



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH

BEFORE: EMPLOYMENT JUDGE K ANDREWS
sitting alone

BETWEEN:

Mrs G Dama

Claimant

and

(1) Platinum Staffing Recruitment Ltd
(2) Mr P Sadowski
(3) Mr L Werenowski
(4) Ms P Luczyszyn
(5) Haja Baba Ltd

Respondents

ON: 10 January 2018

Appearances:

Claimant:

Did not attend

Respondents 1,2,4 & 5:

Ms P Zdanowicz, Trainee Legal Executive

Respondent 3:

In person, Solicitor

JUDGMENT

The claims against the third and fifth respondents have no reasonable prospects of success and are struck out.

REASONS

Background

1. The claimant complains that she has been subjected to race discrimination and that her contract of employment was breached.
2. A case management preliminary hearing was originally listed but that was converted to an open hearing at the request of the respondents to consider their applications for strike out and deposit orders. The parties were notified of that change and the revised date of this hearing.

3. Extensive email correspondence has been received by the tribunal from the claimant. Some but not all of that was copied by her to the respondents despite her being advised that it should be.
4. On 2 November 2017 the claimant emailed the tribunal and asked whether she needed to attend the hearing today. On the instructions of Judge Martin the claimant was advised by letter dated 20 December 2017 that she should attend the hearing as the tribunal would be considering striking out her claim and whether a deposit should be paid. She was advised that she could make written submissions but her attendance was preferable. On 27 December 2017 the claimant emailed the tribunal and advised that she would not be attending today but gave what she described as a breakdown of her case for clarification. The claimant again emailed the tribunal on 5 January 2018 giving a reason of a medical nature as to why she would not be able to attend the hearing.
5. As expected the claimant did not attend today but I took into account the matters set out in her email dated 27 December 2017 and I have also read and taken into account where relevant the other correspondence she has sent to the tribunal over the course of the proceedings.

Relevant Law

6. The power to strike out a claim is found at rule 37(1)(a) of the Employment Tribunal Rules of Procedure 2013 (the ET rules) which provides that a tribunal may strike out all or part of the claim on the ground that it is scandalous or vexatious or has no reasonable prospect of success. It is well recognised that discrimination claims should not be struck out summarily save in the clearest of cases (*Anyanwu v South Bank Students Union* 2001 IRLR 305) but equally it is clear that the Tribunal retains the discretion to do so (*Jaffrey v Department of Environment etc* 2002 IRLR 688).
7. The tribunal has jurisdiction to determine complaints relating to contravention of:
 - a. part 5 of the Equality Act 2010 (which includes race discrimination in the workplace by the employer or another person in the course of their employment by the employer); and
 - b. the contract of employment where that claim arises or is outstanding on termination of the employee's employment (*Extension of Jurisdiction Order* 1994).

The Third Respondent

8. The third respondent is a solicitor and was instructed by the first respondent after the claimant had been dismissed in respect of communications she had sent to clients of the first respondent. Accordingly the third respondent wrote to the claimant on 31 July 2017 setting out his client's position, asking her to desist from contacting the clients, to deliver copies of any documents

or data belonging to the first respondent, to undertake to desist from contacting clients in future and provide a written apology. The letter also stated that if these matters were not responded to within a certain timeframe an injunction would be sought with accompanying costs implications. The letter also suggested that the claimant seek immediate independent legal advice.

9. This letter seems to have had the desired effect and there was no further contact between the third respondent and the claimant until the claim form naming the third respondent was lodged on 16 August 2017. Apart from naming the third respondent as a party, the claim form contains no other reference to him.

10. On 18 September 2017 the third respondent wrote to the claimant stating that he had received the claim form, summarised his response and inviting her to discontinue the claim against him. He stated that if she did not do so he would be forced to apply to have her claim dismissed which would involve his attendance at the tribunal and costs which he would be seeking in due course. Again he advised the claimant to seek independent legal advice. The claimant replied on 19 September 2017 stating that she had already sought legal advice, that the third respondent was at risk of being arrested and concluded:

'So please feel free, to file anything you like against me, as I would gladly go to court to demonstrate how you conduct your business.'

11. The third respondent filed his response at the tribunal on 21 September 2017 in which he stated that he had never met the claimant, spoken with her, employed her or discriminated against her in any way. In a letter dated 20 September 2017 to the tribunal the third respondent formally applied for the claim against him to be struck out and for an award of costs.

12. There is nothing in the correspondence from the claimant on the tribunal file nor specifically in her email dated 27 December 2017 to suggest that she has any valid claim against the third respondent.

13. I am satisfied that claims of racial discrimination and breach of contract against the third respondent have no reasonable prospects of success. It is clear that there was no employment relationship between him and the claimant and also that he was not employed by the first respondent. He was at all times a professional adviser acting in that capacity and on instructions. Accordingly the claim against the third respondent is struck out.

14. The third respondent made an application in respect of his unnecessarily incurred costs in dealing with this claim pursuant to rule 76 of the ET rules. I am satisfied that it is appropriate to make an order in his favour in respect of the time he has unnecessarily incurred from 19 September 2017 (the date upon which the claimant made it clear that despite his warning she would be pursuing her claim against him) and I provisionally assess the quantum of those costs at £800 reflecting the time spent by the third respondent in attending today's hearing. As the claimant is not present I invite her to make

submissions, if she so wishes, within **14 days** of the date this Judgment is sent to her of any evidence of means that she wishes me to take into account before I finalise that assessment.

The Fifth Respondent

15. The fifth respondent is a client of the first respondent. In their response submitted on 11 October 2017 it was stated that they have not employed the claimant nor have any other contractual relationship with her and have no knowledge of her. The response also contained an application for the claim to be dismissed.
16. There is nothing in the correspondence from the claimant on the tribunal file nor specifically in her email dated 27 December 2017 to suggest that she has any valid claim against the fifth respondent.
17. I am satisfied that claims of racial discrimination and breach of contract against the fifth respondent have no reasonable prospects of success. It is clear that there was no employment relationship between it and the claimant. It was at all times a client of the first respondent. Accordingly the claim against the fifth respondent is struck out.
18. An application for costs was made on behalf of the fifth respondent in relation to two hours' advice @ £35 ph given to them by Ms Zdanowicz but she was unable to provide me with a copy of any relevant invoice. I will further consider that application on production of a hardcopy of the relevant invoice showing the advice charged for and when it was paid. Such documentation is to be forwarded to the tribunal with a copy to the claimant within **14 days** of the date this Judgment is sent. If the claimant has any comments in relation to such application and any evidence of means she wishes me to take into account in considering it, she should send that to the tribunal with a copy to the fifth respondent within **14 days** of receipt. I will then deal with that application on the papers.

Employment Judge K Andrews
Date: 10 January 2018