



## THE EMPLOYMENT TRIBUNALS

**Claimant:** Ms Emilia Maria Da Silva Batista

**Respondents:** (1) Estate of the late Veronica Janes Addison Cohen  
(2) Olivia Qizilbash  
(3) Imogen Cohen

**Heard at:** London Central Employment Tribunal      **On:** 6 December 2019

**Before:** Employment Judge H Clark (sitting alone)

### Representation

**Claimant:** Mr Adamou - Counsel

**Respondents:** Dr I Cohen

**Interpreter:** Ms Cardoso

## JUDGMENT FOLLOWING OPEN PRELIMINARY HEARING

It is the judgment of the Tribunal that the Claimant's contention that her engagement or employment by the First Respondent was continued by the Second and Third Respondent after her death has no reasonable prospects of success and should be struck out.

### REASONS

1. By a Claim Form presented on 21 August 2019 the Claimant made claims of unfair and wrongful dismissal, unlawful deduction from wages, failure to provide employment particulars, payslips and a statement of reasons for dismissal. She also claimed a redundancy payment arising out of her employment with the late Mrs Cohen, which she suggested had been adopted and continued by her executors (Mrs Cohen's daughters). The Response Form denied all the claims and asserted that the Claimant's

engagement by Mrs Cohen ceased by operation of law on her death in December 2017 and that any claims in the Employment Tribunal were considerably out of time. The Respondents suggested that the Claimant was self-employed in any event, such that the Tribunal would have no jurisdiction to determine her claims.

2. An Open Preliminary Hearing was initially listed to consider the correct identity of the Respondents, however, the Respondents invited the Tribunal to consider their application to strike out the Claimant's claim. This was added to the list of issues and an amended notice of hearing was served on the Claimant accordingly.

### **The Proceedings**

3. The Claimant and the Second and Third Respondents were present at the hearing, although no oral evidence was given and no witness statements provided. The hearing proceeded on the basis of the contents of the pleadings and documents provided by the Respondents. Whilst these documents had not found their way to the Tribunal file, they were sent to the Claimant and Tribunal on 22 November 2019 and had been received by the Claimant.
4. The Tribunal heard oral submissions from Dr Cohen (based on the written contentions which were contained in the Respondent's bundle of documents) and both oral submissions and a written skeleton argument from Mr Adamou. The proceedings were interpreted for the Claimant in the Portuguese language.
5. At the outset of the hearing, the Tribunal established with Mr Adamou, that the Second and Third Respondents were Respondents purely as Executors of the first Respondent, rather than in their private capacities. The other clarification sought from the Claimant was that, although she described her job title with the Respondents as a carer/housekeeper, it was conceded that her role as carer did not extend beyond the death of Mrs Cohen (for whom she was caring). The Second and Third Respondents took no issue with their being named as Respondents as representatives of their late mother.

### **The Issues**

6. As there was no issue with the naming of the Second and Third Respondents, the Tribunal clarified that it would not only consider the Respondents' application to strike out the Claimant's claims, but also whether a deposit order should be made. As there was only a 3 hour listing, the Tribunal anticipated that there would be insufficient time to deliberate and deliver judgment, therefore, the Tribunal invited Mr Adamou to take instructions from his client as to her financial circumstances in the event that the Tribunal was minded to make a deposit order.
7. There were three broad contentions by the Respondents which formed the basis for the strike out application:

- 7.1 Whether the Claimant was employed by Mrs Cohen (The Respondents suggest that she was self-employed).
- 7.2 If employed, whether the Claimant's employment was continued by Mrs Cohen's Executors following their mother's death.
- 7.3 If not, whether the Claimant's claims against Mrs Cohen were in time or whether the Tribunal would have jurisdiction to hear them out of time.

Whilst Mr Adamou contended that the time limit issues were not included in the strike out application, the Respondents clearly considered they were. For reasons outlined below, this dispute was academic, as the Tribunal has declined to strike out the Claimant's claim on this basis.

