Neutral Citation Number: [2022] EWHC 2694 (KB)

Case No: QB-2020-001936

IN THE HIGH COURT OF JUSTICE
KING 'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/11/2022

Before :

MASTER STEVENS

- -

Between :

Mr Obhiosise Benjamin Ogedegbe	**Claimant**
- and -	
Simplyhealth People Limited	**Defendant**

- -
- -

Obhiosise Ogedegbe appearing on his own behalf as **Claimant**
Daniel Piddington(instructed by **Group Legal Counsel, Simplyhealth People Limited**) for the **Defendant**

Hearing date: 15th July 2022

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MASTER STEVENS

Master Stevens :

INTRODUCTION

1. This is my judgment on the defendant's application for summary judgment pursuant to CPR 24.2 and/or strike out of the claim pursuant to CPR 3.4(a) on the basis that there are no reasonable grounds for bringing the claim and /or (b) that it is an abuse of process. The claim is pleaded as one for restitution /damages in the sum of £735, 961 for losses said to be caused through unjust enrichment.

2. Since inception of the claim on 28th May 2020, it has taken a somewhat tortuous path, initially being stayed due to lack of clarity and then struck out for a few weeks as the Master was not appraised that the claimant had applied to lift the earlier stay, having filed Particulars of Claim, before being re-instated by the court on 3rd August 2020. The claimant has applied for a default judgment twice, by applications dated 2nd December 2020 and 17th February 2021. Following a hearing before Deputy Master Toogood on 27th April 2021 both applications were dismissed on the basis that they were not filed prior to receipt of the defendant's Acknowledgement of Service and/or Defence. At the same hearing an application by the defendant, dated 9th September 2020, relating to service of the claim form and for an extension of time to file a defence was withdrawn. The claimant thereafter mounted an appeal to vary the costs order that had been made following the hearing but that application was refused by Master Eastman and later the application was dismissed on further appeal by Mr Justice Stewart.

3. From 5th October 2018 through to 12th February 2021 there was an ongoing Employment Tribunal claim arising out of the same factual matrix but the claimant's appeal of the Tribunal decision was finally dismissed by Lord Justice Bean in February 2021, by which time these proceedings had been afoot for 10 months. The claimant asserts that he was advised to commence this litigation by Employment Judge Cadney. The hearing bundle for this application ran to 362 pages and the Masters' Appointment Form provided for a one hour hearing with 30 minutes pre-reading time which was plainly inadequate. Judgment was reserved.

FACTUAL BACKGROUND

4. The claimant advised the court that he is a qualified accountant and holds a Batchelor of Arts degree with Honours, and supplied a copy of his Masters degree certificate in Business Administration from Middlesex University. The defendant is a company responsible for the recruitment and employment of employees solely for companies within an overall corporate group structure called Simplyhealth Group Limited. This claim arises from interactions with the claimant during a recruitment process handled by the defendant on behalf of another company in the group with the trading name of Simplyhealth. The principal business of Simplyhealth is the provision of health insurance plans to individuals and to business entities. Other companies within the group provide services such as dental health plans and animal healthcare plans. During the early part of 2018 the claimant applied for the role of Benefits Consultant at Simplyhealth. An interview was arranged by the defendant for 2nd May 2018 with Claire Ridgewell and Tom Trinder .

5. Prior to the interview, on 30th April, Mandy Pain, Talent Acquisition Team Co-ordinator at Simplyhealth, wrote to the claimant and advised " .. please can you ensure you review the attached role profile and anything you are unclear of or want further explanation please do let me know. Can you please prepare a 5/10 minute Sales Pitch for the Simplyhealth Cashplan. https://www.simplyhealth.co.uk/health-plans/plan-details/cash-plan?banner=CashplanCallout."

6. There is no record or assertion that the claimant contacted Mandy Pain with any queries ahead of the interview and the claimant states that he did review the website in preparation, as requested. On 2nd May the interview proceeded as planned. The claimant was asked to present the Simplyhealth Cashplan which he believes he did "excellently well". In the latter part of the interview he was asked to present a sales pitch for the Simplyhealth Health Plan which he did, even though Mandy Pain's email had not stated that this would form part of the interview process. The following day, the claimant sent an email to both Tom Trinder and Mandy Pain with a subject header "Re: Benefits Consultant Interview", explaining that he had not been able to say much about levels of cover, monthly payments or annual limits for the Health Plan at interview because that information was omitted from the website. The email concluded by saying "I think you might want to have a look at the simplyhealth's website and make the necessary amendments on the "Business health plans' six levels of cover section". Apparently Tom Trinder sent an email on 9th May to the claimant asking if he was free that day to give feedback on the interview and the claimant confirmed that he was. However the claimant heard nothing despite sending emails on 9th and 10th May requesting the feedback. On 15th May the claimant telephoned Mandy Pain requesting the feedback and sometime later that day he was called and told he had been unsuccessful at interview.

7. Thereafter on 16th May the claimant wrote to Romana Abdin, then Chief Executive of Simplyhealth, reciting the interview preparation he had been advised to undertake, the fact that he believed the part of his interview concerning the Cashplan had gone extremely well but that he had been unable to perform so well in relation to questions on the Health Plan because the information had been missing from the company website that was needed for his answers. He commented in paragraph 3 of his letter that the website lacked "information needed by members of the public for them to be able to make an informed decision on whether to sign up for the simplyhealth Health Plan or not as an employee". He went on to say that he had pointed out the deficiency by email to Tom Trinder and Mandy Pain and stated "the particular section of the website needed to be amended so that potential customers could have the complete information they need before making up their mind whether to sign up for the Simplyhealth Health Plan." He went on to articulate how he had been "shocked" to discover that he had not been selected for appointment as the feedback during the interview itself regarding the Cash Plan had been so positive.

8. The remainder of the letter raised questions about the interview questions posed to the only other candidate, whom the claimant had assumed was successful at interview. He said," I was the only candidate at the interview who was able to discover that vital information relating to the Simplyhealth Health Plan for employees were incomplete on the website… Did [Tom] ask the same question from other candidate or it was just me only….I think this is pure discrimination…".The letter concluded, "I think I am the most competent candidate for the benefit consultant role. I request to be employed as

the Simplyhealth Benefit Consultant". The defendant says the letter was immediately forwarded to the HR department as it was deemed to be a complaint relating to the recruitment process. I have not seen any further correspondence between the parties relating to that complaint. The claimant believed one other, younger, candidate was interviewed for the role on the same day as him and assumed that he had been successful at interview. It is now known that neither candidate was appointed, although it appears that the claimant was unaware of this fact when commencing his Tribunal claim and made a presumption that the other candidate had been successful. The claimant says he was left without a job for a prolonged period thereafter which caused financial hardship for him and his family which made him feel worthless. At one point he worked as a volunteer at a London NHS hospital to assist with the Covid pandemic.

9. Five months after the interview on 5th October 2018 the claimant commenced his Employment Tribunal claim for redress on grounds of age discrimination. He alleged that his interview was more onerous than that of the other candidate who was younger and appointed to the role he had applied for. I have not seen a copy of the filed ET1 but within my bundle is a copy of a letter written well after the claim had commenced, on 19th August 2019, stating that the claimant had reviewed the Simplyhealth website earlier that day and "discovered that the levels of cover and other vital information are now available on the Simplyhealth's website as a result of my letter of 16th May 2018 to Romana Abdin...Simplyhealth has thus benefitted financially from my letter of 16th May 2018 and I am charging Simplyhealth £20,000 fee for my Business Consultancy services which prompted Simplyhealth to correct their errors on their website". The Tribunal Judgment, dated 16th March 2020, recites at paragraph 4.9 that "The Claimant further alleged that he had identified a problem with the information on the Respondent's website; it lacked details of the six levels of cover that it offered and the relevant premiums for each. He identified the lacuna to the interviewers and, as a result, he claimed an entitlement to 50% of the profit increase which the Respondent made that year, being £735,961". That latter figure is of course substantially larger than the original claim. The Tribunal largely accepted the evidence supplied by the defendant's employee, Mrs Ridgewell, who had been on the interviewing panel, finding at paragraph 4.14, "There was no reason to disbelieve what she said about the strength of the Claimant's interview presentation..". The rest of the judgment concerns the issue of age discrimination and the process by which the determination was reached, the claimant not having attended the hearing, none of which is relevant to the determination of this application. The judgment does not contain any express finding of fact concerning whether the defendant has only one product called a Cash Plan for consumers and one for businesses called a Health Plan, as alleged on the Claim Form.

