[2022 Gib LR 206]

PICARDO v. DE CASTRO

SUPREME COURT (Dudley, C.J.): July 15th, 2022

2022/GSC/20

Tort—defamation—damages—£20,000 damages for libel consisting of eight tweets by Spanish politician alleging that Gibraltar Chief Minister corrupt and permitted smuggling, money laundering, tax fraud and corruption—relatively limited publication—each tweet seen by 2,000–3,000 Gibraltar residents

The claimant brought an action against the defendant for defamation.

The claimant, the Chief Minister of Gibraltar, claimed that the defendant, a Spanish politician, had published various tweets which contained false and defamatory allegations about him. The claimant claimed that the natural and ordinary meaning of the eight tweets was that he was corrupt and that he governed Gibraltar in a manner that permitted or promoted smuggling, money laundering, tax fraud and corruption.

By his acknowledgment of service, the defendant indicated his intention to contest the jurisdiction of the court. However, he failed to make an application under CPR r.11 and was therefore to be treated as having accepted the court's jurisdiction.

The claimant applied for default judgment under CPR Part 12. Rule 12.12(6) provided:

> "(6) Both on a request and on an application for default judgment the court must be satisfied that—
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> (a) the particulars of claim have been served on the defendant (a certificate of service on the court file will be sufficient evidence);
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> (b) either the defendant has not filed an acknowledgment of service or has not filed a defence and that in either case the relevant period for doing so has expired;
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> (c) the defendant has not satisfied the claim; and
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> (d) the defendant has not returned an admission to the claimant under rule 14.4 or filed an admission with the court under rule 14.6."

The claimant sought damages arising from publication of the tweets in Gibraltar. He advanced substantial evidence to prove the falsity of the allegations in the defendant's tweets.

Held, judgment as follows:

(1) The claimant was entitled to default judgment. The filing of the acknowledgement of service established that the claim form and particulars of claim had been served. No defence had been filed, the claim had not been satisfied and no admission had been returned or filed. By virtue of CPR r.12.12(1) the starting point was that "the court shall give such judgment as the claimant was entitled to on the statement of case." A default judgment was not a judgment on the merits. The court retained a discretion to refuse to enter a judgment in default if to do so would result in an injustice but in the present case there was no apparent basis upon which to exercise that residual discretion (para. 11).

(2) The appropriate award of damages was £20,000. The court accepted the claimant's submission that in their natural and ordinary meanings, the tweets meant amongst other things that the claimant was a mafioso; a facilitator and protector of smugglers; a promoter of money laundering; a corrupt individual and briber of other corrupt individuals; and an individual who willfully ignored fraud and organized crime and had profited from having made Gibraltar a refuge for criminals. Each of the tweets would have been seen by between some 2,000 to 3,000 Gibraltar residents, with potential for duplication within that cohort, with various tweets viewed by the same people. The court had previously considered the applicable principles when assessing an award of damages for libel as followed: (a) damages for injury to reputation was the most important factor. The closer it related to personal or professional integrity and reputation, the more serious it was; (b) a claimant could look to an award of damages to vindicate his reputation, which was particularly relevant where there was no retraction or apology; (c) account had to be taken of the distress, hurt and humiliation caused by the publication; and (d) the extent of publication was very relevant (*Picardo* v. *Manos Limpias*, 2015 Gib LR 228). The court also considered that criticism against local political leaders emanating from Spain could sometimes be seen in Gibraltar as a badge of honour, enhancing a Gibraltar politician's standing and having the effect of reducing an award of damages. Balancing all of the relevant factors and mindful that the extent of the publication in Gibraltar had been relatively limited, the appropriate award of damages was £20,000 (para. 19).

Cases cited:

(1) *Adelson* v. *Anderson*, [2011] EWHC 2497 (QB), referred to.

(2) *Barton* v. *Wright Hassal LLP*, [2018] UKSC 12; [2018] 1 W.L.R. 1119; [2018] 3 All E.R. 487, referred to.

(3) *Charles* v. *Shepherd*, [1892] 2 Q.B. 622, referred to.

(4) *eDate Advertising GmbH* v. *X*, Cases C-509/09 and C-161/10; [2012] Q.B. 654; [2012] 3 W.L.R. 227, considered.

(5) *Football Dataco Ltd.* v. *Smoot Enterprises Ltd.*, [2011] EWHC 973 (Ch); [2011] 1 W.L.R. 1978; [2011] FSR 25, considered.

(6) *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, considered.

