

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

Determination Number: WA 177/07  
File Number: 5081615

BETWEEN HILTON DOHERTY  
Applicant

AND PRP AUCKLAND LIMITED (NOW  
ORAKEI GROUP (2007) LIMITED)  
Respondent

Member of Authority: P R Stapp

Representatives: Michael Quigg and Tim Sissons for Applicant in  
Attendance  
Anthony (Tony) Kidd for Respondent by Telephone  
from Auckland

Investigation Meeting: Wellington, 19 December 2007

Determination: 21 December 2007

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] This application can be briefly summarised as follows. Mr Doherty is seeking to be paid outstanding money from PRP Auckland Limited, which he says was jointly his employer with 54 Cuba Street (2007) Limited. 54 Cuba Street (2007) Limited accepted, in an earlier Authority investigation, liability to pay Mr Doherty. In an order of the Authority made on 18 May 2007 (WA78/07) 54 Cuba Street (2007) Limited was required to pay Mr Doherty the sum of \$30,570.22 net in redundancy pay (and pay the tax in addition) and to pay him the sum of \$1,380.27 being a reimbursing car allowance in lieu of notice under the terms of his employment agreement. An outstanding matter of Mr Doherty's bonus was reserved for calculation. Payment was required to be made by 1 June 2007 on the sums ordered, and details on the bonus calculation were required to be produced by 23 May 2007.

[2] 54 Cuba Street (2007) Limited has not paid Mr Doherty. In the meantime it has gone into liquidation. It did arrange to provide details of the calculation of the bonus. That company was withdrawn from the proceedings on 5 October 2007 by e-mail from the applicant's lawyer.

[3] The employment relationship problem when it was originally lodged included Christopher Orchard as an applicant. Mr Orchard is no longer participating.

[4] For completeness the Authority in its determination dated 18 May 2007 granted leave for the applicants to resume the investigation meeting in respect of the role of PRP Auckland Limited and what if any liability it has in paying any outstanding sums. Mr Doherty has decided to proceed.

### **Issues**

[5] What is PRP Auckland Limited? Was PRP Auckland Limited Mr Doherty's employer? Is PRP Auckland Limited liable to pay the sums that 54 Cuba Street (2007) Limited was ordered by the Authority to pay to Mr Doherty? What amount of bonus is outstanding to Mr Doherty, and who is liable to pay?

### **The Parties' Positions**

[6] Mr Doherty claimed that he was employed by PRP Auckland Limited: as cited in the original proceedings. Anthony Kidd, company director of PRP Auckland Limited and Orakei Group (2007) Limited, denied that claim.

[7] 54 Cuba Street (2007) Limited was previously named 54 Cuba Street Limited, PRP Wellington Limited, Axiom Rolle PRP Valuation Services (Wgtn) Limited, Rolle New Zealand Holdings Limited and Hansop Holdings Limited. The directors are Sarah Todd and Mr Kidd.

[8] The name of PRP Auckland Limited was entered on the companies register on 22 September 2006. Its name was changed to Orakei Group (2007) Limited on 3 April 2007.

[9] PRP Auckland Limited was previously named: Axiom Rolle PRP Valuation Services Limited and Axiom Advisory Limited.

[10] Mr Kidd has applied for Orakei Group (2007) Limited to be made a second respondent. This was opposed by the Applicant because he aimed to obtain his money from PRP Auckland Limited, which he says was his employer.

[11] Mr Doherty has relied upon an employment agreement dated 14 November 2001 as proof of his employer at that time, which was Rolle Limited, before there was a change of name to PRP Auckland Limited. Also, he has relied upon an "Information Memo" addressed to "*All Staff, ex Rolle Knight Frank*" and dated 17 September 2004 sent by Mr Kidd. That memo was on the letterhead of Axiom Advisory Limited, being another, earlier name of PRP Auckland Limited, now called Orakei Group (2007) Limited. This company (PRP Auckland Limited, now called Orakei Group (2007) Limited) is not now trading: Mr Kidd described it as a shell company.

[12] Mr Doherty has also relied on a draft employment agreement that he was discussing with Ms Todd: it refers to the employer being: "Axiom Rolle PRP Valuation Services Limited"; which was referred to by Sarah Todd, a director and half owner of Axiom Rolle PRP Valuation Services (Wgtn) Limited. A copy of that agreement was attached to the Applicant's amended statement of problem.

