

IN THE COUNTY COURT
AT PLYMOUTH

Case No: K90PL007

Plymouth Combined Court Centre
The Law Courts
Armada Way
Plymouth
PL1 2ER

Date: 24 May 2024

Start Time: 11.33 Finish Time: 12.37

Before:

HIS HONOUR JUDGE MITCHELL
(Sitting as High Court Judge)

Between:

ICELAND FOODS LIMITED

Applicant

- and -

TERESA BIRCH

Respondent

MISS JUDITH BURNS for the Applicant
THE RESPONDENT appeared In Person

Approved Judgment

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HIS HONOUR JUDGE MITCHELL:

INTRODUCTION

1. I am dealing with contempt proceedings brought by Iceland Foods Limited against Teresa Birch, arising from what is alleged to have been, in effect, a fraudulent attempt to claim damages.
2. The Applicant, today, is represented by counsel, Miss Burns, and Miss Birch appears in person.

BACKGROUND

3. I will say something of the background because it will mean I will not have to repeat myself when I come back later to think about sentence.
4. There was an incident which all this centres on, which occurred on 2 January 2023 at the Claimant's Paignton Food Warehouse. I say "food warehouse", I think that is simply a name, it is not a warehouse as such, it is effectively a food store.
5. Miss Birch was present as a customer and, according to the Incident Report Form that was filled out at the time at the store, Miss Birch effectively had said that she tripped over the handle of a dump sack containing cardboard, which was on the floor, hidden beside a cage.
6. That led, on 24 February 2023, so about a month later, to solicitors instructed by Miss Birch submitting a claim notification form stating that she had caught her right foot on a dump sack, lost her balance and fallen forward, sustaining bruising and swelling to her right knee, left hand and bruising to the ligaments of the left hand, which had formed a lump.
7. Essentially, what Iceland are saying in this is that this was in fact a fraudulent claim, and it bases that view on the CCTV footage that became available from what was captured in the store.
8. The contempt alleged is on the basis of interference with the due administration of justice and, as such, it is the sort of application that requires permission from the High Court; that is in accordance with what is called Civil Procedure Rule 81.3. That was given in this case by HHJ Kelly, sitting as a Deputy High Court Judge, on 14 November last.
9. It is a case in which obviously Miss Birch has rights, because it is a contempt application and her liberty is at stake. Accordingly, the Court, and indeed Iceland, has taken steps to make sure Miss Birch is aware of her rights, particularly in respect of the rights to representation, to public funding and to silence and not to incriminate herself. Miss Birch tells the Court, and I have no reason to think otherwise, that she has tried to obtain representation but, unfortunately, has not been able to secure it, and that may be a reflection of the public funding position in the community at this time.
10. Essentially the allegations, which are very much linked together, are twofold.

11. One is submitting the Claims Notification Form in order to induce payment of damages in circumstances where there was no genuine accident. The second, making a false statement of truth in the Claims Notification Form without an honest belief in its truth. I think, for sentencing purposes, I would treat those, in due course, effectively as the same thing.

THE EVIDENCE

12. In terms of evidence, I do not need to dwell in detail on this for reasons I am going to come to in a moment, but the application is supported by a statement of Nicholas Pearson, who I think is a Technical Claims Manager. The primary evidence is the CCTV footage and I have been supplied with the footage by way of two links. One encapsulates, in effect, the totality of the time that Miss Birch spent in the Store and the other is a shortened version of the actual fall. I need not go into the detail of that other than to say, unfortunately for Miss Birch, it does appear to show, (which is not in reality contested) what I might call a “staged fall”.

MISS BIRCH’S POSITION

13. Miss Birch appears today before the Court and is apologetic.
14. She says this really is not the person that she is. She has admitted the allegations and does not wish to contest them; hence I have not had to go through the evidence in any detail.
15. She tells me, nonetheless, she cannot remember clearly what happened and that she has been suffering with her mental health for some time, and that remains the position.
16. I have been clear with her in understanding whether she is suggesting that her mental health caused her to act in the way that she did or whether she is asking me to bear in mind her mental health in terms of mitigation, and she has been very clear it is the latter and, indeed, it would be difficult to understand how her mental health, in itself, would have led her to stage the fall that one sees in the CCTV. So I am approaching this on the basis I will very much bear in mind her mental health when I come to the appropriate sentence.
17. I am going to pause at this point because that effectively deals with what I might call “the liability side” of the contempt issue.
18. The next part, stage two, is the sentencing exercise, which I have not yet considered and I understand that Miss Burns is going to supply me with certain Authorities which might help to guide me as to the right way forward.

