EMPLOYMENT TRIBUNALS

Claimant: Mrs L Dean-Verity (previously known as Ms Anjum Tahirkheli)

Respondent: Khan Solicitors Limited

Heard at: Leeds (by CVP) **On:** 13 January 2023

Before: Regional Employment Judge Robertson (sitting alone)

Representation
Claimant: Mr C Buttler, King's Counsel
Respondent: Not in attendance

JUDGMENT

1. The claimant's application for an extension of time for her application for reconsideration is granted.

2. Upon reconsideration under rule 70 of the Employment Tribunals Rules of Procedure 2013, the Tribunal's judgment promulgated on 7 April 2014 is revoked.

3. The claim is dismissed on withdrawal by the claimant.

REASONS

1. This has been the hearing of an application for an extension of time and, if granted, for substantive reconsideration of a judgment of Employment Judge Cox in these proceedings, made as long ago as 7 April 2014. As one might expect after such a lapse of time, the circumstances in which this application

reaches me are very unusual. I will need to set out the history in some detail to explain the decisions I have reached.

2. The claimant, Mrs Dean-Verity, has been represented at this hearing, conducted by CVP, by Mr C Buttler, King's Counsel. She has not given evidence. I have considered Mr Buttler's written and oral submissions and such documents as he referred me to within an extensive hearing bundle. Where I refer to page numbers in this decision, this is to the hearing bundle. The respondent, Khan Solicitors Limited, in the circumstances I shall explain, does not resist the application and has taken no part in the hearing.

3. The history is as follows. The claimant, Mrs Layla Dean-Verity, previously known as Ms Anjum Tahirkheli, was an employee and director of the respondent solicitors, Khan Solicitors Limited, along with her then husband Mr Mohammed Khan and Mr Rashid Majid, who were solicitors. She was not a qualified solicitor but worked as the Practice Manager and dealt with the respondent's finances. In 2010 the marriage between the claimant and Mr Khan got into difficulties and it finally broke down in May 2012. In September 2012 the claimant was dismissed from her employment with the respondent on the ground of serious financial impropriety. In due course she brought a claim for unfair dismissal in the employment tribunal. She was represented by solicitors (not those who now represent her).

4. The case came before Employment Judge Cox in the Leeds Employment Tribunal on 20 February 2014. It was listed for two days. Both parties were represented by counsel. At the outset of the hearing the respondent conceded that the claimant had been unfairly dismissed because she was given no notice of the meeting at which the decision was made and no procedure of any kind was followed. Although commenting on the poor quality of the witness statements and inadequacy of the disclosure of documents on both sides, Employment Judge Cox proceeded to consider the question of the remedy for unfair dismissal and to heard oral evidence from Mr Majid and the claimant.

5. Employment Judge Cox's decision was that the claimant should not receive any compensation for unfair dismissal. She found that if a proper procedure had been followed the claimant would have been fairly dismissed, and in any event her compensation should be reduced by 100% because her dismissal had been caused by her own blameworthy conduct. Employment Judge Cox provided written reasons for her decision on 7 April 2014 (199); in the reasons she found that the claimant had been guilty of serious financial impropriety by carrying out four categories of unauthorised transaction for her own benefit listed at

paragraphs 25.1 to 25.4 of the judgment. She rejected the claimant's contention that she had implied authority to make the transactions. She was trenchantly critical of the claimant's evidence, describing her as "one of the most unreliable witnesses" she had ever heard and made other criticisms of her. She strongly preferred Mr Majid's evidence.

6. Although the case concerned alleged financial impropriety, and notwithstanding the Tribunal's standard case management order for disclosure, the respondent did not disclose any of its financial records evidencing the impugned transactions. Employment Judge Cox recorded in her reasons that she had to ask Mr Majid a number of questions to elicit his evidence in chief because of the inadequacy of his witness statement. Whilst the claimant now says she was taken by surprise by this approach to the hearing, it appears that she did not challenge the process at the time nor did she seek an order for specific disclosure of relevant financial records. Further, the claimant did not apply for reconsideration of the decision or appeal against it at the time; Mr Buttler tells me she was advised an appeal had poor prospects of success.

