



# EMPLOYMENT TRIBUNALS

**Claimant:** Syed Tariq MUBARAK

**1<sup>st</sup> Respondent:** rhw Solicitors LLP

## RECORD OF A PRELIMINARY HEARING

**Heard at:** Watford; By video

**On:** 15 April 2021 am

**Before:** Employment Judge Allen sitting alone

### **Appearances:**

For the claimant: Mr A Griffiths of counsel

For the 1<sup>st</sup> respondent: Ms C MacLaren of counsel

Also, in attendance were: Mr R. Benney, solicitor for respondent; Mr N Richardson & Mr B Hatton witnesses for respondent.

### **COVID-19 Statement on behalf of Sir Keith Lindblom, Senior President of Tribunals**

This has been a remote hearing which was not objected to by the parties. The form of remote hearing was Video. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that I was referred to are in the agreed bundle (161 pages) and respondent's application (3 pages). The order made is described below.

## JUDGMENT

1. This matter is stayed pending the outcome of county court proceedings.

### Preliminary Issue

2. The claimant brings a claim under Section 23 of the Employment Rights Act 1996 (ERA) that certain sums were unlawfully deducted from his wages upon termination of his contract of Employment with the respondent.
3. Today's hearing is to consider the Respondent's application for these proceedings to be stayed in accordance with Employment Tribunals Rules of Procedure 2013; Rule 29 (R29).
4. The Respondent's application is clearly set out in writing. In summary it asserts that any deduction from final salary was made under the authority of the Business Assets Sale,

Purchase Agreement (**SPA**) entered into between the respondent, the claimant and 1 other on 20 March 2019.

5. **The Law** A deduction from wages may be permitted under S.13(1) ERA where the worker has signified his or her agreement in writing in advance of the deduction — S.13(1)(b).

Conclusion

6. If a worker has signified his or her agreement in advance to a deduction this would, as a rule, form a 'relevant provision' of the contract. It would seem that S.13(1)(b) was intended to cover situations where such an arrangement is clearly not a term (either oral or written) of the main employment contract and arises in a separate way — for example, a collateral agreement in respect of a loan; or as in this case the SPA.
7. Given that the Respondent's case is that the sums deducted from the Claimant's pay arise from (and are computed according to) the SPA, the SPA is a centrally-important document in the determination of the Claimant's ET claim.
8. The SPA is currently the subject of proceedings before the county court. Much of the factual material relied upon in each proceedings is the same.
9. The proper construction of the SPA is a matter concerning a purely commercial contract and the County Court construction of the SPA will greatly assist the ET in reaching its decision in the current proceedings. Consequently, a stay of proceedings in the Employment Tribunal is not inconsistent with the overriding objective (**R2**).
10. Given that there is a significant overlap between the Employment Tribunal and County Court proceedings, and to avoid parallel proceedings it is appropriate to stay proceedings in the Employment Tribunal.

**Employment Judge Allen**

Date: 4 May 2021

Sent to the parties on:

...13 May 2021.....

For the Tribunal Office:

...GDJ.....