

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2024] NZERA 372  
3279179

BETWEEN

ZHIKUN CHEN  
First Applicant

JIANJUN CHEN  
Second Applicant

SHINING CONTRACTOR  
LIMITED  
First Respondent

ZHIQIANG (JASON)  
HUANG  
Second Respondent

Member of Authority: Marija Urlich

Representatives: Zong-Pei Zhao, counsel for the Applicants  
No appearance for the Respondents

Investigation Meeting: 21 June 2024

Determination: 24 June 2024

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] By application lodged on 16 February 2024 Zhikun Chen and Jianjun Chen seek a compliance order to enforce a settlement agreement entered on 25 August 2023 with Shining Contractor Limited (SCL) and Zhiqiang (Jason) Huang and certified by a mediator on 31 August 2023. They also seek an order for interest on sums unpaid under the settlement agreement, a penalty under s 149(4) of the Act for each instance of breach, a portion awarded to them and an order for costs against SCL and Mr Huang jointly and severally on a solicitor/client basis and to reimburse the filing fee.

[2] By statement in reply lodged 12 March 2024 SCL and Mr Huang accept, that at that date, payments due under the settlement agreement were paid late. They say they are in the process of bringing the payments up to date, the claim as to future payments was speculative as to non-payment and deny an award of interest, penalty or costs is warranted.

### **The Authority's investigation**

[3] A case management conference was held with the parties' representative on 29 April 2024 at which directions were made including that the parties should file and serve any relevant information by 7 June and an investigation meeting would be held on 21 June. The directions dated 29 April and the notice of investigation meeting were served on the parties that day. Messrs Chen filed and served information within the timetable. SCL and Mr Huang did not, they did not seek a variation to the timetable to file information or file information outside the timetable.

[4] On 17 June counsel for SCL and Mr Huang notified the Authority they were withdrawing as the respondents' legal representatives and advised all further correspondence should be directed to SCL and Mr Huang. Counsel provided contact information for SCL and Mr Huang being Mr Huang's email and telephone number. That day the notice of investigation meeting was emailed to Mr Huang at the email address.

[5] At 9.19am on 21 June 2024, less than an hour before the 10am scheduled commencement time of the investigation meeting Mr Huang emailed the Authority seeking an adjournment because he was overseas caring for an unwell family member, had childcare responsibilities and was unable to attend the investigation meeting in person. He was asked to provide evidence to support the adjournment request because the information provided was not sufficient to grant an adjournment given the length of time the matter had been scheduled and advised that the Authority would ring him at the telephone number provided at the scheduled start to allow him to attend or to be heard further on the adjournment application. At my direction Mr Huang was then telephoned at the scheduled start time. The telephone was not answered and the Authority Officer was unable to leave a voice message. Mr Huang emailed the Authority with further narration as to his and SCL's non-attendance. No supporting

information was provided. At my direction, an audio-visual link was sent to the parties, including to the email address with which Mr Huang had corresponded with the Authority and the parties were advised the investigation meeting would start at 10.30am. Mr Huang did not attend by way of audio-visual link which remained open throughout the investigation meeting to facilitate his attendance.

[6] At the investigation meeting I heard from Mr Zhao, for Messrs Chen, on the matter proceeding in Mr Huang's absence. Mr Zhao submitted, given the statement in reply did not dispute non-compliance with the settlement agreement and SCL and Mr Huang had not provided any further information relevant to the matter within or subsequent to the timetable set by the Authority, that the Authority could determine the compliance application and interest and reserve the matter of penalty and costs. The submission is accepted with respect to the compliance order. SCL and Mr Huang had a fair opportunity to attend the scheduled investigation meeting and have been provided a further opportunity to provide information relevant to matters in dispute between the parties.

[7] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received. The Authority was assisted by an interpreter of the Mandarin language.

### **Issues**

[8] The issues requiring investigation and determination are:

- (i) a compliance order is made against Shining Contractor Limited and Zhiqiang (Jason) Huang to comply with the record of settlement including future payments;
- (ii) a penalty is ordered a portion of which awarded to Zhikun Chen and Jiajun Chen;
- (iii) whether an order for interest should be made; and
- (iv) either party entitled to an award of costs.

