



EMPLOYMENT TRIBUNALS

Claimant: Mrs A Mullane Naegele
Respondent: Coleman Tunneling (Ireland) Limited
HEARD AT: CAMBRIDGE ET
ON: 8th & 9th May 2017
7th June 2017 (No parties in attendance)
BEFORE: Employment Judge Ord

REPRESENTATION

For the Claimant: Mr S Cheetham (Counsel)
For the Respondent: Mr J Small (Counsel)

PRELIMINARY HEARING

JUDGMENT ON ISSUES

1. The Claimant is employed by the Respondent and has been continuously employed by the Respondent since 1st May 1981.
2. The Tribunal has territorial jurisdiction to hear the Claimant's claims.
3. No order is made on the Respondent's application to strike the Claimant's claims out or for a Deposit Order on the basis that the Claimant's claims have no reasonable or alternatively little prospect of success.
4. The Claimant's claims are not *res judicata* nor is she prevented from pursuing the same by reference to the rule in *Henderson v Henderson*.
5. The issue of *Estoppel* does not arise on the basis of the Claimant's previous claim as lodged in the Irish Courts and Tribunals.
6. The claim has not been presented out of time.

REASONS

BACKGROUND

1. This claim arises out of the Claimant's employment with the Respondent.
2. The Respondent does not dispute that the Claimant was an employee of the Respondent but says that the Claimant's employment ceased in 2012 and that the Claimant was thereafter employed by Coleman Tunneling (Africa) Pty Limited ("CTA"). The Respondents said that any claim against it is considerably out of time and that there is any event no sustainable claim against it.
3. The Claimant says that her employment with the Respondent was not terminated but that after June 2012 she was, at the request of her manager Mr Coleman providing her services to and receiving payment from CTA but that she remained employed by the Respondent and that such an arrangement was not uncommon in the group of companies operated by Mr Coleman.
4. The Claimant presented a claim to the Employment Tribunal on 26th July 2016. She had undertaken early conciliation through ACAS commencing 1st March 2016 and the relevant early conciliation certificate is dated 24th March 2016.
5. The claim is brought for unlawful deduction from wages. The Claimant says that she was and remains an employee of the Respondent and has not been paid since September 2014. She says that she should have been paid £7,000 per month gross (which she calculates as being £4,655.41 net) and says that those deductions continue to accrue month on month.

THE ISSUES FOR DETERMINATION

6. The issues for determination at this Preliminary Hearing were set out by Employment Judge Moore at a Preliminary Hearing on 8th December 2016, and were as follows:-
 - (1) Was the Claimant an employee of the Respondent Company?
 - (2) Does the claim lie within this Tribunal's territorial jurisdiction?
 - (3) To hear the Respondent's application to Strike Out or for a Deposit Order on the ground that the claim has no or little prospect of success.
 - (4) To consider whether the Claimant is estopped from relying on facts different or contrary to those she pleaded in a (now withdrawn) claim against this Respondent in Ireland.
 - (5) In the light of that withdrawal whether the doctrine of res judicata prevents her from pursuing her present claim in this Tribunal.

- (6) Whether the claim in its entirety was presented outside the statutory time limits.

THE HEARING

7. Evidence was heard at the Preliminary Hearing from the Claimant, Patricia Mullane (who is related to the Claimant), Gerhard Naegele (the Claimant's husband), Jrair Dakramendjin (the Claimant's son) and Graham Gibson (whose evidence was interposed after that of Dianne Coleman). For the Respondent evidence was heard from Dianne Coleman (majority shareholder and director of the Respondent company; the widow of the late John Coleman), Michael Connolly (the Respondent's Accountant) and Elayne Coleman (Daughter of Dianne Coleman and also a Director of the Respondent).
8. All those witnesses gave their evidence by reference to written statements which had been exchanged between the parties in accordance with earlier directions.
9. Witness statements were also submitted from Roger Lander (Chartered Accountant who acted for the Coleman companies in the UK and Ireland) and a copy of an affidavit from Tim O'Sullivan, Solicitor who had acted for the Claimant in the presentation of a work place relations complaint in Ireland was before me along with a sworn statement from Andrew Fawcett (South African Attorney).
10. Both parties made closing arguments and supplementary written comments following the Tribunal's identification of the case of *Weatherill v Cathay Pacific (EAT/333/16)* which had not been referred to in closing whereas the earlier, contrary, decision of *Agarwal v Cardiff University (EAT/210/16)* had been relied upon by the Respondent to indicate that the Tribunal had no jurisdiction to construe a contract of employment in circumstances where a Claimant pursued a claim for unlawful deduction from wages.

