Covance Laboratories Limited and Covance Laboratories Incorporated v *Peta Europe Limited and others*

On 16 June 2005 an important judgment was handed down by Judge Peter Langan in the High Court of Justice (Leeds District Registry).

The background to the case is that in 2004 a member of PETA USA obtained employment with Covance Laboratories Ltd ("CL USA") in its Primate Toxicology Department. She filmed the treatment of monkeys, including monkeys being hit, choked, taunted and terrified (apparently deliberately) by employees. She made her film into a video, and also made detailed written records of the systems and procedures used by CL USA. Her material was analyzed by lawyers and vets within PETA USA, who concluded that CL USA was committing serious breaches of federal and state legislation. On 17 May 2005 PETA USA submitted complaints against CL USA to various US bodies, and held a press conference to publicize these matters. Later the same day PETA Europe publicized them in Europe.

The following day, Judge Langan heard an application by the holding company of CL USA for an injunction to prevent publication of the video, which he granted. On 27 May and 10 June 2005 he heard submissions for the continuation of the injunction until trial. It was asserted that PETA Europe received film material "knowing that it was secret, confidential and private to" CL USA, and that PETA Europe knew that the material was taken and compiled in breach of the investigator's obligations as an employee. The injunction was discharged, on the following grounds.

The judge noted that an injunction which would prevent further publication would interfere with the right to freedom of expression, a right guaranteed by Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Section 12 of the Human Rights Act 1998 provides:

"(1) This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the Convention right to freedom of expression…

(3) No such relief is to be granted so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed…"

In addition, under Section 12(4), where the proceedings relate, *inter alia*, to journalistic material (as in this case), the Act specifies that the court must also have regard to the extent to which it would be in the public interest for the material to be published.

Regarding the effect of Section 12(3), Judge Langan applied the House of Lords decision in *Cream Holdings Ltd* v *Banerjee*[1]: "the general approach should be that courts will be exceedingly slow to make interim restraint orders where the applicant has not satisfied the court he will probably ('more likely than not') succeed at the trial." He also applied the Court of Appeal's judgment in *A* v *B plc*[2], in which Woolf

[1] [2005] 1 AC 253, 22
[2] [2003] QB 195, 11.

CJ stated “the existence of a public interest in publication strengthens the case for not granting an injunction…[T]he fact that the information is obtained as a result of unlawful activities does not mean that its publication should necessarily be restrained by injunction on the grounds of breach of confidence…”

Concerning the merits of the case, the judge stated that the question of whether there was an interest capable of being the subject of a claim for confidentiality should not be allowed to be the subject of detailed argument at the interlocutory stage. Whether or not the information in the video was of its nature confidential could not be determined without a debate on the authorities i.e., just such detailed argument. He stated that it was impossible to say that the issue was one in which CL USA was likely to succeed at trial. Nevertheless, assuming for the purposes of the judgment that CL USA would establish confidentiality, he stated that even if that assumption was made “the effect of doing so is far outweighed by matters on which it is possible…to reach definite conclusions. I refer to the [defence] of public interest…” The existence of this defence made it highly unlikely that CL USA would succeed at trial. Therefore, in accordance with the abovementioned case-law, the injunction was discharged.

Judge Langan considered that concern that laboratory animals should be treated with basics decency was a matter of interest to substantial sections of the public. In the present case, the holding company of CL USA published an animal welfare statement on its website that it would treat animals with “respect” and would follow “all applicable laws and regulations”. He said that a comparison of what was said in the statement and what may be seen on the video was “a comparison between two different worlds…If, as seems likely…the group of which CL USA forms part has fostered a misleading impression, PETA Europe is entitled to correct it publicly.”

This ruling is greatly to be welcomed, establishing as it does that the public has a legitimate interest in being informed about animal abuse in laboratories.