



## EMPLOYMENT TRIBUNALS

**Claimant: Mohammad Chowdhury**

**First Respondent: Queenscourt Law Limited**

**Second Respondent: Solar Security Films Limited**

**Heard at: London Central (via CVP)**

**On: 16 and 17 March 2022**

**Before: Employment Judge Bunting**

### Appearances

**For the Claimant: In person**

**For the First Respondent: Mr Peter Maratos**

**For the Second Respondent: Mr Satnam Singh Talwar**

## RESERVED JUDGMENT

The Judgment of the Tribunal is that :

In relation to claim **2307389/2020**

1. The first respondent made unauthorised deductions from wages by failing to pay the Claimant the full amount of wages due from 01 February 2020 to 30 June 2020, and is ordered to pay to the Claimant the sum of £12,500 being the total gross sum deducted.
2. The first respondent made unauthorised deductions from wages by failing to pay the Claimant in lieu of accrued but untaken annual leave from 01 January 2020 to 30 June 2020, and is ordered to pay to the Claimant the sum of £1,736.25 being the total gross sum deducted.

In relation to claim **2206897/2020**

3. The second respondent made unauthorised deductions from wages by failing to pay the Claimant the full amount of wages due from 01 July 2020 to 29

September 2020, and is ordered to pay to the Claimant the sum of £7,375 being the total gross sum deducted.

4. The second respondent made unauthorised deductions from wages by failing to pay the Claimant in lieu of accrued but untaken annual leave from 01 July 2020 to 29 September 2020, and is ordered to pay to the Claimant the sum of £863.01 being the total gross sum deducted.

## **REASONS**

### **BACKGROUND**

1. The Claimant is a qualified solicitor who has practiced in a number of different areas of civil law, but in particular in immigration law, for several years.
2. This case features two separate claims, against two separate, respondents.
3. The first Respondent is Queenscourt Law Ltd, a law firm that was set up by the Claimant and others) in late 2019 and was regulated by the SRA. There is no dispute that the Claimant acted as its Compliance Officer (both the Compliance Officer for Legal Practice – COLP, and Compliance Officer for Finance and Administration – COFA) until 18 May 2020.
4. This second Respondent is Solar Security Films Ltd. This is a company providing services unrelated to legal services (the nature of their business related to the provision of solar radiation films for windows for commercial premises and vehicles).
5. The one witness called by the first Respondent is Mark Libbert. He is also a qualified solicitor and was involved in setting up Queenscourt Law Ltd, although did not have a formal role when it opened. He was the owner of the second Respondent.
6. Although the second Respondent was initially a party to the first claim (**2307389/2020**), this ceased in circumstances set out more fully below.
7. Therefore, although the Claimant is the same in both, Mr Libbert is related to both claims, and there is said to be a clear factual nexus between both claims, they are two distinct claims that have been heard together.

8. However, both Respondents had a common position in relation to the factual matrix of their claim. I was not invited to make any factual finding by the first Respondent that the second Respondent did not invite me too, or vice versa.
9. For those reasons, I have set out the findings of fact and conclusion in one compendious document.

## **INTRODUCTION**

10. By a claim form presented to the Employment Tribunal on 27 October 2020, the Claimant made a number of claims against the First Respondent. In that claim form he also sought to add the Second Respondent ('SFF').
11. This claim was accepted initially against the First Respondent ('Queenscourt') only. However, after reconsideration, it was accepted against both.
12. The Claimant had also made a claim against SFF which he had presented to London South Employment Tribunal.
13. Although there were a number of other aspects to his claim, by the time of the Final Hearing, the claim in both cases was for unauthorised deduction of wages.
14. In relation to the claim for holiday pay against Queenscourt, the Claimant does not claim that there was an agreement between him and Queenscourt as to his entitlement to holiday, and his claim is based on his entitlement under the Working Time Regulations

## **PRELIMINARY ISSUES**

### Second Respondent's Application to serve an ET 3 out of time

15. There was a Preliminary Hearing on 14 and 21 December 2021 where various directions were made. At that point SSF had not presented a response. As was noted, the claim form had been returned to the Tribunal by Royal Mail marked 'address gone away'.
16. In the 'Summary of Discussion', that was dated 17 January 2022, it was recorded that it was anticipated that SSF would present an ET3 and an application for an extension of time.

17. Although this was done, it was not until 14 March 2022 (two days before the hearing). The reason given for it being so late was that there was a confusion as to whether the claim against SSF was still 'live'.
18. At that preliminary hearing, the two claims were consolidated by agreement. The Claimant withdrew the claim against SSF, but in relation to the claim number 2206897/2020 only.
19. Pursuant to that, a Judgment was issued that said (3) "The entire proceedings against the second respondent are dismissed follow a withdrawal of them by the Claimant".
20. In seeking an extension of time, SSF relied on this, stating that they were not aware, until contacted by the Tribunal to see if they would be participating the hearing, that a claim against them was proceeding.
21. SSF relied on the order of 17 January 2022, and the fact that this stated that all the claims against them had been dismissed. However, this relates solely to the first claim (2206897).
22. The Claimant opposed the application to extend time.
23. Having regard to the principles in **Kwik Save Stores Ltd v Swain [1997] ICR 49 EAT**, and the overriding objective, I concluded that the application should be granted.
24. The claim was considerably out of time and there was a long period of time that elapsed from the Preliminary Hearing. Further, the ET3 was only lodged very shortly before the hearing.
25. Whilst it can be seen how the confusion arose, a representative from SSF was present at the Preliminary Hearing and should have been aware of the fact that there was a claim outstanding. However, this is a credible explanation for the fact of the delay.
26. There is an arguable defence to the claim, and it is therefore in the interests of justice for the claim to be defended so that justice could be done.

27. Furthermore, the ET3 mirrored the position of the SSF at the Preliminary Hearing, so the Claimant would have been aware of the matters raised and could have prepared accordingly.

28. I was anxious that no prejudice was caused to the Claimant and gave him time to consider whether he wished to adduce any further evidence, or would want to call witness in rebuttal. After reflecting, he said that there was not.

#### First Respondent's application to serve an amended ET3

29. The second preliminary issue related to an amended ET3 served by Queenscourt on 28 February 2022. No permission had been sought to do so.

30. I refused permission to do so given the late stage in the proceedings. I asked Mr Maratos whether there was anything new in this ET3 (other than the question of time limits) and he confirmed that there was not. In those circumstances, there was no prejudice to the First Respondent in refusing permission.

31. The one new matter raised was the question of whether the claim against the Queenscourt was out of time. I shall consider the arguments below, but in essence Queenscourt point to the fact that the resignation was on 18 May 2020, but the ACAS certificate is dated 01 September 2020.

32. I stated to the parties that as that matter went to my jurisdiction to hear the claim at all, it would be necessary to consider it.

33. Mr Maratos submitted that this should be dealt with as a preliminary matter. As the case was listed for a Full Merits Hearing and the question of the time limits was so bound up with the merits of the claim, I refused that application.

#### **EVIDENCE**

34. In coming to my decision, I had the following evidence :

- The oral evidence of the Claimant
- The oral evidence of Mark Libbert on behalf of the first respondent
- Witness statements from the Claimant and Mr Libbert, as well as from Amir Khan, Terence Young and Santam Singh Talway

- An agreed bundle of documents of 227 pages

35. In addition, Mr Chowdhury, Mr Manatos and Mr Talwar all provided oral submissions after the evidence.

## **THE CLAIM**

36. There has previously been a preliminary hearing on 14 and 21 December 2021.

37. At that hearing an agreed list of issues was drawn up that was set out in the appendix to the record of the Preliminary Hearing.

38. These were narrowed slightly at the hearing. In relation to the claim against Queenscourt, the issues by the end of the hearing were :

- a) When did the Claimant start working for Queenscourt (16 December 2019 or 6 January 2022)?
- b) Was he due his full salary (of £2,500) throughout his employment?
- c) When did his entitlement to a salary cease (18 May 2020 or 30 June 2020)?
- d) When does his entitlement to holiday pay run from (16 December 2019 or 6 January 2022?) and to (18 May 2020 or 30 June 2020)?
- e) Was he entitled to 30% of the fees of the legal work that he undertook (once he hit his target) or 100%?

39. In relation to holiday, it was agreed that the Claimant was entitled to 28 days a year, but took no holiday throughout his employment. In those circumstances it was agreed that he is entitled to be paid £125 a day, pro-rata against an annual entitlement of 28 days, for whatever was found to be the appropriate length of time that he was employed.

40. In relation to the claim against SSF, the issues remained the same as at the Preliminary Hearing.

## **THE LAW**

### Time Limits for presenting the claim

41. The normal time limit for presenting a claim for unauthorised deduction to a tribunal is set out in s23 of the Employment Rights Act 1996.

