



EMPLOYMENT TRIBUNALS

Claimant: Miss M Baylis
Respondent: Benjamin Archer
Heard at: Birmingham
On: 24 March 2023
Before: Employment Judge Flood (sitting alone)

Representation

No attendance by the parties. Decision made on the papers

JUDGMENT ON RECONSIDERATION

1. The judgment made as against the above named respondent sent to the parties on 19 October 2022 for unpaid holiday pay, breach of contract and unauthorised deductions of wages is revoked. This decision does not affect the judgment made as against the respondent named as Monarch Marketing Enterprise Limited which remains.
2. The complaints of unpaid holiday pay, breach of contract and unauthorised deductions of wages as made against the above named respondent are dismissed.

REASONS

1. On 19 October 2022, the Tribunal sent judgment to the parties in the above matter which was entered against the two named respondents to this claim, the first respondent, Benjamin Archer; and the second respondent, Monarch Marketing Enterprise Limited. The claim had been presented against both respondents. No response was presented by either respondent and so the parties were informed that a judgment may

now be entered. The claimant provided details of how she valued her claims and contended that she had been employed by both respondents during her period of employment. In the absence of any information or evidence to the contrary from the respondents, when the matter came before me I determined that the claimant's claim should succeed against both respondents and judgment was issued accordingly and sent to the parties on 19 October 2022.

2. The first respondent, Mr Archer wrote to the Tribunal on 24 October 2022 stating that he had never employed the claimant and enclosing a copy of a contract of employment between the claimant and the second respondent signed by the claimant on 23 September 2021. He asked to 'appeal' in respect of the respondent's named. I considered that the first respondent had made an application for reconsideration of the judgment against him.
3. The Tribunal informed the parties that I was of the provisional view that in the interests of justice the judgment made against the first respondent should be reconsidered to dismiss the claim as against the first respondent. The grounds for the proposed reconsideration were that the evidence now produced by the first respondent suggested that he never employed the claimant but that she was at all times employed by the second respondent. Therefore all complaints for unpaid wages, holiday pay and breach of contract appeared to correctly lie against the second respondent as the sole employer, and not against the first respondent. The Tribunal understands that the first respondent is a director of the second respondent (and that the claimant wishes to recover sums owed when she believes that the second respondent may now be insolvent). However if the first respondent was never the claimant's employer, he cannot be directly liable for the sums owing under the relevant statutory provisions. In UK law, a company is regarded as a separate legal entity possessed of separate legal rights and liabilities — see *Solomon v A Solomon and Co Ltd* 1897 AC 22, HL.
4. The parties were notified that it was also my view that this could be dealt with on the papers and without the need for a further hearing. The parties were given the opportunity by 28 December 2022 to inform the Tribunal if they thought the judgment should not be reconsidered, giving reasons. The parties were also asked for their views on whether the reconsideration could proceed without a hearing.
5. The claimant provided her response on 15 December 2022 in which she objected to the proposed reconsideration of the judgment made as against the first respondent, Benjamin Archer. No response was received from the first respondent.
6. Having considered the claimant's response I remained of the view that the judgment should be reconsidered and that a hearing is not necessary in the interests of justice. In accordance with rule 72(3) of Employment Tribunals Rules of Procedure 2013 (2013 Rules), the parties were informed that they were entitled to be given a reasonable opportunity to make further representations in advance of that reconsideration without a hearing. The parties were given until 28 January 2023 make such further

representations as they wished as to why the judgment made against the first respondent, Benjamin Archer, should or should not be reconsidered to dismiss the claim as against the first respondent. I suggested that the parties may wish to address some or all of the following questions:

- a. Is there any basis for suggesting that the claimant was directly employed by the first respondent, Mr Archer (other than the fact that the first respondent once arranged for wages to be paid to her from his personal bank account)? For example did the claimant ever carry out any duties other than on behalf of the second respondent? Is there any other evidence to support a contention that despite the claimant's contract of employment being with the second respondent, she was in fact employed by the first respondent?
 - b. If any evidence as suggested at paragraph a (or any other evidence to support the claimant's view) this should also be provided.
7. The parties were informed that I would reconsider the judgment on the first available date after 28 January 2023. No hearing would be required and the parties were not required to attend.
 8. The claimant provided a further response on 25 January 2023. No response was received from the respondent. The claimant submitted that the first respondent as a director of the second respondent was not acting lawfully. The claimant pointed out that there were other individuals with outstanding judgments and COT3 settlement agreements as against the second respondent and the second respondent was refusing to pay these as well as there being unpaid wages as respect to different individuals. The claimant expressed her frustration and how difficult it had been for her, and that she considered the first respondent was effectively avoiding liability for the debts of the second respondent of which he was the sole director. She pointed out that the second respondent appeared to be in breach of its obligations to file accounts and that there may be legal obligations being breached by the first respondent as a director of that company.
 9. The claimant accepts that she was "*employed by the company*" but goes on to submit that as the first respondent paid her wages, he was effectively taking personal liability for the company's finances.
 10. The matter came before me today and I have carefully considered all the points raised by the claimant which were clear and articulately made. I have every sympathy for the claimant's position. It does appear that the first respondent is behaving in a manner which is causing individual employees to miss out on wages validly due to them by the company of which he is a director. The claimant's points about the first respondent being breach of his legal obligations as a director of the second respondent may be very valid points to make.
 11. However the Employment Tribunal can only deal with those legal claims that it has the statutory jurisdiction to address. There is no jurisdiction to deal with matters such as whether directors have complied with the

fiduciary obligations to which they are subject. The Companies Act 2006 touches on matters of this nature but it does not confer any Jurisdiction on the Employment Tribunal to impose any legal remedy or redress for such matters.

12. The matter at issue in this claim that the Tribunal does have jurisdiction to consider is whether the claimant was entitled to a remedy for unpaid wages, unpaid holiday pay and breach of contract. The Tribunal has determined that the claimant was successful in her complaints as against the entity that employed her at all relevant times. That entity was as it has now become clear, the second respondent, Monarch Marketing Enterprise Limited. For the reasons set out at paragraph 3 above, as the first respondent did not employ the claimant, no award can be made against him. The judgment that has been issued in the claimant's favour as against that entity remains in full force and effect. The Tribunal does not have the jurisdiction to deal with matters of enforcement of its judgments as those are a matter for the civil courts.
13. I encourage the claimant to see independent legal advice as to how she may be able to enforce the judgment that has been made. The claimant may wish to contact a solicitor or I also refer the claimant to I refer the claimant to the Sources of Advice leaflet which I have asked to be sent to her.
14. For the reasons set out above, upon reconsideration the judgment made as against the first respondent is revoked and all claims as against that first respondent are dismissed.

Employment Judge Flood

Date: 26 March 2023