

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
OUTAUTAHI ROHE**

[2023] NZERA 350
3199779

BETWEEN	ALAN PAYNTER First Applicant
AND	CRAIG POFF Second Applicant
AND	KRISTOPHER PROUTING Third Applicant
AND	AUTARCH LIMITED (IN LIQUIDATION) Respondent

Member of Authority:	David G Beck
Representatives:	Applicants, self-represented Nicholas Lundy, for the Respondent
Investigation Meeting:	17 March 2023 at Christchurch
Submissions Received:	17 March 2023 from the Applicants 17 March 2023 from the Respondents Further information received from the Liquidator on 5 May 2023.
Date of Determination:	3 July 2023

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Alan Paynter, Craig Poff and Kristopher Prouting were employed in various roles by Autarch Limited (in liquidation) (Autarch) from mid-2022 until early November 2022. Autarch was the project development arm of a property development business that purchased damaged residential properties for restoration and sale. Nicholas Lundy was Autarch's sole director and shareholder. Mr Paynter was latterly employed as Autarch's general manager to work alongside existing employees Mr Poff and Mr Prouting who were employed as project managers.

[2] Autarch began experiencing financial difficulties in early October 2022 and was unable to meet wages' payments owed to all the above-mentioned claimants and so ended their employment on 7 November 2022.

[3] Wage arrears, based upon disclosed employment agreements and pay summaries are claimed by:

- a) Alan Paynter: in the amount of three weeks unpaid wages of \$5,192.40 gross and KiwiSaver contributions of \$259.60 and holiday pay of 8%.
- b) Craig Poff: in the amount of four weeks unpaid wages of \$7,691.20 gross and Kiwi Saver contributions of \$ 230.72 and holiday pay of 8%.
- c) Kristopher Prouting: in the amount of four weeks unpaid wages of \$8076.80 gross and Kiwi Saver contributions of \$242.32 and holiday pay of 8%.

[4] Mr Lundy for Autarch did not respond to the proceedings or provide a brief of evidence as directed but he did participate in a case management conference and he attended the investigation meeting.

[5] Autarch was placed in liquidation on 27 April 2023. The Liquidator however, pursuant to s 248(1)(c)(i) of the Companies Act 1993 upon being approached confirmed on 5 May 2023 that there was no objection to continuing legal proceedings regarding alleged arrears owed.

The Authority's investigation

[6] Alan Paynter, Craig Poff, Kristopher Prouting and Nicholas Lundy attended a half day investigation meeting on 17 March 2023. All spoke and were questioned about written statements that they had previously provided and in the case of Mr Lundy his oral evidence.

[7] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination states findings of fact and law, expresses conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received. In determining this matter the Authority has carefully considered all the material before it, including all evidence given during the investigation meeting and background documentation.

The issue

[8] There is only one relevant issue to determine under s 131 of the Act and that is whether the applicants are entitled to recover wages arrears as claimed.

What caused the relationship problem?

[9] Briefly, Mr Lundy indicated that due to significant, unpaid third-party debts owed to the company and a market downturn, Autarch by early October 2022 was unable to meet its cash outgoings including wages. This resulted in Mr Lundy at a meeting of 7 November 2022, indicating to all three applicants that the business would have to cease trading. No notice payments were provided and by this point in time, Mr Paynter, Mr Poff and Mr Prouting had not been paid since the period ending 16 October 2022. As context, Mr Lundy disclosed he had been in business with Mr Poff and Mr Prouting in an allied enterprise and they were engaged in civil legal disputation that had destroyed their long association. At the time the employment ended Mr Lundy sought no legal advice on his obligations.

[10] In evidence Mr Lundy accepted the wage arrears identified were owing but claimed Autarch did not have the means to resolve matters as his father had control over some assets and at the time of the investigation, he was still trying to keep Autarch as a trading entity. Mr

Lundy said he would ascertain if an agreement could be reached. The parties were directed to advise the Authority of any progress that to date, has been absent.

[11] In view of there being an acceptance of the arrears owed and no challenge to the calculations that were supported by pay slips I find the arrears are due in full and make the following orders.

Orders

[12] Autarch Limited (In Liquidation) is ordered within 28 days of this determination being issued to pay the following outstanding arrears of wages, holiday pay and Kiwi Saver contributions owed to:

- i. Alan Paynter: \$5,192.40. gross unpaid wages, employer Kiwi Saver contributions of \$259.60 and holiday pay of \$415.39 gross.
- ii. Craig Poff: \$7,691.20 gross unpaid wages, employer Kiwi Saver contributions of \$230.72 and holiday pay of \$615.30 gross.
- iii. Kristopher Prouting: in the amount of four weeks unpaid wages of \$8076.80 gross, employer Kiwi Saver contributions of \$242.32 and holiday pay of \$646.14 gross.

Costs

[13] As the parties were not represented, no issues of costs arise.

David G Beck
Member of the Employment Relations Authority