Carol Rohan Beyts v Trump International Golf Club Scotland Limited

Sheriff Court, Edinburgh 5th April 2017

Sheriff Donald Corke

Full Judgement.

The claimant had been photographed on a mobile phone by employees of the Golf Club when she had been urinating ‘discretely’ in sand dunes on the Golf Club’s land. She was reported to the Police and initially charged with an offence under the Civic Government (Scotland) Act 1982, although the charge was later dropped (the Sheriff called it a ‘frivolous criminal complaint’). She brought a claim against the Golf Club for damages for distress caused as a result of the taking of the photograph. Her claim was based on the digital photograph being personal data which was protected under the Data Protection Act 1998, and that the Golf Club had failed to register under that Act.

The Sheriff said that the claimant had been lawfully present on the land in accordance with the Land Reform (Scotland) Act 2003 and that it was lawful and in accordance with the Scottish Outdoor Access Code for her to urinate discretely where she did. He agreed that the Golf Course was in breach of the Data Protection Act 1998 because they were not registered in accordance with the Act. However, it was the taking of the photograph that had caused the claimant distress, not the fact that the Golf Club was not registered under the Act, and her claim therefore failed. However, he was very critical of the employees who had photographed the claimant in these circumstances and warned that such behaviour could lead to prosecution for a public order offence or voyeurism.