



# EMPLOYMENT TRIBUNALS

## Telephone Hearing

**Claimant:** Miss G Mitchell

**Respondent:** Butterfly Leisure Ltd

**HELD AT:** Sheffield

**ON:** 30 June 2020

**BEFORE:** Employment Judge Rostant

### REPRESENTATION:

**Claimant:** In person

**Respondent:** No attendance

## JUDGMENT

1. The claim is not struck out.
2. I make no Deposit Order.

## REASONS

1. The claimant brought a claim against Butterfly Leisure Ltd. The claim contained a number of complaints and included amongst them was a complaint of disability discrimination.
2. The matter came before Employment Judge Lancaster on 20 April 2020. On that occasion the claimant appeared in person and the respondent was represented by Mr H Kaye the owner of the business.
3. Subsequently, it was understood that Mr Kaye had appointed a company called MPH Accountancy to represent him in these proceedings.

4. On 20 April 2020 Judge Lancaster attempted to understand from the claimant the basis of her disability discrimination complaint and described it as best he could at paragraph 8.3. He took the view that the claim was potentially so weak as to justify an Order for strike out or a Deposit Order and set this case down for a public hearing today to decide whether the claim should be struck out on the grounds that it stood no reasonable prospect of success or a Deposit Order be made on the grounds that it stood little reasonable prospect of success. The preliminary hearing was also to make case management orders as necessary arising out of Judge Lancaster's definition of the various issues in the claim.
5. The claimant attended today's hearing but nobody from the respondent attended today's hearing.
6. At 10.05am, I contacted the listing team and asked the relevant clerk to contact Mr Hoe of MPS. She did so by telephone and was unable to speak to him. She sent an email to Mr Hoe to advise him that the hearing was proceeding. At 10.15am with still no appearance by Mr Hoe in the call I proceeded with the hearing in his absence.
7. I spoke to the claimant in order to understand from her further the basis on which she was advancing her disability discrimination claim.
8. The claim appears to me now to be a complaint of direct discrimination or in the alternative a claim under section 15 of the Equality Act 2010.
9. The claimant suffers from bipolar disorder. She asserts that the respondent well knew that she suffered from bipolar disorder. The claimant says that the respondent also knew that the claimant, in order to make sure that her bipolar disorder and her depression did not interfere significantly with her daily life, adopting a coping structure by which she documented everything minutely. The consequence for that was that when something did go wrong or went missing the claimant was and is disproportionately upset.
10. An example of this disproportionate upset arose just before Christmas when the claimant mislaid some rings at work. She says that she spoke to Mr Kaye regularly over the next period of time asking whether he had seen the rings and displaying her obvious upset that she could not find them.
11. Following that, some money went missing at work and Mr Kaye put it to the claimant on more than one occasion that in all likelihood the explanation for the missing money was that the claimant had mislaid it and that if only she looked hard enough she would be able to find it. He solidified this by saying, at the end of that period, when he had reported the theft to the police that he had given the claimant four days to find the money. The claimant says that that was an implied accusation of theft.
12. The claimant asserts that he would not have made that implied accusation if she did not have bipolar and depression or, in the alternative, he made that accusation to her because he knew that her depression meant that from time to time she might mislay or put things in the wrong place and that he had taken that as the basis on which to assume the most likely explanation for the missing money was the fact that the claimant, because of her illness had mislaid it.
13. That might found a claim of direct discrimination, that is to say that Mr Kaye would not have accused a person of mislaying the money who did not have the claimant's condition or discrimination Alternatively it might be a claim of unfavourable treatment because of something arising out of the claimant's

disability. That is to say the accusation was caused by the fact that the claimant's illness, at least in Mr Kaye's perception, made her more likely to mislay things.

14. Absent Mr Hoe's involvement, I had only Miss Mitchell's assertion that Mr Kaye knew fine well that the claimant was ill and that she was quite clear in her own mind that Mr Kaye was, in her words, "playing mind games with her" because of her illness or a manifestation of it. That is to say putting to her the suggestion that she had mislaid the money with no evidence at all other than the fact of her likelihood as the culprit because of her illness.
15. I cannot in those circumstances conclude that claim has no or little reasonable prospect of success and I do not.

Employment Judge Rostant  
Date 1 July 2020