THE LAW OF UNJUST ENRICHMENT, FREE ACCEPTANCE AND SUBMISSIONS UPON IT

10. As the defendant is legally represented their counsel set out the essential components for a claim of unjust enrichment and what the claimant would need to succeed in proving it as follows:

    a) That this defendant (as distinct from any other company within the Simplyhealth group) received a benefit from the information supplied to it by the claimant

    b) That the defendant's enrichment was at the claimant's expense

c) That the defendant's enrichment was unjust

The court would then need to consider whether there was any defence to the claim.

11. The claimant's case for unjust enrichment is premised on the legal concept of "free acceptance", the components of which requiring proof are:

a) That the defendant had knowledge that the purported service had been/was being provided

b) That the defendant appreciated (i.e knew or ought to have known) that the alleged benefit was not conferred gratuitously

c) That the defendant had the option to reject the purported benefit (by being given sufficient notice of the impending benefit such that it could be refused, or the nature of the benefit was such that it could be rejected, even after it had been supplied) but nonetheless exercised the free choice to accept it

The defendant supplied a copy of chapter 17 of the text, The Law of Unjust Enrichment 9th Ed, by Goff & Jones and specifically drew my attention to paragraph 17.03 as follows:

" [A defendant] will be held to have benefited from the services rendered if he, as a reasonable man, should have known that the claimant who rendered the services expected to be paid for them, and yet did not take a reasonable opportunity open to him to reject the proffered services. Moreover, in such a case, he cannot deny that he has been unjustly enriched."

Case law

12. The claimant relied upon 5 case authorities as follows:

a) *Woolwich Equitable Building Society v Inland Revenue Commissioners* (2) HL 20 Jul 1992

This case references the development of the law of restitution within the English legal system.

b) *Benedetti (*Appellant*) v Sawiris and others (Respondents) ; Sawiris and others (Appellants) v Benedetti (Respondent)* [2013] UKSC 50

This appeal set out the way a court should calculate any monies due to another by way of restitution where the other party has been unjustly enriched by the receipt of services. The court held that the award should be based upon the value of the benefit received by the defendant at the expense of the claimant. The trial judge had found that Mr Benedetti performed a role of broker or adviser and then proceeded to value the market value of his services. The Supreme Court found no basis to challenge those findings.

c) *Bank of Cyprus UK Limited v Menelaou* [2015] UKSC 66

In this case the Supreme Court set out the 4 stage test which I have already outlined at paragraph 10 above. The claimant submitted in the case before me that there was similarity between the facts of that case and his own position, namely that the claimant provided something based on a mistaken assumption that they would obtain something in return. The bank had held a charge over a property called Rush Green Hall which they agreed to release on condition that they would receive £750,000 from the sale proceeds and a fresh charge over another property, Oak Court, which was being acquired in a related transaction by the vendor's daughter. The daughter subsequently applied to remove the charge over Oak Court on the basis she had never agreed or signed it. The court held that the bank would never have released its first charge if it was going to lose its security over the purchase of Oak Court. Mr Ogedegbe said on the facts of his own situation he had provided advice to the defendant based on a mistaken assumption that he would secure a job with them.

d) *Cheltenham and Gloucester Plc v Appleyard and Another* [2004] EWCA Civ 291

This case examined the law of subrogation as it applied to a Building Society lender and the court found that subrogation was a private remedy intended to avoid unjust enrichment.

e) *Commerzbank Ag v Price-Jones* [2003] EWCA Civ 1663

In this case an employee had received a bonus which his employers accidentally increased and overpaid in the sum of £250,000. When the employee was subsequently offered redundancy he instead chose to remain employed and claim the increased bonus that had been erroneously offered. It was held that the bank was entitled to restitution of that sum unless the employee could prove he had so changed his position based on the offer and his decision not to leave that it was inequitable to require him to make full restitution to the bank.

THE LEGAL TESTS ON SUMMARY JUDGMENT AND ON STRIKE OUT

13. Pursuant to CPR 24.2. the court may give summary judgment on the whole of a claim or a particular issue if:

"(a) it considers that-

(i) The claimant has no real prospect of succeeding on the claim or issue; "…."and

(ii) There is no other compelling reason why the case or issue should be disposed of at trial."

