



EMPLOYMENT TRIBUNALS

Claimant: Mrs A Oliphant

Respondents: (1) Personal Representatives of Michael Beardsley
(deceased)
(2) Mrs Lindsay Gande

Heard at: Exeter **On:** 14 and 15 July 2021

Before: Employment Judge Smail, sitting alone

Representation

Claimant: Mr K McNerney, Counsel

Respondents: (1) Mrs Wadsworth (Sister and personal representative
of Michael Beardsley)
(2) In Person

JUDGMENT having been sent to the parties on 21 July 2021 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. By 3 claim forms dated 16 March 2020 and 9 April 2020, the Claimant brought claims now limited to notice pay and a redundancy payment. The Respondents are first, the estate of Michael Beardsley deceased; and secondly, Mrs Lindsay Gande.

The Issue

2. It is common ground that the Claimant's continuity of employment stretched back to 12 October 1993 and that she was dismissed when the shop closed for good on 24 December 2019. She had been employed throughout that time as a shop assistant in the card shop 24 Fore Street, Kingsbridge, Devon. It is common ground that she is owed a redundancy payment and notice pay; the issue is who was the employer or employers.

3. Defences of illegality have been abandoned. whilst it is accepted that Mr Beardsley failed to account to the Inland Revenue for tax and national insurance. It is not disputed that the Claimant always received net payments based on a minimum wage calculation and it is not now contended that the Claimant was a knowing participant in any fraud on the revenue. It is a feature of the case that Mr Beardsley serially failed to account for PAYE tax

and national insurance to the revenue and failed to pay VAT to Customs and Excise.

Findings of Fact

4. Key dates are on 12 October 1993 the Claimant started to work for Mr and Mrs Treleaven. They sold their business to Michael Beardsley in September 2005. Mr Beardsley was made bankrupt by Customs and Excise for non payment of VAT on 15 July 2014. He was discharged from bankruptcy on 15 July 2015. Mrs Gande became the girlfriend of Michael Beardsley. By profession she is a care worker. The relationship ended when Mrs Gande returned to Minehead in Somerset in July 2017.
5. On 24 June 2015, whilst Mr Beardsley was still bankrupt the Claimant and Mrs Gande entered into a contract of employment for the Claimant's work at the card shop.
6. On 7 August 2015, Mrs Gande bought Mr Beardsley's business off his trustees in bankruptcy for £10,000.
7. On 31 May 2016, Mrs Gande entered into a lease as a tenant from Mr Beardsley in respect of the shop premises. The ostensible rent due was £12,000 per year. Mr Beardsley died in July 2019.
8. During Mr Beardsley's lifetime Mrs Gande never actually ran the business; he did. She bought the business for £10,000 so that he could remain engaged with it. She entered into the lease of the shop - not to occupy the shop or pay rent on it - but so that Mr Beardsley could provide sham evidence to a mortgage lender to lend him money and put a mortgage on the shop premises. She never paid any rent. She entered into a contract of employment with the Claimant so that the Claimant could be employed by a non bankrupt employer.
9. Mrs Gande and the Claimant – in her final position in the proceedings - both urged me to find that the employment contract was a sham and that the employer always was Mr Beardsley. Mrs Gande opened a business account with Santander, it was in her name. Whilst it was in her name, Mr Beardsley operated it. The account paid the business creditors. Payments for the card machine in the shop went into that account. Cash payments in the till were used by Mr Beardsley for purposes including paying the Claimant. I accept that as a matter of fact and reality Mrs Gande was not the employer during Mr Beardsley's lifetime. This was especially true after she returned to Minehead in July 2017. Notwithstanding the written contract of employment dated 24 June 2015, the employment under that was either always a sham in favour of Mr Beardsley or in any event, the contractual situation reverted to Mr Beardsley from July 2017, when Mrs Gande returned to Minehead.
10. The difficult analysis in this case is what was the position upon Mr Beardsley's death and upon the Claimant receiving notice of termination. When Mr Beardsley died in July 2019, Mrs Wadsworth his sister and one of his personal representatives assumed that the business was Mr Beardsley's. She then discovered over time that the paperwork we now have suggested this assumed position may not be so simple. It was her who informed Mrs Gande that Mr Beardsley had died. She did ask Mrs Gande to help out with

the aftermath and certainly in October 2019, Mrs Wadsworth and her fellow personal representative - an old girlfriend of Mr Beardsley - assumed that they were to make a decision about the running of the business, which was that the business had to close without the appointment of a manager.

11. The business account in Mrs Gande's name continued to pay out the business creditors over this period. Mrs Gande was conscious that on one view the business was in her name and the business was running up debts to creditors that had to be paid. That said, Inland Revenue and Customs and Excise have accepted, following penalty appeals, that her role in the business ceased when she left in July 2017 and they have not come against her for the business's debts of tax and VAT.
12. There was a meeting between Mrs Gande, her financial advisor Mr Travis (who had also been Mr Beardsley's financial advisor) and Mrs Wadsworth and her solicitor on 19 December 2019 at Mr Travis's house. The outcome of this was that the business and shop were to be closed on Christmas Eve and the card shop would stop trading. The intention was that the shop premises would be sold by the estate. It is more than uncertain at the present time as to whether a sale of the premises will generate any proceeds; there is the mortgage capital and mortgage arrears to pay off first. There is no certainty that the estate is solvent.
13. Following the closure of the shop Mrs Gande did continue to pay off debts from the £10,000 that was left in the business account in her name. She took out a cash payment of £5,000 on 3 March 2020 and one of £3,000 on 15 April 2020. She invites me to accept that those payments were to pay off debts of the business. She has no receipts for those. It seems to me equally possible - I do not decide the matter today and do not have to - that she was repaying herself part of the £10,000 she had invested in the business to allow Mr Beardsley to work. I do not know that for certain, but it is certainly equally possible.

Conclusions

14. The issue as to who the employer was at the time of notice of dismissal is accordingly a difficult one. We have informal relationships and unclear paperwork caused by Mr Beardsley's difficulties in dealing in a straightforward way with the business.
15. I am persuaded at the end of the day that the Claimant's final position is a fair one. It is not right to find that Mrs Gande was ever the employer of the Claimant. She was used by Mr Beardsley to facilitate the continuation of his business and to enable him further to work; but all documentation suggesting that she was the employer or the tenant of the premises was sham and is not to be relied upon by a court. The £10,000 acquisition of the business from the trustees and bankruptcy was a genuine transaction, no doubt about it. It is that £10,000 which Mrs Gande claims she is entitled to repayment pursuant to the understanding she had with Mr Beardsley. It seems that she was persuaded in the context of the relationship to do Mr Beardsley these various favours. Plainly, it was not entirely straightforward, but at the same time I accept the Claimant's submission that the reality of the matter was that Mr Beardsley was the employer. Mrs Wadsworth assumed that upon his death that would be the position. I can understand why the discovery of the

paperwork complicated that matter in her eyes; but the reality of the matter is that Mrs Gande was never the employer.

16. I am satisfied on the balance of probability that the contract of employment between the Claimant and Mr Beardsley, as subsisted post July 2017 when Mrs Gande returned to Minehead, continued following his death with the personal representatives up until their decision to close the shop premises. I have little doubt that Mrs Gande also was keen for that to happen because that stopped debts potentially accruing in what might be her name.
17. It is unfortunate that the Respondents have not managed to pay the Claimant what unquestionably is due to her - a redundancy payment and the balance of any notice payment due - and that she has had to bring these proceedings. The informality and lack of attention to normal business relationships of Mr Beardsley has caused this situation. It has been for me to do my best today to try and sort out at the employment angle of that. It is my judgment that, on the balance of probability, upon his death, the employment relationship reverted to the estate. It limped on for a few months before closure, a fate sealed by the decision of the estate to sell the business premises.
18. The indication from the estate is that there are unlikely to be any funds once the mortgage capital and arrears have been paid. It may well be, as the Claimant suspects, that the Redundancy Payments Office/Insolvency Service will need to be called upon.

**Employment Judge Smail
Date: 11 August 2021**

Sent to the Parties: 26 August 2021

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