



EMPLOYMENT TRIBUNALS

Claimant: Mrs C Clay

Respondents: 1 TWH Romsey Limited
2 Romsey Hospitality Limited

Heard at: Southampton **On:** 28 October 2020

Before: Employment Judge Reed

Representation

Claimant: In person

First Respondent: Mr K Bryant QC, counsel

Second Respondent: Mr T Cordery, counsel

JUDGMENT having been sent to the parties on 18 November 2020 and written reasons having been requested, in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. In this case the claimant Mrs Clay sought a redundancy payment from the first respondent, TWH Romsey Ltd (“TWH”). Her employment with that company came to an end on 30 September 2019. She said the reason for the termination of her contract was redundancy, yet no redundancy payment had been made.
2. For TWH it was asserted that there had been a transfer of the undertaking in which Mrs Clay worked, from itself to Romsey Hospitality Limited (“RHL”). If that was correct, then Mrs Clay’s employment was preserved and she was not entitled to a redundancy payment.
3. I heard evidence from Mrs Clay herself, from Mr Graveney, a director of TWH and from Mr Bonen for RHL. On the basis of their evidence and the documents I was shown I reached the following findings of fact.

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4. The White Horse is a hotel, pub and restaurant in Romsey which has traded literally for hundreds of years. Following a money laundering investigation the freehold of the White Horse was surrendered to the National Crime Agency (“NCA”) in May 2019. At that time, the premises were leased to TWH who operated the business as a hotel, fine dining restaurant and pub. It operated under the name “The White Horse Hotel and Brasserie” and TWH owned the bulk of the fixtures and fittings.
5. In the course of 2019 discussions took place between TWH and Mr Bonen on behalf of the NCA with a view to seeing if TWH would sell its fixtures and fittings (and indeed goodwill) in order that the premises could continue to trade as before. It was made clear in the course of those discussions that the intention of the NCA was that the White Horse would continue to trade, albeit under another operator, and that the transfer of undertaking regulations would apply such that the existing employees would transfer.
6. The negotiations between the NCA and TWH failed and the fixtures and fittings were removed by TWH. The NCA now expressed the view that the transfer regulations would not apply.
7. TWH’s tenancy terminated on 30 September 2019.
8. The premises closed at that point. Largely as a result of the removal of the fixtures and fittings, a substantial refurbishment project was undertaken but on 24 October the pub reopened, the gastro pub/restaurant reopened on 25 October and the hotel itself on 9 November 2019. The new operator of the premises was RHL. The freehold remained vested in the NCA (via Mr Bonen as its nominee).
9. Of the forty-nine employees previously employed to work on the premises, thirty-six were employed by the second respondent (including Mrs Clay) and continued to work largely as before.
10. The trading name of the establishment was now simply the White Horse and the nature of its offering somewhat changed. In particular, it went down market. It is a less luxurious hotel and the restaurant offering would no longer be described as fine dining.
11. Under regulation 3 of the Transfer of Undertakings (Protection of Employment) Regulations 2006, a relevant transfer takes place when there is a transfer of an economic entity which retains its identity, meaning an organised grouping of resources which has the objective of pursuing an economic activity.
12. Under regulation 4 a relevant transfer shall not operate so as to terminate the contract of an employment of any person employed by the transferor and assigned to the organised grouping of resources or employees that is subject to the relevant transfer but any such contract shall have effect after the transfer as if originally made between the person so employed and the transferee.
13. Mrs Clay said there had not been a relevant transfer between the first and second respondents. It followed that her employment terminated on 30

September 2019 and she was entitled to a redundancy payment. That was the position also taken by the second respondent. However, the first respondent said that there was indeed a transfer such that Mrs Clay's contract did not end on 30 September but she was entitled to assert continuity against the second respondent.

14. It was clear to me that there was a relevant transfer. As at 30 September 2019, premises known as the White Horse hotel were trading as a hotel, pub and restaurant. Within a few weeks of that date, they did so again.
15. It is right that extensive refurbishment was required in November 2019 and indeed that explained why there was a gap in the operations. It did not seem to me that that was inconsistent with the existence of a relevant transfer.
16. At paragraph 14 of his witness statement Mr Bonen sets out in some detail the steps that had to be taken by the second respondent in advance of reopening. In addition to the refurbishment, for example, it was necessary for the second respondent to obtain new suppliers, a new liquor licence etc. These matters seemed hardly to be inconsistent with continuation of the activities in question.
17. The change of name was a minor one. More significantly, the goodwill attached to the premises remained there, even if the respondents did not agree between themselves that there should be a sale of goodwill. Indeed, it was difficult to see what "goodwill" properly described could be sold, as distinct from the premises themselves. The White Horse was a well known hotel, restaurant and pub before 30 September and it was again, after a short interruption.
18. Although a new website was set up, it actually used photographs from the old website, which served to endorse the view that this was not a radical change in the way the businesses were run.
19. The bulk of the employees of TWH continued to work there.
20. Notwithstanding the brief interruption in the operation and the move down market, I concluded that there was a relevant transfer. There was an economic entity that retained its identity. It followed that Mrs Clay's contract did not terminate on 30 September and she was therefore not entitled to a redundancy payment.
21. For the same of completeness, I should add that although the second respondent was added by the Tribunal, Mrs Clay made no claim against them and accordingly it followed that they should be dismissed from proceedings.

Employment Judge Reed

Date 7 December 2020

REASONS SENT TO THE PARTIES ON

.....22 December 2020.....

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FOR THE TRIBUNAL OFFICE

Note - Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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