(7) *Oriental Daily Publisher Ltd*. v. *Ming Pao Holdings Ltd*., [2013] E.M.L.R. 7; [2012] HKCFA 59, considered.
(8) *Picardo* v. *Manos Limpias*, 2015 Gib LR 228, considered.
(9) *Shevill* v. *Presse Alliance*, [1995] 2 A.C. 18, considered.

Legislation construed:
Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), art. 7(2): The relevant terms of this provision are set out at para. 5.

Civil Procedure Rules (S.I. 1998/3132), r.11: The relevant terms of this rule are set out at para. 8.
r.12.12: The relevant terms of this rule are set out at para. 10.

L. Baglietto, *Q.C.* with *M. Levy* (instructed by Hassans) for the claimant;
The defendant did not appear and was not represented.

1 **DUDLEY, C.J.:** This is the judgment on an application for default judgment pursuant to CPR Part 12 or alternatively summary judgment pursuant to CPR Part 24. In the event, the application was primarily advanced upon CPR Part 12 and for reasons which will become apparent, I do not have to consider the alternative basis upon which judgment was sought.

2 By a claim form issued on January 31st, 2020 the claimant, Fabian Picardo ("FP"), who is the Chief Minister of Gibraltar and was, before taking up office, a practising barrister and acting solicitor, seeks relief against the defendant, Agustin Rosety Fernandez de Castro ("ARFC"). The case pleaded against ARFC is to the effect that since November 2019 he published various tweets which are defamatory of FP. It is also FP's pleaded case that ARFC is a politician and member of the Congreso de los Diputados of the Spanish Parliament, taking up a seat from the electoral district of Cadiz since April 28th, 2019, and that he is a member of Vox, a right wing political party in Spain.

3 The eight tweets which contain what are said to be false and defamatory allegations about FP are in the Spanish language, I set out the alleged date of their publication and their pleaded English translations and, where appropriate, any additional relevant description in the pleaded case:

November 2nd, 2019

"Today Aitor Esteban did not want to greet @ivanedlm

He prefers greeting mafiosos, protectors of smugglers and promoters of money laundering such as @Fabian Picardo

Traitors and mafiosos enemies of Spain."

The tweet displayed a photograph of FP.

November 11th, 2019

"The mayor of Gibraltar is happy about @sanchezcastejon's victory and threatens to take @vox to the courts

You do well to be concerned, @Fabian Picardo, we will make sure everyone knows of the focal point of smuggling and corruption that you govern."

November 16th, 2019

"Gibraltar is a nest of corruption, tax fraud and organised crime @Fabian Picardo plays dumb and looks the other way

He extracts many returns from having made the rock a refuge for criminals."

November 20th, 2019

"There are people who ask ourselves where 700m from the ERE [a corruption scandal in Spain] have been hidden

There is a place close to Sevilla where the convicts have excellent relations

For a corrupt politician, there is nothing like having a tax haven

[rtve.es article extract] The Socialists Chavez and Moscoso met in Madrid with the Minister [incomplete word]

The Socialist members of parliament Manuel Chavez and Juan Moscoso held a meeting in Madrid with the Chief Minister of Gibraltar Fabian Picado, [incomplete word] . . ."

November 21st, 2019 at 15.47 hrs

"The mayor of Gibraltar, @Fabian Pichardo is very nervous . . . We are not your friends, Picardo. We are neither cowards, nor traitors nor corrupt people who you can buy . . ."

This tweet also displayed a photograph of FP.

November 21st, 2019 at 22.08 hrs

"#UGT [a Spanish trade union] stole 64% of all of the subsidies that it collected in #Andalucia (€41.37m) for commissions, bonuses, prostitutes, prawns, bacchanals and cocaine. @FabianPicardo, the parsley of all of the sauces."

November 23rd, 2019

"There are some who ask themselves where the socialists are hiding the money from the EREs [a corruption scandal in Spain] . . .

[Article extract:] Visit by Picardo to Madrid

The socialist members of parliament Chaves and Moscoso met last night with the Chief Minister of Gibraltar."

That tweet, *inter alia* included two photographs of FP meeting socialist members of the Spanish Parliament, and a photograph of the headline of an rtve.es article referring to two members of the Spanish Parliament, Mr. Chaves and Mr. Moscoso, having met FP.

December 18th, 2019

"In Gibraltar, @FabianPicardo and his henchmen are very worried about @vox_es

They have spent many years buying goodwill from faint-hearted politicians

They are terrified of a patriotic force that they cannot buy"

This tweet also displayed a photograph of FP.

