



# EMPLOYMENT TRIBUNALS

**Claimants:** Lutfur Rahman  
Saleh Akram Suhel  
Joachim Goulette

**Respondents:** (1) Black Swan Ventures Ltd(claims of Lutfur Rahman & Saleh Akram Suhel)  
(2) Black Swan Food & Beverage Ltd (claim of Joachim Goulette)

**Heard at:** East London Hearing Centre (by CVP)

**On:** Tuesday 28 July 2020

**Before:** Employment Judge Housego

## Representation

**Claimants:** In person  
**Respondent:** Appearance not entered: Martin Truman, solicitor, in attendance.

# JUDGMENT

The Respondents made deductions from the wages of the Claimants, and are both ordered to pay the Claimants the following sums:

1. Lutfur Rahman: £84,166.62
2. Saleh Akram Suhel: £58,333.33
3. Joachim Goulette: £43,541.67.

# REASONS

## The Claims

1. The claims are for unpaid wages and unreimbursed expenses (S13 Employment Rights Act 1996) and for holiday pay.

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2. The main issue is whether the Claimants were employed as they claim. They were working for the Respondents for extended periods and were never paid by them. It is for the Claimants to satisfy me of that, on the balance of probabilities. They also claim for pay for holiday entitlement untaken at the end of their claimed employment, for which the burden and standard of proof are the same.

### Facts found

3. The Claimants all have experience in the hospitality industry, specifically food and beverage.

4. The Respondents are a special purpose vehicle and its subsidiary. The first Respondent is company 11315420, incorporated on 17 April 2018. Its director is Nicholas James Yvan Spysznyk.

5. The Second Respondent is company number 11609252, incorporated on 08 October 2018. Its directors are Mr Spysznyk and Abdus Shukur.

6. Both are listed at Companies House as active. I enquired of Mr Truman as to their status. He said that they are dormant with no assets. The First Respondent filed accounts on 30 April 2019. The nature of its business is declared at Companies House as 68100 – buying and selling of its own real estate, and 68209 – other letting and operating of own or leased real estate. The Second Respondent has not filed accounts, the first being due by 08 October 2020 for the period to 31 October 2019. The nature of its business is described at Companies House as 56290 – other food services.

7. Mr Spysznyk knew Mr Rahman, who worked in food and beverage, and asked if he was interested in his venture, with Adbus Shukur. They had locations in mind. Some were said to be owned already, some to be acquired. They would trade under the name “*Victoria & Raj*”. There would be about 15 in the UK and others in France, Cyprus and the Isle of Man, and new developments including in Morocco.

8. Mr Rahman left his employment and signed a contract with the Respondents which bears the date 01 September 2018. He was to be “Employee/Operations Director”. He was to be responsible for a 5 year plan to refurbish and open the sites with the new format. This was to include budgeting and all aspects of setting up a new restaurant brand, including recruitment. The contract provided for a salary of £70,000 a year, rising to £100,000 on the opening of all sites. There was the intention for a profit share, unspecified, in future and a company car.

9. Mr Rahman knew Mr Suhel, who also worked in food and beverage. Mr Suhel also left his employment and signed a contract with the Respondents dated 03 November 2018, as Operations Director, stating that employment had commenced on 03 September 2018, at a salary of £50,000 a year, again with an unspecified future profit share based on future budgets, and a company car.

10. Joachim Goulette started work on 14 January 2019. He knew Mr Rahman. He had travelled from Spain to London for interview by

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Mr Spysznyk. He had then accepted an offer of employment and given up his job. He was intended to relocate from Spain to London with a relocation package, but this did not happen. He worked from Spain, much on projects in France and Morocco, and remotely by internet access. This suited him well, for his parents are French and Spanish.

11. None of the Claimants were ever statutory directors of the Respondents. None of them invested any money (and they did not have the resources to do so).

12. The contracts of all 3 Claimants refer to both Respondents as employers. The 1<sup>st</sup> Respondent was to own sites, the 2<sup>nd</sup> Respondent to operate businesses on them.

13. Mr Rahman and Mr Suhel travelled around sites for planning purposes. They were told that some sites were owned by the 1<sup>st</sup> Respondent and others would be acquired and rebranded. There was said to be finance arranged, but there were delays. The reasons advanced were always convincing and the work on the projects continued. This was for all aspects of renovation and rebranding, planning for staff recruitment, menu planning and detailed budgeting. There were initially 9 sites for which planning was required, to open between March 2019 and January 2021.

14. Mr Spysznyk said to Mr Rahman that a financier, Jitin Dixit, was now to finance the project to the extent of £15m. From January to March 2019 there was the promise of funding. Projects such as buying vineyards were proceeding (15 Feb 2019 (105/121) with funds to be drawn down in early March 2019. This was in reply to the 3<sup>rd</sup> Claimant who was asking for his salary. An email of 01 March 2019 (93/121) to the 1<sup>st</sup> and 2<sup>nd</sup> Claimants (and others) said that all was agreed, and that the finance was real and all was good to go, and asked that they tell the 3<sup>rd</sup> Claimant of this good news. It was not so.

15. Over time the Claimants became less than happy with the fact that they were continuing to work without payment, and meeting their own expenses but not being reimbursed.

