EMPLOYMENT TRIBUNALS

Claimant: QR

Respondent: The G.I. Group Limited

Heard at: Watford Tribunal **On:** 8, 9, 10 May 2024

Before: Employment Judge Cowen

REPRESENTATION:

Claimant: Mr Alexandrou (consultant)
Respondent: Ms Musgrave- Cohen (counsel)

JUDGMENT

1 The Claimant's claim for Breach of Contract is dismissed.

REASONS

1. The parties attended a public preliminary hearing at which a number of preliminary applications were made and dealt with in a case management order.

2. The substantive reason for the hearing was to consider a preliminary issue of the claim;

a. Was there a concluded agreement following discussion between the Claimant and Respondent on 6 December (and thereafter). If so, what were the terms.
b. Did the Respondent breach the terms
c. If so what compensation should be awarded

3. An oral judgment on each of these points was given, but the parties have requested written reasons, to be included in the bundle for the final hearing.

4. The Respondent made an application for costs under r.76(1)(a) & (b) at the end of the hearing. Evidence was taken under oath from both the Claimant and her husband Mr Richard Langstone with regards to their means. The judgment on costs was reserved due to a lack of time and a reserved judgment is made separately.

5. There was no agreed bundle for this hearing. A bundle was provided by each party. Witness statements on behalf of the Claimant and her representative Mr Alexandrou were provided. Witness statements were also provided by Mr Pantelias and Mrs Pantelias on behalf of the Respondent. Submissions were heard from both parties.

Facts

5. The following facts, which were relevant to the issues being decided were found by the Tribunal. Not all facts raised by the parties may be referred to here, as the Tribunal limits its findings to those which are relevant to the issues to be determined.

6. The Claimant commenced working for the Respondent, which is a company owned and run by Mr and Mrs Pantelias, on 24 August 2011. Initially the Claimant was a Sales co-ordinator and later became the head of the Purifier Sales department. She was allowed to reduce her hours to part time whilst she obtained qualifications and then returned to full time work.

7. The working relationship between the Claimant and particularly Mrs Pantelias was friendly and included the Claimant being provided with an interest free financial loan by the company, as well as Mr and Mrs Pantelias attending the UK wedding of the Claimant in July 2022.

8. In September 2022 the Claimant's cat died. This caused her to take some time off work due to the bereavement. I do not make detailed findings of fact about this period, or her return to work as it is not relevant to the issues which I have to consider today.

9. The next relevant event is that the Claimant made an application for flexible working in early November 2022 which was declined by the company on 23 November 2022, on the basis that remote working was not possible due to the nature of the computer system. The Claimant raised a grievance on 18 November 2022 and was invited to attend a meeting on 6 December 2022 to discuss this. She also appealed against the refusal of her flexible working application on 28 November by way of a letter on 2 December 2022. This too

was to be considered in the meeting on 6 December 2022.

10. It was agreed that Mr Alexandrou, a former solicitor, who represented the Claimant, could attend the meeting with her. Mrs Pantelias was assisted by her HR advisor Ms Sarah Rhodes.

11. The meeting on 6 December 2022 was not convivial and appeared to get bogged down in details about process and IT capability. The Respondent was aware from the Claimant's sick notes that the Claimant suffered from depression and anxiety. The decision given by Mrs Pantelias at the end of the hearing was that the appeal was rejected. This created somewhat of an impasse between the parties, as the Claimant did not consider herself able to work from the office full time.

12. A decision was taken by Mrs Pantelias upon advice, to instruct Miss Rhodes to negotiate on a without prejudice basis, with Mr Alexandrou on behalf of the Claimant, to see if a settlement agreement could be reached. The purpose of this was to avoid the Claimant bringing claims to the Tribunal and for the Claimant to leave the employment of the Respondent.

13. Negotiations then took place between Mr Alexandrou and Miss Rhodes. Whilst that was going on Mrs Pantelias and the Claimant sat on a sofa outside the meeting room. They had been friends and the Claimant had worked for Mrs Pantelias for 10 years.