42. Section 23(2)(a) provides that a tribunal shall not consider a claim unlawful deduction of wages unless it is presented before the end of the period of three months when the payment was due (or the last of such payments if, as accepted in this case, there were a series of payments).
43. Section 23(3A) provides an exception. There are two limbs to this test. Accordingly, a tribunal may consider a claim presented outside the normal time limit, if it is satisfied that:
  44. it was not reasonably practicable for the claim to be presented within the normal time limited; and
  45. the claimant has presented it within such further period as the tribunal considers reasonable.
46. The normal time limit is extended by section 270B of the Employment Rights Act 1996 to take account of the obligation to enter into early conciliation facilitated by ACAS.
47. In order to determine how the normal time limit will be extended by early conciliation, it is first necessary to identify Day A and Day B and then apply the extensions in section 207B(3) and 207B(4) accordingly. They are defined in section 270B(2). Day A is the day on which the prospective claimant initiates the early conciliation process and Day B is the date of the EC certificate issued when the process is concluded.
48. The extension under section 207B(3) applies in every case. It operates to "stop the clock" during the period in which the parties participate in EC as it provides that in working out when a time limit expires, the period beginning with the day after Day A and ending with Day B is not to be counted.
49. The additional extension under section 207B(4) only applies in certain circumstances, where the limitation date, as calculated by subsection 207B(3) falls in the period between Day A and one month after Day B.

50. The burden of proof for establishing that it was not reasonably practicable to present the claim in time is on the claimant. Case law (*Marks & Spencer plc v Williams-Ryan* [2005] EWCA Civ 470) confirms that the tribunal can take into account various factors such as:

- the substantial cause of the claimant's failure to comply with the time limit;
- whether and when the claimant knew of their rights, including whether the claimant was ignorant of any key information;
- whether the claimant had been advised by anyone and the nature of the advice given;
- whether there was any substantial fault on the part of the claimant or their adviser which led to the failure to present the complaint in time.

51. It was confirmed that the Claimant was pursuing the holiday pay claim as a claim under s13 Employment Rights Act, for which the time limit is the same.

#### Unlawful deduction from wages

52. The relevant law is that contained at s13 and 14 of the Employment Rights Act 1996 which provides the right not to suffer unauthorised deductions from wages.

53. This reads, as far as is relevant, as follows :

#### **13 Right not to suffer unauthorised deductions.**

(1) *"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."*

(2) *In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised—*

*(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or*



*(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.*

(3) *“Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.”*

#### **14 Excepted deductions.**

(1) Section 13 does not apply to a deduction from a worker's wages made by his employer where the purpose of the deduction is the reimbursement of the employer in respect of—

- (a) an overpayment of wages, or
- (b) an overpayment in respect of expenses incurred by the worker in carrying out his employment, made (for any reason) by the employer to the worker.

#### Holiday Pay

54. The claimant seeks payment of accrued and untaken holiday pay at the appropriate rate.

55. If there is a contractual right to payment in lieu of holiday on termination, then a claim can be brought as a breach of contract claim, or as an unlawful deduction of wages claim, or a claim under the Working Time Regulations.

56. Where there is a contractual entitlement to holiday, but no express contractual term providing a right to be paid in lieu of holiday on termination, it is unlikely that there will be an implied contractual right to be paid in lieu (**Morley v Heritage plc [1993] IRLR 400**), but there will be cases where it is appropriate to do so (**Janes Solicitors v Lamb Simpson EAT 323/94**).

57. In other cases, the relevant law is contained at Regulation 13 to 16 of the Working Time Regulations 1998.

58. The Working Time Regulations 1998 provide for minimum periods of annual leave and for payment to be made in lieu of any leave accrued but not taken in the leave year in which the employment ends. The Regulations provide for 5.6 weeks leave per annum. The leave year begins on the start date of the claimant's employment in the first year and, in subsequent years, on the anniversary of the start of the claimant's employment, unless a written relevant agreement between the employee and employer provides for a different leave year. There will be an unauthorised deduction from wages if the employer fails to pay the claimant on termination of employment in lieu of any accrued but untaken leave.

59. A worker is entitled to be paid a week's pay for each week of leave. A week's pay is calculated in accordance with the provisions in sections 221-224 Employment Rights Act 1996, with some modifications. There is no statutory cap on a week's pay for this purpose. Since the payment for leave in this case was due before 6 April 2020 (when there was a change to the relevant provisions) an average of pay over the previous 12 weeks is taken. In accordance with a series of cases including the Court of Appeal's judgment in **British Gas Trading Ltd v Lock and anor 2017 ICR 1**, all elements of a worker's normal remuneration, not just basic wages, must be taken into account when calculating holiday pay for the basic four weeks' leave derived from European law but not for the additional 1.6 weeks leave which is purely domestic in origin.

60. In this case, it was agreed between the parties that the Claimant had not taken any holiday, and that there was an entitlement to 28 days holiday.

61. Further, both parties agreed that there was an entitlement to be paid on termination for holiday accrued but not taken. In those circumstances I find that the Claimant has a contractual right to payment for the holiday taken. I shall consider the consequences of that in light of the findings of fact that I make.

## **FINDINGS OF FACT**

62. I heard oral evidence from the Claimant and Mark Libbert, called by the First Respondent.
63. In addition, there were witness statements provided by Amir Khan, Terence Young and Satnam Singh Talwar on behalf of the First Respondent. Both respondents indicated that they would not propose to call them.
64. We went through the witness statements of the three witnesses who were not called at the hearing. Much of the content were complaints as to alleged issues with the way that the Claimant performed his job, or were comment on the evidence which, it was agreed, were not relevant to the issues.
65. The one point of potential relevance was the question as to when the Claimant began to be employed by Queenscourt. Both Mr Khan and Mr Young stated “we started work on the 6<sup>th</sup> January 2020”, although this did not refer to the Claimant’s starting time.
66. I told both respondents that I would be bound to place less weight on a witness statement where that witness had not been tendered for cross-examination, which they understood.
67. It is clear from the evidence that what was a positive working relationship around the beginning of 2020 broke down, with both the Claimant and Mr Libbert feeling that they were wronged by the other party.
68. Whilst that does not mean that they were not being truthful, it does mean that their evidence today (some nearly two years after the events in question) needs to be seen through that lens.
69. In those circumstances, I place great weight on the contemporaneous evidence in determining what happened, and what the participants state of mind was.
70. Having heard all the evidence and read the documents in the bundle to which I was referred, I make the following findings of fact on a balance of probabilities.

Contemporaneous evidence

71. I will start by setting out, in broadly chronological order, the relevant contemporaneous evidence (documentary and communications), that I was referred to.

72. There are two payslips in the name of Queenscourt Law Ltd dated 31 Dec 2019 (£1,384.62 with no deductions) and 31 January 2020 (£2,352.57 net, £2,500 gross).

73. The bank accounts provided by the Claimant show a number of payments from Queenscourt to the Claimant. These are bill payments, and appear to relate to his consultancy arrangements as they are for broadly similar amounts and each have a reference ended in '/NAME' which would appear to refer to a client.

74. The Claimant received the following payments from Queenscourt :

Date	Amount	Reference
• 05 March	£200	QCL/Keow/01061
• 23 March	£180	QCL/FSultan/01042
• 23 April	£1,170	QCL/1003/Plant

75. In addition, there are a number of instances of money coming in to the Claimant's account, with the same amount going out (with the same reference) on the same day :

Date	Amount	Reference
• 21 February	£1,000	QCL/Potawal/1000
• 29 February	£100	QCL/Kelechi/1009
• 02 March	£550	QCL/Ngomga/01001
• 11 March	£100	QLC/01106/Mehdi
• 13 March	£100	QLC/01106/Mehdi
• 16 March	£100	MC/Ahmed /01114
• 19 March	£550	MC/Manuella/Divorce
• 20 March	£500	MC/Ahmed /01114
• 23 March	£400	MC/Mehta/01121

76. The payment out on 02 March 2020 is to HMCTS Online.

77. The payment out on 20 March 2020 is to 12 Old Square, a set of barristers chambers.
78. A separate bank statement also shows a payment in to the Claimant's account on 02 April 2020 that is labelled "Ref.Wages January from Sola Ltd T/AS SS" for a sum of £1,864.03.
79. On 09 April 2020 a letter was written by R2 (p107) entitled "*impact of coronavirus on our organisation*", and stated that the person it was addressed to would be changed to 'furlough worker' on a reduced salary of 80%.
80. This was sent to the Claimant by Terence Yong (acting on behalf of SSF) on 09 April at 15:06. The Claimant replied that day at 5.14pm confirming that he accepted this.
81. On 20 April 2020 at 13:39 Mr Yong from R2 sent an email to C headed "Employment Contract" and a message saying "*Pls sign the contract and send it back to me. I have attached company handbook for u to look at it too*". It appears from the email at p112 that the Claimant did so at 5:58pm that day. There is a short message saying "*Please find the attached contract*".
82. There is a copy of what appears to be this contract at page 115. This is signed by the Claimant on 21 April 2020.
83. It is headed "Solar Security Films Limited" and states that it is a contract of employment. It also states that the employment began on 6 January 2020. There is no reference there to R1 at all.
84. On 23 April 2020 the Claimant received a payment from Queensway of £1,750. There is what appears to be a client reference here (Plant) which may indicate that this is a consultancy fee.
85. There is a payslip from Queenscourt Law Ltd dated 30 April 2020 (£2,129.40 net, £2,500 gross).
86. There is also a P45 that states that the Claimant left Queenscourt on 30 April 2020. This gives his total pay as £2,500 gross (with £291.40 deduction for tax). I

note that this figure is different from that obtained by summing his payslips. In addition, the date of leaving employment is not a date suggested by anyone else.

