



**IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION**

CAUSE NO. G 2023-0023

BETWEEN **ANN GREED** **PLAINTIFF**
AND **PAGET BROWN FINANCIAL SERVICES LIMITED** **DEFENDANT**

IN OPEN COURT

Appearances: **Ms. Ann Greed, in person**
Mr. Bhavesh Patel of Travers Thorp Alberga for the Defendant

Before: **The Chief Justice, the Hon. Justice Ramsay-Hale**

Heard: **15 June 2023**

Draft Judgment circulated: **22 December 2023**

Judgment delivered: **3 January 2024**

HEADNOTE

Statutory Appeals - Order 55 - Appellant commencing appeal by Writ - Application to strike out for non-compliance with the GCR- power of court to allow parties to remedy non-compliance with the rules

Statutory Appeals - time limit for appeal fixed by statute - whether court has power to extend time - matters to be taken into account when exercising discretion to extend time

JUDGMENT

Introduction

1. This is the decision on an application by the Defendant, Paget-Brown Financial Services (“Paget-Brown”) by Summons dated 5 May 2023, to dismiss an action filed by the Plaintiff, Ms. Ann Greed, on 6 February 2023.

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2. The proceedings were commenced by Writ dated 6 February 2023. The contents of the Statement of Claim which accompanied the Writ made it clear that the proceedings constituted an appeal by Ms Greed against the decision of the Gender Equality Tribunal (the “Tribunal”) to dismiss her complaint of discrimination on the ground of pregnancy against Paget-Brown (“Paget-Brown”).
3. As a litigant in person, Ms Greed’s utter failure to comply with the rules governing statutory appeals which are found in GCR O.55 is perhaps unsurprising. The scale of her non-compliance, however, is. It has been exceedingly difficult to navigate the pleaded case, which spans 99 pages and ends with a claim for damages for discrimination, to discern the Grounds of Appeal on which Ms Greed seeks to rely.
4. Her conduct of the proceedings brings to mind the decision of the Supreme Court in *Barton v Wright Hassall LLP* [2018] UKSC 12, in which Lord Sumption, with whom Lord Wilson and Lord Carnwarth agreed (Lady Hale and Lord Briggs dissenting), stated that a litigant in person’s

“lack of representation will often justify making allowances in making case management decisions and in conducting hearings. But it will not usually justify applying to litigants in person a lower standard of compliance with rules or orders of the court. ... The rules do not in any relevant respect distinguish between represented and unrepresented parties...”

The rules provide a framework within which to balance the interest of both sides. That balance is inevitably disturbed if an unrepresented litigant is entitled to greater indulgence in complying with them than his represented opponent. Any advantage enjoyed by a litigant in person imposes a corresponding disadvantage on the other side, which may be significant if it affects the latter’s legal rights, under the Limitation Acts for example. Unless the rules and practice directions are particularly inaccessible or obscure, it is reasonable to expect a litigant in person to familiarise himself with the rules which apply to any step which he is about to take.”

5. There is no question that Ms Greed’s decision to represent herself, ignore the Rules and embark upon these proceedings without seeking any advice has resulted in pleadings which are plainly embarrassing and might have been summarily struck out on that ground. Nonetheless, as Ms Greed is a litigant in person, despite the encouragement of Lord Sumption to be found in the passages cited above, I have given her pleaded case full consideration in determining the application.

Background

6. Ms Greed commenced employment with Paget-Brown as a Client Service Manager on 27 July 2020. She fell pregnant on or about 29 March 2021. On 29 of October 2021, the day she was due to proceed on maternity leave, she was dismissed by Paget-Brown. As a result, her dismissal, Ms

