

EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: S/4104546/2017

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Employment Judge: Mr D O'Dempsey in chambers (1.5.18)

10 **Miss Angela Thomas**

Claimant

15 **Hermiston Securities Limited**

First Respondent

20 **Barclay & Co Properties Ltd**

Second Respondent

25 **Isum Limited**

Third Respondent

30 **Eamonn Co Property Limited**

Fourth Respondent

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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1. The First Respondent's Claim for costs succeeds in the sum of Eight Hundred and Five Pounds (£805) against the Second Respondent;
2. The Claimant's claim is dismissed upon withdrawal by the Claimant.

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REASONS

E.T. Z4 (WR)

1. These are brief reasons for the decision taken on the basis of written submissions by the parties in respect of the First Respondent's application for costs thrown away by the postponement of the Hearing on 8 February 2018 against the Second Respondent.

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2. I have read the correspondence that has taken place since the Hearing on 8 February 2018 at which I ordered that the Second Respondent pay costs. I have read the schedule of costs and accompanying submissions from the First Respondent (the receiving party) and those from the Second Respondent (the paying party).

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3. The Claimant has withdrawn the claim which I therefore dismiss. That leaves only this application for costs to be determined in respect of quantity, an in principle decision already having been made.

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4. The receiving party has not sought to co-operate to achieve the overriding objective in this application. The receiving party was told clearly that the costs which would be capable of being claimed were those thrown away in respect of the Hearing on 8 February 2018.

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5. The phrase "costs thrown away" means that those costs which would not have been incurred because the Hearing on 8 February 2018 was postponed can be claimed. However that does not, as Mr Strain for the receiving party was told on the day of the hearing, and was repeated in the written reasons for the decision on that day, warrant a claim for all of the costs in the case.

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6. The receiving party has simply ignored that point and has wasted tribunal time as a result. The application includes a claim for costs from 13 December 2017 to 2 February 2018. These would plainly have been incurred whether the hearing on 8 February 2018 took place or not. They were all relevant to the merits Hearing which then needed to take place.

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7. The items on 6-8 February 2018 are not in any way properly explained so as to make it appear likely that they were thrown away in relation to the Hearing on 8 February 2018. There is no information given to suggest that it is likely that any part of those costs relates to the hearing which did not take place.
8. I consider it much more likely that they relate to the preparation for the merits Hearing which was not thrown away because the work could be applied when the postponed hearing was listed again. If there was any basis for the claim that there were costs incurred in respect of the Hearing on 8 February 2018 during that time, which were thrown away, the receiving party's submissions ought to have made that clear. I am satisfied that the receiving party has had sufficient opportunity to make submissions on the question of costs.
9. As to the costs claimed on the date itself, these appear excessive. The receiving party appears to be claiming for 6 hours of AS's time. This appears to be a whole day of billable time spent on the Hearing which did not take place. This appears to be charged on an hourly rate. I do not accept that the work done on that day probably related to the Hearing which did not take place.
10. I reject the submission, understandably made, on behalf of the paying party that the costs should be limited to the time spent in the Hearing. That does not reflect the time which was probably wasted by that Hearing being postponed. As the receiving party has chosen not to break the costs claimed down in any readily intelligible way, or provided the basis for a proper claim, I have to do the best I can.
11. I am prepared to order costs in the sum of £805. These costs reflect that some time would properly have been spent explaining to the receiving party the possibilities surrounding postponement before the Hearing and dealing with the immediate consequences after the Hearing. It includes an element

for travel on that day (which was a cost thrown away by the postponement of the Hearing).

- 5 12. It includes the Hearing-related time, which was 90 minutes, according to the schedule of costs. I have had regard to the receiving party's submission that it would be grossly unfair to limit its claim to the Hearing time itself. However there is little to recommend its claim's articulation. Accordingly I award the receiving party costs in the sum arrived at.

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Employment Judge: Declan O'Dempsey
Date of Judgment: 01 May 2018
Entered in register: 10 May 2018
and copied to parties

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