



EMPLOYMENT TRIBUNALS

Claimant

Respondent

v

P Sharma

A Idea Limited

Heard at: Watford
Before: Employment Judge Anderson

On: 22 April 2022

Appearances

For the Claimant: In Person
For the Respondent: Mr Bassetti (director)

RESERVED JUDGMENT

1. The claimant's claim for unpaid wages is dismissed.

REASONS

1. By a claim form presented on 24 February 2022 the claimant complains of unlawful deduction from wages. His case is that he was employed by the respondent from 21 August 2020 until he resigned on 19 October 2021 and received no wages from November 2020 until his resignation.
2. By a response filed on 31 March 2021 the respondent resisted the complaint on the grounds that any contract of employment was void for illegality as any contract that was created was for the purpose of fraud.

The Issues

3. At a preliminary hearing on 21 October 2021 before EJ Smeaton the following list of issues was agreed:
 - a. Was Mr Sharma an employee or worker of the respondent within the meaning of s230(1) and (3) Employment Rights Act 1996;
 - b. If so, was there a legally enforceable contract in place between the parties at the relevant time (Mr Sharma claims UDW from November 2020). The respondent says there was not because:

- i. The contract is voidable for fraudulent misrepresentation and has not been affirmed in anyway by the respondent; and/or
 - ii. The contract is contrary to public policy and void for illegality;
- c. If there was a legally enforceable contract in place, what was properly payable to Mr Sharma;
- d. Did the respondent make an unauthorised deduction from Mr Sharma's wages in accordance with s13 Employment Rights Act 1996; and
- e. If so, how much is Mr Sharma owed.

The hearing and evidence

4. At the outset of the hearing the claimant said that the respondent had added four pages to the hearing bundle on 20 April 2022, the bundle having been previously agreed between the parties on 8 April 2022. The respondent confirmed this was the case and said that he had come across the documents (a series of WhatsApp messages) only recently and had added these to the bundle as soon as he had discovered them. He confirmed that he had not discussed this matter with the claimant. The respondent was previously represented by solicitors but has been self-represented since 14 April 2022. The claimant said that the documents were forgeries and should not be allowed in on that basis as well as because they were disclosed very late. The respondent said they were not forgeries, and he could provide his phone to prove that. As the documents are relevant to the claim and the claimant had seen the documents before the hearing commenced, I decided that the documents could form part of the evidence before the tribunal. I advised the parties that I had taken note of the claimant's claim that the documents were forged and after hearing all of the evidence would decide what weight to give the documents, which show a WhatsApp discussion about a furlough application.
5. Although both parties had written a witness statement and the statements had been exchanged, neither party had brought a copy to the tribunal, either for the tribunal's use or their own. I note that case management orders were that the respondent should bring copies for the tribunal. Considerable time was spent in the morning determining which documents should be before the tribunal and which documents each party had had sight of. For this reason, witness evidence did not start until after lunch and consequently judgment was reserved.
6. The tribunal received a bundle of 143 pages, largely agreed between the parties except for the late addition of pages 83a-d, a witness statement from the claimant, a witness statement from Mr Basetti and skeleton arguments from each party.

7. The claimant had made notes for himself after reading the respondent's witness statement but as noted above had not brought a copy with him and was not of the view that this was necessary for his cross examination of the respondent. The respondent said he had seen the claimant's skeleton argument and witness statement but was not clear if he had read them and had not understood that the documents were relevant to cross examination at the hearing. I asked the parties if they wanted to make an application to postpone. Both parties were clear that they wanted to continue with the hearing today and resolve the claim. Reading time was afforded to both parties while I read, and I advised the parties that cross examination would be limited to one hour each in view of the late start.