THE FACTS

11. Based on the evidence presented I made the following findings.
12. The initial history of the Claimant's employment with the Respondent (and predecessors/related companies) comes from the Claimant and from her alone. There was no evidence to gainsay what she said and it was not challenged so I am bound to accept it.
13. The Claimant's evidence was that she was first employed in Ireland by the Respondent on 1st May 1981 as an Office Junior. She says she was not given, nor has she ever had, any written terms and conditions of employment. She progressed in the business.
14. The Claimant later began working from the offices of John Coleman Civil Engineering (JCCE) in Milton Keynes. Initially she was commuting to and from her home in Ireland on a weekly basis after Mr Coleman had asked her to work from those offices but in February 1988 she moved with her children to the UK

where her husband was already working for another Coleman Company and the Claimant's employment transferred to JCCE.

15. By late 1993 JCCE was suffering financial difficulties. In advance of any administration (which followed) Mr Coleman set up companies in Ireland and the UK both called "Coleman Tunneling and Technology Services Limited". The Claimant's employment transferred to UK Company of that name.
16. The unchallenged evidence of the Claimant was that the organisation of the different companies operated by Mr Coleman was at the very least informal. She referred to having to identically named companies in two countries as facilitating "flexibility" with monies received, particularly by cheque.
17. In due course Mr Colman operated companies in other jurisdictions. The Claimant said that she was required to set up and manage overseas business bank accounts for companies in those jurisdictions in particular in Thailand, France, Portugal and South Africa as well as those in the UK and Ireland.
18. The Claimant referred to having been promoted to Office Manager and Head of Finance whilst working for JCCE. The Respondent's witnesses could only say that they had no knowledge of this.
19. In 2000 the Claimant took a 12 month sabbatical, though during that period she continued to do monthly revenue returns for the Coleman Companies.
20. The Claimant returned to work in 2001 by which time CTTS had been placed in receivership. All CTTS staff, including the Claimant, were transferred back to the Respondent as the only company which could employ them. The Claimant maintains, therefore, that her employment was continuous from 1st May 1981.
21. The Respondents produced no evidence which disputes that and they do not deny the Claimant was employed by the Respondent although their response in Form ET3 does not condescend to any contrary particulars as to the Claimant's start date. I am therefore bound to accept what the Claimant says and her period of continuous employment began on 1st May 1981.
22. In 2006 the Claimant became a Director of the Respondent Company. The evidence of Dianne Coleman was that this was at the Claimant's own request.
23. According to the Claimant's evidence, which was not challenged by any of the Respondents witnesses nor in cross examination, she became a Director when John Coleman was debarred from so acting in 2006 after failing to file annual accounts in Ireland. She said that she became a Director at the request of D F Byrne (Accountants) and that she understood that that was a temporary measure although she in fact remained a Director until 2016 when she was removed from that post at an Extraordinary General Meeting called on 7th January 2016 by Dianne Coleman.
24. The nub of the issues which I am asked to determine relates to work carried out in South Africa by Coleman Tunneling Africa Pty Limited (CTA) and the Claimant's role in relation thereto. The Claimant's evidence was that the Respondent had been successful in winning profitable work in South Africa (in

respect of which the Claimant was handling administration of contracts plus all income and finances). Monies earned were remitted to the Respondent Company account with Allied Irish Bank. The Claimant had sole signatory power on that account.

