



EMPLOYMENT TRIBUNALS

Ms Mohima Chowdhury

**Christophe Carpente
Architectural Interior Design Ltd**

Claimant

Respondent

v

PRELIMINARY HEARING

Heard at: London Central

On: 18 September 2019

Before: Employment Judge Paul Stewart

Appearances

For the Claimant:

Did not appear and was not represented

For the Respondent:

Mr David Stephenson of Counsel

JUDGMENT

1. The Claimant's application to set aside the dismissal of her claims which resulted from her failure to comply with the unless order made on 4 September 2018 by Employment Judge Elliott is refused.
2. The Claimant do pay the costs of the Respondent for today limited to counsel's fee for this hearing, that being £1,680 (i.e. £1,400 plus VAT).
3. Upon Counsel reiterating his instructions to the Tribunal that, in accordance with the order of Employment Judge Elliott dated 24 July 2019, the Respondent had sent to the Tribunal and to the Claimant a properly particularised costs application, evidence of which does not appear on the Tribunal's file, permission is granted to the Respondent to pursue that application for its costs within 28 days of today's date upon providing evidence of a properly particularised costs application having been made to the Tribunal, and copied to the Claimant, at least 7 days before today's hearing.

REASONS

4. The Claimant had applied on 10 September 2019 for a postponement of this hearing. She said she required until December 2019 “when I can see my health professional and have my health and medication reviewed”. Employment Judge Snelson refused the application by letter dated 17 September 2019 giving, as his reason for his refusal, that a hearing will not be postponed on medical grounds unless cogent medical evidence is provided in support of the application. The letter was sent by email to the parties at 1003 hours yesterday.
5. The Claimant did not attend today and is not represented. She has not provided any medical evidence, whether cogent or otherwise, to explain or excuse her non-appearance.
6. Mr Stephenson appearing for the Respondent has provided me with written outline submissions in which he has carefully set out the procedural background, the law in relation to Unless Orders and the relevant legal principles before making his submissions as to why it is not in the interests of justice to accede to the application to set the Order dismissing her claim aside. A photocopy of his written outline submissions accompanies this order marked Appendix 1, the better that the Claimant can understand these Reasons for I accept and incorporate into them Mr Stephenson’s account of the procedural background, his summary of the law in relation to unless orders and the relevant legal principles that are applicable.
7. I accept the submission that what was specified in the Unless Order was clear. The Claimant could have been in no doubt as to what was required of her to avoid the dismissal of her claim: she had to comply with orders 2(a) to (d) of Employment Judge Grewal’s order of 11 July 2017 by 4 p.m. on 11 January 2019. That entailed providing further necessary particulars of the qualifying disclosure on which her claim is based.
8. The Claimant did not comply with the Unless Order. As explained in Employment Judge Elliott’s Order dated 24 July 2019, an Unless Order is a conditional judgment and, with the Claimant not having complied with it by the date specified in the order, the claim stood dismissed without further Order as confirmed by the Tribunal’s letter of 21 February 2019
9. The Claimant applied on 28 February 2019 to have the Order dismissing her claim set aside. Employment Judge Wade determined that a hearing set for 24 July 2019 should go ahead as she considered it was in the interests of both parties to have a short discussion with the Judge to decide on the next steps. After a series of applications to postpone the hearing made by both sides but with the majority of them coming from the Claimant on the basis of health grounds but not backed up with medical evidence, this hearing was set down. The Claimant knows about it as she made an application to have it postponed, that application being the one mentioned in paragraph 4 above.
10. The claim arises out of an employment which began on 9 May 2016 and ended on 28 June 2016. This is over 3 years ago but the further particulars that would have allowed the Respondent to know in better detail what is alleged against it are still absent.

11. The Claimant has applied to set aside the Order dismissing her claim but I cannot see that it is in the interests of justice to continue to entertain such an application when the Claimant neither attends the hearing or supplies the medical evidence she has been told is a prerequisite of a successful application to postpone a hearing.
12. Therefore, I dismiss the application to set aside the Order dismissing the claim.
13. I move on to the question of costs. The Respondent had made an application for its costs by letter dated 16 July 2019. Reference was made in the letter to a schedule and invoices but these were not attached. Employment Judge Elliott specified in her order that the Respondent should send to the Tribunal and the Claimant at least 7 days before this hearing a properly particularised costs application with details of the amount sought. The Claimant was also required to send to the Tribunal and the Respondent any statement of means on which she wished to rely in relation to the costs application.
14. Neither party has complied with those orders. For the Respondent, Mr Stephenson informs me on instructions a Schedule was supplied and, indeed, he showed me a copy of that Schedule. However, without the Schedule appearing on the Tribunal file and without evidence that such a Schedule had been sent to the Tribunal, I do not consider I am in a position to make any determination on the overall application for costs. I am in a position, however, to make a determination on the application for costs that Mr Stephenson makes in respect of the costs of today.
15. Today's hearing was listed entirely as a result of the Claimant having made her application to set aside the Order dismissing her claim. She applied to have this hearing postponed on health grounds but was told that she needed to present medical evidence if such an application was to be successful. Today, she has neither appeared nor presented medical evidence in support of any renewed application to postpone. In my view, this is an unreasonable way to conduct litigation. Her application was bound to require the Respondent to attend this hearing. The fact that the Claimant chooses not to attend nor makes any further application for a postponement properly supported by the medical evidence she has been told is necessary means that, almost inevitably, the application fails. Yet the Respondent has been put to the expense of attending through counsel.
16. I therefore am in the position where, by rule 76(1)(a), I am entitled to make an order for costs. I regard the fact that this case was listed, and the fact that the Claimant's application to postpone was refused, as giving the Claimant an opportunity to attend and make representations about the application for costs that she knew the Respondent was making.
17. I have regard to Rule 84 and note that I may have regard to the paying party's ability to pay. The Claimant has declined to provide any statement of means that she wished to rely upon in respect of the Respondent's application for costs.
18. Mr Stephenson has limited the Respondent's application for the costs of attendance at today's hearing to his brief fee of £1,680 (£1,400 plus VAT).
19. I bear in mind that the gross salary that the Claimant as Finance Director was employed on was £4,533 per month. Someone with that earning capacity, it

seems to me, should have the means to pay an order for £1,680 costs and thus I make that order.

20. I give permission to the Respondent to pursue the application for the remainder of its costs of the action within 28 days of today's date upon providing evidence of a properly particularised costs application having been made to the Tribunal, and copied to the Claimant, at least 7 days before today's hearing.

21 September 2019

Employment Judge - Stewart

Sent to the parties on:

30/09/2019

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For the Tribunal:

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Ms Mohima Chowdhury

Claimant

Christophe Carpente
Architectural Interior Design Ltd
Respondent

v

Appendix 1