

[2015 Gib LR 228]

**PICARDO v. SINDICATO COLECTIVO DE
FUNCIONARIOS PUBLICOS MANOS LIMPIAS and
REMON**

SUPREME COURT (Dudley, C.J.): June 26th, 2015

Tort—defamation—damages—relevant factors for damages award: (a) injury to reputation most important; (b) vindication of reputation, particularly if no retraction or apology; (c) distress, hurt and humiliation; (d) extent of publication; and (e) credibility of source of allegations and likelihood of publishees believing them—£30,000 damages for libel causing serious damage to professional reputation, honour and integrity; no apology or retraction; publication to majority of Gibraltar; but lacking credibility

The claimant brought an action against the defendants claiming damages and injunctive relief for defamation.

The claimant, the Chief Minister of Gibraltar, claimed that the defendants, a Spanish trade union and its general secretary, published on the first defendant's website defamatory statements alleging that the claimant had condoned or been involved in smuggling, drug trafficking and money laundering, and had improperly disregarded legitimate requests for judicial assistance from foreign courts and tribunals. The allegations were given coverage by the Gibraltar Broadcasting Corporation on its website, its radio news bulletin and its evening news television programme. During these broadcasts, the GBC linked the allegations to statements made the previous week by another Spanish organization.

The Supreme Court (in proceedings reported at 2013–14 Gib LR 665) granted the claimant default judgment for damages in an amount to be assessed but refused his application for a permanent injunction restraining the defendants from publishing the defamatory allegations in Gibraltar. The report relates to the assessment of damages.

The claimant submitted that the natural and ordinary meaning of the defamatory statements as published by the defendants was that he had

aided and abetted smuggling, drug trafficking and money laundering, and had improperly disregarded legitimate requests for judicial assistance from foreign courts and tribunals.

Held, awarding damages of £30,000:

(1) The meaning of the statements would be interpreted in accordance with the “single meaning rule,” whereby the court would determine the single meaning that they conveyed to the notional reasonable publishee, avoiding over-elaborate analysis, and base its award of damages on the assumption that this was the one sense in which all publishees would have understood them. The meaning of the statements, taken together, was that the claimant condoned, but was not actively involved in, smuggling, drug trafficking and money laundering, and that he had improperly disregarded legitimate requests for judicial assistance from foreign courts and tribunals. He brought extensive evidence to show that these allegations were untrue (paras. 7–8).

(2) When assessing an award of damages for libel, the following principles were relevant: (a) injury to reputation was the most important factor, and the closer the libel related to personal or professional integrity and reputation the more serious it was; (b) damages should vindicate the claimant’s reputation, particularly when there had been no retraction or apology; (c) the court would take account of the distress, hurt and humiliation caused by the publication; (d) the extent of publication was very relevant; and (e) the credibility of the source of the libel and the likelihood of the publishees believing it was also relevant, but the fact that the source was not credible was not of itself sufficient to reduce a damages award to a nominal sum. Applying these principles to the present case led to a damages award of £30,000. On the one hand, the libel caused serious damage to the claimant’s reputation as the allegations undermined his reputation, honour and professional integrity; the defendants did not retract or apologize for the libel; and the extent of publication was very great as 52.8% of the population of Gibraltar listened to the GBC’s radio news bulletin and 69.1% watched its evening news television programme. On the other hand, damages awards should be moderate and proportionate; criticisms of Gibraltarian political leaders emanating from Spanish institutions could sometimes be seen in Gibraltar as a badge of honour; and many publishees in Gibraltar did not treat the defendants as credible sources of information and therefore did not believe the allegations. On balance, however, given that the allegations went to the heart of the claimant’s professional reputation, the proper award of damages was £30,000 (paras. 9–14; para. 17).

(3) As the allegations related to the Chief Minister of Gibraltar, the defendants must have been aware that they were likely to be republished by the Gibraltar media, and the defendants would therefore be held liable for the increased damage caused by the GBC’s republication of the allegations, but not for any increased damage which arose from the GBC’s

decision to link the allegations to statements made the previous week by the other Spanish organization. This was an editorial decision taken by the GBC for which it was unreasonable to attribute responsibility to the defendants (paras. 15–16).

(4) It was unnecessary for the court to review awards made by the English courts because this area of law involved particularly fact-sensitive and subjective assessments (para. 17).

