

# Applications for default judgment and an injunction granted in defamation and harassment claim (Rafique v Acorn)

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**TMT analysis:** This is the judgment given on two applications issued by the claimants against the second defendant for default judgment and an injunction in relation to harassment and defamation claims. The claims against the first defendant had been resolved separately, prior to the hearing. The judge, considering that the hearing could proceed in the second defendant's absence, proceeded to examine each of the claimants' applications in turn, recalling the basic principles guiding the assessment of those applications. On the facts of the case, he found that the conditions for granting default judgment and an injunction were met, and both applications were successful. Written by Mathilde Groppo, senior associate at Carter-Ruck Solicitors.

*Rafique and another v Association of Community Organisations for Reform Now Ltd and another* [\[2022\] EWHC 414 \(QB\)](#)

## What are the practical implications of this case?

This case makes a straightforward application of well-established legal principles concerning two issues:

- proceeding in the absence of a defendant, and
- granting default judgment

There are two main points of interest in the judgment, both of which relate to reasoning developed in the context of the harassment claim.

The first is that the case is a rare example in the civil context of a defendant being found liable for harassment on the basis both of acts committed by the defendant, but also by others, with the second defendant's responsibility being engaged under [section 7\(3A\)](#) of the Protection from Harassment Act 1997 ([PHA 1997](#)) for the aiding, abetting and/or procuring of a course of conduct by others (in this case, members of the first defendant).

The second is that the judge clearly states that the principles applicable to the granting of default judgment developed in the context of libel cases will apply to a harassment case.

It is accepted that in the case of an application for default judgment, the court can proceed on the basis of the claimants' unchallenged particulars of claim. The approach to be taken in defamation cases, which is that this general approach applies but could require modification in some instances (for instance where the words were clearly not defamatory or where the pleaded meanings are wildly extravagant or unreal), was set out in *Sloutsker v Romanova* [\[2015\] EWHC 2053 \(QB\)](#) and confirmed in *Charakida v Jackson* [\[2019\] EWHC 858 \(QB\)](#).

In the present case, the judge held that an equivalent approach should be taken in respect of the harassment claim, noting that examples of situations where the general approach would need to be modified included 'where there is no obvious course of conduct, or where it would be unreal to characterise the events relied upon as unreasonable and oppressive conduct, likely to cause the recipient alarm, fear and distress'.

## What was the background?

The claimants were a property management company renting properties to private tenants, and a director of the company.

The first defendant was a campaign group advocating for people with low incomes, and the second defendant was a member of that group.

The second defendant had entered into a tenancy contract with the second defendant, and paid a deposit, which she asked be returned to her the following day. The claimants' case was that following their refusal, the defendants engaged in a sustained campaign against them. The claimants issued proceedings for libel, slander, harassment and breach of data protection law, seeking damages and an injunction.

The claim against the first defendant was resolved after the claimants accepted an offer of amends (in respect of the defamation claims) and an offer of settlement in relation to the other claims.

The second defendant did not engage with the proceedings.

The claim still being pursued against the second defendant was for harassment, in respect of various incidents pleaded in the claimants' particulars of claim and on behalf of the first claimant only, and defamation pleaded as both libel and slander in respect of a speech given by the second defendant (relating to the speech itself, and to the publication of a video of the speech online). Absent any engagement on the second defendant's part with the proceedings, two applications had been issued by the claimants and were before the court

- an application for default judgment, and
- an application for an injunction

The claimants were no longer seeking damages against the second defendant.

### **What did the court decide?**

There were three main aspects to the decision of the court.

#### **Proceeding in the second defendant's absence**

The court was satisfied that that the claim form, particulars of claim, application notices, evidence, skeleton argument, hearing bundle and authorities bundle had been duly served on the second defendant in accordance with applicable rules. It was also satisfied that the second defendant had been duly notified of the application and the hearing, in accordance with [section 12\(2\)](#) of the Human Rights Act 1998 ([HRA 1998](#)), since the second defendant had been contacted through an email address which she had used to communicate with the claimants' solicitors

#### **Default judgment**

The court recognised that the second defendant had not filed an acknowledgment of service or a defence, and therefore that default judgment could be obtained pursuant to [CPR 12.3\(1\)](#).

In relation to both the defamation and the harassment claim, it proceeded on the basis of the claimants' unchallenged particulars of claim, considering there was no need, in the circumstances of the case, to depart from that rule. The harassment claim pleaded specific incidents involving the second defendant, and the second defendant had not challenged the way in which the harassment claim had been pleaded (including in relation to the plea of responsibility under [PHA 1997, s 7\(3A\)](#)). The meanings pleaded by the claimants in respect of the defamation claim (that the claimants operate a fraudulent business, and that they defrauded a vulnerable student by making her sign a blank contract and then added additional unexpected fees) were realistic, and a prima facie case for slander actionable per se had been made out (since the allegations imputed a criminal offence and disparaged the claimants in their profession as landlords)

#### **Injunction**

In the absence of any engagement on the second defendant's part in the proceedings, and therefore of any defence, and absent any remorse on her part, the judge considered that the claimants had provided a sufficient basis to justify the granting of an injunction. In accordance with [HRA 1998, s 12\(4\)](#), the granting of such an injunction pursued the legitimate aim of protecting the claimants from false and damaging allegations and protecting the first claimant from further harassment

### Case details

- Court: Media and Communications List, Queen's Bench Division, High Court of Justice
- Judge: His Honour Judge Lewis (sitting as a High Court judge)
- Date of judgment: 28 February 2022

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