4 FP's pleaded case is that

"9. In their natural and ordinary meanings the words set out [in the tweets] meant and were understood to mean as follows:

9.1. **The First Tweet:** The Claimant is a mafioso, protector of smugglers, promoter of money laundering and an enemy of Spain.

9.2 **The Second Tweet:** The Claimant knowingly governs Gibraltar in a manner that causes, facilitates or permits it to be a focal point for smuggling and corruption.

9.3 **The Third Tweet:** The Claimant plays dumb and wilfully ignores and facilitates widespread corruption, tax fraud and organised crime in Gibraltar, and has extracted profits from having made Gibraltar a refuge for criminals.

9.4 **The Fourth Tweet:** The Claimant assisted and facilitated the hiding of €700 million from the EREs corruption scandal in Gibraltar, a tax haven, by convicted socialist former members of the Spanish parliament Manuel Chaves and Juan Moscoso.

9.5 **The Fifth Tweet:** The Claimant is a corrupt individual who operates by bribing other corrupt individuals.

9.6 **The Sixth Tweet:** The Claimant was intimately involved in the Spanish trade union UGT's theft of 64% of the total of €41.37 million in subsidies that it collected in Andalucia, and its subsequent use of that money on commissions, bonuses, prostitutes, food, orgies and drugs.

> 9.7 **The Seventh Tweet:** The Claimant assisted the convicted socialist former members of parliament Manuel Chaves and Juan Moscoso in hiding the money stolen as part of the EREs corruption scandal in Gibraltar.
>
> 9.8 **The Eighth Tweet:** The Claimant is a corrupt individual who has spent many years buying goodwill and bribing faint-hearted politicians, and is terrified that he will be unable to buy off the Vox party."

5 The claim was issued on January 31st, 2020 and accompanying the claim form was form N510 "Notice for Service out of the Jurisdiction where permission of the court is not required" endorsed to reflect that CPR r.6.33(2)(a) and r.6.33(2)(b)(i) apply to the claim and stating that this court has power to determine the claim under the Judgments Regulation; that no proceedings between the parties concerning the same claim were pending in Gibraltar, the United Kingdom or other Member States and that the defendant is domiciled in Spain. Although for reasons I shall turn to the issue does not require determination, Mr. Baglietto in his skeleton argument persuasively submits that this claim falls under art. 7(2) of EU Regulation 1215/2012 ("Brussels Recast") which provides:

> "A person domiciled in a Member State may be sued in another Member State:
>
> . . .
>
> (2) in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur . . ."

And, that given that the proceedings were commenced before December 31st, 2020 the Brussels Recast applies by virtue of art. 67(1)(a) of the Withdrawal Agreement made between the EU and the UK.

6 Reliance is placed by Mr. Baglietto on *Shevill* v. *Presse Alliance* (9), in which the CJEU ruled that in a case of libel the meaning of "where the harmful event occurred or may occur" was that the defendant could be sued either in its domicile state for damage in any Member State or in any Member State where damage occurred for damages occurring in that State only. Reliance is also placed upon *eDate Advertising GmbH* v. *X* (4), in which the CJEU upheld *Shevill* and ruled further that in relation to damages for "personality rights" infringed by means of content published on the internet, a claimant could sue for damages occurring in all Member States in the courts of the Member State where he has the "centre of his interests." With the court holding that in general, the centre of interests of a claimant is his habitual residence centre and going on to state that ([2012] Q.B. 654, at para. 49):

> "a person may also have the centre of his interests in a Member State in which he does not habitually reside, in so far as other factors, such as the pursuit of a professional activity, may establish the existence of a particularly close link with that State."

It is beyond dispute that on any view FP's centre of interests is Gibraltar. The submission advanced is to the effect that this court has jurisdiction on the *eDate* basis and that moreover, given that FP is only applying for judgment for damage occurring in Gibraltar, that the *Shevill* criteria is also met.

