



EMPLOYMENT TRIBUNALS

Claimant: Mrs J Hollis

Respondent: Mr Costas Kyratzis

Heard at: Nottingham **On:** Thursday 4 October 2018

Before: Employment Judge P Britton

Members: Ms F Newstead
Ms H Andrews

Representatives

Claimant: Mr C Maw, Solicitor

Respondent: In person plus Mrs Kyri Kyratzis, his Wife

JUDGMENT

1. Determination as to whether or not Costas Kyratzis is the correct Respondent in this case is adjourned for the following to happen, namely the joinder of his son George Kyratzis. As to why is set out in the reasons hereinafter recited.

2. Accordingly this case will resume again at Nottingham before this Tribunal on **Thursday 13 December 2018 commencing at 10:00 am**. For the avoidance of doubt the current Respondent must attend as we have not yet made a decision as to whether or not he is a Respondent.

3. The Tribunal will **ensure** that the proceedings are served as a matter of urgency to George Kyratzis with of course a copy of the adjudication of Regional Employment Judge Swann and this judgment.

REASONS

Introduction

1. As to what the issues were today for us to first decide are encapsulated in the record of the telephone case management discussion heard by Regional Employment Judge Swann on 27 September 2018. Thus the first issue is who was the employer.

2. On this issue we have heard sworn evidence from the Claimant, Mrs

Judith Hollis, then from the Respondent (Costas) and finally from his wife. We have considered a bundle of documents before us prepared for the Claimant. Before we go any further we are going to deal briefly with scenario, having now got in terms of the bundle the Land Registry details for the premises in question.

The scenario

3. Judith Hollis was employed working in a bakery shop in Hucknall. The address of that property being 55a Watnall Road, Hucknall. She had worked there since 1 November 2001. There was another shop assistant called Vicky and they ran the bakery shop whilst the baking was done by the then owner Stephen Francis. The baking was not done on the premises. There is no doubt that Stephen Francis sold the property on 12 September 2017. There is also no doubt that there was at this point what is known as a transfer of undertaking (TUPE). That is because the completion took place it seems on the Friday and when the Claimant came into work the following Monday there it was still running. It continued to so operate as a bakers shop with the Claimant and Vicky continuing in their roles as before until they were made redundant on 13 January 2018 when they were told the business was to shut by George Kyratzis who is the son of Costas. Neither received any notice pay or redundancy pay. The Claimant's solicitors wrote two letters before action to the Respondent addressed to him at his fish and chip shop which is next door to the bakers shop. In passing the latter closed on the 13th January never to re-open albeit it seems a café has more recently opened at the premises. As to the letters before action both were ignored: hence the claim presented to the tribunal by the Claimant.

4. In due course a response (ET3) was presented. It was to the effect that Costas knew nothing about it.

5. Directions were issued for a hearing but these were not complied with by the Respondent. Also the Claimant wanted strike out of the defence on the basis that it had no reasonable prospect of success. Accordingly REJ Swann held a telephone preliminary hearing (TCMPH) on 27 September to discuss these issues; but it became clear early on that the first fundamental was as to who was the employer (see bundle p46-48). Costas was represented by his son Andreas. Mrs Kyratzis has told us he is a solicitor. He is unable to represent his father today. At the TCMPH he submitted on father's behalf that the business was actually owned by the other son George. Further advanced today for the Respondent is that George only bought the property: the inference being there was TUPE. Well of course this shows a complete ignorance of the TUPE Regulations 2006. Why, because the business ie the bakers shop continued to trade and the same two people continued to be employed working in it ie the Claimant and Vicky and that remained the case all the way through until George Junior told them that the business was shutting and which it did. Therefore of course this was a redundancy situation. The claims are obvious:-

5.1 First the Claimants statutory entitlement to notice pay. Given the length of service she is entitled to 12 weeks' notice. The amount involved is £90 a week; total value of claim £1,080.

5.2 Because this was a redundancy and her rights had carried forward by reason of the TUPE Regulations she cannot but be entitled to a statutory redundancy entitlement and that of course is based on the ready reckoner multiplier which can be easily found by accessing the relevant Government internet site. Mr Maw has correctly pleaded that entitlement

at in particular bundle page 33. The amount involved is £2,160.

6. Returning to the TCMPH, as Costas was saying that he did not know the whereabouts of George albeit they were communicating by text, REJ Swann suggested it would be prudent to get the details of the ownership of the property from the Land Registry. This has been done by the Claimant's solicitor and the details are in the bundle before us at p41-42. They show that George Kyratzis ie George the son of Costas, purchased the property for £40,000 on 12 September 2017.

