



EMPLOYMENT TRIBUNALS

Claimant:
Ms L Coats

Respondents:

- (1) **Great Marlborough Productions Ltd**
- (2) **Ms S Fell**
- (3) **Mr B Bocquelet**
- (4) **Ms E Browne**
- (5) **Turner Broadcasting System Europe Ltd**

JUDGMENT

The claimant's application dated 17 July 2019 as modified by her letter dated 17 December 2019 for reconsideration of the judgment dated 10 October 2018 striking out the spin off claim is refused.

REASONS

The application

1. The claimant was ordered to pay a deposit of £1000 following a preliminary hearing held on 23 August 2018 as a condition of continuing to advance the 'spin off' claim contained in case number 2200606/2017. The Order was sent to the claimant on 29 August 2018. She failed to pay this deposit by the date specified in the Order. The claim was therefore struck out under rule 39(4) of the Employment Tribunals Rules of Procedure 2013. The claimant has applied for the strike out decision to be reconsidered.
2. I have thought about both the initial deposit order and the subsequent strike out. I have concluded that there is no reasonable prospect of the original decision being varied or revoked on either basis and it would not be in the interests of justice.

Procedural questions

3. Some procedural questions arise, which I will mention. But ultimately they are academic, because I have considered the substance of the application and rejected it anyway.
4. Under rule 70 the tribunal has power to reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the original decision may be confirmed, varied or revoked. Under rule 39(4), a claim is automatically struck out when a deposit is not paid. There is no discretion.
5. In those circumstances, it seems appropriate to take into account the original deposit order which triggered this course of events. I am not entirely sure of the correct legal basis for doing this. It may be that the answer lies in the CPR rules on relief from sanction. Or it may be that I have power retrospectively to vary or revoke the deposit order under rule 29. Rule 29 says that a tribunal may at any stage of the proceedings vary, suspend or set aside an earlier case management order where that is necessary in the interests of justice. The difficulty with this is that the proceedings are concluded.
6. Either way, as I have said, this argument is academic because I do not consider it in the interests of justice to vary or revoke the deposit order or the strike out.

The merits of the application

7. I consider that it is not in the interests of justice to vary or set aside the deposit order. Further, there are no reasonable prospects of the claimant succeeding on her application to reconsider the strike out, even taking into account the deposit order.
8. I gave five reasons for making the deposit order. The issue of whether the respondents always retain rights on all their contracts and whether they gave anyone spin-off rights to the Puppets was just one of those reasons and I listed it as fifth. I did not make a fact-finding on that point. I noted only that it was the argument which the respondents intended to put forward. If the claimant felt the respondents would not make good on that argument, she could have proceeded to hearing. She does not suggest she could not afford to pay the deposit and indeed she did not make any argument to that effect at the time of the preliminary hearing. The claimant says she chose not to pay the deposit and pursue her claim because she was concerned about the costs risk.
9. The claimant could have taken further steps to research and gather evidence if she wanted to pursue the matter. For example, she could have sought disclosure relating to the arrangements with other writers comparable to herself or in particular in relation to Mr Bocquelet. She could have approached Mr Bocquelet himself or sought to bring him as a witness. If she could not secure this information voluntarily, she could have sought an order from the tribunal.

10. Finally, I would add that the so-called new evidence, ie the Bocquelet podcast, is far from conclusive. It comprises vague chat made in a podcast interview, probably of a self-publicising nature. The reality is that the claimant made a decision that her case was not sufficiently strong following the deposit order and chose to withdraw it. She has now changed her mind based on flimsy evidence deep into a podcast interview by her former colleague. There has to be some finality in litigation.
11. For all these reasons, the application or reconsideration is refused.
12. May I add finally that I am sorry there have been administrative delays at several points in bringing this application to my attention. However, the time that has passed since July 2019 has not made any difference to my reasoning.

Employment Judge Lewis

Date 11 March 2020

JUDGMENT SENT TO THE PARTIES ON

11/3/2020

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FOR THE TRIBUNAL OFFICE