



Neutral Citation Number: [2022] EWHC 2759 (TCC)

Case No: HT-2022-000089

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
TECHNOLOGY AND CONSTRUCTION COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 02/11/2022

Before :

MR MARTIN BOWDERY KC
(sitting as a Deputy High Court Judge)

Between :

J WANSTALL & SONS
- and -
FRIDAYS LIMITED

Claimant

Defendant

Mr John Stevenson (instructed by **Knights Solicitors**) for the **Claimant**
Mr Stuart Benzie (instructed by **Freeths LLP**) for the **Defendant**

Hearing date: 17th October 2022

Approved Judgment

This judgment was handed down remotely at 10.30am on 2nd November 2022 by circulation to the parties or their representatives by e-mail and by release to the National Archives (see eg <https://www.bailii.org/ew/cases/EWCA/Civ/2022/1169.html>).

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MR MARTIN BOWDERY QC

This judgment is in six parts.

.1 APPLICATION AND SUPPORTING EVIDENCE

.2 THE PARTIES

.3 A SHORT CHRONOLOGY

.4 THE FACTS

.5 THE LAW

.6 CONCLUSIONS

Mr Martin Bowdery KC :

1 THE APPLICATION AND THE SUPORTING EVIDENCE

1. The application made by the Defendant is an application:
 - to strike out the Claimant’s claim pursuant to CPR Rule 3.4(2)(a) on the grounds that the statement of case discloses no reasonable ground for bringing the claim and/or the claim is an abuse of process; and/or
 - for summary judgment pursuant to CPR rule 24.2(a) on the grounds that the Claimant has ‘no real prospect’ of succeeding on the claim.
2. The application is supported by a Witness Statement of David Friday who amongst other matters states that a meeting took place at The George in Cranbook on the 30th May 2019. He goes on to state:

“22. At the meeting, we discussed the Salmonella outbreaks, the possible routes of contamination and infection, and the costs each party had suffered as a result.

23. Doug accepted that Harefield Farm was the first infected flock and the likely source of further contamination and infections. I accepted that it was possible that contamination had moved within our supply chain (it being impossible to rule this out entirely). Doug outlined the costs linked to the outbreak, especially the rendering of the Deer Park flock and the disruption to his business. I outlined the costs to our business, such as the disruption caused, the reduced availability because of Harefield, the disruption because of Deer Park supply and the issue of eggs being poor quality.

24. We also discussed the biosecurity barrier in hen houses that was Doug's responsibility and should exist and be implemented between outside the bird area and inside and that that was a critical barrier that must have been breached for infections to have occurred.

25. We agreed that the best way to proceed was to focus on our trade moving forward. Doug believed that he could run a successful business in supplying eggs to us and I believed purchasing eggs from Doug helped me to operate a free-range packing business. Doug stated that he needed financial support in the form of a £100,000 loan to be re-paid over one year and suggested this could be deducted from egg payments.

26. In return, Doug would commit to not pursuing Fridays for losses associated with the outbreaks, including through legal channels, and he would not engage in any negative PR activity against Fridays. I also accepted that Fridays would not pursue Doug for the costs it had borne. I said that I would come back to him on how much support we could offer.”

3. The Claimant relies upon a Witness Statement from Doug Wanstall in opposing this application and amongst other matters he states:

“3) Paragraphs 22-30:

The record of our lunchtime discussion at paragraphs 22-25 is broadly accurate but both of us explained the deficiencies we perceived in the other's bio security and what could be done to reduce the risk of another salmonella outbreak. I concluded that each of us understood and would address the other's position and that there was therefore a way forward. We did not discuss anything whatsoever touching upon financial claims against each other still less the abandoning of them. The whole focus of our discussion was how to ensure that we could continue to trade together. If, as Mr Friday claims at paragraph 27, "*the only purpose of this discussion was to bring Doug's claims to an end*" it was not something which Mr Friday voiced or even hinted at.

I note that when Mr Friday briefed his father about the meeting- paragraph 28 - he did not mention anything about the compromise agreement which he now alleges had been reached - even though he now says it was the central topic of the meeting.”

4. David Friday's response to Doug Wanstall's Witness Statement states in relation to paragraph 3(3) quoted above that:

“12. As to paragraph 3 (3), I reiterate my account of the meeting between Mr Wanstall and me where commitment not to pursue for losses was discussed, which is consistent with correspondence beforehand and thereafter. The statement that this "brings the zoonosis issue to a close" (page 24/DF1), was a statement that the claim that Mr Wanstall was clearly threatening in relation to the alleged losses mentioned in his 14 September 2019 email was now settled.