7 In two documents sent to the court registry, both entitled "Reply to the Claim: Contest of the Jurisdiction of the Court" dated September 28th, 2021 and October 13th, 2021, ARFC sought to challenge the jurisdiction of this court. In the first document the representations were limited to an assertion that (i) the Spanish courts have exclusive jurisdiction over the dispute, and that (ii) pursuant to certain provisions in the Spanish Constitution, by virtue of the fact that he is a serving member of the Spanish Parliament and because the statements the subject of the claim were made in exercise of his parliamentary duties, he enjoys immunity. In the second more detailed document, ARFC asserts that art. 7.2 Brussels Recast should be applied restrictively and *inter alia* urges the court to adopt an approach in line with the resolution by the Institute of International Law dated August 31st, 2019, which as I understand it is more restrictive than the provisions of art. 7.2. Interesting as the proposals by the Institute of International Law may be, they evidently do not provide a legal basis to allow for the application of the proposition advanced. In any event as I have said before, these matters do not fall for determination.

8 CPR Part 11 which sets out the procedure for disputing the court's jurisdiction, provides:

> "**11.**—(1) A defendant who wishes to—
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> (a) dispute the court's jurisdiction to try the claim; or
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> (b) argue that the court should not exercise its jurisdiction,
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> may apply to the court for an order declaring that it has no such jurisdiction or should not exercise any jurisdiction which it may have.
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> (2) A defendant who wishes to make such an application must first file an acknowledgment of service in accordance with Part 10.
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> (3) A defendant who files an acknowledgment of service does not, by doing so, lose any right that he may have to dispute the court's jurisdiction.
>
> (4) An application under this rule must—

(a) be made within 14 days after filing an acknowledgment of service; and

(b) be supported by evidence.

(5) If the defendant—

(a) files an acknowledgment of service; and

(b) does not make such an application within the period specified in paragraph (4),

he is to be treated as having accepted that the court has jurisdiction to try the claim."

9 By his acknowledgment of service, ARFC indicated his intention to contest jurisdiction, and to that extent he complied with the provisions of the rule. However, he failed to make an application under the rule within 14 days (or at all) and therefore pursuant to CPR r.11(5) he is to be treated as having accepted the court's jurisdiction. An application under the rule is evidently an application which complies with CPR Part 23 and requires the filing of an application notice and payment of the requisite fee. The documents provided by ARFC did not comply with CPR Part 23 and no fee was paid. A party who is unrepresented is under the same procedural obligations as those who are represented legally and should act in a way that complies with procedural requirements (*Barton* v. *Wright Hassall* (2) ([2018] UKSC 12, at para. 18)).

10 I therefore turn to the substantive issue before me, which is FP's application for default judgment under CPR Part 12. CPR r.12.12, in which supplementary provisions in relation to default judgment are to be found, at (6) sets out the matters in respect of which the court must be satisfied to enter a default judgment. It provides:

"(6) Both on a request and on an application for default judgment the court must be satisfied that—

(a) the particulars of claim have been served on the defendant (a certificate of service on the court file will be sufficient evidence);

(b) either the defendant has not filed an acknowledgment of service or has not filed a defence and that in either case the relevant period for doing so has expired;

(c) the defendant has not satisfied the claim; and

(d) the defendant has not returned an admission to the claimant under rule 14.4 or filed an admission with the court under rule 14.6."

11 The filing of the acknowledgment of service establishes that the claim form and particulars of claim have been served. No defence has been filed; the claim has not been satisfied and no admission has been returned or filed. By virtue of CPR r.12.12(1) the starting position is that "the court shall give such judgment as the claimant is entitled to on the statement of case" as a default judgment is not a judgment on the merits even where, as in this case, a CPR Part 23 application rather than a mere request, is required. As Briggs, J. put it in *Football Dataco Ltd.* v. *Smoot Enterprises Ltd.* (5) ([2011] 1 W.L.R. 1978, at paras. 16 and 19):

> "16. Default judgment is not, in any circumstances, a judgment on the merits. It is in that respect to be contrasted both with judgment after a trial and with summary judgment. The essential distinction between default judgment and a judgment on the merits is that the court is not when asked to give default judgment called upon to form any view about the merits of the claimant's claim, whether as a matter of fact or law."
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> "19. I consider that the requirement in rule 12.11(1) [now rule 12.12(1)] that it must appear to the court that the claimant is entitled to judgment needs to be interpreted in the light of the aggregation of the prescribed circumstances in which an application under Part 23 (rather than a mere request) is required. I do not consider that rule 12.11(1) [now rule 12.12(1)] requires the court to second-guess an assertion in the particulars of claim that, as a matter of law, the facts alleged provide the claimant with a cause of action. Rather, the purpose of the requirement for an application is either to enable the court to tailor the precise relief so that it is appropriate to the cause of action asserted, or otherwise to scrutinise the application in particular circumstances calling for more than a purely administrative response. It is in those respects that it must appear to the court either that the applicant is entitled to the default judgment sought, or to some lesser or different default judgment."

