



EMPLOYMENT TRIBUNALS

Claimant

AND

Respondents

Mr B Rogers

1. Soul Camden Limited
2. Mr Christie Singam

Heard at: London Central

On: 9 and 10 February 2017

Before: Employment Judge Baty (sitting alone)

Representation

For the Claimant:

Mr T Clements (Solicitor)

For the 1st Respondent:

No attendance or representation

For the 2nd Respondent:

Mr T Gillie (Counsel)

JUDGMENT

1. The Claimant was at all material times, in relation to the 2nd Respondent, an employee (for the purposes of section 83(2) Equality Act 2010) and a worker (for the purposes of section 230(3) Employment Rights Act 1996 and Regulation 2 Working Time Regulations 1998).
2. The Claimant's complaints of disability discrimination and for unpaid holiday pay therefore proceed against the 2nd Respondent. They are dismissed as against the 1st Respondent.

REASONS

The Complaints

1. By a claim form presented on 13 July 2016 against the First Respondent only, the Claimant brought complaints of disability discrimination and for unpaid wages and holiday pay.
2. At a preliminary hearing on 8 November 2016, Employment Judge Grewal rejected the First Respondent's response (it not having been submitted on time and the First Respondent not having attended at the preliminary hearing to pursue an application for extension of time). She also granted the Claimant's application to add the Second Respondent as a Respondent. The Second Respondent

defended the complaints. In his response, the Second Respondent submitted that the Claimant was, at all relevant times, self-employed and the Tribunal therefore did not have jurisdiction to hear the complaints. The present hearing was therefore duly listed to consider three issues, namely whether:

- (1) The Tribunal has jurisdiction to consider the claim against the Second Respondent in the absence of early conciliation having taken place with him;
- (2) The Claimant was an employee under the Equality Act 2010;
- (3) If he was, whether he was employed by the First or the Second Respondent.

The Issues for Today's Preliminary Hearing

3. At the start of today's hearing, Mr Gillie made clear that he was representing the Second Respondent only. The First Respondent was therefore neither present nor represented at this hearing.

4. Furthermore, Mr Gillie explained that, in the light of the case law, he no longer challenged whether or not the Tribunal had jurisdiction to consider the claim as against the Second Respondent in the absence of ACAS early conciliation having taken place in relation to the Second Respondent, and this application was withdrawn. It was therefore no longer an issue before me.

5. I confirmed with the Claimant that the heads of claim were of disability discrimination (under the Equality Act 2010 ("Equality Act")) and of unpaid wages and holiday pay (under Part II of the Employment Rights Act 1996 ("ERA") and the Working Time Regulations 1998 ("WTR")). I therefore considered that whether or not the Claimant was a worker for the purposes of the ERA and WTR was an issue which, if not conceded, would need to be determined as well. Mr Gillie, despite a reference in his written submissions which appeared to indicate the contrary, took instructions from his client and confirmed that it was not conceded that the Claimant was a worker. This therefore remained an issue. It was agreed that this issue should be considered by me at this hearing (on the proviso that Mr Gillie had time to take some instructions regarding the evidence from the Second Respondent, which he did during the period when I was reading the witness statements).

6. Therefore, it was agreed that the issues which I would have to determine were as follows:

- (1) Whether the Claimant was a worker (for the purposes of the ERA and WTR) and whether he was an employee (for the purposes of the Equality Act) and, if so, in each case in relation to whom (be it the First Respondent, the Second Respondent or another entity).

7. At the start of the hearing, I also tried to establish with the parties precisely what their positions were on these issues and there followed quite a lengthy

discussion as, particularly in the case of the Second Respondent, it did not appear clear initially what the Second Respondent's position was (and Mr Gillie had to take instructions from his client on several occasions).

8. However, following these discussions, Mr Clements made clear that the Claimant considered that he was an employee and worker of the First Respondent in the latter part of his "employment" but that he did not know what the position was in terms of employing entity in the earlier part of his "employment".

