EMPLOYMENT TRIBUNALS

Claimant: Mr J Reus

Respondent: Maris Interiors LLP

Heard at: **London South Croydon by CVP**
On: **12 January 2021**

Before: **Employment Judge Sage**

Representation
Claimant: In person
Respondent: Ms Skehan Solicitor

RESERVED JUDGMENT

1. The Claimant's claim of unfair dismissal is struck out under the Employment Tribunal (Constitutional and Rules of Procedure) Regulations 2013 schedule 1 rule 37(1)(b) on the grounds that the Claimant's conduct was scandalous and unreasonable.

2. The hearing listed for the 15-16 February 2021 is vacated

RESERVED REASONS

1. This matter was listed at the request of the Respondent to strike out the Claimant's claim for unfair dismissal due to his scandalous, vexatious and unreasonable conduct. Although the Claimant told the Tribunal at the start of the hearing that he too had asked for the Respondent to be struck out, this was not a matter that was before me in this hearing.

Witnesses

2. There was only one witness before the hearing which was Mr Smith who was the Chief Financial Officer of the Respondent Company and the dismissing manager. He produced a witness statement and gave evidence under oath. He was cross examined by the Claimant.

The Evidence

3. The written evidence before the Tribunal comprised of the following:
    a. Written submissions of the Respondent;
    b. Respondent's email to the Claimant dated the 22 September 2020 at 3.01 and 3.04;
    c. Respondent's email to the Claimant dated 15 October 2020 at 12.21;
    d. The Claimant's reply to the Respondent on the 15 October 2020 at 7.28;
    e. Respondent's email to the Claimant on the 28 October 2020 at 4.01 and 4.05;
    f. The Claimant's email to the Tribunal dated the 11 November 2020 at 15.02.

Findings of Fact

4. This matter came before Employment Judge Cheetham QC on the 17 July 2020 in a telephone hearing to identify the issues in the case. It was concluded in this hearing that the only claim before the Tribunal (the Claimant deciding not to pursue the claim of sexual harassment) was unfair dismissal. Although the claim of whistleblowing was discussed in this hearing, it was concluded at paragraph 6-9 of the case management order that the Claimant had been unable to "identify any arguable case on the whistleblowing claim, either on the claim form or when given the further opportunity to do so today, and it cannot proceed". In that case management hearing it was recorded at paragraph 8 that the Claimant's case was that he was not a whistleblower before the date of his dismissal (paragraph 8). The case proceeded on the basis that it was a claim for unfair dismissal only and the Respondent confirmed that the potentially fair reason shown was either conduct or some other substantial reason. The Claimant did not challenge this case management order and he did not appeal. The remaining claim of unfair dismissal was listed for a 2 day hearing to take place on the **15-16 February 2021.**

5. It was noted in the case management order that the respondent's solicitor asked for the Claimant to be requested to stop writing to her in offensive terms. Employment Judge Cheetham QC did not see any offensive emails but was witness to the Claimant describing Ms Skehan as a "liar", which he found to be offensive and inappropriate. The Claimant was warned in the hearing that parties must conduct themselves reasonably otherwise they run the risk of having their claims struck out (paragraph 12). The Claimant told the Tribunal in his closing submissions that he apologised to Ms Skehan after the hearing.

6. Evidence was given by Mr Smith in this hearing and he was the manager who dismissed the Claimant. Mr Smith was not aware when he took the decision to dismiss of any allegation of "grey areas/fraud", he had asked the Claimant for details of any alleged fraud but the Claimant refused to provide any details. He accepted that it was this unsubstantiated allegation of fraud that eventually led to the Claimant's dismissal. He said that he learned for the first time in the case management hearing on the 17 July 2020 that the allegations referred to the HS2 project, however he did not

know this at the time of the dismissal. Mr Smith stated therefore that as he was not aware of this (and the project had terminated in 2017) any evidence about this project was irrelevant to the Claimant's dismissal and to his claim of unfair dismissal.

7. The Claimant cross examined Mr Smith about disclosure of documents relating to the HS2 project. He asked Mr Smith how difficult it would be to find the documents. Mr Smith replied that these documents were irrelevant to his claim for unfair dismissal because the Claimant had not mentioned any wrongdoing in respect of the HS2 project at the time. Mr Smith also told the Tribunal that he had not worked on the project or considered any evidence relating to the project when considering the evidence before him in the disciplinary hearing.

8. The Claimant was asked whether he disclosed information about his concerns to the Respondent and his reply was: "you cannot tell a criminal about his crimes". The Claimant did not disclose any information about wrongdoing to the Respondent during employment, what was disclosed was a mere allegation, lacking any detail or specificity.

