

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2018] NZERA Auckland 310
3023912 & 3023931

BETWEEN LABOUR INSPECTOR
 Applicant

AND MATANGI BERRY FARM LIMITED
 First Respondent

AND JIUBO JIANG
 Second Respondent

AND SHUAI (MICHAEL) JIANG
 Third Respondent

Member of Authority: TG Tetitaha

Representatives: A Dumbleton, Counsel for Applicant
 SJ Davies, Counsel for Respondent

Investigation Meeting: On the papers

Date of Determination: 9 October 2018

**DETERMINATION OF
THE EMPLOYMENT RELATIONS AUTHORITY**

- A. Shuai (Michael) Jiang is joined to the proceeding as the Third Respondent.**
- B. I am satisfied there are grounds for removal pursuant to s178(2) of the Act. The proceeding is removed in its entirety. There is no order as to costs.**

Employment Relationship Problem

- [1] This is an application to join another respondent and remove this matter in its entirety to the Employment Court.

Relevant Facts

- [2] The Labour Inspector filed on 11 January 2018 an application for declaration of the employment status of independent contract workers of Matangi Berry Farm Limited (MBF). If employed, it alleges MBF has breached minimum employment standards for these workers. It also sought declarations that Jiubo Jiang (JJ) an MBF director, was involved in the breaches of the minimum employment standards. It sought recovery of wages and holiday pay owed and penalties against both parties.
- [3] At the same time the Labour Inspector filed a statement of claim in the Employment Court seeking a declaratory judgment of serious breaches of minimum employment standards by MBF pursuant to Part 9A of the Employment Relations Act 2000. It also alleged involvement in the same by JJ. It seeks penalties and banning orders against both parties.
- [4] On 14 February 2018 the Authority directed the parties to mediation and that the requirement to file a statement in reply was on hold until further order of the Authority.

Joinder application

- [5] On 2 March 2018 the respondents sought to join Blueberry Country Limited (BBC) to this proceeding. It sought to stay the service of the application in the meantime.

- [6] The Labour Inspector also sought by Memorandum a direction for Shuai (Michael) Jiang to attend mediation on 6 March 2018 on the basis it would seek to join him at a later date to the proceeding. This was opposed but the respondents noted he would attend voluntarily.
- [7] On 18 July 2018 the Labour Inspector advised mediation was unsuccessful and that an amended statement of problem would be filed within 14 days. The Authority directed the parties to file the statement of problem within 14 days and for the statement in reply to be filed 14 days thereafter. It sought to set down a telephone conference.
- [8] On 1 August 2018 the Labour Inspector filed several documents including:
- a) An amended statement of problem
 - b) An application to join Shuai (Michael) Jiang to the proceedings.
- [9] An extension was granted to 30 August 2018 for the respondent to file a statement in reply. The parties were also asked if they required more mediation. No further direction to mediation was sought or made.
- [10] On 22 August 2018 the parties advised they were liaising regarding a joint Memorandum on timetabling this matter for hearing. However on 30 August 2018 the respondent filed a Memorandum advising instead that it consented to the removal application. The Labour Inspector confirmed on 30 August there was no issue as to costs.
- [11] On 6 September 2018 the Labour Inspector sought an oral decision or indication on the removal application due to a teleconference with the Employment Court the following day. Unfortunately the Member was out of the office and could not attend to the matter.

[12] After reviewing the file, it was noted there were other applications other than the removal application. The Authority sought the respondents view on whether there was consent to joinder of Shuai (Michael) Jiang. Respondent Counsel advised there was.

[13] The respondents also advised the application to join BBC was to be withdrawn on 2 October 2018. This was confirmed by Minute dated 5 October 2018. There is no issue about costs. The matter is now ready for determination.

Joinder of Shuai (Michael) Jiang

[14] Given there is consent to the joinder and evidence his presence is required to determine liability for the breaches (including his own), Shuai (Michael) Jiang is joined to the proceeding as the Third Respondent.

Removal

[15] The Labour Inspector seeks removal pursuant to s178(2) of the Act. This is on the basis the Court already has before it proceedings which are between the same parties and which involve the same or similar or related issues.

[16] Having considered the evidence and statement of problem and claim filed, I am satisfied there are grounds for removal pursuant to s178(2) of the Act. The proceeding is removed in its entirety. There is no order as to costs.

TG Tetitaha

Member of the Employment Relations Authority