9. By contrast, the Second Respondent's position was that the Claimant was self-employed throughout the relevant period and the contract under which he supplied his services was with "the Bayou (UK) Limited" (and not with either the First or Second Respondent) but that, whilst the Second Respondent could not speak on behalf of the First Respondent, it appeared that the Claimant had a contractual relationship with the First Respondent only from 5 March 2016 onwards.

10. This was the best indication I was able to get of the respective positions at this time and the positions appeared confusing both at this stage and as the evidence developed.

11. It was noted that it was not necessary for the Claimant, in respect of jurisdiction in relation to his disability discrimination complaints, to have been an employee of the Second Respondent himself but that, to the extent that the Second Respondent had acted as an employee or agent for an entity which employed (for the purposes of the Equality Act) the Claimant, the Second Respondent could himself be personally liable for any acts of discrimination carried out by him.

The Evidence

12. Witness evidence was heard from the following:

For the Claimant:

The Claimant himself.

For the Second Respondent:

The Second Respondent himself; and

Mr Pawel Jankiewicz, who is engaged by Camden Management (UK) Limited (a company owned by the Second Respondent) in its Accounts and Payroll Department.

13. An agreed bundle of documents numbered pages 1–154 was produced at the hearing.

14. I read in advance the witness statements and any documents in the bundle which were referred to in those witness statements.

15. A timetable for cross-examination and submissions was agreed between myself and the representatives at the start of the hearing. This was adhered to in relation to cross-examination. However, both representatives needed a little extra time to complete their oral submissions.

16. In addition, Mr Gillie produced a set of written submissions which I read in advance. Both advocates gave oral submissions in due course.

17. I then adjourned to consider my decision. I gave my decision to the parties orally with reasons. Both representatives then requested written reasons.

18. In these reasons, references to “Mr Singam” are to the Second Respondent and references to “SCL” or “Soul Camden Limited” are to the First Respondent.

The Law

Equality Act 2010

19. Section 83(2) of the Equality Act Provides as follows:

“83(2)“Employment” means –

- (a) employment under a contract of employment, a contract of apprenticeship or a contract personally to do work”

20. The definition in the Equality Act is therefore much broader than the narrower definition of “employee” in the ERA. The requirements are that there must be a contract and that that contract is a contract personally to do work.

21. In **Jivraj -v- Hashwani [2011] UK SC40**, the Supreme Court also identified, in relation to the definition in section 83(2), a distinction between a case in which the person concerned performed services for and under the direction of the other party to the contract in return for remuneration (which would fall within the definition) as opposed to an independent provider of services who is not in a relation of subordination with him or it (which would not fall within the definition).

Worker (ERA/WTR)

22. Section 230(3) of the ERA provides that:

“(3) In this Act ‘worker’ ... means an individual who has entered into or works under (or, where the employment has ceased, worked under) –

- (a) a contract of employment, or
- (b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby an individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual;

and any reference to a worker’s contract shall be construed accordingly.”

23. The same definition of “worker” is contained in Regulation 2 of the WTR.

24. The key elements of the definition are the requirement for “personal work or services” and the absence of a relationship of “client or customer” between the contracting parties.

Findings of Fact

25. I make the following findings of fact. In doing so, I do not repeat all of the evidence, even where it is disputed, but confine my findings to those necessary to determine the agreed issues.

26. Mr Singam is a business man. He is the sole owner and director of Camden Management (UK) Limited (“Camden Management”). This is his main business. It mainly acts for overseas landlords who have commercial and residential properties in the UK, managing their properties.

27. However, there is a second element to Mr Singam’s business activities. Over many years, Mr Singam has set up many restaurants and bars (in those commercial properties). He likes creating the concept. However, as he prefers not to run them himself and he tries to find suitable tenants to take over the running of these bars/restaurants. The Bayou Soul Restaurant (“the Bayou Soul”), at 20 Inverness Street, Camden (which premises are owned by one of Mr Singam’s overseas clients), is such an example.

28. Evidence in the bundle of contemporaneous press coverage, twitter pages and Google reviews etc, indicates that the Bayou Soul opened at some point in 2014 and I therefore find that it did open in 2014.