14. Unfortunately, the conversation they had that day was not friendly. The Claimant made it clear that if she did not receive a substantial amount, then she would contact customers and suppliers of the Respondent. This made Mrs Pantelias very nervous, as she was aware that the Claimant had detailed knowledge of the business having been a long standing and trusted employee and could therefore cause some difficulty to the Respondent. This conversation influenced Mrs Pantelias' attitude to the negotiation.

15. Mrs Pantelias spoke to her husband Mr Pantelias, who advised his wife not to continue with the without prejudice conversation but to end it there, as Mrs Pantelias was upset by the situation. Mr Pantelias decided not to follow that advice, but to allow Miss Rhodes to negotiate in the hope of an agreement that would end the relationship and ensure that the Respondent's intellectual property could be maintained.

16. Negotiations took place between Mr Alexandrou and Miss Rhodes. A number of points were agreed between them, with the knowledge and authority of their clients. Most significantly that the Respondent would pay the Claimant £40,000 in 3 instalments and that her employment would end on 31 December 2022. This was an agreement that the Claimant's employment would end by mutual agreement. There was no agreement that the Claimant

would be dismissed. It was part of the agreement that the relationship would end in return for the payment.

17. It was also agreed and understood by the Claimant on 6 December that an agreement would be drawn up, that she would give up her employment rights (i.e. to claim at a Tribunal) in return for the payment which was agreed. The Claimant also understood that she would have to obtain legal advice and have a lawyer sign to say that advice had been given to, as Mr Alexandrou was not qualified to do so.

18. It was also agreed on 6 December that the Claimant could remain at home whilst the written agreement was finalised and that she would not be required to work, but would be paid. Further, that the terms of the agreement would be confidential to the parties and that neither party would use derogatory language about the other in public.

19. What was not explicitly discussed on 6 December was that the Claimant's restrictive covenant, which she had signed in 2013, would remain valid. This was the expectation of the Respondent, but nothing direct was said by Miss Rhodes or agreed between the parties. Neither did Mr Alexandrou mention on the 6 December that the Claimant would expect to be released from it.

20. Whilst the fact that a reference would be given was agreed, the terms of that reference were not discussed, and that remained something which the parties knew would have to be finalised as part of the written agreement.

21. It was agreed that Miss Rhodes would create the first draft of the written agreement and she did so and sent it to Mr Alexandrou on 13 December 2022. Along with copies of the Claimant's contract and restrictive covenants.

22. Mr Alexandrou's reply the same day was that he would pass it to the Claimant and discuss the content with her and "once Inese approves then I will refer back to you and Inese will arrange to visit her solicitor for independent legal advice".

23. A second email shortly after from Mr Alexandrou pointed out that " I feel it important to advise you at this stage of the draft documentation that the restrictive covenant on employment is a non-starter. It is not a clause which would be standard in a compromise agreement and was not agreed on the meeting". He goes on to say " the lady will not want to limit her employment options by entering into the proposed restrictive covenant".

24. On 14 December Miss Rhodes set out that the restrictive covenant had already been signed by the Claimant and no new terms were being added.

25. On 16 December Mr Alexandrou returned a draft to Miss Rhodes with his amendments outlined in blue. This document was not shown to the Tribunal. With regard to the restrictive covenants Mr Alexandrou said in his email " I note your comments regarding the restrictive covenants, but that the Claimant had not taken into account the suggestion she would be required to restrict her employment options".

26. After a short delay due to illness, Miss Rhodes replied on 22 December setting out which of the Claimant's proposed amendments were accepted and which were not (p89). The restrictive covenant remained a sticking point, as neither party was willing to compromise. There was also an issue over the Respondent's requirement that there be " proof" that the contact details of clients/suppliers were removed from the Claimant's phone. Mr Alexandrou replied the same day with a further re-amended draft " for your approval and comment below". In the reply it was said that the Claimant refused to let the Respondent see her personal mobile phone in order to prove that she had deleted relevant information.

