

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.
UD487/2008

Employee- *claimant*

against

Employer. - *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. D. Mahon BL

Members: Mr. J. O'Neill
Mr. P. Woods

heard this claim at Dublin on 12th January, 26th May and 20th July 2009

Representation:

Claimants: Ms. Sheila O'Kelly BL, instructed by Hayes Solicitors, Lavery House,
Earlsfort Terrace, Dublin 2.

Respondent: In person.

The determination of the Tribunal was as follows: -

The fact of dismissal was in dispute.

Claimant's Case

The claimant gave evidence. She started working with the respondent as a PA and later moved up to the completions department. She enjoyed her job and had good working relationships with her colleagues.

Sometime in 2004 the chairman said to her that she could reserve a unit in an apartment block in the UK and flip it. She could reserve a unit and when it was complete sell it at a higher price and make a profit. She would not end up owning a property but would make a profit.

She spoke to the sales manager. She did not pay a deposit. She continued to work as usual. Then in early 2005 she was told that she must cash complete the unit. The managing director organised the mortgages. She and 4 colleagues signed the documents for 100% mortgages on 5 units in the same building. She did not pay any money or get independent legal advice. She did get an information pack from the solicitors dealing with the sale. She did not ask for their advice. She felt

that she had to complete with the 4 others. The interest on the mortgages rolled over.

Nothing was done with the 5 units for the remainder of 2005. They were not sold and neither were they let. In early 2006 the 5 owners of the units, including the claimant, decided to let the apartments. Some of the units were let and the money pooled in a UK bank account to pay off the debts. Towards the end of 2006 they decided to get rid of the tenants and try to sell the units. At that time she owed about €50,000.00 on her apartment.

The claimant was worried about the debt. She spoke to one of the directors about it. The director suggested that she speak to the chairman as he had helped other people. On the 8th March 2007 she met with the chairman and asked for his assistance. He told her that other people working for the company had made money on other deals. He said that the apartments were not managed well; it was silly to leave them vacant for a year with the interest rolling over. The chairman said that he would get back to her.

The claimant met the chairman again on 5th April 2007. She would go on maternity leave in two weeks time. He said that he had made losses himself because there was a slowdown in the UK. He enquired about her plans, and she told him that at some later stage she would consider working part time but that she would return to full time work following her maternity leave. She was concerned about the apartment and hoped the chairman would assist her. She did not ask for a lump sum, but thought the chairman might pay the rent on the apartment. He proposed giving her €30k redundancy payment to include her maternity pay. He also said that other people would go in the next six months. She was asked not to mention the redundancy offer to her colleagues. The claimant did not say anything in reply to the offer. She was shocked. Redundancy had not been mentioned before. Also she should not have been first out, three others had shorter service than her. She worked one more day then her doctor signed her off sick until her maternity leave started. She felt that the chairman was using the apartment as a tool to get rid of her.

The offer of €30k would leave her with less than €3k towards her debts when her maternity pay, holiday pay and notice were subtracted. She phoned the chairman on 23rd April 2007 asking for a meeting to discuss the matter properly. He suggested that she should look again at his offer.

On 11th May 2007, the claimant wrote a without prejudice letter to the chairman setting out her position. She was aware that people in the UK office had been made redundant.

The chairman's letter of 3rd August 2007 was read into evidence. The claimant did not agree with his description of the apartment issue as 'non work related'. She felt that his offer was of no benefit to her especially if she was losing her job.

The claimant's letter of 31st October 2007 was read into evidence. She still felt that the apartment was used as a tool to raise redundancy. On the same date she wrote to the operations director of the respondent asking that her selection for redundancy be dealt with through the grievance procedure. She met with the operations director, the financial controller and a colleague on 11th December 2007 at a hotel. She explained her position. She wanted them to understand how she felt and she wanted an apology. She wanted to keep her job. The meeting lasted about 45 minutes. Afterwards she typed up her notes from the meeting. The note of the meeting she handed to the Tribunal was different from the note she sent to her colleague.

On 17th December 2007, the operations director and the financial controller sent the claimant a

letter rejecting her claim that she was selected for redundancy. She appealed this decision to the managing director. There was an appeal meeting on 23rd January 2008. The appeal was not successful.

The claimant was frustrated that her grievance at being unfairly selected for redundancy had not been handled properly. The relationship between herself and her employer had broken down.

She resigned, with immediate effect on 7th March 2008. She was still seeking employment.

The claimant's husband gave evidence of the claimant's losses on the apartment.

Respondent's Case

An employee of the respondent with 12 years service gave evidence. She had 2 children while working for the respondent. Taking maternity leave or getting time off to care for her children was never an issue. She reserved a unit in the block where the claimant bought her apartment. However when the time came to complete, she realised she could not afford the unit. She did not complete and no problems resulted.

The chairman's PA gave evidence. This witness spoke positively of a working relationship with the respondent and in particular with the chairman.

A director of the respondent company gave evidence. The claimant approached her to approach the chairman on her behalf. She has taken units to flip twice. It was not usual practice. She reserved a unit in the same block as the claimant. She was not obliged to complete but she felt an obligation to complete.

The chairman gave evidence. Flipping was a rarity, it has happened about 12 times. It was not allowed under the standard contract. The claimant felt obliged to complete but she was not compelled.

He knew the claimant wanted to see him. He hoped she would go on maternity leave and the matter could be dealt with later. While she was on leave he did not agree to a meeting because he felt it was not the time to have a meeting. At the meeting in April 07, the claimant wanted to reduce her debt on the apartment. They had a broad ranging discussion. He suggested equity release on her house, looking to her parents or to her husband's parents. Redundancy was not on his mind when she came to him. She brought up the issue. In a phone call on 23 April, he told the claimant there was no offer of redundancy and that her job was waiting for her. He wanted to create an atmosphere where she could come back to work.

Determination

The members of the Tribunal very carefully considered all of the evidence adduced, documents presented and statements made during this three-day hearing. The Tribunal accepts that the claimant sustained substantial loss on the purchase of an apartment and that she approached the respondent chairman to discuss the matter. It is understood that the claimant suffered stress during this extremely difficult time and that she made genuine efforts and sought assistance with a view to resolving her problem. The claimant said in evidence that she enjoyed her job and got on well with her colleagues. Moreover the respondent chairman wanted her to feel welcome and

appreciated on her return from maternity leave. The Tribunal considered the claim in detail and finds that a redundancy situation did not exist in respect of the claimant's employment. The claimant was not selected for redundancy and was not dismissed by reason of redundancy. In relation to the constructive dismissal claim it is acknowledged that an uneasy atmosphere may have existed and that the claimant did invoke the grievance procedure. However it is the clear view of the members of the Tribunal that the claimant's job was not vulnerable and that her working conditions and the prevailing circumstances in the workplace could not reasonably be considered to constitute circumstances where the claimant had no alternative other than to resign. Moreover resignation was not a reasonable option in that the claimant had not exhausted the opportunities and possibilities available to her at that stage. It is the finding of the Tribunal that a dismissal did not occur even in a constructive fashion. Therefore the claim under the Unfair Dismissals Acts, 1977 to 2007 fails

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)