7. Whether or not it was stated in the contractual documents to the transaction which are not part of the Land Registry entry that he was also purchasing or otherwise acquiring the business and whether the lawyer at the time made a mistake as suggested by Costas and Mrs Kyratzis today, is completely irrelevant because somebody in the Kyratzis family continued to run the business post the purchase of the property. Why do we say that? Because it is now not in dispute that round about the time that the transaction was completed Costas went into the premises and he spoke to Vicky and Judith and he told them "we have bought the business"¹; and he referred to the need for improvement because it was in a somewhat dilapidated state and that it would for instance need rewiring. At around that time the Claimant and Vicky had also raised that if the business was going to survive as it was failing, it would need to be open for more days than it was and there would need to be extra cover particularly at peak periods because inter alia it sells filled rolls and matters of that nature. In terms of the working pattern, the Claimant worked Mondays 8:30 to 1:00 pm, Wednesdays the same, Thursdays 11:00 till 1:00 pm and Fridays 10:00 till 1:00 pm. The bakers shop was closed on a Tuesday and all weekend. If the Claimant is correct, and she was a credible indeed compelling witness, it was Costas who told them he would sort out the extra cover. And the very next Monday when the Claimant came into work there was the son George and who remained working in the premises up until he told Judith and Vicky that they were redundant. Subsequent to that there were two letters before action as we have already said. They were addressed to Mr Costas Kyratzis at the fish and chip shop which he owns and operates with his wife and which is next door to the bakers shop. They went unanswered. We find it almost inconceivable that those letters were not received. Why not answer them at that time? The same postcode was part of the address as in the subsequent ET1 and the ensuing tribunal service of the proceedings and to which a response (ET3) was received. It follows that we are not persuaded that they were not received.

8. Going back to the scenario the Claimant had known the Kyratzis family and in particular Costas and his wife a long time because first she used the fish and chip shop and also Costas would drop into the bakers shop This fits with his wife telling us that he likes to drop in to other local business and chat. The Claimant always knew him as George. Furthermore he has the personal number plate on his car G1RGE. Costas and his wife says he has never been known as George. As to the number plate they say it is something historical because the son George when he was at university, albeit he couldn't drive, bought the number plate but then as he didn't have a motorcar Costas put it on his car where it has remained for some years. He gave us some history about George in explaining why although he, Costas, had at first wanted to buy the adjacent shop and extend the fish and chip bar he had decided against it because it was George who was insistent on continuing it as a bakers shop. On the other hand what might be more likely is that Mrs Kyratzis tells us she is far from being a

¹ Costas says "we" is something he regularly says meaning the family and not necessarily him.

sleeping partner in the business and is very much in charge of the finances and that she over ruled Costas buying the premises and expanding the fish and chip shop because he needs knee replacements and has a bad back and she wants him to wind down. On the other hand the picture we get of Costas is that he is very energetic and committed and takes a very keen interest in other local businesses and properties. We can only observe what a fine opportunity it would have been to buy the property immediately next door at such a cheap price.

9. So although this property was bought according to the Land Registry entry by George, where did he get the money from? According to Costas and his wife he had some sort of partnership arrangement some years back when working as a in a restaurant in Nottingham called the Moulin Rouge:-

- a) How did he fund that if he was a student?
- b) Thereafter if it did so well why did he end up working for a year as a fish and chip shop manager in Mansfield?
- c) He then went to Croatia and when he came back by and large he worked for dad at the fish and chip shop except when they fell out in what is a volatile relationship. He was not paid wages but instead the Respondent says he was paid "pocket money" of £50-£60 per week.

10. So where does George get £40,000 to buy the property without a mortgage? There in no legal charge as to which see the Land Registry entry.

11. What it means is that there are a large number of unresolved questions in this case. We are not prepared at this stage to safely conclude within the balance of probabilities that Costas wasn't at the least a joint proprietor in this business as an investor with his son. We are not prepared to run the risk that if we let Costas out of this case as a Respondent and then we are left with George that George might say the converse given they fall out so regularly and say oh no it was funded by my dad and it's his business. So we will leave it to them to fight it out at the next round of this proceeding.

12. That brings us back to the TUPE Regs and the repeated assertion today by Costas and his wife that only the property was bought. It flies in the face of the facts as they do not contradict that the bakers shop remained opened after the acquisition of the property and that George worked in it. Judith and Vicky were clearly employed by someone at the time of the transfer namely Mr Francis and thereafter they continued to work for either George junior of Costas or both and who paid their wages: these had historically always been in cash and without payslips. Thus there was a TUPE. Thus the first point to make is that all liabilities of the transferor transfer across to the person who has taken over the business. Thus the only issue is which of the Kyratzis family is liable for the notice and redundancy entitlements ie George; Costas or both?

13. We remind the parties of what is at stake in this case. It is a redundancy payment for £2,160 and 12 weeks' notice; £1,080. The total there is £3,240. But of course if the matter comes back for another hearing the following is also engaged. The Claimant never received written particulars of employment from Mr Francis. Thus that potential liability pursuant to s13 of the Employment Rights Act 1996 transferred to Costas or George or both at the TUPE. The Claimant had not received those particulars as at the dismissal. Thus if there is another hearing, pursuant to s38 of the Employment Act 2002 the tribunal has a

discretion to award up to four weeks pay. There was a claim before us pursuant to s13 of the ERA but that would in itself only give us jurisdiction to declare the terms of in effect the contract of employment. But that of course is pointless in this case. Thus it has been withdrawn . But it does not effect the ambit of s38 if the case returns for a further hearing. This is something the parties and in particular Costas and in due cause George might care to reflect upon. The final point to make is that the services of ACAS are there if this case is now capable of settlement.

14. But as to the future of this case, we join George Kyratzis. We now have an address for him because according to Costas he is living over the bakers shop and therefore **he can be served the proceedings in this matter at the flat above 55a Watnall Road, Hucknall NG15 7JQ.**

15. We will thus resume this hearing on Thursday 13 December 2018 commencing at 10:00 am .

Employment Judge Britton

Date: 5 October 2018

JUDGMENT SENT TO THE PARTIES ON

FOR THE TRIBUNAL OFFICE