



EMPLOYMENT TRIBUNALS

Claimant: Ms J Tooze

Respondent: S A Designer Parfums Limited

COSTS JUDGMENT

The Claimant must pay the Respondent's costs in the sum of £2,000 (two thousand pounds)

REASONS

1. The background to this matter is set out in a judgment emailed to the parties on 5 December 2023 dismissing the Claimant's claim for breach of contract in respect of failure to pay her money owed under a rental agreement.
2. By letter of 29 December 2023 the Respondent made an application for costs in the sum of £6,000, comprising £4,500 solicitor's fees and £1,500 of counsel's fees. The basis of the application was that the claim was misconceived from the start, had no reasonable prospect of success and had been pursued solely on a vexatious and unreasonable basis. The Claimant had specifically been warned prior to the hearing that costs would be an issue if she could not provide evidence of any rental payments.
3. Unfortunately the costs application was not referred to me until 31 May 2024.
4. On 31 May 2024 I noted that the Respondent had copied the Claimant into the application and invited her response, but none seemed to have been provided. I directed that the Claimant should have a further period of 14 days to say why she should not have to pay the Respondent's costs, including anything she wished to say regarding her ability to pay costs.
5. On 26 July 2024 I was sent an email from the Claimant dated 13 June 2024, together with further responses from both the Respondent and the Claimant.

6. The Claimant stated she thought she had provided enough evidence to prove all the points she made and it was her right to lodge a complaint. Further she didn't think it was fair for the Respondent to claim costs since she was a single mother living off state benefits with two children to support, one of whom had recently been disabled in a rugby match, while the Respondent was a company that turns over 30 million a year. She was now living in Thailand earning a much-reduced salary of 60,000 USD but paying a mortgage in the UK "to keep a roof over her son's head". Prior to the hearing, she had tried to mediate with the Respondent through ACAS but with no success.
7. The Respondent stated that it understood that both of the Claimant's children were adults, one living separately and the other earning a living breeding dogs. Further, that the Claimant's son's rugby injury occurred in January 2021, before she joined the Respondent. As regards the costs claimed, the Respondent had only claimed the costs of counsel attending the hearing, not a solicitor as well.
8. The Claimant stated her children were over the age of 18 but living in the family home, that her son's dog-breeding business had never got off the ground and that he lived on disability payments. She agreed his rugby injury had happened in January 2021.
9. While in the Employment Tribunal an award of costs is an exception, rule 76 of the Rules of Procedure lays down the circumstances in which a tribunal must consider whether to make an award of costs. In particular, rule 76(1)(b) provides that one of those circumstances is "where it considers that... any claim or response had no reasonable prospect of success."
10. For all the reasons set out in the judgment I am satisfied this claim had no reasonable prospect. Not only was there no evidence of Mr Alvarez entering into a (very unusual) legal commitment to pay the Claimant's rent for the remainder of her rental contract in the event she was dismissed, but, as summarized in the judgment at paragraph 37, the Claimant provided no evidence to the Tribunal of "any rental agreement with Ms Skinner, the registered landlord of the property, and ... submitted no evidence of any payments to anyone other than her friend, Kelly Bell."
11. I am also satisfied it is appropriate to exercise my discretion to make such an order. In this respect, the Claimant is still earning a substantial salary and while she may have to pay mortgage costs on a property in the UK there is no evidence that she could not afford to pay the Respondent's costs (or any of them) or that such a payment would cause her undue hardship. The Respondent may be a successful company, but no respondent should have to devote time and costs to defending a claim that had no reasonable prospects of success and should never have been brought.
12. Further, the Respondent's letter of 6 September 2023 had put the Claimant on notice that costs may become an issue if she failed to provide evidence to substantiate her claim.
13. As regards the quantum of costs, the Respondent's costs have not been particularised, save for a distinction between solicitor's and counsel's fees. I also

note that the hearing was only listed for one-day and was not a particularly complex matter.

14. In the light of all the above, I consider it appropriate to award the Respondent £2,000 (two thousand pounds) by way of costs. That figure, which is significantly less than the sum claimed, takes into account the matters in the paragraph above and also broadly correlates with the costs incurred by the Respondent after the Claimant was put on notice of a potential costs claim in September 2023.

Employment Judge S Moore

Date: 1 August 2024

Sent to the parties on:

2 August 2024

For the Tribunal: