



# EMPLOYMENT TRIBUNALS

## Claimant

1. Mr Martin Seib
2. Mr Oliver Hilton
3. Mr George Turnball

## Respondent

v

Property Collection Worldwide Limited  
(formerly Homebook.club Limited)

**Heard at:** Watford by CVP

**On:** 29 April 2021

**Before:** Employment Judge Alliott (sitting alone)

## Appearances

**For the Claimant:**

1. In person
2. In person
3. Did not attend.

**For the Respondent:** Mr Craig Cook (owner of the respondent)

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

**“This has been a remote hearing not objected to by the parties. The form of remote hearing was CVP. A face to face hearing was not held because it was not practicable and no-one requested the same.”**

## JUDGMENT

The judgment of the tribunal is that:

1. The respondent has made unauthorised deductions from the first claimant's wages and/or is in breach of contract and is ordered to pay the first claimant the net sum of £2,144.51.
2. The respondent has made unauthorised deductions from the second claimant's wages and/or is in breach of contract and the respondent is ordered to pay the second claimant the net sum of £737.98.
3. The third claimant's claim is struck out as it does not appear to be actively pursued and/or is dismissed upon withdrawal.

## REASONS

### **The third respondent's absence**

1. Notice of this hearing was sent to the parties on 2 January 2021. This included the third claimant.
2. At the start of this hearing at 10am, the third claimant was not in attendance. I caused my clerk to telephone the number we had on file and this went to voicemail.
3. Following the conclusion of this hearing, at approximately 12:30, the clerk informed me that Mr Turnball had telephoned her and stated that he did not realise the hearing was going ahead as he had not checked his e-mails. In any event, the claimant has e-mailed the tribunal to withdraw his claim. As such, even if I had not already struck-out the claim, it would stand to be dismissed upon withdrawal.

### **The first and second claimant's claims**

4. The first and second claimants were both employed by the respondent from 14 December 2015 until both resigned on 9 February 2016.
5. It is accepted by the respondent that the first claimant was on a salary of £55,000 per annum and that the second claimant was on a salary of £35,000 per annum.
6. Both claimants worked for 57 days.
7. The first claimant has put before me a payslip for the month of October 2015 (when working for a different company to the respondent). Mr Cook accepted that that represented the net pay due to the first claimant. The payslip records a net payment of £3,302.50. That translates into a daily rate of £110.08 based on a 30-day month. Accordingly, the first claimant should have been paid £6,274.75. He was actually paid £3,800, leaving a shortfall of £2,474.75.
8. During the course of this hearing, it was accepted by the first claimant that he had seven days holiday over the Christmas period and had only accrued four days holiday entitlement by the date of his resignation. Consequently, it was agreed that £330.24 should be deducted from the amount said to be owing leaving a balance due of £2,144.51.
9. As regards the second claimant, the second claimant calculated that he was due £4,209.51 net for his period of employment. Mr Cook accepted that that was an accurate assessment. Again, taking into account the three days holiday due to be recouped pursuant to the terms of the contract of employment, the second claimant's claim was reduced from £959.51 to £737.98.

10. These claims have a long and somewhat chequered history. Claim forms were lodged on 17 April 2016. The claims were stayed because there was a High Court action brought by the respondent against the claimants and others. It would appear that the High Court action came to an end upon the final rejection of the respondent's application to appeal at some time in 2018. Unfortunately, the claims appear to have remained dormant until the end of 2020 when a Case Management Order was made and this hearing was listed for a final hearing with a time estimate of three hours.
11. In accordance with the Case Management Order, the claimant's put in witness statements and evidence by 17 January 2021. Mr Cook put in his witness statement and exhibits thereto on 14 April 2021.
12. It is quite clear to me that Mr Cook is extremely bitter about the circumstances of the claimants leaving his firm's employment and that he contends that they conspired to set up in competition having taken confidential information from his company. I express no view on the merits of that position which is obviously disputed by the claimants. However, that was the substance of the case brought before the High Court.
13. Mr Cook has complained that there is no form ET1 concerning Mr Hilton's claim. From the files that I have it is clear that an application was made to include Mr Hilton's claim, along with Mr Seib's claim, when the fee was paid, as was then required. All three claimant's claims have claim numbers and were served on the respondent which filed a response in each of those claims. I am satisfied that all three claimants have claims before me.
14. No respondent's contract counter-claim has been made or accepted and there is no separate file for an employer's contract claim. As such, I am satisfied that there is no employer's contract claim before me.
15. Mr Cook sought to justify the shortfall in the payments made to the first and second claimants on the basis that they had been absent from work or not working for the respondent during working hours and so not entitled to be paid.
16. Normally, when an employee goes to a place of work, it is clear cut whether or not he is physically at work. Further, whilst at work the employee is entitled, prima facie, to be paid. If the employer seeks to reduce an employee's pay on the basis that he or she was not actually working for the employer for all or part of the time at work then it seems to me that clear evidence would have to be produced to demonstrate this.
17. However, the first and second claimants worked from home. Whilst there were hours of work set out in their contracts of employment, being salaried it is inevitable that there would have been a certain flexibility in terms of their work. It would have been open to them to decide when to take breaks.

**Case Numbers: 3400497/2016, 3400498/2016  
and 3400510/2016 (V)**

18. Mr Cook's evidence relating to why he says the claimants were absent from work was to take me to a number of exhibits to his witness statement, and assert that in order to do the work, to set up in competition with the respondent company, the claimants must have been doing their own work during their working hours. I do not accept that evidence. I cannot draw an inference that the claimants were not working from the fact that after they terminated their contracts of employment they may have set up in competition to the respondent. Mr Cook did take me to an e-mail dated 9 February 2016 from Clare Cook to both claimants, referring to them "both disappearing off the face the earth again" and asking for some form of communication. 9 February 2016, was of course the day they both resigned.
19. Both claimants denied not working for the respondent. The second claimant did accept that he had taken two hours off on 3 February to go for a job interview.
20. I find that Mr Cook has failed to prove that either claimant was absent from work and/or failing to work for the respondent during working hours. As such, I find that the respondent did not have a lawful reason to fail to pay wages properly due to the claimants and was in breach of contract in not doing so.
21. Accordingly, there will be judgment for the first and second claimants in the sums as calculated.

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**Employment Judge Alliott**

Date: 19 May 21

Sent to the parties on: 28 May 21

For the Tribunal Office