

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 157/10  
5159659

BETWEEN	KAREN KIRK Applicant
AND	TODD & STACEY TREGOWEATH AND THOMAS HARRIS & DAWN MARTIN T/A ZINC INNOVATION INTASTE RESTAURANT Respondent

Member of Authority: Vicki Campbell

Representatives: Alan Taylor for Applicant  
Thomas Harris and Dawn Martin for Respondent

Investigation Meeting: On the papers

Determination: 7 April 2010

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**DETERMINATION OF THE AUTHORITY**

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[1] Ms Kirk has made an application to the Authority for what amounts to a compliance order with the Authority's Determination numbered AA 346/08 issued by the Authority on 1 October 2008 although the date was stated in error on the determination as being 2007.

[2] Following the issuing of the Determination, the Authority received a letter from Mr Harris and Ms Martin dated 22 January 2009, advising that at no time did they have any involvement in the staffing matters for the partnership of Todd & Stacey Tregoweth and Thomas Harris and Dawn Martin trading as Zinc Innovations Intaste Restaurant ("Zinc Restaurant") and advised that they did not accept liability for the awards ordered by the Authority.

[3] On 6 January 2009 Mr and Mrs Tregoweth were declared bankrupt. Because of the stance taken by Mr Harris and Ms Martin as to their liability, and the bankruptcy of Mr and Mrs Tregoweth, the money awarded to Ms Kirk under AA

346/08 has not been paid. Section 76(1) of the Insolvency Act 2006 provides that “On adjudication, all proceedings to recover any debt provable in the bankruptcy are halted.” This means that any recovery action against Mr and Mrs Tregoweth are caught by this provision and are therefore *halted*.

[4] On 14 August 2008 a Deed was signed by all four partners in the partnership, dissolving the partnership with effect from 28 March 2008 and providing for all debts, claims and demands of the partnership to be assumed by Mr Harris and Ms Martin.

[5] At the time the Deed was signed on 14 August 2008 Ms Kirk’s claim was known or ought to have been known to the partnership. My conclusion is based on the fact that Ms Kirk raised her personal grievance for unjustified dismissal with Mr and Mrs Tregoweth 12 February 2008 and Mr and Mrs Tregoweth responded to the initial raising of the grievance by agreeing to attend mediation.

[6] I am satisfied that at the time the determination was issued on 1 October 2008 Mr Harris and Ms Martin had assumed liability for the claim arising out of Ms Kirk’s employment relationship with Todd & Stacey Tregoweth and Thomas Harris & Dawn Martin trading as Zinc Innovation Intaste Restaurant.

[7] Mr Harris and Ms Martin say they had no involvement in the restaurant and were silent partners only. I have considered whether the actions of Mr and Mrs Tregoweth should be attributable to the partnership as a whole. I answer that question in the affirmative. Mr and Mrs Tregoweth, Mr Harris and Ms Martin operated a business under a partnership agreement and must be seen together as a firm within the meaning of s 7 of the Partnership Act 1908<sup>1</sup>

[8] That firm as a whole is liable for any wrongful acts committed by any one partner in the ordinary course of the business of the firm<sup>2</sup>. When acting as he did, Mr Tregoweth was acting in his capacity of partner with responsibility for dealing with staffing matters. Whether he dealt with staffing matters well or badly, he was never the less, doing something within the ordinary course of the business. As held in *Proceedings Commissioner v Ali Hatem*, a partner acting in the ordinary course of the

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<sup>1</sup> See *Proceedings Commissioner v Ali Hatem* [1999] 1 NZLR 305.

<sup>2</sup> Partnership Act 1908, section 13.

business of the firm, is deemed to have the implied authority of the other partners (of the firm)<sup>3</sup>.

[9] I am satisfied that Zinc Restaurant has not complied with the Determination and that the non-compliance continues today.

[10] Zinc Restaurant's continuing defiance of the Authority's orders places it at peril of serious consequences. The Authority's orders may be the subject of a further application for compliance in the Employment Court. The Employment Court is empowered to impose penalties for continuing non-compliance which include imprisonment, fines and the sequestration of property.

**Thomas Harris and Dawn Martin trading as Zinc Innovations Intaste Restaurant are ordered to comply with Determination AA 346/08 issued by the Authority on 1 October 2008 within 28 days of the date of this determination.**

#### **Costs**

[11] Costs are reserved. In the event that costs are sought, the parties are encouraged to resolve that question between them. If they fail to reach agreement on the matter of costs, Ms Kirk may lodge and serve a memorandum as to costs within 28 days of the date of this determination with any reply submissions being lodged with 14 days of receipt. I will not consider any application outside that timeframe.

Vicki Campbell  
Member of Employment Relations Authority

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<sup>3</sup> Supra n 1.