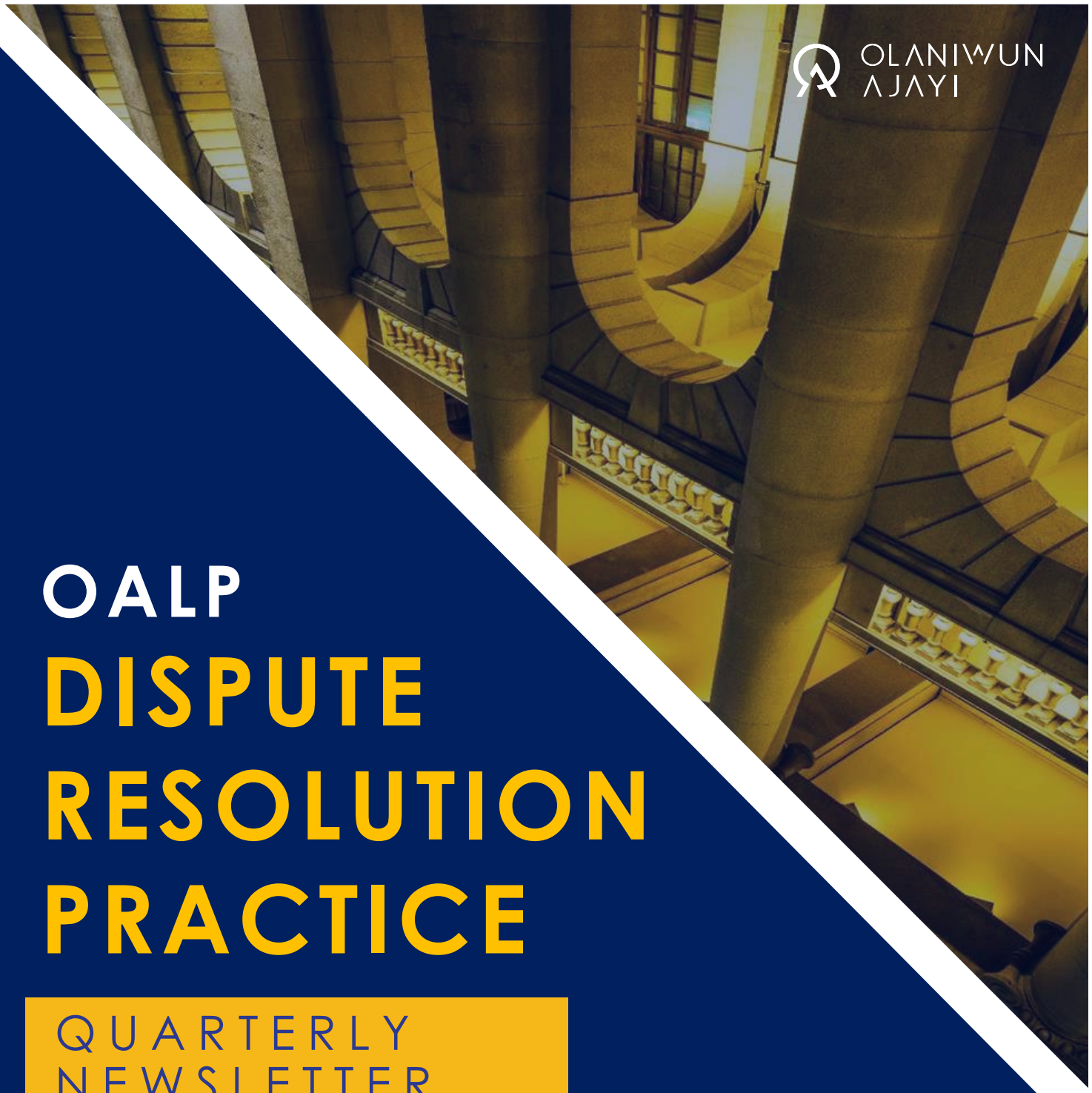


OLANIWUN AJAYI

OALP DISPUTE RESOLUTION PRACTICE

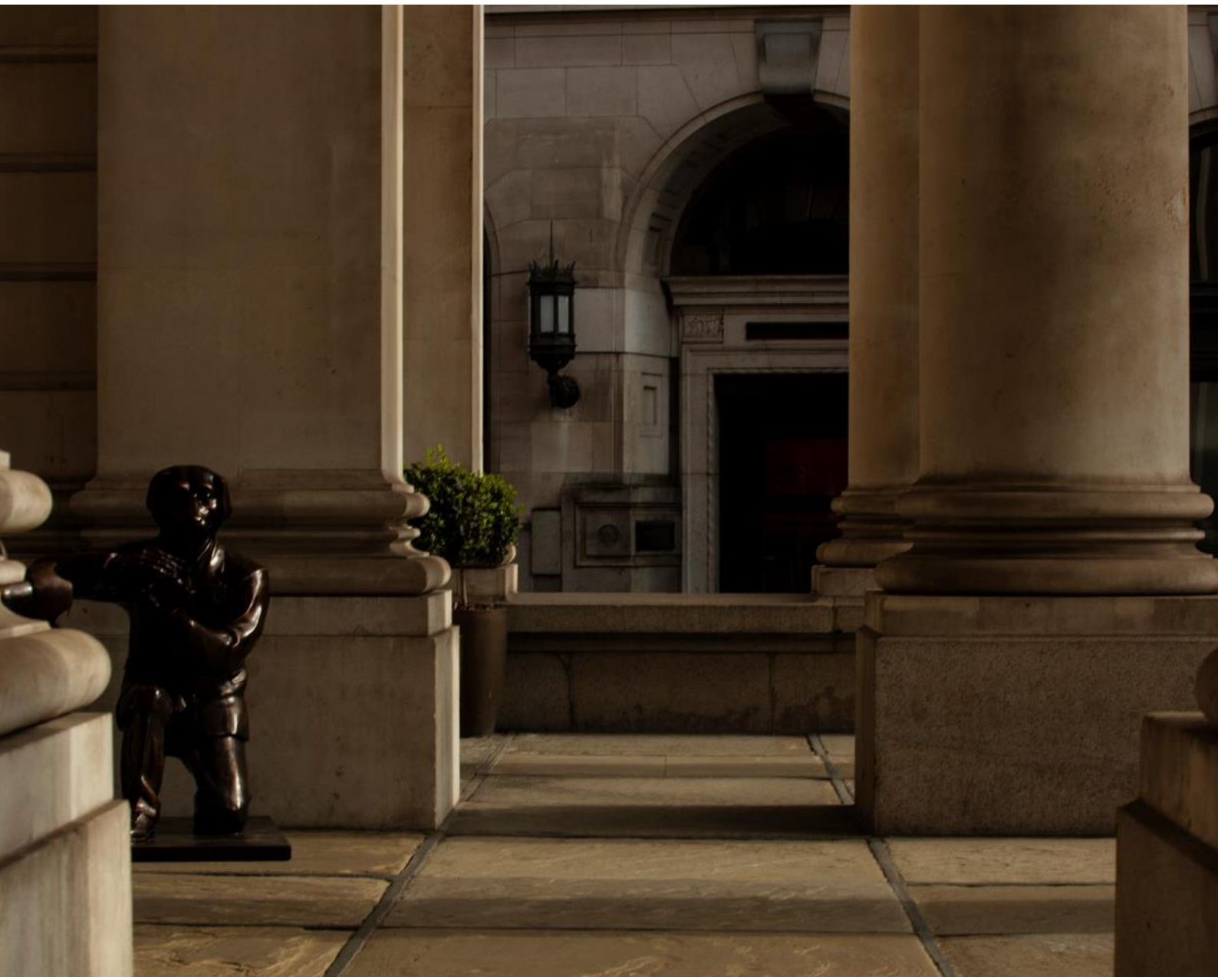
QUARTERLY NEWSLETTER

2nd Quarter 2024

INTRODUCTION

In the second quarter of this year, the law was advanced in Nigeria and progressive jurisdictions, with very interesting twists. In Nigeria, our appellate courtrooms were the epicenters of some of the most radical changes to legal principles in recent times. From decisions on crime and investigation, commerce and trademark registration, contract and jurisdictional limitation, to civil trial and claims substantiation, our Justices left clear verdicts and useful hints on future decisions. In the Federal legislature, our lawmakers responded to increasing incidences of cybercrimes by amending the Cybercrimes Act. In other jurisdictions, the legal frontiers were not pushed any less forcefully.

In this edition of our Quarterly Newsletter, we examine all these developments and trust that you find it an exciting read, as usual.



