



# EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

and

Respondents

Mr L Patil

Harvey Nash Plc

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

SITTING AT: London Central

ON: 7 December 2018

BEFORE: Employment Judge A M Snelson (sitting alone)

On hearing the Claimant in person and Ms K Sweeting, Director, on behalf of the Respondents, the Tribunal adjudges that the claim is struck out.

### REASONS

1 By his claim form presented on 26 June this year, the Claimant claims against the Respondents for wages alleged to be due by way of overtime payments. It does not matter whether the claim is put as one for unauthorised deductions from wages (under the Employment Rights Act 1996, Part II) or as one for sums due under a contract of employment (under the Tribunal's contractual jurisdiction).

2 The Respondents resist the claim on a number of grounds including the contention that there was never a contractual relationship between the parties.

3 The matter came before me for final hearing today. The Claimant attended in person and Ms K Sweeting, a Director, represented the Respondents.

4 A swift exploration of the dispute with the Claimant established that there was common ground that no contractual relationship existed between the parties. He is the sole director of a company, Godavari Consultancy Services Ltd ('Godavari'), which once had a contractual relationship with the Respondents. He is aggrieved because he believes that the Respondents were and are indebted to Godavari in respect of services performed by him for the benefit of the Respondents in his capacity as an employee or, more probably, agent of Godavari.

5 I explained to the Claimant that his claim appeared to be untenable because he was not a party to the contract under which he was seeking to claim and that accordingly I was inclined to strike it out as having no reasonable prospect of success. He was unable to offer any argument to the contrary.

6 The Tribunal has power to strike out claims which have no reasonable prospect of success (Employment Tribunals Rules of Procedure 2013, rule 37(1)(a). It is a power which must be employed with care but Tribunals should not flinch from exercising it in a proper case.

7 I was quite satisfied that the only proper course was to strike this claim out. It was, for the primary reason offered, bound to fail.

8 Had I not struck the claim out on the ground stated, I would have struck it out or dismissed it on one or more of the following additional grounds:

- (1) The claim depended on the Claimant establishing an *employment* relationship under which he worked as an employee or 'worker' of the Respondents and it was common ground that there was no such relationship (if by any company, he was employed by Godivari);
- (2) The claim is hopelessly out of time, relating to an engagement which ended in 2016;
- (3) The claim is an abuse of the Tribunal's process, being identical to a prior claim issued and still running in the Industrial Tribunals of Northern Ireland.

9 I was told that on the morning of the claim before me the parties had been involved in a telephone case management hearing in the Northern Irish dispute, in which the judge had advised the Claimant to seek independent advice. I gave the same advice and mentioned the possible danger of being ordered to pay the other party's costs, which may arise where a claim is pursued which cannot succeed.

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EMPLOYMENT JUDGE SNELSON  
10 December 2018

**Judgment entered in the Register and copies sent to the parties on 12 Dec. 18**

..... for Office of the Tribunals