

**States of Guernsey**



**EMPLOYMENT & DISCRIMINATION TRIBUNAL**

**APPLICANT:** Mr Nigel Jones  
Represented by: Advocate Paul Richardson

**RESPONDENT:** CI Traders Limited or alternatively Comprop Limited  
Represented by: Miss Elaine Gray

Decision of the Tribunal Hearing held on 5 and 6 February 2008.

**Tribunal Members:** Mrs Tina Le Poidevin  
Mr Andrew Vernon  
Miss Alison Anderson

**UNANIMOUS DECISION**

Based on the evidence presented, the Tribunal found

1. The Applicant to be an employee of Comprop Limited
2. The Applicant's effective date of termination to be 10 August 2007
3. That the Respondent did not dismiss the Applicant and the circumstances were such that the employee was not entitled to terminate his contract without notice by reason of the employer's conduct.

Mrs Tina Le Poidevin...

19 March 2008

Signature of the Chairperson

Date

NOTE: Any award made by a Tribunal may be liable to Income Tax  
Any costs relating to the recovery of this award are to be borne by the Employer

Any Notice of an Appeal should be sent to the Secretary to the Tribunal within a period of one month beginning on the date of this written decision.

The detailed reasons for the Tribunal's Decision are available on application to the Secretary to the Tribunal, Commerce and Employment, Raymond Falla House, PO Box 459, Longue Rue, St Martins, Guernsey, GY1 6AF

**The Law referred to in this document is The Employment Protection (Guernsey) Law, 1998, as amended.**

## **Extended Reasons**

### **1.0 Introduction**

1.1 The Applicant claimed that:

1.1.1 He was employed by the Respondent as Chief Executive Officer then Managing Director for almost 6 years.

1.1.2 He had been unfairly dismissed by the Respondent by virtue of a letter to him dated 25 July 2007 following the acquisition of shares in Channel Island Traders Limited ("CIT") by Sandpiper Bidco Limited as there was no fair reason for the dismissal and/or no fair procedure followed in accordance with contractual redundancy procedures and/or the Code of Practice on Handling Redundancies issued by the Department of Commerce and Employment and the manner of the dismissal breached the implied term of mutual trust and confidence.

1.2 The Respondent disputed the claim on the grounds that:

1.2.1 The Applicant was an employee of ComProp Limited (not CIT) from 10 August 2001 until his last day of service on 10 August 2007 following his resignation. A request was also made to strike out CIT as a listed Respondent.

1.2.2 The letter of 25 July 2007 referred to as the reason for the Applicant's alleged dismissal was a Bonus Letter and was not intended to be a notice of dismissal.

1.3 The Applicant appeared in person and gave witness testimony under oath on his own behalf, as guided by his representative, Advocate Paul Richardson and assisted by Advocate Simon Geall.

1.4 No witnesses were called for the Applicant.

1.5 In addition to form ET1, a document bundle marked EE1 and a joint document bundle marked ER1 were presented in evidence.

1.6 The Respondent was represented by Advocate Elaine Gray, assisted by the Respondent's employee, Mrs Sharon Peacock.

1.7 In addition to original and amended forms ET2, a joint document bundle marked ER1 and document bundles marked ER2 and ER3 (the latter being a summary of the Respondent's closing comments) were presented in evidence.

1.8 Messrs Tom Scott and Steve Down were called for the Respondent.

1.9 It was noted that as there were two people named Tom Scott within the organisation, namely father and son, any reference made to Mr Tom Scott during the course of the Hearing would be deemed to relate to Mr Tom Scott senior.

1.10 Details of the Applicant's remuneration for the months of February to July inclusive appeared in the joint bundle marked ER1 and was undisputed.

## **2.0 Facts Found by the Tribunal**

2.1 The Applicant commenced employment with the Respondent on 10 August 2001.

2.2 The Applicant signed an Employment Agreement dated 10 August 2001 noting terms and conditions of employment in connection with the Applicant's position as Chief Executive Officer of ComProp Limited.

2.3 ComProp Limited was an AIM listed company in the Channel Islands and the Applicant was responsible for carrying out investment and development work on its behalf.

2.4 During 2003 the Applicant's remuneration was under the auspices of the ComProp Remuneration Committee.

2.5 The share capital of ComProp Limited was acquired by CIT in its entirety in 2004. Following this acquisition the Applicant's role was that of Managing Director of ComProp Limited, a wholly owned subsidiary of the holding company CIT rather than a free standing AIM listed company.

2.6 The Applicant was involved in the sale and the transfer of staff in relation to this transaction.

2.7 When CIT bought ComProp Limited the Applicant received a substantial number of shares in the company to replace his previous holding in ComProp which had been obtained following the takeover of his own private company in 2001.