25. In 2012 Mr Coleman decided to incorporate CTA. He was the sole shareholder. The Respondent's sub contracting work in South Africa was coming to an end and the expatriate workers who had been working on that remained working in South Africa as in the same year CTA won its' first contract.
26. The Claimant says that in mid 2013 with work in the UK and Ireland drying up and with work in South Africa available and profitable she was instructed by Mr Coleman to pay "everyone in Ireland" and all UK expenses directly from South Africa. She said this was a way of keeping Mr Coleman's reserve funds in Ireland secure and that she was told that South Africa was to "pay for everything".
27. The Claimant says that this did not alter or impact upon the identity of her employer. She says that Mr Coleman would often use money from one company for the benefit of another depending on where the money was coming in. This was corroborated in evidence by Mr Gibson who said that from time to time his loyalty was "stretched" by his not being paid for 3 months (or not receiving expenses for 6 months) but then Mr Coleman always made good his losses and that "what may be hard for an outsider to understand ... is that payments could have come from any of John Coleman's companies and as long as I receive the correct amount this was not a problem from me" and "he simply paid his staff from whichever company had money at the time" but that he "was certainly not switched around from various of the companies although I could be working on any of their behalf at any given time".
28. The Claimant's case is that from that time on, whilst payments to her were made from CTA she remained an employee of the Respondent and that the terms and conditions of her employment (although I repeat the point that these had not been reduced to writing at any stage) remained unaltered.
29. The Respondent's case is that from that time on the Claimant was an employee of CTA. The pleaded case is that from 26th June 2012 "when she received her final Salary Payment from the Respondent" she had not been an employee of the Respondent. The Respondent specifically denied in its pleading that there was "any transfer of trade, business or undertaking from the Respondent to [CTA] or vice versa" thus precluding any suggestion that the Claimant's employment transfer to CTA by operation of any transfer regulations or as part of any other transfer of business.
30. There was in the bundle of documents produce to me a pay slip from "Coleman Tunneling Ltd" (no further particulars given) addressed to the Claimant and dated 31st March 2012. The payment was in the sum of £1,000 less statutory deductions, net £877.04. It stated that the Claimant's taxable salary for the year to date was £12,000 (this would be the last pay slip for the tax year). The Claimant has written on it "P35 figures. UK Final Pay slip".

31. The Respondent says that this corroborates its' position. They say that this was the Claimant's last pay from the UK because thereafter she was employed by CTA. The Claimant says that this was simply a note that from then on money would be paid from CTA and nothing more.
32. Neither party could properly explain the salary figure. I have not been shown the accounts of Respondent, nor the Bank Statements of the Claimant or any tax returns. The Claimant says that this was not her full salary (which was £7,000 per month gross according to her) but that she would be paid this money and that Mr Coleman would then pay the balance and "sort out" the tax. It is no part of my function today to unravel the various financial arrangements in that alleged situation, nor to determine the terms of the agreement particularly as regards pay between the Claimant and her employer. But both parties may consider the arrangements between them may require some significant clarification before this matter comes to its' final hearing.
33. I am however satisfied that the words "Final UK Pay slip" are not sufficient of themselves to lead me to conclude that at that stage the Claimant's employment with the Respondent was thereby terminated.
34. I say that for the following reasons:-
 - 34.1 The Respondent's pleaded case is that the Claimant remained in receipt of payment from the Respondent until 26th June 2012 "when she received her final salary payment from the Respondent", and that that was the date of termination of her employment with the Respondent. That is inconsistent with the Respondent's own case that her employment ended in March 2012 based on the annotation to the pay slip.
 - 34.2 There was no P45 issued by the Respondent at any time.
 - 34.3 In the piecemeal bank records which have been part of the bundle before me the Claimant was paid €300 in July 2012 and in February 2013 €500 for her "expenses, Ireland" in June 2012 she was paid salary of €317.00 and a further salary payment of €5264.51. In April 2012 she had been paid "March expenses" of €9015.00. The Claimant says this corroborates her evidence that a shortfall in salary paid through May wage slips may have been rectified through other payments later.
 - 34.4 The Claimant's own evidence that thereafter her salary was to be paid out of monies generated in South Africa by CSA in the way Mr Coleman had done with other companies from time to time the past served to explain the annotation "Final UK Salary".
35. Further and in any event the Claimant was cross examined on the question of whether she had been seconded to CSA. She said that she had not been and had she been would have required a work permit. The Claimant said that she supervised the business of CSA.
36. The Respondent relies on the following matters as demonstrating the Claimant being employed by CAS. They approached the matter this way because – other than by implication – they cannot identify any termination of the Claimant's