### **The Law**

8. The Tribunal's power to strike out a claim or part of it is derived from rule 37 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 where a claim has "*no reasonable prospects of success*". It is a draconian power, since it deprives a party of the opportunity to have certain issues fully aired in the Tribunal. It is well established that a Tribunal should be slow to strike out in particular a discrimination claim (*Anyanwu v South Bank Student Union [2001] ICR 391*). Discrimination claims are fact sensitive and often turn on what inferences it is appropriate to draw from primary evidence. This can be too nuanced an exercise to perform at a preliminary hearing on limited evidence. However, that is not to say that a claim or assertion which is prima facie implausible should never be struck out.
9. Mr Adamou referred the Tribunal to the following case law, which reinforces the proposition that a case should only be struck out in exceptional circumstances and that particular care should be taken where there is a factual dispute between the parties: *Balls v Downham Market High School & College* UKEAT/0343/10 and *Blockbuster Entertainment Ltd v James* [2006] EWCA Civ 684; *Tayside Public Transport Company Ltd (t/a Travel Dundee) v Reilly* [2012] IRLR 755 (CS); *Romanowska v Aspirations Care Ltd* UKEAT/0015/14 and *QDOS Consulting Ltd & Ors v Swanson* UKEAT/0495/1.
10. The case of *Hasan v Tesco Stores Ltd* UKEAT/0098/16 held that the Tribunal should consider a two-stage test, firstly whether any of the grounds set out in rule 37(1) have been established and Secondly, whether to exercise its discretion to strike out. This Tribunal would add that the latter should take place having regard to the overriding objective in the Tribunal's 2013 Rules to deal with cases fairly and justly, which includes saving expense.

### **Factual Background**

11. It is common ground that the Claimant originally worked for the Second and

Third Respondent's parents as a cleaner from November 1997 for a few hours a week over two days. When Mr and Mrs Cohen later separated, she continued to work for them both at their respective properties. When Mrs Cohen's health declined, from 2015, the Claimant was asked to move into her flat with her to provide housekeeping and care services, alongside other carers. The Claimant was engaged in other cleaning work alongside her caring/housekeeping responsibilities for Mrs Cohen.

12. The Claimant is Portuguese and it is the Respondents' case that in the course of taking steps in relation to her immigration status, the Claimant asserted to the Home Office, (supported by documents from HMRC) that she was self-employed. On this basis, and because the Claimant worked for other people as a cleaner, the Respondents suggest that she was not an employee of the late Mrs Cohen and, therefore, the Tribunal does not have jurisdiction to consider most of her claims. The Tribunal notes that an unlawfully deduction from wages claim can be brought by a worker as well as an employee. There was no documentary or other evidence before the Tribunal as to the Claimant's likely status.
13. Mrs Cohen sadly died in December 2017. The Claimant was permitted to remain living in Mrs Cohen's flat after her death and until it was sold in the course of sorting out her affairs and executing her will. The Claimant paid no rent for her accommodation and the utility bills were paid by the Estate. There is a dispute between the parties as to whether the Claimant asked to remain in the flat or whether she was asked or invited to do so by the Second and Third Respondents.
14. Mrs Cohen's flat was sold in April 2019 and the circumstances in which the Claimant's residence there came to an end were unfortunate to say the least. In early April 2019 the Claimant was asked to sign a form of Occupational Waiver. As the Claimant is not proficient in English, she did not understand the contents of this form. The Claimant was aware that the flat had been sold and that she would have to move out and did so on 11 April 2019. However, she returned to the property on 12 April 2019 and the porters at the flat refused her re-entry. The Second and Third Respondents expressed both their bewilderment and regret that this happened and told the Tribunal that this was not their instructions to the Porters. The Claimant was (understandably) upset at the manner of the termination of her occupation of Mrs Cohen's flat and this appears to have been the trigger for her current claims.
15. The Respondents' bundle of documents contains the correspondence between Solicitors which ensued. The Claimant was a beneficiary under Mrs Cohen's will to the tune of £50,000 and it was confirmed that this sum had been paid to her (in the context of the Tribunal's inquiries as to her ability to pay a deposit order within these proceedings). There were, therefore, Solicitors involved on both sides.
16. On 16 April 2019 Solicitors instructed by the Claimant made inquiries about the legacy she was left by Mrs Cohen and asked that she be paid her

unpaid wages since December 2017 and for confirmation as to whether her employment had come to an end, what the termination date was and what has been put in place as compensation for her loss of employment and housing. In a response dated 24 April 2019 the Respondents' solicitors confirmed the position in relation to the legacy, making it clear that the only outstanding issue as far as the Respondents were concerned was the legacy, which had been part paid at the Claimant's request and that it was the Second and Third Respondents who had encouraged Mrs Cohen to leave the money to the Claimant in her will to thank her for her help over the years. The Claimant's Solicitor sought clarification on 24 April 2019 that no redundancy payment was going to be made. This was confirmed by the Respondents' Solicitor in an email dated 28 April 2019. It was explained that any contract the Claimant had with Mrs Cohen was frustrated and came to an end automatically by operation of law at the date of her death in December 2017. It was also pointed out that the six month time limit for a claim for statutory redundancy had long since passed.