7. Immediately following promulgation of Employment Judge Cox's judgment, Mr Majid provided a copy of the judgment to the press and publicised it on social media. He also reported the claimant to the police and to the Solicitors Regulation Authority (SRA). The police decided to take no action against the claimant, even though Mr Majid applied (unsuccessfully) for a review of that decision.

8. Two years later, on 7 March 2016 an SRA adjudicator found that the claimant had breached the SRA Principles and the Solicitors Code of Conduct in respect of three of the four unauthorised transactions found by Employment Judge Cox. The adjudicator imposed disciplinary sanctions of a rebuke and a section 43 order restricting her from working for solicitors' firms (424). That decision was upheld by the SRA Adjudication Panel on 12 October 2016 and the Solicitors Disciplinary Tribunal on 3 May 2017. The decision was based substantially on the findings of Employment Judge Cox in the 2014 judgment and, although the claimant sought disclosure of documents from the respondent in the course of the proceedings and applied for an oral hearing before the adjudicator and the Adjudication Panel, she was not successful. The SRA did not make its own assessment of the primary evidence.

9. On 22 February 2018, approaching six years from when the claimant had left the respondent's employment, Mr Majid and the respondent sent a High Court pre-action letter of claim to the claimant and her former husband Mr Khan. The total

proposed claim was for over £800,000; it was based in part on three of the financial matters which Employment Judge Cox had found against the claimant. The pre-action letter had attached to it 855 pages of documents. Among those documents were some which the claimant says should have been disclosed for the Employment Tribunal hearing and which she says fundamentally undermine the findings made by Employment Judge Cox. I will return to these documents later.

10. Following receipt of the documents, which she considered exonerated her in terms of Employment Judge Cox's findings and, therefore, the disciplinary charges against her, the claimant applied to the SRA in June and August 2018 for review of the disciplinary decisions. In October 2018, an SRA adjudicator revoked the section 43 sanctions to which the claimant was subject. However, in October 2019 a different adjudicator declined to set aside the rebuke (599). The claimant applied in January 2020 for judicial review of that decision. Those proceedings were stayed by consent on 24 January 2020 to allow the claimant to exhaust the remedies available to her by applying to the employment tribunal for reconsideration of the 2014 judgment.

11. Meanwhile, on 20 July 2018 the claimant had lodged an appeal to the Employment Appeal Tribunal (EAT) against the 2014 judgment, based on complaints about the conduct of the hearing. She applied to adduce fresh evidence in the form of the new documents. The appeal was of course substantially out of time, and on 4 February 2019 HHJ Judge Richardson affirmed the EAT Registrar's decision to dismiss the appeal on that ground.

12. On 14 January 2019 the respondent and Mr Majid commenced High Court civil proceedings against the claimant and Mr Khan. On 11 September 2020 District Judge Goldberg struck out on the proceedings as an abuse of process. In reaching his decision he made trenchant criticisms of Mr Majid and the respondent: he found they had pursued a campaign against the claimant after she left the business, writing to potential employers and legal practitioners, and indeed newspapers, setting out allegations about her dishonesty; when the police declined to mount a prosecution for her alleged dishonesty, Mr Majid attempted unsuccessfully to force the Crown Prosecution Service to prosecute her; he found that this had the air of exacting some form of retribution against the claimant, which was extraordinary for a professional practice. Taking these matters into account along with delay, inability to formulate a coherent claim and failure to conduct the proceedings properly, District Judge Goldberg decided that the High Court claim amounted to an abuse of process and struck it out.

13. Mr Majid and the respondent appealed against District Judge Goldberg's decision and in June 2021 were granted permission to appeal; among the grounds of appeal was that the judge had failed to place any or any proper weight on the conclusions reached by the Employment Tribunal in 2014. However, in April 2022 the parties reached a settlement agreement bringing an end to the High Court proceedings. I will return to this agreement below.