27. There was no further correspondence until 3 January 2023 when Miss Rhodes replied to Mr Alexandrou saying that she was instructed to give a deadline that if the agreement which she sent on 22 December 2022 was not signed by 6 January 2023 then the offer was withdrawn in its entirety. That date passed with no word from the Claimant.

28. On 23 January Mr Alexandrou wrote to Miss Rhodes saying he hadn't heard from her since his email on 22 December. Thus indicating that he had not seen the deadline sent on 3 January. He noted that the Claimant had been paid in December saying "despite the absence of the written agreement". He went on to say that as long as payments are made " my principal is nonplussed over the agreement".

29. On 1 February Miss Rhodes replied saying that she had been ill and pointed out that she had emailed on 3 January but clearly Mr Alexandrou didn't receive it. She pointed out that given the Claimant was pushing to amend the draft agreement, she clearly was bothered about it.

30. On 6 February Mr Alexandrou said that payments had been made to the Claimant and she was not clear what they represented. He said " My last email made the point that if a written agreement cannot be agreed, then so be it, as it makes no difference to my principal if she had been paid her outstanding remuneration and package as agreed".

31. On 7 February Miss Rhodes pointed out that the restrictive covenant was a sticking point for the Respondent. She asked Mr Alexandrou to "confirm why your client objects to the inclusion of something she has already agreed to and would continue to [be] bound by regardless of the agreement". Mr Alexandrou did not reply to this.

32. On 10 February Miss Rhodes wrote saying, as they had received no response the Respondent was withdrawing the offer in full.

33. After that Mrs Pantelias contacted the Claimant on 21 February to set up a grievance meeting. She indicated that The Claimant would have paid leave until 21 February but then she wanted the Claimant to return to work. She also offered unpaid leave or holiday until the grievance is completed.

34. A grievance process was then carried out by an independent company instructed by the Respondent. That report was sent to the Claimant on 3 March. At that point the Claimant was invited to return to work and to put in place the suggested mediation.

35. The Claimant replied to this on 10 March by handing in her resignation.

The Law

Contracts

36. The following principles of contract law were taken into account by the Tribunal; In order for there to be a contract the parties must show that there has been offer and acceptance of terms. The terms must be complete and operable and unconditional. The parties must have implied at least an intention to create legal relations. There must then by some consideration by the parties to show intent to be bound.

37. It is not a legal requirement that a contract be reduced to writing. However, if it is not written down it is hard to prove it existed. The fact that it is not written down is a lack of proof, not a lack of agreement.

38. the test to be applied to identify a contract is an objective one. I note that what was said by the parties is just one aspect of the evidence and that the documentary evidence is more weighty.

Settlement Agreements

39. A settlement agreement is a specific type of contract and is outlined in legislation. There are criteria which must be fulfilled for a contract to be a binding settlement agreement.
S.203(3) ERA sets out the requirements. This is mirrored by s.147(3) EqA.

These set out that an agreement will not be binding unless it is
a) Set out in writing
b) relates to the particular proceedings/issues
c)only made where the employee has received advice form a relevant independent adviser as to the terms and its effect on their ability to pursue their rights before an ET. That adviser must have a valid insurance
d) the adviser must be named on the agreement and must sign to say that they have complied with the requirement.

40. It is notable that IDS Handbook on settlement terms refers to "employers may wish to insert restrictive covenants" under the heading "common terms of settlement agreements".

41. The ACAS code of Practice gives practical advice that a 'reasonable period of time' should be given to a party to consider the terms proposed. It is said that reasonable is a minimum of 10 days.

Decision

42. A situation arose on 6 December 2022 where it became clear to both sides that what had previously been a good working/friendly relationship was now so strained that a return to work looked unlikely. It was clear to both sides that a way out of this situation would be to enter into a settlement agreement. They therefore agreed to engage in discussions. These negotiations led to heads of agreement being made at the meeting.

