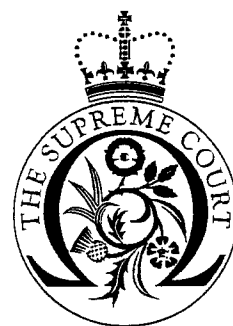


In the Supreme Court of the United Kingdom



Application form

On appeal from

The Court of Appeal, Civil Division (England & Wales)

1) Jason Spiller, 2) 1311 Events Limited

— V —

1) Craig Joseph, 2) Jason Joseph, 3) Anthony Raymond

Appeal number

UKSC 2009/0210

Date of filing

1 1 / J U N / 2 0 1 0
D D M M M Y Y Y Y

Applicant's solicitors

REYNOLDS PORTER CHAMBERLAIN LLP

Appellant's solicitors

DAVID PRICE SOLICITORS AND ADVOCATES

Respondent's solicitors

HOWARD KENNEDY

1. Details of the applicant

Applicant's full name

ASSOCIATED NEWSPAPERS LIMITED AND TIMES NEWSPAPERS LIMITED

Original status

- Claimant Defendant Intervener
 Petitioner Respondent
 Pursuer Defender

Solicitor

Name

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Ref. JML/ASS7.708

Email

How would you prefer us to communicate with you?

- DX Email
 Post Other (please specify)

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2. Nature of the application

The applicant applies for

- | | |
|--|---|
| <input type="checkbox"/> Extension of time | <input checked="" type="checkbox"/> Permission to intervene |
| <input type="checkbox"/> Security | <input type="checkbox"/> Order for substituted service |
| <input type="checkbox"/> Expedited hearing | <input type="checkbox"/> Review of Registrar's decision |
| <input type="checkbox"/> Other order <i>(please specify)</i> | |

3. Grounds on which application made

On what grounds are you making this application?

PLEASE SEE ATTACHED.

4. Consent to application

The following parties
consent to this application

See attached letter(s) dated

The following parties
object to this application

The Appellants and the Respondents have not provided their consent. Due to the need to meet the deadline to make this application they have not yet had sufficient time to properly consider their position with their advisers.

See attached letter(s) dated

5. Other relevant information

We hope to continue dialogue with the parties as to their consent to this application and will inform the Court if the parties give their consent at a later date.

6. Details of the appellant

Appellant's full name

1) Jason Spiller, 2) 1311 Events Limited

Original status

- Claimant Defendant
 Petitioner Respondent
 Pursuer Defender

Solicitor

Name

DAVID PRICE SOLICITORS AND ADVOCATES

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Counsel

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Postcode

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Counsel

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Address

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Postcode

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7. Details of the respondent

Respondent's full name

Original status

- Claimant Defendant
 Petitioner Respondent
 Pursuer Defender

Solicitor

Name

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Counsel

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Postcode: W C 1 R 5 B P

Email:

Counsel

Name:

Address:

Telephone no.:

Fax no.:

DX no.:

Postcode:

Email:

8. Certificate of Service

Either complete this section or attach a separate certificate

On what date was this form served on the

Appellant: 1 1 / JUN / 2 0 1 0
D D M M M Y Y Y Y

Respondent: 1 1 / JUN / 2 0 1 0
D D M M M Y Y Y Y

I certify that this document was served on

THE SOLICITORS TO THE APPELLANT AND THE RESPONDENT

by
REYNOLDS PORTER CHAMBERLAIN LLP

by the following method
FAX AND EMAIL TO BOTH PARTIES

Signature

**9. Details of Registrar's order/decision
being appealed**

Date of order/decision

2	2	/	O	C	T	/	2	0	0	9
D	D		M	M	M		Y	Y	Y	Y

Please return your completed form to:

The Supreme Court of the United Kingdom, Parliament Square, London SW1P 3BD
DX 157230 Parliament Square 4

Telephone: 020 7960 1991/1992

Fax: 020 7960 1901

email: registry@supremecourt.gov.uk

www.supremecourt.gov.uk

IN THE SUPREME COURT
ON APPEAL FROM THE COURT OF APPEAL
(CIVIL DIVISION ENGLAND & WALES)

(1) JASON SPILLER

(2) 1311 EVENTS LIMITED

Appellants/Defendants

and

(1) CRAIG JOSEPH

(2) JASON JOSEPH

(3) ANTHONY RAYMOND

Respondents/Claimants

GROUND ON WHICH THE APPLICATION IS MADE

1. The Applicant applies for permission to intervene in this appeal from the interlocutory decision of the Court of Appeal in this libel action, made on 22 October 2009.
2. This appeal raises a number of fundamental issues of principle as to the core requirements of the defence of fair comment (better described as honest opinion) and, in particular, as to what facts qualify to support the opinion and to what extent they need to be indicated in the publication complained of, and to what extent they need to be proved at trial. Despite the crucial significance of this defence for freedom of expression, and despite it being one of the principal mechanisms by which English law seeks to achieve compliance with the values and priorities enshrined in Article 10 of the European Convention of Human Rights and Fundamental Freedoms, these critical issues remain uncertain.
3. The Applicant anticipates that if permission is granted other media entities may wish to be party to the intervention, using the same representation and submissions.

4. The editors of the recently published third edition of Duncan & Neill on Defamation suggest that it is doubtful that, notwithstanding the fundamental importance and breath of this defence, "English law has succeeded in avoiding the legal refinements against which Lord Denning MR cautioned".
5. The Appellants in this appeal are not members of the media, but are a company and its directors engaged in the business of providing entertainment booking services. Nor is the publication a media publication. However, the issues to be decided will have profound consequences for media publications, which commonly feature opinions expressed by third parties rather than (as in this case) opinions by the defendants themselves.
6. The applicant would propose to instruct counsel to prepare written submissions. and make oral submissions if it is considered appropriate by the panel of Justices in accordance with r.26 of the Supreme Court Rules 2009.
7. Without seeking to 'strait-jacket' the issues the Applicant would seek to focus on the following

Issue 1

Whether the statement of Lord Nicholls in *Tse Wai Chun Paul v Albert Cheng* [2001] EWLR 31 at [19] that "*The comment must explicitly or implicitly indicate, at least in general terms, what are the facts on which the comment is being made. The reader or hearer should be in a position to judge for himself how far the comment was well-founded*" is an accurate statement of English law.

This statement involves two propositions: (i) that for the defence of fair comment to be available the *particulars of fact* upon which the comment is based must be contained or specifically referred to in the article complained of, expressly or by implication; and (ii) that the reader must be able to make his own value judgment *based on the facts stated in the article* (the purported rationale for the requirement set out at (i) above). It would be submitted that both propositions are wrong in principle and derive from a misinterpretation of the House of Lords' decision *Kemsley v Foot*.

Issue 2

Whether the commentator has to know the facts at the time of publication

Quite distinctly the Applicant would wish to address the extent to which, if at all, the commentator has to know the facts on which he relies. This issue does not directly arise on this appeal although it is clearly connected as a matter of principle to Issue 1. It is however of fundamental importance to the defence and the two leading textbooks (Gatley and Duncan & Neill) disagree on the point.

Both the above issues require a close examination of the reasoning of Mr Justice Eady;s judgment in *Lowe v Associated Newspapers* [2007] QB 580.

Issue 3

What is the correct interpretation of section 6 of the Defamation Act 1952.

The Applicant would submit that all facts legitimately relied on in support of the comment complained of come within the section. It will respectfully be submitted that the Court of Appeal's construction of section 6 is very difficult to identify, let alone apply.

The Applicant would wish to address these issues with particular reference to the problems of reporting the opinions of others; a perspective which may not otherwise be fully explored on this appeal. The Applicant is not aware of any other pending appeal to the Supreme Court where these questions will be reviewed.

It is hoped that the submissions of the applicant will assist the Court in a case of great significance for the media and the protection of freedom of expression. For all of the above reasons, the Applicant respectfully seeks the permission of the Court to intervene in this case.