Cases cited:

- (1) *Appleyard v. Wilby*, [2014] EWHC 2770 (QB), referred to.
- (2) *Charleston v. News Group Newsp. Ltd.*, [1995] 2 A.C. 65; [1995] 2 W.L.R. 450; [1995] 2 All E.R. 313; [1995] E.M.L.R. 129, applied.
- (3) *Jeynes v. News Magazine Ltd.*, [2008] EWCA Civ 130, applied.
- (4) *John v. MGN Ltd.*, [1997] Q.B. 586; [1996] 3 W.L.R. 593; [1996] 2 All E.R. 35; [1996] E.M.L.R. 229, applied.
- (5) *McManus v. Beckham*, [2002] 1 W.L.R. 2982; [2002] 4 All E.R. 497; [2002] E.M.L.R. 40; [2002] EWCA Civ 939, referred to.
- (6) *Marrache v. Smith*, 1812–1977 Gib LR 270, referred to.
- (7) *Oriental Daily Publisher Ltd. v. Ming Pao Holdings Ltd.*, [2013] E.M.L.R. 7; [2012] HKCFA 59, considered.
- (8) *Royal Brompton & Harefield NHS Trust v. Shaih*, [2014] EWHC 2857 (QB), referred to.

J. Santos for the claimant;

The defendants did not appear and were not represented.

1 **DUDLEY, C.J.:** In a ruling of July 9th, 2014 (reported at 2013–14 Gib LR 665), I granted the claimant default judgment for damages in an amount to be assessed, but for the reasons set out therein, I refused the application for a permanent injunction restraining the defendants from publishing in Gibraltar the defamatory allegations that are the subject matter of this claim. This is the ruling on the assessment of damages.

2 There not having been a trial of the action, the meaning of the libels needs to be ascertained to determine the appropriate award properly (*Appleyard v. Wilby* (1)). The meaning of the publications must be determined in accordance with the “single meaning rule,” which was explained by Lord Bridge in *Charleston v. News Group Newsp. Ltd.* (2) ([1995] 2 A.C. at 71) on the following terms:

“... [T]he jury in a libel action ... is required to determine the single meaning which the publication conveyed to the notional reasonable reader and to base its verdict and any award of damages on the assumption that this was the one sense in which all readers would have understood it.”

3 The approach to be taken in determining the meaning of the publication was summarized by Sir Anthony Clarke, M.R. in *Jeynes v. News Magazine Ltd.* (3) ([2008] EWCA Civ 130, at para. 14):

“(1) The governing principle is reasonableness. (2) The hypothetical reasonable reader is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking but he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available. (3) Over-elaborate analysis is best avoided. (4) The intention of the publisher is irrelevant. (5) The article must be read as a whole, and any ‘bane and antidote’ taken together. (6) The hypothetical reader is taken to be representative of those who would read the publication in question. (7) In delimiting the range of permissible defamatory meanings, the court should rule out any meaning which, ‘can only emerge as the produce of some strained, or forced, or utterly unreasonable interpretation . . .’ (see Eady, J. in *Gillick v. Brook Advisory Centres* approved by this court [2001] EWCA Civ 1263, at para. 7 and *Gatley on Libel and Slander* (10th edition), para. 30.6). (8) It follows that ‘it is not enough to say that by some person or another the words *might* be understood in a defamatory sense.’ *Neville v. Fine Arts Company* [1897] A.C. 68, *per* Lord Halsbury, L.C. at 73.” [Emphasis in original.]

4 In the present case, the offending material is to be found in a press release (“the press release”) and an attached complaint (“the complaint”) against the claimant (and the representative of the United Kingdom in Gibraltar), the latter addressed to the European Commission.

5 Although both the press release and complaint (which are in the Spanish language) primarily allege the commission of an environmental crime arising from the sinking of 70 cement blocks into the sea, they respectively go on to state: “Furthermore, a complaint is also filed on account of the protection afforded by the respondents to contraband, drug smuggling and money laundering” and “Furthermore, I say that the respondents are necessary accomplices, collaborators and co-operators in smuggling, drug trafficking and money laundering, even disregarding letters rogatory issued by courts and tribunals.” The defendants’ press release and complaint were given coverage by the Gibraltar Broadcasting Corporation (“the GBC”) on the following terms:

“Manos Limpias denounces Governor and Chief Minister.