29. There is no evidence that Mr Singam had a tenant running the Bayou Soul until December 2015 (at which point Mr Singam maintains that he had a tenant in place albeit, as I shall come to, that evidence is disputed by the Claimant). I therefore find that, at least until that point (December 2015) the Bayou Soul was managed by Mr Singam.

30. Mr Singam owns and is a director of around 20 different companies. The registered addresses of many of these are Mr Singam’s home address, although some are registered at other specific property addresses, for example where the company’s occupation is marked as “caterer”, it may have its registered address as the address of the relevant restaurant.

31. The Bayou (UK) Limited (“Bayou UK Ltd”) was incorporated on 23 May 2014. Mr Singam was the owner and sole director of this company. Until at least 16 September 2016 (the date of the company search of Mr Singam’s directorships which was in the bundle), its correspondence address was Mr Singam’s home address. However, a further company search in the bundle dated 6 February 2017 showed the registered address of Bayou UK Ltd as being 20 Inverness Street. The registered address is actually phrased “Bar Solo, 20 Inverness Street” rather than “Bayou Soul, 20 Inverness Street”. The same company search shows the

“nature of the business” of Bayou UK Ltd as being “management of real estate on a fee or contract basis”. However, the earlier Companies House search of 16 September 2016 of Mr Singam’s directorships in relation to Bayou UK Ltd states the occupation as “caterer”. It appears from the directorship entries that the reference to “occupation” is to the director’s (i.e. Mr Singam’s) occupation, rather than the company’s occupation. No further evidence of what Bayou UK Ltd did, whether it employed any employees, or what payments were made in respect of those employees, was provided to the Tribunal. Nor was there any further documentary information regarding the nature of its business. Mr Singam was also managing the property from which the Bayou Soul operated, 20 Inverness Street, on behalf of one of his overseas clients.

32. The Claimant has been a chef for over 20 years. He has held numerous head chef appointments in that time. These were generally on an employment basis, although the position he had immediately prior to coming to work for the Bayou Soul, which was as Head Chef at the “Fat Bear” in St Paul’s, and which he held from October 2014 until Autumn 2015, was on a self-employed basis and enabled him to do other work as well.

33. Mr Singam had advertised for a head chef for the Bayou Soul in an online advertisement website, Gumtree. The advert did not specify whether the position was as an employee or on a self-employed basis.

34. The Claimant applied in response to the advertisement. Mr Singam telephoned him and asked him if he could meet with him the same day. The Claimant met Mr Singam who took him to the Bayou Soul Restaurant.

35. Mr Singam and the Claimant agreed that the Claimant would start working as head chef at the Bayou Soul, which the Claimant duly did. There is a dispute as to when he started (the Claimant says 1 September 2015 and Mr Singam 4 October 2015), but a determination of that is not necessary for the purposes of the decisions before me.

36. No written contract was ever put in place. No mention was made of what entity the Claimant was contracting with, whether Mr Singam personally or a corporate entity. No corporate entity was mentioned, be it Bayou UK Ltd or otherwise. The Claimant assumed that he would be contracted to a corporate entity, but he had no knowledge of this.

37. Mr Singam maintains that the Claimant told him that he was self-employed in his current role and that this suited him as he had outside catering functions and that they therefore specifically agreed that the Claimant would be engaged on a self-employed basis at Bayou Soul. The Claimant denies this. Mr Jankiewicz’s evidence was that he understood that the Claimant was employed on a self-employed basis, but he accepted that that was only on the basis of what Mr Singam told him, so that sheds no further light on whether or not there was a conversation about self-employment between the Claimant and Mr Singam.

38. However, in relation to respective credibility of witnesses, Mr Singam frequently failed to answer simple questions asked of him, displayed a surprising

lack of knowledge of his own business operations when asked about them, and made several assertions that were contradicted by documentary evidence. One clear example of the latter is his assertion that he had nothing to do with the management of the Bayou Soul after 5 December 2015, when there was a clear series of texts between him and the Claimant from February 2016 discussing the Claimant's on-going engagement at the Bayou Soul, including the line from Mr Singam "I simply cannot carry on a business without a kitchen". These show clearly that Mr Singam was still involved in the business of the Bayou Soul Restaurant (I refer to these texts again below).

