In Summary: a review of summary disposal in light of recent caselaw, Part 5

Caytons
Changing Perceptions

INTRODUCTION

There has been a quartet of interesting recent judgments concerning the summary disposal of claims. This is the fifth in a series of five parts which consider this important jurisdiction with reference to the four decisions.

This note focusses on the case of *Ogedegbe v Simplyhealth People* (2022) EWHC 2694

THE FACTS

Mr Ogedegbe is said to have been an accountant. Simplyhealth People Limited ('People') is a company concerned with recruiting for other companies within the Simplyhealth group. The Claimant applied for a job as a Benefits Consultant at one of the companies, which traded as Simplyhealth ('Simply'). People called him in for interview. In advance of the interview, Simply invited him to prepare a short sales pitch for one of its products, for which it provided a factsheet.

The interview went ahead. Mr Ogedegbe, who does not appear lacking in self-belief, thought his presentation had gone "*excellently well*". But he followed up the interview with an email to Simply and People to say that he had been unable to say much about the levels of cover available, as few details were available on Simply's website. He suggested that they amend it. He did not get the job.

Many have had the disappointing experience of a positive interview followed by a rejection, but few react as Mr Ogedegbe did. His first step was to complain to Simply's CEO. He maintained that his presentation had gone extremely well but that he had not been able to address all of the questions because of deficiencies in Simply's own website. He went on to insist that he was *"the most competent candidate for the…role"* and that he be taken on without further ado.

When this did not result in an immediate job offer, he brought a claim in the Employment Tribunal. He alleged age discrimination. This was because the other interviewee was younger than him. An immediate difficulty, however, was that the other candidate was unsuccessful as well.

Details of the tribunal proceedings are sparse. But Mr Ogedegbe appears to have argued that he was entitled to charge a £20,000 consultancy fee for pointing out what he regarded as errors on Simply's website. On further reflection, he appears to have concluded that he was selling himself short. He noted that People's profits had increased by £1.47m in the previous year. He reasoned that this could be attributed to his pointing out the shortcomings in Simply's website. On that basis, he claimed to be entitled to 50% of the increased profits. The tribunal did not go his way.

Mr Ogedegbe was undeterred. He took his case as far as the Court of Appeal, where it was finally dismissed. He also brought a parallel action in the King's Bench Division. In that action, he sought restitution or damages in the sum of £735,961 based on unjust enrichment. It will probably have been guessed by now that he did so as a litigant in person.

THE APPLICATION

People applied for summary judgment and/or for the claim to be struck out as disclosing no reasonable grounds for bringing a claim and/or as an abuse of process. Its position, adopting the Master's emphasis, was that the claim lacked *any* prospect of success.

THE LAW ON UNJUST ENRICHMENT

To succeed, Mr Ogedegbe would have needed to demonstrate that:

1. People, and not another company within the Simplyhealth group had received a benefit; and that

2. People's enrichment was at his expense and that

3. the enrichment was unjust; and that

4. there was no defence to the claim.

He relied on the concept of 'free acceptance' which itself has three components:

1. that the defendant has knowledge that the purported service had been provided; and that

2. the defendant knew or ought to have known that the benefit was not conferred gratuitously; and that

3. the defendant had the option of rejecting the benefit but nevertheless exercised the free choice to accept it.

THE JUDGMENT

Master Stephens gave summary judgment for Simply. He concluded that the elements of an unjust enrichment claim did not exist. Simply had not received a benefit. It was a recruitment company. It was not part of the insurance sales operation.

The Master concluded that it could be determined as a short point of construction of the sort appropriate to a summary judgment application that the information supplied by Mr Ogedegbe was not capable to being considered a benefit and nor was it his intention to supply the information as part of a commercial transaction. It was clearly part of the interview process. The suggestion that Mr Ogedegbe expected to be paid for his alleged services was made for the first time during the tribunal proceedings when he noticed People's increased profitability. People cannot be said to have appreciated that Mr Ogedegbe expected to be paid for his 'services' when the idea of charging a fee only came to him some time after the event.

The Master followed recent authority such as *Begum v Maran* [2021] EWCA Civ 326 to the effect that it follows from a finding that the claim has no realistic prospect of success that the Particulars disclose no reasonable grounds for bringing the claim and should be struck out. He did not consider it necessary to decide the alternative application to strike out as an abuse of process but indicated that his order would make clear that the claim was dismissed as being totally without merit.

He added that prolonging litigation which is bound to fail is not a sensible way to proceed as it drains resources for all those affected by it. Pursuing such a claim will not assist the claimant and will place an unfair burden on the defendant who is put to the trouble and expense of unnecessary court proceedings.

DISCUSSION

As noted in Part 3, the courts will commonly afford litigants in person an opportunity to rectify a defective statement of case. However, there is a distinction between a case in which the court is simply unable to discern from the Particulars of Claim whether there might be anything in the claim or not, and one which is self-evidently nonsense. This case is an illustration of the willingness of the courts to dispose summarily of claims which fall within the second category.

The problem here was not simply that the Claimant had failed to plead out all the elements of an unjust enrichment claim. It was that the claim had no foundation in fact. It was misconceived on multiple levels. This could be established shortly and without the need for the court to scrutinise extensive documents or hear witnesses give evidence. It was the ideal type of case for a summary disposal application.

Richard Senior
Partner
E: senior@caytonslaw.com