MR. IPINLOJU DAMOLA FEMI V. EFCC & 3 ORS – [2024] LPELR-61914 (CA) - "THE EFCC IS ALLOWED TO RESTRAIN AN ACCOUNT WITHOUT COURT ORDER FOR 72 HOURS BUT MUST SEEK ORDER OF COURT TO KEEP THE ACCOUNT BLOCKED BEYOND THE STIPULATED NUMBER OF HOURS".

Brief Facts

The Appellant's bank account with the 4th Respondent was frozen due to a written request by the 1st -3rd Respondents to freeze same, as the 1st Respondent was investigating the Appellant on issues pertaining to fraud. Consequently, the Appellant filed an originating motion seeking amongst others, a relief for the Court to declare that the act of freezing his bank account by the Respondents was an infringement of his fundamental rights as guaranteed under sections 34, 35 and 44 of the Constitution of the Federal Republic of Nigeria (CFRN). The trial court refused the Appellant's reliefs and dismissed the Appellant's originating motion. Aggrieved, the Appellant appealed to the Court of Appeal.

Decision

In resolving this matter, the Court of Appeal distinguished the decisions in GT Bank v. Adedamola [2019] 5 NWLR Pt. 1664 and Olagunju v. Economic and Financial Crimes Commission (EFCC) [2019] LPELR 48461 (CA) by noting that in the GT Bank and Olagunju's cases, there was no prior application for an order of Court either before and after the freezing of the account, but in the instant case, an application for the order of Court to block the account was sought and although it was yet to be granted before the bank account was frozen, the Court eventually granted same. Furthermore, relying on the provisions of section 6(5) (b) of the Money Laundering (Prohibition) Act, 2011, the Court held that the 1st Respondent has the powers to freeze or block a bank account without a Court order for 72hours but must seek an order of Court to keep the bank account frozen or blocked beyond the stipulated 72 hours. The Court consequently dismissed the appeal.

Click here to read a full review of the decisions in this publication.

DIKE GEO MOTORS LTD & ANOR V ALLIED SIGNAL INC & ANOR [2024] LPELR – 61780 (SC) PP. 18 -21, PARAS C-B - "A TRADEMARK REGISTRATION MAY NOT IN ALL CASES PROVIDE A COMPLETE DEFENCE TO A TRADEMARK INFRINGEMENT ACTION OR A PASSING OFF ACTION."

Brief Facts

The Respondents as Plaintiffs at the Federal High Court filed an action against the Appellants for the infringement of their registered trademark. In defence, the Defendants argued that they did not infringe the Plaintiffs' trademark as (x) the Appellants do not manufacture but purchase and sell brake and clutch fluids using the trademark "Allied and Device" and (y) the said "Allied and Device" trademark in use by the Appellants belongs to a third party, Dom Frank Nigeria Ltd. Premised on this, the Appellants filed an application praying the Court to strike out the Respondents' suit *in limine* as the trademark in use was registered. The application was dismissed by the trial Court on 13.04.1999 and an appeal against the dismissal was also refused by the Court of Appeal, hence, the appeal to the Supreme Court.

Decision

The Supreme Court, in dismissing the appeal, held that the Appellants must on the merit, show honest concurrent use of identical trademarks by compelling and cogent evidence. The Court held that the application for striking out was "misconceived and premature" and "cannot be established on the basis of an objection taken *in limine*"; and the mere fact that the Appellants' trademark became registered after the Respondents had commenced the action at the trial Court did not "inescapably doom" the Respondents' infringement action. The appeal was dismissed, and case was remitted to the Federal High Court to be tried on the merit. It is clear from the above that the ordinary fact that a trademark is registered cannot be sufficient defence to a claim for trademark infringement, and that a party who raises this defence must prove the honest concurrent use of identical trademarks on the merit.

INCORPORATED TRUSTEES OF ZAKI CLUB V. NEW NIGERIA DEVELOPMENT CO. LTD. & ANOR [2023] LPELR-60429(CA) - "DOCUMENTARY QUOTATIONS AND INVOICES DO NOT SUFFICE AS EVIDENCE OF PAYMENT OF THE SUM OF MONEY STATED IN THEM. THE PARTY RELYING ON A QUOTATION OR INVOICE MUST PRESENT EVIDENCE OF PAYMENT".

