



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Mr Steven Gammon

AND

Respondent

Ivybridge Tile & Bathroom Ltd

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Plymouth

ON

14 September 2018

EMPLOYMENT JUDGE N J Roper

Representation

For the Claimant: In person

For the Respondent: Mr J Heard of Counsel

JUDGMENT

The judgment of the tribunal is that the claimant was neither an employee nor a worker of the respondent and accordingly his claims are all dismissed.

RESERVED REASONS

1. This is the judgment following a preliminary hearing to determine the employment status of the claimant. In this case the claimant Mr Steven Gammon has brought claims alleging breach of contract, unlawful deduction from wages, and for accrued but unpaid holiday pay. The claims are all denied by the respondent. This tribunal's jurisdiction to hear these various claims turns on the claimant's employment status. It was agreed therefore that this matter would be heard as a preliminary issue in order to establish the claimant's status, before (if then necessary) going on to consider the substance of the claimant's claims.
2. I have heard from the claimant, and Mr Craig Roxburgh and Mr Karl Rogers on his behalf. I have heard from Mr Mark Coates and Mrs Karla Turner on behalf of the respondent.
3. There was a degree of conflict on the evidence. I have heard the witnesses give their evidence and have observed their demeanour in the witness box. I found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.
4. In short, the claimant Mr Steven Gammon worked for the respondent company Ivybridge Tile & Bathroom Ltd between 4 April 2016 and 24 January 2018. The relationship

- terminated in acrimonious circumstances and there are alternative current civil proceedings between the parties.
5. The claimant is an experienced bathroom and kitchen fitter. He is the owner and sole registered director of a limited company namely Bespoke Bathrooms (South West) Ltd ("Bespoke Bathrooms"). Its registered office is the same as the claimant's home address. It has its own website which inter-alia advertises its business as a supplier and fitter of quality bathrooms.
 6. The respondent company is an independent family run business which specialises in the design and supply of quality bathrooms and kitchens to both private homeowners and businesses. Mr Coates is the sole owner and director of the respondent, and his daughter-in-law Mrs Turner is the Showroom Manager, and a designer and member of its sales team.
 7. The claimant first started working for the respondent in April 2016 following a conversation with Mr Coates. He was paid fortnightly, and in at the initial stages these payments were apparently made even if he did not invoice regularly. Shortly thereafter Mrs Turner took over the administration of the accounts for the respondent, and she paid the claimant upon receipt of invoices raised. Nonetheless the claimant was generally paid on a fortnightly basis.
 8. All of the invoices raised by the claimant were on Bespoke Bathrooms headed notepaper, and were all at the same agreed rate of £240 per week inclusive of VAT, in other words £200 plus VAT.
 9. The claimant asserted today that he worked exclusively for the respondent, and did not carry out any other work on behalf of Bespoke Bathrooms. However, it is clear from the contemporaneous documents which I have seen this is not the case. On 5 April 2017 the claimant emailed Mrs Turner to explain that he would be absent at a funeral the following week and would not be able to work, and "with regards to the up-and-coming weeks without any scheduled jobs I will have to put in my own jobs, as you can appreciate I can't afford to lose the money." In addition, I have seen evidence that in about September 2017 the claimant did a kitchen installation for one Mrs Wood who had not engaged the claimant through the respondent company.
 10. This denial by the claimant in the face of contemporaneous documents which proved the opposite affected his credibility, and where there was a conflict of evidence between the claimant and the respondent, I preferred the respondent's evidence.
 11. The claimant has accepted that before, during and immediately after his relationship with the respondent he was the sole director of Bespoke Bathrooms. The audited accounts of that company to the year ending 31 March 2017 appear to show that the claimant withdrew funds in excess of the amounts paid by the respondent to that company (thus indicating again that he was doing other work over and above the work paid for by the respondent), and that "taxation and social security" were registered as a creditor. The claimant accepted that the sums received from the respondent were credited through the accounts of Bespoke Bathrooms and that Bespoke Bathrooms paid tax and National Insurance on these sums.
 12. In addition, the claimant accepted that Bespoke Bathrooms was at all relevant times registered for VAT, and that it was deregistered shortly after the termination of the relationship between the parties. The claimant says that he accounted for the VAT which he had received, and was able to reclaim VAT on supplies purchased by Bespoke Bathrooms. Similarly, the respondent accounted for the VAT element of the payments made in reply to the invoices from Bespoke Bathrooms in their normal VAT accounting.
 13. In late 2016 the respondent lent the claimant a vehicle when he was temporarily without one, but otherwise the claimant used his own van, and the van and its running costs were not paid for by the respondent. The respondent did produce business cards for the claimant indicating that he was representing the respondent company when undertaking work for the respondent. Otherwise the claimant was at liberty to refuse work from the respondent if he chose and was not entitled to any paid holiday or sickness absence. In September 2017 the respondent prepared a contract for services in its name and the name of "Steve Gammon of Bespoke Bathrooms and Kitchens (South West) Ltd", but the claimant declined

