



EMPLOYMENT TRIBUNALS

Claimant: Mr D Burcin
Respondent: Mission Cafe Limited
Heard at: East London Hearing Centre (in public; by video)
On: 11 January 2021
Before: Employment Judge Moor
Representation
Claimant: No appearance
Respondent: Mr A Razouk, Director

JUDGMENT having been sent to the parties on 13 January 2021 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013.

REASONS

***“This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was V video. A face-to-face hearing was not held because it was not practicable. The documents that I was referred to are in a bundle prepared by the Respondent and the witness statements.*”**

1. The Claimant worked as a Head Barista for the Respondent company from 3 June 2019 to 2 December 2019.
2. On 5 January 2020, after a period of Early Conciliation, the Claimant brought claims for unlawful deduction of wages; accrued but outstanding holiday pay on termination of his contract of employment and unpaid expenses.
3. The full hearing of this matter on 14 May 2019 was postponed because of restrictions in the pandemic. That hearing was converted into a case management preliminary hearing before EJ Gardiner. At that hearing was agreed that the Respondent owed the Claimant £1,498.63 in arrears of pay; and £931 in holiday pay. No order was made on that occasion. Today I have been informed that those sums remain unpaid but the Respondent claims that it was entitled to deduct £600 from the arrears of pay sum. I deal with this in my reasons below.

4. The Respondent brought a claim for breach of contract against the Claimant. At the Preliminary Hearing EJ Gardiner judged the Claimant's expenses claim to be a breach of contract claim. Having heard from the Respondent, he established that it's contract claim concerned a debt owed to a related company of the Respondent. The Respondent argued that the terms of the employment contract required repayment of this debt at £300/350 per month and that, although those deductions had been made, it was still owed £13,599.17. EJ Gardiner ordered the Respondent to amend its response to clearly set out the legal and factual basis of this contract claim; he ordered the Claimant to respond to this amendment and to provide Further Information in the form of a breakdown of the expenses he claimed were owed.

5. At a further Preliminary Hearing on 5 October 2020, at which the Claimant made no appearance. EJ Ross refused to amend the Respondent's claim to include claims for a personal debt said to be owed by the Claimant. EJ Ross found the Respondent's contract claim still to be unclear and therefore ordered the Respondent to give Further Information about its contract claim. EJ Ross warned the Respondent that their contract claim did not look strong (p74). EJ Ross identified a number of questions that they had to answer.

- a. In one sentence when the contract relied upon was agreed
- b. State whether it was orally or in writing. If in writing, to provide the document.
- c. Identify (in one sentence) the term relied on 'which is alleged to allow the Respondent to permit it to recover from the Claimant the full balance of a debt owed to a company related to the Respondent on termination of his employment'.
- d. State in 1-2 paragraphs how the Claimant breached the contract.
- e. Explain the factual allegations for the basis of the loss and provide a Schedule of loss.

6. EJ Ross also made an order that, unless the Claimant give the Further Information EJ Gardiner had ordered by 2 November 2020, then the expenses claim would be struck out. The Claimant has not provided that further information. The Claimant has not provided any reason for this second failure to provide a breakdown of his expenses claim. The Claimant has not attended today. I therefore order that the Claimant's expenses claim be struck out.

7. On 16 October 2020 the Respondent provided Further Information in response to EJ Ross's order (p80). They allege the contract that allowed the Respondent to deduct from the Claimant's wages debts owed to BUNA Coffee International Ltd ('BUNA') was the employment contract. They allege he broke this contract by giving insufficient notice.

8. The Claimant has not made a response to the Respondent's contract claim, although there is some sense of his defence in what he has written in his original claim. I have considered whether there is sufficient material before me to make a Rule 21 judgment in the sum sought by the Respondent and have decided that there is clearly not. The claim originally pleaded makes it clear that the alleged debt is owed to a different company to the Respondent, BUNA, and on the face of it therefore I could not make a Rule 21 Judgment. It is for this reason that EJ Ross warned the Respondent that the claim did not look likely to succeed.

9. The Respondent drew my attention to an email from EJ Russell dated 6 January 2021. EJ Russell was considering striking out the Claimant claims unless information was provided by 20 January 2020. It seems to me that EJ Russell must not have been aware of today's hearing listed to decide whether those claims should be determined. My judgments today mean it is no longer necessary to follow her order because all claims have been decided upon today.

10. At the start of this hearing, the Respondent again raised the issue of the debt alleged to be owed personally by the Claimant to Mr Mawas. This is a claim that the Respondent had wanted to add to its contract claim. EJ Ross refused to allow that amendment. I explained that I could not look at that matter again. If the Respondent had disagreed with EJ Ross's decision not to amend they should have considered an appeal. In any event, I would not have allowed the amendment because it is only claims by the employer company that the Tribunal has jurisdiction to hear, not claims in respect of debts the Claimant might owe to other individuals.

11. That the Claimant has not attended today is unsurprising given that the sums he claims were effectively agreed at the hearing before EJ Gardiner. I do not therefore strike out his claim for non-attendance today.

Remaining Issues

12. At the outset of the hearing I identified the outstanding issues. They were as follows:

13. The Claimant's claim for money owed. It was agreed at EJ Gardiner's hearing that the Respondent owes money to the Claimant. The Respondent agreed today that only remaining issue was whether those sums should include the £300 pcm deduction in respect of the 'BUNA debt'. The Respondent argued that this was allowed by the contract.

14. The Respondent's contract claim. The Respondent alleges the Claimant owed BUNA Coffee International Limited (a different company) a debt of £15,000 which they agreed at the start of his employment with the Respondent that he would repay by deductions from his earnings of £300/350 per month depending on hours worked. The Respondent alleges there is still £13,599 owed of this debt and they claim it before me.

Findings of Fact

15. I heard the oral evidence of Mr Razouk and Mr Abdulkarim. I read the documents referred to me. I make the following findings of fact.

16. The Claimant and witnesses were business partners. They were all directors of the company BUNA Coffee International Limited ('BUNA').

17. The Respondent alleges it was agreed that each director of BUNA would be responsible personally for 25% share of its debts and liabilities. I have not been shown any company minutes that establish this as a fact. It is not necessarily the case that directors owe such a debt to their companies. It is such an important agreement that I would expect to have seen it written down. All I have been shown is a spreadsheet prepared for the Tribunal proceedings. It is a good spreadsheet in that it identifies the documents referred to. But I have not seen these documents and not been able to establish for myself that they relate to a debt. However, for reasons which I will explain, I do not need to decide whether such a debt was owed to BUNA or not.

18. In June 2019 the Claimant entered into a contract of employment with the Respondent, MCL. This was a separate business venture from BUNA and a separate legal entity but with the same directors. The contract was signed by the Claimant and Mr Razouk in early June 2019. I accept that the document I have seen was the contract signed.

19. The contract was expressed to be for 6 months and that it would be subject to 6 month extensions subject to a performance review. I accept that the intention was, if all went well, there was to be a long-term relationship.

20. The 3rd bullet point of the preface to the contract noted '*The employee agrees to pay his share from BUNA debts and agrees that paying these debts is of utmost priority*'.

21. Clause 9 of the contract stated '*a sum of £300 of your salary will be deducted each month to pay towards the outstanding debts on BUNA ... until these debts and liabilities are fully and completely paid for.*'

22. In practice, deductions to the Claimant's earnings were made in accordance with the contract. When he worked more than 50 hours per week £350 per month was deducted, otherwise it was £300 per month.

23. The Claimant had to give 12 weeks' notice of termination of the contract. He left his employment on 2 December 2019. The Claimant did not give 12 weeks' notice to end his employment. No claim is made as to any losses leading from this failure.

24. I have not been shown any primary evidence of the amount of debt it is alleged Claimant owed BUNA but the spreadsheet prepared for this tribunal shows a series of figures owed by BUNA taken from company accounts, bank statements, invoices and so on. The Respondent argued that the Claimant owed 25% of these amounts to BUNA.

25. The Respondent has failed to pay the November salary and the December salary 2019 to the Claimant, which they agreed at EJ Gardiner's hearing amounts to £1498.63. They have failed to pay outstanding holiday pay which they have agreed amounts to £931.00.