9. Mr Smith confirmed to the Tribunal that there would only be two witnesses giving evidence to the Tribunal, himself as dismissal manager and Ms Walker of HR. He stated that no other person was involved in the dismissal process. However the Claimant had contacted 23 of the Respondent's employees requesting that they attend Tribunal to give evidence even though none were involved in the dismissal process. The Tribunal did not have a copy of the Claimant's email to all the employees during the hearing so the decision was reserved to enable all relevant documents to be reviewed. The first few paragraphs of the email sent to the staff was as follows:

10. "*Due to certain statements made by the Maris Interiors lawyer, in my Employment Tribunal case against Maris, I am now pushing the police to start a criminal case against Maris. You will be mentioned by me to the police due to your involvement in potentially fraudulent activities at Maris, or due to your awareness of potentially fraudulent activities at Maris. I did not want to see the situation elevate this level of seriousness, but the Maris lawyer has given me no option. I tried to settle my Employment Tribunal case with Maris, but they were not interested. If you are angry about this situation then be angry with Maris management. I already have one witness statement that names you as being aware of fraudulent events at Maris".* The Claimant went on in the email to ask each employee a number of questions about what he described as fraudulent actions by the Respondent.

11. The Respondent stated that all employees had declined to respond to the Claimant. The respondent has refused to divulge their employees' personal details to the Claimant. The Claimant has however referred to the Respondent's employees as his witnesses however there was no evidence that any of the employees had agreed to attend as a witness for the Claimant. Even though the Claimant stated that he needed access to 'his witnesses' he then stated that he was in touch with many of his ex-colleagues. The Claimant's reason for contacting 23 employees in this

threatening manner was contradictory, if he was genuinely in contact with his ex-colleagues, he would not need to resort to mass communications that were threatening in nature, as this email was.

12. In reliance of the application to strike out Mr Smith referred to the Claimant's conduct which he stated was an attempt to destroy the Respondent's business, his reputation and the reputation of all those who work for the Respondent. He referred to the Claimant making libellous and slanderous allegations designed to cause distress and embarrassment and damage to the Respondent's commercial interests. He stated that the Claimant had made a number of unsubstantiated allegations of fraud and wrongdoing. The Tribunal was particularly referred to pages 477-530 of part B of the hearing bundle (of disputed documents). As this bundle was not before me, I had to reserve the decision in order to read a few of these documents before making my decision.

13. Mr Smith's statement contained a particular reference to one such allegation in an email from the Claimant to the Respondent dated the 3 August 2020. This email is long and not all of the text has been copied below but the main parts of the email dealing with the Claimant's conduct of the case have been reproduced. The paragraph breaks do not necessarily replicate the original text. The Claimant's email stated as follows:

"To win my case I need to show the judge only basic key information. That means I need to ensure that Maris senior management have been charged by the Police with committing actual crimes. This is the only way that the Judge will accept that I was justified in not telling Maris what I knew when you ordered me to do that. This means that I have to put pressure on the Police now to investigate Maris and charge people in the next few months. I made a basic declaration to the Police about the possible crimes that I had information about. I did this as that was my obligation under the law. I have not followed up that declaration, and the Police have said that they are too busy to investigate my case any time soon. I have never pushed the Police to investigate because I have no desire for harm to come to Maris. I only started this situation to defend myself from the attack from David Cannon that could harm my career.

Now that I know how the Employment Tribunal works, my situation has changed. To win my case I need to fully expose the potentially criminal activities at Maris that I know about. Nothing less will satisfy the Judge. I will now pressure the Police into action. To do that I need to get in contact with other organisations that will do their own investigations of Maris. That situation will force the Police into action as they do not want to be the only group that did not investigate potentially criminal activities at Maris when they were told about them.

In order to win my two Employment Tribunal cases I will need current and past Maris employees to make witness statements to the Police, not just to the Employment Tribunal, as originally planned. I will also need to contact the companies that I believe Maris has harmed financially, and give them my information. That will encourage them to investigate Maris themselves, and contact the Police directly.

I will also need to give my information to my local member of parliament, Daisy Cooper, to pressure the Police into action. I have been advised that being a Liberal Democrat, Ms Cooper will likely ask the Police why they are not investigating white collar fraud in the City. That will most likely force the Police into action to investigate potentially criminal activities at Maris. I have spoken to Protect and they are arranging a lawyer to appeal against the judge's decision to drop my whistleblower case. Protect knows that the law is on my side. It is not straight forward as I informed you of my intention to blow the whistle before I blew the whistle with the Police, but the law is clear. Protect expect that the case Reus vs Maris Interiors will become a defining case when someone tells their employer that they will blow the whistle, but they are terminated before they can fully do it. This will make Reus vs Maris Interiors a high profile case that will be discussed in detail in the legal press. That means the public are going to know of the potentially fraudulent activities you engaged in. That is not my choice, that is an unintended consequence of the Employment Tribunal needing a clearer understanding of the whistleblowing case law.

There will be two Employment Tribunal cases, one for whistleblowing, and another for the wrongful termination of my employment.. Your lawyer threatened me with the claim that my cases against you are vexatious, where I would have to pay all of your costs if that were true. Because of this I have to prove to the Judge beyond any doubt that my cases are not vexatious. To do this I must ensure that Maris management are investigated by the Police and charged for the potential crimes that I have evidence of. This is something that I don't want to do, but your lawyer has left me no choice with her claims. As I have said throughout this situation, I wish no harm to the more than 100 innocent people that work at Maris. Therefore I am giving you one way out of this situation today. You can settle my two Employment Tribunal cases this week. If my two Employment Tribunal cases have been settled this week then I will not be required to undertake any action to prove my case. I will also not need to protect myself from a claim of making a vexatious case, where I might have to pay your costs. If nothing is agreed this week, then everything that I described here will unfortunately happen. As I have said many times, I don't want to bankrupt Maris and cost over 100 innocent people their careers…….

To win my Employment Tribunal cases I must demand that Maris is investigated by the Police so that guilty people are charged for their crimes. Harm will happen to Maris as an unintended, but predictable, outcome of me doing this to win my two Employment Tribunal cases. I can't avoid harming Maris because I now understand that nothing less than a Police investigation will be accepted by the Judge as proof of my innocence. I need to act fast to appeal the judge's decision on the whistleblower case as Protect need to take action this week. I also need to be in contact with the Police and other parties as soon as possible. This means that I can only give you until 3 pm on Friday the 7th of August 2020 to have settled my two Employment Tribunal cases. Obviously my preference is to settle, but if this has not happened by this deadline then I will do what is needed to win my two Employment Tribunal cases".

14. Mr Smith went on to state that the Claimant has "repeatedly told the Police of these baseless allegations". Mr Smith told the Tribunal that the Respondent has investigated the allegations but they are baseless.

15. It was noted in this long email that the Claimant stated that the reason he needed to embark upon his campaign to have the Respondent charged with a criminal offence was to justify his original decision not to provide the Respondent with any information about his allegations at the time. It was also noted in this letter that the Claimant referred to his two claims, one for whistle blowing and his unfair dismissal claim. The only live claim before this Tribunal is the case of unfair dismissal.

Closing submissions relied upon by the Respondent

16. The Respondent provided written submissions and in outline they confirmed that this was a case of unfair dismissal only. It will only involve looking at the decision maker's decision and the evidence they had before them at the time. The Claimant is attempting to examine multi million pound projects (including HS2) even though they were not before the dismissal manager at the time. It was stated that the Claimant wished to include these documents in the bundle with a view to damaging the Respondent's reputation and business interests. The respondent asked that the Tribunal do not allow the Claimant to expand the litigation in this manner. They state that attempts to expand this litigation beyond the unfair dismissal complaint is designed to inflict maximum damage on the respondent by making unsubstantiated allegations of criminal activities that are unrelated to his unfair dismissal claim.

17. The respondent referred to the evidence given by Mr Smith and the Claimant's email dated the 3 August 2020. This emailed threatened police complaints, contact with the Respondent's clients and threats to bankrupt the Respondent and to 'harm more than 100 employees'. The Claimant has also made contact with third parties and the Respondent's employees to conflate his unfair dismissal litigation with non-existent criminal proceedings. The respondent stated that the Claimant has done this to inflate his litigation for his own gain. To inflict maximum damage on the Respondent in commercial terms and to cause distress cost and embarrassment. They also stated that this is to obstruct the Tribunal from dealing with the claims in accordance with the overriding objective.

18. The Respondent in oral submissions confirmed that they were pursuing a strike out under rule 37(1)(b) due to what they describe as the Claimant's scandalous vexatious and unreasonable conduct. Mr Smith described the way in which the Claimant has pursued his case in a way that is designed to cause maximum expense and distress which is out of all proportion to the claim of unfair dismissal. This is not a simply misguided Claimant. His intention is to destroy the Respondent's business and the Claimant's email sent in August 2020 was referred to and it was stated that he continues to conflate criminal proceedings with his claim for unfair dismissal. The correspondence that he has sent to the Respondent's employees is harassing and those letters are in the Claimant's bundle at pages 477 Part B. These letters refer to criminal proceedings, the Respondent believes

that this is outrageous and aimed at causing distress. The respondent submits that it is appropriate to strike out the Claimant's claim.

