

JERSEY / JUDGMENT

Kathleen Fortun v G4S Secure Solutions (Jersey) Limited

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IN THE EMPLOYMENT AND DISCRIMINATION TRIBUNAL BETWEEN KATHLEEN FORTUN
CLAIMANT AND G4S SECURE SOLUTIONS (JERSEY) LIMITED RESPONDENT TRIBUNAL

JUDGMENT

Reference: [2021] TRE 010 Date of Judgment: 10 August 2021 (heard on the papers) Before: Dr Elena Moran, Chairman Mrs Tamburai Muoni & Mrs Elizabeth Adams, Panel Members

Representation: For the Claimant: In Person For the Respondent: Advocate Huw Thomas, Carey Olsen DECISION The claims of disability discrimination are dismissed.

REASONS

Miss Fortun is a resident of the Westmount Apartments which are situated on Westmount Road, St Helier (the “Westmount Flats”). She has hearing loss and is unable to communicate by telephone. It is accepted by G4S that she has the protected characteristic of disability within the meaning of the Discrimination (Jersey) Law 2013. Miss Fortun protests about the way her parking complaint was handled by G4S. In particular, she alleges that they refused to communicate with her by email and that they closed her complaint without resolving it and refused to engage with her any further. Both sides have shared relevant documents and filed witness statements. G4S have filed written submissions. Miss Fortun chose not to do so. With the agreement of the parties we have determined the issue of liability on the papers. The Parking Complaint On 22 December 2020 Miss Fortun sent an email to Assured raising a concern about parking at the Westmount Flats. Assured responded to say “G4S are the parking control officers, residents should contact them if they feel there are issues with the way the cars are parked.” Miss Fortun asked how she could contact them and at 12:06 she received a response saying she could email them at [email redacted]. At 2:07 the same day Miss Fortun sent an email to [email redacted]. The email says “Why are they (sic) so many cars parked at Westmount when you are supposed to be policing the estate? I came home at 4pm yesterday and there were several cars and vans outside.” Michael Power, Operations Support Officer, responded by email the next day at 09:36. He said “If you can supply us with J Numbers of vehicles that do not have permits or are parked where they shouldn’t be we can take action.” Miss Fortun responded at 12:06 in the following terms: “In any case, what is the point, you don’t take action, reply to emails or even monitor your email box and you ask an elderly person to do your job while you sit on your arse!!”. Mr Power’s response at 12:14 was “If you would like to call me we can talk through your comments.” Miss Fortun responded at 12:34

saying “You don’t want to talk to me on here, why? Because it will be recorded. You want to talk on the phone. Isn’t that discrimination.” Joe Cairney, Security Services Manager responded at 13:37. He said “Looking at the email chain below, I’m unsure what your complaint is, you make an accusation of discrimination, but fail to state why this is the case? In the event that we receive no further information from yourself we will close down your complaint at 18:00 today. Should you wish to pursue your complaint please provide some relevant information to back up your statements so they can be fairly investigated.” Miss Fortun responded at 13:57 saying “You don’t reply to emails. I use emails as you would a phone. Michael Power asked me to talk to him over the phone. I cannot do that as I can only use emails. Then it’s silence, he obviously doesn’t want to talk via email. Why is it so hard? If I could phone he would be speaking to me as I type this but it is not possible. What other means of communication do you have and what does he want to talk about?” Mr Cairney sent a further email at 14:04 saying “I am not sure what else I can say to you to resolve your issue. I have reviewed your complaint and on the evidence you have provided I am closing your complaint down. Unfortunately you have not provided me with any information to back up your complaint, therefore I cannot look into this any further.” Miss Fortun responded at 14:16 as follows: “The disability discrimination law requires you to make reasonable adjustments fir (sic) communicating with the deaf. You have neither provided that or are willing to do so. Your Assistant Michael Power has I believe refused to communicate via email. He wanted me to phone.” This prompted a further email from Mr Cairney at 14:34 in which he says “We are happy to communicate with you in any way so that those we interact with have the full ability to understand and communicate with us in the way they can. If you need to speak with us via phone, you have my number below. The fact that you are stating that we refuse to communicate via email, when communicating both ways via email is confusing and doesn’t quite make sense or back up your complaint. If you wish to make a complaint please do so via email or phone at your convenience. If you wish to communicate in another manner please let me know and I will accommodate as far as I reasonably can.” Miss Fortun responded at 14:42 in the following terms: “I asked Michael Power to talk to me via email but he wanted to talk via phone which I am unable to. Please do not talk to me in the manner you do. We pay dearly for our apartments and expect you to do your job.” There is a further email from Mr Cairney sent at 15:00 on 23 December in which he repeats points made before namely that they have communicated with her by email and if there are no further issues to raise the complaint will be closed. Miss Fortun replied at 15:14 repeating the point that Mr Power wanted to talk to her which she can’t do and he hasn’t told her what he wanted to talk about. At 14:14 Miss Fortun forwarded her email exchange with G4S to Assured Property Management (“Assured”). We have not seen all of the email exchange, but it is clear from what we have seen that Peter Allman, General Manager at Assured, explained to Miss Fortun more than once the limited role of G4S in relation to dealing with parking at Westmount Flats. He asked that any parking issues be emailed to Assured and that G4S only be contacted in the event of an emergency. There are further email exchanges on 14 and 15 January 2021 that start with Miss Fortun informing Mr Cairney that there are several cars parked on site that should not be there. Mr Cairney responds that they will look when they next visit the site in line with their contract, which he mistakenly refers to as being with Andium. Miss Fortun points out the mistake and complains about the lack of action. In a later email she