39. The Claimant by contrast, was straightforward in his answers and consistent in his evidence. Therefore, where there is a conflict of evidence, I prefer the evidence of the Claimant over that of Mr Singam in the absence of other documentary evidence.

40. I therefore find that there was no conversation between the Claimant and Mr Singam regarding self-employment or employment status at the start of the Claimant's engagement as head chef.

41. As noted, there was no written contract. I accept the Claimant's evidence that he asked for contractual documents several times but did not get them and that his status as an employee was confirmed to him. Mr Singam denies this but, for the reasons above regarding respective credibility, I prefer the Claimant's evidence.

42. The Claimant was paid £550 per week. I have seen no evidence of those payments being put through the books of any entity at all, but Mr Singam's evidence is that no tax was paid on this and, in the absence of any evidence to the contrary, I accept that. Certainly no payslips were provided to the Claimant. Mr Singam did not ask for a P45 from any previous employer of the Claimant nor was a P45 provided to him.

43. The Claimant's evidence is that he was working on a full-time basis at the Bayou Soul and did not work for anyone else and, in the absence of any evidence to the contrary beyond assertion, I accept that.

44. The Claimant was not permitted to provide a substitute for his role as head chef. He had to do this work himself. If there was any cover for him when he was away, this was not provided by the Claimant but by the Bayou Soul, generally from other employees at the Bayou Soul.

45. It is accepted by Mr Singam that there were other employees working at the Bayou Soul (although I have seen no evidence or details of who employed them).

46. The Claimant was fully integrated into the operations of the Bayou Soul. I have seen a large amount of promotional material in the bundle promoting the Claimant as head chef of the Bayou Soul, including a photograph of him in his chef's whites in front of the restaurant, Facebook pages stating he was part of the culinary team, and various invoices for the Bayou Soul which were sent to the

Claimant. The Claimant was in charge of running the kitchen, complying with health and safety, managing staff and dealing with profits.

47. Mr Singam wanted the Claimant to be head chef at the Bayou Soul because of his particular skills as a head chef and because he thought he had the relevant expertise for it. Following the interview, Mr Singam confirmed the Claimant's employment.

48. Mr Singam maintains that in November/December 2015 he identified a tenant for the Bayou Soul, a Mr Daniel Sebastian; that he soon began the business of handing over the Bayou Soul business to Mr Sebastian; that he, Mr Singam, resigned on 5 December 2015 as a director of Bayou UK Ltd (which Mr Singam maintains is the entity which ran the Bayou Soul and engaged the Claimant); that he handed over the business and ownership of the Bayou UK Ltd to Mr Sebastian on that date and ceased thereafter to have anything to do with the management of the Bayou Soul; that Mr Sebastian did not make a success of the business; that the Claimant and Mr Sebastian did not get on; that the Claimant made it clear that he could not work with Mr Sebastian; that Mr Singam had to act as a mediator between them; that he was concerned with the manner Mr Sebastian was operating; that he therefore set up the First Respondent, Soul Camden Ltd ("SCL") on 22 January 2016 in preparation to take over the business again if Mr Sebastian failed so as to reduce damage to the good will of the business; that on 5 March 2016 Mr Sebastian "left the business"; and that on 7 March 2016, SCL took over the operations of the Bayou Soul.

49. Of the above, it is correct that Mr Singam resigned as a director of the Bayou UK Ltd on 5 December 2015 and that SCL was incorporated on 22 January 2016, with Mr Singam as owner and sole director. (SCL's registered address is at the Bayou Soul, 20 Inverness Street. Mr Singam remained director of SCL until 1 August 2016). However the rest of the above account is disputed. In particular, the Claimant, who was working full-time as head chef at the Bayou Soul until 13 February 2016 (when he collapsed at work and went off sick), had never heard of or met Mr Sebastian, let alone had the bad working relationship which has been described by Mr Singam.