Findings of Fact

8. The claimant and Mr Basetti met in 2019 and decided to form a company together providing IT services, specifically services related to artificial intelligence and gaming. The company was incorporated on 14 November 2019 and called A Idea Limited.
9. Mr Basetti said that the plan was for the claimant to be a 90% shareholder and for him to hold 10%. The claimant made no comment on this. I note from the bundle that Mr Basetti emailed the claimant on 13 January 2020 (date given on the index) setting out what he wanted to happen to his 10% in the event of his death. I find therefore that it was the settled intention of the parties to set the business up in this way.
10. The claimant is an asylum seeker. He had no right to work in the UK until 27 February 2020. Asylum Registration Cards (ARC) were provided in evidence showing that the claimant had no right to work at the time the business was incorporated. From 27 February 2020 he had a limited right to work in a shortage occupation category. He did not either before or from 27 February 2020 have recourse to public funds. The claimant said in oral evidence that he did not have the right to become a director in a company incorporated in the UK.
11. It was the respondent's position that he was unaware at the time the business was incorporated that the claimant was not permitted to become a director. The claimant said that he showed his ARC to the respondent and the respondent's accountant at a meeting in November 2019. The business was set up with both the claimant and the respondent as directors. Shortly afterwards the claimant was removed as a director. Mr Basetti said that the claimant was removed as a director as he did not have a bank account, could not get one because of his asylum seeker status and that meant that no company bank account could be opened while the claimant was a director. The claimant said that he had made it clear from the outset that he could not be a director at that time, had not given permission to be registered as one and asked to be removed as soon as he realised he had been named as one. There was little documentary evidence about this in the bundle. The ARCs do not show that the claimant was ineligible to become a director. In an email dated 15 November 2019 the respondent sends the claimant a link

to the Companies House information about the newly incorporated company. There is no record of the claimant's response. There is an email from Mr Basetti dated 27 December 2019 to his accountant about removing the claimant as a director in which he states:

'Please can you update the company records for A IDEA LTD and make me the sole shareholder because it is still showing Pushp Sharma as partner. This in run has held the new bank account from opening because they need an ID Verification for Pushp Sharma that is not possible at the moment.'

The accountant replies that this was done on 24 November 2019. On this evidence I find that the company was incorporated in the names of Mr Basetti and the claimant and the claimant was shortly after removed as a director having told Mr Basetti that he could not provide the necessary documents required by way of identification to open a business bank account. There is no written evidence that the claimant told Mr Basetti that he could not be a director and that Mr Basetti ignored this. There is written evidence that Mr Basetti thought that the claimant could not be a director because he did not have a bank account.

12. On 11 August 2020 the claimant emailed Mr Basetti with the news that he had been given permission to work in shortage occupations. He suggested two ways forwards, one that the respondent offer him a job (he notes under this option that he did not have a national insurance number but could work for some time without one) or two, they could wait until the *'Home office scraps conditions to my work permit then I can be cofounder and it will save our energy and time.'*
13. On 17 August 2020 the claimant deposited £1980.00 into the respondent's bank account. The sum is described by the parties as 'corpus funds'.
14. The claimant had planned to make use of the Imperial College incubator hub which provides space and services to science startup businesses. Mr Basetti said that the claimant told him that as he was not a director of the respondent, he needed instead to be able to prove he was an employee and they agreed that the respondent would offer the claimant employment. Mr Basetti contacted his accountant by email on 30 August 2020 asking the accountant to set up the claimant as an employee on an annual salary of £7200. On 30 September 2020 he sent a further email revising the salary to £24,000. Mr Basetti said this was because the claimant had advised him that this higher salary would stop questions from Imperial College about how he was able to support himself. The claimant denied that this was the reason he and Mr Basetti decided he should be offered employment and denies that this was the reason for the increase in wages from £7200 to £24,00. He said he was negotiating a salary with the respondent based on his skills and experience. I do not find that it is likely that the claimant would have initially agreed with the respondent a salary of £7200 as evidenced by the instructions to the accountant on 30 August and then started a negotiation. There is no evidence of a negotiation. The company was not generating any income as no work had started and Mr Basetti had not put any capital funds

into the respondent. Furthermore, as is agreed between the parties, and evidenced by the bank accounts, the claimant paid his own money into the company bank account, had it withdrawn as 'wages' and then paid it back into the bank account. In an email which is listed on the bundle index as dated 29 August 2020, the claimant tells the respondent he (the claimant) should rent his own flat in order to obtain a utility bill in his own name, with rent paid through the company, and notes

'Moving London- Once it's done (personal bank) then I finish my 3 months' probation period then need to show a higher increased salary to move there.'