2.8 The Applicant's duties included the development of properties and land with the objective of leasing or selling these to clients.

2.9 The Applicant reported to the Chairman, Tom Scott and, as a result of the sale to CIT, Tom Scott became Chairman of CIT and Chairman of ComProp Limited, the property division of CIT. All property matters went through Tom Scott.

2.10 During the summer of 2005 another company expressed an interest in buying CIT but this subsequently fell through.

- 2.11 During 2005 an attempt was made to ratify terms and conditions of employment and standardise contracts of senior staff but this was never finalised.
- 2.12 During the period 2005/2006 venture capitalist, Sandpiper Bidco Limited, became interested in CIT and put in a formal proposal for takeover.
- 2.13 As a condition of the purchase, it was agreed that Tom Scott would purchase the developing properties (as set out in the Share Purchase Agreement between CIT as the Vendor and Lapwing Investments Limited and CI Investments Limited as the Purchasers).
- 2.14 As CIT was a stock exchange listed company certain rules had to be followed to prevent insider dealings, which resulted in Tom Scott listing the Applicant as an “insider” for these purposes in December 2006 and explaining details of the proposed deal to the Applicant.
- 2.15 The property division of CIT consisted of Mr Tom Scott as the Chairman of the Property Board, Nigel Jones as Managing Director, Steve Down as Finance Director, Martin Bralsford as a Non-Executive Director and other Non-Executive Directors together with a small number of employees in ComProp Limited and Jones & Co.
- 2.16 In 2007 CIT reported employing some 3,000 staff overall.
- 2.17 There were HR services available within Guernsey and Jersey, with the larger of the subsidiaries within CIT having their own HR departments.
- 2.18 On 4 June 2007 Mr Tom Scott wrote to the Applicant confirming a 2007 bonus award of £58,470 and arrangements for his future annual bonus which would be based at 10% of 1% of sale proceeds of properties sold by him without the use of third party agents in the preceding financial year. It was noted that this would replace his participation in the Group Senior Executives’ Annual Bonus Scheme.
- 2.19 Over much of 2007 various legal teams were engaged to complete the legal documents necessary for Sandpiper’s acquisition of CIT and also the transfer of the property divisions to Tom Scott. The various drafts of these documents were seen and commented on by the Applicant.
- 2.20 It was well recognised by CIT that staff within the Channel Islands were not as well protected as they were in the UK, especially in relation to business transfers as the Transfer of Undertakings (“TUPE”) laws in the UK did not apply to the Channel Islands. Clauses were, therefore, written into the Sale and Purchase Agreement to protect the staff. In the case of the property division, it was envisaged that the staff would, on or as soon as possible after the deal had completed, either transfer to ComProp (CI) Limited on terms which were substantially no less favourable than the terms on which they were employed, or, alternatively, if they did not wish to transfer, they would remain employed by their usual employer but be made legally redundant following a

secondment period with either ComProp (CI) Limited or Lapwing (Trading) Limited.

- 2.21 On 27 June 2007, as part of the overall transaction, CIT agreed, subject to the terms of a separate sale and purchase agreement, to sell certain of its properties to Lapwing Investments Limited and CI Investments Limited.
- 2.22 The overall sale was conditional upon various factors including the Jersey Competition Regulation Authority, the German Act re: Restraints on Competition and acceptance by the shareholders at an EGM.
- 2.23 A Prospectus was drawn up and sent out to shareholders on 5 July 2007. Reference was also made to the arrangements for the transfer of employees on page 93 of this document.
- 2.24 On 25 July 2007 Mr Martin Bralsford, Chief Executive of CIT wrote to the Applicant advising him that a £25,000 deferred bonus awarded to him in 2006 had been paid to him together with his July salary payment, noting that this payment in addition to the payment made earlier in 2007 was in full and final settlement of any bonus amounts awarded to date. The letter also noted CIT's assumption that the Applicant would be taking up employment with one of Mr Tom Scott's companies subject to the change of control, which was being considered by shareholders on 30 July, taking place as planned. This letter was received by the Applicant on 26 July 2007.
- 2.25 On 26 July 2007 the Applicant, Mr Tom Scott, Mr Steve Down, Sir Michael Wilkes, Mr David Bralsford and Mr David Lowe were asked to sign standard resignation letters in connection with their directorships in preparation for this transaction.
- 2.26 In late July 2007 the Applicant signed letters resigning from his directorships of the main holding companies in preparation for the sale of CIT.
- 2.27 The Applicant was in the office on 27 July 2007.
- 2.28 The Shareholders were due to vote on 30 July 2007.
- 2.29 At the time Mr Steve Down went on holiday on 30 July 2007 no-one was aware that the Applicant would not be transferring, resigning or had been dismissed.
- 2.30 A letter dated 30 July 2007, addressed to Brenda Noyon, the Applicant's PA, was signed by the Applicant as Chief Executive of ComProp Limited. This letter advised her of the acquisition of CIT by Sandpiper which was scheduled to complete on 3 August 2007 and stated that the Applicant, along with other staff in their offices as employees of ComProp, would be asked to transfer to Mr Scott's new company and, in the event that he did not transfer, her position as his PA would not exist. The letter noted her entitlement in terms of notice and holiday entitlement if this situation was to arise. This letter was not provided to Mrs Noyon until 10 August 2007.