raises again the issue of Mr Power wanting to talk to her. Mr Cairney eventually shuts down the email chain by asking her to address all further correspondence about parking issues to the managing agent and not G4S. On 28 January 2021 Miss Fortun sent a further email to Assured complaining about G4S. Assured responded the same day and explained yet again the limited parking service provided by G4S. Scope of Article 22 The first line of defence put forward by G4S is that it does not provide goods, services or facilities to Miss Fortun within the meaning of Article 22 of the Discrimination Law. Article 22 applies to “a person who provides goods and services, or makes facilities available to the public or a section of the public (whether for payment or not)...”. The managing agents of the Westmount Flats are Assured. There is a contract in place between Assured and G4S in relation to the provision of certain car parking services. Joe Cairney, Security Services Manager for G4S, describes the services provided as two random parking patrol visits to Westmount a week. He continues in paragraph 2.3 of his statement to say that G4S do not provide a reactive service to parking issues unless there is an emergency. In paragraph 2.3 of his statement he says “Assured have shared our contact details with the apartment owners of Westmount to report any urgent parking issues, however we do not have any contract directly with the residents of Westmount and are only engaged via Assured.” We have been supplied with what is described as the G4S contract. We note that Assured are not a party to this contract and it is not clear how this contract applies to Westmount Flats. However, we have also been provided with a document headed “PAT – 7040 Westmount Flats” that sets out the services to be provided by G4S at the Flats. These include two random parking patrols per week. We have also been provided with a copy of the G4S Method Statement for the services provided to Assured in relation to the Westmount Flats. Under the heading “car park monitoring” it states that there is an obligation to look for offending vehicles onsite and ticket them. Offending vehicles include vehicles not parked within a marked bay, not authorised to be on site or obstructing other vehicles, pathways or access. The service provided by G4S to Assured is also summarised in the email from Mr Allman to Miss Fortun sent on 28 January

2021. He says that G4S are contracted to provide an average of two visits per week. He goes on to say “They also provide an emergency response service if any vehicle is causing a dangerous obstruction such as blocking a roadway to prevent emergency vehicle access or obstructing an emergency exit or other essential access or exit point. They do not provide ad-hoc attendance at the moment but this can be reviewed if there is sufficient support.” In their written submission G4S put forward the following reasons for saying that Article 22 does not apply: G4S is a private company and does not provide services to the public at large. We find the fact that G4S is a private company to be irrelevant; the issue is whether G4S provide a service to the public or a section of the public. We find that the residents of Westmount Flats constitute a section of the public. G4S was contracted by Assured and not the individual residents of Westmount. We find it is irrelevant whether there is a contract or not between the individual residents and G4S. The issue is whether G4S provides services to a section of the public even if their contractual obligation to do so rests with a third party. The scope of services provided by G4S does not include a reactive service unless there is an emergency. When G4S interacted with Miss Fortun they did so for the purpose of providing

a service to a section of the public. The fact that upon investigation her complaint fell outside the scope of their contracted service is irrelevant. The key question is the context in which the interactions took place and if the context is provision of services to a section of the public then Article 22 applies. Despite providing Miss Fortun with an email address with which to contact them, G4S were not contractually obliged to communicate with residents on general parking issues. Again, as long as the context of the interaction was the provision of services to a section of the public then Article 22 applies. Miss Fortun does not have a parking space at the Flats and accordingly she had no right or expectation of services from G4S. That appears to us to be factually incorrect. By their own admission G4S provide an emergency response service and Miss Fortun was provided with an email address so that she could contact them if necessary. There is no evidence to support the assertion that she was not entitled to the benefit of the services provided by G4S because she does not have a parking space at the Flats. We find that Article 22 does apply because G4S were providing services albeit limited services to a section of the public being the residents of Westmount Flats. It is irrelevant that there was no contract between Miss Fortun and G4S. The point is that the services were being provided for her benefit and in providing the services G4S are obliged to act in a manner that is consistent with the provisions of the Discrimination Law.

