



EMPLOYMENT TRIBUNALS

Claimant: Mrs H Jones

Respondent: Mortgage Squirrel

JUDGMENT

1. The Judgment under Rule 21 sent to the parties on 14 October 2019 is set aside.
2. The respondent is granted an extension of time for presenting its response and that response is accepted.
3. The claims will now be listed for a three hour full merits hearing unless the parties indicate that that time estimate is insufficient.

REASONS

1. Judgement under Rule 21 was entered on 14 October 2019 because it appeared that the respondent had not submitted a response nor applied for an extension of time to do so.
2. In fact, the respondent had made such an application on 4 October 2019, with a response attached, but by reason of an error on the part of the Tribunal, that application was not brought to my attention at the time when I gave judgment.
3. The basis of the application was in essence that Mr East, the managing director of 'Mortgage Squirrel' was not attending the office during the relevant period for reasons connected with his personal circumstances. His post was not forwarded to him nor was it opened by anyone else and hence he did not receive the claim form until 23 September 2019. He took advice promptly and this resulted in the application on his behalf by his representative.
4. The respondent wrote to the Tribunal on 24 October 2019 to ask for a reconsideration of the judgment, given the failure by the Tribunal to deal with application for extension of time.
5. I wrote to the parties on 13 February 2020 with my provisional view that the application to reconsider should be allowed for the reasons set out in the letter and invited the views of the parties. These were received 14

February 2020 (respondent) and 19 February 2020 (claimant).

6. Both parties were of the view that a hearing was not necessary to determine the application and I agree. The claimant urged me not to set aside the Judgment because, essentially, she said that it was Mr East's fault that he did not see the claim form sooner and had not engaged in Early Conciliation attempts. She said he had poor prospects of defending the claim.
7. I have decided it is in the interests of justice for me to set aside the default judgment. It seems to me that it would have been appropriate to extend time for the response at the time the application was made, applying the guidance in Kwik Save Stores Ltd v Swain and ors [1997] ICR 49, EAT.
 - I have no reason to think that Mr East's explanation is not honest. I do not find it unsatisfactory;
 - The delay is not significant;
 - The prejudice to the respondent if the extension is refused is greater than the prejudice to the claimant if it is allowed;
 - The respondent appears to have an arguable defence to the claims.
8. It cannot therefore be in the interests of justice, if the respondent is deprived of a defence because of an error by the Tribunal and there is nothing to suggest to me that there cannot still be a fair hearing of these claims. Additionally, the named respondent does not appear to be a legal entity so the Judgment may well be irregular and unenforceable in any event.

Employment Judge JOFFE

Date 5th March 2020

JUDGMENT SENT TO THE PARTIES ON

06/03/2020

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FOR THE TRIBUNAL OFFICE