16. On 11 January 2019 Mr Spysznyk emailed the 1<sup>st</sup> and 2<sup>nd</sup> Claimants (97/121) and stated that funds would be released the next Tuesday. He added *"Over the weekend I will call and discuss with each of you your position so that you are paid what your due also that you can rest easy about the future."*

17. On 04 February Mr Spysznyk stated in an email to the 2<sup>nd</sup> Claimant *"It will be this week."* On 11 April 2019 the 2<sup>nd</sup> Claimant emailed Mr Spysznyk asking for his unpaid salary for 5 months. On 20 April 2019 Mr Spysznyk emailed the 2<sup>nd</sup> Claimant to say that *"Next week is the start of a new phase for us all POSITIVE."*

18. On 19 June 2019 the 2<sup>nd</sup> Claimant emailed Mr Spysznyk asking when he would be paid, and asking about the funds. On 31 July 2019 was still assuring the Claimants that money was being transferred in the next day or so, and that they could *"rest assured"* that the money was being transferred, that there was a *"clear plan"* and they were *"advancing well"* (92/121).

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19. Ultimately the Claimants gave up hope, ceased work and sought advice from Acas, and wrote resigning their employments, and sending “*invoices*” for the sums they were due under their contracts of employment, and round sums for expenses said to have been incurred.

20. On 04 November 2019 (90/121) Mr Spysznyk then offered each of the 1<sup>st</sup> and 2<sup>nd</sup> Claimants a Subway franchise by way of recompense, and said that he was to add their claims to his own claim against the backer who had let him down. The 1<sup>st</sup> and 2<sup>nd</sup> Claimants had no confidence that Mr Spysznyk would deliver what he promised, and running a sandwich shop was not what they were about.

21. They then started these proceedings. The Respondents took the view that as the 1<sup>st</sup> Respondent was a special purpose vehicle with no assets, and that likewise the 2<sup>nd</sup> Respondent had no assets, they would not file any response to the claims. This hearing was therefore conducted as an “*appearance not entered*” case.

### Conclusions

22. All the Claimants were employed by both Respondents. Their contractual documents are all in the same format. Insofar as leave may be needed for each to claim against both respondents I grant it.

23. The Claimants all gave oral evidence and I asked them questions. I am satisfied that their evidence was genuine and truthful. The Claimants were genuinely employees of the Respondents, and were never paid their salaries. They worked hard to set up business plans, budgets, formats, designs, menus, identified suppliers, prepared job descriptions and plans for staff to set up and run at least 9 large establishments in several countries. The 1<sup>st</sup> and 2<sup>nd</sup> Claimants were employed from 01 September 2018, and the 3<sup>rd</sup> Claimant from 14 January 2019, all of them leaving on 30 October 2019 (their schedules of loss say 31 October – I have taken this to mean the last day in October).

24. It was remarkable that they should work for so long with no payment, and rely on savings and borrowing from their families.

25. However, the vision held out for them all was to be at the heart of a successful well paid future in a new chain backed by £35m of investment, with outlets in Morocco, France, Cyprus as well as the UK. It is understandable that they were willing to put heart and soul into this vision – and that it was a mirage does not undermine that.

26. There were a series of promises and progress reports that the Claimants believed. Plainly Mr Spysznyk was very convincing indeed. The emails from him are clear evidence of that persuasion. I have no doubt but that he was even more persuasive in oral communication.

27. Throughout there were emails to Mr Spysznyk asking when they would be paid, and referring to salary due. At no point did Mr Spysznyk demur and say that this was some form of joint enterprise. His email of 19 January 2019 expressly referred to paying the Claimants “*what you are due*”, which is, on the

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balance of probability an acceptance that it is salary because that was what was being requested. I am satisfied that the written contracts – prepared by the Respondents' solicitor – were genuine and not any form of sham. It follows that the claims for pay succeed.

28. The 1<sup>st</sup> and 2<sup>nd</sup> Claimants seek expenses, of round figures. (I have taken into account that they paid their own expenses, and were not reimbursed, when coming to my conclusion that they were employed.) They produce no documentary evidence of such expenses. Nevertheless, and given that none of the Claimants got the company cars to which their contracts entitled them. Over a period of almost a year a figure of £2500 is only a couple of hundred pounds a month, and extensive travel was required. The figures are approximate, but are not overstated. I find that the Claimants succeed in these claims also.

29. The Claimants seek also holiday pay: their work had ended sometime before they resigned. In these circumstances I find that their claim to pay for holiday not taken does not succeed. They were not working (understandably) and it is logical to treat this time as holiday.

30. I award the sums gross: it may be unlikely that the Claimants are able to effect any recovery from the Respondents, but if they do they will need to account to HMRC for income tax and national insurance.

**1<sup>st</sup> Claimant**

31. £70,000 a year = £5,833.33 a month: 01 September 2018 – 30 October 2019 – 14 months.  $14 \times £5,833.33 = £81,666.62$  plus £2,500 expenses = **£84,166.62**.

**2<sup>nd</sup> Claimant**

32. £50,000 a year (the contract so provides (20/121), and not the £55,000 set out in his schedule of loss) = £4,166.67 a month: 01 September 2018 – 30 October 2019 - 14 months.  $14 \times £4,166.67 = £58,333.33$  plus £2,000 expenses = **£58,333.33**.

**3<sup>rd</sup> Claimant**

33. £55,000 a year = £4583 a month: 14 January 2019 – 30 October 2019 = 9 ½ months.  $9.5 \times £4583 = £43,541.67$ .

**Employment Judge Housego  
Date: 5 August 2020**