The forgoing is subject to the caveat that the court retains a discretion to refuse to enter a judgment in default if to do so would result in an injustice (*Charles* v. *Shepherd* (3) ([1892] 2 Q.B. at 624)). In the present case there is no apparent basis upon which to exercise that residual discretion. It follows that FP is entitled to default judgment.

Quantification of damages

12 Notwithstanding his pleaded case, FP does not seek injunctive relief or worldwide damages, but limits his claim to damages arising from publication of the tweets in Gibraltar. When the matter first came before me, I was not satisfied that the evidence sufficiently distinguished between publication to Twitter users worldwide and publication to Twitter users

resident in Gibraltar. At the adjourned hearing, reliance was placed upon the fourth witness statement of Samuel Marrache, a trainee barrister at Hassans, whose evidence it is that he had not been able to sift through the thousands of likes and retweets on the tweets, but that he conducted a review of "quote tweets." He explains that quote tweets are essentially retweets which have been made with a comment, and that these are shown to the maker's followers and include the original tweet being retweeted, together with their comment. According to his evidence the second, fifth, sixth and eighth tweets were quote tweeted by various Gibraltar based Twitter accounts. He conducted an analysis of the proportion of Gibraltar based followers that those accounts have, and reached the conclusion that each of those four tweets would have been viewed by 2694, 2515, 2150 and 3061 people respectively. Whilst accepting that that analysis does not factor any overlap between followers of each account, in which regard he suggests that a 20% overlap reduction between followers could be factored in as a reduction. He goes on to express the opinion that the extent of publication is likely be far greater than that established by his analysis.

13 In *Picardo* v. *Manos Limpias* (8), which coincidentally also involved a claim for defamation by FP, when considering the approach when assessing damages, I said (2015 Gib LR 228, at paras. 2–3 and 7):

> "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* . . .). 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.* . . . ([1995] 2 A.C. at 71) on the following terms:
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> > '. . . [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.'
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> 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.* . . . ([2008] EWCA Civ 130, at para. 14):
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> > '(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.]"

> "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."

14 I accept Mr. Baglietto's submission that in their natural and ordinary meanings, the tweets meant amongst other things, that FP is:

(1) a mafioso;

(2) a facilitator and protector of smugglers;

(3) a promoter of money laundering;

(4) a corrupt individual and briber of other corrupt individuals;

(5) an individual who wilfully ignores fraud and organized crime and has also extracted profits from having made Gibraltar a refuge for criminals;

(6) an assistant and facilitator of the hiding of €700m. from the ERE's corruption scandal; and

(7) someone who was intimately involved in the Spanish trade union UGT theft of 64% of the total of €41.37m. in subsidies which it collected in Andalucia and its subsequent squandering of the money on commissions bonuses, prostitutes, food, orgies and drugs.

15 It is also properly submitted that whilst a claimant is entitled to obtain a default judgment as of right and rely upon the presumption of falsity, they are in those circumstances unlikely to be awarded substantial damages. In order to obtain a substantial award of damages, a claimant may however seek to prove the falsity of the allegation (*Adelson* v. *Anderson* (1) ([2011] EWHC 2497 (QB), at para. 78)). In this regard FP advances substantial evidence to prove the falsity of the allegations. As regards the allegation

that he is a "facilitator and protector of smugglers," he asserts that the Government that he leads has during his almost ten years in office taken very significant steps, under his personal direction, towards combatting 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. He also highlights the significant investment by his Government in improving the resources available to HM Customs and the Royal Gibraltar Police marine sections. In relation to his being "a promoter of money laundering" he says that he has actively strived to combat money laundering and terrorist financing in Gibraltar and relies upon the fact that his Government promoted the Proceeds of Crime Act which was enacted in 2015 and a large volume of subsidiary legislation including regulations on anti-money laundering and electronic money. Additionally, that Gibraltar exchanges information and cooperates with its foreign counterparts (primarily in the UK and Spain) in relation to money laundering, associated predicate offences and terrorist financing. In relation to the allegation that "he is a corrupt individual and briber of other individuals" he asserts that he has never engaged in corrupt conduct and relies upon his having been elevated to the rank of Queen's Counsel and his Government's commitment to establish an anti-corruption authority. Finally in relation to the more specific allegations which touch upon the ERE and UGT he encompasses these with some of the more general tweets as alleging that he has "wilfully ignor[ed] fraud and organised crime and assisted in multimillion euro theft and fraud" he categorically denies the assertion and makes the point that he is unable to address the falsity of these allegations in more depth because they are simply lies which are wholly without foundation.

