Neutral Citation Number: [2022] EWHC 3010 (KB)

Case No: QB-2021-003315

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25 November 2022

Before:

BRUCE CARR KC
(Sitting as a Deputy Judge of the High Court)

- -

Between:

GODSTIME BASSEY IDNEKPOMA	**Claimant**
- and -	
AMAZON UK SERVICES LIMITED	**Defendant**

- -
- -

Claimant – **In person**
Ms Jane Russell (instructed by **Eversheds Sutherland (International**) **LLP)** for the **Defendant**

Hearing dates: 31 October – 1 November 2022

- -

Approved Judgment

Bruce Carr KC:

Introduction:

1. By a Claim Form dated 6 August 2021, the Claimant brought proceedings against Amazon UK Services Limited ("**Amazon**") and a Second Defendant, PM Recruitment ("**PMP**"). The Claim Form described the claims as being "Breach of contract, conspiracy, negligence, intentional infliction of distress, depression (personal injury), forgery, whistleblower" and assessed the value as being "Up to £10,000,000 (million British pounds)" against Amazon and "Up to £2,000,000" against PMP. Both Defendant's resisted the claims brought against them. In its Defence, dated 22 November 2021, Amazon pleaded that:
    a. The contract claim was not understood and that there never was a contract entered into between Amazon and the Claimant;
    b. The claims based on conspiracy and forgery were also not understood, lacked particularity and were denied in any event;
    c. The claims in negligence/for personal injury were again not understood but to the extent that Amazon owed the Claimant a duty of care, that duty had not been breached;
    d. There was no jurisdiction in the High Court to hear a whistleblowing claim.

2. PMP's Defence, dated 20 December 2021, asserted that it was in fact the wrong Defendant as the Claimant's dealings had been with a different corporate entity. All of the Claimant's claims were denied in any event. Whilst there is (or was) clearly a dispute about the correct identity of the Second Defendant, I will refer to "PMP" throughout this judgment and in particular in relation to the recruitment process which is dealt with below, irrespective of whether this is in fact the correct Defendant.

3. Both Defendants set out reasons as to why the Claimant's claims should be dismissed – Amazon pleaded that the claims "contain insufficient detail, are insufficiently precise and contain no realistic prospect of success and Amazon intends to make an application for summary judgment in respect of them." PMP pleaded that the claims against it "should be struck out pursuant to CPR 3.4(2)(a), (b) and/or (c); and/or summary judgment should be entered in [PMP's] favour pursuant to CPR 24.2."

4. On 31 January 2022, Amazon issued an application to strike out the Claimant's claims under CPR Part 3.4 or alternatively for summary judgment under CPR Part 24. On 2 February 2022, PMP issued an application in similar terms in respect of the claims against it.

5. Also on 1 February 2022, the Claimant issued a contempt application against Amazon. The nature of the contempt was described as "false statement in the defense" (sic). The summary of facts alleged to constitute the contempt were described by the Claimant as follows:

> "The first defendant have (sic) stated that I never met the conditions for the parmanent (sic) offer but this is clearly a lie, which is proven by the email sent by the second defendant to the first defendant, it states 'we did advice (sic) him we would still

honour his blue badge subject to him satisfying his employment conditions – which he has now done'. Blue badge in this sentence refer (sic) to my parmanent (sic) contract."

6. By an order dated 17 May 2022, Mr Justice Soole listed the summary judgment/strike out applications issued by the two Defendants to be heard before a High Court Judge on 7 July 2022. He also ordered that, in the event that Amazon issued and served an application to strike out the Claimant's contempt application by 10 June 2022, that would be heard by the same judge immediately after the summary judgment/strike out applications.

7. Amazon duly issued its application to have the Claimant's application dismissed or struck out on the final day specified in the order of Mr Justice Soole.

8. The various applications then came before Mr Dexter Dias QC (as he then was) sitting as a Deputy Judge of the High Court on the date set by Mr Justice Soole. Mr Dias however recused himself from hearing the applications as a consequence of which they were relisted for a two-day hearing on 31 October and 1 November 2022 before me.

9. In the event, Proceedings against PMP were however resolved under the terms of a consent order, the details of which were kept between the parties. The hearing before me was therefore confined in terms of strike out and/or summary judgment to the application brought by Amazon. I also had before me, Amazon's application to have the contempt application struck out.

Legal Framework

10. Although the Claimant appeared in person, I do not think that from the perspective of defining the relevant legal framework, that he has been at any disadvantage. The applicable principles are well-established and in this case did not give rise to the need for any particular legal analysis. They have been helpfully summarised in the Skeleton Argument prepared by Ms Russell on behalf of Amazon.

11. Dealing first with the strike out application, the starting point is CPR Rule 3.4, the relevant parts of which provide as follows:

> "Power to strike out a statement of case
> *3.4*
> *(1) In this rule and rule 3.5, reference to a statement of case includes reference to part of a statement of case.*
> *(2) The court may strike out a statement of case if it appears to the court –*
> *(a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;*
> *……*
> *(5) Paragraph (2) does not limit any other power of the court to strike out a statement of case.*
> *(6) If the court strikes out a claimant's statement of case and it considers that the claim is totally without merit –*

(a) the court's order must record that fact; and
(b) the court must at the same time consider whether it is appropriate to make a civil restraint order."

12. The approach to be taken on such an application has been helpfully set out by Lewison J (as he then was) in ***Easyair Limited v Opal Telecom Limited [2009] EWHC 339 (Ch)*** at paragraph 15 as follows:

> *"The correct approach on applications by defendants is, in my judgment, as follows:*
> *i) The court must consider whether the claimant has a "realistic" as opposed to a "fanciful" prospect of success:* ***Swain v Hillman*** *[2001] 2 All ER 91;*
> *ii) A "realistic" claim is one that carries some degree of conviction. This means a claim that is more than merely arguable:* ***ED & F Man Liquid Products v Patel*** *[2003] EWCA Civ 472 at [8]*
> *iii) In reaching its conclusion the court must not conduct a "mini-trial":* ***Swain v Hillman***
> *iv) This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents:* ***ED & F Man Liquid Products v Patel*** *at [10]*
> *v) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial:* ***Royal Brompton Hospital NHS Trust v Hammond (No 5)*** *[2001] EWCA Civ 550;*
> *vi) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case:* ***Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd*** *[2007] FSR 63."*

13. Turning to the provisions of the CPR relevant to the contempt issue, CPR Part 81.3(5)(b) provides that permission to make an application is required:

> "*where the application is made in relation to an allegation of knowingly making a false statement in any affidavit, affirmation or other document verified by a statement of truth or in a disclosure statement*."

14. In the present case, the alleged contempt is to be found in Amazon's Defence filed in these proceedings on 22 November 2021. The Defence contains a Statement of Truth in the usual format and signed by Alex Price, Regional Senior HR Manager on behalf of Amazon.

15. Whilst the power to strike out an application for contempt was expressly set out in paragraph 5 of the Practice Direction to RSC Ord 52 and has not been expressly included within CPR Part 81, I accept, based on what was said by Judge Eyre QC in *Taylor v Robinson [2021] EWHC 664 (Ch)* that the Court retains the power to do so as part of its inherent jurisdiction pursuant to which it has the power "to control its own proceedings so as to prevent abuse of its process" (per Judge Eyre QC at paragraph 43).

Relevant factual background

16. Although there are some factual disputes between the Claimant and Amazon, there are some matters that are uncontentious as follows:
    (1) In the late summer/early autumn of 2018, Amazon was looking to recruit employees to work at its Tilbury warehouse premises ("**Tilbury**"). PMP was engaged to find the necessary staff who were to be recruited on permanent Amazon contracts;
    (2) The Claimant applied through PMP for such a role and was made an offer on 21 September 2021 which was said to be:
        "…conditional on and subject to Amazon receiving…..(ii) confirmation (prior to joining) of your eligibility to work in the UK"
    (3) The offer letter did not specify a start date but said that the Claimant would:
        "…be contacted regarding a date for your 'Day Zero' Amazon Orientation Day'.
    (4) In order to access Tilbury, permanent employees were given a security pass known as a "Blue Badge". Amazon also used agency staff employed by PMP to work at Tilbury on a temporary basis – temporary agency staff (who were not directly employed by Amazon) were given access to Tilbury via a "Green Badge."
    (5) Whilst the Claimant worked at Tilbury between October 2018 (or thereabouts) and 31 December 2018, at no time was he issued with a Blue Badge. He used the Green Badge that was issued to him in order to access the premises.
    (6) On 3 December 2018, the Claimant emailed Mr Ashwin Vara, Branch Manager at PMP stating as follows:
        "I recently wrote to you about the recruitment process. I now feel that I have been based on my race since there haven't been any reason given to me why the parmanent (sic) role I initially applied for wasn't given to me, although I was given a conditional offer and passed all the checks that was (sic) required."
    (7) Mr Vara replied the same day that:
        "We have advised you previously that you missed the cut off date with regard to blue badge hiring as our ECS check took longer than expected to complete and sent back to us. In the circumstances, we offered a

temporary role which you accepted. Please also be advised that your original offer was a conditional offer and not an offer of employment."

