EMPLOYMENT TRIBUNALS
London Central Region

Heard by CVP on 3/8/2022

Claimant: MRS A MAPARA

Respondents: (1) PRIORY GROUP/ PRIORY HEALTHCARE LTD

(2) PIPPA MANBY

(3) SIMON FORSHAW

(4) LEE NEWMAN-IZYDORCZYK

Before: Employment Judge Mr J S Burns

Representation
Claimant: Dr E M Mapara

Respondents: 1: Dr M Ahmad (Counsel)
2 and 3: Ms Stanley (Counsel)
4: no appearance

JUDGMENT

1. By consent, the name of the First Respondent is amended so it reads as above

Not by consent;

2. The claims against all Respondents are struck out.
3. It is declared that the claims were Totally Without Merit.
4. The Claimant shall pay the First Respondents costs of £4450 by 17/8/22
5. The Claimant shall pay the Second and Third Respondents costs of £14083.80 by 17/8/22

REASONS

Introduction

1. The First Respondent applied on 11/7/22 and Second and Third Respondents applied in their GOR and on 5/4/22 and 6/7/22 for the claims against them to be struck out. The applications were flagged in a Tribunal letter for hearing and, after an administrative muddle, finally listed by tribunal letter dated 19/7/22 for hearing today 3/8/22.

2. It appears that the ET1 may not have been served on the Fourth Respondent who was a previous employee of the First Respondent who left that employment many years ago. The ET1 was sent to the Fourth Respondent at the First Respondent's address and not forwarded. I decided to consider on my own initiative whether to strike out against the claims against the Fourth Respondent.

3. I was referred to a bundle of documents of 283 pages, a supplementary bundle of 41 pages, a skeleton argument from the First Respondent and a skeleton argument from the Second and Third Respondents.

4. Dr Mapara objected to the hearing going ahead today because he said that the Tribunal had not previously sent him copies of the ET3s filed by the First to Third Respondents. I was unable to explore whether or not that was so, but these documents were in the main bundle for today and at his request I also emailed these documents to Mr Mapara at the start of the hearing. I was also shown an email dated 5/4/22 in which the solicitors of R2 and R3 sent these documents to the tribunal and copied them to Dr Mapara The applications to strike out did not turn on the details of the ET3s and had been sufficiently explained in the applications and notice of today's hearing all of which had been sent to the Claimant. Hence I saw no good reason to postpone the hearing.

5. Mr Mapara also objected to the admission of the supplementary bundle which he was sent yesterday. This bundle contains correspondence from the Tribunal and inter-parties correspondence which the Claimant and he would be familiar with anyway. Hence I saw no reason to exclude it.

6. At my request the Claimant sent me various emails containing correspondence dated several years ago from Tribunal staff including Mr B Doyle, Mr B Clarke and from staff in the High Court.

7. I did not receive any evidence except from the Claimant about her means for purpose of the costs' applications.

8. The Claimant issued her claim against "Priory Group" as First Respondent. "Priory Group" is not a legal entity. I was informed that Priory Group Limited is a holding company and the correct name of the Respondent should been be Priory Healthcare Limited (Company No. 06244860), part of the Priory Group of Companies, whose registered office address is Fifth Floor, 80 Hammersmith Road, London, W14 8UD. We were unable to reach agreement about this at the beginning of the hearing but by consent I amended the name of R1 so it reads as above with the intent that Priory Healthcare Limited would be deemed to have been sued herein and be bound/benefitted by this judgment.

9. Dr Ahmad and Ms Stanley made submissions of about 30 minutes each and then Dr and Mrs Mapara both made submissions of just over an hour, in accordance with their request.

10. Before he knew the outcome, Dr Mapara congratulated me on having conducted the hearing "fairly".

<u>Previous litigation</u>

11. I do not have all the previous pleadings and Orders but based on what I have seen in the bundle, the following appears to be the relevant litigation history:

12. The Claimant worked as a nurse for First Respondent. She was dismissed or claimed that she had been dismissed on 19/9/2010.

13. She presented an ET1 claim 2355619/2010 for unfair dismissal against R1 at London Central ET and obtained a default judgment on 6/6/2011 - which was subsequently set aside. The claim was then dismissed. She appealed unsuccessfully to the EAT and the Court of Appeal.

14. On 30/12/2011, 9/1/2012 and 26/1/2012 respectively the Claimant presented three further ET claims at London Central (2300077/2012; and 2300227/2012 and 2300398/2012) against R1 and other Defendants for discrimination, the facts relied on being the same or substantially the same as the claims in 2355619/2010. Those were dismissed at a preliminary stage on time limitation points. An appeal to the EAT was dismissed on 10/9/2013 as totally without merit.

15. The Claimant via Dr Mapara complained to Judge D J Latham, then ET President (E&W) and in 2016 complained Mr B Doyle, then ET President (E&W) about the dismissal of her previous ET claims . On 10/11/2016 Mr Doyle told the Claimant that her complaints were closed. More recently Mr B Clarke (current ET President E&W) confirmed this to Dr Mapara in writing.

16. On 17/9/2013 the Claimant presented High Court proceedings HQ13X04637 against R1 and 22 others for breach of contract and numerous other claimed causes of action such as “miscarriage of justice”, “wrongful dismissal”, “breach of trust and confidence” and race, sex and age discrimination. These claims arose out the same or similar subject matter as the previous ET proceedings.

17. She initially obtained default judgment on 8/1/2014. On 18/2/2014 there was a hearing of the Defendants’ (in that claim) applications to set aside the default judgments.

18. Ms Manby (R2 in the instant ET proceedings) was instructed as counsel on behalf of the 23rd Defendant (Mr Edwards, a barrister). She attended a hearing on 18/2/2014 before Master Cook (a QBD Master) and advanced applications (i) to set aside judgment in default obtained by the Claimant; (ii) for the Claimant to pay Mr Edwards' costs on an indemnity basis. The application was successful. Master Cook set aside the judgment in default and ordered that Mr Edwards' costs were paid on the indemnity basis (with a payment on account of £4,000).

19. Mr Forshaw (R3 in the instant ET proceedings) as counsel on behalf of 12 Defendants (referred to as “Clarion Defendants”) also attended the hearing on 18/2/2014 before Master Cook and advanced applications made by those Defendants inter alia: (i) to set aside judgment in default obtained by the Claimant; (ii) for the Claimant to pay the Clarion Defendants’ costs on an indemnity basis. Those applications were successful. Master Cook set aside the judgments in default and ordered that the costs of the Clarion Defendants were paid on the indemnity basis (with a payment on account of £10,000).

20. Master Cook also found that the Claimant’s applications for judgment in default and the claims which the Claimant sought to advance against the Priory’s solicitors and counsel were all totally without merit.

21. Subsequently the Claimant sought to appeal or challenge the setting aside of the default judgment. That appeal appears to have been sent initially to the Civil Appeals Office but on 23/7/2014 was sent back to the High Court Appeals Office. Sweeney J got involved and ordered that a transcript of the hearing on 18/2/2014 be obtained and checked against the original recording. On 5/9/2014 and 11/12/2014 Dingeman J and Blake J respectively dismissed the Claimant’s appeal against Master Cook as out of time.

22. In November 2015 the Bar Standards Board dismissed a complaint by the Claimant against R3. In March 2018 the Bar Standards Board dismissed a complaint made by the Claimant against R2 and a further complaint against R3. On 7/6/2018 Sean Jones QC (in R3’s chambers) in a careful letter dismissed the Claimant’s complaint against R3.

<u>The current claims</u>

23. The claims stated on the ET1 (2200982/22) presented on 21/2/22 were for “Unfair dismissal, race, sex and age discrimination, false imprisonment and stigma discrimination”. In a schedule of loss filed by the Claimant on 22/3/22 she made reference to further claims namely ‘illegal eviction’, ‘personal injuries’, ‘rent paid’ and ‘malicious prosecution’ and a “Failed Data Subject

request".

24. The "claims" detailed in paragraph 8.2, 9.2 of the ET1 and in the appended document entitled "Background to case of registered nurse…" fail to disclose valid causes of action.

25. As already stated, R1 is the Claimant's previous employer, R2 and R3 are the barristers who represented various defendants before Master Cooke on 18/2/2014, and R4 is a previous employee of R1 who was involved in some dealings with the Claimant in or before her dismissal in 2010 and who has subsequently, but many years ago, left the employ of R1.

26. Dr Mapara in his submissions today instead of addressing the Respondents' submissions, placed considerable and repeated emphasis on his/the Claimant's complaint/allegation that a transcript obtained of the High Court hearing on 18/2/2014 is inaccurate or has not been properly "validated" and that in this regard Master Cook and or R3 and possibly others have been guilty of fraud or collusion.

27. I explained to Dr Mapara several times that even if, which I do not accept for one moment, this was true, it is not a matter which the Employment Tribunal has anything to do with. The Tribunal has no jurisdiction over the business of the High Court. As stated above, it appears that the Claimant's appeal against Master Cooke was finally dismissed in late 2014 and that is the end of that matter. However, if for some reason that appeal or indeed the substantive claims in that litigation are capable at this late date of being revived, that is something which the High Court must deal with, not the ET.