14. Pursuant to CPR 3.4 (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; and /or

(b) It is an abuse of the courts process or is otherwise likely to affect the just disposal of the proceedings

15. The notes to the White Book make it plain at 3.4.2 that a claim should not be struck out unless the court is certain it is bound to fail. Within the Practice Direction there are examples of cases where the court may conclude that the Particulars disclose no reasonable grounds because they set out no facts indicating what the claim is about or they are incoherent, alternatively despite a coherent set of facts, those facts even if true do not disclose a legally recognisable claim.

16. As to what is an abuse of process, at 3.4.3 in the White Book, the notes record that there is no clear definition, and the scope is wide but if any abuse can be addressed by less draconian methods than a strike-out, then the other option should be taken.

OVERLAP BETWEEN SUMMARY JUDGMENT AND STRIKE-OUT APPLICATIONS & RELEVANT CASE LAW

17. A relatively recent authority provides some assistance on the question of overlap between a summary judgment application and whether a defendant failing to prove grounds for summary judgment must necessarily fail on its strike out application too.. In *Burnford v Automobile Association Developments Ltd*, BL-2021-000731, HHJ Paul Matthews said at [20], when comparing and contrasting the two types of application, "These two methods of summarily disposing of a claim without a trial are frequently combined in the same application, as in this case. But it is clear that an application under rule 3.4 is not one for summary judgment: see eg *Dellal v Dellal* [2015] EWHC 907(Fam). It is generally concerned with matters of law or practice, rather than with the strength or weakness of the evidence. So on an application to strike out, the court usually approaches the question on the assumption (but it *is* only an assumption, for the sake of the argument) that the respondent will be able at the trial in due course to prove its factual allegations. On the other hand, on an application for summary judgment, the court is concerned to assess the strength of the case put forward: does the respondent's case get over the (low) threshold of "real prospect of success"? If it does not, then, unless there is some other compelling reason for a trial, the court will give a summary judgment for the applicant".

18. At [21] the judge continued, by reference to the judgment of Coulson LJ in *Begum v Maran (UK) Ltd* [2021] EWCA Civ 326 at [20] "in a case like this (where the striking-out is based on the nature of the pleading, not a failure to comply with an order), there is no difference between the test to be applied by the court under the two rules". Then continuing at [21], "accordingly, I do not agree with the judge's observation at [4] that somehow the test under r.24.2 is "less onerous from a defendant's perspective". In a case of this kind, the rules should be taken together, and a common test applied. If a defendant is entitled to summary judgment because the claimant has no realistic

prospect of success, then the statement of claim discloses no reasonable grounds for bringing the claim and should be struck out: see Global Asset Capital Inc v Aabar Block SARL [2017] EWCA Civ 37…".

19. Coulson LJ continued at [22] "As to the applicable test itself:

a) The court must consider whether the claimant has a "realistic" as opposed to a "fanciful" prospect of success: *Swain v Hillman* [2001] 1 AER 91. A realistic claim is one that carries some degree of conviction: *ED& F Man Liquid Products v Patel* [2003] EWCA Civ 472.But that should not be carried too far: in essence the court is determining whether or not the claim is "bound to fail"".: *Altimo Holdings v Kyrgyz Mobil Tel Ltd* [2012] 1 WLR 1804 at [80] and [82].

b) The court must not conduct a mini-trial: *Three Rivers District Council v Governor and of the Bank of England (No 3)* [2003] 2 AC 1, in particular paragraph 95. Although the court should not automatically accept what the claimant says at face value, it will ordinarily do so unless its factual assertions are demonstrably unsupportable: *ED & F Man Liquid Products Ltd v Patel; Okpabi and others v Royal Dutch Shell Plc and another* [2021] UKSC 3, at paragraph 110. The court should also allow for the possibility that further facts may emerge on discovery or at trial: *Royal Brompton NHS Trust v Hammond (No 5)* [2001] EWCA Civ 550; *Sutradhar v Natural Environmental Research Council* [2006] 4 All ER 490 at [6]; and *Okpabi* at paragraphs 127-128."

20. On the latter point I am also mindful of the decision in *Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Company 100 Ltd* [2007] FSR 63, where similarly the court determined that it should hesitate about making a final decision without trial, even where there is no obvious conflict of fact at the time of the application, but where there are reasonable grounds for believing a fuller investigation into the facts would add to, or alter, the evidence available to a trial judge and therefore affect the outcome of the case.

