

Supreme Court Rules Bakery Did Not Discriminate Against Gay Customer

The Supreme Court has this week handed down judgment in the long-running “gay cake” case (*Lee v McArthur and Ashers Baking Company Limited*). The bakery, which is in Northern Ireland and run by individuals with strict Christian beliefs including that gay marriage is inconsistent with Biblical teaching, refused to make a cake which had been ordered by Mr. Lee, a gay man, and which bore (as well as a picture of Bert and Ernie from Sesame Street) the message “Support Gay Marriage”. The central issues were whether this amounted to unlawful discrimination on the grounds sexual orientation and/or political belief and whether such discrimination (if found) would still be unlawful when taking into account the bakers’ rights under the European Convention on Human Rights (ECHR) to freedom of religion and freedom of expression.

The Supreme Court found in favour of the bakers. They had not discriminated against Mr. Lee on the grounds of sexual orientation – their objection was to the message, not to Mr. Lee’s sexuality or the sexual orientation of persons he associated with. They would equally have refused to bake the cake for a heterosexual customer.

There was also, the Court held, no unlawful discrimination on the grounds of political opinion. It was arguable that Mr. Lee’s political opinion in favour of gay marriage, which is not legal in Northern Ireland and is a much-debated political issue, was “indissociable” from the wording he wanted on the cake, meaning that refusing to honour the order was potentially direct discrimination on the grounds of political belief.

However, this conflicted with the bakers’ rights under the ECHR to freedom of thought, conscience and religion and to freedom of expression (which includes the right not to express an opinion or to be compelled to express an opinion in which they do not believe). As a result, the anti-discrimination laws could not be used to compel the bakers to supply a cake iced with a message with which they profoundly disagreed, unless it was justified. The Court found that no such justification had been shown here. As a result, Mr. Lee’s claims failed.

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This case is likely to be heralded (in some quarters at least) as a victory for freedom of expression – the bakers could not be forced to propound a message with which they did not agree - but its importance should perhaps not be overstated. It was all about the message and the not the characteristics of Mr. Lee himself. The Court was explicit that the bakery could not have refused to provide a cake to Mr. Lee *because* he was gay or supported gay marriage.

The case does however give some comfort to business owners who fear being forced to publish sentiments that they disagree with, such as support for a particular political party or a particular religious denomination. It will be interesting to see if and how this ruling is implemented. Could an ad agency run by Remainers refuse to run a pro-Brexit campaign? Or a printing company run by Catholics refuse to print literature for a pro-choice charity? On this ruling, very possibly they could.

The principles from this case apply equally in employment law but the Supreme Court's decision should not impact on the employment relationship. Employers are still prohibited from discriminating against their employees because of a protected characteristic (such as sexual orientation, political belief). Not employing someone because of their religious or political beliefs is still clearly unlawful.

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