50. If Mr Sebastian had been managing the Bayou Soul from 5 December 2015 to 5 March 2016, it is inconceivable that there would be no documentary evidence of this, for example in the form of business emails, texts, letters, with Mr Singam or with the Claimant or other members of staff at the Bayou Soul. However, nothing whatsoever has been provided nor is there even a simple statement from Mr Sebastian confirming that he was running the Bayou Soul in that period. By contrast, the only evidence that I have seen in documentary form of anyone carrying out management functions in that period is of management by Mr Singam.

51. For these reasons, as well as the respect of credibility of the witnesses which I referred to above, I prefer the Claimant's evidence and find that Mr Sebastian was not managing the Bayou Soul in that period and certainly not managing the Claimant.

52. On 13 February 2016, the Claimant collapsed at work at about 12.30 pm. One of his colleagues called an ambulance and the Claimant was taken straight to hospital and admitted straightaway. At the hospital, the Claimant was told that he would be in for two weeks and would need a further two weeks to recover. Mr Singam was notified by his staff and by the Claimant regarding this incident. The Claimant tried to speak to Mr Singam from hospital but he did not answer.

53. On 22 February 2016, the Claimant messaged Mr Singam to advise how long he would be away for. The succession of text messages between the Claimant and Mr Singam, which take place over the period from 22 - 24 February 2016, and which I have already referred to above, are as follows:

“Claimant: Hi Chris sorry to be a pain will be in hospital for a further 2 weeks then up to 2 weeks to recover at home

Mr Singam: Hi Bernie hope you are coping. Unfortunately owing to the uncertainty in the situation I have had to employ a new team in the kitchen at bayou. Am sorry but you will appreciate that I simply cannot carry on a business without a kitchen. The other option was to close the business down

Claimant: So I'm fired

Mr Singam: No you are not able to work and have not been for awhile now.

Claimant: Been in hospital 2 weeks as I said I come out this week then have to wait for wound to heal about 2 weeks as per text I sent you.

Mr Singam: Bernie when I spoke to you when first admitted you did say that you were gonna be out for awhile as there was suspicion of cancer – I took that to mean that you were out for a long while. It is simply not possible to operate a small restaurant with just 2 chefs and one of them in hospital for an indefinite period of time – I am sure you can understand that.”

54. This line of messages is clear evidence that Mr Singam retained a management role in the business of the Bayou Soul and was managing the Claimant in relation to discussions relating to the continuation or otherwise of his engagement as head chef at the Bayou Soul.

55. Mr Singam's explanation of this in his cross-examination was that he was simply relaying text messages to the Claimant from Mr Sebastian. This explanation is simply incredible. If Mr Sebastian was running a business, there was no reason why he could not communicate with the Claimant himself. These messages are very clearly from Mr Singam himself. There is no reference to his texting on behalf of Mr Sebastian or anyone else. The reference to “I” is repeated in those messages and they are clearly messages from Mr Singam himself.

56. Around this time, the Claimant's partner at the time, Karian Osborne, gave Mr Jankiewicz a medical certificate concerning the Claimant's illness. Mr Jankiewicz was not surprised that a medical certificate was provided (as he admitted in cross-examination).

57. Mr Jankiewicz and Mr Singam had regular weekly meetings about Mr Singam's businesses in general. At one such meeting around this time,

Mr Jankiewicz fed back to Mr Singam confirmation that he had had about rumours flying around amongst staff as to the reason for the Claimant's sickness absence.

58. Ms Osborne later went to pick up the Claimant's wages. Mr Singam said he would give her the money for Thursday and use holiday entitlement to pay holiday pay for the period the Claimant was in hospital.

59. Mr Singam did give the Claimant some wages whilst he was in hospital but the Claimant considered that there was a shortfall and went to see Mr Singam about it when he came out of hospital on 29 February 2016.

60. There were further discussions between the Claimant and Mr Singam about wages and about the Claimant returning to work, and certain payments were made to the Claimant, including a £300 cash payment which Mr Singam gave to the Claimant on 14 April 2016. This was made after the Claimant had, on 14 April 2016, informed Mr Singam that he had been diagnosed with bowel cancer. Mr Singam maintains that he made the payment because he felt sorry for the Claimant.

61. The Claimant then asked about holiday pay and statutory sick pay. Mr Singam replied:

"I didn't put you through the books, you're lucky you have that, plus you did not tell me you were sick."