21. It is helpful to record one of the other key principles to be applied on summary judgment, as set out by Lewison J, as he then was, in *Easyair Ltd v Opal Telecom Ltd* [2009] EWHC 339 (Ch) at [15 vii)] "… it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that is determined, the better. If it is possible

to show by evidence that although material in the form of documents or evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction: *ICI Chemicals & Polymers Ltd v TTE Training Ltd* [2007] EWCA Civ 725".

22. Finally, it is important to remember that the evidential burden is on the applicant to establish that there are grounds to believe there is no real prospect of success and no other compelling reason for trial. It is only when the applicant has produced evidence which is credible to support the application, that the respondent becomes subject to the evidential burden of proving the opposite.

THE PARTIES SUBMISSIONS CONCERNING THE SUMMARY JUDGMENT APPLICATION

Submissions by the defendant

23. The defendant submitted that the claim is entirely misconceived and lacks *any* prospect of success. In particular they asserted that the essential components of the legal test for unjust enrichment, as set out at paragraphs 10 and 11 above, are not satisfied in that:

a) The defendant, as a recruitment and payroll company could not benefit from any increased sales of health insurance products as it does not "trade" or engage in commercial activity i.e. it is the wrong defendant to sue, even if there was a valid claim to be brought which is denied.

b) There is no causal link between the actions of the claimant in mentioning alleged deficiencies on the Simplyhealth website and any increased profit shown for Simplyhealth *People* Limited in filed accounts at Companies House between December 2017 and December 2018. This is because the defendant's income does not derive from the sale of healthcare policies-it is a recruitment and payroll company. There has been no enrichment therefore of this defendant, due to any actions of the claimant.

c) Irrespective of whether the correct defendant has been chosen within the trading group, it is denied that there has been, or could have been any free acceptance of a benefit conferred by the claimant because:

(i) The defendant was unaware, that in providing the information he did, the claimant was providing a service. The claimant had been asked to prepare for interview for a position which he wanted and any research that he undertook in readiness for that interview, or information provided as to the content of the website, was directed towards securing employment as a Benefits Consultant. On page 3, paragraph 1 of the Particulars of Claim the claimant states "I provided the Defendant my Business Consultancy services advice because I was hoping to be employed by the Defendant". It was submitted

that this sentence is entirely inconsistent with any arrangement to provide independent business consultancy services. The defendant further submits that the fact that the letter written by the claimant was forwarded to an HR professional, as a potential complaint, rather than to a salesforce or IT team demonstrates that condition (a) discussed at paragraph 11 is not satisfied.

(ii) The claimant has not outlined any basis for asserting that the defendant appreciated it expected to pay for the letter of 16th May 2018. The letter was not written on any headed business paper and no invoice has ever been intimated or supplied. Furthermore there was no contract between the parties or any anticipated contract in respect of "business advisory services" The wording of the letter relating to the hope "to be employed by the Defendant" is said to further demonstrate a complete lack of intention by the claimant to be paid for the alleged services-his intention was to secure a salary on appointment. These submissions are directed towards condition (b) of the test at paragraph 11 above.

(iii) Finally, in respect of condition (c) of the test the defendant maintains that it had no option to reject the "benefit" as they never intimated that they were seeking the claimant's advice or services prior to his unsolicited letter, they had no opportunity to reject the purported service and in fact obtained no benefit from the advice, evidence having been supplied to show that there were no website changes resultant from the contents of the 16th May letter or other assertions by the claimant. The defendant maintains that it therefore did not "accept" any benefit.

