

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

BETWEEN:

JOHN CHRISTOPHER DEPP II	<u>Appellant</u>
-and-	
NEWS GROUP NEWSPAPERS LTD (1)	<u>Respondents</u>
DAN WOOTTON (2)	

GROUND OFS OF APPEAL

Nature of the Appeal

1. The Appellant seeks permission to appeal, and if granted, to set aside the decision of Mr Justice Nicol (“the trial Judge”) finding that the Respondents had proved that the defamatory allegations they published were substantially true.
2. It is recognised that the Appellate Court will be slow to set aside a trial judgment with findings of fact because of the greater ability which the trial Judge usually has to assess the witnesses whose evidence they are based on. In this case the Court of Appeal should do so because the trial Judge failed to examine the evidence and the arguments with the care that the parties were entitled to expect and which a proper resolution of the issues demanded.
3. The judgment is plainly wrong and the consequential decision in favour of the Respondents is manifestly unsafe, because: (a) the trial Judge’s findings were not conclusions based on or supported by a carefully weighed and reasoned analysis of the evidence, or the credibility of the various witnesses, but rather bare assertions without any real explanation for how he reached these serious findings in the face of conflicting accounts of events, and (b) he uncritically accepted at the outset that the complainant must have been correct in her allegations and, having done so,

discounted or ignored any evidence to the contrary, despite the fact that it undermined her credibility and the account she had given.

4. Despite its length, the judgment lacks both analysis and reasoning for the trial Judge's decisions to exclude matters which were damaging to or inconsistent with the evidence of the witness on whose veracity or reliability the Respondents' entire case depended (namely Ms Amber Heard), or as to why he made the findings of fact he did as to what he said happened.
5. In view of the unreasoned, inconsistent and unsustainable findings of fact in this judgment, the Appellant did not receive a fair trial in protection of his rights in accordance with both Article 6 and Article 8 of the European Convention on Human Rights. Where allegations of serious criminal conduct are determined by a single judge, the importance of an effective appeal process is far greater.
6. Further, these findings have been reached in a judgment that has been very widely publicised, which is not only devastating to the Appellant but also has wider repercussions for alleged victims or those who are wrongly accused of domestic violence. It is the result of a high-profile libel trial (one, which until relatively recently, would ordinarily have been determined by a jury) where the evidence and argument was closely followed and examined by the public as it proceeded.
7. This is therefore a paradigm example of a case where there are additionally compelling grounds for the judgment to be reviewed on appeal in any event, but particularly given the weight of reasons which render the findings that the trial Judge reached plainly wrong or unsafe.

Grounds of Appeal

8. The judgment is plainly wrong and/or the trial Judge failed to examine the evidence and the arguments with the care that the parties were entitled to expect and which a proper resolution of the issues demanded for the following reasons, any one of which would be sufficient to justify setting aside the decision in favour of the Respondents but which taken cumulatively render the judgment manifestly unsafe:

- (1) The trial Judge's findings of fact on issues of central importance amounted to bare assertions rather than reasoned decisions following upon a careful weighing-up and reasoned analysis of the evidence given by both sides. As a result, there is no or no proper explanation for how the trial Judge reached these serious findings in the face of conflicting accounts of events. He failed to give reasons to explain what evidence he found to be sufficiently cogent so as to satisfy the required standard of proof, in light of the criminal nature of the allegations complained of.
- (2) The trial Judge failed to test the oral evidence given by Ms Heard against contemporaneous documentary evidence or the evidence from numerous independent and professional witnesses. Further, he reached conclusions on this evidence which were outside the bounds of a reasonable finding, particularly given the implausibility of many aspects of her account which if treated or followed through consistently would have critically undermined the veracity of her account of the physical assaults she claimed to have been subjected to or the physical injuries she allegedly suffered (none of which were supported by medical evidence).
- (3) The trial Judge failed to examine or assess properly the credibility of Ms Heard (or the other principal witnesses on behalf of the Respondents), including by ignoring contradictory or relevant evidence relied upon by the Appellant that undermined such credibility or the account which was given. It seems that having uncritically accepted at the outset that Ms Heard must have been correct in her allegations, the trial Judge discounted evidence to the contrary, even attributing to her evidence which she did not give in order to cater for the obvious weakness or improbabilities in her evidence.
- (4) The trial Judge failed to consider or otherwise address his mind to the impact of finding that one of the assaults alleged by Ms Heard in the confidential judgment did not happen.
- (5) Given the seriousness of the allegations involved, and the fundamental importance of assessing the credibility of the starkly opposed accounts given by the Appellant and his numerous witnesses (several of whom were

independent of him) on the one hand and Ms Heard and her close friends on the other hand, it was incumbent on the trial Judge to closely examine and provide a proper assessment of the principal grounds on which Ms Heard's credibility was challenged, or at least address them. He did neither.

- (6) Conversely, the trial Judge made no findings that the Appellant or other witnesses were dishonest, as would be inevitable given his findings of fact. Despite this obvious and fundamental flaw with the judgment, the trial Judge failed to give any or any real reasons as to why he did not accept their sworn testimony.
- (7) The trial Judge erred in law in applying s.4(1) of the Civil Evidence Act 1995 to the evidence of a Los Angeles Police Officer who had attended Ms Heard's home after one of the alleged incidents of domestic violence and whose subsequent deposition in legal proceedings in the United States the Appellant relied upon. The Respondents obtained an order pursuant to CPR r.33.4 requiring the officer to be cross-examined and the officer attended court (via video link) for that purpose. The Respondents made a deliberate decision not to cross-examine him. The officer's evidence was thereby unchallenged and the Civil Evidence Act had no role to play. Further, the evidence of this officer, which despite critically undermining Ms Heard's veracity went unchallenged by the Respondents, was discounted by the trial Judge, as was the evidence of his colleague, an officer experienced in domestic abuse cases.

Reasons for granting permission

9. In the premises, it is contended that the Appellant has (at least) a reasonable prospect of success, in accordance with the test for granting permission to appeal. The Appellant will detail in his Skeleton Argument a number of examples which demonstrate the reasons outlined above. However, given the limits imposed by the Practice Direction to CPR Part 52, these will be merely examples, as opposed to an exhaustive list, of the ways in which the judgment is seriously flawed and the findings of fact upon which it is based are manifestly unsafe or perverse.

10. The examples which demonstrate the reasons outlined above will be detailed in the Appellant's Skeleton Argument, and will be capable of assessment by reference to the trial transcripts, the witness statements and the documentary evidence which was placed before the trial Judge.

11. Further, and in any event, there are other compelling reasons for permission to appeal to be granted. This was a very public judgment, reached by a single Judge, making devastating findings of extremely serious criminal offences having been committed, and where this has had wider ranging implications for the public at large, particularly victims (or those wrongly accused) of alleged domestic abuse. It is important that in such circumstances, and especially where the flaws in this judgment are so many and so fundamental as to warrant a proper review, that there is an effective appeal process.