16 In *Picardo* v. *Manos Limpias* (8), I went on to consider the applicable principles when assessing an award of damages for libel, and I said (2015 Gib LR 228, at paras. 9–13):

> "9 In *John* v. *MGN* . . ., 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* . . ., 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* . . . 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.* . . ., 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."

17 Mr. Baglietto relies upon the judgment in *John* v. *MGN Ltd.* (6) of Sir Thomas Bingham, M.R., as he then was, which undoubtedly enhances the analysis of injury to reputation, by relying upon the passage ([1997] Q.B. at 607):

> "In assessing the appropriate damages for injury to reputation the most important factor is the gravity of the libel; the more closely it touches the plaintiff's personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be."

And later in relation to vindication upon the passage at (*ibid.*):

> "A successful plaintiff may properly look to an award of damages to vindicate his reputation: but the significance of this is much greater in a case where the defendant asserts the truth of the libel and refuses any retraction or apology than in a case where the defendant acknowledges the falsity of what was published and publicly expresses regret that the libellous publication took place."

Reliance is placed upon a further passage in the judgment of Sir Thomas Bingham who, in relation to the potential for a defendant's behaviour to aggravate the injury to a claimant's feelings, said (*ibid.*):

> "It is well established that compensatory damages may and should compensate for additional injury caused to the plaintiff's feelings by the defendant's conduct of the action, as when he persists in an unfounded assertion that the publication was true, or refuses to apologise, or cross-examines the plaintiff in a wounding or insulting way."

In this regard it is FP's case that after his solicitors sent a letter of claim to FRAC inviting him to (a) remove the offending tweets from his Twitter feed; (b) apologize to FP; (c) agree to compensate FP in damages and pay his legal costs; and (d) undertake not to republish the defamatory allegations, FRAC did not engage in any such process but rather published a tweet in which he claimed that FP was "very concerned by Vox" and thereafter published a further tweet which translated into English reads:

> "@FabianPicardo and his henchmen should not think that they have silenced us with their ridiculous claims
>
> We are dealing with more urgent issues

> We will respond shortly and continue reporting the abuses which Gibraltarians and Britons commit in Gibraltar
>
> #youwillnotsilenceus
>
> # gibraltarisspanish"

Comparable awards

18 Reliance is placed upon awards in comparable cases, summaries of which are to be found in the "Schedule of Awards of Damages in Libel and Slander Claims" in *Carter-Ruck on Libel & Privacy*, 6th ed. (2010). However, the most useful comparator must evidently be *Picardo* v. *Manos Limpias* (8). In that case the natural and ordinary meaning of the statements made by the defendant was 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" (2015 Gib LR 228, at para. 6). Albeit the subsequent coverage given to the statements by GBC was more nuanced and were meant and understood to mean that the claimant "had condoned smuggling, drug trafficking and money laundering." I concluded as follows (*ibid.*, at paras. 17–18):

> "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 publishees 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."

My comments at para. 17 are of equal applicability in this case. The "badge of honour" issue was one I explored in that case and in which I suggested that criticism against local political leaders emanating from Spanish institutions or organizations could sometimes be seen in Gibraltar as enhancing a politician's standing. Relying upon *Oriental Daily Publisher Ltd.* v. *Ming Pao Holdings Ltd.* (7) and by analogy I determined that

although a factor which has the effect of reducing damages, it is not of itself sufficient to reduce an award to a nominal amount.

19 The most significant difference between *Picardo* v. *Manos Limpias* (8) and the present case is the extent of publication. In *Picardo* v. *Manos Limpias* the extent of publication was set out as follows (2015 Gib LR 228, at para. 14):

> "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."

That is evidently materially different from the present case in which each of the tweets will have been seen by between some 2,000 and 3,000 Gibraltar residents, with potential for duplication within that cohort, with various tweets viewed by the same people. As Sir Thomas Bingham put it in *John* v. *MGN Ltd.* (6) ([1997] Q.B. at 607):

> "The extent of publication is also very relevant: a libel published to millions has a greater potential to cause damage than a libel published to a handful of people."

In all the circumstances of this case, balancing the factors I have identified above and mindful that the extent of publication in Gibraltar has been relatively limited, in my judgment the appropriate award of damages is £20,000. I shall hear submissions as to costs.

Judgment accordingly.