This scenario does not lend itself to a situation in which a prospective employee is negotiating a wage. I find that the respondent offered the claimant employment at the claimant's suggestion in order to facilitate the claimant's plan to obtain the services of the Imperial College incubator hub for the respondent. I find that the salary of £24,000 was settled upon as the claimant suggested that was a figure which indicated that the claimant was in credible employment.

15. The documents referring to the creation of an employment contract are confusing. There is an offer with a salary of £24,00 from the respondent to the claimant by email and his acceptance of that offer. The document is undated but is listed on the bundle index as being 13 August 2020. The parties agreed that the position was advertised on an internet recruitment website, the claimant applied for it, and was ultimately appointed. There is an email from Mr Basetti to the claimant on 20 August confirming his application and that he has been shortlisted. There is a further offer from the respondent to the claimant of employment in the same terms in a letter dated 21 August 2020, signed by Mr Basetti. I note that all of this predates Mr Basetti's instructions to the accountant to pay £7200, but neither party commented on this in evidence and the claimant agreed that the original salary discussed was £7200. I find that the parties agreed that because the claimant could not become a director the respondent would offer him employment in order to satisfy any pre-requisites for applying to benefit from a place in the Imperial College incubator hub. To that end an offer of employment was made to the claimant by the respondent and that offer was accepted. The offer letter states that employment can commence from 21 August 2020.
16. On 11 September Mr Basetti provided an open reference letter for the claimant confirming permanent employment at a salary of £2000 per month.
17. The respondent's bank account statements were provided to the tribunal for the period 23 January 2020 to 9 February 2021. Utility bills, council tax and rent are paid out of the account from October 2020 onwards. The claimant confirmed that this was for his personal dwelling, not company premises. In addition, there are four cash deposits as follows: £1980 on 17.8.20, £2000 on 11.9.20, £1860 on 23.9.20 and £1960 on 22.10.20. The following cash withdrawals are recorded: £1663 on 23.9.20 and £1960 on 22.10.20. Three

pay slips are provided showing a net salary per month to the claimant of £1663.40 for September, October and November 2020.

18. It was agreed by the parties in oral evidence that the money paid into the business account was the claimant's own money and the withdrawals on 23 September 2020 and 22 October 2020 were made by Mr Basetti for the claimant's salary under the employment contract, and that the money was immediately paid back into the account after withdrawal.
19. On 22 October 2020 in an email the claimant said to Mr Basetti that *'in the last two months I have done cloning of four major hits (video games) and specifications charts have been generated.'* Mr Basetti's oral evidence was that he had never seen evidence of any work carried out by the claimant. The claimant said that he had done work but it was never demanded or reviewed. He said the applications to higher education establishments in the bundle were part of that work. In response to Mr Basetti's question about work done after October 2020 when the claimant expected to be furloughed (as explained below) the claimant said *'everyone was getting paid for doing nothing then'*. The claimant has provided no evidence of work done even though this aspect of the claim was contested by the respondent in its grounds of response. I find that no work was carried out by the claimant for the respondent after the offer of employment was made and accepted. I find that a collection of applications to higher education institutions for a range of courses, some of which have no obvious connection to the respondent's business or the claimant's job title, do not amount to work carried out by the claimant for the respondent.
20. On 30 October 2020 Mr Basetti emailed the claimant as follows:

'Due to the COVID-19 and the job support scheme offered by the government of UK your employment contract has been amended with new conditions that show how the job support scheme affects the payment structure.

Please refer to page 5 and section 0, which has three new items related to your job support scheme and feel free to contact me.

