IN THE COUNTY COURT
SITTING AT MEDWAY

Neutral Citation: [2024] EWCC 17
Claim No.: J27YJ551

Sitting via Cloud Video Platform

Date: 19 November 2024

Before:
Deputy District Judge Rose
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B E T W E E N:

Denis Christopher Carter Lunn

Claimant

- and -

The Commissioners for His Majesty's Revenue & Customs

Defendant

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The **Claimant** appeared in person
Rosamund Baker of Counsel, instructed by the **Treasury Solicitor**, for the **Defendant**

Hearing date: 13 February 2024
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This judgment is approved for release to the National Archives for publication.

Judgment

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1. Primarily I offer apologies to both parties for the apparent delay in this matter being listed; the draft judgment was sent to the court by email on 12 May 2024 but was not, for some reason that has yet to be clarified, listed until yesterday.

2. I have had sight of a bundle of 366 pages, a skeleton argument on behalf of the defendant, with a bundle of authorities and had oral submissions from both parties. References to the bundle are rendered as [page] or [page/paragraph].

3. The claimant is a former Chartered accountant, having relinquished his practice following a prosecution.

4. The defendant is the non-ministerial department of the government of the United Kingdom tasked with the collection of various taxes and levies, including that of Value Added Tax ("VAT") at the prevailing rate, within this judgment the defendant is referred to as "HMRC" or "the defendant".

5. This claim centres around a claimed overpayment of VAT, and subsequent claim for interest upon the said overpayment.

6. Prior to commencing the hearing there were four matters to be dealt with;

    i. An application from the claimant dated 7 November 2023 to amend the claim and consequently, the time estimate ("the claimant's application") at [39-43],
    ii. An application from the defendant dated 6 November 2023 to amend the defence pursuant to CPR17.1(2)(b) ("the defendant's application") at [26-30],
    iii. A matter raised by me as to the possibility of apparent bias and the need for recusal and,
    iv. The jurisdiction of the court.

7. The claimant's application was not marked up by the court in the papers before me; however it was based upon there being in excess of thirty exhibits and two lever-arch files of documents, as well as a potential claim for stress. It was agreed between the parties that if there was duplication of documents between the various bundles filed at court and that it was unlikely that the matter could not be disposed of in time. I explained that in the absence of medical evidence any such injury claim would be doomed to failure. Consequently, this application was withdrawn.

8. The defendant's application was made on 6 December 2023, to amend their defence to reflect a payment made to the claimant in the sum of £3027.77 in respect of VAT credits, interest, and fixed costs. This amendment was agreed by consent and re-service, naturally, was waived. The claimant withdrew his opposition and his request for costs, on the basis that it was noted his damages claim remained extant.

9. These amendments were mainly typographical in nature, including updating the defendant's name to that shown within this judgment, from 'HM Revenue & Customs', and noting that the defendant had already paid 2% above base rate, which was in excess of the 0.5% claimed.

10. The third matter was somewhat more nuanced as the claimant had raised issue with various employees of the defendant, particularly at their Leeds office. I raised with the parties that my wife was one of HM Inspectors of Taxes, based at the Leeds office during the currency of his dispute, albeit in a different team to that dealing with the claimant. I raised this in the interests of ensuring that the claimant was aware of this potential link. I confirmed the department in which my wife worked and the names under which she has been known. I explained that I was aware of the potential

suggestion of apparent bias, per *R v Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet Ugarte (No. 2)* [2000] 1 AC 119, and *Magill v Porter* [2001] UKHL 67, to the reasonable and fair-minded observer and invited the parties to make representations or request my recusal. Neither party took this issue, and both were content to proceed, and preferred that the matter be heard rather than be adjourned.

11. The final issue to be dealt with was that of jurisdiction; I raised with the parties that the correct measure of taxation, or the computation of the same, did not fall within the purview of the county court and queried if this matter ought to be before the Tax Chamber of the First Tier Tribunal. The parties agreed that, as this was a claim for damages not simply interest, and that whilst the measure of damages may be by reference to the applicable supplements and interest rate, the county court had jurisdiction on the damages claim pursuant to the governing law and jurisdiction clause at paragraph 1.10 of the settlement agreement. Both parties rely, in differing ways upon the Value Added Tax Act 1994 ("the 1994 Act") and the County Courts Act 1984 ("the 1984 Act").

12. The claimant has advanced various claims for injury, VAT credits that were due for the correctly invoiced work, and that consequently, these attract compensatory payments as well as interest under the 1994 Act from 2013 to the date of trial, and interest under the 1984 Act from the conclusion of the settlement agreement in 2020 to the date of trial. In addition he seeks the fixed costs of pursuing these VAT claims, as well as costs of this action to be assessed by reference to the litigant in person cost rate of £19 per hour.

13. The defendant posits that the claimant, whilst being entitled to the credits and fixed costs, is only entitled to the statutory interest found within s.85 of the 1994 Act and that any subsequent claim is defeated by the terms of the settlement agreement.

14. The claimant had for a number of years practiced as an accountant and tax advisor, engaged in making and filing VAT returns for his own business, Christopher Lunn and Co., as well as on behalf of his clients.

15. It is not disputed that, due to a criminal investigation and prosecution by the defendant, the claimant served a custodial sentence for offences of fraud in his dealings, both on his own behalf, and on behalf of his clients.

16. The claimant instituted proceedings within the First Tier Tribunal initially and a settlement agreement pursuant to s.85 of the 1994 Act was entered into by the parties on 15 January 2020. This agreement is found at page [288-291] of the bundle and states at recital D that the parties are desirous of settling the appeal particularised in paragraph 1, and that such an agreement is to be binding.

