



EMPLOYMENT TRIBUNALS

Claimant

Mr A Carnell

v

Respondents

**Filmore And Union Limited (in
administration) (1)**

Kevin Bacon (2)

Chris Boyes (3)

PRELIMINARY HEARING

Heard at: Leeds

On: 8 August 2019

Before: Employment Judge JM Wade

Appearance:

For the Claimant:

In person

For the First Respondent:

Mr G Moore (solicitor)

For the Second and Third Respondents:

Mr S Sweeney (counsel)

JUDGMENT

1. The proceedings against the second and third respondents are struck out pursuant to Rule 37 for the reasons set out below.
2. The proceedings against the first respondent remain subject to a stay pending permission of the administrator or an order of the Court.

REASONS

1. The claimant told me today that he and his former wife were the founders of the well known outlets which bear the name of the first respondent. The unhappy outcome to the sale of a stake in the company last year is a well trodden path. Not long after the sale in 2018 the claimant was suspended by the investor directors (the second and third respondents) and this year in March 2019 his employment was ended. The company then entered a "pre-pack" administration in May 2019 and various of its assets were immediately sold (I was told approximately half of the outlets), and no doubt its goodwill and name. These are circumstances one would not wish on anyone and he has my sympathy.
2. At today's hearing he appears as a litigant in person, but confirms that his particulars of claim had been drafted by his lawyers, and that he agreed the usual documents in 2018 with advice (sale agreement, loan notes, shareholders agreement, service agreement and so on).

3. I reviewed with him the contents of his claim form and gathered some missing information including that he commenced further employment on 1 June 2019 on a salary of £60,000, as a managing director. I pointed out to him that box 4, entitled “Cases where the respondent is not your employer”, was empty, and that nothing in his professionally drafted grounds of claim indicates that whistleblowing detriment claims are being presented against his former directors. There is a reference to suspension in August 2018, but this is contained in the background section and there is no reference to it in the section headed “claims”. Self evidently if amendment was sought there are limitation issues in relation to suspension as an act of detriment. Mr Sweeney pointed out that in the agenda produced by the claimant for today the claimant seeks remedies which are obligations, if they are obligations of anyone, of the first respondent: loan note payments, notice pay, unpaid outstanding holiday, unpaid business expenses, unpaid salary. The agenda also says, in answer to the question “what complaints are brought”: Unfair dismissal due to protected disclosures.
4. I explained to Mr Carnell that there is no complaint in the grounds of claim or claim form which can be pursued against his former colleagues, albeit his grievances are clearly directed towards the action they took. The options available to me are to strike out the claim of my own motion or give him time to consult his lawyer and show cause why it should not be struck out. Had I reviewed the claim in sufficient time before today’s hearing I would have directed an unless order under Rule 26 be sent. Mr Sweeney confirmed it was his position that strike out, albeit in many cases draconian, was the just cause in this case today when there was no discernible cause of action and where the claimant has secured other employment, and the financial remedies against the second and third respondents are limited. His clients’ pleading on the facts is less generous to the claimant than suggesting strike out, he accepts, but that in the context of the claimant commencing his proceedings ostensibly as a litigant in person.
5. I have given Mr Carnell the opportunity to explain why I should not strike out the complaints against the investor directors. His comments were very much to air the grievance of the unhappy chain of events I describe above, but also to suggest, or at least this is how I understood his position, that because the investor directors took all decisions, that perhaps there was some basis to consider them to be the de facto employers. Again, I have sympathy with his position, but these were arrangements agreed between men, or rather, people, of business, to use that old fashioned term. They all had advice at the time. The documents will no doubt be very clear as to the employing entity and people of business are taken to mean what they say when they sign such documents.
6. It is also clear to me that the claimant has articulated matters which are alleged to be the basis for a minority shareholder action, and he referred to his lawyers putting them as such. He is also a creditor of the company because of his directors’ loans (and this Tribunal has no jurisdiction to adjudicate on those). There are other avenues to pursue his grievances against the investors if any wrongdoing is alleged in the conduct of the company. Many people have lost their jobs following this external investment, and because of the company’s circumstances, all financial remedies will be limited. Striking out today is draconian in the sense that it is pulling off the plaster with speed, but having heard from Mr Carnell it remains the just thing to do: all parties will be put to additional expense with little possible gain; and other users of the Tribunal will

have its resources diluted dealing with ongoing proceedings in a claim which reveals no pursuable complaint against the investor directors.

7. For all these reasons I strike out those proceedings today. As for the pursuable complaints against the first respondent, they are stayed and I can take no action in them unless and until permission is granted by the administrators or given by the Court (and I am told that the administration order was granted by the Leeds Registry).

Employment Judge JM Wade

8 August 2019

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The Employment Tribunal is required to maintain a register of all judgments and written reasons. The register must be accessible to the public. All judgments and reasons since February 2017 are now available at: <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.