Further to this I will inform you on the exact breakdown of salary from the business and the money that you receive from the job support scheme after I receive the clarification from the company accounts team.'

The wording of the email implies that there was an attachment, but it was not provided to the tribunal.

21. On 20 November 2020 there was a WhatsApp exchange between the claimant and the respondent. This was the late addition to the bundle objected to by the claimant. When making his objection he said that the documents were false and should not be allowed in as evidence. When questioned about the documents in oral evidence the claimant said that he could not remember and it might be true, but he no longer had the phone he had at that time. I was given no evidence on which I could conclude that the

documents are other than genuine and find that they are a true record of a conversation between the parties on 20 November 2020.

22. The importance of these two documents is that they relate to the respondent's allegation that the claimant approached Mr Basetti and asked to be put on furlough, to which Mr Basetti agreed. The claimant denies that he made such an approach or agreed to the proposed changes to his contract referred to in the email of 30 October 2020. The conversation of 20 November 2020 indicates that the claimant was actively looking for a furlough arrangement which he could show to Imperial College. I find that the parties had agreed that the respondent should make an application for the claimant to benefit from the government furlough scheme.
23. As it happened, because the respondent's accountant had not set up the claimant on the payroll by a specific cutoff date, the claimant was ineligible for the furlough scheme.
24. The claimant emailed Mr Basetti on 15 December 2020 and 15 January 2021 asking for an update on the furlough situation. On 18 January 2021 he emailed asking about taking legal action against the respondent's accountant due to his failure to progress the furlough application. Mr Basetti emailed the accountant on 1 February 2021 about the furlough application and was reminded by the accountant the same day that he had advised on 14 December 2020 that it was not something the accountant could deal with. He forwarded this information to the claimant on 11 February 2021.
25. The claimant contacted ACAS to commence early conciliation on 28 January 2021. A claim to the tribunal was submitted on 24 February 2021 a day after ACAS conciliation concluded.
26. The claimant sent a letter to Mr Basetti on 19 October 2021 resigning his employment.

Submissions

27. The claimant referred to the document at pages 55-57 of the bundle (an offer of employment) and s1 of the Employment Rights Act 1996. He said an employer must provide a single document showing terms and a single document showing any agreed changes to the statement of terms. The claimant said that the changes to terms and conditions suggested by the respondent on 30 October 2020 were illegal according to his (the claimant's) immigration status. He said that under ss27 and 13 Employment Rights Act 1996 he should not have suffered unlawful deductions from his wages. He said he was due wages from August 2020 to October 2021 and the facts are self-explanatory.
28. Mr Basetti for the respondent said that right from the beginning he was drawn into a contract, he was manipulated and exploited into agreement by the pitch for AI and that it would generate multi-millions of pounds. He said he was promised an office would be set up in the Imperial College incubator hub but he had been manipulated into agreeing an employment contract

which had led to this tribunal claim. Mr Basetti said the claimant's intentions had been illegally based from the outset, the claimant had used Mr Basetti's time and his energy to get everything he needed to carry out his nefarious activities.

The Law

29. S230 of the Employment Rights Act 1996 defines employees and workers:

(1) *In this Act "employee" means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.*

(2) *In this Act "contract of employment" means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.*

(3) *In this Act "worker" (except in the phrases "shop worker" and "betting worker") means an individual who has entered into or works under (or, where the employment has ceased, worked under)—*

(a) *a contract of employment, or*

(b) *any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual;*

and any reference to a worker's contract shall be construed accordingly.

30. S13 of the Employment Rights Act 1996 deals with unauthorised deductions from wages:

An employer shall not make a deduction from wages of a worker employed by him unless—

(a) *the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or*

(b) *the worker has previously signified in writing his agreement or consent to the making of the deduction.*

Decision and Reasons

31. The claimant says that he was employed by the respondent under a valid contract from 21 August 2020 until he resigned on 19 October 2021 and that he was not paid any wages from November 2020 to October 2021.

