

Case No: 2403837/2017, 2403838/2017, 2403839/2017 and 2403840/2017



# EMPLOYMENT TRIBUNALS

## Claimants

- (1) Mrs Lisa Hicks
- (2) Mrs Lisa Day
- (3) Mrs Lorraine Davey
- (4) Ms Jodie Buttler

## Respondents

- (1) Head Volume Limited
- (2) Urban Escape Group Limited

# PRELIMINARY HEARING

Heard at: Southampton

On: 7 September 2018

Before: Employment Judge Fowell

## Appearances

**For the Claimants:** In person (save for the fourth claimant who made no appearance)

**For the Respondents:** No appearance

# JUDGMENT

## Background

1. This hearing was to consider an application by the Second Respondent to reconsider the default Judgment made under Rule 21 of the Employment Tribunal Rules of Procedure, made against them on 4 January 2018.
2. The four claimants initially issued proceedings against the Second Respondent and another company, Head Volume Limited, for breach of contract/notice pay, arrears of wages and holiday pay. The claims against Urban Escape Group Limited were not accepted as there was no early conciliation certificate for that company.

**Case No. 2403837/2017, 2403838/2017, 2403839/2017 and 2403840/2017**

3. Early conciliation was then commenced on 19 September 2017 and concluded on 20 September 2017, before a further claim against Urban Escape Group Limited was submitted. This application arises in the course of those second proceedings.
4. I was able to satisfy myself from the contracts of employment, payslips and one P60 provided by the claimants that they were all employed by the Second Respondent, Urban Escape Group Limited.
5. Urban Escape Group Limited applied for a reconsideration of the Rule 21 Judgment on the basis that Mr N Clench, a director of both companies, had been unable to prepare a response as he had had a stroke and was in hospital. On that basis this hearing was listed, and the Second Respondent was directed to provide a draft response as part of the application for reconsideration.
6. No such response has been received, despite the passage of several months, nor has there been any further correspondence from the Second Respondent. There being no reason given for reconsidering the decision, or any apparent defence to the claims, the application is refused and the judgments continue in effect.
7. Records from Companies House show that the Second Respondent (company number 04393253) changed its name to Sunflower Hill Limited on 17 July 2018 and is now in liquidation. As a result some or all of the amounts claimed may prove to be recoverable from the National Insurance Fund, via the Insolvency Service, or directly from the liquidators.
8. Companies House records also show that the company is in compulsory liquidation, that a petition was presented on 30 April 2018, and that winding up commenced on 15 August 2018 through The Official Receiver 11th Floor Southern House, Wellesley Grove, Croydon, CR0 1XN.
9. By section 130 of the Insolvency Act 2006:

**130.— Consequences of winding-up order.**

  - (1) ...
  - (2) When a winding-up order has been made or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company or its property, except by leave of the court and subject to such terms as the court may impose.
10. In those circumstances, the appropriate course for the tribunal is to stay the claim unless and until any of the claimants applies for the appropriate consent from the administrator and/or leave of the High Court — *Carr v British International Helicopters Ltd (in administration) 1994 ICR 18, EAT.*
11. It is unlikely that that will be necessary however. The present state of proceedings is that liability against the Second Respondent is established, and was given by the order of this Tribunal on 4 January 2018, before the winding up petition was issued. The question of compensation should be capable of determination without an order of this court.

12. The following orders are therefore made:

## **ORDERS**

Made pursuant to the Employment Tribunal Rules of Procedure

**1. Dismissal of claim**

1.1. The claim against the First Respondent, Head Volume Limited, is dismissed on withdrawal by the claimants.

**2. Amendment**

2.1. The Second Respondent's name is amended to Sunflower Hill Limited.

**3. Stay**

3.1. These proceedings are stayed.

**Employment Judge Fowell**

Dated 19 October 2018

Sent to the parties on:

22 October 2018

For the Tribunal Office