



# EMPLOYMENT TRIBUNALS

## Claimant

Dr M Ter-Berg

## Respondent

v (1) Simply Smile Manor House Ltd.  
(in voluntary liquidation);  
(3) Mr Parul Malde;  
(4) Dr Colin Hancock

**Heard at:** Huntingdon

**On:** 26 September 2023

**Before:** Employment Judge M Ord

## Appearances

**For the Claimant:**

Mr J Jenkins, Counsel

**For the Third and Fourth Respondent:**

Mr S Butler, Counsel

## JUDGMENT on an APPLICATION for COSTS

No Order is made on the Application for Costs made by the Third and Fourth Respondents.

## REASONS

1. The Third and Fourth Respondents have brought an Application for costs in relation to the Claimant's claim to have been employed by the First Respondent, ("Manor House") and in respect of the Preliminary Hearing before me on 24 – 26 February 2020, on which date the Claimant's contention that he was an employee of the First Respondent failed and his complaint that he had been automatically unfairly dismissed was dismissed. The Order for Interim Relief made on 17 January 2019 ceased and was revoked.
2. Manor House is now in voluntary liquidation, its rights in relation to costs have been assigned to Simply Smile UK Limited which was the sole share holder of Manor House.

3. The Application was made in writing on 11 June 2020, the Claimant replied in writing on 29 June 2020 and I have heard oral submissions from both Counsel.
4. It is right to point out that the Claimant Appealed the findings made on 26 February 2020 on three grounds. He succeeded on one, namely the question of the correct interpretation of Clause 36 of the Associate Agreement entered into between the parties, the Substitution Clause; thus the overall question of whether the Claimant was or was not an employee of Manor House.
5. That point was remitted to a different Employment Judge and at a hearing on 15 and 16 June 2023 Judge KJ Palmer found that the Substitution Clause was consistent with requirement for personal service, but that despite that the limited construction of the Substitution Clause did not serve to defeat the true intention of the parties, which was reflected in the Associate Agreement, i.e. that the Claimant was self-employed.
6. Prior to the Hearing before me, the Claimant had successfully applied for an Order for Interim Relief. On 17 January 2019 Employment Judge Laidler had concluded that it was likely that the Claimant would establish that he was an employee and that he would establish that the reason, or principal reason, for his dismissal was the making of protected disclosures.
7. In the light of all of that, can it be said that the Claimant acted unreasonably in bringing these proceedings and in particular, by pursuing the question of employee status before me? I conclude that it cannot.
8. The Claimant was considered likely to succeed on the question of employment by Judge Laidler, however he failed to establish that status before me.
9. In the Employment Appeal Tribunal Judge Auerbach felt that one aspect of the decision required consideration by a different Judge as to the interpretation of the Substitution Clause. The question was determined by Judge KJ Palmer who set out his findings, but reached overall the same conclusion as I did on the question of employment status.
10. Thus, four Judges have considered this issue and reached, to varying degrees, different conclusions.
11. In the light of all of that I cannot say that the Claimant was behaving unreasonably in pursuing the claim to the extent that it was based on employee status.
12. He had persuaded Judge Laidler that he was likely to succeed on the point and it was inevitable therefore that he could pursue that further before me, even if at that stage his arguments did not succeed.

13. For those reasons the Application is dismissed and no Order is made.

16 October 2023

---

Employment Judge M Ord

Sent to the parties on:17 October 2023.

.....  
For the Tribunal Office