d) A separate issue raised by the defendant concerns the nature of the perceived "benefit" bestowed by the claimant relates to the products called a "Cash Plan" and a "Health Plan". The defendant says the products are one and the same so the entire basis of the claimant's purported business consultancy service is flawed. As their website has moved to a new content management system they say they cannot provide date-stamped pages relevant to the dates in this claim. They have provided witness evidence from their HR Operations Partner, signed 20th May 2021, confirming that she was employed by the defendant at the time of the claimant's interview. She states that there are two plans available for each of individuals and businesses, a health plan and a dental plan. She says at paragraph 13 that the Health Plans are often referred to as Cash Plans because the customer can claim a cash back on the cost of private healthcare they receive. She acknowledges that the names of the products has "constantly evolved and aligned" since 2017 to the current terminology of "Health Plans". She explains at paragraph 7 that during 2018 there was a "significant overhaul " of the website as it transitioned to a new content management system involving the removal of over 1000 pages and some simplification for customers using it. What she is clear about is that a "cash plan " has never been a separate type of plan but just a different name for "health plan". She also stated at paragraph 14 that the website does not provide details of the corporate health and dental plans as they are all bespoke but says the claimant was not interviewed for a role selling products to corporates, the inference being that he would not have been asked a question at interview about a product he would not be involved with, if employed.

Submissions by the claimant

24. The claimant's skeleton argument contained a number of complaints which were not relevant to this hearing, namely assertions regarding the defendant's failure to file a Defence on time, which has been the subject of a previous application and references to the Fraud Act which has not been pleaded and therefore does not fall to be considered now. Regarding the claim having prospects of success he produced the case authorities referred to above where claimants had succeeded in a claim for unjust enrichment.

25. The claimant maintained that he believed he could prove that the defendant had received a benefit from his advice concerning deficiencies in the way their insurance products were marketed on their website by virtue of production of the new website pages and the statement of increased profits as recorded at Companies House. This assertion relates to condition (a) referenced at paragraph 10 above.

26. In respect of condition (b) of the legal test the claimant stated the enrichment was at his expense because the defendant had refused to employ him for a vacant position and he had suffered hardship as a result of being unemployed.

27. In respect of condition (c) of the legal test the claimant maintained the enrichment was unjust because the defendant should not have implemented his advice if they were not going to employ him, stating "This amounts to too much of an exploitation and they took too much advantage of my vulnerable situation".

28. As far as the concept of free acceptance is concerned, the claimant did not expressly address this as to how the defendant knew a "service had been provided", rather than interview feedback, nor why they would have appreciated the benefit should be paid for (save that he had referred to exploitation as stated above at paragraph 27) and he did not explain how the defendant could have rejected the benefit of his unsolicited correspondence although he said "they should not have implemented my advice" which seems to me to provide his answer to the question.

29. The claimant denies that the Simplyhealth Cash Plan is an interchangeable term for their Health Plan.

MY DETERMINATION OF THE SUMMARY JUDGMENT APPLICATION

30. I remind myself that the correct test is whether the claimant's prospects of success in proving both unjust enrichment and free acceptance can fairly be said to be better than *merely arguable* i.e. not fanciful but containing some degree of conviction, or in other words are the claimant's arguments bound to fail? I need to consider whether a fuller investigation into the facts would affect the outcome of the case or whether I have all the evidence necessary for the proper determination of the question now. Neither party submitted that I did not have everything I needed at this point in time to reach a fair conclusion. I also formed that view.

31. The concept of unjust enrichment is well established within the English legal system as the case authorities which have been produced demonstrate. However for a party to succeed with their claim they must satisfy not just one element, but *all* of the ingredients that form part of the threshold test for success. I will deal with my determination on the evidence for each.

32. **First, did this defendant receive a benefit?** I have read the evidence, including studying the extract of the defendant's financial accounts filed at Companies House for the year ended December 31st 2018, as relied upon by the claimant, and read the Strategic Report of the defendant filed within those same accounts available on-line at Companies House. Page 1 of that Strategic Report sets out that the defendant's "principal activity is the employment of people who deliver services for a number of companies within the Simplyhealth group ("the Group"). The services are provided on an arm's length basis and are the Company's main source of income…. Revenue has risen by 49%... this increase is reflective of restructuring within the Simplyhealth Group where the employment contracts of approximately 450 staff were transferred to the Company...". Later on in the accounts it is revealed that the transferring staff were the Denplan Limited team. Having read these statements, and listened to submissions, I conclude that if any benefit was given and relied upon from the claimant as asserted,(and which I will consider further below), this defendant did not receive any direct financial benefit from increased insurance policy sales through another trading company within the Group in the year ended 2018. I accept the defendant's submissions that Simplyhealth People Limited is not part of the insurance sales trading operation, and I find that there is no evidence from the accounts relied upon, as independently audited records, that the revenue increase enjoyed by the defendant in 2017/2018 arose from increased insurance product sales.