13. This discussion at the meeting about the losses incurred by Mr Wanstall occurred following, and as a result of, written threats of redress and reference to legal advice being taken. Obviously, the agreement of a financial settlement / payment was finalised explicitly for the purpose of dealing with the claim that was quite clearly being advanced by Mr Wanstall.

14. Given that Mr Wanstall now says that the agreement related to bio security, I do not understand why he says that Fridays was willing to advance the money to Mr Wanstall. The only reason that Fridays agreed to such a payment was to settle Mr Wanstall's claim in relation to the losses he alleged during the meeting.

15. Further, the summary of the update to our Managing Director certainly concerned the Settlement Agreement. The absence of reference to the term "*compromise agreement*" in no way defines what was or wasn't discussed. As my first statement sets out at paragraph 28, I recounted

how Mr Wanstall and I discussed " ...the costs to both sides ...". Where the essence of Mr Wanstall's claim is that he incurred losses owing to the salmonella outbreak, it follows that the payment was agreed to settle these."

.2 THE PARTIES

5. The Claimant is a partnership (that is challenged by the Defendant who alleges that any agreement was with Doug Wanstall personally) that carries on trade as farmers and food producers from Bank Farm, Ashford, Kent and various other sites in England in particular egg farms at Harefield Farm and at Deer Farm. The Claimant produces some 200,000 eggs a day and was an important supplier to the Defendant.
6. The Defendant is a leading producer of eggs and egg products to retailers, food service providers, wholesale, manufacturing customers and other egg packers in the United Kingdom and abroad. The Defendant owns and operates rearing farms (where day old chicks are reared to nearly egg laying maturity); laying farms (where eggs are produced by laying hens); packing centres (where eggs are packed and graded to a saleable quality) and two chilled food factories including an egg boiling plant.
7. The Defendant produces approximately 80% of its ungraded eggs for packing from its own laying farms, it also has agreements in place with external providers (known as 'contracted producers') who primarily supply free range ungraded eggs to them. The Claimant was a contracted producer until on or about 5th September 2019.

.3 A SHORT CHRONOLOGY.

Date	Event
17July2017	Sample taken from C's Harefield Farm tested positive for Salmonella. Test was undertaken at Weald Laboratory, a private laboratory owned by D
21 July 2017	British Egg Industry Council ("BEIC") notified of the result.
31July2017	Email from Doug Wanstall to David Friday stating, (inter alia): <i>"I am obviously very anxious at this end as we are about to see our income from Harefield farm (sic) implode which is going to have a dramatic effect on our overall business"</i> .
1 August 2017	Email from Doug Wanstall to David Friday stating (inter alia): <i>"This has all come as rather a shock, am not insured and this will have a serious and prolonged financial impact on my business."</i>
11 April 2018	D notified by BEIC that C's Deer Park Farm had failed a certification audit.

19 March 2019	D notified by BEIC that Salmonella at Deer Park Farm.
27 March 2019	Email from Doug Wanstall to David Friday requesting £150,000 advance payment for eggs. Fridays agreed and paid £20,000.
20 May 2019	<p>Doug Wanstall long email to BEIC, David Friday and James Friday stating (inter alia), <i>"I will be seeking redress for the costs and losses, for the fact that our treatment has been unfair and for the flagrant double standards, the question is how best to go about it."</i></p> <p>James Friday responded to this email on the same day at 13.06</p>
28 May 2019	David Friday sent a text message to Doug Wanstall to arrange a meeting to discuss his 20 May 2019 email.
30 May 2019	<p>Meeting at the George in Cranbrook between David Friday and Doug Wanstall.</p> <p>See David Friday: Doug Wanstall requested financial support of £100,000 (§25 [91]) and in return he would commit to not pursuing Fridays for losses associated with the outbreaks.</p> <p>See Doug Wanstall: concedes that the record of the meeting is "broadly accurate" (Paragraph 3(3) [191]). However he further stated that "We did not discuss anything whatsoever touching upon financial claims against each other still less the abandoning of them"</p>
3 June 2019 (17.31)	<p>Email from David Friday to Doug Wanstall (headed "Faster Payment Agreement") confirming proposed payment. Mr Friday states:</p> <p><i>"I'm pleased to be able to assist you in bringing this final piece of the zoonosis issue to a close. Please confirm your understanding of this arrangement, so I can proceed to payment this week"</i></p>
3 June 2019 (17.43)	<p>Email from Doug Wanstall to David Friday (headed "Faster Payment Agreement"):</p> <p><i>"Thank you for the offer of £50,000 by way of a loan to be repaid over 50 weeks. I would like to accept[...].</i></p> <p><i>Lets hope we can move onto more positive things in the near future. "</i></p>