Brief Facts

The Appellant filed an action as Plaintiff claiming the sum of N48,700,305 from the 1st Respondent as value of purported improvements it made on the 1st Respondent's property (the **Property**) where the Appellant claimed to have been a tenant for over 40 years before the 1st Respondent sold the Property to the 2nd Respondent. The Appellant claimed that by the 1st Respondent's letter dated 21.11.1975 (Exhibit C3), it was agreed that the Appellant would carry out improvements on the Property and the 1st Respondent would pay for the value of the work done by the Appellant on the Property. The trial Court dismissed the Appellant's action hence an appeal to the Court of Appeal. In the Respondents' brief, the Respondents argued that the claim of the Appellant to have made improvement worth NGN48,7000,000 was not supported by any cogent or compelling evidence as invoices are not conclusive evidence of payment and so the appeal ought to be dismissed.

Decision

In agreeing with the Respondents and dismissing the appeal, the Court considered the quotations purportedly from contractors dating back to 1996, 1999 and 2000 which were submitted by the Appellant, and held that quotations are not conclusive of whether payments were made or not. The Court held that receipts of payment or cheques evidencing the payments should have been tendered in evidence and not just quotations.

Ultimately, the Court held that there was no basis to grant the reliefs sought by the Appellant and dismissed the appeal.

S.R.O LTD V. ADEFOWOPE & ORS [2024] 6 NWLR (PT. 1934) 273 - "THE TRIAL COURT, TO PREVENT AN ABUSE OF PROCESS, MAY CHOOSE TO CONTINUE PROCEEDINGS AND ADDRESS A NOTICE OF PRELIMINARY OBJECTION AT A LATER STAGE IF STOPPING TO ADDRESS IT IMMEDIATELY WOULD RESULT IN ABUSE, DISREPUTE OR INJUSTICE."

Brief Facts

The 1st – 6th Respondents commenced an action at the Federal High Court, Osogbo by filing a writ of summons against the Appellant and the 7th Respondent. Upon service of the originating process on the Appellant, he filed a Statement of Defence on 09.10.2018 and a Notice of Preliminary Objection (NPO) on 04.04.2020 challenging the jurisdiction of the court to entertain the 1st -6th Respondents' claims. At the hearing of the NPO, the Federal High Court in interpreting the provisions of Order 29 Rules 4 and 5 of the Federal High Court (Civil Procedure) Rules 2019 (the Rules) stayed further consideration and determination of the NPO until the hearing of the substantive suit.

Dissatisfied, the Appellant appealed to the Court of Appeal, arguing that adjourning the hearing of the NPO until the conclusion of the trial goes against decisions of the Supreme Court that objections against the jurisdiction of the Court can be raised at any time and must be determined first once they are raised.

Decision

The Court held that although it is correct that jurisdiction is the lifeblood of any proceedings and an objection to the Court's jurisdiction ordinarily ought to be taken first once raised, this principle should be applied upon a consideration of the circumstances and peculiarities of each case. The Court of Appeal considered prior decisions on this point and held that the intendment of Order 29 of the Rules was to regulate when and how objections against the jurisdiction of the Federal High Court can be raised to prevent such objections from frustrating the expeditious and economic disposal of cases.

The Court held that the trial Court in the exercise of its inherent jurisdiction to prevent an abuse of the court process, may choose to continue proceedings and consider the jurisdictional objection at a later stage in the case, when it realizes that stopping further proceedings to first deal with the objection will result in an abuse of the court process or subject the proceedings to disrepute.

Click here to read a full review of the decisions in this publication.

BARNAX ENGR CO. (NIG) LTD V. GOVT. OF RIVERS STATE & ANOR (2024) LPELR-61799 (SC) - "THE SUPREME COURT SIGNALS THE POSSIBILITY OF PARTIES TO AN AGREEMENT DEFEATING THE LIMITATION OF TERRITORIAL JURISDICTION OF COURTS BY THEIR AGREEMENT, IF THE COURT THEY AGREED TO, HAS SUBJECT-MATTER JURISDICTION".

Brief Facts

The Appellant entered a contract with the 1st Respondent to supply 4 Princess Cruise Boats. The contract was negotiated in Abuja, but the verification and conclusion of the contract was done by a committee set up by the Respondents in Port Harcourt. The Appellant, in performance of his own part of the contract supplied the 4 Princess Cruise Boats to the Respondents for which the Respondents only paid NGN9,853,610.90 leaving NGN186,365,852.99 outstanding. The Appellant issued a writ of summons under the undefended list procedure against the Respondent at the Federal Capital Territory, Abuja High Court (FCT High Court) claiming the outstanding contract sum. The Respondents did not file any intention to defend the suit or any defence. The FCT High Court entered summary judgment in favour of the Appellant. The Respondent appealed the decision of the FCT High Court on the ground that the Court lacked territorial jurisdiction. The Court of Appeal allowed the appeal and held that the FCT High Court lacked the territorial jurisdiction on the subject matter, the Appellant then appealed to the Supreme Court.

Decision

The Supreme Court considered Order 9 Rule 3 of the Old Rules which is similar to Order 3 Rule 3 of the FCT High Court (Civil Procedure) Rules 2018 (New Rules) and held that the suit ought not to have been instituted in the FCT High Court, and the appropriate Court was the High Court of Rivers State since the contract was performed in Port Harcourt and the Respondents who were Defendants at the trial Court, resided in Port Harcourt. Although the Supreme Court dismissed the appeal, the Supreme Court held obiter, that "...However, where the parties to a dispute have, by agreement in writing, chosen a designated forum for resolving their dispute, it would not matter if in the fact that the Court which had been chosen in their agreement does not have the territorial jurisdiction to entertain the dispute, as long as the Court has the jurisdiction to entertain the subject matter of the dispute, that suffices to clothe the Court with jurisdiction." This statement made obiter by the Supreme Court on the possibility of parties to a contract validly agreeing to a court which would ordinarily not have territorial jurisdiction provided that the court has subject-matter jurisdiction, signals the possibility of a reasoned decision of the Supreme Court along this line soon.

MICHELLE O'CONNOR-RATCLIFF V. CHRISTOPHER GARBER 601 U.S [2024] – "PUBLIC OFFICIALS CAN BE HELD LIABLE FOR BLOCKING CRITICS ON THEIR PERSONAL SOCIAL MEDIA ACCOUNTS"

Brief Facts

Michelle O'Connor-Ratcliff and T.J Zane created public Facebook profiles to promote their campaigns for election into the Poway Unified School District (PUSD) Board of Trustees (PUSD Board). The Petitioners successfully won the elections and continued sharing PUSD related content – inclusive of communicating with constituents and soliciting feedback, on their public Facebook profiles. The Respondents (Christopher Garnier and Kimberly Garnier) were parents of students who attended schools within the PUSD and regularly expressed criticisms against the PUSD Board on the Petitioners' social media accounts. The Petitioners deleted the Respondents' comments and subsequently blocked them from commenting on their social media accounts. The Respondents commenced an action at the District Court against the Petitioners on the ground of the violation of their First Amendment rights because social media accounts constitute public fora. The District Court held that the Petitioners acted "under colour of" state law when the Respondents were blocked on their social media accounts but granted the Petitioners qualified immunity in respect of the damages claimed by the Respondents.

On appeal to the Ninth Circuit, the judgment of the District Court was affirmed. Dissatisfied with the appeal, the Petitioners applied to the Supreme Court of the United States (SCOTUS) for review of the judgment on a writ of certiorari.

Decision

The SCOTUS vacated the judgment of the Ninth Circuit and held that the Ninth Circuit's approach deviated from the approach laid down in Lindke v Freed where the SCOTUS ruled that public officials who obstruct a person from interacting with the public official's social media account engage in state action under 42 U. S. C. §1983 only where the public official both (y) "possessed actual authority to speak on the State's behalf on a particular matter", and (z) "purported to exercise that authority when speaking in the relevant social-media posts." In light of Lindke v Freed [Supra], the SCOTUS remanded the case to the Ninth Circuit for further proceedings consistent with the SCOTUS's opinion in Lindke v Freed [Supra]. Although the SCOTUS affirmed that public officials who post public office related issues on their personal social media accounts can be held liable for violating the First Amendment right of members of the public when they block public users, the SCOTUS clarified that such liability is applicable only where the public officials are empowered to speak on the State's behalf and are exercising said power.

ONTARIO (ATTORNEY GENERAL) V. ONTARIO (INFORMATION AND PRIVACY COMMISSIONER) – "A BALANCE MUST BE STRUCK BETWEEN THE CITIZENS RIGHT TO FREEDOM OF INFORMATION AND THE CONFIDENTIALITY THE EXECUTIVE REQUIRES TO GOVERN EFFECTIVELY."

Brief Facts

The Ontario's Freedom of Information and Protection of Privacy Act ('FIPPA') grants Citizens a general right to request access to government-held information. This right of access is not absolute and has specific limitations. The relevant limitation to this case, is contained in Section 12 of the Ontario Freedom of Information and Protection and Privacy Act, which protects records whose disclosure *"would reveal the substance of deliberations of the Executive Council or its committees"*.

