

IN THE SUPREME COURT OF GIBRALTAR

2013 – P - 160

BETWEEN:

THE HON. FABIAN PICARDO

Claimant

-and-

(1) SINDICATO COLECTIVO DE FUNCIONARIOS
PUBLICOS MANOS LIMPIAS

(2) MIGUEL BERNARD REMON

Defendants

Mr J Santos for the Claimant

No appearance by the Defendants

RULING

DUDLEY CJ: In a ruling of 9 July 2014 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 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 properly determine the appropriate award, [*Appleyard v Wilby* [2014] EWHC 2770 (QB)]. 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 Newspapers Ltd* [1995] 2 AC 65 at page 71 on the following terms:

“... the 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 summarised by Sir Anthony Clarke MR in *Jeynes v News Magazine Ltd* [2008]EWCA 130 at [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 paragraph 7 and *Gatley on Libel and Slander* (10th edition), paragraph 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] AC 68 per Lord Halsbury LC at 73.”*

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 was given coverage by the Gibraltar Broadcasting Corporation (“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 as set out at paragraph 5 of the Particulars of Claim 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 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) 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 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 of 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 promoting 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 HM 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; 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 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 transposes 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 [1997]QB 586* Sir Thomas Bingham MR (as he then was) identified the principles which are relevant when assessing an award of damages for libel, from which I draw the following:

- (i) 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;
- (ii) a claimant may look to an award of damages to vindicate his reputation, this is particularly relevant where there is no retraction or apology;
- (iii) account has to be taken of the distress, hurt and humiliation caused by the publication; and
- (iv) 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 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 Claimants reputation of any doubt which may have been created by the libellous statement. The

significance of that principle was recognised by the Court of Appeal for Gibraltar in *Marrache v Smith* [1812-1977] *Gib LR* 269 where (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 Foundation Trust & Ors v Shaih* [2014] *EWHC* 2857 (*QB*) where HH Judge Moloney QC sitting as a judge of the High Court, when assessing the quantum of damages for libel at [12] said:

"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 organisations could sometimes be seen in Gibraltar as a "*badge of honour*". Mr Santos relies upon *Oriental Daily Publisher Ltd v Ming Pao Holdings Ltd* [2013] *EMLR* 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 purposes of ascertaining whether the allegations have a low level of credibility. However, 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 8000 members. The Press Release was also carried by Europa Press a press agency and GBC republished the allegations on its website, on their radio news bulletin and on Newswatch, their evening news television programme. The evidence before me shows that an audience survey carried out by GBC in May 2014 shows that 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 re-published by some Gibraltar media. In those circumstances it is right that the Defendants also be held liable for the damage caused by GBC's republication [*McManus and others v Beckham* [2002] 1 WLR 2982].

16. In its reports 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 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 and which are summarised in *Carter – Ruck On Libel and Privacy* (6th ed.) 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 judgement 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.

Anthony Dudley
Chief Justice
26 June 2015