The Claimant's oral submissions

19. Strong language has been used which is disappointing. I am not looking to destroy the company I am looking for a solution to compensate me for work done that was wrong. The respondent did not want to talk to me. The respondent has threatened to destroy me for blackmailing them. I sent a request for statements 23 more times I told them what potentially could happen to them. It looks a bit blown out of proportion. I tried to come to an agreement with them but they refused. I told them why I could not tell them the details of the whistle blow; the Handbook said I could go outside the organisation but I didn't go to the press.

20. If I wanted to destroy them I could have done many tricky things. They are looking for a way to throw this out. They have broken employment rules all the time. I have made requests to strike out the respondents response . If they are upset that I approached potential witnesses they shouldn't try and come between me and potential witnesses. I disagree I am vexatious. Earlier in the case I responded to the respondent directly I wrote an apology because Judge Cheetham said I may not use inappropriate words. However people from the Netherlands are more direct, here there is a more friendly way of speaking. My language may sound strong and in a way shocking, however the way British people speak is different. I am asking to have my day in court and I am right. I do not make things up. I do not want to destroy the company. I am looking for a solution. I said that 23 times. The respondent has not taken notice of anything I have said.

21. **The Law**

Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 Schedule 1

Rule 37 Striking out

(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds—

(a) that it is scandalous or vexatious or has no reasonable prospect of success;
(b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;
(c) for non-compliance with any of these Rules or with an order of the Tribunal;
(d) that it has not been actively pursued;
(e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out).

(2) A claim or response may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.

(3) Where a response is struck out, the effect shall be as if no response had been presented, as set out in rule 21 above.

Decision

22. The first and major point to note in this case is that it is a claim for unfair dismissal, the claim of whistleblowing was considered by Employment Judge Cheetham QC who concluded that the claim could not proceed. I am therefore considering whether the conduct of the Claimant in pursuing his claim of unfair dismissal has been scandalous, unreasonable or vexatious.

23. Although the Claimant has stated in his oral submissions that it may be an issue of his communications style, being a person from the Netherlands, the complaint is not about his use of language it is about his actions and the motivation for those actions. It was also noted that in his long email dated the 11 November 2020 the Claimant stated that his long letters are scrutinised by professionals and English Language proof readers. All his correspondence is carefully worded and the meaning is clear.

24. Turning first to the Claimant's conduct. His letter dated the 3 August 2020 was clear. It was threatening and his predominant focus was to put pressure on the Police and other agencies (such as the Serious Fraud Office 'SFO') to charge the Respondent and its officers with criminal offences. The focus was not on litigating the unfairness of the dismissal or the procedure followed. The Claimant's objective in securing a criminal prosecution was to then say to the Tribunal that he was right not to tell the Respondent "what [he] knew", even though he has never divulged to anyone what it is he actually knew at the time. His focus is on proving that his entirely unsubstantiated allegations had merit. There is no evidence that they had merit at the time or at the date of this hearing.

25. The issue of whether he was right to make an allegation was irrelevant to the claim for unfair dismissal. He was dismissed for refusing to report wrongdoing as required by his contract. He refused to provide any evidence to support the allegations during employment and from the tenor of his emails to the employees of the Respondent and in the email of the 3 August shows that he is still unable to provide any evidence of wrongdoing.

26. The Claimant is using these proceedings to gather evidence that he believes will provide justification for him refusing/failing to provide any evidence of wrongdoing whilst in employment. He also accepts in the above letter that he is attempting to engineer evidence that will strengthen his chances of success in his unfair dismissal and also to bolster a case for whistleblowing, even though that is not a claim he presently has before the Tribunal but it is clearly a claim that he wishes to pursue.

27. The Claimant's relentless quest to uncover evidence of wrongdoing is entirely unrelated to his unfair dismissal claim. It appears to have two distinct objectives, firstly to create as much adverse interest around the Respondent company, to force various law enforcement agencies to investigate. The second objective is to put pressure on the Respondent to pay him a sum in settlement of his unfair dismissal claim and a potential whistleblowing claim which has yet to be pursued. The Claimant's objective is to secure criminal prosecutions in order to exonerate himself before an Employment Tribunal even though any evidence gained post termination will have no relevance to a claim for unfair dismissal. Any evidence that is uncovered post termination will be irrelevant unless the Claimant brought it to the attention of Mr Smith during the disciplinary hearing.