32. The respondent says that the contract is void for illegality or fraudulent misrepresentation. The respondent relies on the principles in *Stoffel and Co v Grondona 2020 UKSC 42* in respect of its argument on illegality. I was not directed to any particular part of that judgment, and it seems to me that the

case simply restates the guidance set out in the case of *Patel v Mirza* [2016] AC 467. Lord Toulson found in that case that an illegal contract can still be enforced unless it would be contrary to the public interest and to do so would harm the integrity of the legal system. He said that in order to assess this, it is necessary to consider:

- the underlying purpose of the law that had been breached,
- any other relevant public policy which might be affected by the denial of the claim, and
- whether denial of the claim would be a proportionate response to the illegality (noting that punishment is a matter for the criminal courts).

33. The respondent says that the contract was created for the purpose of fraud, it was for a criminal or immoral purpose and so contrary to public policy and was illegal from the outset. It says that the basis was the deception by the claimant of either the respondent or some other person. Though not specified I take it that the other 'person' is Imperial College.

34. I find that the creation of the contract does not fit the definitions of fraudulent misrepresentation or illegality as claimed by the respondent. Whilst it was clear from the evidence that the purpose of the contract was to represent to Imperial College that the claimant was financially sound, there was insufficient evidence provided of an attempt to defraud the college or anyone else. There was no evidence that the business idea was not well founded or that it was part of a plan to defraud anyone. It is not clear to me either what law has been breached or public policy offended for the purpose of an illegality argument. There was no evidence about what happened at Imperial College or what representations were in fact made to it by the claimant, or how he and/or the respondent would have benefited in that respect, specifically from the contract having been formed. There is no evidence that Mr Basetti or the respondent were defrauded. The evidence is that Mr Basetti understood exactly the purpose of the employment contract.

35. However, it is clear that the contract was not a genuine contract of employment negotiated between, and entered into by, the respondent and the claimant for the purposes of the claimant providing services to the respondent.

36. I find that the contract is a sham. A sham contract was defined by Lord Diplock in the case of [Snook v London and West Riding Investments Ltd \[1967\] 2 QB 786](#) at para 802 (as quoted by Lord Clarke in *Autoclenz v Belcher* [2011] UKSC 41):

"I apprehend that, if it [ie the concept of sham] has any meaning in law, it means acts done or documents executed by the parties to the 'sham' which are intended by them to give to third parties or to the court the appearance of creating between the parties legal rights and obligations different from the actual legal rights and obligations (if any) which the parties intend to create. But one thing, I think, is clear in legal principle, morality and the authorities ... that for acts or documents to be a 'sham', with whatever legal consequences follow from this, all the parties thereto must have a common

intention that the acts or documents are not to create the legal rights and obligations which they give the appearance of creating.”

37. The claimant and Mr Basetti decided to enter into business together and for that purpose the respondent was incorporated. Because of his asylum status and/or his lack of a bank account the claimant was unable to act as a director of the respondent and so suggested to Mr Basetti that the respondent employ him in order that he had a basis on which he could continue to pitch to Imperial College for space in the incubator hub. Mr Basetti agreed, a job description was drawn up and ultimately an offer of employment was made and accepted. There was no evidence presented of any intention of either party that the contract was anything more than a vehicle to move forward with the claimant's plans for the respondent company while he could not act as a director. Mr Basetti paid no money into the respondent, the respondent did not generate any money as no business took place, the claimant paid his own wages for two months from the capital funds he had deposited in the business, and then paid the wages back in as capital, and there is no evidence of work done by the claimant. The evidence about how the contract came about, and subsequent dealings between the parties on the bank account and furlough intentions, is such that it is clear that the parties' common intention was that the documents [the offer letter and acceptance] would not create the legal rights and obligations which they gave the appearance of creating.
38. For this reason, I find that the claimant was neither an employee nor a worker of the respondent and there was no legally enforceable contract between the parties.
39. The claimant's claim for unpaid wages is dismissed.

Employment Judge Anderson

Date: 3 May 2022

Sent to the parties on: 10 May 2022

For the Tribunal Office