



EMPLOYMENT TRIBUNALS

Claimants: Mr M Briscoe
Mr G Haughton

Respondent: (R1) A Star Building Contractors Limited
(formerly Mullaney and Lunn)
(R2) Mr Ashley Lunn

Heard at: Nottingham **On:** Thursday 7 March 2019

Before: Employment Judge P Britton (sitting alone)

Representatives

Claimants: Both In Person
Respondent: Mr M Mullaney, Director

JUDGMENT

1. By consent the application for reconsideration of the default judgment against the first Respondent succeeds and it dismissed from these proceedings.
2. No response having been filed, the claim succeeds against the second Respondent. Accordingly, he will pay each Claimant compensation for non payment of wages in the gross sum of £1,500.

REASONS

Introduction

1. The claim (ET1) was presented in this matter by the Claimants to the Tribunal on 13 April 2018. Essentially it is a claim for unpaid wages for work that they undertook for either the first or the second Respondent as bricklayers. Initially the claim was only against Mullaney and Lunn Building Contractors Limited.
2. It was accordingly served out against that company but no response was received. At that stage a check by one of my colleagues established that in fact it no longer was Mullaney and Lunn Building Contractors Limited but had become by way of a change of name A Star Building Contractors Limited on 5 April 2018. Stopping there, Mullaney and Lunn Contractors Limited had only been incorporated on 22 February 2018 and so this was a very quick change of name.

In any event the proceedings were accordingly re-served out to A Star Building Contractors Limited ("A Star") at its registered office on 19 June 2018 with a deadline for filing a response of 17 July 2018. No response having been received, this Employment Judge issued default judgments for both Claimants against that Respondent in each case in the sum of £1500.

2. On 12 September 2018 Ansons, Solicitors, e-mailed into the Tribunal making application to set aside the default judgment against the first Respondent and explaining the circumstances in which the response had not been presented; at the same time sending in a proposed response and asking for revocation of the default judgment and thence liberty to defend by allowing what would be a late response. Essentially this engages Rules 20 and 70-72 of the Employment Tribunals 2013 Rules of Procedure. The proposed response was meritorious. Put at its simplest it was as follows. Thus, when Mr Mullaney and Mr Lunn decided to go into business together they set up the limited company Mullaney and Lunn Building Contractors on 22 February 2018. However, it then became very quickly clear that they couldn't trade as joint directors and shareholders because Mr Lunn's credit record was such that the banks refused him facilities. Thus he went his own way. And I have incontrovertible evidence before me today as per a search of Companies House that as a result he was no longer a Director by circa 29 March 2018. Furthermore, cross referenced to the bank accounts produced today before me by Mr Mullaney and it is clear that he only started to trade A Star on 7 April 2018. I therefore cross reference back to the claims.

3. Both Claimants had made plain in their ET1 that their dealings were with Mr Lunn only.

4. Against that background Ashley Lunn was joined by me as a second Respondent; and he was served the proceedings on 19 December 2018 with the requirement to file the response by 16 January. This he never did. Unfortunately, at that stage the file was not put before me, because if it had been then I would have issued a default judgment against him.

5. As it is as per my previous direction today had been listed to hear the reconsideration application of the first Respondent and if I granted it, to go on and hear the case.

6. This morning Ashley Lunn has e-mailed the Tribunal stating he cannot make it today and because he has family problems and has also been suffering from depression. However in the e-mail he accepted that he engaged the two Claimants when he was a sole trader to work with him on a bricklaying job on a housing estate being developed by M and J Evans Ltd. He added that: "*the two lads came into my gang and I wasn't happy with their work at all so I hold their money until further notice... I take full responsibility of the payment and it's nothing to do with Star (for which read A Star)*". So that means he accepts that there was no contract entered into between the Claimants and Mr Mullaney. The Claimants accept that today. Indeed it is now obvious that the engagement was after Mr Lunn parted company with Mr Mullaney.

7. As to Mr Lunn seeking to suggest there was something wrong with their work, he has not entered a response. Furthermore, the evidence that I have from the Claimants which was provided in a statement on 7 November is clear. Not only was their work satisfactory, but they were retained by M and J Evans to continue working for it post the departure of Mr Lunn.

8. Accordingly with the Claimants' consent I revoke the default judgement against A Star and dismiss it from the proceedings. Second, I enter a default judgment whereby Mr Lunn will pay both Claimants the amounts outstanding.

Employment Judge Britton

Date: 19 March 2019

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE