



EMPLOYMENT TRIBUNALS

Claimant: Miss B Day

Respondent: Mumby Trading Ltd/CBD Commerce

HELD by Cloud Video Platform (CVP) in Sheffield **ON:** 22 May 2023

BEFORE: Employment Judge Brain

REPRESENTATION:

Claimant: In person

Respondent: Mr N Mumby, Director

JUDGMENT having been sent to the parties on 31 May 2023 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. These reasons are provided at the request of the claimant.
2. The claimant presented her claim form on 9 March 2023. Before doing so, she went through mandatory early conciliation as required by the Employment Tribunals Act 1996. The early conciliation process commenced on 7 March 2023 and ended on 9 March 2023.
3. The respondent was named in the claim form as “*Mumby Trading Ltd/CBD Commerce*”. The early conciliation certificate named the prospective respondent as Mumby Trading Ltd.
4. The claimant claims that the respondent made unauthorised deductions from her wages. She claims that the sum of £508 gross is due to her for work undertaken over a two weeks’ period between 18 February and 3 March 2023 inclusive. Although she has received payslips for this work (dated 3 and 10 March 2023 respectively) the monies have not in fact been paid to her.
5. Mumby Trading Ltd was dissolved on 11 April 2023. A final notice to this effect was published in *The Gazette* may be seen upon a search of Companies

House. (*The Gazette is the Official Public Record for (amongst other things) statutory notices pertaining to limited companies*).

6. Ahead of the dissolution, a first strike out notice was published in *The Gazette* on 3 January 2023. By this, the Registrar of Companies gave notice that unless cause be shown to the contrary, Mumby Trading Ltd would be struck from the register of companies and dissolved not less than two months from that date.
7. The Tribunal takes judicial notice of the fact that the Registrar of Companies may take action to strike a company from the register of companies where it is neither carrying on business nor is in operation. The Registrar may take this view if (amongst other things) they have not received company documents that should have been sent to them.
8. Before striking a company from the register, the Registrar is required to write two formal letters and send notices to the company's registered office to enquire whether the company is still carrying on business or is in operation. If satisfied that they are not, the Registrar will publish a notice in *The Gazette* stating their intention to strike the company off the register unless reason is shown not to do so.
9. Mr Mumby was a sole director of Mumby Trading Ltd. Although he said he had not seen any letters from Companies House, he did not deny that these had been received. On the contrary, he said that such notices may have been received by his accountant.
10. On this basis therefore the Tribunal finds that Mumby Trading Ltd was dormant some time prior to 3 January 2023. It was this which caused the Registrar of Companies to issue notice in *The Gazette* on 3 January 2023 of a proposal to strike them off the register of companies. Mumby Trading Ltd failed to show cause that they should not be struck off the register and dissolved. From this, the Tribunal concludes that Mumby Trading Ltd was inactive over the period between 18 February and 3 March 2023 (being the relevant period for the claimant's claim).
11. It cannot accordingly be the case that the claimant was working for Mumby Trading Ltd. Otherwise, they would have to give an account for the trading activity being undertaken at this time. There was no trading activity, hence the failure to show cause why it should not be struck out.
12. An action may not be brought or continued against a company which has been dissolved. Upon dissolution, it simply ceases to exist.
13. The claimant worked as an administrative assistant from 14 September 2022 until 3 March 2023. Whilst she accepts that she was employed by Mumby Trading Ltd at the outset, it is plain that at some point this ceased to be the case for the reasons already given. It is not open to Mumby Trading Ltd to, on the one hand, maintain that they were trading and providing with the claimant with gainful employment while on the other causing the Registrar of Companies to write because of inactivity and then failing to show cause why they should not be struck from the register of companies.
14. On 3 May 2023 the Tribunal received a letter from Mr Mumby in which he described himself as managing director of CBD Commerce Ltd. (This is another company of which he is sole director). Mr Mumby said in the covering letter that the claimant had never been paid or employed by CBD Commerce Ltd. He

attached a document purporting to show that CBD Commerce Ltd had only been operating from 7 April 2023. (It is not clear how the document is evidence of that anyway). He also enclosed a notice of appearance in from ET3.

15. Mr Mumby gave evidence that CBD Commerce Ltd is continuing to carry out part of the business carried on by Mumby Trading Ltd. This part fell within the scope of the duties carried out by the claimant for Mumby Trading Ltd. The claimant gave unchallenged evidence that the administrative duties that she was carrying out towards the end of her employment were from the same premises and serving the same customers as throughout her employment. On Mr Mumby's account, the part carried on by CBD Commerce Ltd was an identifiable and distinct part of that carried on by Mumby Trading Ltd.
16. It follows therefore that there was a transfer of the undertaking carried out by Mumby Trading Ltd to CBD Commerce Ltd. Accordingly, the claimant's employment transferred with it as she was assigned to undertake work for that part of the business transferred. Logically, this must have been the only part that was actually operating, given the dormancy of Mumby Trading Ltd.
17. In the Tribunal's judgment, it is in the interests of justice to substitute CBD Commerce Ltd as the respondent to the claim for Mumby Trading Ltd. As has been said, no claim can be pursued against Mumby Trading Ltd. Effectively, this is an amendment of the claimant's claim by way of the introduction of a new respondent. Mr Mumby is the sole director of CBD Commerce Ltd and was the sole director of Mumby Trading Ltd. He accepted that he would have no further information to give or representations to make other than those in the notice of appearance which he filed with the Tribunal on 3 May 2023. That being the case, there can be no prejudice to him or to CBD Commerce Ltd of the latter being joined into the proceedings as the respondent to the claim in substitution for Mumby Trading Ltd.
18. There was no dispute the claimant had undertaken two weeks' work between 18 February and 3 March 2023. There was no dispute that she was owed the sum of £508 gross by way of unpaid wages.
19. It follows therefore that there should be a declaration that CBD Commerce Ltd made an unauthorised deduction from the claimant's wages and has failed to pay her. CBD Commerce Ltd shall therefore pay her the sum of £508 being the gross sum due to her.

Employment Judge Brain

Date 23 June 2023