17. Paragraph 1, and the 10 subparagraphs pertaining to the same, of the agreement detail the appeals included within the ambit of the settlement, namely those before the First Tier Tribunal under references TC/2019/04086 and TC/2019/04088, that the parties respectively, in consideration for the agreement, agree not to pursue or amend any further claims, most particularly the periods in question between September 2013 and January 2016, against each other in respect of these sums and, finally, that this agreement is binding upon the parties upon the conclusion of 30 days from execution in the absence of a notice of repudiation.

18. Paragraph 3 of the agreement is a standard 'whole agreement' clause; confirming that no prior oral or written agreements or representations are to be incorporated into the agreement.

19. The claimant seeks;

    19.1 Damages for injury due to the proceedings and conduct of HMRC,
    19.2 Repayment of overpaid VAT as detailed at [11] in the sum of £3028.40,
    19.3 Repayment of supplements, calculated at 5%, to these refunds as detailed at [12] in the sum of £1413.15,
    19.4 Interest upon both at 0.5%, as detailed at [13-14] in the sum of £332.88. This sum includes £60.09 interest upon the supplement payments.

20. The defendant has already made payment of the sum of £3027.77, being the adjusted sum due to the claimant by reason of the amended calculation after an error in the claimant's favour was discovered, together with £245.07 of interest calculated at 2% above base rate, and £285 in respect of costs, and this was paid on 15 March 2023. The details regarding this recalculation are found in the witness statement of Stefan Tosta on behalf of the defendant, most particularly at [267-270].

21. Both parties make reference to the 1994 Act, s.85 which states, inter alia,

    "s.85 *Settling appeals by agreement.*
    (1) Subject to the provisions of this section, where a person gives notice of appeal under section 83 and, before the appeal is determined by a tribunal, and HMRC the appellant come to an agreement (whether in writing or otherwise) under the terms of which the decision under appeal is to be treated—

        (a) as upheld without variation, or
        (b) as varied in a particular manner, or
        (c) as discharged or cancelled, the like consequences shall ensue for all purposes as would have ensued if, at the time when the agreement was come to, a tribunal had determined the appeal in accordance with the terms of the agreement.

(2) Subsection (1) above shall not apply where, within 30 days from the date when the agreement was come to, the appellant gives notice in writing to HMRC that he desires to repudiate or resile from the agreement.

(3) Where an agreement is not in writing—

(a) the preceding provisions of this section shall not apply unless the fact that an agreement was come to, and the terms agreed, are confirmed by notice in writing given by HMRC to the appellant or by the appellant to HMRC, and
(b) references in those provisions to the time when the agreement was come to shall be construed as references to the time of the giving of that notice of confirmation.

(4) Where -

(a) a person who has given a notice of appeal notifies HMRC, whether orally or in writing, that he desires not to proceed with the appeal; and
(b) 30 days have elapsed since the giving of the notification without HMRC giving to the appellant notice in writing indicating that they are unwilling that the appeal should be treated as withdrawn, the preceding provisions of this section shall have effect as if, at the date of the appellant's notification, the appellant and HMRC had come to an agreement, orally or in writing, as the case may be, that the decision under appeal should be upheld without variation.

(5) References in this section to an agreement being come to with an appellant and the giving of notice or notification to or by an appellant include references to an agreement being come to with, and the giving of notice or notification to or by, a person acting on behalf of the appellant in relation to the appeal.

22. It is clearly stated at s.85(2), and within the agreement itself, that any notice to repudiate the settlement agreement must be lodged within 30 days from execution.

23. These proceedings were instituted on 2 August 2022, being the issue date on the claim form, this is plainly outwith the 30-day period detailed in s.85(2), I am not invited by either party to find that the settlement agreement has been repudiated, or that any aspect of the agreement ought to be severed as unenforceable.

Judgment

24. The claim is dismissed for the following reasons;

24.1 The claim for damages for stress or mental injury that was intimated but not

fully particularised has no arguable grounds; no medical evidence has been advanced, nor has the relevant Pre-Action Protocol been followed; consequently this head of loss was sensibly abandoned by the claimant.

23.2 The claimant has not repudiated the settlement agreement, either within the prescribed time pursuant to s.85(2) of the 1994 Act, nor under paragraph 1.10 of the agreement, and he has not attempted to do so during the hearing. As no such repudiation has been effected, paragraph 3 of the agreement is effective and that agreement constitutes the entire agreement between the parties, with further claims being precluded by the operation of paragraph 1.9. That agreement has resulted in the payment made by the defendant to the claimant on 15 March 2023; the agreement did not make provision for interest.

23.3 The claim for interest under the 1984 Act is dismissed due to the operation described in paragraph 23.2 of this judgment; the entire agreement is a self-contained settlement, albeit with no date for completion. Accordingly, and in a similar manner to offers made under CPR36, it is a 'self-contained code' and inappropriate for the court to impute either a date by which payment ought to be made, or a rate of interest to be applied. This is a regulatory settlement agreement between financially sophisticated parties, both acting in business capacities; the court has no power to alter the terms of this agreement if one party decides that they have struck a poor bargain, indeed, neither party seeks to repudiate this agreement.

23.4 The claim for costs at the litigant-in-person rates is dismissed for two reasons; primarily and as a matter of law; costs follow the event; as the claimant has failed in his claim, he is not entitled to costs. In any event, pursuant to CPR 27.14(2)(g), as this matter was allocated to the small claims track and the court has made no finding of unreasonable conduct, even if the claimant had been successful, these costs would not have been recoverable.

Order

1. Defendant name is amended to 'Commissioners for His Majesty's Revenue and Customs', reservice dispensed with.
2. Claim dismissed.

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