



EMPLOYMENT TRIBUNALS

Claimant: Mr T Jeurninck & Mr M Scatena
Respondent: Piatto (London) Ltd (in voluntary liquidation)

UPON APPLICATION made by letter dated 6 September 2020 to reconsider the Judgment dated 5 August 2020 under rule 71 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013, and without a hearing

JUDGMENT

1. The Judgment is revoked.
2. The name of the respondent is amended to Piatto (London) Ltd (in voluntary liquidation) and the address for service to that of the liquidators.
3. The case will be re-listed for a preliminary hearing to determine the claimants' employment status for the purposes of their complaints of sexual orientation discrimination and unauthorised deductions from wages. The parties will be notified of the date and length of the hearing following the date for compliance with the order below.
4. By 12 February 2021, the parties are ordered to notify the Employment Tribunal and each other as to whether or not they have complied with the case management orders made by Employment Judge Ferguson at the preliminary hearing held on 20 June 2019 and if they have not, why not. In addition, the parties should state how many witnesses they intend calling to the preliminary hearing and the relevance of each witnesses' testimony. The Tribunal will then decide the length of the hearing and set a date.

REASONS

1. In the Judgment dated 5 August 2020, which was sent to the parties on 25 August 2020, I dismissed the claimants' claims because of their non-attendance at that preliminary hearing in circumstances where I believed they should have attended. The respondent did not attend either.
2. The claimants made an application for a reconsideration of the Judgment on 6 September 2020.
3. In essence the claimants' application is on the grounds that they were unclear as to whether the hearing was proceeding or not, having received confusing correspondence from the Tribunal, the respondent having not complied with the case management orders to provide documents and produce the bundles of

documents and to exchange witness statements, difficulties in obtaining advice and having written to the Tribunal seeking clarification but having received no response.

4. By a letter dated 1 December 2020, the Employment Tribunal wrote to the parties at my request, indicating that I was of the opinion that the application should proceed and should be granted. That letter invited the respondent, if it thought the Judgment should not be reconsidered, to write to the Tribunal with reasons by 8 December 2020. The letter further directed both parties to write to the Tribunal setting out their views on whether the application could be determined without a hearing.
5. In an email dated 7 December 2020, Mr Alessandro Spina wrote to the Tribunal on behalf of the respondent notifying that the respondent company had gone into administration and providing details of the administrator. On confirming the position with the Companies House website, I determined that the respondent company in fact went into creditors voluntary liquidation on 12 August 2020 and the liquidators are Mr Hasib Howlader and Mr Nicholas Andrew Stratten both of Third Floor, 112 Clerkenwell Road, London EC1M 5SA. Mr Spina had in any event provided an email address for Mr Howlader of hasib@hudsonweir.co.uk. I therefore direct that the name of the respondent is amended to Piatto (London) Ltd (in voluntary liquidation) and all further correspondence is sent to Mr Stratten and Mr Howlader at the above postal and email addresses.
6. In an email to the Tribunal from the claimants dated 15 December 2020, the claimants appear to have misunderstood the position and are requesting that a second preliminary hearing does not have to go ahead and could be determined without a hearing. To be clear, the matter I was asking them to respond to was whether it was necessary to have a hearing to consider their application for reconsideration of the Judgment dismissing their claims. Their email also repeats the difficulties that the claimants have experienced in obtaining advice. Unfortunately, the Tribunal cannot provide legal advice to the parties. That is something they must obtain themselves. However, at any hearing the Tribunal can provide assistance to unrepresented parties.
7. The Tribunal's powers concerning reconsideration of judgments are contained in rules 70 to 73 of the Rules of Procedure. A judgment may be reconsidered where "it is necessary in the interests of justice to do so." Applications are subject to a preliminary consideration. An application will be refused if an Employment Judge considers there is no reasonable prospect of the decision being varied or revoked. If not refused, the application may be considered at a hearing or, if the Judge considers it in the interests of justice, without a hearing. In that event the parties must have a reasonable opportunity to make further representations. Upon reconsideration the decision may be confirmed, varied, or revoked and, if revoked, may be taken again.
8. In the circumstances I decided that it was proportionate and in line with the Tribunal's overriding objective, as well as in the interests of justice, to determine this application without a hearing.
9. It is quite clear from the Tribunal's correspondence that the hearing was proceeding and so the claimants should have attended the hearing, which after all was by video link rather than having physically to travel to our offices in West Croydon, even if the respondent had not complied with the case management orders.
10. However, on reconsideration I can see that the claimants were clearly confused as to how the hearing could continue if the respondent had not provided any documents, prepared a bundle, or exchanged witness statements as they were required to do.

11. They had written to the Tribunal seeking clarification but had received no response. As a result, they remained confused as to what was happening. In an ideal world, if the Tribunal's resources had not been so severely stretched by the COVID-19 pandemic, then the Tribunal would have responded to the claimants' queries.
12. Given the circumstances set out by the claimants in their application, the respondent's apparent failure to comply with the case management orders, their own non-attendance, as well as the nature of the substantive claims which include allegations of discrimination and the claimants' difficulties in obtaining advice at the present time, I believe it is in the interests of justice that the case should be allowed to continue. I therefore revoke the Judgment of 5 August 2020.
13. The case will be re-listed for an open preliminary hearing, dealing with the claimant's employment status, and the parties will be notified of the dates in due course, following the date of compliance with the case management order as set out above.
14. The claimants are urged to seek advice, particularly as to the implications for their case, and the enforcement of any award of compensation if made, as a result of the respondent company being in voluntary liquidation.

Employment Judge Tsamados
28 January 2021