

IN THE COURT OF APPEAL, CIVIL DIVISION

REF: A2/2017/2053

GUISE -v- SHAH



ORDER made by the Rt. Hon. Lady Justice Sharp DBE

On consideration of the appellant's notice and accompanying documents, but without an oral hearing, in respect of an application for permission to appeal

Decision: granted, refused, adjourned. An order granting permission may limit the issues to be heard or be made subject to conditions.

REFUSED

Reasons

In my view, the complaints about the judgment below, in the Grounds, as elaborated in the Skeleton argument in support, have no real prospect of success on appeal, and there is no other compelling reason why an appeal should be heard. Permission to appeal is therefore refused.

The judgment in relation to this unifying dispute, as the judge plainly found it to be, dealt meticulously with every aspect of the factual evidence; it contained an accurate and careful account of the relevant issues of law, in particular, in relation to the defence of truth by reference to section 2 of the Defamation Act 2013 and in relation to the harassment claim made by the claimant; and it applied the law correctly to the facts.

Ground 1: The suggestion that the judge somehow wrongly applied section 2(3) of the Defamation Act 2013 or that had he correctly applied it to the facts, the only reasonable conclusion was that the section 2 defence should succeed, is untenable: see in particular, para 187 where the judge explained his conclusion that though some of the allegations made had been proved by the defendant, the allegations made that had not been proved, in particular the most serious allegation of fraud (as the judge was entitled to find it to be, and which he had relied on for his threshold finding of serious harm) seriously harmed the claimant's reputation. It is not surprising, as the claimant says, that the truth of lesser allegations that were not relied on by the judge for his threshold finding, would not disturb the finding of serious harm, for the purposes of section 2(3). Be that as it may, in my view, the defendant's complaints under Ground 1 raise no arguable error of law, but amount, in substance, to a mere disagreement with the judge's factual finding that having regard to the allegations that were proved to be true, serious harm was caused to the claimant's reputation by the allegations not proved to be true.

Ground 2: This ground is not remotely arguable for the reasons very well set out in the claimant's CPR PD 52C Statement. The judge set out the relevant law and correctly applied it to the facts. He found, as he was fully entitled to, that there was a course of conduct that was sufficiently serious to amount to harassment; and that the defendant knew his course of conduct as a whole amounted to harassment. The judge had proper regard to the significance of article 10 considerations in this context; he was right to say that oppressive, persistent and repeated publications can amount to harassment, and he was entitled to find on the facts, that the defendant's course of conduct in publishing and continuing to publish the website, and in sending a person to "visit" the home of the claimant and his wife, was oppressive and unacceptable and "crossed the line".

Ground 3: As is conceded in the defendant's Skeleton Argument, the issue of honest opinion apparently had no impact on the outcome, from which it follows that the matters raised are theoretical and can give rise to no arguable ground of appeal.

Information for or directions to the parties



This case falls within the Court of Appeal Mediation Scheme automatic pilot categories*. Yes No

Recommended for mediation Yes No

If not, please give reason:

Where permission has been granted, or the application adjourned

- a) time estimate (excluding judgment)
- b) any expedition

Signed: 

Date: 8 January 2018

By the Court

Notes

- (1) Rule 52.6(1) provides that permission to appeal may be given only where –
 - a) the Court considers that the appeal would have a real prospect of success; or
 - b) there is some other compelling reason why the appeal should be heard.
- (2) Where permission to appeal has been refused on the papers, that decision is final and cannot be further reviewed or appealed. See rule 52.5 and section 54(4) of the Access to Justice Act 1999.
- (3) Where permission to appeal has been granted you must serve the proposed bundle index on every respondent within 14 days of the date of the Listing Window Notification letter and seek to agree the bundle within 49 days of the date of the Listing Window Notification letter (see paragraph 21 of CPR PD 52C).

Case Number: **A2/2017/2053**

DATED 8TH JANUARY 2018
IN THE COURT OF APPEAL

DR ANDREW GUISE

- and -

RAJEEV SHAH

ORDER

Copies to:

David Price QC Solicitor And Advocate
21 Fleet Street
London
EC4Y 1AA
Ref: 22471

Brett Wilson LLP
DX 53341
Clerkenwell
Ref: MCC/GUI001.001

Lower Court Ref: HQ15D05048