(8) On 31 December 2018, the Claimant was working at a picking station at Tilbury. He was standing in the vicinity of a ladder that was hit by a robot used to move goods around the premises. Shortly thereafter, the Claimant reported that:

> "The ladder used for safe picking was moved by the robot and it hit me on my legs. It happened so fast and I was too shocked with fear to know how it happened."

(9) CCTV footage of the incident showed that the Claimant had not in fact been hit by the ladder at all. He was standing about 1 metre away from it when it was hit by the robot. He then walked to a nearby computer screen and made an entry on it before then sitting on an upturned box that was used for picking purposes;

(10) The Claimant nevertheless left the premises that day in an ambulance, having described the pain to his right shin as being at 6 on a scale of 1 to 10;

(11) The Claimant has not returned to or done any work at Tilbury since 31 December 2018;

(12) On 18 January 2019, the Claimant issued proceedings in the Employment Tribunal ("**ET**"), initially against PMP only, in which he claimed that he had been discriminated against on grounds of both age and race. In his details of claim, he identified PMP as his employer and stated that he had:

> "…. been given a conditional [contract] subjected (sic) to dibs (sic) and my right to work in the UK."

(13) He also stated that, after a short period of delay, that he "would have to register as a temp worker as the checks took too long. I refused and said this was discrimination but the manager spoke to me in a reasonable manner and said that I will only be a zero hours contract for four weeks and after that four weeks, I will automatically be made permanent."

(14) He went on in the same Claim Form to describe the incident on 31 December 2018 in the following terms:

> "For putting my life at risk and not making sure the equipment I was using prior to the start of my shift and leading to an incident which occurred around 9.30 am on 31/12/2018 which resulted to an episode of me suffering shock, stress and anxiety…..my employer…was quick to take my work ID badge off me whilst I was still being rolled on a wheel chair and disoriented of time and space."

(15) By an order dated 17 December 2019, Employment Judge Ross ("**EJ Ross**") ordered that the Claimant should pay a deposit order in respect of his Tribunal claims, including 2 claims relating to the alleged provision of equipment on 31 December 2018 that was not safe;

(16) Given that the Claimant then failed to pay the deposit due under the order of 17 December 2019, those claims were then struck out by order of EJ Ross dated 11 February 2020;

(17) The Claimant's remaining claims of race discrimination and victimisation were then struck out by Regional Employment Judge Taylor ("**REJ Taylor**") on 14 May 2021, the Claimant having failed to comply with the terms of a further deposit order that was made against him on 7 June 2021;

(18) The Claimant then applied to the Tribunal for reconsideration of that decision. The application was dismissed by REJ Taylor by order and reasons sent to the parties on 19 July 2021;

(19) In her Reasons for her decision, REJ Taylor recorded the following:

a. Paragraph 21 - the Claimant's claims of unfair dismissal against Amazon had been struck out as it had never employed him

b. Paragraph 29 – in support of an application to strike out the Claimant's claims which was heard on 9 March 2021, Amazon had produced a copy of the CCTV footage of the incident that occurred on 31 December 2018;

c. Paragraph 30 – "The [CCTV] footage shows that the ladder did not touch [the Claimant] or injure him. On the day the Claimant had even insisted that an ambulance was called. Despite knowing that he had not been struck by the ladder, in the Claimant's correspondence to [Amazon] and to the Tribunal, the Claimant had claimed that he was 10-20 seconds away from death because of [Amazon's] use of unsafe equipment. The Claimant had continued to accuse [Amazon] of deliberately endangering his life and had made outlandish claims that its employees had planned to have him killed."

d. Paragraph 60 – "Focussing on the particular allegations and arguments…..the reason for the decision to order a deposit was that the Claimant reported to the Respondent that he had been struck and injured in a workplace accident. He continued to insist that this had happened even when shown CCTV footage disproving that the event had occurred in the way that he alleged. The Tribunal was and is satisfied that the Claimant was willing to persist in giving an untruthful account and make false allegations about this event…"

17. In addition, to the above, there are a significant number of factual matters that are in dispute, in particular on the question of whether a number of apparently contemporaneous documents were forged by Amazon and/or PMP or were the product of a conspiracy between them. These issues feature heavily in the pleaded claims which the Claimant has brought in this Court – I address them below.

