



JUDICIARY OF  
ENGLAND AND WALES

**2 December 2021**

**BETWEEN:**

**HRH THE DUCHESS OF SUSSEX**

**Claimant/ Respondent**

**- AND -**

**ASSOCIATED NEWSPAPERS LIMITED**

**Defendants / Appellants**

**JUDGMENT SUMMARY**

**Important note for press and public: this summary forms no part of the court’s decision. It is provided so as to assist the press and the public to understand what the court decided.**

The central question in this case was whether the judge, Mr Justice Warby, had been right to grant summary judgment for breach of privacy and breach of copyright to Meghan, Duchess of Sussex, against the publishers of the Mail on Sunday newspaper and MailOnline, Associated Newspapers Limited.

The claims related to the publication in the Mail on Sunday and the MailOnline (together “Mail on Sunday”) of about half the contents of a 5-page handwritten letter (the Letter) which the Duchess had sent on 27 August 2018 to her father, Mr Thomas Markle (Mr Markle).

The Court of Appeal (Sir Geoffrey Vos, Master of the Rolls, giving the lead judgment, with which Dame Victoria Sharp, President of the Queen’s Bench Division, and Lord Justice Bean agreed) upheld the judge’s decision that the Duchess had a reasonable expectation of privacy in the contents of the Letter. Those contents were personal, private and not matters of legitimate public interest [84]. The articles in the Mail on Sunday interfered with the Duchess’s reasonable expectation of privacy, and were not a justified or proportionate means of correcting inaccuracies about the Letter contained in an article published on 6 February 2019 in People magazine in the USA ([95] and [106]).

The key point was that the Mail on Sunday articles focused on revealing the contents of the Letter, rather than providing Mr Markle’s response to the attack on him in People magazine ([77], [95] and [106]). The headline: “Revealed: The letter showing true tragedy of Meghan’s rift with a father she says has ‘broken her heart into a million pieces’” and the first line of the Mail on Sunday article: “[t]he full content of a sensational letter written by [the Duchess] to her estranged father shortly after her wedding can be revealed for the first time today” demonstrated that the Mail on Sunday articles were splashed as a new public revelation of extracts from the Duchess’s Letter to her father, rather than her father’s answers to what People magazine had written ([95] and [102]).

Associated Newspapers argued that the judge had failed to realise how People magazine had traduced Mr Markle by alleging that he had cold shouldered his daughter at the time of the wedding, lied about her shutting him out, and ignored her pleas for reconciliation in a loving Letter [73]. The Court of Appeal found that the judge had been right to decide that just one paragraph of the Letter could have been

justifiably deployed to rebut the allegation in People magazine that the Duchess's Letter was loving, when in fact it was a Letter reprimanding Mr Markle for talking to the press and asking him to stop doing so ([95] and [106]).

The Court of Appeal rejected Associated Newspapers' arguments that the judge had (a) applied the wrong legal test in deciding where the balance lay between the Duchess's article 8 rights in the Letter and the rights of Mr Markle and Associated Newspapers to freedom of speech under article 10 ([87]-[95]), and (b) failed properly to evaluate Associated Newspapers' defences to the Duchess's breach of copyright claim: first, fair dealing in reporting current events, and secondly the public interest in reporting the Letter ([96]-[103]). It was common ground that the judge had correctly stated the legal principles that were applicable to the question of whether summary judgment should be granted ([29]-[32]).

The Court of Appeal commented that the new evidence that had been provided to it had also been widely publicised in the press, nationally and internationally [68]. In those circumstances, it decided that the new evidence should be admitted as a matter of pure pragmatism, even though it was more directed to the drafting of the Letter and to what the Duchess knew about the contacts between the Kensington Palace Communications Team and the authors of the book, "Finding Freedom" (the Book), than to the issues in the appeal [70].

Despite finding the new evidence of little assistance [70], the Court of Appeal noted that the Duchess had apologised to the court for the pleading served on her behalf that said she did not know if, and to what extent, the Communications Team were involved in providing information for the Book. It had appeared from new evidence from Mr Knauf that he had provided some information to the authors of the Book with the

Duchess's knowledge [71]. The Court of Appeal said that this was, at best, an unfortunate lapse of memory on her part, but did not bear on the issues, and had been given no prominence in Associated Newspapers' oral argument [71].

For the detailed reasons given in the judgment of the Master of the Rolls, the judge's careful decision, mostly on factual questions, was upheld [105]. It was hard to see what evidence could have been adduced at trial that would have altered the situation. The judge had been in as good a position as any trial judge to look at the article in People magazine, the Letter and the Mail on Sunday articles to decide if publication of the contents of the Letter was appropriate to rebut the allegations made against Mr Markle [79]. The judge had correctly decided that, whilst it might have been proportionate to publish a very small part of the Letter for that purpose, it was not necessary to publish half the contents of the Letter as Associated Newspapers had done [106].

The Court of Appeal concluded by reiterating the narrowness of the issues it had to decide [105].