LATER

19. I am now dealing with sentencing pursuant to comments I have already made which follows on from Miss Birch’s admissions of the two allegations of contempt before the Court and, just, again, to restate those for the purposes of the sentencing exercise, the first was submitting the Claims Notification Form to induce payment of damages in circumstances where there was no genuine accident and, second, making a false statement of truth in that Claims Notification Form without an honest belief in its truth.

20. As I indicated, I think, when I paused at the end of what I called “stage one”, before going on to the sentencing remarks, I am treating those two allegations effectively as being the same thing. They arise from the same incident and the same claim.
21. The starting point in considering sentence is for the Court to consider culpability and then harm, then take a provisional view as to what is the correct way forward and then to factor in any aggravating/mitigating factors, and, at the end of all of that, if the Court is still looking at, potentially, a custodial sentence, to consider whether that should be suspended.
22. So the start is culpability for what has happened, and it seems to me that, in that respect, this was plainly a dishonest claim. It was an attempt to defraud the Applicant and/or its insurers. It did not get very far, it is fair to say, because the claim was withdrawn rapidly after the production of the CCTV footage, but the reality is that it might well have been persisted with, if it had not been for that early production.
23. It seems to me if one looks at what I might call the “Lovett Matrix”, that is the matrix which was approved in the *Lovett v Wigan* case, this would be the equivalent of what is referred to there as a Category B case. It is falling between the very bad behaviour in Category A and the very minor behaviour at Category C.
24. So far as harm is concerned, this was a low-level claim in the sense of the damages arising would have been limited because the injuries that were being suggested were not that significant. It seems to me the damages were likely to have been in what I might call the low thousands at best.
25. I appreciate that is not the end of it in terms of harm, because no doubt Iceland and/or its insurers are concerned about the corrosive impact of members of the public making false claims, because these do not happen in isolation; they have a cumulative effect, both on the financial position of those who are in receipt of these claims but also the administration of justice generally.
26. Bearing that in mind, but bearing in mind also, as I say, the limited value, potentially, of this claim, I would call this a Category 2 harm case, again if I were to adopt the Lovett Matrix formulation.
27. So, according to the ‘Lovett Table’, in so far as that is referable to a case of the present type, that gives a range of potential penalties between simply adjourning sentence on the one hand, to three months’ imprisonment on the other.
28. I had a quick look at the Criminal Sentencing Guidelines for fraud cases. Given this would have been, to my mind, a value of below £5,000, it would have been in a Category 5-type harm case. That would, just as a comparison, point to a community sentence. I do not have that option available to me because I am sitting in the Civil Courts and in the Civil Courts the only options, effectively, are either adjournment, a fine or a sentence of imprisonment. There is no community option.
29. The criminal guidelines for fraud, of course, do not take into account the interference with the administration of justice aspect, and I have been taken, helpfully, by Miss Burns, to a number of Authorities which give examples of how the Courts have dealt with not dissimilar situations in the past. Further, there has also been some guidance in the Court of Appeal.

30. The most helpful guidance in a broad sense seems to me to arise in the case of *Liverpool Victoria Insurance Co. Limited v Cann* (sic?), and a practice note equally allied to that 2019 case. In the case this was said by the Court of Appeal, and I am quoting from paragraphs 59 and 60:

“We say at once, however, that the deliberate or reckless making of a false statement in a document verified by a statement of truth will usually be so inherently serious that nothing other than an order for committal to prison will be sufficient. That is so whether the contemnor is a claimant seeking to support a spurious or exaggerated claim, a lay witness seeking to provide evidence in support of such a claim or an expert witness putting forward an opinion without an honest belief in its truth.”

