



EMPLOYMENT TRIBUNALS

Claimant: Ms M Goodsell

Respondent: Mrs D Barclay-Bernard and Mrs N Hiller t/a Ellenwhorne Equestrian .
Centre

Heard at: London South (CVP) On:16th February 2024.

Before: Employment Judge R F Powell (sitting alone)

Representation:

Claimant: Mr Foster, solicitor

Respondent: Mr Grant, solicitor

JUDGEMENT

The respondents are order to pay to the claimant the sum of £5,000.00 in respect of the claimant's costs.

REASONS

1. This hearing was conducted on the morning of the 16th February 2024 during which I heard the evidence of both respondents who were then cross examined by Mr Foster on behalf of the claimant.
2. Prior to the commencement of the hearing I had read the entirety of an agreed 181 page bundle, the witness statements and the separate written submissions on behalf of the claimant and the respondents.
3. I allowed both parties the opportunity to present any further written submission by the 23rd February and I commenced my deliberations in chambers on 3rd March 2024.
4. The context of this judgment is found in my previous judgments with reasons, which are within the bundle at pages 7 to 54 (including Mr Foster's note of the hearings).
5. Neither Mrs Barclay-Barnard nor Mrs Hillier attended the hearing held on the 29th June 2023 at which I ordered the respondents, subject to consideration of their means, to pay all of the claimant's costs. That judgment has not been subject to a timely application for re-consideration or appeal.

The claimant's position

6. The claimant is a young woman, now with a child, of modest means. The legal cost of her success in litigation exceeds the value of her award in respect of her breach of contract claims. Save for an unspecified portion of her legal costs which Mr Foster has agreed to forgo, she faces the unhappy prospect of being a litigant whose legal costs exceed her award of compensation. She seeks all of her costs.

The Respondents' Position

7. The essence of the respondents' case today is their inability to pay any award of costs because, as individual respondents and as a business partnership, they have incurred so much personal debt to; HMRC, local authorities, mortgage lenders and a range of banks and credit providers that neither is in a financial position to offer any redress for their unreasonable behaviour.

Findings of Fact

The Respondents' financial circumstances: Stocklands Farm & The White Horse Rescue Charity

8. The Respondents are the joint owners of a small farm called Stocklands, mostly of grazing with a small parcel of woodland, a good number of outbuildings and a residential house [143]. They purchased the property for £655,000.00 in 2005 [140].
9. The respondents subsequently traded as Ellenwhorne Equestrian Centre; a partnership which provided livery and equestrian training.
10. Mrs Barclay Barnard lives in the farmhouse on the site.
11. Both respondents stated that their partnership of Ellenwhorne Equestrian ceased trading in September 2022.
12. The partnership has rented about 24 acres of the farm to a charity called White Horse Stables – Horse Rescue [168]. Both the respondents are recorded as trustees of the charity in the documents before me [173].
13. The records which the respondents have provided to me show that the farm stables a number of privately owned horses and 16 horses which are described as "horse rescue" [167].
14. The horse rescue charity has had an annual income that varied between £750,000 and £956,000 per annum over the last five years.
15. From that income the charity paid, and still pays, into the Ellewhorne Equestrian Centre bank account, at least £5,000.00 per month. That is an annual income of £60,000.00 per year.
16. From the evidence of both witnesses I conclude that the partnership no longer incurs costs of trading nor receives income from trading as an equestrian centre. The rental income from the charity belongs to the respondents as individuals.

17. However the respondents, as the joint owners of the farm, have mortgage and loan debts and interest accruing upon those debts.
18. Additionally both respondents have personal debts.
19. The respondents have chosen the documentary records they wished to produce to evidence their expenditure, income and debts. That evidence is relied upon to establish that neither has the means to make any payment towards their liability for the legal costs which Ms Goodsell incurred due to the respondents' conduct in these proceedings.
20. The respondents have not provided any of the annual accounts or returns to HMRC for the most recent years of their partnership.
21. The respondents have provided one example of the partnership's bank statement for December 2023; some 15 months after the business ceased to trade.
22. That statement [163-4] shows credits to the partnership's account from "White Horse" (the charity) close to £9,000.00 (including a single payment of £5,000.00 for the monthly rent). It also shows two payments totalling £900 from the partnership bank account to the White Horse charity. There were other smaller payments indicating that the partnership was supplying, at cost, stable hay and labour to the charity in 2023.
23. £7,400.00 of the December 2023 income received from the charity was paid to the respondents' mortgage creditors.
24. I also note that Mrs Hillier personally received much smaller sums from the charity; £550.00 in November 2023 [111- 112] and £130.00 in December 2023 [109].
25. I am thus doubtful that the partnership has completely ceased its activities. It appears to still engage in some economic activity with the charity, but I do accept that it no longer offers equine services or training to the public.

The potential Sale of Stocklands Farm

26. I note that, the farm house and its three acres of land have been advertised for sale at £850,000.00 [187]. The balance of the farmland (34 acres of pasture, equestrian buildings and woodland) do not appear to be for sale at this time and continue to generate an income of £60,000.00 per annum.
27. In the documents before me the whole farm has, over the last four years, been valued at £1,650,000.00 [151] and more recently at "just under" £1,000,000.00 [162], if a "very speedy sale" was required.
28. I take into account that an estate agent's valuations are an art not a science and that house prices, and agricultural land values, fluctuate considerably over time.
29. I also take into account Mrs Barclay Barnard's evidence that she had sold another property which she owned and invested all the profit from that sale into the Stockland's farmhouse

and its three acres of land. Given that she did not pay her capital gains tax on the aforesaid sale, which she told me amounted to £23,000.00, it appears she made a substantial investment in her home and garden to make it more attractive to prospective purchasers.

30. The farmhouse, which was previously for sale with a guide price of £1,000,000.00, is now for sale with an asking price of £850,000.00 and has not attracted an offer of purchase, It has recently been advertised with an asking price of £825,000.00.
31. Although the partnership has owned the farm for 19 years it has not reduced the initial loan. In addition to a second mortgage there are three charges over the property relating to unpaid council tax and debts owed to HFC bank [140].
32. The total mortgage debt, including outstanding interest payments, currently stands at £709,094.07.
33. The HFC loan, secured against the property and the outstanding debt to the local authority evidence at least a further £73,000.00 debt. The total partnership debt which relates to the property is , on the evidence before, me around £784,000.00.
34. When the farmhouse is sold it appears that the entire value of the sale will be spent repaying debts and the various costs of the sale.
35. I accept Mr Grant's submission that, if the whole farm was sold for £1,000,000.00, after the costs of sale, the partnership would be likely to receive a little over £195,000.00.
36. How that sum might be divided between Mrs Barclay-Barnard and Mrs Hillier (her daughter) would be a decision for them to make. If it were an equal share then each would receive around £97,600.00.
37. That sum would be more than sufficient to discharge Mrs Hillier's personal debts of around £40,000.00. It would be insufficient to extinguish her mother's personal debts of around £100,300.00, unless Mrs Hillier agreed to a slightly unequal apportionment of the total sale funds in favour of her mother.
38. It would also mean the £60,000.00 income received from the White Horse charity would cease and Mrs Barclay- Bernard would possibly need to seek accommodation through social housing provision.
39. It is apparent from the respondents' evidence that their current intention, as their sales brochure describes, is to sell the farm house, but not the majority of the land.

A Sale of the Farmhouse and its Gardens

40. If the farmhouse is sold for its current asking price of £825,000.00, after the costs of the sale, the balance would be sufficient to extinguish, the partnership's mortgage, council tax and HFC debts.
41. By retaining the land currently rented to the charity the income of £60,000.00 per annum will remain available to the respondents for so long as they retain its ownership .

42. The £60,000.00 per annum income would go some way to incrementally reducing their respective personal debts, and the associated interest payments.
43. Depending upon how mother and daughter choose to apportion the annual rental income, it could also be sufficient to provide for reasonable rental accommodation for Mrs Barclay-Barnard.
44. In addition to the rental income the respondents would also retain the value of the 34 acres of mortgage free grazing and woodland. Based on the estimates in the documents before me, the estate agent appears to value the land at £210,000.00 to £240,000.00 for a sale which was neither “forced” nor “very speedy”.
45. In my judgment the respondents’ current intention is to sell the farm house and gardens,, but not 34 acres of land; strongly indicative of an intention to retain the benefit of the rental income and the residual value of the land for the foreseeable future.
46. I also accept that the reduction of the asking price for the farmhouse and gardens is evidence that the sale process maybe prolonged; measured in months not weeks.

The ability of the Respondents to pay any part of the costs order.