26. Both witnesses before me referred to the BUNA debt. When I asked Mr Abdulkarim whether the debt had been assigned to MCL he referred to the contract of employment as evidencing that the 'Claimant was committed to paying the BUNA debts'. He did not refer to any evidence of assignment of the debt from BUNA to MCL.

Law

27. Different companies are different legal persons.

28. Debts to one company can be assigned to another company if all parties agree. But it is not the case that because the same directors are involved in both companies that such assignment is to be assumed.

29. The Employment Tribunals (Extension of Jurisdiction) Order 1994 allows me to hear contract claims by employers arising or outstanding on termination of an employment contract. It does not allow companies other than employers to bring claims at the Employment Tribunal.

30. Under the Employment Rights Act 1996, a deduction made to a wage is lawful if it is expressly agreed to beforehand in writing.

Application of Facts and Law to Issues

31. In my judgment, the November and December 2019 salary due to the Claimant should include a deduction of £600 (in total) accordance with the contract of employment that allowed £300 deduction per month. Therefore the amount owing to the Claimant by the Respondent in respect of wages is £1498.63 – 600 = £898.63 gross. The Respondent should pay that amount to the Claimant net of tax.

32. It is agreed the Respondent owes accrued but untaken holiday pay of £931.00. The Respondent should pay this amount to the Claimant.

33. In my judgment I cannot award to the Respondent ('MCL') the alleged outstanding debt the Claimant owes to a different company, BUNA.

34. The only jurisdiction I have is in relation to a contract claim brought by the employer, here MCL. I do not have jurisdiction to hear debt claims brought against the Claimant by another company, even if a related one.

35. In my view the BUNA debt was not assigned to MCL.

- a. There is no evidence by way of company minute that this ever happened. If the whole debt had been assigned from BUNA to MCL, I would have expected to see a clear agreement in a company minute about this. The Third bullet point of the contract of employment is insufficient. It simply records an agreement that the Claimant will to pay his share of BUNA debts. It does not record that BUNA or the parties have assigned this debt to MCL. Put simply, it does not record that debts to BUNA have become debts to MCL.
- b. Nor do I consider that the contract of employment was enough itself to assign the debt. This is because the debt is still described in the document as a debt to BUNA or BUNA debt. A general statement that debts are owed by an employee to another company is insufficient to assign the debt.
- c. In my view, all that the contract of employment did was create a mechanism whereby the Claimant agreed to pay off some of the alleged debt from his earnings. It seems to me MCL was an agent in this respect. (It is rather like an attachment of earnings order – whereby an employer pays to the court a debt owed to another by deductions of earnings.)
- d. When I asked Mr Abdulkarim about assignment, he could not refer me to anything but the contract of employment which I have found to be insufficient in this respect.

36. I therefore do not need to decide what debt is owed by the Claimant to BUNA. This is probably just as well as the evidence is arguably insufficient for me to have done so. There are no original documents supporting the spreadsheet relied on. If BUNA wish to pursue this alleged debt then the County Court is the place to do it and they should rely on primary evidence of the debt, not a spreadsheet prepared for the proceedings.

37. I understand that behind these proceedings is a breakdown in relationship. My decision is not based on the various allegations made on either side about bad faith but on

a simple contractual construction that the contract of employment was insufficient to assign the alleged BUNA debt to MCL.

Reconsideration: Clause 10 of the Contract

38. At end of hearing the Respondent referred me to clause 10 of the contract of employment. I have treated that as an oral application to reconsider my judgment.

39. Clause 10 of the contract states '*we can deduct any money that you owe us or our business from your pay or other payments due to you.*'

40. In writing these reasons, I have therefore looked at clause 10. It seems to me it does no more than reassert the mechanism I have found to be in place whereby during the course of employment MCL could deduct from wages part of the debt owed to BUNA. This clause goes not further than that. It would have to be construed for more clearly in order to do so. It certainly does not assign the BUNA debt to MCL. It is not therefore in the interests of justice to change my decision.

**Employment Judge Moor
Date: 2 February 2021**