87. A document from HMRC (page 117) states that the Claimant received two payments of £2,000 and £2,500 on 30 April 2020, and a further payment on 31 May 2020 for £2,500.

88. On 18 May there is a deed signed by the Claimant and Mr Libbert (p69 bundle). This is addressed to the Director at Queenscourt, Mr Mahfuz. In it, the Claimant states "*I hereby resign from my office as a director of the Company with immediate effect*" (my emphasis). He also goes on to state that he waives any claim to a right of action.

89. There is also an email from 11:56 on 18 May 2020 from Mr Libbert to the Claimant. I shall quote this in full :

"In reference to our conversation, I hereby confirmed that you are leaving your post with Queens Court Law Ltd and will be employed with SSF effective January 2020.

Your wages during your service with Queens Court Law Ltd will be borne by SFF, as your January was paid by SSF and your February wages will be paid for by SSF. You will receive what is equivalent of furlough pay for March through to June 2020 from SSF and regular pay as per your contract from July 2020 onwards.

This email serves as a confirmation of your employment status.

90. The Claimant replied at 2.09pm with a blank email.

91. On 4 June 2020 John King, from SSF sent the Claimant an email welcoming him to the company.

92. There are also a large number of WhatsApp and other messages, the relevant and significant ones being the following (I have italicised those from Mr Libbert to the Claimant, the remaining are from the Claimant to Mr Libbert) :

- **21 March** - 22:06 - "*Munshat, you are an employee*"
- **21 March** - 22:08 - "*You can keep your responsibility. Because that's why we've employed you*"
- **14 April** - 10:37 - "*Good morning Munshat, what you think that either of us is holding your February salary? You were never at work at SSF. Therefore it is goodwill and please wait till our bosses approves the extrafunding. And for March please wait for furlough payment to come through at the end of this month*" page

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- **20 April** - 12:52 - "Hi mark As you discussed the role of in house consultant at SSF, Please find my details below"

There was then a discussion between the Claimant and Mr Libbert, in which Mr Libbert says (at 17:38) "And I'll get my bosses to finalise this and you'll be employed until SSF like me and Terence".

- **22 April** - 13:45 - "...Your February pay will come as soon as the sale of QCL is finalise and you are deemed having been taken on board SSF full time. Your back pay would be released with immediate effect and furloughed through from March to June".
- **05 May** - 15:46 - "... In the meantime for Feb, payment to be approved by my bosses they need a resignation letter from you indicating your resignation from QCL. Otherwise to them I could have just requested for payment claimaint that is from you but paid to someone else instead".
- **15 May** - 22:35 - "One likely solution is that I am getting my bosses to agree to utilise the money from the sale of QCL to fund the furlough up to next month"
- **15 May** - 22:35 - "Cause come July you will be on regular payroll"
- **19 May** - 18:31 - "Hi Mark, yes urgent for me actually.as your bosses in Malaysia signed for the feb payment, could you release it now rather than waiting till Friday? Thanks. Sorry to disturb you at your dinner time."
- **21 May** – 08:39 – "Mark morning. You forgot to call yesterday. Shall get paid today? Queenscourt has now handed over. Let me know please?"
- **04 Jun** - 14:42 – "If my job role requires ssf to advice on contract/ commercial law, would you be able to invest on related law books and legal resources websites? Thanks". My Libbert replies two minutes later saying "Yes we can certinally make the budget for it"
- **05 Jun** - 15:09 - "Are you now going to as am Anthony to apply again? What's my situation would be? Ssf of queenscourt?"
- **05 Jun** - 20:30 - "Hi Mark, if you for Furlough for queenscourt, that would be from June. As I said, my salary came to £8.500 between Feb-May, you advised that SSF would pay it on behalf of queenscourt. Please let me know how soon you would be able to pay it off ..."
- **05 Jun** - 21:01 - "*I don't think you quite understand that there is no eligibility for furlough for you and Amir and Asif. He submissions for June are meant for those who qualify but have not been furloughed. They have until 10<sup>th</sup> of June to be furloughed for at least 3 weeks so that they can be furloughed beyond June. SSF is ending its own furlough programme this month anyway.*

*And while your calculations is not wrong. I feel the need to reiterate that the amount that SSF is paying is purely out of goodwill. We have not undertaken to pay Asif or Amir buying March"*

- **11 Jun** - 14:07 - "When is SSF opening for business so that I can start?"
- **01 July** - 12:44 – "I hope to get paid today?"
- **01 July** - 12:46 – "By the way Mark, when you pay me, how would I get paid? Do I receive it under payslips? Because from Feb-June its five months totalling £10,500.00 in total before tax. So how would the Accounts calculate the Tax and NI if not pay slips?"

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- **10 Jul** - 12:57 - "... Please give me another deadline for salary payments which were passed could of times ... When SSF is opening business? Shall I receive any advance briefing about the works?"
- **23 Jul** - 09:42 - "... hi mark, What have you decided with Mahfuz about my salaries? Let me know please?"
- **04 Aug** - 19:52 – "Hello Mark, Any update regarding my salary? Did you take the shares from Mahfuz?"
- **05 Aug** - 22:48 - "Hi mark, you said I would be in regular pay roll with SSF. Whats happening with that? Thanks"
- **05 Aug** - 23:04 - "but if I am ssf pay roll now as its legal adviser/ consultant, then it should not be an issue anymore"
- **09 Aug** - 14:28 "Hi Mark, You said besides SSF sorting out my payments accrued from Queenscourt, my salary from SSF would start July as its legal adviser. Its almost mid August now. What's your plan about this?"
- **13 Aug** - 11:37 "Hi Mark, Should I keep asking you anymore when I get paid from both Queenscourt and SSF"
- **03 Sep** - 20:08 "... So what's happening with my legal adviser role and salaried for SSF?"
- **04 Sep** - 08:56 "this is a debt if both Qcl and SSF. I don't bother who pays the debt as long as its settled"

I can't stay idle forever and keep relying on your hollow promises since January. Its 9 months now and nothing happened ... If I wait any further, I would be barred by limitation to take the matter to court. That means I might lose it forever. I can't afford that .... SSF employment is separate from the joint debt of ssf and QCL. So what's the status of that employment"

### The nature of Queenscourt

93. Queenscourt is a law firm regulated by the SRA. At the time it started, the Claimant was a 40% shareholder in the company.

94. As such, he was a director of the company. But he was also employed as the compliance officer, and was someone who undertook legal work as a regulated lawyer.

95. Whilst he was a shareholder, his status as a director of the company and an employee are, legally, completely distinct. For understandable reasons, in their dealings with each other (and at the hearing) the parties did not draw the clear distinction between the Claimant acting as a director, and acting as an employee.

96. Additionally, and perhaps understandably, they did not always draw the distinction between the status of Mr Libbet as an employee of Queenscourt, and Mr Libbert as the director (and sole shareholder) of SSF.



When did the Claimant start employment with Queenscourt?

97. There is a surprising lack of documentary evidence. Whilst there is no requirement for a contract of employment to be writing, it would be expected that a contract of employment for a solicitor at a firm of solicitors (particularly where the solicitor would be the compliance officer) would be in writing.
98. Even without a written contract, it would be expected that there would be other discussions in writing prior to the creation of the business.
99. The Claimant states that he was in discussions with Mr Mahfuz (who was to be the other shareholder of Queenscourt from the summer of 2019).
100. Queenscourt went through the usual process with the SRA and was authorised from 16 December 2019. There is no indication that it was open to the public at that time, or that it took clients until January 2020.
101. Whilst there is a payslip from December 2019, it is not clear where this has come from, and there is no evidence of payment of this into the Claimant's bank account.
102. Further, it is unclear why the payslips would have stopped being produced in January 2020. These are not a reliable indicator as to the Claimant's employment status at the time.
103. An additional factor is that when he was paid his January 2020 salary (on 02 April 2020) this is not based on the full amount of £2,352.57 (£2,500 minus deductions for tax and NI), rather on a lesser amount. This is strongly suggestive of the fact that he was not employed the whole month.
104. Whilst I find that the Claimant was a director of the company when the firm was authorised in December 2019, there is not sufficient evidence to say that his employment started until the firm opened on 6 January 2020.

Nature of the fee agreement

105. The Claimant states that the agreement was that he was entitled to 100% of the legal fees received for any legal work that he undertook with clients.

