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HRH Duchess of Sussex v Associated Newspapers Ltd ^a

[2020] EWHC 1058 (Ch)

CHANCERY DIVISION
WARBY J
24 APRIL, 1 MAY 2020 ^b

Equity – Breach of confidence – Confidential information – Disclosure by media – Ingredients of tort – State of mind – Whether requirement to prove dishonesty, malice, or bad faith – Human Rights Act 1998, Sch 1, Pt I, arts 8, 10. ^c

Dishonesty, malice, or bad faith are irrelevant to liability for the tort of misuse of private information. Such matters have no role to play as an ingredient of the claim. It is settled law that a cause of action for misuse of private information exists whenever: (i) the particular information at issue engages art 8 of the European Convention on Human Rights (as set out in Sch 1 to the Human Rights Act 1998) by being within the scope of the claimant’s private or family life, home, or correspondence; and (ii) the conduct or threatened conduct of the defendant is such that, upon a proportionality analysis of the competing rights under arts 8 and 10 (freedom of expression), it is determined that it is necessary for freedom of expression to give way. Plainly, the defendant’s state of mind can have no bearing on the first limb of the test. Nor is it required at the second stage. A media publisher will be held responsible for publication of information which it is wrongful to publish, even if the publisher acts in good faith; and the publisher will be liable for a publication which is not justifiable in the public interest, even if it believed that it was so justifiable. Both issues are to be determined objectively. State of mind is a subjective, not an objective question. Moreover, nothing in the case law of the European Court of Human Rights says anything about state of mind as an ingredient or factor in the assessment of whether a publication is wrongful, at any stage of the analysis, or suggests that an evidential exploration of the publisher’s state of mind is required (see [35]–[37], [39], [41], [42], [45], below); *Campbell v MGN Ltd* [2003] 1 All ER 224 applied; *Murray v Big Pictures (UK) Ltd* [2008] 2 FLR 599, *Mosley v UK* (2011) 31 BHRC 409 and *Von Hannover v Germany* (No 2) (App nos 40660/08 and 60641/08) (2012) 32 BHRC 527 considered. ^d

Notes

Notes ^e

For the tort of misuse of private information, see *Halsbury’s Laws TORT* vol 97 (2015) para 562.

For the Human Rights Act 1998, Sch 1, Pt I, arts 8, 10, see *Halsbury’s Statutes* vol 7(1) (2019 reissue) 888. ^f

Cases referred to ^g

Abbey v Gilligan [2012] EWHC 3217 (QB), [2013] EMLR 12.
ASG v GSA [2009] EWCA Civ 1574, [2009] All ER (D) 238 (Dec).
Campbell v MGN Ltd [2004] UKHL 22, [2004] 2 All ER 995, [2004] 2 AC 457, [2004] IP & T 764, [2004] 2 WLR 1232; *rvsg* [2002] EWCA Civ 1373, [2003] ^j

Case Reference



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Soft Cover (Fortnightly - 24 Issues)	₹24,500/-
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