28. I have been referred to the case of Bennett v London Borough of Southwark [2002] IRLR 407 where the term 'scandalous' was considered by Sedley LJ who said that the term could be given two narrow meanings which were "the misuse of legal proceedings in order to vilify others; the other is giving gratuitous insult to the Court in the course of such process". There is considerable evidence that shows that the Claimant is using these legal proceedings to vilify the Respondent. Mr Smith confirmed in evidence that the Claimant had contacted the Respondent's customers and made unsubstantiated allegations of fraud. The Claimant has made numerous allegations to the police and he told this hearing that he had also reported the Respondent to the SFO. He has gone to his MP and made threats to the Respondent's employees. This amounts to a concerted campaign by the Claimant to vilify the Respondent and to destroy the reputation of its officers and employees as well as significantly harming their business.

29. The email of the 3 August contained unpleasant threats against the company and showed that the Claimant's intention in his campaign was to ensure that the Respondent is charged with crimes. That is scandalous conduct. The Claimant is therefore attempting to use law enforcement agencies (Police and the SFO) to investigate as a means to bolster up a claim for whistleblowing. A claim that is not before the Tribunal.

30. The Claimant's 23 emails to the Respondent's employees are also evidence of scandalous behaviour. They are threatening in nature and wrongly infer that he has evidence of wrongdoing when he clearly does not. They are written in this way to attempt to compel them, with the threats of possible criminal prosecution, to provide the Claimant with a statement. It was noted that the questions he posed at the end of each email asked for evidence of fraud/ wrongdoing by the Respondent suggesting that he had no evidence of wrongdoing.

31. These actions are not in pursuit of his legal claim but are actions that are designed to embarrass and cause distress and fear to the company, it's officers and employees. It is done so with the intention of proving that he is right and the Respondent is wrong. The Claimant's actions are carried out with the intention of establishing wrongdoing after the event. This is a misuse of proceedings and scandalous behaviour.

32. That conduct would be enough to establish grounds to strike out the Claimant's claim but for completeness I also considered his actions regarding the disclosure of documents and the compilation of the bundle. It was noted in the strike out hearing that the Claimant asked Mr Smith in cross examination about the disclosure of documents in relation to the HS2 project and in relation to historic projects; Mr Smith confirmed that they were irrelevant to his investigation and were not considered or referred to when considering whether to dismiss.

33. The Claimant's sole focus in these proceedings and in the hearing before me was to gather evidence that is entirely unrelated to his case. He wishes to secure evidence that he erroneously believes will exonerate him or to prove that he was right all along. The documents he demands are irrelevant to his claim for unfair dismissal and the Respondent has confirmed that this is their view. He refuses to accept this and in his email dated the 27 November 2020 stated that if the Respondent did not include all the disputed documents into a single joint bundle he would "dispute the relevance of Maris documents if my own are to be excluded from the bundle" despite him accepting that this approach would be against the Employment Tribunal rules. The disputed documents relate to what he described as "evidence relating to one of the protected disclosures that I made about fraudulent activities at Maris", as there is no whistleblowing claim against the Respondent these documents are irrelevant to the legal issues before the Tribunal when considering the unfair dismissal case.

34. The manner in which the Claimant has proceeded with his case has been unreasonable. He continues to demand documents that are irrelevant to his case, his demand for the HS2 project and documents relating to matters that post-date the dismissal appear to be a fishing expedition for evidence not for his unfair dismissal claim but to bolster an application to have his whistleblowing claim reinstated.

35. I considered whether it would be possible to have a fair hearing in this case however on all the evidence before me I conclude that it is not. The Claimant has made clear his intention to use the proceedings to tell the public of the "potentially fraudulent activities you engaged in" and to pursue his whistleblowing case. That is not his claim in these particular proceedings. It is not even a factual issue in the case as the Claimant had confirmed to Employment Judge Cheetham QC and in this hearing that he did not make a protected disclosure of information to the company. The reason he did not do so was because he viewed the Respondent as a "criminal" and did not want to tell a criminal about his crimes. These were strong views expressed about the Respondent and extremely damaging and the Claimant will inevitably use the Tribunal case to further publicise his erroneous views. They are all the more damaging because they are unsupported by any evidence. There cannot be a fair hearing in this matter and I conclude therefore that on all the evidence this claim shall be struck out.

36. The dates of the 15-16 February 2021 are vacated.

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Employment Judge **Sage**
15 January 2021