31. They go on to say:

“Because this form of contempt of court undermines the administration of justice, it is always serious, even if the falsity of the relevant statement is identified at an early stage and does not in the end affect the outcome of the litigation. The fact that only a comparatively modest sum is claimed in the proceedings in which the false statement is made does not remove the seriousness of the contempt. The sum in issue in the proceedings is however relevant ...”

32. So, bearing in mind what I think I glean from that, which is the strong requirement for a deterrent, in effect, for this sort of behaviour, it seems to me a fine would not be sufficient, and the starting point, it seems to me, does point very much to a custodial sentence, which the Court of Appeal was making plain there was what would ordinarily be imposed, subject to the Court’s overall discretion.
33. A starting point, bearing in mind the Lovett formulation, in terms of length of sentence, and I stress this is only a starting point at the moment, it seems to me would be in the nature of eight weeks or thereabouts.
34. I have then got to think about aggravating factors.
35. On the one hand, in that respect, this was an opportunistic event. I do not think that, for one moment, Miss Birch entered the Iceland store intending to perpetrate a fraud. It seems to have come upon her when she was in the Store itself. But, nonetheless, it was then followed through, with solicitors being instructed and a claim being promoted.
36. On the other hand, in terms of mitigation, Miss Birch has told me about her mental health position, and that is evidenced by a letter from her general practitioner, which I have already quoted in discourse with Miss Birch. That is a letter dated 15 February 2024. It refers to Miss Birch’s history of mental health issues, that she is known to suffer with depression, there was some confusion because she had been switched from one particular type of antidepressant to another, and what that resulted in for a period was she continued to take two at the same time, there was inadvertent “overdosing” for a period of time, and that caused some issues with mental clarity and confusion. That is not to say this is an excuse for the offence having been committed, but I have asked

Miss Birch whether her mental health condition continues and she confirms that it does, and she remains on antidepressants.

37. She is also in receipt of PIP payments, and that is due to an arthritic condition.
38. Furthermore, this is a first offence. Indeed, Miss Birch tells me this is the first time that she has been in a Court itself for any reason whatever. There has been, on that basis, no previous offences, indeed of any sort.
39. She is clearly remorseful and has admitted the allegations today. Indeed, it might be thought that an earlier indication in an acknowledgement of service which was at an early stage of the case, it seemed, or one reading of that might have been that she was then admitting the offence subject to the impact of her mental health.
40. So all of those factors would lead to some rowing back, it seems to me, from the starting point in terms of length of sentence, and would probably reduce the length then to something in the region of four weeks or thereabouts.
41. The issue then is whether that is going to be imposed immediately or is it going to be suspended. This really seems to me to be very much, as often is the case, the crux of things.
42. The focus, again, seems to me to be very much on Miss Birch's mental health and the fact that this is a first offence and it is very unlikely to be repeated. There is also some impact on a third party, in that she tells me that she is helping to care for a diabetic friend and that sometimes involves staying overnight and the like.
43. Overall, my view is that this is an appropriate case for imposing a suspension, so I am not going to impose an immediate custodial sentence, albeit I recognise the seriousness of what has taken place. That is recognised by the fact that it is a sentence of imprisonment, but it is going to be suspended. So it is a sentence of four weeks, but suspended for one year.

LATER

44. Looking at the costs schedule, it seems to me that it is expensive, but it is inevitably going to be expensive because of, as I say, the rather elongated process that has been involved. The only reduction I would propose to make is £1,000 in respect of counsel's fee for the skeleton, because I think that ought to be included in the brief at £3,000. So I am going to reduce the figure to £17,194.69. I am going to say payable within twenty-eight days. That is not to mean, as I have just said, that I expect that to happen, but it gives Miss Birch an opportunity to make a proposal to Iceland, putting forward details of her financial circumstances, and either that will be agreed, which is fine, because the parties can agree how this is going to be repaid, or, if there is an ongoing issue, then Miss Birch can make an application to the Court for an instalment arrangement, producing some details of her financial position, and the Court will then deal with it as appropriate. But the order will be payment within twenty-eight days at this stage.

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(This judgment has been approved by the Judge.)

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