EMPLOYMENT TRIBUNALS

Claimant	Ms M Grisley
Represented by	Mr D Rogerson (friend)
Respondents	(1) Solmar Finance Inc (2) Glenbrook Associates Limited
Represented by	Mr E Kemp (counsel)
Before:	**Employment Judge Cheetham QC**

Preliminary Hearing held on 10 June 2021 at
London South Employment Tribunal by Cloud Video Platform

JUDGMENT

1. The claims against the Third Respondent (Werner Erhard) and the Fourth Respondent (Barbara Stevenson) are removed pursuant to Rule 34 and the claims against them are therefore dismissed.

2. The application to amend the claim by adding a complaint of discrimination is refused.

REASONS

1. This is a claim that was brought on 28 December 2019. The Claimant was employed between 1 February 2016 and 4 August 2019 as a Household and Property Manager. Her ET1 referred to claims for unfair dismissal, notice pay, holiday pay and other payments.

2. She brought her claim against 4 Respondents: (1) Solmar Finance Inc., (2) Glenbrook Associates Limited, (3) Werner Erhard and (4) Barbara Stevenson. The documentation seen by the Tribunal showed that she was engaged by the First and Second Respondent companies.

<u>The Third and Fourth Respondents</u>

3. The Respondents applied under Rule 34 to remove the claims brought against the Third and Fourth Respondents and have those claims dismissed.

4. The Tribunal read the witness statement of the Fourth Respondent, Barbara Stevenson, who is General Counsel for the First and Second Respondents. In that statement, she described the relationship between the Claimant and the Respondents and appended supporting documentation. Mr Rogerson did not dispute the contents of the statement, nor the validity of the documents, which did not suggest any possible employment relationship between the Claimant and the Third and Fourth Respondents.

5. In making the application and drawing attention to the contractual relationships, Mr Kemp pointed out that the corporate Respondents (the First and Second) had accepted the Tribunal's jurisdiction, so the issue was academic. In any event, there was no individual liability for the claims brought by the Claimant.

6. Mr Rogerson said in reply that the Claimant would say that the Third Respondent was her employer and, if the First and Second Respondents did not have subsidiary in the United Kingdom, "*the Third Respondent must be the de facto or de jure employer*". The Third Respondent had control over how the Claimant did her job.

7. Having heard the submissions and read the papers, the Tribunal ordered the removal of the claims against the Third and Fourth Respondents pursuant to Rule 34 and therefore dismissed the claims against them.

8. The First and Second Respondents have accepted the Tribunal's jurisdiction, therefore any judgment can be enforced against them. In any event, there is no basis for these individuals to have liability for the unfair dismissal and the various money claims and their inclusion was by association, rather than upon any contractual basis. Even on the Claimant's own case, it is also a mystery why the Fourth Respondent - in particular - was included.

Amendment

9. On 14 January 2021 the Claimant sought to amend her claim to include what she described as a claim for injury to feelings. The Respondents objected to this on 19 January 2021.

10. The Tribunal explained that injury to feelings was the name for the particular compensation awarded in the event of (for example) a successful claim for discrimination. The case law referenced by the Claimant did not assist her, because that related to when injury to feelings might be awarded, whereas the issue here was whether she could amend her claim to add a complaint of discrimination.

11. In her application, the Claimant described her claim as follows:

"We request to amend point 8.1 in the ET1 form to include discrimination on the bases of sex, national origin and education:
i. Claimant was addressed as 'sweetheart' by Mr Erhard.
ii. Claimant was called a 'bitch' by Mr Erhard.
iii. Claimant was instructed, yet refused, to wear a dress to work.
iv. Claimant was belittled by Mr Erhard implying that she was 'sloppy' because she is a 'Brit…' (British).
v. Claimant was disparaged for her work despite 'having a PhD'.
This was a continuing pattern of conduct as evidenced in the recordings of 17 April 2017 and 22 June 2018."

12. Mr Rogerson said that the harassment would be evidenced by recordings made between April 2017 and June 2018 and that these examples are a "pointer" to the alleged behaviour.

13. He said that the delay in applying was caused by the Third Respondent's behaviour, in that the Claimant had been conditioned to accept it. It was not until much later that she had realised what she had experienced. Also, her contract contained a confidentiality clause, so she could not talk about it. The Claimant had also been told by ACAS that she could add a claim for injury to feelings at a later stage.

14. The application to amend is refused. Although framed as a claim for injury to feelings, it is – as Mr Rogerson accepted - an amendment to add an entirely new claim for discrimination because of race and national origins ("education" not being a protected characteristic). The type of discrimination alleged is harassment.

15. While the Tribunal accepts that the Claimant may have had difficulties in articulating the claim, on any view this is a wholly new cause of action, which is also very significantly out of time. It would also prejudice the Respondents if the application was allowed, because they would be facing a claim that was very different to the one pleaded in the ET1 and would have to find witness evidence going back 4 years.

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Employment Judge S Cheetham QC
Date: 2 July 2021

Sent to the parties on
Date: 8 July 2021