Knowledge of disability The next issue we need to determine is when G4S became aware of Miss Fortun's disability. It is not in dispute that G4S were aware of her disability once it received the email from Miss Fortun sent to Mr Cairney at 14:16 on 23 December 2020. Miss Fortun says in her witness statement that G4S were aware of her disability earlier than this. She says she was given an email address for G4S by Assured so that she could contact G4S other than by the advertised phone number and that this was done because she was deaf. It is apparent from emails provided to us dating from 2019 that Miss Fortun has been in contact with G4S prior to the complaint that is the subject of these proceedings. On 9 June 2019 she sent an email to [email redacted] that was initially responded to by Mr Cairney. However, there is nothing in that chain of correspondence to suggest that G4S were aware that Miss Fortun is deaf. Assured provided another email address for G4S on 22 December 2020, but again there is nothing in the email exchange to suggest that G4S were told that Miss Fortun is deaf. Based on the evidence provided to us we find that G4S first became aware of Miss Fortun's disability at 14:16 on 23 December 2020. We also find that there is no evidence to suggest that G4S could have reasonably been expected to know about her disability any earlier. Reasonable adjustment

Article 7A(1) of the Discrimination Law puts a duty on a service provider to make a reasonable adjustment where a provision, criterion or practice ("PCP") of the service provider puts a disabled person at a substantial disadvantage. Miss Fortun complains that G4S failed to make a reasonable adjustment to accommodate her disability because they wanted to speak to her on the phone. A correct reading of the email sent by Mr Power at 12:14 on 23 December 2020 is that he offered to speak to her on the phone about her complaint. He did not suggest that this was the only mode of communication and the later emails from Mr Cairney are all clear that G4S were willing to accommodate email communication. We therefore find that there was no PCP applied by G4S that put Miss

Fortun at a substantial disadvantage. Even if we are wrong about this, we have already found that when Mr Power sent his email, G4S did not know that Miss Fortun was deaf and could not have reasonably been expected to know. Article 7A(3) states that the obligation to make a reasonable adjustment under Article 7A(1) only applies if the service provider knows or reasonably should have been expected to know about the disability. As a result, there was nothing discriminatory about Mr Power suggesting a phone call when he did not know that Miss Fortun was deaf. In all later communications from G4S it was made clear that email communication was acceptable. Reasonable adjustments were therefore made by G4S in compliance with Article 7A. Closing the complaint Miss Fortun protests that G4S closed her complaint without resolving it and refused to engage with her any further. We have considered whether this might amount to direct discrimination under Article 6(1). Article 6(1) provides that direct discrimination occurs if because of a protected characteristic a person treats the subject less favourably than the person treats others. We have asked ourselves if G4S has treated Miss Fortun less favourably than it would have treated a person in identical circumstances to her, but who is not deaf. The identical circumstances are someone who sent the same complaint emails as her. We find that not to be the case. It is unfortunate that when Miss Fortun raised her original complaint with Assured on 22 December 2020, they referred her to G4S. It is clear from the documents we have seen that the role of G4S in relation to the Westmount Flats is relatively limited and extends to two random checks a week and dealing with emergency parking issues. Despite the limited nature of their contract, G4S offered to try and deal with the parking issue by requesting J numbers of the offending vehicles. Miss Fortun took offence at this suggestion and responded "In any case, what is the point, you don't take action, reply to emails or even monitor your email box and you ask an elderly person to do your job while you sit on your arse!!". Being unaware that Miss Fortun is deaf Mr Power suggested a phone call. At this point Miss Fortun raised the issue of discrimination and Mr Cairney took over dealing with the complaint. He asked for more information about the complaint. At this point it is not clear if the complaint was still about parking or discrimination. He warns that the complaint will be closed if no further information is provided. Miss Fortun responds at 13:57, the only further information she provides is to say that G4S do not respond to her emails and that Mr Power doesn't want to talk to her via email. Both statements are incorrect. First, G4S did respond to her emails. Second, Mr Power was willing to communicate with her via email as was Mr Cairney. Having been unable to elicit any information from Miss Fortun that would enable any action to be taken in relation to the parking issue Mr Cairney closed her complaint and later declined to communicate with her any further about it. We find that Miss Fortun was not treated less favourably than a comparator in identical circumstances who is not deaf. She raised a parking issue with G4S that was outside the scope of their contract with Assured. Asked to provide further information she refused to do so. Instead, she fixated on a suggestion by Mr Power that she might like to phone him to discuss her complaint. She either misread or deliberately misinterpreted his email suggesting a phone call as being a requirement that communication could only take place by phone. Unable to obtain any further information

from Miss Fortun G4S closed the complaint and refused to communicate with her about it any further. In our opinion they were perfectly entitled to do so. Their decision had nothing to do with the fact that Miss Fortun is deaf but was based on their conclusion that there was no substance to the complaint. As Miss Fortun was not treated less favourably than a non-disabled comparator her complaint of direct discrimination fails. Dr Elena Moran Date: 25 August 2021

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