The Claims brought in the present proceedings

18. Whilst the principles applicable to summary judgment and strike out apply with equal force irrespective of whether a party acts in person, it nevertheless seems to me that where the pleadings have been drafted by a non-lawyer and the claims which are advanced are subject to potential dismissal on either basis, the Court should allow for a degree of latitude. The Court should as a result, strive to read what has been drafted without undue technicality in order that if a Claimant does have a sustainable case, he or she is not driven out of the proceedings on the basis of an over-stringent examination of the words used. That said, it cannot be the duty of the Court to try to fashion a claim where on analysis of the facts and legal principles, no such claim can properly be advanced.

19. In his Claim Form, under the heading "Brief details of claim" the Claimant has set out the following as potential causes of action:

    a. Breach of contract;
    b. Conspiracy;
    c. Negligence;
    d. Intentional infliction of distress;
    e. Depression (personal injury);
    f. Forgery;
    g. Whistleblower.

20. In the brief Particulars of Claim contained within the Claim Form, he refers to:
    a. An agreement with both Amazon and PMP which was "violated and the contract false" – he says that he had agreed to a contract for permanent work but I was misleaded (sic) into a zero hour contract";
    b. Documents having been forged to bring about his termination from employment after he had raised health and safety concerns;
    c. Having "suffered a breakdown that day 31.12.2018 for fear of my life being endangered" and that he had been provided with unsafe equipment that day.

21. On 20 October 2021 (three months after REJ Taylor's ET Judgment on his reconsideration application), the Claimant filed his Particulars of Claim. I will not set out the whole of that document here but the following assertions appear to be of significance:
    a. On 21 September 2018, and after a successful interview process, he was made a conditional offer of employment with Amazon;
    b. On 4 October 2018, the day before his agreed start date, he was told that that date was cancelled "due to overbooking because there was no longer a space for induction that week";
    c. On 18 October 2018, he spoke to a PMP manger, Mr Ashwin, who is said to have assured him that he was a direct hire and that there was nothing to worry about;
    d. On 19 October 2018, he spoke to Mr Ashwin who told him that he had spoken to Amazon and it had suggested that he join the temporary staff "with a promise to become permanent staff after 4 weeks working in the temporary position."
    e. On 23 October 2018, he started his induction "with the promise of automatically becoming permanent after 4 weeks."
    f. The workplace was "dangerous to [his] health" and it "appeared to [him] that the managers were angry" that he had raised concerns. He started to develop "back pain and anxiety which left him out of work without pay.";
    g. On 31 December 2018, the incident with the robot occurred which collided with his person ladder. "This happened in a rush that all I could think of was the worst danger that it could had (sic) resulted if I wasn't 20-30 seconds lucky by not being on the ladder…..I felt the only way I could again try to leave the unsafe work environment was to state that I sustained an injury in my leg. I was already suffering from back and knee pain during this time due to [Amazon] failing to provide me with a reasonable adjustment from pain I had sustained at the same workplace previously."

h. Managers from Amazon and PMP conspired to produce "a fraudulent document to support their false version of events on 31 December."
i. He was "cheated out of [his earnings] by the manager of [Amazon] and [PMP] with the use of false documents and instruments."
j. He considers that the offer of conditional employment "still stands" as he met all of the conditions;
k. As already stated, he sought damages of £10 million against Amazon and a further £2 million against PMP.

Amazon's Defence

22. In its Defence, Amazon makes the following key points:
    a. The Claimant was an agency worker supplied by PMP to work on a temporary basis at Tilbury
    b. A conditional offer of employment had been made to him which was subject, inter alia, to completion of an "ECS Check" confirming his eligibility to work in the UK;
    c. The Claimant had made complaint about back pain;
    d. On 13 November, the Claimant had complained to PMP that he had been told that the background checks for his employment had taken too long to be completed and he had therefore "settled for an insecure [temporary] position."
    e. In November and December 2018, the Claimant had been subject to a number of discussions and warnings about his behaviour and performance;
    f. On 27 November 2018, the Claimant had complained to an Amazon security guard, Mr Akinde, that he was suffering from knee and back pain and anxiety;
    g. On 24 December 2018, a request was made for the termination of the Claimant's assignment with Amazon;
    h. On 31 December 2018, the Claimant made a false claim that he had been injured by a falling ladder;
    i. The conspiracy allegations were denied and no documents had been forged.

The Disputed Documents

23. I have already set out a number of factual matters which are either accepted by the parties or have been determined in the course of the ET proceedings which the Claimant brought. The factual background – at least from Amazon's perspective – is further determined by reference to what it says is a series of contemporaneous documents prepared by it or by PMP. The Claimant claims that these documents have been forged as a result of the conspiracy between the two Defendants. Given the breadth of the Claimant's allegations, any such conspiracy would have had to have involved a substantial number of individuals working across both Amazon and PMP. The relevant documents are as follows:
    a. An email chain dated 23 October 2018 passing between Mr Vara (of PMP) and Matt Beadle, Daniel Clarke and Monika Jodlowska (all of whom were employed by Amazon).
        i. The email chain starts with Mr Vara stating that:

"Godstime Idenekpoma was a direct hire but he was waiting for the results of his ESC check which has now come back. **We did advise him that we would still honour his Badge subject to him satisfying his employment conditions – which he has now done**….Are we able to accommodate him into a day zero this week." (Emphasis added). The significance of the reference to a "Blue Badge" is that Mr Vara appears to have told the Claimant that he would be permanently employed by Amazon – something that, it seems to me was not in his gift to offer.

ii. Mr Clarke then asks Ms Jodlowska if she can check with "Pra" if he would be happy to accept another Blue Badge. Ms Jodlowska responds by saying that it would not be possible to accommodate him "as we finished direct hiring 2 weeks ago already (last Day Zero for blue badges was scheduled for 9 October). He can start working as a temporary associate with a chance of conversion to permanent employment after Peak Time, however please tell him that this is not something that we can guarantee." She then has a follow up question as to why the ECS check had come back so late. "Pra" is almost certainly a reference to Prajvin Prakash an Amazon manager who was involved in the later termination process relating to the Claimant.

iii. The date of these exchanges fits broadly with the chronology of events as advanced by the Claimant – the only material difference between his case and that set out in the emails is that Amazon do not appear in those emails to have made any promise of permanent employment. Nevertheless, it does appear that Mr Ashwin *did* give the Claimant some comfort with regard to that as he apparently promised that the Blue Badge would be honoured;

iv. Nevertheless, I cannot see that the Claimant has any realistic prospect whatsoever of persuading a court that the email exchange of 23 October 2018 is anything other than genuine. That being so, it confirms that which is already agreed between the parties – that the Claimant was never employed by Amazon. His fall-back position is that Amazon promised him permanent employment after 4 weeks but there is nothing in the documents that I have seen that supports that assertion.

b. "Flex Colleague Contract of Employment"

I have been provided with a blank document headed "Flex Colleague Contract of Employment". It has not been signed by the Claimant and he suggests that he was never issued with it. The fact that there is no signed copy may support him in that assertion. But that point only takes him so far and no further. Even if one were to proceed on the basis that he was never issued with the correct documentation to reflect his status, that status is not something that he denies – he accepts that he was never employed by Amazon and was only engaged by PMP. There is a dispute about whether or not he was told that he would get a permanent contract with Amazon after four weeks and it is that concern which appears to be at the heart of his grievances both in the ET and in the current proceedings in the High Court. I do not believe that the absence of a signed (Flex) contract takes him any further in his arguments that he has been the victim of a conspiracy or other fraudulent activity by Amazon or PMP.

c. "Supportive Feedback Documents"

i. These are essentially written records of conversations with the Claimant and warnings given to him about his attendance and performance over the 3 month or so period when he worked for Amazon at Tilbury;
ii. They fall into two categories – "Productivity" – which deals primarily with the extent to which the Claimant was reaching the 'picking' targets that had been set for him as a warehouse operative – and "Behavioural" - which deals with absence or lateness for work;
iii. The Productivity reports show that he was spoken to or warned on 14 November, 21 November, 28 November, 5 December, 12 December and 26 December. The reports also set out detailed information about items picked and the rate of performance that the Claimant has achieved. The documents are signed by the Claimant although he claims that his signature was forged on each of the multiple occasions on which it appears on documents of which he challenges the provenance and veracity. Other than the Claimant's bare assertions (which include an assertion that not one of the recorded meetings/discussions actually took place), there is no evidence at all to support his claims that these documents are not what they purport to be. I do not think that there is the slightest possibility that a court would conclude that Amazon – either independently or in conjunction with PMP – had created a false paper trail in order to set up a dishonest basis for terminating the Claimant's temporary engagement with PMP;

d. Accident report form – 31 December 2018
i. The Claimant's position on this document was not entirely clear to me. In so far as he alleges that it was forged, I do not think that there is any prospect of him establishing that this is the case. The report quotes him as saying that he was hit on his legs by the ladder and that he was too shocked to know how it happened. As I understand the Claimant's case, he accepts that he reported injury to his legs but that this was essentially a ploy to get himself removed from what he regarded as a dangerous workplace.
ii. Even if one takes that at face value, it follows that he gave an entirely false account to Amazon of an injury which simply did not happen. This was precisely what was found to be the case by the ET and – on the assumption that the issue remains open to it – I cannot see a court coming to any different conclusion were this matter to proceed to trial.

