



EMPLOYMENT TRIBUNALS

Claimant

Mr B Aken

Respondent

v

Cambridge Care Company Limited

Heard at: Bury St Edmunds

On: 09 January 2020

Before: Employment Judge S Moore

Appearances

For the Claimant: Ms J Carpenter, Solicitor.

For the Respondent: Ms G Rezaie, Counsel.

JUDGMENT ON A PRELIMINARY ISSUE

The respondent's response served on 27th September 2019 stands as its response in these proceedings and the hearing listed for 1 April 2020 will proceed.

REASONS

1. This was a preliminary hearing to determine whether or not the respondent's response should be accepted having been submitted out of time.
2. On 8 May 2019 the claimant submitted a claim form electronically claiming unfair dismissal. He claims he was employed by the respondent as a support worker/carer from April 2010 until 1 February 2019 when he was summarily dismissed. During that time, it is common ground that for a period the claimant had a personal relationship with the respondent's owner, Ms Penny Overy, and he asserts that during that period he acquired a 49% share in the company.
3. The claim form was issued on 1 July 2019 and the address given on the claim form was 6-7 Kings Court. In fact, the respondent had moved from 6-7 Kings Court to 4 Kings Court on 30 September 2017, although the details on its website had not been updated.

4. On 22 August 2019 Judge Warren of the Employment Tribunals directed of his own volition that the claim should be resent to the respondent at its registered office, 53 High Street, Cheveley which is the address of its accountant because “service at the address provided by the claimant is unlikely to come to the attention of the respondent”. Sometime between 22 August and 6 September 2019 the claim form was served on that address.
5. Shortly before 24 September 2019 Miss Overy was informed by the occupants of 6-7 Kings Court they had received post for her. She collected that post on 24 September 2019, discovered the claim form and telephoned Messers Allen and Overy in London who suggested that instead she contact Keystone Law, which she did.
6. A response on behalf of the respondent was submitted to the tribunal on 27 September 2019.
7. Ms Rezaie for the respondent submits that the response was not submitted out of time because the claim form was not validly served on the respondent until it was sent to its registered office sometime between 22 August and 6 September 2019. In this respect under the Civil Procedure Rules 1998 (as amended) service of a company must be at its principle office or any place of business which has a real connection with the claim.
8. I accept this submission and find that 6-7 Kings Court satisfied neither of those criteria, although it was the company’s previous place of business it was not at the time that the claim form was issued. Since the claim was not validly served until sometime between 22 August and 6 September 2019, I find, on the balance of probabilities, that the respondent’s response served on 27 September 2019 was actually in time.
9. In any event, I would have exercised my discretion in the respondent’s favour to accept late service of the response.
10. Ms Carpenter for the claimant submitted that Ms Overy had wilfully ignored the existence of the proceedings until 24 September 2019 and only took action once she became aware that the first hearing, which had been listed for 24 September 2019, had been postponed and she anticipated that judgment would be entered against her.
11. Having heard evidence from Ms Overy I do not accept this submission. I accept her evidence that she was not aware of the proceedings until she collected the mail from 6-7 Kings Court on 24 September 2019 and further that she acted as quickly as she could have done thereafter.
12. The claimant relies on the alleged lack of merits of the defence and has put in evidence bank statements between 2016 and 2018 showing some payments to him from the respondent identified as wages.

13. The respondent says these payments were not referable to the claimant's employment status but to other personal matters.
14. This factual dispute is not something that I am able to assess at this preliminary stage and I am not prepared to assume there is no basis to the respondent's defence.
15. As regards issues of prejudice, the delay is not substantial and Ms Carpenter has not identified any prejudice that the claimant has suffered by reason of that delay. By contrast, if the respondent is not permitted to defend the claim Ms Overy will obviously incur substantial prejudice.
16. Accordingly, the respondent's response will stand as its response to these proceedings and the hearing listed for 1 April 2020 will proceed.

Employment Judge S Moore

Date: 20 January 2020

30/01/2020

Sent to the parties on:

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For the Tribunal Office