admitted employment with the Respondent whether by resignation, dismissal or agreement. The only living witness to the discussion between the Claimant and Mr Coleman was in mid 2012 is the Claimant. Mr Coleman died on 3rd March 2013.

37. Through Dianne Coleman the Respondents said that in mid 2012 “it was decided that [the Claimant] would provide her services to CTA”. She does not explain what is meant by that statement but I note (and this is relevant to all of her evidence about matters and whilst her husband remained alive) that whilst he was alive she “was not heavily involved in the running of the business”. In fact the only details she gives of any involvement is being “occasionally required to go to the offices of Coleman Tunneling Ireland to sign forms requiring [her] signature”.
38. Next she explained the payments to the Claimant which were subsequent to the March 2012 pay slip as being paid because of difficulty in setting up payment facilities in South Africa but there was no evidence of that, nor was there any explanation of what those difficulties were. She also stated that the €500 expenses payment in February 2012 was, she understood, to cover the cost of a flight to Ireland to see Mr Coleman prior to his demise.
39. Next she made a number of criticisms of the way the Claimant behaved in the management or administration of CTA implying that as she did so with little or no supervision or restraint that was indicative of employment by CTA.
40. Further the Respondent refers to an email of 9th December 2013 from Elayne Coleman. At that time Elayne Coleman was dealing with some or all of the administrative affairs of the Respondent and wrote to the Claimant asking what to with certain invoices and salary payments, saying that “I will take this over from here so that you do not have to be involved with Coleman Tunneling Ireland”. The reply from the Claimant was that Elayne Coleman should send the relevant paperwork to her and she then explained the processes involved. The Claimant’s closing comment was that it was “not difficult ... but needs watching like a hawk” and mentioned a suggestion made about closing the Irish company down.
41. The Respondent portrayed this exchange in closing submissions as “confirming that the Claimant was to have no involvement with the Respondent”, but in fact in a later email the Claimant refers to the taking over of that administrative as being “a weight off [her] mind”.
42. On the following day, 10th December 2013, the Claimant wrote again to Elayne Coleman following an email from Dianne Coleman questioning various matters including the cost of plant hire from the Respondent to CTA. In part of the response the Claimant says that “I’m not an employee of Dianne and she must get that straight”. The Respondent says that means the Claimant was accepting that she was not an employee of the Respondent, but at that stage it is not clear what day to day involvement Mrs Dianne Coleman had in the Respondent and further it is clear that the Claimant has never alleged that Dianne Coleman was her employer (nor has it been alleged by the Respondent).

