



# EMPLOYMENT TRIBUNALS

## Claimant

Miss T Hurynovich

v

## Respondent

(1) Leo Scheiner  
(2) Dr Nicole Scheiner  
(3) Oscar Scheiner  
(4) Ben Ong Ltd  
(5) Fyrtorr Ltd

## RECORD OF AN OPEN PRELIMINARY HEARING

Heard at: Watford

On: 20 January 2020

Before: Employment Judge Alliott (sitting alone)

### Appearances:

For the Claimant: In person

For the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> & 5<sup>th</sup> Respondents: Mr Matthew Hodson (Counsel)

## JUDGMENT

1. The claimant's claim for pregnancy/maternity discrimination has no reasonable prospect of success and is struck out pursuant to Rule 37(1) of the ET's (Constitution and Rules of Procedure) Regulations 2013.
2. The claimant's claims against the second respondent (Dr Nichole Scheiner) have no reasonable prospect of success and are all struck out as against the second respondent pursuant to Rule 37(1) of the ET's (Constitution and Rules of Procedure) Regulations 2013.
3. The claimant's claims for detriment and/or automatically unfair dismissal on the grounds of making a protected disclosure have little reasonable prospect of success and a Deposit Order will be made pursuant to Rule 39(1) of the ET's (Constitution and Rules of Procedure) Regulations 2013 in the sum of £100.

## REASONS

1. It is the claimant's case that she was employed on 9 September 2003. It would appear that the claimant's employment ceased on 30 November 2018. There is a very considerable issue between the parties as to who employed the claimant at the various points of her employment. It is the claimant's case that her job title was Chief Financial Officer/Chief Operations Officer.
2. By a claim form presented on 22 March 2019 the claimant presents claims of unfair dismissal (both "ordinary unfair dismissal" and automatically unfair dismissal on the grounds of making a protected disclosure), detriment for making a protected disclosure, pregnancy/maternity, race, disability and sex discrimination and claims for a redundancy payment, notice pay, holiday pay, arrears of pay and other payments including medical insurance.
3. This open preliminary hearing was ordered by Employment Judge Henry on 18 August 2019 following an application by the first, second, third and fifth respondents dated 15 May 2019 to strike out the claimant's claims and/or make a Deposit Order in relation to all or any of them.

### The law

4. Both parties have made submissions on the law. In particular the point has been made that in discrimination claims in particular, due to the fact that they are generally fact sensitive, as a matter of justice and public policy, it is important that factual disputes are determined by a full tribunal and tribunals should be slow to strike out in discrimination claims. That having been said, it is quite clear that that is not an absolute prohibition and in clear cases such claims can be struck out if appropriate.

### The claims

#### The claimant's employer

5. Over the course of this hearing I have endeavoured to understand the basis of the claimant's case as her pleaded case is not entirely clear. Dealing with the various heads of claim raised I begin with the issue of who was the claimant's employer.
6. It is common ground that there was no contract of employment.
7. In her claim form the claimant asserts that initially in 2003 she was employed by the first respondent but also alludes to a company called Afterthought Ltd. In discussion with the claimant she asserted to me that she was paid from an offshore company named Young Again Nutrients, a company registered in the Dominican Republic.
8. The claimant has shown me Income Tax documents and payslips which reveal the following:

- 8.1 A P45 suggesting the claimant left the employment of Afterthought Ltd on 1 October 2014;
  - 8.2 P60s for the year ending 5 April 2013 and 5 April 2014 in the name of Afterthought Ltd; and
  - 8.3 P60s in the name of the fourth respondent, Ben Ong Ltd, to 5 April 2015, 2016 and 2017.
9. The claimant told me that whilst she received some of her pay from Ben Ong Ltd she also received other payments from an offshore company called Ben Ong Corporation, incorporated in Nevis with a bank account in Cyprus.
  10. During the course of this hearing reference has also been made to a company called Ben Ong UK Ltd. Various other companies are referred to by the claimant in her claim form.
  11. Echoing the submission of Mr Hodson, I agree that there is a degree of structural complexity in the way that the Scheiner family operate their various business concerns. I have no information as to why it was that the entity paying the claimant appears to have changed from Afterthought Ltd to Ben Ong Ltd in 2014.
  12. It would appear that the fifth respondent, Fyrtorr Ltd was incorporated on 18 June 2018. It would also appear that Ben Ong Ltd and Ben Ong UK Ltd were placed into liquidation on 28 November 2018.
  13. In her claim form and before me today the claimant has asserted that the fifth respondent began trading in or about June 2018 and that the fifth respondent was based in the same business address, had the same website, the same employees and were offering the same products. It is the fifth respondent's case that it only acquired the business assets and goodwill from the liquidator on or about 30 November 2018.
  14. Be that as it may, in my judgment there clearly is a triable issue as to whether or not there was a TUPE transfer of the claimant from Ben Ong Ltd or another to the fifth respondent.
  15. The claimant has agreed that she is not contending that the second respondent was her employer and makes no allegations against her. As such all claims against the second respondent are struck out.
  16. In addition, in my judgment, there is a potential argument as to whether or not Ben Ong Ltd was the claimant's employer. During the course of this hearing I have repeatedly asked the claimant to tell me who she says her employer was. She has had considerable difficulties in doing so for whatever reason. However, the claimant has said on more than one occasion that she was employed by the Scheiner family and in that context I have concluded that I cannot strike out the unfair dismissal and ancillary employment claims against the first and third respondents as there is the potential for there being more than one employer and the whole issue will be fact sensitive given the lack of contemporaneous

documentation. Accordingly I decline to strike out the unfair dismissal claims against the first and third respondents.