17. In the course of her submissions, Dr Cohen referred the Tribunal to various documents in support of the Respondents' contention that the Claimant was neither required nor did she perform any cleaning or housekeeping duties in their mother's flat after her death. For instance, photographs have been provided as to the state of the flat a few weeks after the Claimant's departure from it. When the flat was painted to get it ready to be marketed for sale in the spring of 2018, the decorating contractor arranged for it to be cleaned after the painting had been done, providing his charges for arranging and overseeing carpet and other cleaning of the flat in March 2018. An invoice in relation to the removal of medical equipment from the flat dated 1 March 2018 was provided. Dr Cohen pointed out that had the Claimant been engaged as a housekeeper, there would have been no need to pay a Third party to clean the flat in readiness for its marketing.
18. A text message exchange dated 7/8 July 2018 between the Second Respondent and the Claimant's niece in Portugal, Carla, was provided. The Claimant's niece contacted the Second Respondent on 7 July 2018 to inform her that the washing machine in the flat was dripping water onto the wooden floor and that the Claimant was worried that the floor would be damaged, so could a plumber be arranged. The Second Respondent replied that she would contact the Porters in the morning. Given the Claimant's language difficulties, the Respondents suggest that her niece in Portugal had to make contact with them to explain the problem. There was no suggestion that the Claimant would have sorted out this problem herself and, it is the Respondents' case, that her level of English would not have enabled her to do so in any event. There is a later text message from the Third Respondent to Carla confirming that the sale had been completed and that she had cleaned the flat the previous day and had found some bottles of wine and toiletries belonging to the Claimant, which she had left with the Porters for her to collect.
19. It is common ground that from December 2017 until April 2019 the Claimant was not paid any remuneration and nor did she request any. There was

nothing in writing concerning her role or status in the late Mrs Cohen's flat.

## **Conclusions**

### **Status**

20. Having heard Dr Cohen's submissions and considered the documents provided by the Respondents, the Tribunal indicated to Mr Adamou that it was not necessary for him to address the Tribunal on the question of the Claimant's status. The Tribunal explained to the Respondents that the determination of employment status is a nuanced exercise, which involves a holistic assessment of a number of factors, including the parties' self-description and how their relationship was regarded by HMRC for tax purposes. Taking the latter in isolation, without hearing any evidence from the Claimant as to the arrangement she had with the Mrs Cohen, for instance, who provided the cleaning materials she used, how she was paid, how regular her hours were, whether she could send a substitute (which seems unlikely given the very personal nature of her role with the late Mrs Cohen in the last two years of her life) and what proportion of her income was derived from this work, the Tribunal cannot possibly reach the view that the Claimant has no reasonable prospects of establishing that she was employed by the late Mrs Cohen. As such, the Respondents' application to strike out all her claims on that basis is refused. The Tribunal also notes that a claim for unlawful deduction from wages (and unpaid holiday pay) does not rely on employed status, but could also be brought by a worker. It is entirely possible that the Claimant could satisfy a Tribunal that if she was not employed by Mrs Cohen, she had at least worker status in relation to her.

### **Continuation of "Employment"**

21. If the Claimant is able to establish that she was employed by Mrs Cohen (and for the purposes of this part of the decision, it is assumed that she can), she would also need to establish that her employment continued after Mrs Cohen's death. It is that contention to which the Tribunal now turns, in considering whether the Claimant has reasonable prospects of establishing this.

22. At common law the death of one party to a personal contract brings it to an end by operation of law. This was established in *Farrow v Wilson* 1869 LR 4 CP 744 in the context of the employment of a farm bailiff, in which it was held that in contracts for personal service it is an implied condition that the death of either party would "dissolve" the contract. This remains the position at common law, although there are statutory provisions which protect employees in particular circumstances, for instance, in relation to redundancy. Section 136(5) of the Employment Rights Act 1996 deems that the death of an employer constitutes a dismissal for redundancy purposes. Section 174 of the 1996 Act deems the personal representative to be the person to whom management of a household passes in the event of the death of an employer in the case of those who are rather archaically termed

“domestic servants.” Also, continuity of employment is preserved in circumstances where an employee is employed by the personal representatives of the deceased employer (section 218(4)).