47. There are two broad themes which I have examined based on the evidence of both respondents and the claimant’s assertions.
48. The first is on the basis that the farm/or farm house will not be sold for a substantial period and that their respective current finances reflect their medium term (three years) future prospects. The respondents submit that, on this basis Mrs Barclay-Barnard cannot reasonably afford to pay any contribution to the claimant’s costs and Mrs Hillier can only reasonably afford a modest sum and for a fixed duration.
49. The second is that the Farmhouse and Gardens will be sold and the respondent’s financial circumstances will materially improve. That improvement will allow Mrs Hillier to make a reasonable contribution to the claimant’s costs. However, Mrs Barclay- Barnard will still have her personal debts and the costs of alternative accommodation.

The Respondents’ ability to afford any contribution to the claimant’s costs

50. The level of the respondents’ debts, the amounts of interest they pay and there level of income are not in dispute.
51. I have taken the witnesses through aspects of their respective bank statements. I have read through all the documents in the bundle and in the case of Mrs Hellier clarified aspects of her expenditure.
52. Based on their evidence, and where appropriate, taking each respondent in turn, I find as follows:
53. Most of the respondents’ expenditure is essential.

54. Each respondent's individual income, absent the sale of the farmhouse, will not be sufficient to discharge their respective personal debts.
55. Mrs Hillier is an employee whose role does not offer any material prospect of promotion.
56. Mrs Barclay-Barnard is seventy seven years old and her personal income is her state pension. She manages the rental income from the charity and other ancillary provisions of service to the charity. That income is spent on the partnership's debts and interest payments.
57. There are prospects of increasing the respondent's income by a modest increase the cost of the rent to the charity and to make a modest charge to the small business run by Mrs Hillier's daughter on the respondents' farm.
58. A 1 percent increase in the rental (which is considerably less than the current rates of inflation) and a nominal charge to Mrs Hillier's daughter could provide an additional £720.00 per annum.
59. Whilst none of these would be palatable to the respondents, each would be reasonable and practical to implement.
60. Within the records of the respondent's personal expenditure there are several types of expense which might be viewed as the small pleasures of ordinary life. These include Mrs Barclay- Barnard's:
- a. Purchase of lottery tickets and premium bonds [66, 67].
 - b. Paying £59.99 for Sky TV and Spotify services [68].
 - c. Eating out in restaurants on a modest number of occasions [66-68]
 - d. Two purchases of jewellery, as presents.
61. Mrs Barclay-Bernard, during questions from myself, described the expenditure above as part of normal living. I agree that for many people occasional eating out and subscription media services are normal. The question for me is whether it is reasonable for a respondents in this case to prioritise making redress for their unreasonable conduct over their small pleasures.
62. In Mrs Hillier's case Mr Grant's argument [paragraph 64.2] on her behalf was that she could, for a defined period of no more than two years, sustain a contribution to the claimant's costs of £50 per month: a total of £1,200.00.
63. Before reaching my conclusions I took into account the following additional material factors:
64. That I should discount the 20% of the total award I now know was attributed to VAT, that was not payable.

65. That Mr Foster had, rather generously, undertaken not to seek a proportion of his fees above those which were not recovered from the respondents. Consequently, the claimant will not herself be contractual bound to pay all of her costs.
66. That, if I make an order costs to be paid it is unlikely that, in the absence of an agreed plan for a series of payments, the sum due will be enforced through the County Court and additional interest payment may accrue.

Conclusions

67. I have taken into account all of Mr Grant's submissions and I find that the state of the respondents' finances are such that, an award of the whole of the claimant's costs order (less the element of VAT) ordered would not be proportionate in all the circumstances set out above.
68. However, I am not persuaded that the respondents are incapable of paying a reasonable portion of the costs order.
69. In my judgement the respondents are immediately able to afford small but regular payments and will have, if they act reasonably, the ability to afford a significant part of the costs order.
70. In my judgment the respondents are currently in a position to offer for sale the acres of amenity woodland and/or a part of the ten acres of land not rented to the charity (albeit that may well require allowing a purchaser rights of way over the land rented to the charity). The sale of one acre would be sufficient.
71. The respondents could sell a part of the parcel of the land now rented by the charity, to the charity; reducing the charity's long term rental costs and providing the respondent's with a degree of financial relief. Again, one acre would be sufficient.
72. They are similarly in a position to take an alternative approach and increase the rental income from their land rented to the charity.
73. Lastly, in my judgment the prospects of a successful sale of the Stocklands farm house have increased with the reduction in the asking price.
74. The above possibilities are practical and reasonably achievable for the respondents and will enable the respondents to pay a reasonable part of the claimant's costs over the next two to three years.
75. In light of all the evidence before me, I have concluded that a proportionate and reasonable sum to order is £5,000.00.

Employment Judge R F Powell
Dated: 2nd April 2024