62. The Claimant took this as notification of dismissal.

Conclusions on the issues

63. I make the following conclusions, applying the law to the facts found in relation to the agreed issues.

Employment Status

Equality Act

64. I turn first to the question of whether the Claimant was an employee for the purposes of the extended definition in section 83(2) of the Equality Act. What is required is a contract personally to do work.

65. There is no dispute that there was a contract in place under which the Claimant was engaged as head chef at the Bayou Soul. The question is what sort of contract was it.

66. In this respect, I am in no doubt that it was a contract personally to do work.

67. As I have found, the Claimant was required personally to carry out the role of head chef. He had been hired by Mr Singam, in response to an advertisement Mr Singam placed, for his specific skills and experience as a head chef. It was the Claimant's skills and experience which were required and no one else's.

68. The Claimant did not the right to send someone else to do the head chef duties nor did he ever do so. When any cover for him was required, because he was away or when he was off sick, that was arranged by the Bayou Soul and not by the Claimant (as would have been the case had he been self-employed operating his own business).

69. This was therefore a contract of personal service and one under which the Claimant was doing work (as head chef).

70. As to any element of subordination that may be required, as referred to in the case of Jivraj, the Claimant was not operating a business on his own account; rather he was working in the business of the Bayou Soul. He was hired by Mr Singam and Mr Singam was to take any decisions about whether his contract would continue or not, as is evident from the text messages of 22-24 February 2016. Discussions regarding pay, holiday pay and SSP were between the Claimant and Mr Singam. As can be seen from Mr Singam's words to the Claimant on 14 April 2014, Mr Singam expected the Claimant to tell him when he was sick.

71. For all these reasons, there clearly was a sufficient element of subordination of the Claimant to Mr Singam in his role.

72. That is enough to satisfy the definition of section 83(2). The Claimant was therefore an employee for the purposes of the Equality Act.

ERA/WTR

73. The Claimant submitted that, in fact, the evidence is such that the Claimant would also satisfy the wider definition of employee in the ERA. That may be case, but it is not a decision that I have to take.

74. As to the definition of worker in the ERA and WTR, I find that the Claimant was a worker for similar reasons to the reasons why he was an employee for the purposes of section 83(2) of the Equality Act. The Claimant was engaged under a contract. It was an oral contract. As I have found, the contract was for him to perform work (as head chef) and to perform that work personally.

75. Furthermore, the Claimant was not operating as a separate business and the Bayou Soul was not his client; rather, he was an integral part of the operations of the Bayou Soul; as Mr Singam admitted in cross-examination, the Claimant ran the kitchen, managed staff, dealt with health and safety and with profits. Furthermore, the Claimant did not supply services to anyone else at that time.

76. The Claimant was not carrying out any profession or business undertaking and, even if he had been, the Bayou Soul was not a client or customer in relation to any such profession or business undertaking. This carve out in the definition of worker for the purposes of the ERA and WTR does not therefore apply.

77. The Claimant was therefore a worker in relation to both the ERA and WTR.

The Claimant's employer

78. I turn now to the question of who or what was the other party to that contract; in other words in relation to whom or what was the Claimant a section 83(2) employee and an ERA/WTR worker.

79. Three candidates have been suggested: SCL, Bayou UK Ltd and Mr Singam himself. In terms of the start of the Claimant's relationship in September/October 2015, one candidate can immediately be discounted, namely SCL, as SCL was not incorporated until 22 January 2016 and therefore did not even exist until that date. This does not preclude a change of "employer" to SCL at a later date on or after 22 January 2016, but I shall return to that later.

80. Mr Singam's case is that Bayou UK Ltd was the contracting party at all times and that, even after 7 March 2016 when, on Mr Singam's own case, SCL "took over" the running of the Bayou Soul, the Claimant was never engaged by SCL, but was always engaged by Bayou UK Ltd.