106. Queenscourt states that the agreement was that he could keep 30%, but only once he hit his annual billing target. That target was set at £30,000, being reflective of his salary (although this took no account of overheads including NI, etc).
107. The bank statements show that the Claimant was receiving payments for sums in the hundreds of pounds on a sporadic basis in the months of February – April 2020.
108. The bank references are generally in the format 'Queenscourt/Name/Number' that is strongly suggestive of these being payments referring back to a client.
109. The sums involved would be more consistent with him receiving 100% of the fee rather than 30%.
110. Further, if the agreement was that he had to hit a certain target before he received a share of these fees, it would be a very difficult exercise to pay the Claimant the fees and then, if he did not reach his target, recoup it. It would be far simpler to not pay any monies until he reached the relevant amount, and then pay him.
111. For those reasons, I find that the Claimant was entitled to, and received, 100% of the fees for the work that he brought in.

The Covid-19 pandemic and the Claimant's arrangements to leave Queenscourt

112. The Claimant undertook work as a lawyer with a number of clients, although this ceased as the pandemic started.
113. There was a dispute as to how well the Claimant had performed his job as a compliance officer. I do not need to resolve this, as it is not said that the Claimant was dismissed.
114. The Claimant was due his salary to be paid in arrears on the last day of the month. From January 2020 this did not happen. The salary for January 2020 was not, in fact, paid until 02 April 2020.
115. Even then, it was paid from the SSF account, rather than Queenscourt.

116. The documentary evidence does not point all one way. One feature is that whilst there is no written contract between the Claimant and the First Respondent, there is one from January 2020 between the Claimant and SSF. However, all parties agreed that this did not reflect the actual position. Additionally, the P45s show a different end date to one suggested by either party.
117. I find that what happened was that when the Covid-19 pandemic started and the furlough scheme announced, the Claimant and the people involved in Queensway and SSF were aware that their business would be severely impacted. For that reason, they decided to take advantage of the furlough scheme.
118. However, the paperwork was not in place for the Claimant to be furloughed from Queensway. For that reason, it was agreed that documentation (such as the employment contract) would be created to present him to HMRC as an employee of SSF who had been furloughed.
119. This is the only explanation for the documentation that has been provided. Support for this can be seen in the text message of 14 April 2020 at 10:37 where Mr Libbert says 'you were never at work at SSF'.
120. During April 2020 (if not before) the Claimant decided that he would leave Queenscourt. The background to this can be seen in the WhatsApp messages that are in the bundle. These show extensive discussions between the Claimant and Mr Libbert around him leaving and being replaced.
121. At that stage, he had not been paid on time for his salary, and had only been paid for the month of January (albeit he received this at the beginning of April).
122. An arrangement was made that the Claimant would transfer his 40% shareholding in Queensway to Mr Talwar, who would take over as the compliance officer.
123. This transfer would be for free, in return for which Mr Talwar would take over any liabilities of the firm and, subsequently, the Claimant would receive the wages owed to him.

124. There was no clear statement as to when that money would be paid to him. The high point for Queenscourt's argument is in the text message of 22 April 2020 from Mr Libbert to the Claimant where Mr Libbert says that as soon as the sale of the Queenscourt is finalised, the Claimant would be 'deemed' to have been taken on by SSF full time and his back pay 'released with immediate effect'.
125. There were other messages that are not that clear. For example, on 15 May 2020 at 22:35 when Mr Libbert says that the Claimant will be on the SSF payroll from July.

Meeting on 18 May 2022

126. I find that before this meeting, although there was a general plan for the Claimant to leave Queenscourt and transfer to SSF, the details had not been finalised prior to 18 May 2022.
127. I consider that the question of the Claimant's situation as a director is clear following that meeting. The deed signed by the Claimant shows that he resigned as a director with immediate effect.
128. This deed is silent as to his status as an employee. The email sent that day by Mr Libbert at 11.56am refers to the Claimant's 'post'.
129. However, there is a reference to 'wages', and the statement that 'this email serves as a confirmation of your employment status'. That means that the email was meant to refer to the Claimant's employment by Queensway.
130. This email purports to say that the Claimant will have been employed by SSF from January 2020. This may have been the intention of Mr Libbert and the Claimant, but cannot have the effect of retrospectively transferring the Claimant's employment to SSF (although it may have consequences for who has liability to pay his salary).
131. This does say that he will be paid 'through to June 2020' (albeit by SSF).
132. This email was sent by Mr Libbert, and the Claimant responded with a blank email at 2.09pm, which was an acknowledgment of receipt. Had this not

accurately reflected the understanding of the Claimant, then he would have said so in the reply.

133. The email does not say that the Claimant will leave immediately (or 'with immediate effect' as the deed says). Further, it says that he will be paid 'through to June'.

