

IN THE COURT OF APPEAL (CIVIL DIVISION)  
ON APPEAL FROM

Appeal Court Ref: A2/2017/0897

THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION  
B E T W E E N:

Claim No. HQ15D05286

JACK MONROE

Claimant/Respondent

-and-

KATIE HOPKINS

Defendant/Appellant

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APPELLANT'S ADDITIONAL SUBMISSIONS  
ON THE EFFECT OF *LACHAUX* ON HER  
APPLICATION FOR PERMISSION TO APPEAL

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1. These brief additional submissions are made by the Appellant (“A”) following the Court of Appeal’s decision in *Lachaux v Independent Print Limited & Others* [2017] EWCA Civ 1334 (“*Lachaux*”) handed down on 12 September 2017, a copy of which is annexed hereto. Independent Print Limited and Evening Standard Ltd (“IPL” and “ESL”), two of the parties against which *Lachaux* was decided, have applied to the Court of Appeal for permission to appeal to the Supreme Court (and its submissions on that application are also annexed).
2. If and to the extent that A requires the Court’s permission to rely upon these submissions, she seeks such permission pursuant to rules 52.15 (“Variation of time”) or 52.17 (“Amendment of appeal notice”) and relies in any such application upon the fact of *Lachaux* having been handed down after she had filed her application for permission and supporting documents, but prior to determination of that application. Furthermore the likelihood of the Court of Appeal’s decision in

*Lachaux* bearing upon this appeal was anticipated in A's Skeleton Argument for Permission to Appeal at [21]-[22], and the approach now advocated by A (see [8] below) was already contemplated.

3. The Court of Appeal held (relevantly) in *Lachaux* that:
  - 3.1. s. 1(1) gives statutory effect to *Thornton* and in doing so raises the threshold from one of substantiality to one of seriousness; and
  - 3.2. the common law presumption as to damage, and the common law principle that the cause of action accrues on the date of publication, are unaffected by s.1(1).
4. These submissions seek to deal with the effect of the Court of Appeal's decision in *Lachaux* upon A's grounds of appeal.
5. Ground 1 is maintained and strengthened by *Lachaux*. In determining whether the tweets had a defamatory tendency the Judge (at [23(2)]) applied a "substantiality" threshold, instead of "seriousness" threshold. A continues to enjoy a real prospect of succeeding before the Court of Appeal for the reasons set out in that ground and also in A's Skeleton at [7]-[8]. There is a stark difference between the gravity of the imputations in this case (unspecified condoning of a relatively trivial act of criminality) and those in *Lachaux* (violent spousal abuse, child abduction, fabrication of allegations with a view to the false imprisonment of another etc.: see [86] of *Lachaux*).
6. Ground 2.3 is maintained and strengthened in the light of *Lachaux*. Whether or not "likely to cause serious harm" is taken to mean "has a tendency to cause serious harm", it is clear that the seriousness must relate to the injury to the claimant's reputation, not the effect on the claimant. See, in particular, the points made by Davis LJ at [27] and [42]. In contrast to the example given by Davis LJ at [27] – that of an employee being dismissed as a result of a publication – there were no consequences identified in this case other than injury to R's feelings, which as Davis LJ makes clear at [42], is irrelevant to s.1(1). And as is stressed by Davis LJ, serious harm must be assessed at the date of publication; subsequent upset by the

claimant cannot make that which was not already defamatory, defamatory: see [59]-[63] and [82(2)].

7. Ground 4 is maintained in that if the Judge was correct to look to A to rebut R's case on serious harm assuming that case had been established on a "tendency" basis, he nevertheless erred in his approach to A's rebuttal evidence
8. The following Grounds/Sub-grounds are directly contradicted by *Lachaux*: 2.1, 2.2, and 3. However, A has a real prospect of (ultimately) succeeding upon those grounds because an appeal to the Supreme Court might succeed in *Lachaux* or the present case, given the novelty of the statutory provision and uncertainty as to its application since its introduction. The grounds identified above (2.1, 2.2 and 3) all hang on the determination of the meaning of s.1(1), which is the central issue in IPL's appeal (see its submissions). A submits that permission ought to be granted in relation to those grounds, albeit that she will not argue them save in the event that IPL has succeeded to any relevant extent in the Supreme Court.<sup>1</sup>

**David Price QC**  
**Jonathan Price**  
**For the Defendant/Appellant**  
21 September 2017

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<sup>1</sup> See the White Book commentary at 52.6.2 and the reference to *Beedell v West Ferry Printers Ltd* [2001] EWCA Civ 400