23. The nature of the Claimant’s role for Mrs Cohen was necessarily a very personal one. She moved in with Mrs Cohen in her flat in 2015 and lived with her as her carer/housekeeper until her death in December 2017. The Claimant’s Claim Form asserts that Mrs Cohen’s Executors then either stepped into her shoes or adopted her employment following her death. Mr Adamou’s written submissions suggest that following Mrs Cohen’s death, *“it is the Claimant’s case that the Second and Third Respondents acting as agents for the First Respondent carried on the Claimant’s employment in the same terms as before.”* This was manifestly not the case in so far as the Claimant’s caring role is concerned. It was admitted at the outset of the hearing that the Claimant’s role as a carer did not continue after Mrs Cohen’s death. Neither the Second or Third Respondents lived in their mother’s flat, nor did they require any care.
24. It is common ground that the Claimant did not request any payment or wages from the Respondents for remaining in Mrs Cohen’s flat until after she moved out. The Tribunal appreciates that an employee’s lack of legal knowledge about their rights should not be a barrier to their exercising them. It is said on behalf of the Claimant that it was understandable that she did not demand wages in the immediate aftermath of Mrs Cohen’s death, when the Respondents (and her own) grief was raw. That submission is accepted in relation to the early weeks and even months after Mrs Cohen’s death. However, the Claimant’s failure to enquire about or assert a right to payment for her residence in Mrs Cohen’s flat for a 16 month period is not explained by her solicitude for the Respondents’ feelings. The most obvious explanation for this is that she was not expecting to be paid to live rent free in Mrs Cohen’s flat with the utilities paid for by the Estate.
25. There is force in Dr Cohen’s submissions that the Claimant has never explained what duties she suggests she carried out for Mrs Cohen’s estate after her death. There have been a number of opportunities to do so. Firstly, in the course of correspondence between Solicitors in April 2019 in which assertions were made about the Claimant’s entitlement to pay or a redundancy payment. In an email of 28 April 2019 to the Claimant’s Solicitors it was asserted, *“Since the final payment Emilia, has not been engaged to carry out further services or duties. Instead she has been able to live in the property rent free without any bills as a courtesy following the kindness shown to Mrs Cohen during her lifetime. There was always an understanding that this would come to an end when the property was sold which has now happened.”* The reply from the Claimant’s Solicitor was, *“Noted, I will take further instructions”*. Subsequent correspondence then concerned the provisions of Mrs Cohen’s will and no challenge was made to the statement that the Claimant had not been engaged to carry out further services or duties.
26. At the time Claim Form was drafted, the Claimant and her Solicitors were

aware that it was the Respondents' position that she had not been required to carry out further services or duties after Mrs Cohen's death and yet the Claim Form did not make it clear what duties the Claimant asserts she was required to perform. In light of this, in the hearing itself, the Tribunal asked Mr Adamou what duties the Claimant was asserting she was employed to do following Mrs Cohen's death and was told that they were "housekeeping duties." When pressed for specifics, it was asserted that the Claimant's original duties were maintained throughout – "*to maintain and keep in good order*" the property. Mr Adamou made it clear that the failure to challenge the Respondents' assertions in correspondence does not amount to an acceptance. He submitted that any omission in the pleading should not be held against the Claimant, particularly in circumstances where English is not her first language.

27. The Tribunal is grateful to Mr Adamou for his written submissions, which draws attention to the various authorities which caution the Tribunal against striking out claims which depend on determinations of a factual dispute. As he submitted, such an order should only be made in the most obvious cases. The threshold is, quite rightly, a high one, as it involves bringing to an end a party's contention before a full merits hearing when all the evidence is available. In *Romanowska v Aspirations Care Ltd* UKEAT/0015/14 (a whistle-blowing claim) it was held that the Respondent must be able to demonstrate that there are powerful reasons for suggesting that the Claimant's factual assertions are unsustainable. Langstaff J referred in that judgment to *Ezias* (another whistle-blowing claim) and quoted Maurice Kay LJ in which it was accepted that there might be cases which embraced disputed facts which nevertheless might justify the striking out of such cases, but the nature and scope of the factual dispute was important. At paragraph 29 it was stated, "*It would only be in an exception case that an application to an Employment Tribunal will be struck out as having no reasonable prospect of success when the central facts are in dispute. An example might be where the facts sought to be established by [the Claimant] were totally and inexplicably inconsistent with the undisputed contemporaneous documentation.*"

28. In *Balls v Downham Market High School and College Lady Smith* reminded the Tribunal that the test is not whether the Claimant's claim is "likely to fail" and it is not test "*which can be satisfied by considering what is put forward by the respondent either in the ET3 or in submissions and deciding whether their written or oral assertions regarding disputed matters are likely to be established as facts. It is, in short, a high test. There must be no reasonable prospects.*" (paragraph 6).