43. However, neither party asserted that a written agreement was completed and signed that day. The Claimant asserted that there was a verbal agreement to pay £40,000 and to end the Claimant's employment by way of dismissal on 31 December 2022. She asserted that there was then a separate agreement which was not finalised, to enter into a settlement agreement that the Claimant would not pursue her legal rights.

44. The Claimant has not explained to me herself, nor shown evidence of, the Respondent's agreement to two separate agreements. Nor have I been able to find any evidence from which I can infer that the Respondent agreed to two separate agreements. It makes no sense for the Respondent to have agreed to pay the Claimant £40,000 if they were not going to receive the assurance in response that the Claimant would be prevented from bringing claims to the Tribunal.

45. Nor do I find it plausible that the Claimant would agree to enter into an agreement to give up her legal rights in return for nothing at all. These two sides were part of the same agreement.

46. I also do not accept that Mr Alexandrou's emails to Miss Rhodes are indicative of him only trying to reinforce terms agreed on 6 December. They

clearly go beyond what was discussed on the day. At no point does Mr Alexandrou say in the emails that a complete agreement had been reached and that this communication is in relation to a separate point.

47. I therefore do not accept that the Claimant's contention of two agreements withstands scrutiny.

48. Turning then to whether there was a single complete, operable and unconditional agreement on 6 December; I find that many of the points which are required to be contained in a settlement agreement were agreed in principle between Mr Alexandrou and Miss Rhodes on 6 December, but that nothing was reduced to writing and therefore no formal agreement was made.

49. The principle terms of an agreement were agreed between the parties; the sum, the payments, the end of the employment, the return of equipment and the non-derogatory clause. However, the point which both sides understood at the end of 6 December was that this needed to be reduced to writing and that the Claimant would need to see a solicitor in order to make this into a binding settlement agreement. That did not happen.

50. The evidence of the emails between the representatives show that the negotiations continued after 6 December, about the remaining terms of the contract. I'm reminded by case law to look at the documentary evidence and I have taken account of the emails between Mr Alexandrou and Miss Rhodes during December, January and February 2023. They show a back and forth of compromise and dispute over various points, but significantly over restrictive covenants. This is not a point which was discussed on 6 December, but became a point of contention between the parties.

51. When Mr Alexandrou wrote to Miss Rhodes on 13 December saying that the Claimant did not want to enter into restrictive covenants, he missed the point, as the Claimant had already agreed to them in 2013 and had continued to work with the Respondent without complaint about them since. This was therefore not a new point and therefore the inclusion of them in the draft settlement agreement was merely a reminder of the status quo.

52. Unfortunately the Claimant either did not see it this way, or wanted to try to remove the existing restrict covenants, and so refused to agree to their inclusion. Equally this was the Respondent's greatest comfort, as Mrs Pantelias was worried about the Claimant using their information to assist a competitor, or to bring negative publicity to the company.

53. Ultimately, this became the sticking point of the negotiation. There were one or two periods of delay due to the Christmas break and Miss Rhodes being ill, but it became clear in February 2023 that neither side would move

their position and therefore the Respondent brought the negotiation to an end.

54. I do not accept the Claimant's submission that there was an agreement and that the Respondent moved away from it. I find that there were elements of agreement, but not a complete agreement.

55. It is also clear that the payment made in December 2022 was not a sum which had been agreed by way of the negotiation. It was a sum more akin to a monthly pay. I do not find that the Respondent made a payment under any agreement other than the contract of employment.

56. The Claimant's evidence that she was aware that to have a concluded agreement she would need to receive legal advice and that she did not visit a solicitor and did not sign an agreement, shows that she knew herself that no legally binding complete agreement was created.

57. There was therefore no concluded contract and therefore no breach of contract.

Employment Judge Cowen
19 June 2024
JUDGMENT SENT TO THE PARTIES ON

.1 July 2024.....

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FOR THE TRIBUNAL OFFICE