EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Ms S Slim	**v**	**(1) Mr Akorede Sulaimon Huthman** **(2) Huthmans Real Estate Ltd**

Heard at: Watford **On**: 14, 15 & 17 March 2022

Before: Employment Judge Andrew Clarke QC
Ms J Hancock
Ms K Turquoise

Appearances

For the Claimant: In person
For the Respondents: Mr C Adiole, Solicitor

JUDGMENT

1. Pursuant to Rule 37(1) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 all claims in these proceedings are struck out forthwith.

REASONS

1. This judgment deals with the Tribunal's consideration, on its own initiative, of whether the whole of each claim in these proceedings should be struck out. For that purpose, some analysis of the progress of the claims to date needs to be undertaken. In that context it is necessary for us to deal with the issue of whether or not there remains any claim which the claimant is, as a matter of law, able to pursue. For reasons which we elaborate below that is an issue which we are unable to resolve on the material before us, hence we will proceed on the basis that the claims have not been extinguished by agreement in the circumstances described below.

2. The claimant began proceedings against five respondents on 8 March 2019. None of the respondents submitted a form ET3 and Default Judgments were issued against them all on 12 August 2019 and 24 January 2020, for liability and remedy respectively. At the heart of her claims was an

assertion that the first respondent forced the claimant to abort his child in order to keep her job in their joint venture enterprise and then removed her from it.

3. By an email of 12 February 2020, the first respondent (acting for himself and the other respondents) informed the Tribunal that he had only just realised that the claims existed. Although the language used was not that of a lawyer, the intention was clear; namely that he wished to have the judgment set aside so that he could defend the claims. The Employment Tribunal so understood his letter. The total judgment sums at that stage were over £300,000.

4. On 15 March 2021 the matter of setting aside the judgments came before Employment Judge Hyams. He heard evidence from the parties and, by agreement, dismissed the claims against three of the respondents. He also set aside the judgments against all respondents and gave directions for the hearing of the claims against the remaining two respondents. He identified the issues in the case and provided a provisional timetable for the hearing. He also made various orders which the claimant accepts were explained at the hearing and subsequently encapsulated in a series of orders accompanying the written record of that preliminary hearing. The claimant is a professional business woman. She is not a lawyer, but has completed a year of a law degree course. She has a good understanding of legal terminology and appeared able readily to grasp the legal concepts relevant to this case when explained to her.

5. The claimant, who represented herself at that hearing as she did before us, did not oppose the respondents' applications before Employment Judge Hyams. She had written to say as much in advance by an email of 6 August 2020. That represented a significant departure from the stance she had taken in a lengthy email of 17 February 2020 responding to the application to set the judgments aside. The explanation for that change of mind appears to us to lie in the existence of an agreement that neither party told Employment Judge Hyams about.

6. On 12 June 2020 the parties to the claim (as then constituted) entered into a written agreement. That agreement recited:

> "In a judgment dated 24 January 2020 the Employment Tribunal ordered the judgment debtors [the five then respondents] to pay the total sum of £303,807.20 to the judgment creditor [the claimant]. The judgment was made in the absence of the judgment debtors."

7. The agreement then went on to record that the parties agreed certain terms including the following:

> "2. The judgment creditor shall accept the sum of £3,000 in full and final settlement of the amount due under the Employment Tribunal judgment dated 24 January 2020 and all obligations and liabilities under the Employment Tribunal judgment… "

> "3. Pursuant to clause 2 of this agreement the judgment debtor shall pay to the judgment creditor the sum of £3,000 by 4pm on 19 June 2020 in full and final satisfaction of the Employment Tribunal judgment dated 24 January 2020."
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> "4. Notwithstanding clause 2 of this agreement, the judgment creditor agrees to forego any enforcement right and/or any claim for damages or compensation that she might have arising from any failure on the part of the judgment debtors in connection with the Employment Tribunal judgment…"
>
> "5. The judgment creditor and judgment debtors agree to forego any entitlement to or claim they might have to recover any legal costs arising from or associated with the Employment Tribunal claim…"

8. The existence of that agreement was first revealed to the Employment Tribunal at about 9:50am on 14 March 2022, being the first morning of what was to be the full merits hearing. The claimant had already made (and the Tribunal had refused) a paper application to postpone the hearing and, when the hearing commenced, the first respondent intimated an intention to make such an application himself.