[13] Further Mr Doherty says that business, management and payroll functions were conducted through PRP Auckland Limited, including e-mail exchanges when he was working in Wellington and supports his claim that PRP Auckland Limited was his employer.

[14] On 17 July 2007 Mr Kidd replied in a letter to the Authority to Mr Doherty's Counsel's memorandum supporting this application. Mr Kidd produced an employment agreement that was not signed but which had Mr Doherty's name on it dated 2006. The employer is identified as: Axiom Rolle PRP Valuation Services (Wgtn) Limited. Mr Kidd also produced a pay slip with the name of that company paying Mr Doherty's salary. Mr Doherty denied ever seeing either of these two documents before.

[15] The matter is further complicated by the existence of another company called PRP Auckland Limited and incorporated on 27 March 2007. This company comes from a company called Wairau Road No 94 Limited that changed its name on 3 April 2007 to PRP Auckland Limited. Mr Kidd says it was not and has not been involved in any way with Mr Doherty. He says any company Mr Doherty is referring to must be PRP Auckland Limited, now called Orakei Group (2007) Limited, although he contended that this was also an entirely separate company to the Wellington operation where Mr Doherty was employed.

[16] Also, Mr Kidd has relied upon taking over the assets, staff and clients of Rolle Limited on 2 September 2004 through a company called Hansop Holdings Limited. He says that company changed its name to Axiom Rolle PRP Valuation Services (Wgtn) Limited. He says the Auckland assets, staff and clients were transferred to Axiom Advisory Limited owned by him. He says the two off chutes explain the differences between the Auckland and Wellington operations.

[17] Axiom Rolle PRP Valuation Services Limited changed its name and it finally ended up as PRP Auckland Limited. Mr Kidd says that PRP Auckland Limited, now Orakei Group (2007) Limited, never employed Mr Doherty. He says the only relationship between his companies with PRP Auckland Limited now Orakei Group (2007) Limited was some shared services. Mr Kidd says only two people were employed by that company and worked in Wellington: an accountant and chief executive.

[18] In reply the applicant says that for all intents and purposes it appears that the affairs of Orakei Group (2007) Limited continue to be conducted by the company named and registered as PRP Auckland Limited (formerly Wairau Road No 94 Limited).

[19] Mr Doherty is further adamant that he had no perception of any distinction between the Auckland and Wellington companies and their commonality was apparent when he noted that the services and some clients were shared.

[20] Mr Doherty says he did not have a signed employment agreement because it was still to be finalised. He says he only had a signed employment agreement with

Rolle Limited. The only other agreement he discussed with Ms Todd was the draft Axiom Rolle PRP Valuation Services Limited agreement.

[21] Mr Doherty replied that the employment agreement that Ms Todd referred to in an e-mail dated 28 July 2006 to the chief executive working in Wellington that stated: "*The employment contract we gave him last year*", must have been one with employer's name: Axiom Rolle PRP Valuation Service Limited. This is because that was in 2005/2006 and referred to when there was an attempt to sign off the employment agreement that he referred to in his statement of problem (not the one produced by Mr Kidd on 17 July 2007 naming Axiom Rolle PRP Valuation (Wgtn) Limited).

[22] Mr Doherty says any suggestion that the agreement Mr Kidd produced to support him not being employed by PRP Auckland Limited, now Orakei Group (2007) Limited, could not be the case because the agreement Mr Doherty attached to his statement of problem was dated 2005 being the reference to "*The employment contract we gave him last year*".

[23] Mr Doherty says he was never presented with a final version of any agreement to sign.

### **Determination**

[24] I accept that various sums of money are still owed to Mr Doherty. 54 Cuba Street (2007) Limited has not paid any sums as ordered and since it is in liquidation has been withdrawn from the proceedings. Mr Doherty says that PRP Auckland Limited was his employer and asked that it be directed to pay him the outstanding amounts.

### **What is PRP Auckland Limited?**

[25] There are two entities. First there is PRP Auckland Limited, now called Orakei Group (2007) Limited. The change of name is recorded from 3 April 2007. Secondly there is PRP Auckland Limited, formerly Wairau Road No 94 Limited. Mr Doherty does not appear to have had a role in this company. The change of name for this company occurred from 3 April 2007 also. The former company is no longer trading and Mr Kidd confirmed that it is a shell company. The latter company is trading and

carrying on essentially the same business as the former company, with the same name, except that it is not conducting plant and machinery valuations. Mr Kidd is a director of both companies. The latter company is not a party to these proceedings since it is registered as a separate company and there has been no consent to it being joined and technically not on any notice. Any movement of goodwill in the use of the same name, “PRP Auckland Limited” has not been explained by Mr Kidd.

