

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 8/08
5111044

BETWEEN MAGGI BRUNSDEN AND
 ANNETTE INNES
 Applicants

AND ACACIA EMPLOYMENT
 SERVICES LIMITED
 First Respondent

 MOMENTUM MEDIA
 LIMITED
 Second Respondent

Member of Authority: R A Monaghan

Representatives: Maggie Brunsdn and Annette Innes in Person
 Stephan Bosman, Counsel for Respondents

Telephone conference: 4 January 2008

Determination: 15 January 2008

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Maggi Brunsdn and Annette Innes have applied for orders for the payment of outstanding wages and holiday pay following the termination of their employment. The matters addressed and the orders to be made in this determination were discussed in a conference call between the parties on 4 January 2008.

Matters arising from the application as filed

1. The identity of the employer and joinder of party

[2] The Authority makes orders for the payment of wages and holiday pay against employers, and cannot make such orders against a person or organisation who is not a party to the relevant employment relationship.

[3] Here the statement of problem cited only Acacia Employment Services Limited (“AESL”) as the employer party. However a document filed in an associated application appeared to raise an issue about whether another company, Momentum Media Limited (“MML”), was the employer. MML has two directors, both of whom are also among the directors of AESL. MML’s shareholder is a third company Acacia Media Holdings Limited (“AMHL”). AMHL and AESL have the same directors and shareholders.

[4] The applicants were employed in a business trading as M & V Creative. I was told MML operated that business, and that AESL was, in effect, a management company and employed the applicants. Its only assets were the contracts it had to supply staff to MML and to another company. Both MML and the other company have ceased trading.

[5] Management companies are not uncommon phenomena, and it may be that AESL was correctly cited as the only employer. Similarly, though, it is not unknown for an investigation of the detail of the operation of a management company to result in a lifting of the corporate veil¹ or a finding that, for other reasons, the true employer is an organisation other than the management company.

[6] I have formed no conclusion on the matter, but merely raised the identity of the employer as an issue that may require investigation. In the circumstances disclosed by the ensuing discussion I asked counsel whether both AESL and MML could be cited as the employer parties to any order made in respect of the monies owed to the applicants. He subsequently sought instructions from both companies and advised of their consent to that proposal.

[7] Accordingly MML is joined as a respondent party to this application for the purposes of the orders I will make.

2. Wages and holiday pay owed to the applicants

¹ The classic example of this in an employment situation is found in **NZ Seamen’s IUOW & Ors v Shipping Corporation of New Zealand Limited** [1989] 1 NZILR 6.

[8] I enquired of counsel whether there was any dispute that the monies claimed by the applicants were owed in the amounts identified. He advised that the amounts sought by Ms Brunsdon and Ms Innes were not disputed.

[9] Counsel was also to seek instructions as to whether an order could be made by consent for the payment of the sums claimed by the applicants. He did so, and advised that AESL and MML agreed to awards being made against them in the amounts claimed by the applicants.

3. The financial position of the companies

[10] As mentioned, counsel advised that MML and the second company contracting with AESL for the services of staff have ceased trading, with a flow on effect for AESL. The companies have not been placed in liquidation because there have not been funds available to pay a liquidator, although that may change. Statutory demands for payment have been or are to be served, including a demand from the IRD. Proceedings are expected to flow from the response to those demands. AMHL, too, has significant debts.

[11] That state of affairs has implications for the applicants' ability to obtain the fruits of the orders they seek. Some of the matters they have raised regarding the availability of assets capable of being used to meet the obligations to pay are better raised in enforcement proceedings should such proceedings be commenced. These matters raise further legal issues and I have suggested that advice be sought on them in association with any enforcement proceedings.

Orders for payment

[12] Against that background I make the following orders by consent:

[13] AESL and MML, jointly and severally, are ordered to pay:

- (a) \$5,951.87 (gross) to Maggi Brunsdon in respect of outstanding wages and holiday pay; and

(b) \$1,759.44 (gross) to Annie Innes in respect of outstanding wages and holiday pay.

R A Monaghan

Member of the Employment Relations Authority