4 June 2019 (09.24)	Email from David Friday to Doug Wanstall: <i>"For clarity this is not a loan but a faster payment, and can you confirm this brings the zoonosis matter to a close."</i>
4 June 2019 (09.31)	Email from Doug Wanstall to David Friday (still headed "Faster Payment Agreement"): <i>"Yes sorry I understand it is a faster payment, I also confirm that this bring a close to the zoonosis matter with Fridays Ltd. If the payment can be made tomorrow that would be helpful"</i> <i>"I intend now to move to a more positive footing ... "</i>
7 August 2019	Email from Doug Wanstall to David Friday discussing termination of the agreements with Fridays (for the supply of eggs).
14 September 2019 (06.33)	Email from Doug Wanstall to David Friday: <i>"The amount was paid as some small help as we were in such a dark hole financially. I said to you that it would never cover our losses but that I was not going to turn it away. The agreement was very loose but as I understood it, whether a loan or faster payment, it would be paid back over a year. My financial problems have not gone away, they were caused by salmonella. "</i>
10 October 2019	Email from Dough Wanstall to David Friday. <i>"Thank you for meeting in London yesterday, it was good to air our thoughts but I am not sure that much was achieved. I don't want a fight and I would like to put this behind us all and want to find a settlement that works.</i> <i>I appreciate that both parties have been badly affected by this both reputationally and financially and any further action or delay in settling it once and for all can only be destructive for us and the industry. I must stress I did not and will not talk to any journalists, they found the information by other means.</i> <i>I do want something positive to come out of this and I shall be taking that up with BFREPA and the BEIC. There is little doubt that the handling of future outbreaks needs to be different, and I favour a no fault type investigation where all parties work to find the source and vehicle of infection and manage it so that the likelihood of it happening again is reduced as much as possible. I think if we can all come out and say that we are working together to improve the way salmonella is handled then that will send a powerful and positive</i>

	<p><i>message to the rest of the industry at a very unsettling time.</i></p> <p><i>If a loan type arrangement can be put in place where I pay it back over a period of time whilst I restructure my business and repair the damage caused by salmonella I am prepared to back it with a personal guarantee and sign a joint agreement where we lay down that we will not point the finger of blame at either party. I would then like to work with you and the BEIC to get to the bottom of this in order that we can once and for all find out where 2669 came from and consign it to the history books.”</i></p>
11 October 2019	<p>Email from David Friday to Doug Wanstall</p> <p><i>“Thank you for your email.</i></p> <p><i>Like you, we want to put this behind us and focus on working within the industry to help prevent such outbreaks and improve the response to them.</i></p> <p><i>I think that we are all agreed that there is nothing to be gained from fighting amongst ourselves or pointing the finger of blame.</i></p> <p><i>With regard to financial assistance, I am afraid that Fridays are not in the money lending business and the kind of arrangement we previously agreed is simply not possible when we are no longer in a trading relationship.”</i></p>
21 February 2020	Respondent’s Letter of Claim
5 June 2020	Applicant’s Letter of Response.
6 July 2021	Claim issued claiming loss and damage emanating from the Salmonella outbreaks.

THE FACTS

8. The factual background to this matter is far from clear. The Defendant complains that:

“In an email dated 20th May 2019, from Doug Wanstall to David Friday, Mr Wanstall set out a dispute that he was raising in relation to the infection of the flocks at C’s Harefield Farm and Deer Farm with Salmonella:

- .1 The email is headed "Urgent attention required" and Mr Wanstall sets out the details of the infection at Harefield Farm in July 2017.**
- .2 The email is addressed to the British Egg Industry Council ("BEIC") and also David Friday and James Friday. The email states in terms that:**

"I will be seeking redress for the costs and losses, for the fact that our treatment has been unfair and for flagrant double standards, the question is how best to go about it." [119]

- .3 He goes on to set out details of the infection at Deer Farm in March 2019.**
- .4 He states that Friday's packing centre was tested and proved positive on or around 15th April 2019.**
- .5 He alleges that the Claimant received egg trays with "*significant egg shell, yolk and mould residues*"**
- .6 The gist of the email is that Fridays must have been the source of the salmonella outbreak because it is the only common factor.**
- .7 The email concluded:**

"This problem will not simply go away or be brushed under the carpet and I am happy to talk further at any time to reach a resolution, I suggest that happens sooner rather than later"

9. However that email was addressed to Mark Williams of the BEIC and David and James Friday. The email contains a list of complaints against the BEIC and ends by stating:

"The personal and financial stress on me has been significant, almost to breaking point. I feel let down by an organisation that I have only ever supported. I will be seeking redress for the costs and losses, for the fact that our treatment has been unfair and for the flagrant double standards, the question is how best to go about it. I don't want a fight, nor for this to go public, but I will not simply roll over and accept that this is all my fault and see my poultry business ruined. Needless to say I am taking advice and am considering my options.