29. HHJ Serota's observed in *QDOS Consulting Ltd & Ors v Swanson* UKEAT/0495/1 that "*applications that involve prolonged or more extensive study in the assessment of disputed evidence that may depend on the credibility of witnesses should not be brought under rule 18(7)(b) but must be determined at a full hearing. Applications... that involve issues of discrimination must be approached with particular caution.*"



30. This claim does not involve allegations of discrimination, although there is one factual dispute which the Tribunal cannot resolve without hearing evidence and that is as to whether it was the Claimant who asked to be able to stay in Mrs Cohen's flat pending its sale or whether she was asked to do so by the Second and Third Respondent. In the Tribunal's judgment, the resolution of this dispute is not determinative of the question for decision by the Tribunal, which is whether the Claimant's employment by Mrs Cohen continued beyond her death, because her personal representatives/executors continued it.
31. It is common ground that the basis of the Claimant's continued residence in Mrs Cohen's flat was not set out in writing. It will be for the Claimant to prove that her employment was extended, as the legal presumption is that her employment terminated by operation of law in December 2017 (subject to the exceptions set out above). The burden of proof will lie on her to demonstrate that there was an express or implied agreement to this effect. No express employment contract is pleaded, so the Tribunal would need to consider whether such a contract could be implied by conduct (the other circumstances in which a contract might be implied do not appear to apply).
32. The history of the Claimant's employment or engagement by Mrs Cohen is not in dispute. Up until 2015, the Claimant worked as a cleaner for Mrs Cohen and did not live with her. When Mrs Cohen's health declined, the Claimant moved in with her and took on the role of carer/housekeeper for her. This was a response to a need by Mrs Cohen in light of her failing health. Mrs Cohen had other carers coming in, but the Claimant played a valuable role in helping her with housekeeping tasks she could no longer do and running errands. She did this for the last two years of Mrs Cohen's life and the Respondents made it clear in the hearing that they are grateful for the support she gave to their mother.
33. The Claimant's Claim Form asserts that her employment as a "housekeeper/carer" continued until April 2019. This was quite obviously not the case and it is now conceded on the Claimant's behalf that her caring role ceased on Mrs Cohen's death. The role which it is now said continued was that of "housekeeper." There is an implication in the title "housekeeper" that this involves "keeping house" for someone else. The Claimant has not yet articulated what duties she was expected to perform as a housekeeper pursuant to her claimed employment by Mrs Cohen's personal representatives. This is noteworthy given the Respondents have maintained since April 2019 that she had no duties and was not so employer (or engaged). If it were simply the case that the Claimant's Solicitors failed to challenge the Respondents' case in correspondence, I would accept Mr Adamou's submission that this could have been an oversight and no negative inference should be drawn. However, to fail to address the issue in the Claim Form and to be unable to explain to the Tribunal the scope of the factual dispute at the hearing of an application to strike out the claim is more problematic.

34. Not only has the Claimant been aware of the Respondents' case in this regard since April 2019, but she has also had the compelling documents on which the Respondents' rely in support of their contention that the Claimant had no "housekeeping" duties in advance of this hearing. The documents demonstrate that it was left to the Claimant's English-speaking niece in Portugal to contact the Second Respondent to ask her to arrange for the washing machine to be mended when it leaked and that the Second Respondent did so without questioning why the Claimant as the alleged "housekeeper" did not arrange this herself. Significantly, the Second Respondent did this by contacting the building's Porters, who were also responsible for letting prospective purchasers into the flat to view it.
35. The second relevant piece of unchallenged evidence is the arrangements made by the Respondents for the flat to be cleaned and decorated in the spring of 2018. Again, the Claimant was not involved in this (or expected to be so), but the decorator himself arranged for cleaners to go in after the painting had been completed so the flat was ready to be marketed. In light of this, the Tribunal is left in the dark as to what "housekeeping" duties might conceivably have been performed by the Claimant. Housekeeping duties could include cooking, shopping, cleaning and arranging repairs or decoration. The documents demonstrate that neither party appears to have expected that the Claimant would clean the flat in readiness for viewings or that she would arrange for repairs of the contents or that she would organise its decoration. There was no one resident in the flat for whom to cook or do shopping. It cannot be sensibly contended that the Claimant was employed by the Respondents to keep the house for herself.
36. The Tribunal has regard to the fact that for a 16-month period of performing as yet unspecified housekeeping duties, the Claimant did not query with the Respondents why the salary she had been receiving from Mrs Cohen for her caring/housekeeping duties had stopped. As Mr Adamou pointed out, in the early months after Mrs Cohen's death, this would be understandable at a time when both the Claimant and Respondents would have been in the early stages of grief. However, the most credible explanation for failing to request wages for a 16 month period is that the Claimant was not expecting to receive them. Even if her English was not good enough to make a request for wages, the documentary evidence demonstrates that her niece in Portugal was able to communicate with the Respondents on her behalf.
37. The parties' respective understandings are not conclusive of their legal status and that is particularly so where English is not the first language of one of them, however, the concept of working in return for payment is universally understood, such that the Tribunal does not accept that the Claimant would have been unaware of her right to pay in return for her services, if she had been rendering any. If it were to be contended that the Claimant was acting as some sort of property guardian in a Porter serviced flat (which it is not), the fact that she was receiving free rent with all her bills being paid would be obvious consideration for this.

