Case No: 2411345/19

EMPLOYMENT TRIBUNALS

Claimant:	**Mr T Kitson**
First Respondent:	**The Property and Lifestyle Company Limited**
Second Respondent:	**Southport Property Developments Limited (appearance not entered)**

JUDGMENT

The first respondent's application dated 5 March 2020 for reconsideration of the judgment sent to the parties on 28 February 2020 is refused.

REASONS

1. I have undertaken preliminary consideration of the first respondent's application for reconsideration of the judgment dismissing his claims. That application is contained in an email dated 5 March 2020 ("Application"). I also treated the application for reconsideration as an application for written reasons under Rule 62(3) of the Employment Tribunal Rules of Procedure 2013 ("ET Rules") which were sent to the parties on 3 April 2013.

The Law

2. An application for reconsideration is an exception to the general principle that (subject to appeal on a point of law) a decision of an Employment Tribunal is final. The test is whether it is necessary in the interests of justice to reconsider the judgment (rule 70).

3. Rule 72(1) of the 2013 Rules of Procedure empowers me to refuse the application based on preliminary consideration if there is no reasonable prospect of the original decision being varied or revoked.

4. The importance of finality was confirmed by the Court of Appeal in **Ministry of Justice v Burton and anor [2016] EWCA Civ 714** in July 2016 where Elias LJ said that:

> *"the discretion to act in the interests of justice is not open-ended; it should be exercised in a principled way, and the earlier case law cannot be ignored. In particular, the courts have emphasised the importance of finality (Flint v Eastern Electricity Board [1975] ICR 395) which militates against the discretion being exercised too readily; and in Lindsay v Ironsides Ray and Vials [1994] ICR 384 Mummery J held that the failure of a party's representative to draw attention to a particular argument will not generally justify granting a review."*

5. Similarly in **Liddington v 2Gether NHS Foundation Trust EAT/0002/16** the EAT chaired by Simler P said in paragraph 34 that:

> *"a request for reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or to reargue matters in a different way or by adopting points previously omitted. There is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and reconsideration applications are a limited exception to that rule. They are not a means by which to have a second bite at the cherry, nor are they intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed but with different emphasis or additional evidence that was previously available being tendered."*

6. In common with all powers under the 2013 Rules, preliminary consideration under rule 72(1) must be conducted in accordance with the overriding objective which appears in rule 2, namely to deal with cases fairly and justly. This includes dealing with cases in ways which are proportionate to the complexity and importance of the issues, and avoiding delay. Achieving finality in litigation is part of a fair and just adjudication.

The Application

7. Key to the application for reconsideration is whether the first respondent received notice of the hearing of 27 February 2020. The following is relevant:-

a. Mr Wheble of the first respondent was in attendance at the preliminary hearing on 27 November 2019 when the final hearing date (27 February 2020) was identified as the final hearing date. At that point he was a party in the proceedings.

b. Notice of Hearing was sent to the then parties on 18 December 2019. It is clear from this document that it was sent to The Property and Lifestyle Company Limited at 1 School Lane, Burscough, Lancashire, L40 4AE.

8. In the Application, the first respondent states " *we were unaware of the above hearing dated 28 February 20-20 due to our lease of 1 School Lane, Burscough, Lancashire, L40 4AE ending on the 30 November 2019*" In relation to this, the following is noted:-

a. Mr Wheble did not inform the Tribunal of any change of address either at the preliminary hearing on 27 November 2019 or at any other time before the Final Hearing on 27 February 2020. He knew on 27 November 2019

that the Property and Lifestyle Company Limited was being added as a party to the proceedings.

b. According to Companies House register the registered office remained at 1 School Lane, Burscough, Lancashire L40 4AE until 27 March 2020 (well after the final hearing date).

9. Having regard to these points I am satisfied that the first respondent was aware of the hearing of 27 February 2020. The first respondent had an opportunity to participate in the hearing and decided not to do so.

10. As for the remaining issues raised in the Application:-

a. The first respondent has provided a document called a "*period of statement*" between the first respondent and Simon Moy, statements showing payments made from a party identified as "*Landlord*" and from Simon Moy, account summary documents, various invoices from third parties, an insurance policy document in the name of the second respondent. None of these documents provide any assistance in relation to the issues in these Employment Tribunal proceedings (1) whether the claimant was a worker, if so, (2) who employed him and (3) how much he is entitled to claim in the Employment Tribunal.

b. The first respondent has also provided details of the dispute between the first and second respondents. These details are not relevant to the issues in these Employment Tribunal proceedings.

c. The first respondent states that its only involvement with the claimant was the making of payments on behalf of the second respondent.

d. The first respondent notes that the claimant stated (at the case management hearing on 27 November 2019) that he worked for Procuro and was self employed.

11. The points raised by the claimant are either irrelevant or are attempts to re-open issues of fact on which the Tribunal heard evidence and made a determination. In that sense they represent a "second bite at the cherry" which undermines the principle of finality. Such attempts have a reasonable prospect of resulting in the decision being varied or revoked only if the Tribunal has missed something important, or if there is new evidence available which could not reasonably have been put forward at the hearing. Whilst the first respondent did not attend the hearing:-

a. it had due notification of the hearing.

b. it had every reasonable opportunity to provide relevant evidence to the tribunal.

c. The documentation provided does not provide any assistance with the issues of the claimants worker status or his employer.

d. The Tribunal considered carefully all of the evidence provided and reached its decision on the basis of that evidence. The submissions made

by the first respondent and noted at 10.c and d., whilst potentially relevant, would have made no difference to the outcome.

The first respondent is clearly concerned that the finding has not gone in its favour. A Tribunal will not reconsider a finding of fact just because the claimant wishes it had gone in his favour.

Conclusion

12. Having considered all the points made on behalf of the first respondent, I am satisfied that there is no reasonable prospect of the original decision being varied or revoked. The points of significance were considered and addressed at the hearing. The application for reconsideration is refused.

Employment Judge Leach

DATE: 16 June 2020

JUDGMENT AND REASONS SENT TO THE PARTIES ON

16 June 2020

FOR THE TRIBUNAL OFFICE