- 2.31 Under a scheme of arrangement (under Article 25 of the Companies (Jersey) Law 1991) the issued share capital of CIT was acquired by Sandpiper Bidco Limited on 3 August 2007.
- 2.32 The Applicant telephoned Mr Steve Down during his holiday on 3 August 2007 to advise him that the deal had gone through.
- 2.33 An Agreement for the Transfer of Employment from CompProp Limited to CompProp CI Limited was provided to the Applicant by Tom Scott on 6 August 2007 together with other similar documents for the Applicant's staff.
- 2.34 On 7 August 2007 the Applicant discussed the transfer agreements with his staff.
- 2.35 On 8 August 2007 the Applicant arranged a meeting with his lawyers.
- 2.36 On 10 August 2007, having met with his lawyers, the Applicant removed his belongings from the office.
- 2.37 The Applicant's lawyers wrote to the Respondent on 10 August 2007 noting Mr Jones' intention to leave his employment.
- 2.38 The Applicant then went on holiday off island.
- 2.39 The first time anyone, apart from the Applicant's wife, was aware that the Applicant would not be transferring, was when the Applicant advised Mr Steve Down by telephone during the weekend of 11/12 August 2007.
- 2.40 On 16 August 2007 the Applicant met with Mr Tom Scott to advise him that he had chosen not to take up employment with ComProp (CI) Limited.
- 2.41 On 20 August 2007 the Applicant wrote to Mr Steve Down returning his company credit card.
- 2.42 The Applicant filed a claim for Unfair Dismissal on 30 August 2007.
- 2.43 On 31 August 2007 Mr Steve Down wrote to the Applicant referring to the Applicant's meeting on 16 August 2007 with Mr Tom Scott at which the Applicant confirmed that he had chosen not to take up employment with ComProp (CI) Limited following the recent sale of CIT. This was despite being offered employment with ComProp C I Limited on terms and conditions which, taken as a whole were substantially no less favourable than those on which he was previously employed by ComProp Limited.
- 2.44 Payslips provided to the Applicant for the months of February to August 2007 inclusive noted a centred heading of "CI Traders – Guernsey – Salary Advice", with the Applicant's name and "66820 - ComProp" at the bottom left-hand side.

- 2.45 A BACS Schedule – By Department for CI Traders - Guernsey noted the Applicant as being within ComProp, dated 24 July 2007, listed various payments which tallied with a total figure of £63,845.92 on a CI Traders Limited Private Account NatWest Current Account statement.

### **3.0 The Law**

- 3.1 The Applicant claims that he was employed by CIT. Section 34(1) of the Law defines an “employee” as “... an individual who has entered into or who works under (or, where the employment has ceased, who worked under) a contract of employment;” and an “employer”, in relation to an “employee,” as “... the person by whom the employee is (or, where the employment has ceased, was) employed;”
- 3.2 The Applicant further claims that he was unfairly dismissed by his employer. Section 5(2) of the Law notes that “... an employee shall be treated as dismissed by his employer if, but only if –
- 3.2.1 the contract under which he is employed by the employer is terminated by the employer, whether it is so terminated by notice or without notice;” and ...
- 3.2.2 “(c) the employee terminates that contract, with or without notice, in circumstances such that he is entitled to terminate it without notice by reason of the employer’s conduct.”
- 3.3 Section 5(4)(b) notes that “the effective date of termination” ... “in relation to an employee whose contract of employment is terminated without notice, means the date on which the termination takes effect; ...”
- 3.4 Even though the Applicant’s ET1 clearly stated potential grounds for summary or constructive unfair dismissal, the Applicant’s final submission referred quite clearly to a potential redundancy situation whereby the Code of Practice on Handling Redundancies, as issued by Commerce and Employment, had not been followed.
- 3.5 Section 6(2)(c) of the Law relates to dismissal on the grounds of redundancy, with Section 6(3) notes that “... the determination of the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend on whether in the circumstances (including the size and administrative resources of the employer’s undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee and that question shall be determined in accordance with equity and the substantial merits of the case.”

