

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2022] NZERA 315
3171525

BETWEEN KUNAL CHAUGULE
 Applicant

AND SAMS EVENT STYLING
 LIMITED
 First Respondent

 MOHAMMED ZAMEER
 Second Respondent

Member of Authority: Eleanor Robinson

Representatives: Applicant in Person
 Mohammed Zameer, representing the First Respondent

Investigation Meeting: 6 July 2022 by telephone

Submissions: 28 June and 10 July 2022 from the Applicant
 5 July 2022 from the Respondent

Determination: 13 July 2022

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Applicant, Mr Kunal Chaugule, is seeking compliance and a penalty against the First Respondent, Sams Event Styling Limited (SESL) on the basis that it has failed to fully adhere to the terms of a settlement agreement reached between the parties.

[2] Mr Chaugule also seeks an order that the Second Respondent, Mr Zameer, a director of SESL, be made liable for making any payment ordered by the Authority.

[3] SESL claims that it has part paid what it was agreed was to be paid to Mr Chaugule, however it cannot afford to make any further payments at this time.

The Authority's Investigation

[4] The parties agreed to the Authority determining this issue based on the Statement of Problem and the Statement in Reply, on submissions by the Applicant and Respondent, and by a telephone investigation held on 6 July 2022.

Issues

[5] The issues for determination are whether or not:

- SESL failed to comply with clause 3 of the Agreement between the parties?
- Should a compliance order be issued?
- Should a penalty be awarded against SESL?
- Should Mr Zameer be made responsible for paying any amounts ordered to be paid by the First Respondent?

Relevant Background

[6] Mr Chaugule commenced employment with the Respondent on 5 February 2021 as an Assistant Sales Manager. The employment agreement provided to him by SESL stated that his hours of work were 40 per week.

[7] Mr Chaugule stated that throughout his employment, he was not paid on time and had repeatedly reminded SESL to pay him. He stated that at the point of his resignation in July 2021, he was owed \$7,500.00 by SESL in respect of outstanding wages.

[8] After his resignation, Mr Chaugule said SESL paid him on occasion, but at the time he contacted the Mediation Services of the Ministry of Innovation, Business and Employment (MBIE), he was still owed \$6,500.00 in outstanding wages. An 'Agreed Terms of Settlement for Early Resolution carried out by phone' was drafted and dated 1 March 2022 (the drafted ROS), however it was not signed or certified by a mediator.

[9] Clause 3 of the drafted ROS stated that Mr Chaugule was to be paid a total sum of \$6,500.00 in respect of outstanding wages for the period Mr Chaugule worked for SESL between February and July 2021. The drafted ROS set out that payment was to be made in accordance with the following payment plan:

- a) A payment of **\$1,500** will be paid to Kunal on or before **Friday 25th March 2022**;
- b) A second payment of **\$1,500** will be paid to Kunal on or before **Monday 25th April 2022**;
- c) A third payment of **\$1,500** will be paid to Kunal on or before **Wednesday 25th May 2022**; and

- d) A fourth and final payment of **\$2,000** will be paid to Kunal on or before **Saturday 25th June 2022**.

[10] The drafted ROS also set out at clause 5 that:

This is the **full and final settlement of all matters** between Sams Event Styling Limited and Kunal Chaugule arising out of their employment relationship.

[11] The payments set out in clause 3 of the drafted ROS were to be paid to Mr Chaugule in the amounts and by the dates stated.

[12] Mr Chaugule said that SESL paid the first instalment of \$1,500.00 on or about 23 March 2022 in accordance with clause 3(a) of the drafted ROS, however SESL failed to pay the second or subsequent instalments in accordance with the timetable as agreed, although it had made two further payments, the first of \$500.00 on 10 May 2022, and the second of \$500.00 on 13 June 2022. This leaves the amount outstanding and remaining to be paid by SESL to Mr Chaugule of \$4,000.00.

[13] Mr Zameer said that SESL had struggled financially as a result of the constraints placed upon it by Covid, however it had made such payments as were possible to Mr Chaugule.

Was the drafted ROS reached by accord and satisfaction?

[14] Employment disputes are not uncommonly resolved by means of confidential settlement agreements between the parties which are then sent to be signed and certified by a mediator pursuant to s 149 of the Employment Relations Act 2000 (the Act).

[15] In this case Mr Chaugule's evidence was that a basis for agreement had been reached between the parties, and the Mediation Services of MBIE had been approached to draft a settlement agreement recording the parties' agreement to resolve the issue of the wages owed to Mr Chaugule.

[16] A mediator had drafted an 'Agreed Terms of Settlement for Early Resolution carried out by phone' (the drafted ROS) however it had not subsequently been signed or certified by a mediator.

[17] In *Cabletalk Astute Network Services Limited v Cunningham*¹ Judge Shaw set out the classic definition of accord and satisfaction, defined in the case of *British Russian Gazette and Trade Outlook Ltd v Associated Newspapers Ltd*² as:

¹ [2004] 1 ERNZ 506

² [1933] 2 KB 616, at 643-644

Accord and satisfaction is the purchase of a release from an obligation, whether arising under contract or tort, by means of valuable consideration, not being the actual performance of the obligation itself.

[18] Chief Judge Colgan in *Graham v Crestline Pty Limited*³ explained that⁴

whether accord and satisfaction has been made is a question of fact requiring a finding of a meeting of the parties' minds or that one of them must act in such a way as to induce the other to think that money (or other consideration) is taken in satisfaction of the claim.

[19] In this case, at the point of his resignation in July 2021 Mr Chaugule says he was owed outstanding wages in the sum of \$7500.00 by SESL. This is not denied by SESL.

[20] Whilst the drafted ROS was not certified by a mediator, I note that SESL made the first payment of \$1,500.00 on or about the date specified in clause 3(a) of the drafted ROS. Further part payments have also been made and Mr Zameer did not deny that the payments were due and owing to Mr Chaugule. His evidence was that SESL had failed to make the agreed payments on the dates and in the amounts agreed because its business had been affected adversely by financial constraints, resulting primarily from the Covid-19 situation.

[21] I find that the drafted ROS represents a meeting of minds. Mr Chaugule would receive 'valuable consideration' because he would receive the outstanding wage payments due to him.

[22] For SESL under the terms of the drafted ROS it avoided the possibility of Mr Chaugule taking further action to recover the outstanding sums of outstanding wages. As such the valuable consideration gained by Mr Chaugule constituted 'the purchase of a release from an obligation' by SESL. This was set out in the drafted ROS in clause 5 which stated that it was in: "full and final settlement of all matters" between them.

[23] I find that there would be, and indeed was, a real benefit to both parties in entering into the drafted ROS.

[24] In accordance with the terms of the drafted ROS I find that SESL affirmed the terms of it by making the first payment and the subsequent part-payments.

[25] I determine that there was accord and satisfaction such that the drafted ROS is binding on the parties.

³ [2006] ERNZ 848

⁴ *Ibid* at para [49]

Should a Compliance Order be made?

[26] The drafted ROS refers in clause 3 to the dates when the payment of the sums of outstanding wages agreed to be paid should be made. I find that the payment have not been made in full, with SESL still owing Mr Chaugule the sum of \$4,000.00.

[27] From the evidence available to the Authority, I am satisfied that SESL has failed to comply with clause 3 of the drafted ROS.

[28] **In order to effect compliance with the drafted ROS, I therefore order SESL to pay Mr Chaugule, no later than 14 days from the date of this determination, the remaining balance of monies in the sum of \$4,000.00 pursuant to s 137(1)(b) and (3) of the Act.**

Interest

[29] The Authority may order interest to be paid in any matter involving the recovery of any money pursuant to clause 11 of Schedule 2 to the Act. I consider it appropriate to order interest in this matter.

[30] **I order that SESL pay Mr Chaugule interest on the sum of \$4,000.00 from the date of this determination to the date of payment using the Ministry of Justice civil debt interest calculator to calculate interest.**

Should a Penalty be ordered?

[31] A penalty can be ordered in respect of an agreed terms of settlement which have been breached pursuant to s 149 (4) of the Act. However to come within s 149 of the Act, the agreed terms of settlement to which s 149(3) of the Act applies must be signed and certified by the mediator as: “the person empowered to do so”.

[32] As set out in s 149 (1)(a) and (b) of the Act, the ‘person empowered to do so’ is a mediator as the person employed or engaged and holding a general authority to do so by the chief executive of MBIE.

[33] In this case, the drafted ROS has not been signed by the person empowered to do so, and therefore no penalty can be ordered pursuant to s.149 (4) of the Act.

Should Mr Zameer be made responsible for ensuring payment is made to Mr Chaugule?

[34] Mr Zameer is a director of SESL. However he is not a party to the drafted ROS to which there are two identified parties: Mr Chaugule and SESL.

[35] The issue before the Authority is enforcement of the terms of the drafted ROS. The compliance order must be issued against the two identified parties to it i.e. Mr Chaugule and SESL.

Filing Fee

[36] **The Respondent is also ordered to pay Mr Chaugule the filing fee of \$71.56 within 14 days of the date of this Determination.**

Costs

[37] Costs are reserved. However if the parties are minded to apply for costs, I note here that, subject to his submissions, Mr Chaugule represented himself and, unless he incurred legal costs, it is therefore unlikely he has grounds to claim a contribution to any fair and reasonable costs.

[38] If Mr Chaugule does seek costs, he may lodge, and then should serve, a memorandum on costs within 14 days of the date of issue of the written determination in this matter. From the date of service of that memorandum the respondent would then have 14 days to lodge any reply memorandum. Costs will not be considered outside this timetable unless prior leave to do so is sought and granted.

[39] All submissions must include a breakdown of how and when the costs were incurred and be accompanied by supporting evidence.

[40] The parties could expect the Authority to determine costs, if asked to do so, on its usual notional daily rate unless particular circumstances or factors required an upward or downward adjustment of that tariff.⁵

Eleanor Robinson
Member of the Employment Relations Authority

⁵ *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [106]-[108].