This problem will not simply go away or be brushed under the carpet and I am happy to talk further at any time to, reach a resolution, I suggest that happens sooner rather than later."

10. I construe this letter as asserting that Doug Wanstall will be seeking redress for costs and losses from an "organisation" that is BEIC and not from David Friday. It is certainly strongly arguable that this letter is seeking redress for costs and losses from BEIC and not from David Friday. At this stage there appears as yet no claim made against the Defendant and at this stage no dispute with the Defendant.
11. The Defendant submits that:

"Following receipt of that email, David Friday arranged a lunch meeting with Doug Wanstall and he attended that lunch on 30th May 2019. At that meeting

there was a discussion about the issue raised in the 20th May 2019 email. There is a dispute as to what was said at that meeting; however, it is not in issue that following that lunch there was a chain of emails wherein Doug Wanstall expressly accepted an offer of a loan of £50,000 and agreed that brought an end to the "zoonosis matter" (email 3rd June 2019 and 4th June 2019.)"

12. I observe that although David Friday now claims that the Claimant foregoing its claims was expressly discussed, as the central issue, at the pub meeting he neglected to mention this when he reported on the meeting to his managing director (and father) Malcolm Friday. See paragraph 28 of David Friday's Witness Statement which stated

"28. I then organised a meeting with the Managing Director at Fridays, Malcolm Friday. We discussed the meeting and I recounted how Doug and I discussed the costs to both sides and how Doug had indicated that he was under financial stress and had asked us for support in the form of a loan, that could be repaid by way of deductions from future amounts due to Doug as payment for eggs."

13. It is alleged that a settlement was concluded in the following chain of emails:

Email 1

David Friday to Doug Wanstall

3rd June 2019 (17.31)

"As discussed, we will provide a faster payment of £50,000 to you this week. This will be repaid over 50 weeks at £1,000 per week (commencing w/c 10th June 2019).

This is subject to the value of any unpaid eggs supplied to us, exceeding the remaining balance of the faster payment amount. In this case, repayments will be increased to cover the difference.

I'm pleased to be able to assist you in bringing this final piece of the zoonosis issue to a close. Please confirm your understanding of this arrangement, so I can proceed with the payment this week.

Email 2

Doug Wanstall to David Friday

3rd June 2019 (17.43)

Thank you for the offer of £50,000 by way of a loan to be re paid over 50 weeks. I would like to accept. I understand that this is to be paid into our account this week and that re payments of £1000 per week will be made

from w/c 10th June 2019. I understand the point about the value of eggs held by you.

Lets (sic.) hope we can move onto more positive things in the near future.

Email 3

David Friday to Doug Wanstall

4th June 2019 (09.24)

Thanks for the confirmation - I'll arrange the payment today for later in the week.

For clarity this is not a loan but a faster payment, and can you confirm this brings the zoonosis matter to a close.

I'm looking forward to moving forward on a more positive footing too!.

Email 4

Doug Wanstall to David Friday

4th June 2019 (09.31)

Yes sorry I understand it is a faster payment. I also confirm that this brings a close to the zoonosis matter with Fridays Ltd. If the payment can be made tomorrow that would be helpful.

I intend now to move to a more positive footing and move my business forward, lets (sic.) hope the whole egg industry can do the same at some point soon.

14. I construe this chain of emails applying the key principles applicable to the interpretation of contractual provisions summarised by Lord Hodge in **Wood v Capita Insurance Services Limited** [2017] AC 1173 as an arrangement looking forward not backwards. The zoonosis issue (the zoonosis matter) referred to is the outbreak of salmonella.
15. These emails do not refer to a dispute between the parties as to the costs and losses of that outbreak but rather to a state of affairs which the parties had resolved so as to enable them to trade together going forwards.
16. If that is not the correct interpretation of these emails it is certainly strongly arguable that these emails do not settle any dispute between the parties, if in fact the parties were at this stage in dispute.