## **4.0 Summary of Parties' Main Submissions**

### **4.1 Respondent**

- 4.1.1 Two witnesses were called by the Respondent, namely Mr Tom Scott and Mr Steve Down. Both gave evidence and were cross-examined by the Applicant's representative.
- 4.1.2 The Respondent's representative, Miss Elaine Gray, stressed that in relation to the identity of the employer, it was for the Applicant to prove that there was a change in employer, not for the Respondent to show that there was no change in employer.
- 4.1.3 From the Applicant's evidence, correspondence suggested consideration being given to the possibility of a new contract although only a draft agreement of 31 August 2005 was in existence and there was no evidence to suggest that this new contract was finalised or signed.
- 4.1.4 Miss Gray asked the Tribunal to ignore the draft contract relied upon by the Applicant and proceed upon the terms set out in the signed contract of employment dated 10 August 2001.
- 4.1.5 In order to establish the identity of the employer as ComProp Limited, she referred to:
  - (a) a tailored signed contract of 10 August 2001 which noted that any variations to it would not be of any effect unless agreed in writing and signed by or on behalf of both parties (ER1, Page 111, Clause 13.3)
  - (b) annual accounts from 2007 indicating that the Applicant was 'head of ComProp Limited' (ER1, Page 35)
  - (c) payslips and BACS payment slips referring to the Applicant being an employee of ComProp Limited (ER1, Page 164-165)
  - (d) the Applicant's letter signed by him as Chief Executive of ComProp Limited on ComProp Limited headed notepaper to Brenda Noyon dated 30 August 2007 (ER1, Page 90) which states "I and a number of staff at our offices are employed by ComProp"
  - (e) the cross-examination of Mr Tom Scott during which Mr Tom Scott confirmed that two sets of London lawyers and internal CIT staff were sufficiently satisfied that the Applicant was an employee of ComProp Limited that he should be included as such in the sale and purchase agreement as a transferring employee



- (f) the Applicant's own lawyers who thought he was employed by ComProp Limited as noted in AFR's letter of 10 August 2007 (ER1, Page 120) which states "pursuant to a letter from the Chief Executive of CI Traders Limited, the parent company of ComProp Limited ("the Company") dated 25 July 2007 ... our client was summarily dismissed from his employment with the Company"
  - (g) the evidence given by two witnesses, namely Messrs Tom Scott and Steve Down, who considered the Applicant to be an employee of ComProp Limited
- 4.1.6 In relation to the claim of actual dismissal, Miss Gray referred to the Applicant's claim that the letter to him from Martin Bralsford dated 25 July 2007 constituted a notice of dismissal. This claim was noted in AFR's letter of 10 August 2007 and the Applicant's ET1 filed on 30 August 2007 as well as being indicated by Advocate Richardson at the directions hearing held on 24 January 2008.
- 4.1.7 The Applicant seemed uncertain as to exactly when he was dismissed, as, when giving evidence, he said that he considered himself to be actually dismissed as a result of the letter of 25 July.
- 4.1.8 In the Applicant's ET1, the letter his advocates sent on 10 August 2007 and at the directions hearing, his position then was that he was dismissed on the date of the letter.
- 4.1.9 During the course of the hearing it appeared that his latest position was that the dismissal actually took place at a later date which he contended to be 3 August 2007, the date of the transaction completing.
- 4.1.10 The Respondent's position was that Martin Bralsford's letter of 25 July 2007 was not intended to be a dismissal and reference was made to *Harveys at DI-2C(1) Martin v Yeoman and Stern* for guidance on determining how words should be interpreted. In the latter case particularly, the Tribunal had stated that the test was to construe the words in all the circumstances of the case in order to decide whether or not there had been a dismissal.
- 4.1.11 The Applicant's knowledge was particularly relevant in that:
- (a) He had knowledge of the bid, having been an insider from December 2006, which was uncontested in evidence.
  - (b) He was a principal architect of the Sale and Purchase Agreement (SPA) of 27 June 2007.