9. None of the directions given by Employment Judge Hyams have been complied with. The case was not ready to proceed on the morning of 14 March. There has been no disclosure. There were no bundles and no witness statements dealing with the merits of the claim. Even the draft ET3 which was produced before Employment Judge Hyams had not been formally served, albeit that it is clear that the judge had regarded that as a mere formality.

10. Why neither side had progressed this case is explicable in terms of the June 2020 agreement. Subsequent to it being made, a problem arose for the first respondent. The judgment against him (which was against the corporate respondents and him jointly and severally) remained extant. The setting aside of it was, so it appears to us, at that stage in March 2021 a collusive exercise to remove a judgment which was damaging that respondent's credit rating. Why the claimant did not progress the claim thereafter when relations with the first respondent broke down was investigated by us in detail and we deal with this below.

11. Later the claimant appears to have changed her mind with regard to the (now set aside) judgments. She wrote two enigmatic emails to the Tribunal on 6 July 2021 saying that she had been "manipulated" and that she had "given evidence under duress and misguidance". She asked for an opportunity to state her case. It appears from what she told us of a conversation with the Tribunal that the Tribunal considered that she was seeking a trial of the matter. It was pointed out that this was the effect of the orders already made and that she would have the opportunity to have all matters ventilated at this hearing. In any event, no further action was taken either by the Tribunal or by the claimant until shortly prior to this hearing. We consider that relations between the claimant and first respondent had broken down again in about July 2021, but the relationship was rapidly

repaired. Hence, the emails of 6 July were sent, but the claimant did nothing to prepare the claim until very shortly before this hearing.

12. It was plain to us that the issues in this case could not be dealt with on Monday 14 March or on any of the succeeding 4 days set for the hearing. The case had not been prepared by either side and the impact of the agreement of June 2020 needed to be carefully considered. It appeared that when there existed a judgment in respect of all her claims, in a quantified sum, the claimant had signed an agreement to compromise the sum to be paid to her against the background of an application to set the judgments aside.

13. We adjourned the hearing until 10am on the second day (the Tuesday) in order to give the parties a chance to reflect upon the current position and to address us as to the impact of the June 2020 agreement. The claimant had attended alone on 14 March, but her solicitor was intending to see her as soon as the case had been postponed (as she hoped that it would be) in order to advise as to its future conduct.

14. We set out the difficulties as we then apprehended them to be to the parties and invited them to make submissions on the following day as to whether the June agreement was legally binding, whether it offended against the sections of the various employment statutes dealing with excluding or limiting the operation of their provisions, whether the claimant had any cause of action if the agreement was enforceable (it being agreed that the compromise sum had been paid), whether we (rather than the County Court or High Court) could hear any arguments as to the agreement being void or voidable for duress and whether, in any event, the claims (if any survived) should be allowed to proceed given their lack of preparation. We told the parties that we were contemplating striking the claims out under Rule 37(1)(c) and/or (d), the operation of which we explained to them. In that context the claimant told us that she intended to bring her documents to the Tribunal on the following day and we noted that she had said in an email of 8 March 2022 to the Tribunal that her legal team was at that stage going through all of her documents and evidence.

15. On Tuesday 15 March (ironically, a day exactly one year after the hearing before Employment Judge Hyams) we received written submissions from the respondents and heard evidence from the claimant which was intermingled with submissions. Given our decision as to how to proceed (see below) we did not offer to the respondent's solicitor the opportunity to cross-examine the claimant, although he did cross-examine the claimant on Thursday 17 March in the context set out below.

16. In the light of what she told us about her subsequent dealings with the first respondent we regarded the claimant's contentions on entering the June 2020 agreement under duress with some scepticism. However, we felt unable to decide on them. She alleged that she had entered into the June 2020 agreement because of threats to her personal safety uttered by the first respondent. She claimed that he had told her that his business partner

was a big and important man and that "people would come after me" if she did not enter into the agreement. The respondent asserted that the agreement was negotiated over a period of time and that there was no undue pressure placed on the claimant. She asserted that she had evidence to support what she said in exchanges of WhatsApp messages. It was clear to us that if we were to embark on a consideration of the claim of duress, we would need disclosure of relevant documents (including the drafts leading to the agreement and any accompanying correspondence) as well as witness statements from relevant participants.

17. The claimant also referred to financial pressures on her, but what she said appeared to us unlikely to amount to economic duress in the light of the decision of the Supreme Court in Pakistan International Airline Corporation v Times Travel (UK) Ltd [2021] UKSC40, but we reached no final conclusion on the matter.