134. In light of that, I find that that it was agreed that the Claimant's employment would continue until 30 June, notwithstanding that he had resigned as a director.

135. I do not consider that the fact that the Claimant was making requests for payment prior to the end of June 2020 changes that. The Claimant was still owed money from several months ago.

#### Payment for wages at Queenscourt

136. The Claimant contacted Mr Libbert the next day, but there is no substantive discussion as there was a problem with Mr Libbert's phone.

137. Later that day the Claimant asks Mr Libbert where his back pay is. I have set out that text above.

138. In the next few days there are a number of exchanges where the Claimant is asking Mr Libbert for an update, and Mr Libbert is explaining the delay in payment from Malaysia. I will not set them all out but there appears to be one or two messages a day for the rest of the month.

139. These messages continued in the first two weeks in June, again every few days. There are then further messages sporadically until the ones on 4 September 2020. By this point it was clear that the relationship between the Claimant and Mr Libbert had broken down.

140. I find that the Claimant was due to be paid by Queenscourt until 30 June 2020, with the last payment being due on that day.

#### Was there a contract of employment with SSF?

141. The email of 18 May 2020 from Mr Libbert refers to the fact that the Claimant will be employed by SSF from January. Whilst I do not consider that

that could have retrospective effect, the message is clear that the Claimant would start working for SSF 'as per your contract' from July 2020.

142. Mr Libbert stated in his oral evidence that this was, if anything, a conditional offer based on the Claimant 'sorting out' the reconciliation of the accounts.

143. I find that that was not the case, and there was a clear offer from Mr Libbert on behalf of SSF, that was accepted by the Claimant.

144. This was to work as a legal adviser to start on 01 July 2020, and to be paid at the rate of £2,500 per month.

145. The welcome email sent on 04 June 2020 is not consistent with the suggestion that the Claimant's position was 'up in the air', or labile to change depending on whether he had resolved the accounting issue.

146. There were a number of different WhatsApp messages between the Claimant and Mr Libbert, where the Claimant was talking about his new appointment. At no point did Mr Libbert mention the need for him to reconcile the accounts.

147. The only references to such were in an exchange between the Claimant and Mr Talwar, but these are after 01 July 2020.

148. The messages between the Claimant and Mr Libbert show that the Claimant was pushing for work to be given for him, as late as 04 September 2020. This is consistent with him understanding that he was an employee.

149. I find that throughout that period of time, until 29 September 2020, the Claimant was employed by SSF.

150. I fully accept that he was not undertaking much, if anything, for them, but the remedy would have been for SSF to take action against him.

151. In any event, as this is not a breach of contract claim, there is no need to identify what consideration was given by the Claimant over that period of time.

152. It was agreed that on 29 September 2020 the Claimant resigned (or purported to). Whilst SSF did not respond to this, or acknowledge it, that does not change the fact that it can still be effective.

153. It was not said that the Claimant was required to work any notice period.

154. I therefore find that the Claimant was employed by SSF from 01 July to 29 September 2020.

## **Conclusion**

### Claim against Queenscourt (2307389/2020)

155. Based on the findings of fact above, I find that the Claimant was employed by Queenscourt from 06 January to 30 June 2020.

156. Given that the ACAS certificate is dated 01 September 2020 no issue over time limits apply.

157. During that period of time, he was entitled to be paid at the rate of £2,500 per month. The only payment made was £1,800 covering the month of January 2020.

158. The Claimant is therefore entitled to £12,500 gross.

159. It was agreed that the Claimant took no holiday and, if he succeeded on the wages claim, he would succeed on the holiday pay claim on the same basis. This was to be calculated on the basis of 28 days holiday per calendar year at the rate of £125 a day.

160. The Claimant was employed for 181 days, which equates to 13.89 days. At the agreed rate, the Claimant is entitled to £1,736.25 gross.

### Claim against SSF (2206897/2020)

161. Again, based on the findings of fact above, the Claimant was employed by SSF from 01 July to 29 September 2020. This is two full months and twenty nine thirtieths of a third month.

162. The Claimant was not paid anything by SSF for this period of time.

163. Based on the monthly salary of £2,500, the Claimant is entitled to £7,375.
164. Again, it was agreed that the Claimant would be entitled to holiday pay. The period of time worked is 90 days. This equates to 6.9 days, again at £125 per day.
165. On that basis, the Claimant is entitled to £863.01 for unpaid holiday pay.

DATE: 02 May 2022

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**Employment Judge Bunting**

Sent to the parties on:

03/05/2022

For the Tribunal:

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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