33. **Secondly, was the information supplied by the claimant capable of being considered a benefit and was it the intention of the claimant to supply a benefit as a commercial transaction i.e. not gratuitously?** The claimant has supplied case law where benefits were deemed to have been provided in other claims for unjust enrichment. The benefits were of a tangible nature- alleged overpayment of taxes, a dispute between parties who were co-owners of a company, over a company sale valued in excess of 3 billion euros and the level of brokerage fee that arose, release of a property charge, subrogation of another property charge and a sizeable overpayment of a bonus. It is plain that the nature of these "benefits" is worlds apart from the comments provided by the claimant in a few brief words, as part of an email and a subsequent letter on entirely different topics, to suggest that the defendant should improve its website and that increased sales would flow from those changes.

34. A summary judgment application is appropriate for considering a short point of construction of a document. I have studied the email sent by the claimant on 3rd May headed Re: Benefits Consultant Interview and the plain and natural reading of it, is that the claimant wished to explain why he had some difficulty answering some of the interview questions on the previous day. There is absolutely no suggestion that he was offering advice/ a service on website development for which a consultancy fee might be appropriate. It is a personal email from an individual hoping to secure an employment contract, not any other type of consultancy contract, and simply said "I think you might want to have a look at the simplyhealth's website and make the necessary amendments on the "Business health plans" six levels of cover section. It was part of an exchange chasing up feedback from the job interview in the hope that the Benefits Consultant position would be secured. Although that email was relied upon in the claimant's skeleton argument for this application it is not pleaded on the Claim Form or in the Particulars of Claim.

35. I turn next to consider the construction of the claimant's letter of 16th May 2018, which is pleaded as the basis of his claim. That letter is headed "Re: Benefit Consultant Job Interview/Discrimination" which cannot be said to intimate that the content contains information or advice of value for which a fee should be payable. The tone and content is quite clearly one of complaint and confrontation concerning a perceived unfairness in selection for the role applied for by the claimant. The letter repeats that information was missing from the website which the claimant says is " needed by the public" but then proceeds to explain that without the information it was "impossible for me during the interview to talk about the six levels of cover,.." . The effect of the missing information for customers is referenced twice but the impact on the interview process, and not being offered the job is mentioned many more times alongside an allegation of discrimination and the letter ends "I think I am the most competent candidate for the Benefit Consultant role. I request to be employed as the Simplyhealth Benefit Consultant". I cannot construct those sentences to impute a meaning that a fee was due for the information that had been imparted; there is no reference to an invoice, no sum is specified and the overall tenor is that the interview process was flawed and unfair and that the remedy sought was a job offer.

36. The timing of the letter of 16th May 2018 is also an important part of the overall context within which the content was drafted. It was sent the day after the claimant received news that a much hoped for offer of employment was not going to be forthcoming. Some 5 months later a claim was issued in the Employment Tribunal on grounds of age discrimination. There was no reference to the claimant having offered a benefit for which he expected to be reimbursed, until many, many months later on 19th August 2019, when the claimant wrote to the Tribunal stating he had that day visited the Simplyhealth website and discovered that the information he had suggested should be added to the website on 16th May 2018 was now visible on the website. He went on to say "I am charging Simplyhealth £20,000 fee for my Business Consultancy services which prompted Simplyhealth to correct their errors on their website". It is plain from this letter that there had been no intention to charge the defendant anything at all when the earlier letter had been written, over a year earlier. It is therefore inconceivable that the defendant could, under the relevant legal test, be "held to have benefited from the services rendered if he, as a reasonable man, should have known that the claimant who rendered the services expected to be paid for them" in accordance with the principle of free acceptance as set out in the text already referred to at paragraph 11 above. There was nothing revealed by the earlier correspondence to suggest to the defendant that a service had been provided, for which a fee would be payable, unless the defendant chose to reject the advice. Indeed the claimant's own Particulars of Claim at page 3, paragraph 1 states his motivation in offering "advice" was " because I was hoping to be employed by the Defendant". The claimant says he made a mistaken assumption that he would be employed when offering his advice, and compares that to the mistake in overpaying a bonus in the *Price-Jones* case cited above and relies on that case authority for him to succeed in claiming unjust enrichment. What the claimant has failed to distinguish, when comparing his situation to that of the Commerzbank, is that there was no doubt in that case that a tangible benefit had been conferred between two parties who had a contractual relationship.