In this case, a journalist from the Canadian Broadcasting Company ('CBC') requested access to 23 confidential mandate letters from Premier Doug Ford to Ontario's Cabinet ministers. The Cabinet Office denied the CBC's request on the basis that Section 12 of the FIPPA grants protection to documents which reveal the substance of deliberations of the Executive Council. CBC appealed the refusal to the Information and Privacy Commissioner of Ontario (IPC). The IPC disagreed with the Cabinet Office, stating that the mandate letters did not fall within the documents contemplated by section 12 of the FIPPA and as such were not exempt from disclosure. The Attorney General of Ontario (AGO) sought judicial review of the IPC's decision at the Divisional Court of Ontario.[2] The Divisional Court upheld the IPC's decision, deeming it reasonable. Dissatisfied, the AGO appealed to the Court of Appeal and subsequently to the Supreme Court.

Decision

The Supreme Court for Ontario allowed the AGO's appeal and ordered that the IPC decision should be set aside. The Supreme Court held that the mandate letters in contention are protected from disclosure under s. 12(1) of FIPPA because the letters reflect the view of the Premier on the importance of certain policy priorities and mark the initiation of a fluid process of policy formulation within Cabinet. Thus, releasing them would expose the very "substance of deliberations" which is what section 12 (1) FIPPA aims to protect. The Supreme Court highlighted the fact that while citizen's right to information is crucial, the need to ensure that public officials are able to speak freely and deliberate without fear that what they say might be subject to public scrutiny is also equally essential to create a functioning society. Ultimately, the Supreme Court reversed the IPC's decision.

R. V. BYKOVETS 2024 SCC 6 - "PRIVATE ORGANIZATIONS SUCH AS INTERNET SERVICE PROVIDERS ("ISP") HAVE A DUTY TO PROTECT THEIR CLIENTS' PERSONAL INFORMATION AND SHOULD NOT VOLUNTARILY DISCLOSE THIS INFORMATION TO LAW ENFORCEMENT AUTHORITIES REQUESTING IT."

Brief Facts

Sometimes in 2017, the Calgary Police commenced investigation into an allegation of fraudulent online purchases from a liquor store. The investigation revealed that the store's online sales were handled by Moneris, a third-party payment processing company. The Police contacted Moneris to provide the IP addresses used for the purchases and they flagged two IP addresses. They also proceeded to obtain a search warrant which was executed at their residences. Further to that, Mr. Bykovets was arrested and charged with offences relating to, among others, the possession and the use of third parties' credit cards and personal identification documents. Before the commencement of trial, Mr. Bykovets challenged the police's request to obtain the IP addresses from Moneris, alleging that it violated his right against unreasonable search and seizure under section 8 of the Canadian Charter of Rights and Freedoms (the **Charter**). He then asked the trial judge to exclude the evidence obtained from the police's use of his IP address considering that his right under section 8 of the Charter has been infringed.

Decision

The Supreme Court in its decision noted that the principal object of Section 8 of the Charter was for the protection of privacy or the individual's "right to be left alone". Therefore, to establish a breach of Section 8, there must have been a search. Also, a search occurs where the state invades a reasonable expectation of privacy. An expectation of privacy is reasonable where the public's interest in being left alone by the government outweighs the government's interest in intruding on the individual's privacy to advance its goals, notably those of law enforcement. The Supreme Court analysed an expectation of privacy by considering the following: (a) the subject matter of the search; (b) the claimant's interest in the subject matter; (c) the claimant's subjective expectation of privacy; and (d) whether the subjective expectation of privacy was objectively reasonable.

The Supreme Court stated that an IP address alone may divulge the identity and other personal information of the user; and when combined with other information that is volunteered by other companies, it can expose a high range of a user's personal online activity. The majority of the Supreme Court held that the request by the State for an IP address constitutes a search under section 8 of the Charter, allowed the appeal, set aside the conviction and ordered a new trial.

Click here to read a full review of the decisions in this publication.

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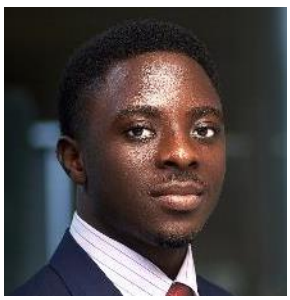

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