

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 17/05/2021 4:44:14 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Concise Statement
File Number: NSD426/2021
File Title: JOANNE ELIZABETH DYER v SUE CHRYSANTHOU & ANOR
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 18/05/2021 8:49:52 AM AEST

A handwritten signature in blue ink that reads 'Sia Lagos'.

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Concise Response of the First Respondent

No. NSD 426 of 2021

Federal Court of Australia

District Registry: Sydney

Division: General

Joanne Elizabeth Dyer

Applicant

Sue Chrysanthou SC

First Respondent

The Honourable Charles Christian Porter

Second Respondent

1. In answer to the allegations in the Concise Statement dated 11 May 2021 (**CS**), the first respondent (**Chrysanthou**) says that she has only been provided with the redacted version and does not know and cannot admit any of the material that she cannot see and read because it is redacted.
2. In answer to the allegations in paragraph 1 of the CS, Chrysanthou:
 - (a) admits that she is a barrister and senior counsel;
 - (b) admits that she provided advice to the applicant (**Dyer**) on 20 November 2020 and 27 and 28 January 2021;
 - (c) says that the advice referred to in the preceding paragraph was limited to [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
 - (d) admits that she met with Dyer, Michael Bradley and James Hooke on 20 November 2020;
 - (e) says that she attended the conference referred to in the preceding sub-paragraph at the request of Matthew Richardson, and as a favour to him;

- (f) says that her recollection of that conference will be set out in an affidavit filed by her in this proceeding;
- (g) admits that she is acting for the second respondent, the Honourable Christian Porter (**Porter**) and has held that brief since 10 March 2021;
- (h) admits that she did not seek Dyer's consent to act for Porter and says that she did not need to seek such consent;
- (i) says that she notified Dyer of her brief for Porter by informing Michael Bradley shortly after 9am on 15 March 2021;
- (j) admits she drafted the Originating Application, Statement of Claim and Reply for Porter in his proceedings in consultation with and on instructions from Rebekah Giles, solicitor;
- (k) otherwise denies the allegations in paragraph 1 of the CS.

3. In answer to the allegations in paragraph 2 of the CS, Chrysanthou says that:

- (a) on 15 March 2021 Dyer, by her solicitor Michael Bradley asserted that Chrysanthou had confidential information of Dyer, but did not at that time ask her to return the brief for Porter;
- (b) on 24 March 2021 Dyer, by her solicitors, asked Chrysanthou to undertake to not do further work on the Porter brief, and Chrysanthou refused to give that undertaking;
- (c) on 23 April 2021 Dyer, by her solicitors, advised that if Chrysanthou did not return the brief by 4pm on 26 April 2021, she would approach the Court without further notice;
- (d) at about 4:30pm on 30 April 2021 Dyer, by her solicitors, advised that if Chrysanthou did not return the brief by 5pm on 2 May 2021 (a Sunday), she would commence proceedings in the Equity Division of the Supreme Court of New South Wales by approaching the Duty Judge on Monday 3 May 2021;
- (e) at about 11:30 am on 10 May 2021 Dyer, by her solicitors, notified Chrysanthou that she would be commencing proceedings;
- (f) she is of the view that, by reason of the cab rank rule, she is prevented from returning the brief for Porter;

- (g) she has not been provided with any information by Dyer that would require her to return the brief in the Porter matter.
4. Chrysanthou does not plead to paragraph 3 of the CS which makes no allegations of fact.
 5. In answer to the allegations in paragraph 4 of the CS, Chrysanthou:
 - (a) does not know and cannot admit the nature of the relationship between Dyer and AB;
 - (b) understands that AB committed suicide on about 24 June 2020;
 - (c) admits that it is alleged that AB made claims that she had been raped by Porter in 1988;
 - (d) admits that the ABC published an article written by Louise Milligan that identified and defamed Porter by the repetition of allegations said to have been made by AB;
 - (e) admits that Porter has sued the ABC and Louise Milligan in relation to the publication of the Article referred to in the preceding sub-paragraph.
 6. In answer to the allegations in paragraph 5 of the CS, Chrysanthou:
 - (a) admits that on 9 November 2020 the ABC broadcast an episode of Four Corners entitled "*Inside the Canberra Bubble*";
 - (b) admits that Dyer engaged in a filmed interview for that broadcast;
 - (c) does not know and cannot admit what other interviews and contact Dyer engaged in with Milligan;
 - (d) admits that the filmed interview included Dyer discussing the allegations said to have been made by AB against Porter;
 - (e) admits that the allegations said to have been made by AB against Porter were not included in the November Four Corners episode; and
 - (f) admits that parts of the filmed interview of Dyer were included in the November Four Corners broadcast.
 7. In answer to the allegations in paragraph 7 of the CS, Chrysanthou:

- (a) does not know and cannot admit what, if any advice Dyer sought from Marque Lawyers;
- (b) does not know and cannot admit what matters Mr Richardson advised Dyer in relation to, save for what is set out below;
- (c) admits that she [REDACTED]
[REDACTED]
[REDACTED]
- (d) says that [REDACTED]
- (e) says that she attended the conference [REDACTED] as a favour to her friend Matthew Richardson;
- (f) admits that she did not issue an invoice for the advice she gave [REDACTED]
[REDACTED] and never intended to do so given the matters set out in the preceding sub-paragraph;
- (g) says she never agreed to act in any proceedings.

