

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2013] NZERA Auckland 191  
5417162

BETWEEN	LYNETTE SALLY O'BOYLE Applicant
A N D	ONE DOUBLE FIVE WHARE ROOPU COMMUNITY HOUSE TRUST First Respondent
A N D	CHRISTOPHER NOEL RODERICK PERRY Second Respondent
A N D	FRANCES FREEMAN Third Respondent
A N D	TAKURANGI ANITA YORKE Fourth Respondent
A N D	JOHN MURRAY Fifth Respondent
A N D	ROBYN MATHEWS Sixth Respondent
A N D	MARY NICHOLAS Seventh Respondent

Member of Authority:	Rachel Larmer
Investigation meeting:	13 May 2013 by telephone conference
Submissions received:	13 May 2013 from Applicant 13 May 2013 from Respondent
Date of Determination:	14 May 2013

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**DETERMINATION OF THE AUTHORITY**

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**A. The second, third, fourth, fifth, sixth and seventh respondents are struck out of these proceedings.**

**Employment relationship problem**

[1] The first respondent One Double Five Whare Roopu Community House Trust (“155”) invited the applicant to withdraw her claims against the second to seventh respondents on the grounds the Authority has no jurisdiction to hear claims involving them but she declined to do so.

[2] The first respondent applies for the second through to seventh respondents to be struck out of these proceedings. The applicant opposes that application.

**Respondent’s submissions**

[3] The first respondent says it was the entity which employed the applicant and that none of the other respondents had an employment relationship with her. The first respondent is recorded in the applicant’s individual employment agreement as the employer.

[4] The first respondent submits the Authority does not have jurisdiction to hear the applicant’s claims against the second to seventh respondents because:

- a. none of them were in an employment relationship with the applicant and
- b. the applicant has not identified any specific cause of action which falls within the Authority’s jurisdiction against any of the second to seventh respondents who have applied to be struck out of these proceedings.

[5] It further submits that there is nothing in the affidavits filed in support of the applicant’s interim injunction application (which was withdrawn at the telephone conference on 13 May) which discloses anything capable of amounting to a cause of action against any of the second to seventh respondents.

[6] The first respondent says that the naming of the second to seventh respondents is an abuse of the Authority’s process. It says it is not for the Authority to look into the internal workings of the employer entity by joining current or former Trust members as parties.

## **Applicant's submissions**

[7] The applicant claims that because clause 2.2 of her individual employment agreement records that she is to report to the 155 Co-ordinator, Ms Carol Peters and to the "*Trust Board*" she can individually name current or past Trust Board members.

[8] The applicant confirms she does not claim to be (or ever to have been) in an employment relationship with any of the second to seventh respondents. She acknowledges the first respondent was her employer. Rather she says there is "*an issue involving an internal conflict which needs to be resolved*" because she claims such conflict resulted in the first respondent being unable to act fairly and reasonably as an employer which led to a position "*where the first respondent was not in a position to be the employer of the applicant.*"

[9] In response to the Authority's request that the applicant identify a specific cause of action against any of the second to seventh respondents she claims there was an internal conflict and *ultra vires* actions by some of the Trust members and there is an issue as to whether or not there has been a breach of fiduciary duties by Trust members and what impact that had on the employment relationship.

## **Issue**

[10] The issue for the Authority to determine is whether there is a cause of action against any one of the second to seventh respondents which falls within its jurisdiction to investigate.

## **Outcome**

[11] The Authority's jurisdiction to investigate claims against a party who is not and never was in an employment relationship is extremely limited. None of the second to seventh respondents are or were in an employment relationship with the applicant and she has not identified a cause of action which the Authority has jurisdiction to investigate in respect of them.

[12] I find the Authority does not have jurisdiction to investigate any of the claims made against the second to seventh respondents. Accordingly, the second to seventh respondents are all struck out of these proceedings.

## **Costs**

[13] The first respondent has been successful and is entitled to a contribution towards its costs. Costs will be dealt with by an exchange of memorandum with the first respondent having seven days to file its memorandum, the applicant having seven days within which to respond, with the first respondent having three working days within which to file any reply memorandum.

**Rachel Larmer**  
**Member of the Employment Relations Authority**