28. Furthermore, as pointed out by Mr B Doyle in a letter to Dr Mapara on 3/7/2015, (he - ie the President of the ET) has no responsibility for the conduct or decisions of Master Cook, and his responsibility and jurisdiction only extends in respect of judges in the Employment Tribunal.

<u>Claims against R1</u>

29. The claims, to the extent that they recognisable as claims of the type that the Tribunal can entertain, would be wholly out of time, with there being no good reason provided as to why the Tribunal should accept such claims so late– as they relate to former employment which ended, on the Claimant's case, on 19/9/2010. After such a long time, cogent evidence will not be available to the parties and/or a fair trial will be impossible.

30. The principle of res judicata applies in that the Claimant previously has run and had dismissed claims of unfair dismissal and age, sex and race discrimination against R1.

31. I have not been able to compare the particulars of claim in the 2010/2011/2012 previous ET proceedings with those in the instant claim, but if and to the extent that the details or emphasis of the said claims may differ, then the principal of abuse of process would debar the recent claims in any event because any such matters could and should have been brought against R1 in those previous proceedings.

32. The new alleged claims which the Claimant has inserted in her Schedule of Loss (see paragraph 23 above) are not claims over which the tribunal has any jurisdiction.

Claims against R2 and R3

33. Their only involvement in the affairs of the Claimant have been summarised above - namely as representing certain defendants in obtaining the setting aside of the Claimant's default judgments in the High Court in February 2014.

34. They are barristers who have never been instructed by the Claimant. It is not alleged that the Claimant was ever employed by either of R2 or R3 and no other basis upon which the Tribunal could have jurisdiction to hear any claim them is set out. They had no other relationship with her that could result in liability under the Employment Rights Act 1996 or the Equality Act 2010. Hence the Tribunal has no jurisdiction over them.

35. They owed the Claimant no duty. There is no general duty owed by counsel to their opponent. As advocates in proceedings they are immune from suit.

36. In any event any claim which could be advanced in the Tribunal is very many years out of time. If there was a claim, time would have started to run against it in 2014. It is clear from the complaints which have been made to the Bar Standards Board, to chambers etc, that the Claimant's grievances against R2 and R3, wholly misconceived though they are, have been of long standing, so there is no excuse for the unwarranted very long delay in the Claimant issuing any ET claims against them. The remarks above about the availability now of cogent evidence and inability to have a fair trial, apply here also.

Claims against R4

37. R4 was also one of the Defendants in the High Court proceedings and on balance of probabilities was also a Respondent in the previous ET proceedings, or if he was not, could have been joined.

38. I find similarly that any claims against him would offend the principles of res judicata and issue estoppel, and are significantly out of time in circumstances in which it would not be just and equitable to extend time.

Generally

39. The claims are all totally without merit because they are bound to fail in the sense that there is no rational basis on which they could succeed

40. I find that the claims are all vexatious and have no reasonable prospect of success. Hence they are struck out under Rule 37(1)(a).

Costs

41. R1 claimed costs limited to Counsel's fees of £4450 excluding vat (which vat is not recoverable against C as R1 is vat registered).

42. R2 and R3 together claimed costs and fees of £14083.80.

43. I note that the value of the claims were put at millions of pounds in the Claimant's Schedule of loss. Hence she cannot complain that the Respondents have engaged experienced Counsel and incurred substantial fees in defending.

44. I have found that the claims had no reasonable prospect of success. I also find that they have been brought vexatiously. Hence my discretion to award costs is engaged.

45. The Claimant did not suggest that these costs were unreasonable in amount but said she was unable to pay the costs because of lack of financial means of her own. On oath she told me that she earns as an agency nurse about £35000 per year, and that she lives with Dr Mapara who does not work, and 3 adult children in rented accommodation. I have taken this information into account in exercising my discretion.

46. The Claimant and Dr Mapara know very well that the previous claims over the same ground against R1 have been struck out long ago. They knew before they issued the current proceedings that their complaints against R2 and R3 have been considered and rejected not only by their respective chambers but by the Bar Standards Board. Nevertheless they decided to sue R2 and R3 regardless of the personal inconvenience, worry and expense this has caused.

47. I got the impression from the Claimant's and Dr Mapara's whole approach and from the Claimant's angry and repeated insistence at the end of the hearing today that she would not pay any costs, that she and Dr Mapara think that they will never be made to pay costs in fact so with impunity they can go on pursuing serial litigation regardless of the consequent impact on others.

48. In this case I regard it as proper to award the full costs claimed, whether or not the Respondents will be able to enforce payment of them.

J S Burns Employment Judge
London Central
3/8/2022
For Secretary of the Tribunals
Date sent to parties: 04/08/2022