Spanish public services trade union ‘Manos Limpias’ has filed a legal complaint against the Governor and Chief Minister over the creation of the artificial reef. It accuses Fabian Picardo of an environmental

crime by ordering the sinking of 70 concrete blocks to construct the reef and Sir Adrian Johns of being a collaborator and accomplice of Mr. Picardo. It further claims that both of them have condoned smuggling, drug trafficking and money laundering.”

6 The claimant’s case is that, in their natural and ordinary meaning, the statements made by the defendants meant and were understood to mean that the claimant “was aiding and abetting smuggling, drug trafficking and money laundering, and was improperly disregarding legitimate requests for judicial assistance from foreign courts and tribunals.” In relation to the coverage by the GBC, the pleaded case is that, in their natural and ordinary meaning, the words complained of meant and were understood to mean that the claimant “had condoned smuggling, drug trafficking and money laundering.”

7 In determining the meaning, I avoid an over-elaborate analysis of the passages but rather seek to ascertain the meaning which the ordinary, reasonable reader would put on the words. Adopting such an approach, I am of the view that the passage contained in the complaint, if read in isolation, would convey to the ordinary, reasonable reader the meaning that the claimant attributes to it. However, the complaint was published with the press release and the assertion there, whilst also libellous, is more nuanced. In my view, it is instructive that, in covering the story (albeit further disseminating the libel), the GBC conveyed the defendants’ assertions as amounting to the claimant condoning the various illegal activities rather than suggesting more active participation. In my view, the meaning to be given to the press release and complaint and the republication by the GBC is that the claimant condoned the commission of the criminal activities identified and that he disregarded requests for judicial assistance from foreign courts.

8 Although the claimant is entitled to rely on the presumption of falsity, in support of his claim for damages he advances both substantial and substantive evidence to prove the falsity of the allegations. In his witness statement, he highlights the steps that his government has taken to tackle smuggling, such as the designation of special zones in which the legal limit for possession of cigarettes is lower than elsewhere in Gibraltar; the imposition of certain restrictions in relation to the grant of retail licences for tobacco; and the promotion of legislation to make the concealment of tobacco in a motor vehicle a criminal offence. In relation to both the smuggling and drug trafficking allegations, he highlights the increased resources made available by his government to the Royal Gibraltar Police and to H.M. Customs, and the measures taken at the border which are in line with the European Commission’s recommendations. As regards the money laundering allegations, the claimant relies upon Gibraltar’s compliance with its international and EU obligations; the fact that his government is well advanced in drafting legislation to give effect to new

standards set by the Financial Action Task Force's revised anti-money laundering principles; and the steps taken by the Financial Services Commission and the Gibraltar Financial Intelligence Unit in the fight against money laundering. The allegation that the claimant ignores requests for judicial assistance is countered by reference to an assurance given to him by the Attorney-General that letters of request are never ignored and evidence is regularly obtained through the mutual legal assistance legislative framework. He also relies upon the fact that the minister responsible for justice recently passed the Exchange of Information and Intelligence between European Law Enforcement Authorities Regulations 2014, which transpose Framework Decision 2006/960/JHA, which is aimed at simplifying the exchange of information and intelligence between law enforcement authorities of EU Member States.

9 In *John v. MGN* (4), Sir Thomas Bingham, M.R. (as he then was) identified the principles which are relevant when assessing an award of damages for libel ([1997] Q.B. at 607), from which I draw the following:

(a) damages for injury to reputation is the most important factor. The closer it relates to personal or professional integrity and reputation, the more serious it is;

(b) a claimant may look to an award of damages to vindicate his reputation; this is particularly relevant where there is no retraction or apology;

(c) account has to be taken of the distress, hurt and humiliation caused by the publication; and

(d) the extent of publication is very relevant.

10 In the present case, the gravity of the libel is severe and the damage to the claimant's reputation is serious in that the allegation that he condones the commission of serious crime goes to his integrity and honour and impacts upon his professional reputation both in his office as Chief Minister and as a barrister.