[26] The incorporation of Wairau Road No 94 Limited and the change of its name to PRP Auckland Limited on 3 April 2007 is not Mr Doherty’s employer, although the same name “*PRP Auckland Limited*” is being used.

**Was PRP Auckland Limited now called Orakei Group (2007) Limited Mr Doherty’s employer?**

[27] I accept that there is sufficient evidence to support Mr Doherty in his claim that his employer was PRP Auckland Limited, now Orakei Group (2007) Limited. I am supported in making this conclusion by:

- Mr Kidd having the opportunity to participate in the original proceedings and choosing not to do so.
- Mr Kidd was a director associated with the entire configuration of companies involved.
- Mr Kidd has a link in the decision making chain involving the Wellington arrangements. His involvement in day to day management in Wellington probably was more given that two PRP Auckland Limited people, an accountant and chief executive were placed in Wellington to work.
- Mr Doherty had an employment agreement with Rolle Limited that was carried over to Axiom Rolle PRP Valuation Services Limited that became PRP Auckland Limited when the names changed. There was never a replacement agreement and the draft that Mr Doherty says he discussed was the Axiom Rolle PRP Valuation Services Limited draft agreement.
- The existence of letterhead used from Axiom Advisory Limited a previous name for PRP Auckland Limited where Mr Kidd stated to all staff ex Rolle Frank Knight:
  - *“To reiterate all essential terms of your employment contracts will be carried over to the new company. This includes but is not*

*limited to such things as holiday and sick leave, salary and incentives”.*

- Mr Doherty’s bank statements that referred to Rolle Limited and Axiom Rolle Advisory for salary and expense payments. Both these companies ended up being called PRP Auckland Limited.
- There was no documentation produced by Mr Kidd to support the service arrangements that he says were in place between the companies.
- Mr Doherty’s bank statements referred to PRP Wellington Limited from December 2006 for his salary payments. I accept he was not consulted or informed of such changes before they were made.
- I accept that Mr Doherty had not seen the employment agreement and pay slip Mr Kidd produced with his reply on 17 July 2007 lodged in the Authority. I accept that Mr Doherty says that the writing on that agreement was not his and that he did not know who had written on the agreement.
- Mr Doherty is adamant that he had no perception of any distinction between the Auckland and Wellington companies and their commonality was apparent when he noted that the services and some clients were shared and that Mr Kidd had an involvement.

**Is PRP Auckland Limited liable to pay the sums that 54 Cuba Street (2007) Limited was ordered by the Authority to pay to Mr Doherty?**

[28] Because PRP Auckland Limited, now called Orakei Group (2007) Limited, was Mr Doherty’s employer, it is liable to pay the outstanding sums despite 54 Cuba Street (2007) Limited accepting liability and not paying. However, Mr Doherty’s success will probably be limited unless he can get the monies owed him from a shell company that is no longer trading.

**What amount of bonus is outstanding to Mr Doherty, and who is liable to pay?**

[29] Mr Doherty has confirmed his bonus is \$20,107.92: that has not been challenged. The claim is supported from information provided by the respondents. The sum is owed by PRP Auckland Limited now Orakei Group (2007) Limited.

**Orders of the Authority**

[30] That PRP Auckland Limited now Orakei Group (2007) Limited as Mr Doherty's employer is directed to pay to Hilton Doherty the sum of \$30,570.22 net in redundancy pay (and pay the tax in addition) and to pay him the sum of \$1,380.27 reimbursing car allowance in lieu of notice under the terms of his employment agreement. Also, PRP Auckland Limited now Orakei Group (2007) Limited is to pay to Hilton Doherty the sum of \$20,107.92 outstanding bonus.

[31] Costs follow the event and PRP Auckland Limited now Orakei Group (2007) Limited is to pay Mr Hilton Doherty the sum of \$2,000 contribution towards costs for an investigation meeting lasting an hour involving attendance, preparation involved in resuming the investigation meeting and the preparation of relevant memoranda.

P R Stapp  
Member of the Employment Relations Authority