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# EMPLOYMENT TRIBUNALS

## *Claimant*

1. Mr J Fitzgerald
2. Mr H Happy
3. Mrs B Blizik
4. Mr G Lynch
5. Miss L Babious
6. Mrs M Ion
7. Mrs D Panaseviciene

**AND**

## *Respondents*

Laine Pub Company Ltd  
& Clounaduff Limited

**Heard at:** London Central

**On:** 28 January 2020

**Before:** Employment Judge Pearl

## **Representation**

**For the Claimant:**

Do not appear and are not represented

**For the Respondent:**

Laine Pub Company Ltd by Ms T Hudson, Solicitor

**For the Respondent:**

Clounaduff Limited does not appear and is not represented

## **JUDGMENT**

1. The claims of all the individual Claimants against Laine Pub Company Ltd are struck out on the grounds set out in the Reasons below.
2. The seven individual Claimants shall pay costs to Laine Pub Company Ltd in the sum of £4,000 exclusive of VAT.
3. By 28 April 2020 Laine Pub Company Ltd shall inform the Tribunal whether it agrees to claim number 2202925/2019 being dismissed; and, if not, why it wishes to proceed.

## **REASONS**

1. On 15 September 2019 I dealt with the preliminary hearing for case management in this series of cases and I noted that they presented “a complex scenario”. One of the curiosities was that Mr Fitzgerald, the lead Claimant, also was or is the sole Director of Clounaduff Limited against which Laine Pub Company Ltd has in effect brought a counterclaim. Nevertheless, it was possible to make straightforward orders that would bring the matter to a preliminary hearing today and there were seven preliminary issues that needed to be decided. Six of them were set out in the notes to the order made on 16 September and I added a seventh by letter dated 24 September 2019.

2. At that time the Claimants were not legally represented and Ms Hudson tells me today that there was never any point after her firm became involved in the proceedings at which legal representation was notified to her or even referred to. The Claimants had done nothing by the date in the order, 21 October 2019, by way of exchange of list of documents. This was not a problem and Ms Hudson’s firm became involved the next month. Time passed during which there was no communication to her from the Claimants and on 23 December the principal Respondent served its documents on the Claimants. At that point Mr Fitzgerald notified Ms Hudson that he would be sorting out the documents and would revert to her after the Christmas break. He never did so.

3. On 7 January 2020 the Respondent notified the Tribunal that the Claimants were in substantial breach of the orders and sought among other matters a strike out of the claims. The Tribunal responded on 20 January 2020 to all parties and the staff were also able to confirm that by this date nothing had been received from the Claimants in recent weeks at the Tribunal office. Employment Judge Segal QC notified the parties that all the existing directions remained in force and that the hearing today would remain listed. He warned the individual Claimants that as they had not provided copy documents to the other side they would have to explain that today; and if they had no proper excuse for failing to disclose documents and the hearing would be unable to proceed, the claims may be struck out and/or there may be cost consequences, as he termed them. He made the same comment concerning any failure to exchange witness statements.

4. On 24 January 2020 the Claimants through Mr Fitzgerald in a short email to the Tribunal said the group would be unable to attend today “due to the fact that we have lost our legal representation”. He went on to say that they had secured the services of a solicitor (although no solicitor had every come on the record with the Tribunal) but that solicitor had not done the work, they were searching for another solicitor and it was too late to do any of the required paperwork, as he put it. On 27 January, yesterday, Mr Fitzgerald wrote to Ms Hudson saying that he had not been able to contact the Tribunal by telephone but making it perfectly clear that the Claimants would not be in attendance today. It is clear from the email, which I put on the file, that he was anxious to prevent the Respondent

making a wasted trip to the Tribunal and also thought that the Tribunal may remove the matter from the list. Perhaps recognising the weakness of his situation, he commented that it is probably unusual to see this type of email.

5. It is apparent to me, from this email, that yesterday Mr Fitzgerald had determined not only to ignore all the previous orders that had been made, but even more significantly to ignore the warning that Employment Judge Segal QC sounded in the letter I have referred to. He was not proposing to attend, nor were the other Claimants, in order to explain the situation or to oppose the strike out of the claims or deal with any consequential question of costs, or to give any explanation as to what had gone on. It is in my view abundantly clear that he and the Claimants had decided that they would bury their heads in the sand and that they took this course in the full knowledge that their claims could be struck out and costs may be ordered.

6. Having recited all these circumstances, it seems to me that the strike out application is irresistible and that in the interest of justice all these individual claims should be struck out. There are four grounds, as Ms Hudson has noted in her argument, for the strike out order. The manner in which these proceedings have been conducted by the Claimant is unreasonable. There has been noncompliance with orders. It is clear from the events of the last few days that they are not actively pursuing the claim in any realistic manner. Finally, they have not attended today which is a separate ground for a strike out in a fit case. Putting all these matters together with the relevant chronology I consider that it would be wrong to do anything other than strike out the individual claims.

7. As to the issue of costs, Ms Hudson has prepared a full schedule showing that her firm's costs are £4,690.50 exclusive of VAT. Having regard to the schedule, in my discretion I reduce that to £4,000 exclusive of VAT. The Claimants had a reasonable opportunity to make representations by attending the hearing and they were warned of costs consequences. The Tribunal is therefore entitled to make the order subject to the adjustment I have mentioned.

8. This leaves finally the claim made against Clounaduff Limited. Ms Hudson did not pursue her application for a default judgment and it would be wrong in the circumstances to issue one, since Laine Pub Company Ltd maintains the defence that there was no relevant transfer of undertaking. In order to preserve the position, I make no order at this stage in relation to the proceedings on that counterclaim but have directed above that within three months the Tribunal shall be told whether or not there is agreement from the principal Respondent to the dismissal of that claim, and if not, why it should proceed.

**Case Numbers: 2201306/2019 / 2201307/2019 / 2201308/2019  
2201309/2019 / 2201310/2019 / 2201311/2019  
2201312/2019 & 2202925/2019**

Employment Judge Pearl

Dated:12 Feb 2020

Sent to the parties on:

13/2/2020

For the Tribunal Office