38. The Claimant's Claim Form suggests that she is claiming unpaid wages for the 16 months after Mrs Cohen's death at the rate of £1,361 per month. She will need to prove to the Tribunal at the full merits hearing that there was an express or implied agreement between the parties which entitled her the same pay she received for caring for Mrs Cohen, keeping the flat clean and running errands for her, notwithstanding the fact that she had none of these duties. The Tribunal is satisfied that it is inherently implausible that the Respondents would have agreed to such an arrangement.
39. The Respondents have provided photographs of their late mothers' flat to demonstrate that it had not been cleaned at the point when the Claimant moved out. This has not assisted the Tribunal to draw any conclusions as to the parties' mutual expectations, given that the circumstances around the Claimant's moving out of the flat are in dispute and were unfortunate. There could be a number of reasons why the Claimant did not clean the flat in April 2019 and the Tribunal is unable to draw the inference that she did not do so because she did not think it was her job to do so. The fact that contract cleaners were engaged in the spring of 2018 are sufficient to demonstrate the parties' mutual expectations in this respect.
40. The Tribunal acknowledges the repeated exhortations from the higher courts to exercise caution in depriving a party of an opportunity to have their contentions fully aired in a hearing. The authorities do, however, contemplate that there will be unusual cases in which it will be proper to do so. In the Tribunal's judgment, this is one of those cases. The Tribunal is unable to conceive of what evidence the Claimant could give (which she has not yet been able to put forward through her representatives) which would or could lead a Tribunal to conclude that her valuable role in looking after an elderly woman in her own home continued after her death. The fact that the Claimant lived in Mrs Cohen's house rent free for a further 16 months pending its sale, even if this was at the invitation of her daughters, is not evidence from which a Tribunal could infer that this constituted an adoption of her contract by Mrs Cohen's personal representatives. In these circumstances, the Tribunal is satisfied that her contention that she was dismissed by them in April 2019 has no reasonable prospects of success.
41. The fact that the conditions for a strike out are satisfied is not an end to the matter, as the Tribunal must consider whether strike out is a proportionate sanction. In this case, the parties should not be put to the time and cost of litigating a contention which is bound to fail. The Claimant's claims for a redundancy payment and itemised payslips survive the strike out, subject to issues concerning the time limit. Her claim for unfair dismissal is problematic, because the death of an employer terminates a contract without a dismissal.

42. It was acknowledged that if the Claimant failed to establish that her contract with Mrs Cohen continued until April 2019, her claims would be ostensibly out of time. Mr Adamou had no instructions as to whether it would be asserted that it had not been reasonably practicable to present a timely claim in early 2018. Whilst the Claimant was present in the hearing, the allocated listing would not have permitted him to take instructions and then for the Tribunal to hear evidence as to the time limit issues. In these circumstances, the Tribunal is not in a position to determine that the Claimant has no reasonable prospects in establishing that the Tribunal has jurisdiction to hear her claims on the basis of a termination date in December 2017.
43. For the avoidance of doubt, any potential employment claims which the Claimant may have against the late Mrs Cohen (as at December 2017) are unaffected by the striking out of the Claimant's contention that she remained in employment after her death. Whether the Tribunal has jurisdiction to hear such claims (on the basis that they are ostensibly out of time) will be determined at another Open Preliminary Hearing.

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Employment Judge Clark  
Dated: 20 December 2019

JUDGMENT & REASONS SENT TO THE PARTIES ON

.....23/12/2019.....

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS