

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKĀURAU ROHE**

[2019] NZERA 429
3034720 & 5579375

BETWEEN

KATYA PFENNIGER
Applicant

AND

CRAFTBROS HOSPITALITY
LIMITED
First Respondent

GORDON BLUME
Second Respondent

RONALD BRAUN
Third Respondent

Member of Authority: TG Tetitaha

Representatives: Thomas Harvey advocate for Applicant
No appearance by or for the Respondents

Investigation Meeting: On the papers

Submissions [and further information] received: 30 August, 17 December 2017, 27 June 2018 and 9 and 11 July 2019 from Applicant

Date: 19 July 2019

DETERMINATION OF THE AUTHORITY

- A. The application for wage arrears is dismissed.**
- B. The application for name suppression is declined.**
- C. Given Ms Pfenniger was unsuccessful, no costs are ordered.**

Employment Relationship Problem

[1] Katya Pfenniger seeks payment of wages arrears that she alleges is owed by the respondents. She has asked that this hearing be conducted “on the papers” i.e. without holding a hearing.

[2] Unfortunately the progression of this employment relationship problem has been hampered by problems including removal of the first respondent from the companies register and service upon the second and third respondents. Ms Pfenniger has also more recently sought name suppression.

[3] This determination deals with all issues on the papers and without a hearing as requested by Ms Pfenniger.

Relevant Facts

[4] In 2014 Ms Pfenniger accepted employment as a staff coordinator. She was provided with a draft employment agreement but never signed it. The agreement named the first respondent as her employer.

[5] At the conclusion of her employment, Ms Pfenniger alleges she was owed wages of \$3,025, holiday pay and Kiwisaver. After attempts to recover her wages, she filed a statement of problem in the Employment Relations Authority on 25 February 2016 seeking payment.

Service upon second and third respondents

[6] At the time the statement of problem was filed, Gordon Blume no longer resided in New Zealand. Ronald Braun continued to reside in New Zealand initially at an address in Point Chevalier.

[7] On 19 April 2016 a process server engaged by the Authority attempted service upon Mr Braun at the Point Chevalier address. The documents were returned with a letter noting he had moved out of the address and had no other known address for service.

Overseas service upon second respondent

[8] Ms Pfenniger was advised about the unsuccessful service upon Mr Braun. On 4 May 2016 Ms Pfenniger was also advised that service overseas upon Mr Blume required an application to the Authority for leave to do so.

[9] Despite the direction to apply to serve Mr Blume overseas, on 16 November 2016 Ms Pfenniger copied the Authority an email she had sent to the Mr Blume. The

email attempted service upon Mr Blume to an overseas address. She later enquired if she was required to travel to Germany to serve Mr Blume and was told this was not required.

Seeking further evidence of second and third respondents involvement in employment relationship problem

[10] Given the lack of an application to serve Mr Blume overseas, the problems with service upon Mr Braun, and a statement of problem that did not detail the involvement of the second and third respondents in her employment relationship, Ms Pfenniger was asked to provide information about this by 12 December.

[11] Ms Pfenniger replied on 24 November that she was employed by Mr Blume because an employment contract she was provided was never signed by her. She gave no detail about how Mr Braun could be her employer.

[12] Ms Pfenniger was directed to provide a copy of her draft employment agreement which was provided on 4 December 2016. The employment agreement named Craftbros Hospitality Limited as her employer.

Telephone conference to progress matters

[13] After enquiries from Ms Pfenniger in August about progression of the file, a telephone conference was set down for 16 August 2017.

[14] After the conference two Minutes were issued setting out concerns about whether the second and/or third respondents were the employers. Ms Pfenniger was again asked to produce further evidence to show her employment relationship with second and/or third respondents. They also noted the impending removal of Craftbros Hospitality Limited from the companies register and Ms Pfenniger's advice she was taking steps to prevent this.

Removal of first respondent from companies register

[15] Ms Pfenniger emailed the Authority on 16 August asking it to lodge an objection to the removal of the first respondent from the Companies Registry. She was advised by email the same day from the Support Manager that the Authority

cannot raise an objection to the Companies Office about the removal of the first respondent.

[16] No further steps were taken by Ms Pfenniger to prevent the removal of the first respondent company. The first respondent Craftbros Hospitality Limited was removed from the Companies Registry on 16 October 2017.

Further requests for information

[17] On 31 August 2017 Ms Pfenniger filed a Memorandum with incomplete attachments. She was directed to file all of her attachments which occurred on 1 September 2017. Ms Pfenniger's IRD records noted a different employer, Nineteen Café. The Memorandum stating amongst other things:

26 Ronald Braun continues to have a significant role with Craftbros, otherwise he would not be using his address as the address for service, just as he would not be publically noting on LinkedIn that he had a working relationship with Craftbros. Even if Craftbros is not a legitimate company, there is a reason why this company still has a presence. Even if Craftbros is a falsely created and misleading company, there remain two significant names that are to date linked with this company: Ronald Braun and Gordon Blume.

27. The applicant worked for Ronald Braun and Gordon Blume as the company Craftbros is not a legitimate company. The applicant never signed an employment agreement with Craftbros, all communication was always with the persons Ronald Braun and Gordon Blume.

...

30. Behind every business there are people operating the business, in this case Gordon Blume and Ronald Braun. A business cannot exist without such people.

...

34. Ronald Braun head hunted the applicant. Ronald Braun hired the applicant. Gordon Blume was absent initially. Both men hired staff, however Ronald Braun had a greater input due to Gordon's absence.

...

38. Ronald Braun took care of administration as often Gordon Blume was overseas. Gordon Blume paid employees.

[18] The Memorandum referred to Craftbros Hospitality Limited's accountants and her IRD records showing Nineteen Café as her employer. The accountants were directed to file all information about Ms Pfenniger's employment by 14 September 2017 and to advise if it knew who and what Nineteen Café was.

[19] The Accountant advised on 8 September that it did not hold any records for the first respondent and did not know who Nineteen Café was. The payroll was managed by a system known as Flexitime. No contact address for this business was

provided. The Accountant was asked to provide these details for Flexitime but none have been received.

[20] On 17 January 2018 Ms Pfenniger was asked to confirm a number of evidential matters to progress her file to determination. Ms Pfenniger did not confirm these matters. Instead on 26 February she provided a further address for service and email for Mr Braun. She also copied her correspondence to Mr Braun seeking payment of her wages.

[21] On 7 March and 26 April 2018, Ms Pfenniger was asked about progress on the file given we had not heard from her. She advised she was seeking representation on 30 April 2018 and would revert to the Authority at a later date.

[22] Ms Pfenniger secured representation in June 2018. On 27 June 2018 Ms Pfenniger's advocate filed a Memorandum seeking orders that Gordon Blume provide further information relating to Ms Pfenniger's employment. It did not state what documents were being sought or address leave to serve the proceedings upon Mr Blume whom resided overseas or the requests for information to date.

Hearing time offered

[23] On 10 July 2018 a Minute was sent to Ms Pfenniger's advocate advising the first respondent should be struck out and the difficulties with serving the remaining respondents. Given the lack of progress in receiving information, hearing time was offered for Ms Pfenniger to attend and give oral evidence about her claims against Mr Blume and Mr Braun.

[24] Ms Pfenniger replied that she was unhappy with this course of action on 28 July 2018. Despite this, there was a further opportunity for Ms Pfenniger to file relevant information and another opportunity of hearing time.

[25] On 18 September 2018 her advocate filed various correspondence with Mr Blume, an Accountant and the Authority dated between 8 May 2015 and 16 August 2017. Further correspondence was sent to the Authority on 18 December 2018. No application for leave to serve overseas has been received.

[26] Ms Pfenniger continued to email Mr Blume seeking payment and copied the Authority. On 18 December 2018 the Authority enquired if this was all of the information she intended to file about her claims. She advised her representative would file further information.

Final attempts to obtain information about the claims

[27] On 25 February 2019 the Authority advised it would be dealing with both the substantive matter and overseas service upon Mr Blume. It noted no further information had been received and asked for submissions by 1 March 2019. Ms Pfenniger's representative sought an extension which was granted. No further information was filed.

[28] The Registry contacted Ms Pfenniger again on 10 July 2019 advising this matter was to be determined. She enquired about name suppression and was asked to provide grounds. She filed a Memorandum on 11 July 2019 seeking name suppression.

[29] Given the slow progression of this matter to this point, this is now ready for determination upon the papers.

Gordon Blume

[30] Gordon Blume no longer resides within New Zealand. It is accepted he now lives and works in Germany. Ms Pfenniger seeks leave to serve Mr Blume overseas.

[31] A consideration in granting leave to serve an overseas respondent is whether they are a necessary and proper party to the proceedings.

[32] The evidence filed to date consists of a draft unsigned employment agreement naming the first respondent as the employer, Ms Pfenniger's statement she refused to sign the same and an email from Mr Blume to Ms Pfenniger dated 8 May 2016 set out below:

Hello Katya, apologise for not coming back to you earlier. I was out of town working last week. Its been a hard two month and not really anything is happening. Clients are not paying as well so short at the moment. Started sending out reminders with

notice of debt collection this week with not much results for now. I onto it and will try to pay asap. Can you update the spreadsheet with worked hours please.

Gordon Blume 021 xxxxx

[33] Ms Pfenniger believes this email shows Mr Blume accepted personal responsibility for payment of her wages. I do not believe this to be the case. There are later emails including one on 22 May 2015 from Ms Pfenniger seeking payment of wages and asking Mr Blume to explain “what is happening with your company?” inferring the first respondent company was responsible for payment, not Mr Blume.

[34] Although Mr Blume was the director and shareholder of the first respondent company this does not make him liable for payment of wages.

[35] Ms Pfenniger provided additional information in the form of a submission attaching various documents including her IRD Summary of Earnings. None of the documents name either Mr Blume or Mr Braun as her employer. Instead they name another unincorporated entity Nineteen Café as her employer.

[36] Further Ms Pfenniger’s Memorandum filed 31 August 2017 stated Mr Blume did not hire her and was often absent overseas. This infers he had little (if any) control over her employment.

[37] In the circumstances I am not persuaded Mr Blume is a necessary and proper party to this proceeding because there is insufficient evidence he was Ms Pfenniger’s employer. I decline leave to serve Gordon Blume overseas with this proceeding.

Ronald Braun

[38] There is little (if any) evidence Mr Braun was Ms Pfenniger’s employer. From the information she has provided, he hired her and managed the payroll. He also “took care of administration” but played no other active role in her employment. His reference to Craftbros in his LinkedIn account bears no relationship to being her employer. I am not persuaded Mr Braun was Ms Pfenniger’s employers.

Craftbros Hospitality Ltd

[39] The best evidence of who was intended to be Ms Pfenniger's employer at the time of her employment is the employer named upon the draft employment agreement namely Craftbros Hospitality Limited. The fact she refused to sign the agreement does not automatically make either Mr Blume (or Mr Braun) her employer.

[40] Craftbros Hospitality Limited was removed from the Companies Registry on 16 October 2017. The effect of the removal is that the first respondent has ceased to exist as a legal entity. This means Ms Pfenniger can no longer bring employment proceedings against it.

[41] As Craftbros Hospitality Limited has been removed from the companies register, there is no corporate entity that can be sued to recover the wage arrears. The application for wage arrears is dismissed.

Name suppression

[42] The Court noted the starting point is the principle of open justice. A high standard must be met before that principle can be appropriately departed from. A "stringent" approach to applications for non-publication is required because of the fundamental importance of the principle of open justice. Parties seeking the order "must show specific adverse consequences that are significant to justify an exception to the fundamental rule [of open justice] ... the standard is a high one."¹

[43] There is insufficient evidence that meets these tests before me to justify granting name suppression. The application for name suppression is declined.

[44] Given Ms Pfenniger was unsuccessful, no costs are ordered.

TG Tetitaha
Member of the Employment Relations Authority

¹ *XYZ v ABC* [2017] NZEmpC 40 at [66] and following.