EMPLOYMENT TRIBUNALS

Claimant: Mrs T King

Respondents: (1) Henrietta Birgel

(2) Wellbeing Care and Support Services Ltd (in liquidation)

JUDGMENT & ORDER

(1) Upon reconsideration, the Judgment in the claimant's favour against respondent (1) that was signed by the Employment Judge on 25 September 2019 is revoked.

(2) On the Tribunal's own initiative, Wellbeing Care and Support Services Ltd (in creditors voluntary liquidation) is added as respondent (2).

(3) Except that a copy of the claim form, of the above Judgment of September 2019, and of this Judgment & Order, will be served by the Tribunal on respondent (2), care of its liquidators (Mr Kieran Bourne, Cromwell Insolvency Limited, 5 Mercia Business Village, Torwood Close, Coventry, West Midlands, CV4 8HX), these proceedings are stayed and in particular, the time for presentation of a response by either respondent is extended indefinitely.

(4) The purpose of the stay is to enable the claimant to claim the money she is entitled to from the Redundancy Payments Office of the Insolvency Service. See: *https://www.gov.uk/your-rights-if-your-employer-is-insolvent*

(5) The claimant may apply to lift the stay if she has a good reason for doing so. If she does not make an application by 18 December 2020, her claim will be dismissed without further order.

REASONS

1. This decision has been made without a hearing, in accordance with rule 72(2). In my view, the interests of justice do not necessitate a hearing and neither the claimant nor respondent (1) – the "first respondent" – has asked for one.

2. I gave judgment in the claimant's favour against the first respondent on the papers under rule 21 on 25 September 2019. The judgment was sent out shortly afterwards. Significantly later, on 30 March 2020 – after, it seems, the claimant tried to enforce the judgment against the first respondent – the first respondent emailed the Tribunal stating, "*I wish to clarify that I should not have been named in this action as the contract was with the Business Wellbeing Care Services*

which was later renamed Wellbeing Care and Support Ltd. So I wish to appeal for it to be changed to the business."

3. Employment Judge Ahmed considered the claimant's email. At his direction, the first respondent was written to, by a letter of 27 April 2020, asking her whether she was applying for reconsideration and instructing her to do various things if she was. She did what Judge Ahmed instructed her to do, making a formal reconsideration application under cover of an email of 5 May 2020.

4. Pausing there, there are, technically, two ways in which one can get a rule 21 judgment set aside. The first is reconsideration. However, there is a better route: rules 20 and 21, read together, are effectively a kind of code for dealing with this situation. The easiest thing to do is to apply under rule 20 for an extension of time for presentation of the response. If that application is allowed, any judgment entered under rule 21 is automatically set aside, pursuant to rule 20(4). There are no time limits for making an application for an extension of time, as there are for reconsideration applications, and an application for an extension of time does not have to be dealt with by the same Judge who gave judgment, as a reconsideration application does.

5. The fact that the claimant could have gone down this better route, and no doubt would have done so had she not been encouraged to make a reconsideration application instead, is something I take into account in deciding to grant her reconsideration application. It seems to me that the 14 day reconsideration application time limit is less important where the first respondent could have applied for an extension of time to get what she wanted, bearing in mind that there is no time limit for making an application for an extension of time.

6. The three main things I take into account in relation to the reconsideration application are: why did the first respondent not present a response on time; the merits of the first respondent's defence; the balance of prejudice.

7. I am afraid the information the first respondent has provided as to why no response was presented is rather unsatisfactory. She has written to the Tribunal that, "*The reason why the application for reconsideration is being made late is simply because I was advised by the insolvency company that they will sort everything out for Mrs T King even though it was under my name. It was not until enforcement officers presented at my home address that I got told to contact the court. This was not deliberate or intentional.*" However, although that may partly explain why she did nothing about the Judgment after it was made, it does not begin to explain why she did not reply to the claim form and allowed the Judgment to be made in the first place. The response was due in August or September 2019 and by her own admission staff were not written to telling them of the intention to liquidate the business until December 2019. In fairness to her, Employment Judge Ahmed did not tell her to provide this information, but it leaves me not really knowing why she completely failed to respond to the claim.

8. However, looking at the merits of the first respondent's defence, they are overwhelming. The claimant was never employed by the first respondent. As far as I can tell, the claimant agrees with this; it is an established fact. By the claimant's own admission, then, the first respondent had a cast-iron defence and the claimant should never have brought a claim against her.

9. Moreover, I am told by the first respondent – and this is not disputed by the claimant either – that the claimant was told about the liquidator and her details were forwarded to the liquidator to assist her in making a claim from the Insolvency Service. If she has not made such a claim, I do not know why not.

10. The balance of prejudice also comes down in the first respondent's favour. Looking at the balance of prejudice involves comparing the situation the claimant and the first respondent would be in if I were to revoke the judgment and the situation they would have been in had the first respondent presented a response to the claim when she should have done.

11. If I were to revoke the judgment, the claimant would be in no worse a position than she would have been in had the first respondent presented a response to the claim on time. This is because, had the first respondent done this, the claimant would have had to have amended her claim to make a claim against respondent (2) – the "second respondent" – which was in financial difficulties. The chances are that the claimant would have ended up having to ask for the money from the Insolvency Service, which is just what she is going to have to do now if she hasn't done so already. Having a judgment in your favour revoked, when it is for a sum of money you are not entitled to from the person the judgment is against, is not 'prejudice' in legal terms. Instead, it is the loss of a windfall.

12. If I do not allow the first respondent's reconsideration application, she remains legally liable to pay a sum of money to the claimant which she was never, and should never have been made, legally liable to pay her.

13. Taking all of the circumstances into account, even though the reconsideration application is made very late, and even though the first respondent has not adequately explained why she did not present a response to the claim, I think it would be in the interests of justice to revoke the judgment I gave (on paper and without a hearing) in September last year and make the orders I have made.

14. Turning, briefly, to those orders, they should largely be self-explanatory. The reason I have imposed a stay on the proceedings is that: there is no point requiring the first respondent to present a response when the claimant effectively concedes that the first respondent has a complete defence to the claim; there is no point in the claimant pursuing the second respondent because it is insolvent, and the better option is for her to claim her money from the Insolvency Service.

EMPLOYMENT JUDGE CAMP

18/06/2020

Sent to the parties on:

15/07/2020…….

For the Tribunal:

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