14. Following the stay of the application for judicial review of the SRA decision, the claimant for the first time applied on 21 February 2020 for reconsideration of the 2014 judgment. She supported the application with submissions and a witness statement exhibiting hundreds of pages of relevant documents, including the new documents. On 23 March 2020, however, Employment Judge Cox refused to extend time for the application. It followed that the reconsideration application itself was also refused.

15. On 26 October 2020 the claimant made a further application for reconsideration of the 2014 judgment of 7 April 2014 based on developments in the High Court claim. On 27 October 2020 Employment Judge Cox again refused the application, saying she had nothing to add to the decision of 23 March 2020.

16. The claimant appealed to the EAT against Employment Judge Cox's March 2020 decision. On 31 August 2022 HJJ Shanks in the EAT granted the appeal and set aside Employment Judge Cox's decision, remitting the matter to her. That decision was on the ground that Employment Judge Cox had wrongly evaluated the prejudice the claimant would suffer if the decision stood. In November 2022 HHJ Shanks varied his decision so as to remit the matter to a different Employment Judge. Thus it comes before me today.

17. Finally, I mentioned that in April 2022 the claimant, Mr Majid and the respondent reached a settlement agreement in the civil proceedings. Amongst the settlement terms recorded in a schedule to a Tomlin Order dated 25 April 2022, at paragraphs 8-10 (373), (a) the respondent and Mr Majid agreed that they would take no part in any application by the claimant to the SRA and would not oppose reconsideration of the SRA's findings; and (b) the claimant agreed that if her appeal to the EAT was successful, and if then the 2014 judgment was revoked by the employment tribunal on reconsideration, she would discontinue the claim in the employment tribunal and not seek any damages or costs from the respondent or Mr Majid. Whilst this settlement does not of course bind me as to what decision I should make on the claimant's application before me, its terms are a relevant factor. During this hearing, Mr Buttler confirmed that he had instructions to withdraw the claim if I revoked the 29014 judgment.

18. I begin with the claimant's application for an extension of time for her application for reconsideration. Rules 70-73 of the Employment Tribunals Rules of Procedure 2013 (the 2013 Rules) deal with applications for reconsideration. Rule 70 provides that a tribunal may reconsider any judgment where it is in the interests of justice to do so. On reconsideration, the original decision may be confirmed, varied or revoked, and if revoked, may be taken again.

19. Rule 71 of the 2013 Rules provides that an application for reconsideration shall be presented in writing within 14 days of the date on which the written record of the original decision was sent to the parties or within 14 days of the date on which the written reasons were sent (if later).That date was 7 April 2014, meaning the application should have been presented by 22 April 2014. It was made on 21 February 2020, almost six years out of time. Rule 5 gives a general power to extend time.

20. Mr Buttler relies on the familiar principles set out in **Kwik Save Stores Limited v Swain 1997 ICR 49**. On an application for extension of time, the Tribunal should take into account the reasons or lack of them for the delay and the underlying merits of the case to arrive at a decision which is objectively justified on grounds of reason and justice, balancing up the prejudice to either side in granting or refusing the application. He says that lack of an adequate reason for the delay is important but not decisive, and prejudice is equally important and may be determinative.

21. As to reason for delay, Mr Buttler says that the claimant did not have access in February 2014 to the financial documents she needed because they were in the respondent's possession and the respondent had failed to disclose them in breach of the Tribunal's case management order. She did not see them until February 2018 when the respondent provided them with the pre-action claim letter. Although Mr Buttler accepted that the claimant had known of the existence of the documents in general terms in 2014, she did not have the specific documents supporting the individual transactions which would have enabled her to prepare her defence. He accepted that arguably those then advising her might have made more of the failure to disclose the documents or pursued an application for specific disclosure in 2014.

22. Mr Buttler submitted that once the claimant had the financial documents, she acted promptly by asking the SRA to review its disciplinary decisions. She also attempted at that point to appeal to the EAT against the 2014 decision. He accepted that arguably the claimant would have been better advised at that time

to have sought reconsideration of the 2014 judgment based on the new documents. However, she had not done nothing but on advice, had begun with the application to the SRA. She made the application to the employment tribunal for reconsideration in February 2020 when she knew it was essential to do so before she could progress her application for judicial review of the SRA's decision not to revoke the sanction of imposition of a rebuke.

23. In respect of the merits of the underlying claim, Mr Buttler contends that the documents disclosed in February 2018 cast real doubt on Employment Judge Cox's findings about financial impropriety. Those findings, contrary to her case that she had implied authority to make such payments, were that she had made unauthorised payments from the firm's office account for her own benefit.

24. Mr Buttler reminds me that Employment Judge Cox's findings were made on assessment of oral evidence, rather than review of financial documents. Witness evidence is notoriously unreliable. The documents show that Mr Majid's evidence that he had no involvement in the respondent's financial affairs was obviously wrong; he signed off the respondent's accounts before the events in question.

25. Mr Buttler submits that one of the findings concerned payments to the claimant's and Mr Khan's children in September 2012. But the disclosed bank records show (543) similar payments to the children being made in February 2013 from the respondent's bank account identified as "salaries control", several months after she had left. This shows that the finding that the claimant was secretly siphoning money from the firm to her children was wrong. Another finding was about payments to Prime Currency, including a specific payment of £20,000. The financial records (for example 534) show loans from the claimant and Mr Khan totalling £200,000 which were repaid in chunks including payments to Prime Currency and one specific payment of £20,000. This supports the claimant's case that the payments were innocent. Further, text messages between Mr Khan and Mr Majid, the existence of which was wholly unknown to the claimant until disclosed in February 2018, show that both men were well aware that the claimant had the Range Rover vehicle. This information, Mr Buttler says, "guts" the Tribunal's findings about financial impropriety.

26. As to prejudice, Mr Buttler contends that the balance of prejudice in the unusual circumstances of this case firmly favours the claimant. He accepts that in most circumstances, where there has been a delay of this magnitude, the respondent would suffer significant prejudice. But in this case, the respondent will suffer no prejudice because under the terms of the settlement, it is not resisting the

application or taking any part in the hearing and if the 2014 judgment is reconsidered and revoked, the claim will be at an end. The claimant, however, will suffer real prejudice if time is not extended. She will lose the opportunity to have the decision reconsidered. The SRA based its disciplinary decisions on the 2014 judgment, and if it is not set aside, it is much more likely that the sanction of a rebuke will remain on the public record as a stain on her character.

27. My conclusions on extension of time are as follows. I have applied the factors in **Kwik Save v Swain**. I am troubled that when findings of financial impropriety were made against her in April 2014 following a hearing at which the supporting financial documents had not been disclosed, the claimant did not apply immediately for reconsideration or pursue an appeal. She sought to challenge the 2014 judgment only when subsequent events gave an imperative for to do so, well out of time. It also seems to me that the focus in 2018 on applying for review of the SRA's decisions and pursuing an out of time appeal to the EAT was unwise; when the SRA's decisions had been so firmly founded on the 2014 judgment, it would have been prudent to seek reconsideration of the decision, relying on the new documents. I recognise that the claimant had professional advice throughout and she took steps in 2018, even though the wrong ones, to deal with the situation. But I am not persuaded that the claimant has shown an adequate explanation for the delay.

28. On the other hand, and for the reasons identified by Mr Buttler, the documents disclosed in 2018 appear to me to cast real and cogent doubt on the findings of the Tribunal that the claimant was guilty of financial impropriety.

29. Conclusively, however, the balance of prejudice is overwhelmingly with the claimant. If the application is allowed to proceed out of time, the respondent will suffer no prejudice whatever. It does not intend to take any further part in the claim. The claimant will withdraw the claim. Factors which would otherwise be relevant, and possibly determinative, such as the importance of finality in litigation, and the risk to a fair trial of delay so long that the tribunal would be reviewing matters over 10 years old, do not arise. If the judgment is not reconsidered, the disciplinary sanction based on it is more likely to remain in place. Balancing up these factors, with the balance of prejudice the most significant in the unusual circumstances of this case, I conclude that the time for the application for reconsideration should be extended.

