



EMPLOYMENT TRIBUNALS

Claimant: Ms E Neale

Respondent: Property Aspire Ltd

Heard: Remotely (by Cloud Video Platform) – Midlands West

On: 27 January 2022

Before: Employment Judge Power (sitting alone)

Representation

Claimant: in person

Respondent: Mr N Topliss, Director of Property Aspire Ltd

RESERVED JUDGMENT

The complaint of unlawful deductions from wages is not upheld.

REASONS

Issues

1. The Claimant's claim dated 11 August 2021 is in respect of unlawful deductions from wages in the sum of £2592. The Claimant says that she

entered into a contract of employment with the Respondent dated 6 May 2021 and that she has not been paid for work carried out under that contract between 13 May 2021 and 5 August 2021. The Claimant says that she was engaged as a Property Lettings Advertising Assistant via an advertisement placed by the Respondent on Indeed.com website. She says that she is owed money for 18 hours of work per week at the rate of £12 per hour.

2. The Respondent responded to the claim on 17 September 2021 and states (by the evidence of its Director, Mr Neil Topliss) that it has never engaged or employed the Claimant to undertake work on its behalf. The Respondent denies that it owes the Claimant the sums claimed and submits that the claim brought by the Claimant is fraudulent and based on forged documentation.

Procedure

1. Although the parties had been asked to provide an agreed bundle of documents prior to the hearing, this had not happened. I had the claim and response forms, a statement from the Claimant (with twelve documents attached: comprising various emails appearing to be sent between the Claimant and Mr Topliss of the Respondent on various dates between 5 May 2021 and 9 August 2021, and a contract of employment dated 6 May 2021, which appeared to have been signed by the Parties via DocuSign), and three documents provided by the Respondent as part of the response to the claim (photographs of a property (Wharf Road) which was undergoing renovation, a letter to the Respondent from Complete Building Control Ltd dated 31 August 2021 concerning works at the Wharf Road property and a contract between Mr Topliss and Leaders Romans Group letting agency dated 14 January 2021 in respect of a property at Swindon Road, Egbaston).
2. By Case Management Order of 23 August 2021, the Tribunal had ordered the parties to provide to each other full written statements with relevant documents attached in chronological order on or before 18 October.
3. The Claimant had provided a Schedule of Loss on 21 September 2021 and an unsigned witness statement with twelve documents attached on 18 October 2021.
4. The Respondent did not provide a witness statement. At the start of the hearing, I considered an application from the Respondent to be allowed to give oral evidence. Mr Topliss submitted that he had not wanted to provide a witness statement or further documents ahead of the hearing as he asserts that he is the victim of fraud and that the Claimant would have been given access to more of his personal information had he complied with the Case Management Order. The Respondent appeared distressed at times during the hearing, consistent with his assertion. I noted that his response to the claim was already set out in the ET3 and that he had sent various documents to the Tribunal at the time of submission of his ET3 upon which his response was based and which the Claimant had seen and

had an opportunity to consider in advance of the hearing. Having given the Claimant an opportunity to comment on the Respondent's application and considered her response, in the circumstances I decided it was in line with the overriding objective to permit Mr Topliss to give oral evidence. After the Respondent's evidence in chief had concluded, the Claimant was permitted a break to think of questions that she wanted to put to Mr Topliss in cross-examination.

5. The Claimant and Mr Topliss of the Respondent gave evidence. They each had the opportunity to ask questions of the other. Mr Topliss displayed the signature page of his passport during his evidence on screen in order to demonstrate the difference between the signature being attributed to him on the contract of employment dated 6 May 2021. The Respondent also provided copies of bank statements for the period May-August 2021. After the Claimant had completed her evidence, the Claimant asked to send to the Tribunal copies of screenshots from her phone showing a confirmation email from "Indeed Apply" and messages with three potential leads in respect of lettings. Further short breaks were taken to allow the parties to consider the additional documentary evidence submitted by both parties during the hearing. Both parties made closing submissions.