- (c) He received many drafts of the SPA and along with Steve Down commented on all aspects of the SPA, not just property aspects,
  - (d) He was aware of the proposed transfer of employees and redundancy/secondment arrangements.
  - (e) He had knowledge of the novation agreements for employees, including his own evidence of those arrangements being cascaded down to the ComProp Limited employees.
  - (f) He had not mentioned to anyone that he would not be transferring over to the new ComProp and should have known that everyone was proceeding on this assumption.
- 4.1.12 The Applicant stated in evidence that he had continued to work on Tom Scott's companies after 25 July 2007 before taking holiday.
- 4.1.13 Sometime after 1 August 2007 he signed a number of statutory resignation letters for various companies.
- 4.1.14 On 3 August 2007 he spoke to Steve Down to tell him the SPA deal was completed.
- 4.1.15 On 6 and 7 August 2007 he received a novation agreement where, at that point in time, he, on his own admission, said he was reviewing his options.
- 4.1.16 On 10 August 2007, 17 days after the alleged dismissal, he gave a letter dated 30 July 2007 to Brenda Noyon (ER1 Page 90) which included the words "I and a number of staff at our offices are employed by ComProp", "We will be asked to transfer to Mr Scott's new company", "in the event that I do not transfer" and "should this series of events occur". In this letter the Applicant purported to dismiss Brenda Noyon, his PA of 12 years, in his capacity as her boss, even though he contended to be dismissed by a letter written 17 days earlier.
- 4.1.17 On 16 August 2007 the Applicant met with Mr Tom Scott where he advised him he was not transferring to the new ComProp but would go his own way. At no point did he say that he considered himself as having been dismissed.
- 4.1.18 The Applicant gave evidence that he made verbal requests to discuss his future position within the new ComProp but did not make any written requests, despite the importance of this matter, which brought into question the credibility of this position.
- 4.1.19 The Applicant did not raise any grievances at any time. He did not complain to anyone that he was dismissed.

- 4.1.20 The letter of 25 July 2007 did nothing more than deal with administrative matters arising out of the assumption that the Applicant was transferring over and was one very minor step in a complex and lengthy chain of events in all of which he had been intimately involved.
- 4.1.21 The Respondent's representative did not consider that a dismissal had occurred in accordance with Section 5 of the Employment Protection (Guernsey) Law, 1998 (as amended).
- 4.1.22 With regard to the Applicant's dismissal in the future, in his ET1 he said he was dismissed on 25 July 2007 but in the course of evidence it became apparent that his position shifted to a dismissal in the future whereby on the sale of CIT he would no longer be employed within the CIT Group at some future point.
- 4.1.23 The 25 July 2007 letter was not ambiguous but simply made an assumption that if a certain deal went through the Applicant would be leaving his employment and a statement of intent to terminate a contract in the future did not constitute an unlawful termination. Reference was made to *Harveys at D1.2C(3) Morton Sundour Febrics Ltd v Shaw* and *Burton Group Ltd v Smith* which resulted in the decision that advance warning of termination did not equate to notice of dismissal. Reference was also made to *Haseltine Lake & Co v Dowler* which found that a statement of future termination did not amount to a repudiatory breach of contract entitling the employee to leave and claim constructive dismissal.
- 4.1.24 There is nothing to suggest that ComProp Limited would have terminated the Applicant's employment in breach of contract if he had decided not to transfer to the new ComProp which is supported by:
- (a) The Applicant's own evidence which did not point to one single breach on the part of ComProp Limited.
  - (b) Tom Scott's evidence which stressed the importance of protecting the employees, despite the absence of any TUPE equivalent.
  - (c) The SPA which contains an obligation for the transferring employer to use 'all reasonable endeavours' to procure the acceptance from as many employees as possible to the novation agreement.
  - (d) ComProp Limited's obligation towards employees who did not wish to proceed by providing redundancy arrangements in accordance with all applicable legal procedures and/or requirements together with a secondment arrangement to ensure sufficient time to complete those procedures.

- (e) Steve Down's evidence where he recounted what equated to a fair and full redundancy procedure.
- (f) The Applicant's own knowledge of redundancy procedures based on his personal experience of handling the redundancy of former employee John West.
- (g) Tom Scott's evidence, which clearly confirmed that he did not intimate the Applicant's future termination but, rather, clearly noted his reliance on the Applicant to transfer, to the extent that he would have asked the Applicant not to leave on the basis that he would be much better off.

4.1.25 Had the Applicant advised ComProp that he did not wish to transfer, ComProp would have made him lawfully redundant.

4.1.26 ComProp could have alternatively provided the Applicant with payment in lieu of notice, terminated his employment with notice and made him work for twelve months or placed him on gardening leave.

4.1.27 The Applicant claimed that he was being offered a lesser job whereas the employment was on substantially no less favourable terms in that the Applicant had the chance to continue in employment which Tom Scott considered to be financially better for him.

4.1.28 The Applicant knew that if he did not take the job, which was his prerogative, he would be made lawfully redundant.

