

## *Connolly v Whitestone Solicitors*

In this case the Employment Appeal Tribunal (EAT) reminded respondents of the potential 'illegality' argument that can be made to defeat a claim.

In law, if a contract is tainted with illegality then an involved party will not usually be able to rely on that contract. A common example is that an individual will be unlikely to succeed in a claim based on their employment contract, if they are not legally entitled to work in the UK and have misrepresented the fact that they were. This of course makes fundamental sense. You should not be able to bring a claim (and potentially be rewarded) if the contract the claim is based on is in some way unlawful. The case of *Connolly* reminds us of the potential role that illegality arguments can play in a Tribunal claim involving employment status.

Mr Connolly was a solicitor who was engaged by the Respondent on a self-employed basis. He also accounted for his earnings on a self-employed basis. In evidence Mr Connolly admitted that originally he saw himself as self-employed but over time realised that that he was actually an employee. The original Tribunal concluded that he was an employee, but could not bring his claim because the contract was tainted with illegality due to the misrepresentation that was made to HMRC.

Mr Connolly appealed and was partially successful. The EAT highlighted that in order for a contract to be tainted with illegality, the individual must claim self-employed status with HMRC knowing that he/she is not entitled to do so. It is important to note that mistaken belief (the individual wrongly believes that they are self-employed) will not be sufficient to render the contract 'illegal'. The individual must know that the assertion to HMRC that they are self-employed is unsustainable. This will mean they are acting in bad faith and render the contract unenforceable.

In this case the original Tribunal had not gone as far as finding that Mr Connolly had made an assertion knowing that the assertion was unsustainable and therefore the appeal succeeded.

It is worth noting that it will be a tough task getting a Tribunal to make a finding that an individual knowingly misrepresented the position to HMRC. However it is worth bearing mind for those claimants who sit in the Tribunal and state that they knew from the start that they were an employee but just paid their tax as self-employed.

**If you would like further information regarding this case, or any other Employment Law issues please contact**

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