8. In answer to the allegations in paragraph 8 of the CS, Chrysanthou:

- (a) admits that Dyer, Michael Bradley and James Hooke attended her chambers at about 10am on 20 November 2020;
- (b) says that Matthew Richardson attended shortly after 10am;
- (c) says that the purpose of the conference was to advise Dyer in relation to [REDACTED]
[REDACTED]
[REDACTED]

9. In answer to the allegations in paragraph 10 of the CS, Chrysanthou:

- (a) relies on the content of her affidavit that will be filed in these proceedings as to her recollection of what was said during the conference on 20 November 2020;
- (b) admits that she has an obligation to preserve any confidential information of Dyer's that was imparted to her during that conference;
- (c) says that she gave an undertaking to Dyer on 30 March 2021 and 26 April 2021, inter alia, that should any confidential information come to her mind, she would never disclose it to any person;

- (d) says she gave an undertaking on 26 April 2021 that she would not cross-examine Dyer or Hooke should they become witnesses in the Porter proceedings;
 - (e) says that Dyer is not her client, and was not her client on 10 March 2021;
 - (f) says that Dyer is not a party to the Porter proceedings and does not have a relevant legal interest in it;
 - (g) denies that she is acting in conflict with Dyer's interest by acting for Porter against the ABC and Milligan.
10. In answer to the allegations in paragraph 11 of the CS, Chrysanthou:
- (a) admits that she did not inform Dyer that she was accepting the brief to act for Porter, prior to accepting that brief;
 - (b) admits that she did not seek Dyer's consent to accept the brief for Porter, and says that she did not need to seek such consent;
 - (c) admits that she has advised and appeared for Porter in his proceedings against the ABC and Milligan;
 - (d) admits that she prepared the pleadings in the Porter proceedings in consultation with and on instructions from Rebekah Giles, solicitor;
 - (e) admits that she is still briefed in the Porter proceedings;
 - (f) admits that she is under an obligation to inform Porter, as her client, of everything she knows will be of assistance to Porter within the scope of her brief, subject to matters about which Porter gives informed consent that she not use for his benefit.
11. In answer to the allegations in paragraph 12 of the CS, Chrysanthou admits that Porter commenced proceedings against the ABC and Milligan by way of Originating Application and Statement of Claim filed in the Federal Court on 15 March 2021.
12. In answer to the allegations in paragraph 22 of the CS, Chrysanthou relies on the content of her affidavit that will be filed in these proceedings as to what she recalls was said during the conference on 20 November 2020.
13. In answer to the allegations in paragraph 23 of the CS, Chrysanthou:

- (a) says that given the challenge to Schedules 1, 2 and 3 of the Defence, the identity of the witnesses in the Porter proceedings to be called in support of any defences is unknown;
 - (b) says that in the little time she spent with Dyer on 20 November 2020, she formed no view or opinion on Dyer's strength, weaknesses, honesty, knowledge and/or beliefs;
 - (c) says that, despite the matters set out in the preceding sub-paragraph, on 26 April 2021, she offered an undertaking not to cross-examine Dyer if she becomes a witness in the Porter proceedings;
 - (d) denies that she has any confidential information of Dyer relevant to the Porter proceedings.
14. In answer to the allegations in paragraph 24 of the CS, Chrysanthou says that these are matters of law and she does not plead to them.
15. In answer to the allegations in paragraph 25 of the CS, Chrysanthou:
- (a) denies that any information disclosed by Dyer to her on 20 November in conference (that she can recall) is relevant to the Porter proceedings;
 - (b) denies that there is a real and obvious possibility that any such information will be used by her for Porter's benefit in the Porter proceedings;
 - (c) denies that Dyer's state of mind as to any information or otherwise, is relevant to the Porter proceedings.
16. In answer to the allegations in paragraph 26 of the CS, Chrysanthou:
- (a) denies that there is any conflict between her duty to Porter and her interaction with Dyer;
 - (b) says that Dyer has no relevant interest in the Porter proceedings given she is not and will never be a party to it;
 - (c) denies that she has in any way failed in her duties as a barrister in relation to Porter, Dyer, or otherwise;
 - (d) denies that she is in possession of any relevant confidential information of Dyer's;

- (e) denies that she would be required by her duty to Porter to disclose to him matters that are confidential to, and subject to legal professional privilege of Dyer.
17. In answer to the allegation in paragraphs 27-29 of the CS, Chrysanthou:
- (a) admits that her solicitor sent a letter that contained the words in paragraph 28;
 - (b) says that the Concerns Notice sent by Dyer to Nationwide News in November 2020 has been the subject of media reporting last week;
 - (c) agrees that any information in the court documents or affidavits that contain material that is privileged should be the subject of suppression orders.
18. In answer to the allegations in paragraph 30 of the CS, Chrysanthou:
- (a) denies that there is a real possibility that Dyer's legal professional privilege will be compromised by her continued representation of Porter;
 - (b) denies that she has in her possession any confidential information of Dyer's that is relevant to the Porter proceedings and thus denies that there is a real possibility that it will be compromised;
 - (c) does not know and cannot admit that Dyer will be called by the ABC as a witness in Porter's proceedings against the ABC and Milligan;
 - (d) says that on 26 April 2021 she offered an undertaking not to cross-examine Dyer if she does become a witness in the Porter proceedings;
 - (e) says that Dyer is not disadvantaged or likely to suffer detriment as a witness in that proceeding by the fact that she acts for Porter, as opposed to any other competent counsel.

This pleading was prepared by Patrick George solicitor, and settled by Noel Hutley SC



Patrick George

Solicitor for the first respondent

17 May 2021