- Greed received “zero maternity leave, zero bonus, her visa was cancelled and she was left without a job days before she was due to give birth”.
7. She was advised by Paget-Brown that she was being terminated with immediate effect because she went into the office outside working hours and sent client files to herself in breach of Paget-Brown policy and diverse confidentiality laws. Ms Greed contends that the purported reason for her dismissal cannot withstand scrutiny as she had, throughout her employment with Paget-Brown, sent files to herself to work on them outside of office hours and the company was well aware of that fact. As Ms Greed’s position amounts to an assertion that the dismissal was unfair, it is unsurprising then that she commenced proceedings against Paget-Brown before the Labour Tribunal.
 8. Ms Greed also decided to pursue proceedings before the Tribunal pursuant to section 33(1) of the **Gender Equality Act** (“GEA”) on the grounds that that she had been discriminated against in the workplace on the basis of her pregnancy ever since Paget-Brown became aware of it and was ultimately dismissed by Paget-Brown so they could avoid paying for her maternity leave.
 9. In her written complaint before the Tribunal, which was as unfocused as the Statement of Claim, Ms Greed asserted, *inter alia*, that a “campaign of discrimination” had been waged against her by Paget-Brown which abolished her post so they could replace her “with a man who could not have babies”.

The Gender Equality Act

10. The statute provides, at Part 2, for protection against gender discrimination. The prohibited grounds of discrimination are set out in section 3 as follows:
 - “3. (1) For the purposes of this Law, a person discriminates against another person on grounds specified in subsection (2) if the first-mentioned person makes, on any of the grounds specified in subsection (2), any distinction, exclusion or preference the intent or effect of which is to nullify or impair equality of opportunity or treatment in any employment or occupation.
 - (2) The grounds referred to in subsection (1) are —
 - (a) sex, marital status or pregnancy; or
 - (b) any characteristic based on gender which appertains generally or is generally imputed to persons of a particular sex or marital status or pregnant state.”
11. The provisions dealing with the prohibition on discrimination in employment are set out in section 4:

- “4. (1) A person who is an employer, shall not in relation to the recruitment, selection or employment of any other person, discriminate against that other person on any ground specified in section 3(2) —*
- (a) in an advertisement of a job;*
 - (b) in an interview or other arrangements made for the purpose of determining who should be offered employment;*
 - (c) in determining who should be offered employment;*
 - (d) in the terms or conditions on which employment is offered; or*
 - (e) in the creation, classification or abolition of jobs.*
- (2) An employer shall not discriminate against an employee on any ground specified in section 3(2) —*
- (a) in the terms or conditions of employment afforded to the employee by the employer;*
 - (b) in conditions of work or occupational safety and health measures;*
 - (c) in the provision of facilities related to or connected with employment;*
 - (d) by denying access, or limiting access to opportunities for advancement, promotion, transfer or training, or to any other benefits, facilities or services associated with employment;*
 - (e) by retrenching or dismissing the employee; or*
 - (f) by subjecting the employee to any other disadvantage.*
- (3) Subsection (1) does not apply to employment for the purposes of a private household.*

12. The statute thus seeks to ensure, among other things, that a woman is not treated unfairly or less favourably because she is pregnant but is assured equality of treatment in the workplace.

The Decision of the Tribunal

13. The Tribunal identified the issues before them as whether Paget-Brown had discriminated against Ms Greed on the basis of her pregnancy:
- (i) in the terms or conditions of employment they afforded her;
 - (ii) in the conditions of her work or occupational safety and health measures;
 - (iii) by denying or limiting her access to opportunities for training, or to any other benefits (e.g. maternity leave and annual bonus) associated with employment;
 - (iv) by abolishing her office; or
 - (v) in dismissing her.

14. The Tribunal noted that with respect to the question of her dismissal, they would consider whether she had been discriminated on the basis of pregnancy and not consider the discrete question of whether it was an unfair dismissal as that issue fell within the remit of the Labour Tribunal.
15. Dismissal: Ms Greed contended that her performance appraisals were good and there had been no issues with her work until Paget-Brown discovered she was pregnant after which they bullied and harassed her to try to force her out before dismissing her on account of her pregnancy. The Tribunal rejected her evidence and found that there were issues with Ms Greed's performance which had been flagged by Paget-Brown before it became known that Ms Greed was pregnant, that these issues related to Ms Greed recording her time to allow the firm to get "*a more realistic view*" of their costs and "*the efficiency and profitability on the funds,*" that these issues were entrenched and had been documented on an ongoing basis throughout the period of April to August of 2021.
16. With respect to the termination of Ms Greed's employment, the Tribunal accepted Paget-Brown's evidence and found as a fact that Ms Greed was terminated for breaching company policy and various laws relating to confidentiality by downloading documentation containing company information, client information and other confidential information and emailing it to her personal computer. As recorded by the Tribunal in its decision:

"It is clear that based on the reason provided by the Respondent, the Complainant's pregnancy had nothing to do with her termination..."
17. Terms and conditions of employment: With respect to Ms Greed's allegation that she was dismissed so Paget-Brown could avoid paying for her maternity leave, the Tribunal found that there was "*no cogent, credible or persuasive*" evidence to support that proposition and the fact that Paget-Brown had renewed her work permit at a cost of \$13,650 just one day prior to terminating her employment was inconsistent with any settled intention to get rid of her so they could avoid paying maternity leave.
18. The Tribunal concluded that Ms Greed had not been discriminated against when she was not paid maternity leave in accordance with the terms and conditions of her employment for the reason that her employment had been terminated and noted again that the question of the fairness of the termination of her employment was not a matter for the Tribunal.
19. Conditions of work and occupational safety and health: With respect to Ms Greed's allegations that she was made to work in conditions that put her under stress and threatened her pregnancy - the "health and safety" issue - the Tribunal found as a fact that:
 - (i) Ms Greed's medical records did not support her assertion that demands had been made on her during the course of her employment which had increased her stress levels and had in turn affected her and her unborn child during the pregnancy;

- (ii) her medical records instead showed there were medical issues with the pregnancy from the outset, unrelated to stress much less work-related stress;
 - (iii) Ms Greed did not advise her health service providers of any stress related issues arising from the workplace or at all;
 - (iv) correspondence between Ms Greed and Paget-Brown showed that she was not stressed but calmly focused on leaving the Islands to travel to the United States for the birth of the child; and
 - (v) it was likely that Ms Greed's stress was related to concerns related to the pregnancy itself which included the possibility that she might miscarry, the risk that this was an ectopic pregnancy and that there were indications of Down's syndrome or spinal complications. experienced during pregnancy among other things.
20. Access to opportunities associated with employment: With respect to Ms Greed's allegation that she had been denied opportunities for training, denied maternity leave, denied an annual bonus to which she was entitled and not allowed to work remotely because of her pregnancy, the Tribunal found as a fact that:
- (i) Ms Greed had received training opportunities;
 - (ii) she was not given maternity leave/pay because her employment had been terminated; and
 - (iii) the issue of the annual bonus was moot as the bonus would be assessed in December, her employment had already been terminated and the scheme was discretionary in any event.
21. With respect to Paget-Brown's refusal to allow Ms Greed to work from home, the Tribunal, having considered Paget-Brown's explanation that they did not have a COVID policy relating to quarantine yet in place, held that some accommodation ought to have been made for Ms Greed to work from home when she isolated as a result of being in contact with someone with COVID, but found that Paget-Brown's failure to do so was not sufficient to prove discrimination on the basis of pregnancy.
22. The abolition of her job: With respect to Ms Greed's allegation that Paget-Brown abolished her job on account of her pregnancy and hired someone to replace her, the Tribunal rejected the proposition that Paget-Brown had hired anyone to replace her. They found that the new hire was employed in an entirely different post and that there was no credible or cogent evidence on which they could find that Ms Greed's job had been abolished on account of her pregnancy.
23. The Tribunal ultimately concluded that Ms Greed had not shown on a balance of probability that her employment had been terminated because of her pregnancy or that she had been treated unfavorably in any aspect of her employment because of her pregnancy and dismissed her claim pursuant to section 35(1)(b) of the GEA, the Tribunal finding that Ms Greed's suspicions were incorrect.

The Grounds of Appeal

24. So far as I can ascertain the grounds of Ms Greed's appeal, she seeks to challenge the Tribunal's findings of fact on the ground that the Tribunal was not entitled to come to the conclusions it did in light of the evidence which had been adduced.

The Defence

25. In its Defence filed to the Statement of Claim, Paget-Brown states in summary that:
- (i) the Statement of Claim does not coherently set out the nature of the appeal or the basis upon which it is said that the Tribunal erred in either law or fact in its Determination;
 - (ii) Paget-Brown refutes any suggestion that that the Tribunal erred in either fact or law; and
 - (iii) the matters raised in the Statement of Claim are simply attempt to repeat all of the points that were made before the Tribunal.

