



# EMPLOYMENT TRIBUNALS

**Claimant: Mr R Horne**

**Respondent: Checkpal Limited (formerly known as Crossverify Limited)**

**Heard at: London Central**

**On: 29 November 2018**

**Before Judge: A Isaacson**

## Representation

Claimant: Mr A Allen, Counsel

Respondent: Mr A Worthley, Counsel

# JUDGMENT

**The Judgment of the Tribunal is as follows:**

- 1. The respondent's argument that sections 13,14 & 15 of the Employment Right Act 1996 ("ERA") allows for a statutory provision to authorise deductions from wages by reference to the Misrepresentation Act 1967 and Companies Act 2006 is struck out on the basis it has no reasonable prospects of success.**
- 2. The respondent's argument that any alleged poor performance was a defence to an unlawful deduction from wages claim should be struck out on the grounds that it has no reasonable prospects of success.**
- 3. The respondent's arguments of estoppel and relying on the equitable doctrine of laches are dismissed following withdrawal by the respondent.**

# REASONS

1. Rule 37 of the Employment Tribunal Rules 2013 provides the power for a Tribunal to strike out all or part of a case on five grounds including no reasonable prospects of success. The bar for strike out is high and where there are points of factual dispute the respondent's case should be taken at its highest. It is rare to strike out but is possible if the Tribunal is satisfied that the argument has no reasonable prospects of success.
2. The wording of sections 13, 14 & 15 of the ERA are in the context of deductions from wages and the relevant provisions relate to situations such as consequences of any disciplinary proceedings or to deduct pay to a public authority, PAYE, National Insurance payments and pension contributions. It is not in relation to all statutory provisions outside that context such as the Misrepresentation Act or Companies Act. The Tribunal finds that the respondent's argument that the respondent has ostensibly a statutory basis to bring claims against the claimant under these acts and are entitled to deduct from the claimant's wages by virtue of sections 13, 14 & 15 ERA has no reasonable prospects of success.
3. The respondent's argument that the claimant's poor performance was a defence to an unlawful deduction from wages claim has no reasonable prospects of success and should be struck out. Such allegations are irrelevant to an unlawful deductions claim. If an employee is guilty of poor performance or misconduct that does not permit an employer to stop payment of wages. The employer should performance manage the employee and if appropriate terminate the employment.

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Employment Judge Isaacson

Date 29 November 2018

JUDGMENT & REASONS SENT TO THE PARTIES ON

30 November 2018

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FOR THE TRIBUNAL OFFICE