Facts

1. The Claimant says that she was asked by the Respondent to advertise four properties for let on Facebook Marketplace during the period 13 May – 5 August 2021, and that the Respondent had been engaged by the owners of those properties to advertise them for let and to arrange viewings for potential tenants. The Claimant says that her role was to advertise the properties and compile lists of the email addresses of potential tenants and to send these to the Respondent so that the Respondent could organise viewings with a view to securing tenants for the property owners. I accepted the evidence of Mr Topliss that he had entered into a contract with a property management agency (Leaders Romans Group) on 14 January 2021 to undertake letting management for a property that he owned personally at Swindon Road, Egbaston. He had selected this particular agency because he had observed it locally (it managed lettings for a neighbouring property) and, on balance, had he wished to find tenants for other properties around that same time, I find it likely that he would have used the same arrangement.
2. I find that the Respondent had not agreed to find tenants for the landlords of properties identified by the Claimant during her evidence as Evering Avenue in Poole, Moreton Road N1, Manor Road, St Albans and Palace Court W2. I find that the Respondent did not receive any payments related to such work. As such, the Respondent had no reason to engage the Claimant to undertake such work. I accept the Respondent's evidence that it would not have been commercially viable to enter into such an

arrangement, as – on the basis of the figures that appear in the emails produced by the Claimant – such an arrangement would have left the Respondent potentially liable to pay the Claimant wages of £2592 to list the four properties, relative to a fee that the Respondent would have received of £199 per property (and only then if a tenant was successfully identified). I conclude that the Respondent did not advertise a job vacancy for a Property Lettings Advertising Assistant on Indeed.com during March/April 2021 or at any time and had no reason to do so.

3. The contract of employment produced by the Claimant contained only a company name and company number for the Respondent, with no address details. The Claimant states that she obtained the address details from a search of Companies House, which ultimately led to the ET3 being sent to the Respondent's accountant, rather than the Respondent directly. Mr Topliss was not sufficiently familiar with the Respondent's company number to be able to identify it during evidence and, on the balance of probabilities, I concluded that, had Mr Topliss entered into a contract with the Claimant, he would have chosen to insert a postal address in the address section of the contract, rather than the company number. Similarly, he would not have chosen to use the company number to sign off his emails (as appeared in the emails produced by the Claimant). On balance, I concluded that the Respondent did not send these emails to the Claimant.
4. I do not accept that the Claimant and the Respondent entered into a contract of employment under which the Claimant would advertise those four properties for letting on the Respondent's behalf on Facebook Marketplace. On the balance of probabilities, I concluded that the signature on the contract produced by the Claimant was not that of the Respondent. The Respondent had submitted to the Tribunal a copy of the contract that Mr Topliss had entered into with Leaders Romans Group (also signed by DocuSign) which bore a different signature. This signature corresponded with those on his passport and driving licence which he produced during the hearing.
5. The Claimant did not provide a copy of the advertisement that she responded to on Indeed.com nor copies of screenshots of the work she had undertaken on Facebook Marketplace related to the four properties. After she had completed her evidence, she was able to find and send to the Tribunal a screenshot of an email to Elizabeth Neale from "Indeed Apply" dated 30 March 2021 which stated that an application had been submitted for "Property Advertising Assistant, Property Aspire Ltd – London, Greater London" which described itself as a "Lettings agency specialising in high quality rental properties to professionals". I find that the Respondent did not place this advertisement.
6. I accept that the Respondent's email address is propertyaspire@gmail.com. This is the address that appears on the Leaders Romans Group contract. The emails produced by the Claimant appear to be from the email address propertyaspireltd@gmail.com. I find that this is not the Respondent's email address. The Claimant had not

produced those emails in their original format. She confirmed to the Tribunal that she had copied and pasted these into the documents attached to her witness statement and had altered them by adding highlighting and italics to the original text. Some of the emails were missing dates and times and it was not possible to place reliance on these emails as an accurate record of what was sent or when these were sent and by whom. In any event, I do not accept that these were sent by the Respondent.

7. Accordingly, I find that the Claimant and the Respondent did not enter into a contract of employment for the Claimant to work for the Respondent as a Property Lettings Advertising Assistant.

Law

1. Section 13 of the Employment Rights Act 1996 provides that an employer shall not make a deduction from the wages of a worker employed by him unless the deduction is required or authorised to be made by virtue of a statutory provision of the worker's contract or the worker has previously signified in writing their agreement or consent to the making of the deduction.
2. An employee has a right to complain to an Employment Tribunal of an unauthorised deduction from wages pursuant to s23 of the Employment Rights Act 1996.

Application of law to facts

1. I have found that the Claimant was not employed or engaged by the Respondent during the period from 13 May 2021 to 5 August 2021.
2. Accordingly, the protection of section 13 of the Employment Rights Act 1996 is not engaged and the Claimant's claim under s23 of the Employment Rights Act 1996 must fail.

Employment Judge Power

Date: 31 January 2022

JUDGMENT SENT TO THE PARTIES ON 17/02/2022
FOR THE TRIBUNAL OFFICE

Notes

1. All judgments and written reasons for the judgments (if provided) are published, in full, online at www.gov.uk/employment-Tribunal-decisions shortly after a copy has been sent to the parties in a case.