

IN THE COURT OF APPEAL

Appeal No: \_\_\_\_\_

ON APPEAL FROM

THE HIGH COURT OF JUSTICE

Case No: KB-2021-001248

KING'S BENCH DIVISION

MEDIA & COMMUNICATIONS LIST

The Hon. Mrs Justice Collins Rice DBE CB

Liability Judgment [2024] EWHC 146 (KB)

Remedies Judgment [2024] EWHC 956 (KB)

BETWEEN

(1) SIMON BLAKE

(2) COLIN SEYMOUR

Claimants /  
Defendants to Counterclaims

-and-

LAURENCE FOX

Defendant /  
Counterclaimant

-and-

NICOLA THORP

Formerly Third Claimant /  
Third Defendant to Counterclaim

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DEFENDANT'S GROUNDS OF APPEAL

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## IN THE COUNTERCLAIMS

- (1) The learned Judge's rejection of D's case on causation of serious harm to his reputation in the counterclaims was wrong, in that the Judge:
  - a. failed to apply the law on proving general bad reputation;
  - b. failed to apply the Rule in *Dingle v Associated Newspapers*;
  - c. treated defamatory opinions as intrinsically less likely to cause harm to reputation than defamatory statements of fact.
  
- (2) The learned Judge's evaluation that serious harm to D's reputation was not caused by the tweets of C1/C2/C3, and that they were not even a material contribution to such harm to reputation, was not a decision available to her on the facts, with particular regard to specific harm consequent on publication:
  - a. The termination by D's agent of their professional relationship; and
  - b. The general drop-off in professional acting opportunities for D.
  
- (3) In the counterclaims, the learned Judge erred in refusing to determine the Truth (C3) and Honest Opinion (C1 and C2) defences in the alternative. This was procedurally irregular and unfair to D.

## IN THE CLAIMS

- (4) The learned Judge's assessment of serious harm in the claims, whereby s.(1) of the Defamation Act 2013 was satisfied by an inferential case based on the Single Meaning of the words complained of, was wrong because the Judge:
  - a. treated the Single Meaning (necessarily determined by the Court with almost no admissible context) as governing what readers actually understood the meaning of the statement to be, even though each reader read the material in-context, including context which precluded them receiving the words in the Single Meaning;
  - b. held that serious harm to the Claimants' reputation could be caused even if no-one believed the allegation in its Single Meaning at all, and where there was no evidence that any person believed the statement at the relevant time (which was not defined) at all.

- (5) The learned Judge's decisions on serious harm in the Liability Judgment in respect of the claims were perverse and/or the product of serious procedural irregularities:
- a. Failing to make any primary findings of fact about scale of publication of each of the tweets, or to distinguish between:
    - i. the scale of publication for which D was responsible (and which bore the Single Meaning) as against
    - ii. the re-publication by the Claimants' themselves (which amounted to more than half the Impressions on Twitter, and which persisted to trial rather than for a few hours) only some of which bore the Single Meaning;
    - iii. re-publication which was supportive of the Claimants and which did not bear the Single Meaning; or
    - iv. publication about the incident in the media, which did not bear the Single Meaning;
  - b. Failing to properly account for D's clarificatory statements within an hour of publication, or deletion and clarification the next day, or his clarificatory remarks in the media in the days that followed, or his apology, dismissing these actions as neither 'prompt' nor 'prominent' when they were both;
  - c. Wrongly relying on the vulnerability of C1 and C2 as gay men (which might be an eggshell-skull factor in harassment or the distress which is parasitic on serious harm to reputation) as a factor affecting reputation in the eyes of reasonable readers (who are by definition not homophobic);
  - d. Treating online abuse as evidence of harm to reputation even where all the available documentary evidence indicated that those abusing the Claimants were not doing so out of belief that the allegations were true, and indeed in full knowledge and understanding of the Defendant's rhetorical device;
  - e. Failing to account for the absolute absence of any evidence of negative effect on the Claimants' professional roles whatsoever, and positive evidence directly to the contrary;
  - f. Relying on the supportive statements by C1's employers – i.e. the opinion of third-parties, and the fact that they chose to publish them – as probative of C1's case that serious harm had been caused to his reputation;

- g. Illogical reasoning that the allegations in the claims and in the counterclaims could not be 'equally baseless' (which was D's subjectively intended meaning) because one allegation was more serious than the other;
- h. Failure to distinguish in any material way between the claims of C1 or C2, being separate claims with separate factual bases;
- i. Contrary to the direct evidence of C2, the finding that there was (or even could be) a causative link between D's publication and abuse suffered by C2 in 2022-23 arising from an entirely independent incident.

(6) The learned Judge's rejection of the conduct-based defence of Qualified Privilege (Reply to Attack) was wrong because she failed to consider the actual statements published by the parties, and instead based her assessment as to the existence of the privilege on their notional objective Single Meanings.

(7) The learned Judge's assessment of damages in the Remedies Judgment at £90,000 for each of C1 and C2 was perverse in that it:

- a. failed to account whatsoever for the conduct of C1 and C2 prior to and shortly after publication by D, including in provoking the libels by attacking D, and their express malice and ill-will towards D;
- b. failed to account adequately or at all for D's apology and/or clarificatory remarks, and other positive evidence of an absence of malice in publishing;
- c. failed to account for Cs' misconduct during the litigation;
- d. failed to account for the fact that Cs' own republications were the majority of publication on Twitter and that Cs' own republications persisted 3 years to trial (as opposed to hours when published by D), in flagrant breach of their duty to mitigate their loss;
- e. was so high as to be well above the maximum PSLA damages in personal injury for the loss of an eye (according to the Judicial College Guidelines, 17<sup>th</sup> edition), and was thus an outcome not available to her on the evidence, even if the Claimants somehow surmounted the 'serious harm' threshold.