## **4.2 Applicant**

4.2.1 The Applicant, Mr Nigel Jones, gave evidence and was cross-examined by the Respondent's representative.

4.2.2 The Applicant stated that he had held the position of Chief Executive Officer of ComProp Limited which was an AIM listed property company in the Channel Islands and, as such, he was responsible for carrying out investment and development work on behalf of that company. This involved piecing together sites and dealing with development opportunities of those sites which were primarily commercial developments in Guernsey.

4.2.3 A letter dated 17 June 2005 from Martin Bralsford to the Applicant marked the start of the process that ultimately led to the change of his employment to CIT.

4.2.4 Another letter dated 29 June 2005 from Mr Bralsford attempting to unify standard contracts for Senior Executives within the CIT group sought his comments or agreement to an attached draft contract.

- 4.2.5 A further letter dated 31 August 2005 received by the Applicant from Mr Bralsford noted that Senior Executives' comments had been taken on board and a decision had been made to issue a final contract, the draft of which had been attached to this letter. It did not matter that this draft was not signed or personalised by the Applicant and it should be taken as his contract of employment. Whilst Tom Scott confirmed that he would have been aware of the generality of that letter, the Applicant's representative, Advocate Richardson, considered that it was important for the Chairman to know what kind of contract his executives were working under.
- 4.2.6 Clause 11.3 of this draft contract of employment noted that in the event of a takeover or merger of the company the executive might be required to resign and if that happened the executive would be entitled to receive a redundancy payment equivalent to twelve months' salary and benefits. It was inconceivable that the Applicant was not operating on similar terms to other executives, notwithstanding that a signed copy could not be produced.
- 4.2.7 From August 2005 the Applicant regarded his employer as being CIT.
- 4.2.8 CIT was referred to on the Applicant's wage slips and all correspondence to him was written on CIT headed paper, including salary increase and bonus notifications.
- 4.2.9 The Applicant had first become aware of the possibility that the CIT group would be sold to a third party by way of a discussion with Tom Scott in December 2006. The gist of the discussion was that there was a likelihood that the CIT business would be taken over and, as part of that transaction, Tom Scott would be retaining some of the properties within the group. The indication at that time was that Tom Scott wanted him to remain with him to look after those particular properties. At that time there were no further details provided in relation to his employment.
- 4.2.10 From that time in December 2006 the Applicant's workload increased in that he continued working on property developments whilst dealing at the same time with negotiations with regard to the properties that were to be removed as part of the bigger transaction. He was also becoming involved in new property matters on behalf of Mr Scott.
- 4.2.11 Between December 2006 and the end of July 2007 Property Board meetings did not occur on the same monthly regularity as in the previous year and he recalled attending only one board meeting.
- 4.2.12 He received a letter dated 25 July 2007 from Martin Bralsford, Chief Executive of CIT, and considered that this letter clarified that he was part of the CIT group of companies and that his remuneration and employment structure was being amended.

- 4.2.13 Whilst the 25 July 2007 letter from Martin Bralsford referred to the payment of a deferred bonus awarded to him in 2006, the material part relating to the change of control contemplated in the Scheme of Arrangement to be considered by shareholders on 30 July 2007 made it quite clear to him that he would no longer be employed by CIT.
- 4.2.14 Between December 2006 and receiving the 25 July 2007 letter the Applicant had been unable to have further discussions with Tom Scott about his detailed plans for him. There had been indications that similar terms of employment would be offered but he had had no discussions despite requesting them. He had no knowledge of long term plans or bonus structures.
- 4.2.15 The Applicant had received no contact from anyone in Human Resources.
- 4.2.16 Without any prior notice or HR input, the Applicant received an agreement for the transfer of employment after the sale of the CIT business. He believed the date of receipt to be Monday 6 August 2007 following a meeting with Tom Scott and Phil Calderwood when he was handed a bundle of agreements in an envelope for him to distribute to his staff at Jones & Co.
- 4.2.17 From the Applicant's point of view it was clear that his existing contract had ended or was purported to have ended and he was being requested to transfer his employment to that of Tom Scott's new company. Also, he did not have any idea of the sort of work he was going to be carrying out for the new employer. He knew that the properties would transfer across and work would continue but there was no safety net as to what other work would be requested of him.
- 4.2.18 It was also an issue for the Applicant in moving from a group corporate structure to a smaller private corporate structure.
- 4.2.19 The Applicant did not view the offer as reasonable as it involved a different role and significant reduction in status, moving from being a Chief Executive of an AIM listed company and later Managing Director of the trading arm of an AIM listed company to an employee of a smaller business under the control of an individual. The privately held companies would no longer offer a corporate structure which would ensure a structured hierarchy of job functions. This would require him to accept a role to act on any personal property matters for Mr Tom Scott and other issues deemed appropriate by that individual.
- 4.2.20 From his point of view he was uncertain as to what had been placed before him and how he was to respond to those options.
- 4.2.21 The Applicant met with Tom Scott on 16 August 2007 to advise him that he was not taking up the offer contained in the tripartite agreement. That meeting lasted approximately ten minutes.