- to sign this. Throughout the relevant period the claimant also had his own public liability insurance in the name of Bespoke Bathrooms.
14. I find as a fact that throughout their relationship the claimant chose to operate through the vehicle of a limited company, namely Bespoke Bathrooms, and that the respondent only ever contracted with Bespoke Bathrooms, and at no stage did the respondent enter into any contract or arrangement with the claimant personally as an individual.
 15. The relationship between the parties broke down following various absences by the claimant, and some customer complaints. I did not hear any evidence as to the rights or wrongs of that dispute and make no findings, other than it is agreed that the relationship terminated on or about 24 January 2018.
 16. The claimant subsequently raised three more invoices, and (as usual) these were on headed notepaper of Bespoke Bathrooms: on 28 January 2018 for seven days' labour at £200 per day plus VAT (totalling £1,680 inclusive of VAT); on 12 February 2018 an invoice for materials from April 2016 to January 2018 in the sum of £2,490.65 including VAT; and again on 12 February 2018 for materials from April 2016 to January 2018 for £249.65 inclusive of VAT.
 17. The claimant's current claims for this tribunal are for unpaid wages in the sum of £1,400 (without VAT); unpaid holiday pay to the year ending March 2017 in the sum of £5,600 and from April 2017 to January 2018 in the sum of £4,700; and for breach of contract or unpaid expenses in the sum of £2,490.65.
 18. Having established the above facts, I now apply the law.
 19. Employees and workers are defined in section 230 of the Employment Rights Act 1996 ("the Act"). An employee is an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment. A contract of employment is defined as a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing. Under section 230(3) of the Act a 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 the 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. (A worker who satisfies this test in sub-paragraph (b) is sometimes referred to as a "limb (b) worker").
 20. Under section 13 (1) of the Act the right not to suffer an unlawful deduction from wages applies to workers, and not just employees.
 21. This tribunal has jurisdiction to hear breach of contract claims by virtue of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 ("the Order"). This jurisdiction is subject to certain preconditions, including that in paragraph 3 (c) of the Order, namely that the claim arises or is outstanding on the termination of the employee's employment. Accordingly the right to bring a breach of contract claim before this tribunal is limited to employees.
 22. The claimant's claim for accrued but unpaid holiday pay is brought under regulation 14 of the Working Time Regulations 1998 ("the Regulations"). The Regulations apply to workers, rather than just employees. The definition of "worker" for the purposes of the Regulations effectively replicates the definition under section 230(3) of the Act.
 23. In the first place the claimant does not seek to argue that he was ever an employee of the respondent. The respondent agrees that he was never its employee. There was no contract between the respondent and the claimant personally or individually, and there was no mutuality of obligation. I agree that the claimant was never an employee of the respondent, and I so find. To the extent that the claimant brings any claim for breach of contract, any such claim is hereby dismissed because there was no claim arising on the termination of any contract of employment.
 24. In circumstances where I have found as a fact that at no stage did the respondent enter into any contract or arrangement with the claimant personally as an individual, the claimant does not meet the definition of a limb (b) worker. At no stage was he an individual who has entered into a contract whereby the individual undertakes to do or perform personally any

- work or services. At all material times the respondent contracted with a limited company in its own right, namely Bespoke Bathrooms (South West) Limited, and did not enter any contract with the claimant as an individual.
25. In conclusion therefore the claimant was not a worker of the respondent, and accordingly I dismiss the claimant's remaining claims for unlawful deduction from wages and for accrued but unpaid holiday pay.

Employment Judge N J Roper

Dated 14 September 2018