



EMPLOYMENT TRIBUNALS

Claimant: Mr I Thomas

Respondent: The Chancellors Group of Estate Agents Ltd.

Heard at: Watford, by CVP

On: 4 March 2021

Before: EJ Price

Representation

Claimant: In person

Respondent: Mr J Gilbert, solicitor

JUDGMENT

1. The matter is adjourned at a date to be fixed.

REASONS

1. This was a remote hearing which was not objected to by the parties. The form of remote hearing was a code "V" hearing, being conducted entirely by CVP video platform. A face to face hearing was not held because it was not practicable and no-one requested the same.
2. No previous case management hearing had been conducted in this matter and therefore the issues were determined at the outset of the hearing.
3. The claims brought are for constructive dismissal and unlawful deduction from wages or breach of contract. It is a central part of the claimant's case that he suffered a drop in salary as a result of lower commission payments when he was moved from the High Wycombe office of the respondent's business to the Amersham office in 2019. This is one of the breaches he relies upon to ground his claim for constructive unfair dismissal.

4. Mr Thomas raised at the outset of the hearing that he did not agree the contents of the bundle. A number of documents he wanted to rely upon had not been included and nor had they been disclosed to him. He had only received a hard copy of the bundle two days prior to the hearing, as it had been sent to the wrong postal address and he had not received the copy the respondent's representative had sent by email.
5. Mr Thomas sought further disclosure of the respondent's profit and loss accounts for the High Wycombe branch and the Amersham branch and also activity reports relating to himself in both branches. These were said to be relevant as they determined how much the claimant was paid both prior to his move to Amersham and after it. A number of additional documents were then disclosed by the respondent by way of email both to the Tribunal and the claimant. The respondent accepted that these further documents should have been disclosed, however considered that as the issues in the matter were not clarified prior to the hearing today they had not disclosed them.
6. The claimant was given an opportunity to read the documents. In his view the additional disclosure was limited and did not demonstrate the level of commission he was owed as the reports were personal to him and therefore did not capture the full extent of any commission owing as it did not include the commission due as a result of other sales made by staff in the office. He therefore made a further specific disclosure application for profit and loss reports that included the entire activity of the branch.
7. The respondent accepted that the documents disclosed were in fact in error, and produced and disclosed further reports which were corrected versions. However, it also accepted that the profit and loss reports and the activity reports disclosed would not capture the necessary data to demonstrate what commission was owed to the claimant. Mr Gilbert on behalf of the respondent submitted that the documents necessary to demonstrate this would be a. Cash mat reports and b. commission reports for the claimant. The respondent accepted that these documents fell within the test for disclosure, but said it would not be proportionate for the documents to be disclosed now as it would take them a matter of weeks to extract the information from their digital records.
8. In determining the application, I took account of the overriding objective and the need for the parties to be on an even footing. The claimant is unrepresented and does not have access to these documents. I also considered the proportionality of the request. I accept that it may take some time for the respondent to produce the documents, however they highly material to a central part of the claimant's claim for constructive unfair dismissal, namely that the reduction in his salary was a breach of contract that led to his resignation. It is highly regretful that these documents were not provided at an earlier stage. However they appear to be highly relevant to one of the fundamental issues the tribunal is going to have to decide, namely, whether or not the claimant's wages, or potential to earn commission, did reduce, and if so whether this was a breach of the claimant's contract of employment. In my view this issue will not be able to properly considered without evidence as to the claimant's earnings. As there

is no other evidence before the tribunal that can properly elucidate the issue, I granted the application for further disclosure.

9. As the respondent was unable to produce these documents for a number of weeks, as it required a process of reconciliation of their records, the hearing was adjourned to provide the respondent will time to complete the disclosure exercise and for the claimant to consider the new disclosure.

Employment Judge Price

Date 4 March 2021 _____

JUDGMENT SENT TO THE PARTIES ON
22 March 2021

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FOR THE TRIBUNAL OFFICE

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