IN THE COURT OF APPEAL (CIVIL DIVISION) Appeal Court Ref: 2017/0897
ON APPEAL FROM
THE HIGH COURT OF JUSTICE Claim No. HQ15D05286
QUEEN'S BENCH DIVISION
B E T W E E N:

JACK MONROE

Claimant/Respondent

-and-

KATIE HOPKINS

Defendant/Appellant

GROUNDS OF APPEAL

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1. The Judge was wrong in law to find that the Tweets had a defamatory tendency.

   1.1. Contrary to [52], it is too simplistic to state that right-thinking members of society disapprove of people who condone criminality. It depends on the gravity of the criminality and the reasoning expressed by the person who is said to condone it. In the specific context of the present case, right-thinking people generally would not think the worse of Laurie Penny in consequence of her tweets of 8.01pm and 8.04pm of 9 May 2015. They respond to a question posed of her and provide a rational explanation as to why she "doesn't have a problem" with the graffiti which recognises the "bravery of past generations". People may disagree with her, but that is different from whether there is a sufficient consensus among right-thinking people that she should be condemned for holding and expressing such an opinion.

   1.2. In the light of the Judge's (correct) finding (at [43]) that the First Tweet would not be taken literally and had an element of metaphor, there was insufficient information within it and the permitted accompanying context as to the actual opinion imputed to the Claimant in relation to the graffiti, the circumstances in which she expressed it and her reasons for holding it to enable right-thinking members of society generally to think the worse of her.

1.3. The Claimant's innuendo meaning in relation to the Second Tweet was based on readers' knowledge of "Ms Penny's views" of the graffiti. The Judge concluded that to such a reader it would have borne the implied meaning that the Claimant shared them (at [49]). For the reasons stated in paragraph 1.1 above right-thinking people generally would not think the worse of the Claimant for sharing Ms Penny's views.

1.4. Further, in relation to the Second Tweet, the Judge correctly concluded that readers with the relevant knowledge would have understood the Defendant to be acknowledging that when she sent the First Tweet she had "mixed up" Ms Monroe and Ms Penny, but that it made no difference. The obvious reason why it made no difference was because their political views were generally similar and obnoxious to the Defendant. If they had held or expressed shared views on the specific issue of the graffiti, there would have been no purpose to the Second Tweet because the First Tweet would have applied equally to both and there would have been no "mix up".

2. The Judge was wrong in law at [70] to hold that his finding that the tweets complained of had a tendency to cause harm to the Claimant's reputation of a kind that was serious for her was, of itself, a sufficient basis to infer that serious harm had been caused to the Claimant's reputation within the meaning of section 1(1) of the Defamation Act 2013.

2.1. In the absence of reliance on evidence of harm to reputation consequent on the statement complained of, the inference of serious harm should only be drawn in cases where the content of the statement and the manner of its publication are so obviously likely to cause serious harm that no such evidence is necessary.

2.2. This accords with the approach of Bean J (as he then was) in *Cooke & Anor v MGN Ltd & Anor* [2015] WLR 895 at [43] (giving the example of unwithdrawn allegations of terrorism or paedophilia in a national newspaper) and the proposition of Dingemans J in *Sobrinho v Impresa Publishing SA* [2016] EMLR 12 at [46]: "*Mass media* publications of *very serious* defamatory allegations are likely to render the need for evidence of serious harm unnecessary" [emphasis added].

2.3. At [68] the Judge cited the above proposition of Dingemans J. In [69] he diluted it by referring to "widely published" and a "seriously defamatory tendency". At [70], he further diluted it by finding that the section 1 hurdle was surmounted on the basis that the tweets had a "tendency to cause harm to this claimant's reputation in the eyes of third parties, of a kind that would be serious for her". Even assuming (contrary to the above) that it was permissible to rely merely on a tendency in the

words, the Judge was wrong in law to transfer the element of seriousness from the attitude of third parties to the words, to their effect on the Claimant, thereby impermissibly incorporating injury to feelings.

3. The Judge was wrong in law at [69] to rely on the observation of HHJ Moloney QC in *Theedom v Nourish Training Ltd* [2016] EMLR 10 at [15](h).[1] It is an unhelpful gloss on section 1 which, in practice, renders it nugatory. The consequence of the wording chosen by Parliament is that claims should not proceed even if they involve false and malicious publications which have caused substantial, but not serious, harm to reputation accompanied by injury to feelings. Such claims may not be described as "undeserving" or merely "technical". A threshold test which merely excludes undeserving technical claims is no different from the *Jameel* jurisdiction, also referred to in [69].

4. The practical consequence of the above errors of law was that once the Judge found that the words were "defamatory" according to common law principles, the burden wrongly fell on the Defendant to prove that no material harm to reputation had been caused in order to avoid liability. Further, the Judge made the following errors in his approach to the facts relied on by the Defendant:

    4.1. Equated a tweet with a live broadcast or print newspaper in relation to impact (at [71(2)]).

    4.2. Found that the absence of any evidence that the allegation was believed and positive evidence that it was disbelieved were not suggestive of a lack of harm (at [71(4) and (5)]).

    4.3. Found that "some abuse" resulted from the tweets complained of and/or that it was evidence of harm consequent on the meaning complained of (at [71(6)]).

    4.4. Dismissed or failed properly to take into account the relevance of the Claimant's existing standing or reputation in relation to whether the tweets had caused any harm to her reputation (at [71(7) and (8)]).

    4.5. Dismissed or failed properly to take into account the material easily accessible to any interested reader in the immediate aftermath of the tweets which demonstrated that the Defendant had made an obvious mistake and mixed up the Claimant and Ms Penny (at [71(9) and (10)]).

[1] "it is important to bear in mind that s 1 is essentially a threshold requirement, intended by Parliament to weed out those undeserving libel claims otherwise technically viable, but which do not involve actual serious harm to reputation or likely serious harm to reputation in the future."