18. Before turning to the issue of possible strike out, we will set out such conclusions as we were able to reach with regard to the duress issue and its resolution. We do so because these matters were discussed and our provisional views communicated to the parties in the context of the consideration of the possible strike out of the claims.

19. Whether considering the possibility of a reconsideration of the setting aside of the default judgments or whether looking at the issues in the case, the question of whether the June 2020 agreement was void or voidable would need to be considered. For reasons which we set out below our view was that we would have jurisdiction to deal with that issue in either context.

20. It would then be necessary to determine whether the agreement was unenforceable by reason of the contracting out provisions in (eg) s.144 of the Equality Act 2010. It was conceded by the respondents that the agreement was not a formal settlement agreement so as to fall within the exception to those provisions. Even if the claimant did have legal advice the relevant details are not recorded in the agreement as they would have to be.

21. Our provisional view was that s.144 was not engaged here, because the claimant did exercise her rights under the various employment statues and obtained a money judgment. She then compromised the amount she was to receive against a background of the respondents' applications to set the judgments aside. However, neither the claimant nor the respondents dealt with that issue in submissions and if the matter should proceed it would be open to the Tribunal considering the matter to reach a contrary conclusion. We consider that in those circumstances and if our previously recorded views are, indeed, correct it would be an abuse of process for the claimant to re-litigate the claims unless the June 2020 agreement was void or voidable.

22. An Employment Tribunal's jurisdiction is statutory and does not include any express power to declare a contract void or to rescind it. However, an Employment Tribunal may need to construe a contract or determine what its

terms are and we asked ourselves whether that is essentially different from ordering its rescission. There has been some debate in higher courts on these matters. In particular, in Hennessy v Craigmyle & Co Ltd [1986] ICR 461, as confirmed by subsequent decisions of the EAT, the Court of Appeal indicated that a Tribunal would have jurisdiction to determine whether a COT3 agreement should be set aside on the grounds of economic duress. Furthermore, and more recently, Griffiths J in Cole v Elders' Voice (UK EAT/0251/19/UP) seems to us have proceeded on the basis that there is no such distinction. There the judge was considering a case in which, if the claimant was successful, an otherwise binding agreement in the form of a COT3 would be set aside for misrepresentation, thus allowing the claimant to proceed with her claims against the other party to it. It seems to us to follow from those cases that we would have the relevant jurisdiction here.

23. Although the parties did not deal with the matter, we raised the possibility that the agreement could not be relied upon for lack of consideration. At common law the general rule is that a creditor is not bound by a promise to accept part payment in full settlement of a debt (see, for example, D&C Builders Ltd v Rees [1966] 2QB 617). However, in this instance the position is more complicated. The judgment debt was disputed. The respondents had applied to set it aside. Where a claim is disputed in good faith the payment of a compromise sum will provide consideration. That the sum is relatively small (compared to the original judgment debt, as in this case) is not material as courts will not enquire as to the adequacy of consideration. We informed the parties of our view that this would not deprive us of jurisdiction, but we recognise that it is a fact sensitive issue (the dispute has to be "in good faith") and so we reached no final conclusion.

24. It was against that background, which we had explained to the parties, that we turned to look at whether this case should be struck out. We reminded ourselves and the parties of the provisions of Rule 37(1)(c) and (d) and invited the claimant to explain to us why she had not proceeded to prepare the case in accordance with the orders of Employment Judge Hyams. We reminded her that she appeared to have taken no steps at all to progress the case until she responded to being sent the usual pre-hearing checklist in late February 2022. At that point she first asked to be sent a copy of the March 2021 orders and then told the Tribunal that the case was "nowhere near ready" saying that she had got a legal team on board who needed more time and she complained of the first respondent's behaviour since March 2021 and of duress to procure the setting aside of the judgment.

25. We sought to understand what had happened. The claimant gave an account (which we deal with below) on Tuesday 15 March. She also indicated that there were other things going on in her life which she considered relevant and in respect of which she had written evidence that she was able to produce. She told us that this could be available to the Tribunal by Thursday 17 March, hence we adjourned consideration of the strike out until 10am on that day. In doing so, we explained the tribunal's strike out jurisdiction in the context of a failure to comply with orders made to progress a case to trial and where a claimant had failed to pursue their

claims. We satisfied ourselves from her responses to questions that she understood what we had told her and would be able to deal with the strike out issue on the Thursday.