17. There is no mention in these emails of a dispute as to the costs incurred by either the Claimant or the Defendant as a result of the Salmonella outbreak and there is no mention of a dispute as to the costs incurred by either the Claimant or the Defendant being compromised or settled. I do not consider that correspondence after this exchange of emails assists in construing these emails.
18. The Defendant seeks to rely upon an email dated the 14th September 2019 from Doug Wanstall to David Friday which stated:

“The amount was paid as some small help as were in such a dark hole financially. I said to you that it would never cover our losses but that I was not going to turn it away. The agreement was very loose but as I understood it, whether a loan or faster payment, it would be paid back over a year. My financial problems have not gone away, they were caused by salmonella.”

“At that time I didn’t think we would ever prove where the salmonella originated from or how it spread...”

(Emphasis added)

19. In terms of the construction of the Settlement Agreement, this email is post-contractual and so inadmissible on the question of construction. However, the Defendant relies upon the email for three reasons. The Defendant contends that:
- .1 The email is evidence of Mr Wanstall’s intention at the time of the Settlement Agreement;
 - .2 The statement contradicts Mr Wanstall’s account of the meeting of 30th May 2019, where he says (paragraph 3(3)) that the parties “*did not discuss anything whatsoever touching upon financial claims against each other...*”. The 14th September email demonstrates that there was a discussion about the alleged losses suffered by the Claimant and, during that discussion, Mr Wanstall stated to David Friday that the amount that the Defendant agreed to pay “*would never cover [C’s] losses*”;
 - .3 The email sets out Mr Wanstall’s belief at the time of the Settlement Agreement that the Claimant would be unable to prove the origin of the salmonella outbreak and how it spread. That is why he agreed to the Settlement Agreement. Because the Claimant has had a change of heart on this point, it cannot simply abandon the Settlement Agreement.
20. This email is inadmissible on the question of construction. In any event, it shows that there is a strong argument to the effect that in June 2019 Doug Wanstall was unable to formulate a claim against the Defendant arising out of the salmonella outbreak let alone compromise a dispute with the Defendant in respect of the losses the Claimant and the Defendant had suffered as a result of the salmonella outbreak.

.5 THE LAW

21. The Defendant very helpfully in its detailed written submissions summarised the relevant law as follows:

“The principles applicable to applications for summary judgment were summarised by Lewison J in Easyair Ltd v Opal Telecom Ltd [2009] EWHC 339 (Ch) at [15] and approved by the Court of Appeal in AC Ward & Sons Ltd v Catlin (Five) Ltd [2010] Lloyd's Rep. LR. 301. The key principles are:

1. The court must consider whether the claimant has a "realistic" as opposed to a "fanciful" prospect of success: Swain v Hillman [2001] 1 All E.R. 91.
 2. 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].
 3. In reaching its conclusion the court must not conduct a "mini-trial": Swain v Hillman.
 4. 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].
 5. In reaching its conclusion the court must consider 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.
 6. 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: Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd [2007] F.S.R. 3.
 7. On the other hand, it is not uncommon for an application under Pt 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.”
22. On the evidence before me I consider that the Claimant has a realistic prospect of success in establishing that during the exchange of the four emails set out above the parties did not reach a binding settlement agreement in respect of the costs incurred by the Claimant and the Defendant as a result of the salmonella outbreak.

23. I reach that conclusion because:

- I consider that the Claimant has not just got a realistic prospect of success but a strong prospect of establishing that in June 2019 the Claimant had not made any claim against the Defendant for the costs and losses it had suffered as a result of the zoonosis matter or the salmonella outbreak.
- I consider that the Claimant has not just a realistic but a strong prospect of establishing that the June emails set out above did not identify any dispute then existing between the parties as to who was responsible for the costs and the losses the Claimant had suffered as a result of the salmonella outbreak.
- I consider that the Claimant has not just a realistic but a strong prospect of establishing that the June emails set out above did not refer to any settlement or compromise of any dispute if such a dispute existed which I strongly doubt, as to who was responsible for the costs and losses the Claimant had suffered as a result of the salmonella outbreak.

24. In the circumstances I am unable to identify an unequivocal agreement to compromise a clearly defined dispute relating to the costs and losses suffered by the Claimant and Defendant as a result of the salmonella outbreak..

.6 CONCLUSIONS

25. I accordingly dismiss the Defendant's application:

- to strike out the Claimant's claim pursuant to CPR Rule 3.4(2)(a) on the grounds that the statement of case discloses no reasonable ground for bringing the claim and/or the claim is an abuse of process; and/or
- for summary judgment pursuant to CPR rule 24.2(a) on the grounds that the Claimant has 'no real prospect' of succeeding on the claim.

26. I will hear Counsel as to the appropriate form of order and on the issue of costs if not agreed at a further hearing to be fixed by the parties.