e. Termination Request
i. This is set out in a document headed "Trouble Ticketing" and has a creation date of 24 December 2018. It starts with Mr Devraj Singh, a PMP manager requesting the termination of the Claimant's engagement due to poor attendance.
ii. The request is then picked up by Monika Jodlowska (who had been involved in the 23 October email chain to which I have already referred). Ms Jodlowska then referred the ticket to Mr Prakash, Amazon manager. Mr Prakash marked the request for termination as "approved". The precise chronology is not easy to follow (that is, whether it was before or after Mr Prakash gave him approval) but at some point during the process on 31 December, Mr Singh added the following entry to ticket:

> "For information flow I will add today's incident to the body of the ticket and the meeting will be conducted today."

iii. In a letter to the ET dated 23 July 2021 sent by solicitors acting for Amazon in those proceedings, it was stated that the addition made by Mr Singh was done after Mr Prakash had approved the termination for reasons unrelated to the ladder incident – that may well be right but in any event, I do not regard the precise timings as being significant for the purposes of the applications which are before me.

iv. The termination is then confirmed by Mr Singh in a document dated 31 December headed "Supportive Feedback Documentation – Behavioural – Termination" and in the following terms:

> "TA [the Claimant] is currently on ROC1 for health and absence and ROC3 for conduct. Since the ROC3 the TA has accumulated a further 2 sickness and 1 NCNS. In the ROC3 meeting the TA seemed not really to care that he was getting a final warning. On 31/12/18 the TA was dishonest as the TA made claims of a work-related incident whereby he was hit by a ladder following a moving pod. Upon review of the CCTV no injury was cause and false claims were made."

v. This document is unsigned and it seems to me that the likelihood is that no termination meeting was actually held,, not least because the Claimant appears to have left Tilbury immediately after the ladder incident. However, once again, I do not think that anything turns on this.

vi. More importantly, again other than the Claimant's bare assertions, I have not seen any material or other information from which one could begin to infer that this document was anything other than what it purports to be.

The Claimant's Claims in these proceedings

24. Having set out those fact which are not contentious and having reached the conclusions that I have in relation to the disputed documents, I can now address the questions of whether the Claimant's claims should be struck out and/or whether summary judgment should be entered against him:

    a. Breach of contract:

        i. There was no contract under which Amazon ever employed the Claimant. There was a temporary contract with PMP but any breach of that contract cannot be visited on Amazon who were not parties to it.

        ii. Reading the Claimant's pleaded case as fairly and widely as I can, it appears to be the case that he contends that there was an agreement made by Amazon to give him a permanent role after 4 weeks. I have not seen any evidence which supports this assertion. His account is not supported in the contemporaneous exchanges between him and PMP and between PMP and Amazon.

        iii. I do not believe that there is any prospect of the Claimant establishing that the 23 October 2018 email chain involving Mr Vara, Mr Beadle, Mr Clarke and Ms Jodlowska was forged. What I take from that document is that Mr Vara appears on the face of it to have made a commitment to "honour [the Claimant's] Blue Badge" in circumstances in which it was not in his gift to do so. Whilst it might be said that a promise was made by Mr Vara as an agent for Amazon, I do not think that the Claimant has

any prospect of showing that a binding obligation was entered into, not least given the contents of an email from Mr Vara dated 3 December 2018 in which he told the Claimant that:

> "We have advised you previously that you missed the cut off date with regard to blue badge hiring as our ECS check took longer than expected to complete and send back to us. In the circumstances, we offered you a temporary role which you accepted."

iv. Even if the Claimant were to be able to identify a contractual obligation made by Amazon to give him permanent employment, by his dishonest accident claim of 31 December 2018, the Claimant provided ample grounds for Amazon to depart from that obligation.

b. Conspiracy

i. In broad terms, the conspiracy on which the Claimant relies is said to have been one that was committed by a number of Amazon and PM employees and involved the creation of a false document trail to explain away his termination on performance/conduct grounds;

ii. An allegation of conspiracy is a serious one and should not be made without evidence to support it. In this case, beyond pointing to what he says are timing discrepancies on some of the documentation produced by Amazon (which for the record, I do not regard as material), the Claimant has not been able to point to anything that supports his case. I do not see that there is any prospect of him establishing that the 7 or 8 individuals involved in the recruitment, performance and termination documentation, have in fact behaved in the dishonest and conspiratorial way that he asserts.