43. The Respondent has referred me to the case of *Ready Mixed Concrete (South East) Limited v Minister of Pensions and National Insurance [1968] 2QB497* and the four essential elements for employment as set out therein (a contract, an obligation to carry out work personally, a mutual obligation to provide work and for it to be performed by the employee together with a degree of control). At no point in the Hearing, however, could the Respondent point to an act of dismissal or an act of resignation such as to bring the Claimant's employment with the Respondent to an end. The case of *Ready Mixed Concrete* specifically deals with whether or not a contract has been created and as such an agreement was clearly in place between the parties at an earlier stage the question is whether it has ever been terminated, not whether it was ever created.
44. I should also note at this point that much of the evidence from both sides in this case appear to be little more than personal criticism or mud slinging and was designed to cast the other individuals from whom I heard in a disparaging light. This has not assisted me in dealing with the issues at hand.
45. The Respondent also points to the raising of invoices by the Claimant through a trading business ("Alverna") during the period when she was managing the affairs of CTA. The Claimant says that this was done to create a single payment due from CTA which would then be distributed to individuals, including herself, for salary and expenses. There is no evidence to indicate that this was not the case.
46. In due course after a period of successful trading CTA ran into difficulties. It appears from her evidence that Dianne Coleman blamed the Claimant for this. No matter, that is irrelevant in relation to the issues before me. Monies were sent from (she states) her (as opposed to from the Respondent) by way of a loan to assist CTA. Matters did not however improve. Mrs Coleman criticises the way that loan money was used. In due course CTA was the subject of a business rescue in January 2015.
47. As part of that process Mr Fairhurst (part of the business rescue team) wrote to the Claimant referring to having "perused [her] contract of employment ... under the name Coleman Tunneling Ireland and not Coleman Tunneling Africa Pty" and stated that any claim lay against Respondent. It is far from clear what document Mr Fairhurst was looking at, no such contract has ever been produced in these proceedings and Mr Fairhurst has not provided any comment or evidence. However it was the clear view of the Business Rescue Team that the Claimant was an employee of the Respondent not CTA.
48. In February 2015 the Claimant resigned as Chair Person and Director of CTA. In her letter of that date she specifically resigns from those two positions and refers to her "continued employment" as "having become intolerable". The Respondent says again that is evidence of her being an employee of CTA.
49. On 18th February 2015 the Claimant raised a grievance, addressed to Mrs Coleman, regarding her employment with the Respondent. The majority of the issues raised related to Mrs Coleman herself and the failure to pay a salary and out of pocket expenses since September 2014. Mrs Coleman under cross examination suggested that she may not have received this grievance and she did not remember getting it. She said that if she had received it she might have

sent it to a Solicitors but she could not recall. It was not suggested to the Claimant that this document had not been sent to Mrs Coleman. I find as a fact that it was, but that no action was taken on it.

50. In March 2015 the Claimant drafted a complaint form under the workplace relations legislation in Ireland. She drafted the complaint form against the Respondent indicating that her employment had begun on 5th December 1981, that it was continuing, that she had received no terms and conditions and that she had not been paid any money since September 2014 for wages or out of pocket expenses. She said her situation was being ignored.
51. The Claimant's then Solicitors lodged the form but made crucial alterations to it. First they said that the employment had ended on 5th March 2015 (and that she was seeking re-instatement) and second adding that her position had been untenable.
52. This claim was subsequently withdrawn. Mr O'Sullivan (who was the partner in the Solicitors firm of Mooney O'Sullivan with the conduct of the proceedings at the time) has stated in a sworn affidavit that he had concerns over the jurisdiction of the Workplace Relations Commission (although he did not explain that further) and that he felt that the Claimant had been constructively dismissed so he "amended the form to reflect what [he] believed to be [the Claimant's] complaint not in fact what she had instructed [him] in relation to".
53. That claims was discontinued and I have not been made aware of any judicial decision in relation thereto.
54. The Claimant's end of year P60 for tax year 2014/2015 showed the Respondent was also her employer, but the Respondent says that the preparation of such documents was in the hands of the Claimant herself. That is somewhat contradictory to their statement that in 2013 the Claimant was told she was to have no involvement with the Respondent. Indeed the Claimant says she retains all files for banking, creditors, insurance, PAYE and VAT and that was not challenged by the Respondent.
55. In 2016 the Claimant was removed as a Director of the Respondent. The Claimant says that throughout this time her attempts to contact the Colemans were ignored.
56. Mr Small on behalf of the Respondent accepted that the issues of territorial jurisdictions, the prospect of success and time limits would stand or fall on the decision made in relation to the employment of the Claimant.

CONCLUSIONS

57. Based on the evidence which has been presented to me I have reached the following conclusions.
58. First it is clear that until at least early 2012 the Claimant was employed by the Respondent. This is admitted and accepted by all parties.