26. We gave her permission to adduce documentary evidence to support what she had already told us and would tell us in the future and to produce a witness statement on the Thursday morning if she wished to reduce her account into writing. She duly produced a short witness statement and three documents on Thursday morning and in evidence confirmed the accuracy of what she had described to us on the previous Tuesday.

27. What the claimant told us (on Tuesday and Thursday) is as follows. She had not objected to the judgments being set aside as she had felt physically threatened. The first respondent had apparently repeated comments such as those made to get her to enter into the June 2020 agreement. She had said nothing at the hearing before Employment Judge Hyams because she felt threatened. We note that the hearing took place via CVP. We also note that the Employment Judge had spent many hours (a whole day until 17:17) going through the case and explaining the issues to her and that she had made numerous detailed references in that period as to how badly the respondents had treated her during her employment. This seemed to us at odds with her assertion that she felt unable to tell the Employment Judge about the agreement and why she was, in effect, agreeing to have the judgment set aside.

28. She initially told us that she had been too busy to progress the case since March 2021. On investigation she claimed it was large volumes of work from the first respondent that had made her too busy. That she described as “harassing” her, by giving her a great deal of work.

29. She is expert in the letting of luxury properties. The joint venture business with the first respondent operated in that field. In particular, the first respondent is a licenced football agent and required properties for his client footballers. After she left the joint venture, she set up her own lettings business and the first respondent gave her quantities of work. However, she and the first respondent then fell out when she felt he had gone behind her back to a landlord and cheated her out of a fee. Being too busy to progress the case was, therefore, the initial focus of her evidence on Tuesday.

30. It being suggested that being busy should not have prevented her from giving disclosure or providing a witness statement, she suggested that she was waiting to see the respondent’s disclosure and their witness statements before doing anything, because only then would she know what they were saying. It was pointed out, and she accepted, that Employment Judge Hyams had taken time to identify what he saw as the issues that arose in the case, that he had discussed these at length with the parties and then recorded their positions, albeit in summary, in his detailed note of the hearing. The claimant was, we find, fully aware of the respective positions of the parties in March 2021 and well able to give disclosure and to produce her witness statement. We consider that she chose to do nothing because

she, like the respondent, did not at the time intend to advance the case. She regarded it as over and done with. In July 2021 and February 2022 her position appears to have changed when her business relationship with the first respondent deteriorated, or at least did not flourish as she would wish it to have done.

31. We consider that her account of aspects of the material events is highly suspect. It seemed to us almost incredible that she should be working for the first respondent if he was, as she claims, someone who forced her to have an abortion, threatened her to make her sign the agreement and threatened again to get the judgment set aside. There was no suggestion that he forced her to work for him. She claimed to have done so willingly and to be doing such volumes of work that she had no time to progress her claim from March 2021 onwards.

32. By Thursday 17 March her case had developed somewhat. She now asserted that the "main reason" for not progressing her claim was that she was subject to domestic violence from the father of her son. When it was pointed out that this had not prevented her from running her business, she appeared to us again to change horses. We note at this point that we do not suggest that there was no history of domestic violence. However, from matters we shall discuss below, we would be unable to make any findings as to its nature or extent.

33. In cross-examination on Thursday 17 March she asserted that the key reason for not progressing her case was that she believed that she was waiting for the respondents' bundles of documents. She accepted that the orders of Employment Judge Hyams did not so provide, but said that she had not read the preliminary hearing summary and orders when sent to her in April 2021, but that this is what she thought to be the case. She claimed that she first read those orders sometime in the run up to this hearing. She said that she had told the Employment Tribunal of this failure to provide the bundles by email.

34. When it was pointed out to her that emails in February and March 2022 made no reference to the bundle point, she said that she had referred to it in earlier emails so did not need to repeat the point.

35. When it was pointed out that she had sent only two previous emails to the Tribunal since the March 2021 hearing, being those in July 2021 referred to above and that neither mentioned this point, she said that she had assumed that the Employment Tribunal would know of this.

36. We found her evidence in this regard (and generally) unsatisfactory and, in many ways, incredible and contradictory. Even the evidence she gave as to her domestic abuse contradicted a letter written the previous day (and attached to her witness statement) from the domestic violence charity assisting her, as to when she first was dealt with by them.

37. We invited her to show us the documentary evidence which she had said she would disclose to support her case. We reminded her that on Monday she had said it would be produced on Tuesday and that she had told the Tribunal that her legal team was considering that material in her email of 8 March 2022. She then told us that she had only printed out less than 25% of it and this had first been done yesterday. She did not produce what she had with her. She showed us a small pile of copies and said that she had over 500 more pages to consider.