The Present Application

26. Paget-Brown applies to dismiss Ms Greed's putative appeal on the grounds:
- (i) That Ms Greed has not complied with the Rules as she failed to issue a summons for directions at the close of pleadings as required by O.25, r.1; or alternatively,
 - (ii) That the appeal is bound to fail and is liable to be struck out on that basis.

Discussion

27. If I might say, given the manifest difficulties with Ms Greed's pleaded case, her failure to issue a summons for directions is the least of it.
28. A failure to follow the GCR in respect of a summons for direction does not lead inexorably to the striking out of an action. While O. 25, r. 1(4) expressly empowers the court to dismiss the action for want of prosecution if there has been undue delay, the Court may instead treat the application as if it were a summons for directions and give directions for the hearing of the matter: see *White Book*, note 25/L/1 at page 500.
29. In the circumstances where Ms Greed is unrepresented and there has not been any undue delay, the appropriate exercise of the Court's discretion, if this were a *bona fide* Writ action, would be to adopt the latter course and give directions for the hearing of the matter.

30. But this is not a Writ action. The proceedings are intended to be a section 40 appeal from the Tribunal's decision dismissing Ms Greed's claim. Procedurally, although the appeal has not been commenced by originating motion as required by O.55 which deals with statutory appeals, the Court has the power pursuant to O.2, r.1 to order that the proceedings continue as if brought by way of originating motion.
31. O.2, r.1(3) specifically provides that proceedings shall not be set aside on the ground that they were required to be begun by some other originating process. The proper course would be to order that the appeal continue by way of originating motion and give directions for the hearing of the appeal.
32. As to the second limb of Paget-Brown's application, seeking to dismiss the action as it is bound to fail, I note again that this is not a Writ action but a statutory appeal. There is no procedure for striking out an appeal on the ground that it has no possibility of succeeding. The proper course is to hear the appeal and, if the grounds have no merit, the appeal will be dismissed. The application to strike fails on this ground as well.

Appeal out of time

33. Having considered the dates relevant to this appeal, I consider that the proceedings should be struck out as the appeal is out of time. Although the issue was not raised by Counsel for Paget-Brown, it nonetheless falls to be considered, as it goes to the jurisdiction of the Court to hear the appeal.
34. Section 40 of the GEA provides that a person aggrieved by the decision of the Tribunal may appeal within 28 days. O. 55, r.4 (2) provides that the notice of motion setting out the grounds of appeal *must be served* and the appeal entered within 28 days after the date of decision.
35. The effect of the rule is that a statutory appeal which is not filed *and* served within the time limited by the statute is out of time. These proceedings were filed on the last day of the 28 days but not served until 9 February 2023. The appeal is, therefore, out of time.
36. The question which then arises is whether the Grand Court has the power to extend time within which to appeal.
37. GCR O.3, r.5(1) provides that the Court may extend the period within which a person is required or authorized by the rules or by any judgment, order or direction to do any act in any proceedings. Where mandatory time limits are prescribed by statute, however, neither the inherent jurisdiction of the Court nor the provisions of O.3, r.5(1) to extend time may be invoked: *Petch v Gurney (Inspector of Taxes)* [1991] 3 All ER 731, C.A.

38. In *Solomon and five Others v Scotland and Seymour* [2009 CILR 403] Chief Justice Smellie, as he then was, considered the time limit in relation to the filing of election petition and made the following observations which are relevant to the question of whether the 28 day period in the GEA is mandatory, although the issues arising in this appeal may not be of equal public importance:

“56. When matters of real public importance are legislated, it is, moreover, by no means unusual that the courts regard Parliament as having intended that non-compliance by a litigant with statutory time limits in relation to the jurisdiction of the court should result in the court lacking jurisdiction to hear the matter (see, for example, Petch v. Gurney (Inspector of Taxes) (16) approved in R. v. Weir (19) ([2001] 1 W.L.R. at 426, per Lord Bingham of Cornhill).

57. In Petch v. Gurney, Millett, L.J. (in the Court of Appeal) stated ([1994] 3 All E.R. at 738) (in ruling that the 30-day time limit under s.56(4) of the Taxes Management Act 1970 for transmitting a case stated by a Special Commissioner to the High Court was absolute):

“If the only time limit which is prescribed is not obligatory, there is no time limit at all. Doing an act late is not the equivalent to doing it in time . . . Unless the court is given a power to extend the time, or some other and final mandatory time limit can be spelled out of the statute, a time limit cannot be relaxed without being dispensed with altogether . . .”