59. Whilst I have regard for the test in Ready Mixed Concrete that test was laid down in order to determine whether the parties had formed a contract of employment and that is not the issue in this case. As Mr Small confirmed the issue was not whether the Claimant did or did not have a contract of employment with CTA but rather whether her contract of employment with the Respondent had come to an end, and if so, when? The Claimant's simple position is that it has not been terminated.
60. The Respondent's pleaded case is that the Claimant ceased to be an employee of the Respondent in about June 2012. In her evidence under cross examination Dianne Coleman said this was a decision of the Claimant herself, and when asked further about this she "presumed" that the Claimant would have told her late husband this and that she "may" have told Mrs Coleman herself as well but that Mrs Coleman "did take much notice at the time".
61. When asked how it was that the Claimant's decision where she would work or for which company she would work Mrs Coleman said that the Claimant would "probably" have discussed it with Mr Coleman and that "she was quite happy and didn't object". Mrs Coleman herself "presumed" Mr Coleman would have terminated the Claimant's employment with the Respondent, but when asked she admitted that she did not know.
62. In contrast in her witness statement she said that the Claimant had verbally resigned from the Respondent and when asked about this she said that the Claimant "probably did not say that to her" but that her late husband "would have let me know and would have told me". She added "there was always a lot said but I don't know".
63. Such is the Respondent's evidence about the termination of the Claimant's contract of employment with the Respondent in or about June 2012. The Claimant steadfastly denied any resignation, termination or dismissal.
64. As I have said the Respondent seeks to rely on the inferences they draw from the events after that date to demonstrate that the Claimant must have been no longer employed by the Respondent but in truth they did not establish that.
65. What they do establish is that the Claimant had an important supervisory role within CTA but that is by no means inconsistent with her remaining an employee of the Respondent. It is equally consistent with the arrangement the Claimant referred to as corroborated by Mr Gibson, namely that the Claimant was told to use money generated in South Africa through CTA to make payments to Irish staff including herself. This was something which it is accepted by the Respondent would happen from time to time although only for short periods.
66. However those short periods occurred when CTA was still actively trading so as to generate funds and resume the payments itself. In the circumstances of this case that did not happen and it continued to be only South Africa where the money was being made so the arrangement persisted.

67. The fact that the Claimant used the trading business as a single point of receipt of funds from CTA is not evidence of the termination of her employment with the Respondent by whatever means.
68. The Respondent has identified that the Claimant has had no work to do and has done no work for the Respondent since the working relation to CTA ceased. That may well be the case but there is no evidence that the Claimant was not ready and willing to do such work as she was asked to do, nor that the Respondent took any steps to require her to do work. A contract of employment cannot cease simply as a result of inactivity on all sides.
69. I do not find, as there was no evidence upon which I can do so, that the Claimant's employment with the Respondent ended in June 2012. I find that about that time the Claimant was asked by Mr Coleman to manage the affairs (under his ultimate supervision and control) of CTA. She did so without any alteration to the terms and conditions of employment so far as has been established. She was to use the financial gains made in South Africa to pay Irish salaries and her own, and this she did. This was something which was consistent with arrangements which had previously been operated through the Coleman companies where one company would meet the obligations of the other when financial circumstances required it. It may have been hoped at the time that this would be a short term need, as it had been on previous occasions, or Mr Coleman may have seen it as a long term arrangement. We will never know but I find that he asked a trusted employee, the Claimant, to carry out those duties.
70. I accept the Claimant's evidence that she did not resign or transfer her employment to CTA, nor was she dismissed. There is no evidence to the contrary.
71. The Claimant maintains a steadfast denial of resignation and any arrangement whereby her employment would transfer to CTA. It is not suggested by the Respondent there has been any frustration of the contract with the Respondent.
72. The Respondent does not point to any action taken by it to terminate the Claimant's contract beyond the purported verbal resignation and/or agreed transfer and/or termination (it is not clear which they now say took place) in early 2012.
73. I have taken into account the Judgment of Sir John Donaldson in *Harrison v George Wimpey and Co Limited [1972] ITR188* that "where an employee so conducts himself as to lead a reasonable employer to believe that the employee has terminated the contract of employment, the contract is then terminated".
74. However the Claimant's grievance should have left the Respondent under no illusion that the Claimant remained in her eyes an employee of the Respondent. Had they but addressed that grievance timeously we would have doubtless avoided the matters now being litigated before me persisting as they have.
75. Equally in *London Transport Executive v Clarke [1981] ICR 355* a repudiatory breach of contract by an employee (if one is alleged here which does not appear to be the Respondent's pleaded case) will not bring an employment