iii. To the extent that the Claimant complains that his treatment as alleged was the result of him having made complaints about the condition of the equipment with which he had to work his claims would be justiciable in the ET only as health and safety or whistleblowing claims under respectively sections 44/100 and/or sections 47B/103A Employment Rights Act 1996 ("**ERA**");

c. Negligence

i. In order to succeed in a claim based in negligence, a Claimant has to identify a duty of care, breach of that duty and non-remote damage flowing from it;

ii. Whilst it might be arguable that, in the provision of equipment for the Claimant's use, Amazon owed him a duty of care notwithstanding the fact that it was not his employer, I cannot see any basis for arguing that it may have acted in breach of that duty save perhaps in relation to the robot which struck the ladder on 31 December 2018;

iii. I accept that there are within the documents, some records of the Claimant having complained of knee pain (for example on 27 November 2018) there is no record of any accident having occurred and no other evidence to support a claim that he was injured at work due to the negligence of Amazon;

iv. In fact of course, as already set out above, the only record of industrial injury that there is in this case is the false one made by the Claimant himself on 31 December 2018. If the robot which struck the ladder had struck the Claimant and or hit the ladder whilst he was standing on it

such that the Claimant suffered some injury, then he might have had good grounds to bring a claim. However, having watched the CCTV footage, it is quite apparent that he suffered no ill effects from the events of 31 December;

v. In addition, there is no evidence of any visit having made to his GP to report any injury. Indeed during the period in which he worked at Tilbury, there are only 2 entries, both of which relate to an appointment for 20 December 2018 which the Claimant appears to have missed;

vi. There is in short, no medical evidence to support any injury claim asserted by the Claimant;

vii. The fact that he was prepared demonstrably to lie about what happened on 31 December further reduces his prospects of succeeding in a negligence claim against Amazon to vanishing point;

d. Intentional infliction of distress

i. It is not easy to determine exactly what form of claim is being asserted here but it seems reasonable to assume that the Claimant wishes to take forward a claim based in tort and some form of deliberate injury having been inflicted on him;

ii. I do not think that he has any prospect of establishing a factual basis for this claim even if one assumes that he is able to identify a legal one.

e. Depression (Personal Injury)

I was not able to identify any additional basis for this claim over and above the issues raised and dealt with above under the Negligence heading.

f. Forgery

I have dealt with the allegations of forgery above. I do not think that the Claimant has any prospect of showing that documents relating to his relationships with PMP and Amazon have been forged. As I said to the Claimant during the course of argument, it is not enough for him to turn up at Court and assert that documents have been forged without providing some tangible evidence that this is or might be the case. In my view, it is clear from the documents that his was an unexceptional period of employment with PMP at Tilbury and which was terminated for fairly unexceptional reasons, save that his own dishonest account of having sustained injury on 31 December 2018 might he thought to be out of the ordinary.

g. "Whistleblower"

i. The protection against detriment or dismissal for having made a protected disclosure is set out in the ERA in the form of statutory torts actionable only in the ET. The Claimant cannot succeed in a whistleblowing claim in the High Court.

ii. In any event, he has not identified any protected disclosure that he could rely on other than very vague complaints about the equipment with which he was provided.

Conclusion on strike out/summary judgment

25. I do not believe that the Claimant's claims disclose any reasonable grounds for bringing his claims. They therefore fall to be struck under CPR Part 3.4. I should also formally

record that I regard those claims as being totally without merit. In the alternative, he has no real prospect of success in those claims and there is no other compelling reason why his claims or any of them should proceed to trial. Amazon would therefore be entitled to summary judgment under CPR Part 24.2. However, given that the Claimant's claims are struck out under CPR Part 3.4, no additional order is needed by reference to CPR Part 24.2.

The Claimant's Contempt Application

26. As set out above, the Claimant's application is based on an assertion that there is a "false statement in the defence". The particular allegation is that:

> "[Amazon] have stated that I never met the conditions for the parmanent (sic) offer but this is clearly a lie which is proven by the email from the second defendant to the first defendant, it states: 'we did advice (sic) him we would still honour his blue badge subject to him satisfying his employment conditions – which he has now done.' Blue Badge in this sentence refers to my parmanent (sic) contract."

