



JUDICIARY OF
ENGLAND AND WALES

24 May 2018

PRESS SUMMARY

Arnold and Jeanne Mballe Sube v News Group Newspapers Ltd (2) Express Newspapers

[2018] EWHC 1234 (QB)

Mr Justice Warby

References in square brackets are to paragraphs in the judgment

1. The judgment rules on the nature and scope of the claims that can properly be pursued against the publishers of The Sun, the Daily Express and the Daily Star, in respect of a series of articles they published about the claimants in late 2016. **[1]**
2. The claimants are a married couple with 8 children. They are French, and black. In the late Summer and Autumn of 2016, they were in dispute with Luton Council about the adequacy of the housing which the Council had offered the family. Following a local newspaper article about the matter, there was extensive national newspaper coverage **[2]**. One of the articles complained of is set out in **the Annex** to the Judgment, by way of illustration. Readers posted comments (“Posts”), some highly offensive, in the comment sections of the newspaper websites (“Comment Posts”) and on third party websites **[3]**.
3. This action was started in September 2017, claiming remedies for libel and harassment **[4]**. The claimants have since sought to amend their claims to complain of further articles, that the reader comments were harassment, and that the publications complained of also amounted to malicious falsehoods and/or involved breaches of the Equality Act 2010 (“EA”) and/or the Data Protection Act 1998 (“DPA”) **[5]**.
4. The judgment determines preliminary issues in the libel claim: what the articles complained of mean, whether those meanings are fact or comment, and whether they are defamatory. It also decides whether the amendments are viable and adequately pleaded, or should be refused or struck out **[7-8]**.
5. The conclusions reached are summarised at **[13]**:
 - (1) Defamation. The articles complained of did not convey any defamatory factual imputations about the claimants. They did contain or imply a number of derogatory comments or opinions about them. But none of those comments or opinions was, considered *individually*, sufficiently harmful to either claimant’s reputation to satisfy the serious harm requirement laid down by s 1 of the Defamation Act 2013.

- (2) Serious harm (pleading). If the case were to continue the pleaded case on serious harm would need amendment.
 - (3) The Comment Posts. References to these are not struck out, as requested by the defendants. But orders are made to ensure it is clear that these are not complained of as libels.
 - (4) Harassment. Permission to complain of Comment Posts is granted.
 - (5) Exemplary damages. This claim is struck out.
 - (6) Malicious falsehood. The amendment to the claim form is disallowed and the relevant parts of the Particulars of Claim are struck out.
 - (7) EA. The amendment to the claim form is disallowed and the relevant parts of the Particulars of Claim are struck out. The proposed amendments to this claim are refused.
 - (8) DPA. The defendants' challenge to the existing claim is dismissed. But that claim is stayed for the time being. Permission to amend the DPA claim is refused.
- 6.** The reasons for these conclusions are detailed at **[19-50]** (libel), **[53]-[55]** (serious harm), **[56]-[62]** (the Posts), **[63]** (harassment), **[64]-[68]** (exemplary damages), **[69]-[76]** (malicious falsehood), **[77]-[87]** (the EA), and **[88]-[107]** (the DPA).
- 7.** The main effects of the Court's judgment are, in summary, that:
- (1) The harassment claims proceed, in relation to both the articles and the Comment Posts **[8]**, **[63]**.
 - (2) The libel claims fail, unless the claimants argue successfully, in relation to one or more articles complained of, that the meanings the court has found that article to convey are, despite the Court's conclusions on their individual effect, harmful enough *collectively* to satisfy the serious harm requirement: **[13(1)]**, **[43]**.
 - (3) The exemplary damages claim fails on pleading grounds; a further application to amend can be made **[14(5)]**.
 - (4) The malicious falsehood claim fails in its current version. Although an application to amend is possible, the Court cannot see how a viable plea could be framed **[14(2)]**.
 - (5) The dismissal of the EA claim is final, subject to any appeal, because it is based on the conclusion that all the conduct complained of falls outside the scope of the EA: **[14]**, **[82]**.
 - (6) The existing DPA claim survives, but is stayed. The defendants have the right to apply for summary judgment against the claimants. The refusal of permission to amend is without prejudice to the claimants' right to seek permission for an expanded DPA claim, in a reformulated version, and to the question of whether any such amended claim would have to be stayed: **[14(4)]**, **[106]**, **[107]**.
- 8.** Costs remain to be decided, but the Court records that any assessment will be carried out in the light of budgets set in March 2018: **[108]**.

NOTE: This summary is provided to help in understanding the Court's decision. It does not form part of the reasons for the decision. The full

judgment of the Court is the only authoritative document. Judgments are public documents and are available at: www.bailii.org.uk and www.judiciary.gov.uk