[9] This determination deals with whether a compliance order should be made and directions for dealing with the remaining matters.

### **The settlement agreement**

[10] Clause 2 of the settlement agreement provides that SCL and Mr Huang, shall pay Zhikun Chen \$45,000 under section 123(1)(c)(i) of the Act.

[11] Clause 3 of the settlement agreement provides that SCL and Mr Huang, shall pay Jiajun Chen \$45,000 under section 123(1)(c)(i) of the Act.

[12] Clause 4 of the settlement agreement provides that SCL and Mr Huang, shall pay \$10,000 in legal costs.

[13] Clause 5 of the settlement agreement provides a schedule of the payments in clauses 2 – 4 with the first payment being made within 7 days of date of settlement and nine payments of \$9,000 with the first such payment being made on 15 October 2023 and 7 further payments made on the 15<sup>th</sup> of each successive month with the 10<sup>th</sup> and last payment of \$8,000 being made on 15 June 2024.

[14] The settlement agreement was signed by Mr Huang on behalf of SCL and in his own capacity on 25 August 2023. Messrs Chen also signed the settlement agreement on 25 August. On 31 August the settlement agreement was certified by a mediator pursuant to s 149 of the Act. The first payment was due on 7 September.

[15] The settlement agreement provided the terms and conditions were final, binding on and enforceable, and were to remain confidential between the parties except for enforcement purposes.

[16] The information before the Authority establishes SCL and Mr Huang have not paid all the settlement monies they agreed to pay Messrs Chen to resolve their employment relationship problem. The following payments totaling \$51,000 have been paid and received - \$20,000 paid on 12 September 2023, \$9,000 paid on 26 October 2023, \$9,000 paid on 28 November 2023, \$9,000 paid on 21 December 2023 and \$4,000 paid on 2 February 2024. The balance of \$49,000 remains outstanding.

## **Compliance order – Shining Contractor Limited**

[17] Section 137(1)(iii) of the Act empowers the Authority to order a party to comply with any terms of settlement which s 151 of the Act provides may be enforced by a compliance order. Section 151 applies to any agreed settlement agreement enforceable by the parties under s 149(3) of the Act.

[18] SCL and Mr Huang have failed to comply with the settlement agreement and it is appropriate to exercise my discretion under s 137(1)(b) of the Act to order compliance with the sum outstanding. SCL and Mr Huang are jointly and severally liable for the outstanding sum.

[19] Within 21 days of the date of this determination Shining Contractor Limited and Zhiqiang Jason Huang are ordered to comply with the record of settlement and make the following payment without deduction:

- (i) pay Zhikun Chen and Jianjun Chen \$49,000.

[20] Imposition of a compliance order is a serious matter. Should SCL and/or Mr Huang fail to comply with the compliance order as set out above Messrs Chen are entitled to pursue the breach in the Employment Court or the District Court. The Employment Court has powers to impose a fine not exceeding \$40,000, order property to be sequestered, or impose a sentence of imprisonment not exceeding 3 months<sup>1</sup>. Alternatively, a certificate of determination may be obtained from the Authority and enforcement obtained in the District Court.

### **Next steps**

[21] The determination of penalties, interest and costs is reserved. This is to provide SCL and Mr Huang with a further opportunity to provide information they believe is relevant to the determination of these issues. Messrs Chen have provided relevant information including calculation of interest. I am satisfied it has been served on SCL and Mr Huang.

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<sup>1</sup> Section 139 and 140(6) Employment Relations Act 2000

[22] Within 21 days of the date of this determination SCL and Mr Huang are to file in the Authority and serve on Messrs Chen information relevant to the determination of penalties, interest and costs. Messrs Chen may file any information in reply within a further 7 days. The Authority will then determine the claims for penalties, interest and costs on the papers.

Marija Urlich  
Member of the Employment Relations Authority