27. Amazon's pleading with reference to the conditions for permanent employment is contained in paragraph 6.2 of its Defence as follows:

> "It is denied that Amazon promised that the Clamant would be "*started on the job no matter how long the checks took*" as alleged. In the event, the Claimant was not so employed by Amazon: the Claimant's ECS Check was not received until 10 October 2018, after the closing date for permanent recruits to Amazon on 9 October 2018, and so the conditions of the Conditional Offer were not met. Instead, the Claimant was employed by PM under a "*Flex Colleague Contract of Employment"…*and assigned to Amazon on a temporary basis."

28. That paragraph is pleaded as a direct response to the contents of paragraph 2 of the Claimant's Particulars of Claim in which he claimed that, having received a conditional offer, he was told by Amazon managers that he "would be started on the job no matter how long the checks took."

29. In providing the statement of truth at the end of Amazon's Defence, Mr Price (on its behalf) confirmed that he believed that the facts stated in the Defence were true and that proceedings in contempt may be brought in the event that a false statement was made "without an honest belief in its truth."

30. Whilst it is plainly open to the court to find that a contempt had been committed based what has been set out in a pleading, I do not think that there is any sensible basis on which to conclude that it would do so in the present case. The following points fall to be made:

    a. The Claimant's claim that the Defence contains a lie is not based on something that Amazon had said but on what had been said by PMP in its email to Amazon of 23 October 2018. Even taking this at its highest, this is what PMP are saying to Amazon and not what Amazon itself is saying;

b. It is notable that the Claimant himself asserts that the email chain of 23 October 2018 is "a forgery" but is content to rely on it for the purpose of his contempt application;
c. In any event, Amazon's response in its Defence confirms that their position was that the ECS check had not been received by the time of the cut-off date of 9 October which was the "last Day Zero for blue badges" – what the email says and what the Defence then says entirely consistently with it, is that the Claimant was made a conditional offer of employment and that, as far as the ECS check was concerned, that process had not been completed in time so as to enable him to be inducted with other new recruits;
d. It was in those circumstances that an offer of temporary employment was made which the Claimant appears to have accepted, albeit that he says that it was coupled with a promise of permanent employment after 4 weeks;
e. Given that there is no prospect of the Claimant establishing that Amazon's statements in its emails of 23 October 2018 were dishonest or 'forged' and given that paragraph 6.2 of the Defence does not say anything materially different from those emails, I do not think that the Claimant has any prospect of showing that when signing the Statement of Truth, Mr Price on behalf of Amazon, either made a false statement or did not have an honest belief in the contents of the document that he was verifying;
f. In those circumstances, it would clearly be an abuse of the court's process to allow the Claimant to continue to make his committal application and for those reasons, I will dismiss it
g. Under CPR 81.3(5)(b) the Claimant should have sought permission to make his contempt application – he did not do so. Had he done so, I am confident that no such permission would have been given to him.

Civil restraint order

31. Given my conclusion that the Claimant's claims are struck out and are without merit, I am obliged under CPR Part 3.4(6)(b) to consider whether it is appropriate to make a civil restraint order ("**CRO**") so as to limit the Claimant's ability to engage in further litigation. I think that it is right that I record that I am minded to make such an order, particularly given that the Claimant has already attempted unsuccessfully to pursue similar/overlapping claims in the ET. However, given that this point was not canvassed before me at the hearing on 31 October – 1 November 2022, it seems to me that it would be right that I allow the parties, in particular the Claimant, to make representations in writing as to whether and if so, in what terms, any CRO ought to be made, having regard to the provisions of CPR Part 3.11 and Practice Direction 3C – Civil Restraint Orders. To that end it would propose the following timetable:
    a. Claimant to provide written representations as to why no CRO should made within 14 days of the date on which this judgment is handed down;
    b. Amazon, if so advised, to provide written representations in reply within 14 days of receipt of the Claimant's representations under a. above – to include any representations as to the scope of any CRO;
    c. In the event that Amazon provides written representations under b. above, the Claimant is to provide his response within a further period of 14 days thereafter.

32. I would then propose to deal with the matter on paper unless having considered any representations made to me, I take the view that an oral hearing is necessary.

Costs

33. The issue of costs was not addressed at the recent hearing. Subject to anything that the Claimant has to say, it seems to me that Amazon are entitled to their costs, to be subject to a detailed assessment if not agreed. I will therefore allow the Claimant the same period of 14 days to put in any representations that he wishes and for any consequential responses to be filed within the same timeframe as set out above.

Bruce Carr KC

25 November 2022