- 4.2.22 Clause 11.3 of the draft contract of employment provided to the Applicant on 31 August 2005 dealt with a payment equivalent to twelve months' salary and benefits to be made to him in the event of a takeover or merger of the company. The Applicant had not received such a payment although he believed there were other directors who had received such payments.
- 4.2.23 The Prospectus issued to shareholders noted payments to be made to executive CIT Directors, namely Mr Thomas H. Scott and Mr Martin Bralsford. This noted their legal entitlement to redundancy pay representing twelve months' salary, benefits and bonus amounting to £793,000 and £623,000 respectively.
- 4.2.24 The Applicant also believed that Tom Scott received another benefit as a result of the sale of the company, namely a discount on the property purchase which was purported to be in the region of £6 million.
- 4.2.25 The Applicant was not given any assistance to secure alternative employment following his non agreement with the transfer terms.
- 4.2.26 The Applicant believed that the letter to him of 25 July 2007 operated as a dismissal. However, if this was not proven, he would claim that he resigned on 10 August 2007 on the basis of constructive dismissal.
- 4.2.27 The terms of the transfer agreement contained provision for redundancy in the event that employees did not wish to transfer. Consultation forms part of a fair redundancy procedure and an employer's duty is to act fairly and reasonably, assisted by the Code of Practice for Handling Redundancies. Early documentation referred to provision for redundancy situations but there appeared to have been absolutely no attempt whatsoever to engage with the Code of Practice either in evidence or in the Respondent's submissions despite the fact that this was clearly a redundancy situation.

## **5.0 Conclusion**

- 5.1 Having fully considered all the available evidence, the Tribunal made the following decisions:

### **5.2 Employer's Identity**

- 5.2.1 The Respondent's ET2 form noted ComProp Limited as the Employer. The Applicant also listed in his ET1 form that ComProp Limited may be the Employer.
- 5.2.2 The Applicant received correspondence on CIT Group headed paper, It is normal practice to use "head office" stationery when writing to subsidiaries.

- 5.2.3 Pay advices were received on CIT Group headed wage slips – ComProp being sublisted as to where the Applicant worked. It is not unusual for pay advices to be printed on Group headed wage slips where there is a centralised payroll.
- 5.2.4 Although the CIT BACS Schedules contain the words “by department” (ER1 173 refers) it is clear that payments are being made to employees employed by different companies (rather than departments).
- 5.2.5 Although draft employment contracts issued on 29 June 2005 and 31 August 2005 listed CIT as the Employer, these were not finalised.
- 5.2.6 The only personalised, signed employment contract (dated 10 August 2001) noted the Applicant as Chief Executive Officer of ComProp Limited. It was also specifically noted in clause 13.3 of this document that any variations were not effective unless agreed and signed in writing by both parties. There was also provision within the contract for the Applicant to work for a holding company or subsidiary of ComProp Limited.
- 5.2.7 The letter dated 31 August 2005 from Martin Bralsford to the Applicant offered to prepare “conformed copies” upon the Applicant’s confirmation of acceptance. There is no evidence that any such acceptance was forthcoming.
- 5.2.8 Page 4 of ComProp Limited’s Staff Handbook noted the Applicant as Chief Executive.
- 5.2.9 A letter from the Chairman of the Remuneration Committee dated 1 June 2004 detailing the Applicant’s remuneration review noted the subject heading “ComProp Remuneration Review”.
- 5.2.10 The Applicant signed a letter to his PA, Brenda Noyon, on 30 July 2007 in his capacity as Chief Executive of ComProp Limited and clearly stated “I, and a number of staff at our offices, are employed by ComProp.”
- 5.2.11 In the CIT Company Annual Report 2007 the Applicant is noted as Head of ComProp under the heading “For Estates Board”.
- 5.2.12 Both Tom Scott and Steve Down considered the Applicant to be an employee of ComProp Limited.
- 5.2.13 The Applicant’s legal representatives wrote in their letter of 10 August 2007 to the “Managing Director of ComProp Limited” and referred in that letter to their client being “summarily dismissed from his employment by the company” in breach of clause 3.2 of his contract of employment dated 10 August 2001, information which must have been supplied to the Legal Representatives by the Applicant.