37. To conclude, my findings concerning the construction of the claimant's correspondence in May 2018, and upon which he relies, are to the effect that the essential foundation blocks, as enshrined in legal tests, are not present in this case to establish a successful

claim for unjust enrichment. Having concluded that the claimant has no reasonable prospect of success in proving his intention to confer a benefit for which he should be paid an advisory or consultancy fee when sending correspondence to the defendant in May 2018, nor that the defendant could reasonably have understood an intention to be charged and therefore a need to reject the unsolicited correspondence that they had received, the claim fails to get off the ground. No other compelling reasons why the matter should proceed to a trial have been submitted by either party and I cannot think of any myself.

38. To be clear, having made my determination above there is no need for me to explore other issues present in the claim such as whether the website information in 2018 was adequate for customers (and for which there are no screenshots available of that archived material), nor the extent of any improvement as alleged in 2018/2019, nor whether there is a difference between a cash plan and a health plan, nor whether the claimant's comments ever reached the IT design team and were later incorporated into part of the website updates (which is denied), nor whether insurance sales increased (albeit in a separate trading division of the Group to that of this defendant) following the website changes and whether there is any causal link between any possibly improved information and revenue. When considering the legal test required to be satisfied for this claim to get off the ground, I call to mind the image of a 3 legged stool – if one leg is missing it will fall over and fail to be of value; having set out why at least one leg of the stool (or part of the legal test by analogy to this case) is absent there is no need to consider if a second or third part of the legal test is well-founded because it will make no difference -the overall test remains unsatisfied so the claim must fail.

39. I should also mention the claimant's reference on page 2 of his Particulars of Claim to damages for unjust enrichment being due on a quantum-meruit basis, which he defines as reasonable remuneration for consultancy services he has provided. This element of his claim fails on the same basis as I have outlined already, that the correct interpretation of his correspondence is not of the nature, where a reasonable person should have known payment would be expected. The time and effort put into supplying extremely brief comments about possible improvements to the website was related to aspirations to secure a job offer; it is not uncommon for job candidates to comment within the recruitment process on roles they have applied for, and to supply ideas on how they could make a difference if recruited, but such comments are directed at securing employment and nothing more – the whole thrust of the claimant's efforts at the time was directed at securing a job or redress for perceived unfairness in the selection process and the Tribunal has already reached a conclusion on those issues. I have also already set out that there is no evidence that the employment and payroll company the claimant has sued acquired any financial benefit from website changes made by a different corporate entity on behalf of yet another company trading in insurance sales (and where the independently audited accounts show an increased profit as due to transfers of staff dealing with dental plans in any event).

40. Finally, I would like to add a note about the claimant's contention, as pleaded, that he was advised by Employment Judge P Cadney to bring this claim on 20th August 2019. I note the defendant denies this, but they acknowledge that the learned judge said that there was no jurisdiction for him to hear the issue in the context of the discrimination claim. I simply say it is correct that the High Court and County Court are appropriate forums for commencing claims for unjust enrichment, not the Tribunal. The merits of

the claim are for this court to determine, as I just have, and did not fall within the remit of the Employment Tribunal judge.

THE STRIKING OUT APPLICATION

41. As set out at paragraph 18 above, if a defendant is entitled to summary judgment because the claimant has no realistic prospect of success, then the statement of claim discloses no reasonable grounds for bringing the claim and should be struck out pursuant to CPR 3.4 (a).

42. I do not consider it necessary to consider the defendant's further application, in the alternative, to strike out the claim pursuant to CPR 3.4 (b) as an abuse of process. However I do consider in view of my other findings that it will be appropriate to state within my order which will follow this judgment that the claim is dismissed as one that is totally without merit, because there are no reasonable grounds for making the claim- it does not satisfy the basic threshold test for a claim of unjust enrichment. No claim can succeed which does not meet the legal tests which are well-established and prolonging litigation which is bound to fail is not a sensible way to proceed as it drains resources for all those affected by it. I recognise the hardships caused by unemployment but the further pursuit of a claim which I have deemed is bound to fail will not assist the claimant and also places an unfair burden on the defendant who is put to the trouble and expense of court proceedings which are unnecessary where the basic threshold tests are not satisfied.