



EMPLOYMENT TRIBUNAL

Claimant: Mr E Gomes
Respondent: Michael Shane Croner
Sitting At: By CVP
Before: Employment Judge Balogun **On:** 3 May 2022
Appearances:
For Claimant: In Person
For Respondent: Dr Cyrus Mansouri, Solicitor

RESERVED JUDGMENT ON RECONSIDERATION

1. The Reconsideration application is granted.
2. The Judgment of 10 June 2019 is revoked. The claim shall be re-served on the defendant's Solicitors' office.

REASONS

1. This hearing was to hear the application of the respondent dated 16.9.21 for reconsideration of the judgment made on 10 June 2019 and sent to the parties on 26 July 2019, awarding the claimant £8,721 for unlawful deduction of wages.
2. The basis of the application was that the respondent was unaware of the proceedings until bailiffs turned up at his address to enforce the judgment on 28 August 2021. The enforcement proceedings in the county court have been stayed pending the outcome of this application.
3. The issue I therefore had to consider was:
 - a. whether there has been proper service of the proceedings and if not;

- b. notwithstanding any irregular service of the proceedings, whether the claim form or the substance of it had in fact come to the attention of the respondent.
4. Neither party gave evidence but I heard submissions on behalf of the respondent, which the claimant responded to. I was also provided with a bundle from the respondent. The claimant on his part held up a number of documents to the CVP screen, which he later emailed. The claimant sought to email further documents a number of days after the hearing. He was informed that it was not appropriate for him to do so and that those documents would not be considered, which they have not been.
5. The address for service of the proceedings on for the ET1 form is the address from which the respondent operated his restaurant and where the claimant worked. That address was: Why Not Restaurant, 197-199 Replingham Road, Wimbledon SW18 5LY.
6. The restaurant was a business of Why Not Restaurant Limited. The respondent contends that he ceased to operate the business in January 2018 and gave up the business premises around that time.
7. On 25 April 2018, an application was made to strike the company off the register. It was eventually dissolved nearly 2 years later, on 7.4.20.
8. The Notice of Claim letter, dated 5 June 2018 was addressed to the restaurant. It was submitted that no correspondence from the Tribunal was passed on to the respondent.
9. In 2018, the respondent was said to be living between 2 addresses: 49 Allens Wood, Southfield, SW19 6JX and 333A Heydons Road, London SW19 6LA. He stopped living completely at Allens Wood in late 2019. The Heydons Road property was a house of multiple occupation let out to 3 individuals.
10. A Notice of Hearing dated 10 September 2018, was addressed to the Heydon's Road address which suggests that the Tribunal must have been notified of this address at some point after the Notice of Claim was sent. However, there is no record of the proceedings having been re-served on this address. It was submitted that the respondent did not receive the Notice of Hearing.
11. At the end of the hearing, I reserved my decision and ordered the respondent to send contemporaneous evidence that the business lease was surrendered before the proceedings were served. In response, a letter from a Nikhill Patel of Incabell Ltd confirming that the keys of the restaurant were handed back and passed to a new tenant on 8 April 2018. The lease was said to have been surrendered 6 to 7 months later. The letter was dated 9 May 2022 and was

therefore not contemporaneous with events. As it was a document created for the purposes of these proceedings, and I have not had the benefit of hearing from Mr Patel on oath, I have not attached a lot of weight to it. No surrender document has been provided, neither has the agreement signed by the tenant who is said to have taken over the lease. Such documents would have carried more weight.

12. Whilst the evidence presented by the respondent has not been entirely satisfactory, one of the difficulties with this case is that the original Tribunal file has been mislaid, possibly destroyed, and there is limited information electronically. It is therefore not possible to verify from the Tribunal's records what documents were served on the respondent or indeed, whether any documents that were served were returned undelivered.
13. I have considered Rule 91 of the Employment Tribunal Procedural Rules 2013 and whether, notwithstanding any irregular service of the proceedings, the claim form or the substance of it had in fact come to the attention of the respondent. However, there is insufficient evidence for me to make such a finding.
14. In all the circumstances, I have given the respondent the benefit of the doubt and found, on balance of probabilities, that he was not aware of the proceedings. In those circumstances, it is in the interests of justice that the Judgment be revoked.

Employment Judge Balogun
Date: 23 May 2022

Sent to the parties on
Date: 24 May 2022