- 5.2.14 The Applicant's legal representative also refers to the Applicant in their letter dated 5 September 2007 as being Managing Director of a trading arm of an AIM listed company which implies ComProp rather than CIT, as only the latter was an AIM listed company.
- 5.2.15 Brenda Noyon considered the Applicant to be Head of ComProp as referred to in her letter of 28 August to Steve Down.
- 5.2.16 The Tribunal find, therefore, that ComProp Limited was the employer of the Applicant at the material time and at the effective date of termination.

### **5.3 Effective Date of Termination**

- 5.3.1 The Applicant claimed that he was dismissed by virtue of the letter to him dated 25 July 2007 from Martin Bralsford or, alternatively, that the actions of his employer caused him to leave his employment on 10 August 2007.
- 5.3.2 The Applicant confirmed that he continued to work as Managing Director of ComProp following the receipt of the letter dated 25 July 2007 and his last known working day was evidenced to be 10 August 2007, the date he handed Brenda Noyon her letter and the date he removed his personal belongings from the office.
- 5.3.3 Until 10 August 2007, the Applicant made no indication to either his staff, peers or employer that he regarded himself as dismissed nor did he indicate to anyone that he did not wish to continue with the replacement employer even though he had been fully aware that this was the likely and expected outcome of the transfer of properties and subsequent takeover of the remainder of the holding company.
- 5.3.4 The Applicant's legal representative sent a letter to the Respondent on 10 August 2007 confirming the Applicant's intention to claim unfair dismissal.
- 5.3.5 The Tribunal, therefore, find 10 August 2007 to be the effective date of termination.

### **5.4 Dismissal**

- 5.4.1 The Applicant claimed dismissal by virtue of the content of the letter dated 25 July 2007.
- 5.4.2 The Tribunal, after considering the evidence and submissions of both parties, believes that the spirit of this letter was primarily intended to settle bonus payments in an attempt to tidy up administrative matters prior to the sale of CIT, whilst making reference to their assumption (in the absence of any other contrary information from the Applicant) that the Applicant would be transferring to one of Tom Scott's

companies. They did not consider this letter to be worded in such a way that it could be interpreted as a letter of dismissal by anyone, let alone a senior employee who was fully aware of the surrounding circumstances. Also the evidence of Messrs Scott and Down regarding the future important role expected of Mr Jones was compelling.

- 5.4.3 The Tribunal, therefore, find that the case for summary dismissal is unfounded.
- 5.4.4 The Applicant alternatively claimed that he resigned by virtue of the actions of his employer.
- 5.4.5 The Tribunal heard evidence which clearly established that the Applicant had been involved in meetings, discussions and the review of documentation associated with the sale of CIT and the transfer of employees. He was described as Tom Scott's 'right-hand man' and had been made an insider. He met regularly with Steve Down and they had both been involved in management issues.
- 5.4.6 No evidence was presented to suggest that he had been coerced into resigning from his directorships prior to the sale of CIT.
- 5.4.7 He had not advised anyone of his decision not to transfer even though he was aware of the timeframe and processes involved in the sale of CIT. His attempts to obtain further information about his future employment prospects were not documented in any way.
- 5.4.8 On 10 August, the Applicant handed a letter dated 30 July 2007 to Brenda Noyon which stated "in the event that I do not transfer ...". This indicates that on 30 July 2007 (some eleven days before he actually left his employment) the Applicant was thinking about not transferring but did not communicate this to anyone at the time.
- 5.4.9 The Applicant had been treated well financially and was highly thought of by Mr Tom Scott who was relying on him to look after his properties after the sale.
- 5.4.10 The surrounding rules and conditions of the takeover indicated that the deal could not be confirmed until 3 August 2007.
- 5.4.11 The employee protection written into the SPA went over and above local legislative requirements by indicating the good intentions of the employer to take on board their duties with regard to the transfer and acceptance/non acceptance of employees as soon as the takeover had taken place.
- 5.4.12 The Applicant did not make any recourse to his employer via their grievance procedure to clarify his situation. Nor did he enter into discussions, whilst still employed, to take the benefit of the procedure

outlined for employees not wishing to transfer and thus be placed on secondment whilst the situation was properly finalised.

5.4.13 It is, therefore, the Tribunal's decision that the Applicant terminated his employment without notice in circumstances which did not entitle such action, not by virtue of the actions of his employer.

5.4.14 The Applicant further claimed unfair dismissal on the grounds that his employer did not follow a fair redundancy procedure.

5.4.15 The Tribunal finds that this was not a redundancy situation. The Applicant had a senior role to move into within the new company but chose not to communicate with his employer.

5.5 The Tribunal finds that this was not a case of unfair dismissal in any form but rather that the Applicant resigned from his employment without notice in breach of his contract, not as a result of his employer's actions.

**Signature of the Chairman:** Mrs T Le Poidevin

**Date:** 19 March 2008