Case Number: 2204912/2019

EMPLOYMENT TRIBUNALS

BETWEEN

Claimant
Ms CHOLE TOWNS

Respondents
SL MEDIA GROUP LTD (First Respondent)
MR REECE JOHNSON (Second Respondent)

OPEN PRELIMINARY HEARING JUDGMENT

HELD AT: London Central (Zoom audio call) **ON: 15 October 2020**

BEFORE: Employment Judge Russell (sitting alone)

REPRESENTATION:
Claimant: Mr Clarke, Counsel
Respondent: Mr Lane, Consultant

Judgment

1. The Respondent's application under Rule 70 is accepted and the judgment in default against them of 28 July 2020 is revoked.

2. The time for filing the defence is extended and the Respondent's ET3 is accepted .

3. The claim is listed for 19th and 22nd February 2021 for a full hearing on liability and remedy.

4. The Respondents are ordered to pay the Claimant £500 by way of a contribution to her costs .

Reasons

Background

1. The First Respondent was a business operating as a sales agent for third party contract cleaning services. The Second Respondent is the owner and operator of the First Respondent. The Claimant was engaged as a work experience intern by the Second Respondent. The Respondents claim that the Claimant was not employed by either Respondent. They say the Claimant was engaged on work experience with the First Respondent and , in any event , deny the claims made of sexual discrimination and harassment brought by the Claimant and ended her contract for

poor timekeeping.

2. The Claimant states that she was employed by the First Respondent and indeed signed a non-disclosure agreement, produced, and signed by the Respondent, which identifies SL Media Group Ltd as her employer . And the Claimant claims she was harassed and discriminated against relating to /on the grounds of sex by the Second Respondent leading to her resignation.

3. The case had been listed for a hearing on 2nd April 2020 before a Judge sitting alone for one day. That hearing dd not go ahead because of the pandemic. There had still not been a response to the claim by the Preliminary Hearing before Employment Judge Spencer on 28 July 2020. He determined that the claim was validly served at the (then) registered address of the First Respondent and the Second Respondent is its sole director. He noted from a search at Companies House that that the First Respondent changed its registered address on 10th June 2020 to Unit 155, 111 Power Road London W4 5PY and directed that his order and any other notices be sent both to the old and the new registered address. But as there had been no Response to the claim a Rule 21 Judgment would be issued in respect of liability and the issue of remedy for the Claimant's successful claim of harassment relating to sex and sexual harassment was listed to be heard today by Cloud Video Platform (CVP) on 15th October 2020 .

4. The Respondents say the first time they knew anything about this case was when EJ Spencer's Order was served on the then correct Registered Office. And as a result, they applied to set aside judgement that had been entered and , if allowed , an extension of time in which to serve an amended defence. An ET3 now served. Their application was supported by the Second Respondent. With a remedy hearing and or case management directions to follow.

Mr Johnson gave evidence on oath on behalf of the Respondents and after his evidence and submissions from the parties these are my findings limited primarily to the First Respondents' application .

1. The First Respondent was not trading until 10th of June 2020 although it is clear that the company was incorporated on 9th October 2017 (originally under the name of Ulasi Group Ltd) at 1st Floor, 2 Woodbury Grove, Finchley, London, N12 0DR, the address that the claim was served upon.

2. The registered name of the First Respondent then changed to SL Media Group Ltd on 29th October 2018 and so when the claim was presented on 14th November 2019 the company was in existence and the documents show that the claim was served upon the correct company and address at the time of issue.

3. The assertion by the First Respondent that the claims were bought against the incorrect entity is incorrect

4. However, I am satisfied that the Respondents were unaware of the proceedings until they received EJ Spencer's Order on or about 10 August 2020 . The Second

Respondent had not visited or received any material correspondence from the registered office.

5. The Respondents did not receive a copy of the ET1 until on or about 8 September.

6. The registered address of the First Respondent did not change to Unit 115, 111 Power Road, W4 5PY until 10th June 2020 and some considerable time after the ET1 would have been served. However, the Respondents have never been to this postal address and whilst they should have checked it I accept they did not nor had a post redirection service in place and whilst they are at fault for this they have not acted in bad faith in their denial of any knowledge of the case.

7. It is not clear whether the Claimant was an employee of the First Respondent or not. Or whether she resigned or was dismissed . But it is clear she was only working with the Respondents for a very brief period.

8. The issues as to her discrimination and harassment claims arise from largely disputed facts.

Legal Findings

RECONSIDERATION OF JUDGMENTS

Principles

1. **Rule 70.** A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision ("the original decision") may be confirmed, varied, or revoked. If it is revoked it may be taken again.
2. I have found that the Respondents only received notification of the default judgement (the first they said they knew about the proceedings) on or about 10 August following default judgement on 28 July sent to parties on 5 August. As a result, the judgment in default is revoked .
3. I extend time for the ET3 now served , the remedies hearing listed for today will not proceed and the case will be relisted for a full hearing on liability and remedy.

Costs

The Claimant applied for costs under Rule 75 and I heard submissions from the parties before determining this including evidence as to the Second Respondent's means.

My findings are

1 The First Respondent is a small fledgling business . The Second Respondent has limited means especially given the fact his photography based business has almost no income in these Covid times and his side-line DJ work is adversely affected for the same reason.

2 I cannot say the defence has no or little prospect of success on the limited evidence I have heard.

3 The balance of prejudice lies in favour of the Respondents given the prejudice they suffer from playing no further part in the proceedings and going ahead with a remedy hearing today following default judgment having been entered against them.

4The Respondents cannot be guilty of unreasonable conduct , for costs purposes, before they knew of the claim even if perhaps, they should have been aware.

5 They did act unreasonably from 10 August as the they knew about the claim then on/by then although they may not have got the ET1 until 8 September. But even if so , they did not file an ET3 until 17 September'

6 Their letter to the ET saying the wrong company address had been used was misleading as even if they thought this might be the case it was the correct one.

7 The Claimant had had only limited costs until the preparation for this hearing and Counsel's fee for attendance today.

On this basis I award the Claimant £500 by way of a contribution to her costs taking all the above factors into account due jointly and severally from the Respondents and payable immediately to the Claimant. The Respondents have acted unreasonably , especially by denying they had been served and delaying the ET3 , and under rule 76 (1) (a) in its conduct of this case justify a costs order being made and I assess the appropriate sum under Rule 75 should be £500 for the reasons given .

EMPLOYMENT JUDGE

1 November 2020
Order sent to the parties on

02/11/2020

for Office of the Tribunals