

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2012] NZERA Auckland 276
5380333

BETWEEN MARTIN (DING) MA
 Applicant

AND CLOUD TWELVE LIMITED
 (formerly 4U WEB DESIGN
 LIMITED)
 Respondent

Member of Authority: R A Monaghan

Representatives: M Moncur, advocate for applicant
 B Suess, advocate for respondent

Investigation meeting: On the papers

Determination: 13 August 2012

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] In a determination dated 17 February 2012 I found that Cloud Twelve Limited (formerly 4U Web Design Limited) was Mr Ma's employer at relevant times, and made orders for various payments.¹ In a determination dated 14 March 2012 I made an order for costs in favour of Mr Ma.²

[2] No payments have been made. Mr Ma now seeks an order that Cloud Twelve Limited (CTL) comply with those determinations by making the payments ordered.

[3] CTL says it has ceased trading, has no assets and has no ability to pay.

¹ *Martin (Ding) Ma v Dolce Design Limited & Anor* [2012] NZERA Auckland 57

² *Martin (Ding) Ma v Dolce Design Limited & Anor* [2012] NZERA Auckland 96

Background

[4] CTL gave evidence during the investigation meeting in respect of the substantive matter that it was established under its former name as a vehicle for the provision of Mr Ma's services.

[5] When those services were no longer being provided it ceased trading. I accept that, as at the date of that investigation meeting, CTL was not trading.

[6] In a Minute to the parties dated 10 July 2012 I set out the steps I intended to take in order to obtain evidence about CTL's financial position and whether it has any assets. Those steps yielded almost nothing. As a result I accept for the purposes of this application that CTL is still not trading although it remains on the companies office register. While it asserted that it has no assets, there was no other evidence concerning assets and I make no finding on the matter.

Determination

[7] I indicated in the 10 July minute that I would seek further responses and submissions from the parties, but I did not propose to convene an investigation meeting. The parties did not respond to a subsequent query on 30 July 2012 as to whether there was any more they wished to say. I have therefore determined this matter on the papers.

[8] The power to order compliance is discretionary. Where the current status of a company such as CTL makes it likely that such an order would not be observed, for practical reasons alone consideration should be given to the possibility that alternative remedies to that of a compliance order against the company may be more fruitful. On the other hand there was no evidence that CTL has debts other than to its former employees³, there is no information about its assets beyond its director's assertion, and there was nothing to suggest anything exists to prevent it from resuming trading if it wishes.

³ In addition to Mr Ma's claim, I refer to a determination of the Authority in *Darlow v Cloud Twelve Limited* [2012] NZERA Auckland 65.

[9] Were the company clearly moribund I would consider exercising the discretion against making an order for compliance on the ground that the order would serve no useful purpose. I am not satisfied the company is moribund here.

[10] CTL is therefore ordered to:

- a. comply with the determination of the Authority dated 17 February 2012 by making the payments identified at [49] and [50] of the determination; and
- b. comply with the costs determination of the Authority dated 14 March 2012 by making the payments identified at [4] and [5] of that determination.

[11] All payments are to be made by the close of business on 7 days from the date of this determination.

Costs

[12] CTL is further ordered to contribute to the applicant's filing fee in the sum of \$71.56.

R A Monaghan

Member of the Employment Relations Authority