39. In *R v Weir* to which Smellie CJ referred, the Director of Public Prosecutions lodged an appeal from the Court of Appeal to the House of Lords but it was one day late. The House of Lords held that it had no power to extend time. Where a time limit was laid down and no power given to the extend it, the ordinary rule was that the time limit should be strictly observed.
40. If it were necessary to find support for holding that the time limit in the GEA is mandatory, such support could be found in the fact that the legislature has demonstrated that it can make provisions for appeals which do not lay down any time limit but are instead controlled by Order 55. So, for example, the **Immigration (Transition) Act (2022 Revision)** makes the following provision for appeals in section 23(2):

“23. (2) An appeal may be made to the Grand Court from a decision of the Immigration Appeals Tribunal on a point of law only.”

41. I dismiss the appeal on the basis that I do not have jurisdiction to hear it, as it is out of time.
42. If I were wrong in that, and the time limit in section 40 of the GEA is *not* mandatory, the question which arises is whether I should invite Ms Greed to make an application for an extension of time.

43. When considering an application for extension of time, the Court must consider, *inter alia*, the length of the delay, the reasons for it, whether there is an arguable case for the appeal: see Panton J in *Frank Hall Homes v. Planning Appeals Tribunal and Central Planning Authority* [2001 CILR Note 5].
44. Although I have not heard from Ms. Greed, I feel safe in assuming that the proceedings were not served within 28 days because of her ignorance of the relevant rules. Ignorance of the rules is not an acceptable explanation for delay: see *Barton v Wright Hassall LLP*.
45. Having heard from both parties *in extenso* - Ms Greed made all the points in support of her appeal and Paget-Brown responded in full - I consider that, even if there were good reason for Ms Greed's failure to file and serve the appeal within the 28 days, I would not extend time as the putative grounds of appeal are weak.
46. As already noted, the sum of Ms Greed's challenge to the decision of the Tribunal is that the Tribunal erred in finding the facts that it did and came to the wrong conclusion.
47. It is well established that the appellant appealing against findings of fact by a Tribunal faces an uphill battle. In *The Secretary of State for the Home Department v. AH (Sudan) and others (FC)* [2007] UKHL 49, Baroness Hale said with respect to the challenge to the decision of a specialist tribunal at [30]:

*“To paraphrase a view I have expressed about such expert tribunals in another context, the ordinary courts should approach appeals from them with an appropriate degree of caution; it is probable that in understanding and applying the law in their specialised field the tribunal will have got it right: see *Cooke v Secretary of State for Social Security* [2001] EWCA Civ 734, [2002] 3 All ER 279, para 16. They and they alone are the judges of the facts. It is not enough that their decision on those facts may seem harsh to people who have not heard and read the evidence and arguments which they have heard and read. Their decisions should be respected unless it is quite clear that they have misdirected themselves in law.”*

48. In *Farrar v Rylatt* [2019] EWCA Civ 1864, Coulson LJ pointed out that for a successful appeal to be made against a trial judge's finding of fact:

“...an appellant has to show that there was no evidence to support the findings made, or there was a demonstrable misunderstanding of, or failure to consider, relevant evidence. If all the relevant evidence was considered by the judge then, even if the appellate court might have come to a different conclusion, an appeal against the trial judge's findings of fact will

fail. That is why an appeal against a trial judge's findings of fact is such a high hurdle for an appellant to overcome."

49. On any view, there is very little merit in any of the points of appeal to be gleaned from Ms Greed's lengthy "Statement of Claim" which I do not intend to rehearse. None of the points raise a cogent complaint that the Tribunal found facts that contradicted the evidence or misunderstood or failed to consider relevant evidence - and I stress relevant - in arriving at their determination that Ms Greed had not been a victim of discrimination on the ground of pregnancy while employed at Paget-Brown nor was she terminated because of her pregnancy.
50. No purpose would be served in allowing this matter to go forward to a rehearing except to put the parties to further expense and I would dismiss these proceedings in any event.

ORDER:

51. The action is dismissed.
52. I will hear the parties on costs.



Hon. Justice Margaret Ramsay-Hale
CHIEF JUSTICE