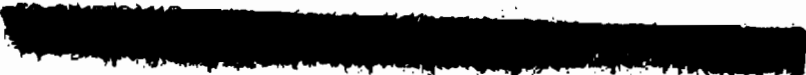
A of those documents, they claim they are entitled to them
 B in any event, there is no competence relating to them and
 because what they say they can prove the court should not
 make an Injunction, or continue an Injunction at this
 stage, alternatively, should not after there has been
 delay of this length of time.

C In my Judgment I do not have to consider whether the
 defendants are right in relation to those arguments, or
 may be right about those contentions. I have only to
 consider whether, as a result of the trial, there is an
 argument based upon those grounds, upon which the
 defendants might succeed.

D I am satisfied that the litigation to date has had
 this advantage for the plaintiffs, namely, that they
 have, by proper Order, properly obtained, had returned to
 them copies of documents and to that extent they have
 E obtained an advantage in this litigation. I am equally
 satisfied that if the defendants win, it may possibly
 depend upon what grounds, there is a prospect that the
 Court would not only discharge the Injunctive Orders so
 F far made, but also, were there then an application, Order
 the return of the documents which had been handed over if
 that were not going to be voluntarily done. Thus, to
 deny the defendants a trial when they wish to recover
 G those documents and have an argument available on which
 there is a chance that they could succeed and when
 litigation deprives them of that argument, is to take
 away from them and to give the plaintiffs an advantage in
 H the litigation. Therefore if discontinuance were to mean

A that there would be no order for the return of those copy
 documents, as Mr Newman contends, would in my judgment be
 to give the plaintiffs an advantage. Just because there
 B may be that position does not, in my judgment, justify
 refusing the plaintiffs the right to discontinue these
 proceedings. On the other hand, it does justify me, if
 C I am satisfied, in imposing terms that leave neither
 party with an advantage. I consider that I am justified
 in this instant in imposing such terms in order not to
 D permit the plaintiffs to obtain an advantage from
 litigation to date which, as a result of the litigation,
 they might lose. Accordingly, I propose to exercise that
 E power because to do otherwise would, in the circumstances
 of allowing a discontinuance, as I propose to allow, it
 F would do an injustice. Indeed, to do otherwise might, in
 different circumstances be somewhat remarkable. A
 plaintiff would then have only to start proceedings to
 recover possession of an article, obtain the return of
 that article by way of an interim Injunction and then
 discontinue against a defendant claiming himself the
 right to possession and it would delay justice, force a
 defendant then to obtain an Injunction to freeze it,
 while he himself brought proceedings which he hoped would
 result in it being returned to him.

G I therefore propose to allow the plaintiffs to
 discontinue because I think that is reasonable in all the
 H circumstances, but to allow them to do so only upon
 terms. I therefore propose to grant that leave. The
 terms -- and I propose at this stage only to outline that



I had in mind and my outline is certainly open to argument in relation to its precise terms and is intended only as an indication of what I have in mind that upon such of the defendants undertaking not to use the copy material surrendered to the plaintiffs' solicitors to run courses concerned with the Church of Scientology, then the terms are to be that the plaintiffs return to the second defendant the materials surrendered by him and to do so within seven days or such other times as the parties may urge upon me. Finally, I come to the question of costs. This question, in my judgment, is clear. This has been a last-minute application upon which the defendants have had no notice at the beginning of what would have been protracted litigation. It comes nearly ten years after the relief which the plaintiffs were obtained by them and the only additional factor, so far as I am aware, is the settlement with the other defendants as recently as last week. I do not see that settlement makes such a crucial difference as is urged upon me. It still leaves the litigation to go forward and it is to be borne in mind the defences in each case are the same defences, save for the fourth defendant, for all the parties, so the fact that one or two no longer continue means that the case still otherwise continues and upon the same terms in relation to the other. Whilst I entirely accept, for the reasons I endeavoured to give, that it is reasonable to discontinue, I am satisfied that the proper order for costs is that the plaintiffs should

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pay the defendants' costs of the discontinuance and I shall so Order.

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