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# EMPLOYMENT TRIBUNALS

**Claimant:** Mr M Keary

**Respondents:** 1) Green Spring Education Trust  
2) Miss Caroline Rawes  
3) Adrian Laure  
4) Mulberry Schools Trust (Discharged 11 July 2019)

**Heard at:** East London Hearing Centre

**On:** Thursday 11 July 2019

**Before:** Employment Judge C Hyde

## **Representation**

**Claimant:** No attendance or representation – Written Representations dated 8 July 2019

**1<sup>st</sup> – 3<sup>rd</sup> Respondents:** Miss C Davies, Counsel

**4<sup>th</sup> Respondent:** Mr T Brown, Counsel

# RECONSIDERATION JUDGMENT

**The Judgment of the Tribunal is that:-**

- 1. The order made on 9 January 2019 and sent to the parties on 21 February 2019 in which Mulberry School Trust was joined as Fourth Respondent to these proceedings was revoked; and**
- 2. Mulberry Schools Trust was discharged from the proceedings forthwith.**

## REASONS

1 This was the hearing of an application on behalf of the Fourth Respondent supported by the other Respondents, for the Fourth Respondent to be discharged from the proceedings. The history of the involvement of the Fourth Respondent was relatively short. The claim was presented on 22 December 2017 after the Claimant's employment terminated on 17 July 2017. There had been delays in the progress of these proceedings largely related to issues about the Claimant's ability to give instructions. In any event an application dated 7 January 2019 was made just before preliminary hearing on 9 January

2019 by the Claimant to join the Fourth Respondent.

2 The Claimant said that he wanted to join the Fourth Respondent to these proceedings because in between the presentation of the claim form and the making of the application to join, there had been a transfer of the school from the First to the Fourth Respondent in about August 2018. There was no suggestion from the Claimant that the dismissal was in anyway related to the transfer. The application to join the fourth Respondent was made because of the terms of a contract between the first and fourth Respondent on the transfer in August 2018. The Claimant argued that under the terms of that agreement, the Fourth Respondent would take on the responsibility for any liability towards him of the First Respondent.

3 I was very grateful to Mr Brown for his very clear submissions on this issue. In summary his point was that under the terms of rule 34 of the Employment Tribunals Rules of Procedure 2013, it was incorrect to join the fourth Respondent. Rule 34 of the 2013 rules of procedure provide as follows:

*“the Tribunal may on its own initiative or on the application of a party or any other person wishing to become a party add any person as a party by way of substitution or otherwise, if it appears that there are issues between that person and any of the existing parties falling within the jurisdiction of the Tribunal which it is in the interest of justice to have determined in the proceedings and may remove any party apparently wrongly included.”*

The wording of that rule is substantially different from the previous wording (prior to 2013) which is helpfully set out in paragraph 8 of the case of *Beresford v Sovereign House Estate* UK EA/0405/11 to which reference was made at the hearing in January 2019. That Rule did not refer to the very important phrase, namely that there have to be issues falling within the jurisdiction of the Tribunal. I accepted the Mr Brown’s arguments about the limiting effect of those words. The 2013 Rule clearly imposes a much narrower and more specific test to determine whether a respondent is properly added.

4 I was satisfied that in essence the reason that the Claimant wished to add the fourth Respondent not to a desire to secure a finding that the fourth Respondent had discriminated against him directly or vicariously but that it really was a matter that related to potential enforcement of any judgment he might obtain against the First Respondent. I accepted Mr Brown’s submissions that the Claimant had not demonstrated adequate grounds to satisfy the test under Rule 34. The Tribunal has no powers in respect of allocating liability for its Judgment to a third party, therefore there is not an issue between the Fourth Respondent and the Claimant, or indeed the First Respondent which falls within the Tribunal’s jurisdiction.

5 For those reasons, I discharged the Fourth Respondent from the proceedings forthwith.

Employment Judge Hyde

26 July 2019