17. It follows that since the unfair dismissal claim remains potentially live as against the first, third, fourth and fifth respondents, so the claims in relation to unauthorised deduction of wages, medical insurance, holiday pay, notice pay and redundancy pay remain live issues. The unauthorised deduction of wages claim relates to the period after the claimant was placed on suspension in January 2018 prior to her going off sick in March 2018. In addition it may relate to a failure to pay full pay whilst on sick leave.

#### **The discrimination claims**

18. The pregnancy/maternity discrimination claims relate to an allegation that the claimant was deprived of maternity leave following the birth of her child on 2 November 2007. As such this claim relates back to 2008. It is plainly at least 10 years out of date and in my judgment it stands no chance of success on the basis that it is time barred and no tribunal would extend time on the basis that it was just and equitable to do so. As such that claim will be struck out.

#### **The disability discrimination claim**

19. Notwithstanding the fact that the claimant has ticked the box to indicate that she does not have a disability on her claim form, she has ticked the disability discrimination claim box.
20. The claimant has shown me a number of fit notes from 2018 describing her medical condition as variously anxiety, stress related anxiety and tearfulness.
21. The claimant asserts that she has the disability of anxiety/mental health/PTSD.
22. There clearly will be an issue as far as the respondent is concerned as to whether or not the claimant has a disability or disabilities within the meaning of the Equality Act and, if so, whether the respondent knew or ought to have known of such a disability.
23. As pleaded, the disability discrimination reads as if the claimant's mental and physical health deteriorated as a consequence of the way she was allegedly treated by the respondents.
24. However, in discussion with the claimant today and endeavouring to try and determine how she put her case, it would appear that the disability discrimination claim is a s.15 claim. The thing arising in consequence of her disability is that she went off sick from March 2018 and the unfavourable treatment she relies upon in support of the claim is that she was not transferred to the fifth respondent and/or she was dismissed.
25. Having looked at all the circumstances and the case as it currently stands, I cannot conclude that there is no reasonable prospect of success and/or that there is little reasonable prospect of success on those claims as defined.

## Race/Sex Discrimination

26. Again, in discussion with the claimant it appears to me that these are s.13 direct discrimination claims.
27. The claims as pleaded firstly relate to allegations that the claimant was in receipt of significantly reduced pay as opposed to her male counterparts. This does not appear to reflect the reality. The claimant was paid £5,000 either net or gross per month (there is a dispute on that issue). The claimant acknowledged that she was the highest paid individual in whatever organisation she was working in. The claimant explained to me that her principal complaint was that as a woman it took her longer to achieve promotion than at least one individual who had been employed subsequently and who received promotion within three years.
28. In my judgment, despite extensive discussion with the claimant, I do not understand exactly how this claim for sex and/or race discrimination is made. In any event the matters complained about, ie the claimant taking longer than male counterparts to reach the position she reached, must be significantly time barred. Consequently, in my judgment there is no prospect of that aspect of her race and sex discrimination claims succeeding, given they are opaque and time barred.
29. The other way that the claimant's race and sex discrimination claims appear to be pleaded relates to her being required to do menial tasks compared with male individuals. She cites as examples having to clean the Scheiner's parents'/grandparents' properties, doing paperwork or sorting through books. Again, when asked for examples and dates the claimant was unable to provide any real detail. Again, similar to the promotion issue, in my judgment the claims are not sufficiently certain and are certainly well time barred and in my judgment no tribunal would extend time on a just and equitable basis to allow those claims to be made.
30. That having been said, the less favourable treatment that the claimant has outlined to me involve her sickness being disregarded in March 2018 and afterwards, only being paid statutory sick pay whilst on sick leave, not being transferred to the fifth respondent and being dismissed upon the fourth respondent's liquidation on 28 November 2018.
31. Mr Hodson has submitted that there has to be some prima facie evidence to point towards the treatment of the claimant being on the grounds of her race and/or sex. However, in my judgment, those claims cannot be said to have no reasonable or little reasonable prospect of success and accordingly they will proceed.

## Public interest disclosure

32. In paragraph 10 of her claim form the claimant presents claims for whistle blowing, more accurately characterised as detriment on the grounds of making a protected disclosure and/or automatically unfair dismissal on the grounds of making a protected disclosure. It is true to say that the claimant's claim form at different places refers to her challenging the validity of activities she was required

to do, being instructed to undertake immoral or questionable activities and again being required to undertake varying questionable activities.

33. I have endeavoured at some length to get the claimant to tell me what information she says she was disclosing to whoever she disclosed the information to. The nearest I have reached on this is mentioning to the third respondent that he was avoiding repaying his student loan by under declaring his salary, payments being made for a house in Italy as business expenses and a bald assertion of tax evasion.
34. Thus, it is that despite endeavouring to understand the nature of this claim it remains opaque. Further, the claimant will need to satisfy the full merits hearing that such information as she did disclose was based on her reasonable belief and was made in the public interest.
35. On the basis that she has in general terms alluded to these claims within her claim form, I have concluded that it would not be right to strike out the claims but I am satisfied that there is little reasonable prospect of success as currently put. Consequently, I will order a deposit and case management orders will require the claimant to provide full details of how she puts this claim if it is to proceed.
36. The claimant has told me that she is not currently in employment and is in receipt of housing benefit and child benefit. She is shortly to apply for Universal Credit and has an appointment for an assessment of disability allowance. She is in debt to the tune of £30,000 but has Premium Bonds to the value of £4,000 which can be cashed in in two days. She told me that she receives help from relatives in paying her bills. I have taken into account the claimant's modest means and have decided that she is capable realistically of finding a deposit of £100 and accordingly the deposit will be in that sum.

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**Employment Judge Allott**

Sent to the parties on:

.....27 January 2020.

For the Tribunal:

.....04 February 2020.....