30. I turn then to the substantive reconsideration. Under rule 70, the overriding factor is the interests of justice. That is very broad, and gives a wide discretion. Mr Buttler reminds me of the principles in the seminal case of **Ladd v Marshall**

1954 1 WLR 1489 where reconsideration is sought on the ground of new evidence. First, the evidence could not have been obtained at the time of the original hearing with reasonable diligence; second, the evidence must be such that, if given, it would be likely to have a significant, even if not decisive, effect on the outcome; and third, the new evidence must be presumably to be believed, even if not incontrovertible. Mr Buttler submits that **Outasight VB Limited v Brown UKEAT/0253/14** confirms that the **Ladd v Marshall** principles apply in the employment tribunal and broadly delineate the interests of justice but reconsideration might be in the interests of justice even where the criteria are not strictly met, such as where a party was taken by surprise at the hearing or an adjournment was not applied for it could have been. The overriding consideration is the interests of justice.

31. Mr Buttler contends that what was already an unusual but meritorious application has been rendered compelling by the fact that, in light of the settlement agreement, setting aside the 2014 judgment paves the way to an outcome that gives effect to the agreement of both parties.

32. Mr Buttler reminds me that Employment Judge Cox's findings were substantially based on the oral evidence of Mr Majid. The new documents, he says, cast a wholly new light on that evidence. He submits that the new evidence could not have been obtained for the original hearing even with reasonable diligence as it was in the control of the respondent, which had failed to disclose it. That evidence was likely to have had an important influence on the judgment. It was credible evidence consisting of contemporaneous financial documentation from the respondent's records.

33. Mr Buttler recognises that the interests of finality in litigation would often weigh heavily against a reconsideration so long after the event. However, he reiterates that the effect of the settlement agreement is that the respondent will suffer no prejudice at all: it will incur no costs, no time or inconvenience and no liability for damages. In the absence of any prejudice to the respondent and in light of the other factors relied on, he says that the interests of justice overwhelmingly favour this judgment being set aside.

34. Rule 72(1) of the 2013 Rules requires me first to decide if there are reasonable prospects of the 2014 judgment being revoked. For the reasons given by Mr Buttler, I readily find that there are.

35. I have therefore reconsidered the 2014 judgment. The test is the interests of justice. I have taken into account the **Ladd v Marshall** principles. As to whether

the new documents could have been obtained with reasonable diligence for the original hearing, I am concerned that the claimant did not seek specific disclosure of the underlying financial documents at the February 2014 hearing or an adjournment when they were not disclosed. However, I recognise that the primary responsibility for disclosing the documents rested with the respondent who had custody of them, and the tribunal went ahead with the hearing notwithstanding their non-disclosure. I have already accepted Mr Buttler's case that the new documents cast real doubt on the findings of financial impropriety and I remind myself that this was a case involving serious allegations of financial impropriety against an individual in a position of trust. The information I have about the contents and significance of the new documents is such as to raise serious concerns about the 2014 findings. Those findings led directly to regulatory action against the claimant. Fundamentally, however, the settlement terms agreed between the parties mean that the respondent will suffer no prejudice whatever if the 2014 judgment is revoked, whereas if it is not the claimant's prospects of setting aside the disciplinary action will be significantly reduced.

36. I therefore find that it is in the interests of justice to revoke the judgment of 7 April 2014. That means that the findings of financial impropriety within the 2014 judgment are set aside. Ordinarily it would follow that the decision would be taken again and I would make the necessary case management orders for rehearing the case. But after I announced my decision, and in accordance with the confirmation that he had given me, Mr Buttler advised me that the claimant withdrew her claim and consented to it being dismissed on withdrawal. I gave judgment accordingly, and these proceedings are at an end.

S D Robertson

Regional Employment Judge Robertson

17 January 2023

Sent to the parties on:

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For the Tribunal Office:

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