38. Against the above background and having regard to the evidence we had heard and seen, we turned to consider whether to strike out the claims. We were satisfied that the claimant had had a sufficient period of time to prepare to deal with the prospect of her claims being struck out. There was no suggestion from her that she wanted further time, or that had she been given further time she would have been able to produce further arguments or material evidence.

39. An Employment Tribunal must adopt a two-stage approach to the question of striking out a claim. First, the factual basis required by the relevant part(s) of Rule 37 must be made out. Then the Tribunal must exercise its discretion whether or not to strike out the claims in question having regard to the overriding objective of dealing with cases fairly and justly as described in Rule 2. We were referred by the respondents to the case of Harris v Academies Enterprise Trust [2015] IRLR 208 and, in particular, to the need to have regard not only to the interests of the parties but also to those of other Tribunal users, what Langstaff P called “the wider view of justice”.

40. It is our view that the claimant did not pursue her case for almost a year because she did not want to do so. She failed to comply with orders because she saw no purpose in doing so because she then had no interest in the case. That position changed when she again fell out with the first respondent in the lead up to this hearing.

41. We have reminded ourselves of the provisions of Rule 37(1)(c) and (d) which deal with non-compliance with tribunal orders and the failure actively to pursue the claims. There was plainly non-compliance with the orders made a year ago and, until recently, there was no effort on the claimant’s behalf to pursue the claims.

42. We have decided to strike this claim out in its entirety. The claimant has quite deliberately failed to obey the orders of the Tribunal. She has not progressed her claim. She appears to us to have believed that she could do so as and when she chose. That is not the case.

43. We consider this a proportionate response to the claimant’s non-compliance with the orders and her failure to pursue her case. The claimant was given a valuable five-day slot for her claim to be determined. She has chosen not to use it, when she could have done so.

44. In the context of the failure to progress the claim we have also reminded ourselves of what was said in Evans v Commissioner of Police of the Metropolis [1993] ICR 151. We consider the delay here was intentional and contumelious. It is disrespectful of the Tribunal deliberately to ignore its orders. There is no requirement to show prejudice to the respondents and it might fairly be said that they were equally guilty of failing to obey orders and to advance their case. However, it appears to us that so far as the respondents are concerned this was because they at all times considered the matter resolved until they saw the claimant bringing it back to life (or attempting to). For them, the purpose of the 15 March 2021 hearing was simply to get the judgments set aside, not in order to allow the case to be defended (they considered it settled), but to avoid further damage to the first respondent's credit rating.

45. There is undoubted prejudice to other Tribunal users. This case has used three days of its five-day window and made little substantive progress. Were it to be re-listed the addition of the issues relating to the June 2020 agreement would be likely to add to that five-day time estimate. We are unpersuaded that even if the case was to be reprogrammed and allowed to go forward then the claimant would actually progress it. We note in that context that even today she is not ready to give disclosure despite having told the Tribunal in correspondence and ourselves (see above) that documents were available and being considered by her lawyers and able to be provided to the Tribunal on the second day.

46. As we have said, we consider that this is a case of a claimant who has proceeded on the basis that she could take her case forward as and when it suited her. Whether she sought to advance the case appears to have accorded with her relationship with the respondent at any particular time. That is no way to conduct litigation and it cannot and will not continue. Under Rule 37(1)(c) and (d) the whole of this claim is struck out.

47. It would be remiss of us not to make some comment on the position of the respondent. We have already said what we have to say with regard to the respondents' failure to progress this litigation. However, of much greater concern to us is the fact that knowing that a settlement agreement had been reached no mention whatsoever was made of this before Employment Judge Hyams. Of course, the claimant is equally guilty of that but the claimant was a litigant in person, whereas the respondent was represented by a solicitor who knew of the agreement. We consider it to be professionally irresponsible to have failed to tell Employment Judge Hyams of the existence of the agreement. It clearly gave rise to additional issues in the case (if any case still survived) and to have failed to alert him to the consequences as they appeared to be at that stage of the existence of the agreement and the fact that the application was being made simply to clear an inconvenient judgment off the record was inexcusable. It is to his credit that the respondents' solicitor did not seek to excuse it.

However, given that the claims have been struck out we propose to take that aspect of the matter no further.

Employment Judge Andrew Clarke QC

Date: 30 March 2022

Sent to the parties on: 04 April 2022

For the Tribunal Office