81. Bayou UK Ltd was incorporated in the same year, 2014, as the Bayou Soul opened. However, Mr Singam was also managing the property from which the Bayou Soul operated, 20 Inverness Street, on behalf of one of his overseas clients. The registered address of Bayou UK Ltd is actually phrased "Bar Solo, 20 Inverness Street" rather than "Bayou Soul, 20 Inverness Street", indicating either a previous bar at the address or an additional one at the same time. Furthermore, importantly, the nature of the business of Bayou UK Ltd is described at Companies House as "Management of real estate on a fee or contract basis". The main part of Mr Singam's business was managing properties for overseas clients and this property was owned by one of his overseas clients. Therefore, it is more likely that Bayou UK Ltd, notwithstanding the use of the word "Bayou" in its name, was a company used to manage the property rather than to operate a restaurant.

82. Mr Singam suggests that the "nature of business" entry at Companies House was just a mistake but, in the absence of any other evidence that this company operated the restaurant, and in the light of my concerns regarding Mr Singam's credibility, I am not prepared to accept this.

83. Furthermore, as indicated, no evidence whatsoever has been provided to indicate that Bayou UK Ltd owned the business of the Bayou Soul. It is admitted that there were employees in that business. But there are no records of their being employed by Bayou UK Ltd or paid by Bayou UK Ltd. Nor were there any records of any transaction carried out by Bayou UK Ltd in relation to the running of the Bayou Soul business.

84. Furthermore, there was no mention of this company to the Claimant when he started working. The Claimant candidly admitted in evidence that he assumed that he would be employed by a corporate entity of some sort. However, that was an assumption on his part; the question before me is what happened in reality.

85. I have seen no evidence of any payments made to the Claimant being put through the books of Bayou UK Ltd or any evidence beyond assertion that it was the entity that engaged the Claimant.

86. By contrast, the Claimant responded to an advertisement from Mr Singam; was interviewed by Mr Singam; was offered the work by Mr Singam and confirmed his acceptance of it to Mr Singam; was managed by Mr Singam; was paid, often in cash, by Mr Singam himself; and communicated with Mr Singam in any discussions regarding his on-going employment/its termination.

87. The evidence is therefore strongly that he was engaged by Mr Singam and not by Bayou UK Ltd. I therefore accept that, from the start of his engagement the Claimant was employed by and was a worker in relation to Mr Singam.

88. I turn now to what happened thereafter.

89. Whether or not Mr Singam was looking to off-load management of the Bayou Soul to Mr Sebastian, I do not know and I make no finding in that respect. It is possible that he was trying to do so in December 2015, as that was his preferred modus operandi with restaurants which he set up. However, as I have found, the fact of the matter was that Mr Singam did not relinquish management control.

90. Mr Singam may have anticipated a handover to Mr Sebastian and may have anticipated using Bayou UK Ltd as a vehicle from which Bayou Soul might be owned and operated by Mr Sebastian in future, as evidenced by his resignation as director of Bayou UK Ltd on 5 December 2015. In this respect I just do not know. He may have set up SCL in January 2016 to take over the business of Bayou Soul either then or at a future date. However I am not prepared to make such a finding in the absence of any evidence beyond Mr Singam's assertion. It is however noticeable that no documentation providing for the transfer of the lease/goodwill/share ownership has been provided in relation to the alleged transfer of the Bayou Soul business to Mr Sebastian in December 2015 or from Mr Sebastian/the Bayou UK Ltd to SCL in March 2016.

91. However, whatever the position there, none of that actually matters. Mr Singam remained managing Bayou Soul and nothing was communicated to the Claimant about any change of employer. There is no documentary evidence showing a transfer of the Claimant's contract from Mr Singam to any other entity. Therefore, I find on the balance of probabilities that Mr Singam was the Claimant's employer from the start of his engagement and remained so throughout his engagement and nothing changed that position. Mr Singam remained the Claimant's employer throughout his contract as head chef.

92. A reading of the 22-24 February text messages makes clear that Mr Singam was not terminating the Claimant's contract at that stage. He therefore continued in his employment until 14 April 2016.

93. Mr Singam was therefore at all times the Claimant's employer and the complaints of disability discrimination, unpaid wages and holiday pay are therefore

properly brought against him personally. They are therefore dismissed as against the First Respondent, SCL.

**Employment Judge Baty
29 March 2017**