11 The second purpose served by damages is vindication. Given the absence of a retraction or apology, this is particularly relevant in that the level of the award must serve to clear the claimant's reputation of any doubt which may have been created by the libellous statement. The significance of that principle was recognized by the Court of Appeal for Gibraltar in *Marrache v. Smith* (6), where (1812–1977 Gib LR at 279) the Court of Appeal endorsed the Chief Justice's direction to the jury that "the amount that she ought to receive is such as would show the untruth of the defamatory words and the nature of the charge made against her." The same approach is to be found in *Royal Brompton & Harefield NHS Trust v. Shaih* (8), where His Honour Judge Moloney, Q.C., sitting as a judge of the High Court, when assessing the quantum of damages for libel said

([2014] EWHC 2857 (QB), at para. 12): “There is also a very important element . . . namely vindication, the use of the court’s award as a public demonstration that these allegations are untrue and that the claimants ought not to have been accused of the things that they have been.”

12 The other main purpose of damages is that of providing compensation for the distress, hurt and humiliation suffered. The claimant very fairly concedes that, given their provenance, many local publishees would treat the allegations as being highly suspicious. Notwithstanding, he goes on to say that he was embarrassed and frustrated by these false allegations, which evidence I accept.

13 The weight which publishees within the jurisdiction would give the defamatory statements dovetails with an issue I raised in a previous hearing when I suggested that criticism against local political leaders emanating from Spanish institutions or organizations could sometimes be seen in Gibraltar as a “badge of honour.” Mr. Santos relies upon *Oriental Daily Publisher Ltd. v. Ming Pao Holdings Ltd.* (7), a decision of the Court of Final Appeal of Hong Kong, in which Lord Neuberger was sitting as a non-permanent judge. *Ming Pao* is analogous in that it is authority for the proposition that the credibility of the source and the likelihood of the publishee believing the libel is a relevant factor when assessing the level of damages and that the court can draw inferences as to the likely reaction of ordinary, reasonable publishees for the purpose of ascertaining whether the allegations have a low level of credibility. However, it is evident from *Ming Pao* that, although low credibility has the effect of reducing damages, it is not of itself sufficient to reduce an award to a nominal amount.

14 The remaining relevant consideration is the extent of publication. The material was originally published by the defendants on the first defendant’s website where it remains available. I accept the evidence that it will have been accessed by a substantial number of people within the jurisdiction, given that a link to the webpage was posted on “Llanito Politics,” a very popular local Facebook group with 8,000 members. The press release was also carried by Europa Press, a press agency, and the GBC republished the allegations on its website, on its radio news bulletin, and on Newswatch, its evening news television programme. The evidence before me shows that an audience survey carried out by the GBC in May 2014 shows that the GBC’s Radio Gibraltar is listened to by 11,600 listeners, whilst Newswatch has an audience of 15,000 viewers; this is 52.8% and 69.1% respectively of Gibraltar’s adult population. Given those figures, the claimant very cogently argues that the press release was published to the majority of the population.

15 Whether or not the defendants made the press release directly available to Europa Press, by issuing it the defendants must have been

aware that the libel was likely to be carried and repeated by press agencies. Given that it related to the Chief Minister of Gibraltar, they must also have been aware that it was likely that it would be republished by some Gibraltar media. In those circumstances, it is right that the defendants also be held liable for the damage caused by the GBC's republication (*McManus v. Beckham* (5)).

16 In its reports, the GBC said that the defendants' allegations "echoed" statements made the previous week by a Granada-based association and it is said that this link significantly compounded the element of credibility afforded to the libel. The claimant seeks to attribute responsibility to the defendants for that. In my view, it is not reasonable to do so. Connecting both stories was an editorial decision taken by the GBC and any increased credibility cannot be attributed to the defendants.

17 I take account of awards by the English courts relied upon by Mr. Santos which are summarized in *Carter-Ruck On Libel & Privacy*, 6th ed., at ch. 15 (2010), but, given that this is an area of law in which assessments are particularly fact sensitive and involve an element of subjectivity, I find it unnecessary to review them in this ruling. Although the defendants have chosen not to take part in these proceedings, nonetheless I bear in mind in their favour the need to be moderate and proportionate. I also do not ignore what I have described as the "badge of honour" element and that many publishers will not have believed the allegations. However, the libellous statements go to the heart of the claimant's professional reputation both as Chief Minister and a barrister and, in my judgment, given the extent to which they have been published, the award has to mark the seriousness of the libel and provide public vindication to the claimant's reputation.

18 Taking account of all these factors, I am of the view that the proper award of damages is one of £30,000. I shall hear submissions as to costs.

Orders accordingly.