



THE EMPLOYMENT TRIBUNAL

SITTING AT: CROYDON

BEFORE: EMPLOYMENT JUDGE MORTON

BETWEEN:

Mr A Balchin

Claimant

AND

Saied Zargham

Respondent

ON: 13 October 2017

Appearances:

For the Claimant: No appearance

For the Respondent: Mr M Reed, Accountant

JUDGMENT ON RECONSIDERATION

1. It is in the interests of justice to reconsider the default judgment against the Respondent Saied Zargham dated 28 November 2016. That judgment is set aside.
2. The Respondent's application for an extension of time for filing a response to the Claimant's claims is granted.

REASONS

1. A hearing took place before me on 13 October at which the Respondent, Mr Zargham, appeared in person and was assisted by his accountant Mr Reed. The Claimant, Mr Balchin, who is currently in New Zealand, did not attend the hearing.

2. It appears from the draft Response submitted to the Tribunal on 22 August and the contemporaneous documents including the Claimant's P45 and payslips, that the Claimant was an employee of a limited company at the material time (Frankie and Johnny Café Bar (No 3) Limited, company number 05734270), not of Mr Zargham. Mr Balchin was not present and was unable to dispute this assertion.
3. The records at Companies House indicate that Mr Zargham was at the time of the matters giving rise to Mr Balchin's claims a director of the limited company and that the company itself was dissolved on 25 July 2017.
4. Given the potential for injustice to the Claimant I considered Mr Zargham's explanation for the delay in making the application for reconsideration. It was clear to me from reading the file that the Respondent and his adviser had failed at the outset to take the appropriate steps to defend the claim, which would have been to file a response and to make an application for the limited company to be substituted as the Respondent. Mr Reed instead wrote numerous emails to the Tribunal asking for the claim to be "cancelled". Confusion then arose from the fact that Mr Reed was not on the record consistently throughout the relevant period. Correspondence from the Tribunal was not therefore always sent to the right person. I questioned Mr Reed as to why he had not taken the steps recommended by the Tribunal on 26 January 2017. Mr Reed said that he had not received that item of correspondence from the Tribunal and I had no reason to disbelieve him, particularly as on one subsequent occasion (31 May 2017) an important piece of correspondence from the Tribunal was sent to an email address that contained an error and was again not received.
5. A further procedural complication arose from the fact that having asked the Respondent to pay a fee in respect of his application for reconsideration, the Tribunal then wrote to him to tell him that a fee was no longer required as the tribunal fee regime had been abolished following a Supreme Court decision.
6. I considered the history carefully and in particular considered whether there had been any deliberate delaying tactics by the Mr Zargham, such that it would not be just to set aside the default judgment. I bore in mind that since the limited company has now been struck off there is a potential injustice to the Claimant, who will have real difficulty pursuing and enforcing his claims as the company no longer exists.
7. I came to the conclusion that Mr Zargham had not deliberately delayed. He had not been well served by Mr Reed's failure to engage with the Tribunal process properly or to inform himself of the appropriate steps at the outset, but there had then been administrative problems that could not be laid at his door or that of Mr Reed. Mr Zargham was not and never had been the proper Respondent to the claim. Therefore I consider that it would not be just for the default judgment against Mr Zargham to stand and I conclude that it is in the interests of justice to set aside the judgment dated 28 November 2016.
8. The draft response filed with Mr Zargham's application for a reconsideration on 22 August 2017 shall stand as the response to the claim. It is not however possible to substitute the limited company as the Respondent to the claim as that

company has been dissolved.

9. It is a matter for the Claimant how he wishes to proceed in the circumstances. The matter should be stayed for a period of 28 days to enable the Claimant to take advice and consider what further steps he wishes to take.

Employment Judge Morton
Date: 25 October 2017