contract to an end. There must be a positive action by the Respondent which must be clear and unequivocal to cause a dismissal. That applies equally to a breach by the Respondent. It does not bring the employment to an end without a positive step of termination by the Employee.

76. I find in this case that no such termination of contract has taken place.
77. What happened was the Claimant was required as part of her duties under her contract of employment with the Respondent to supervise the affairs of CTA. Though that became her principle or sole function matters not, it was work she was doing as an employee of the Respondent. Payment was received through CTA as a device, one used by the Coleman companies in other situations, to use the funds of one company to meet the obligations of another.
78. Once that set of responsibilities came to an end the matter rested. The Claimant lodged a grievance which was received by the Respondent but was ignored. The Claimant was seeking recovery of money she said was owed to her under her contract of employment and she subsequently launched proceedings in the Irish Courts and Tribunal system but withdrew them immediately it became clear that the claim lodged was not the one she sought to make. She subsequently presented her claim to this Tribunal. At no stage during that period should the Respondent have been under the illusion that the Claimant did not continue to maintain that she was an employee of the Respondent.
79. In all the circumstances, therefore, I can find no termination of the Claimant's contract of employment with the Respondent by the act of any party nor by operation of law. I am therefore bound to conclude that the Claimant's contract of Employment with the Respondents subsists and continues to date, no steps having been taken to bring the same to an end.
80. The Respondent accepts that this Tribunal has territorial jurisdiction to deal with the claim which the Claimant brings for unlawful deductions from wages.
81. In light of my findings I cannot say that the Claimant's case has no reasonable or little reasonable prospect of success. Accordingly I make no order on the application to strike the claim out and for a deposit order.
82. There is no issue of Estoppel. The Claimant maintains the same position as she did when she drafted the workplace relations complaints form. Her then representative mistook or misrepresented the claim she was making and when this came to her attention she withdrew the claim. She has not therefore sought to rely on any different facts to those which she now alleges.
83. The matter is not res judicata (no judicial determination of these issues have been made as far as I have been told) and the rule in Henderson v Henderson is not engaged.
84. The Claimant's contract of employment subsists. She continues, on her case, to thereby suffer unlawful deduction from wages. The claim has been presented in time.

SUPPLEMENTARY

85. In submissions Mr Small relied on the case of Agarwal to indicate that the Tribunal had no jurisdiction to construe a contract of employment when a party to it is making a claim for unlawful deductions from wages. That case has now been rejected by subsequent decision of the Employment Appeal Tribunal (Weatherill).
86. It is not been necessary for me to make any decisions on the terms of the contract of employment under which the Claimant was engaged and continues to be engaged by the Respondent. However, on the basis of the contemporaneous documents which I have seen and the apparent “flexibility” (to use the Claimant’s words) of the limited company financial arrangements operated within the Coleman companies the Tribunal conducting the final hearing in this case will have to determine what the terms and conditions of the Claimant’s employment were in particular as to salary, and further the Claimant will have to establish to the satisfaction of the Tribunal the extent of any outstanding expenses which she also claims.
87. A notice of hearing is attached, the conduct of this matter will be determined at a Preliminary Hearing (to be conducted by telephone) in order to give directions to a Final Hearing.

Employment Judge Ord, Cambridge.
Date: 28 June 2017

ORDER SENT TO THE PARTIES ON

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FOR THE SECRETARY TO THE TRIBUNALS