

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 84/09
5146574

BETWEEN SEUNGWHAN BAK
Applicant

AND EDWARD KANG & WASAN
INTERNATIONAL CO.
LIMITED
Respondents

Member of Authority: Alastair Dumbleton

Representatives: Yoon Cheol Hong, advocate for Applicant
Edward Kang, advocate for Respondents

Investigation Meeting: 18 March 2009

Determination: 24 March 2009

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] In a determination dated 12 November 2008 the Authority ordered Wasan International Construction & Development Limited (WIC & D) to pay Mr Seungwhan (Patrick) Bak wages and holiday pay of \$10,022.66 in total, together with interest at 9% pa from 4 June 2008 until payment in full of the principal sum.

[2] The Authority's order was required to be complied with by 26 November 2008.

[3] On 15 December 2008 Mr Bak applied to the Authority to enforce the determination given the previous month. He advised that he had taken it to the District Court where a distress warrant had been issued but later returned *nulla bona*.

[4] In his latest application Mr Bak sought an order that Mr Kang personally, and also Wasan International Company Limited (WIC), pay the amounts due from the 12

November determination. WIC is separately incorporated from WIC & D, but the two have in common Mr Kang as director.

[5] The respondents, Mr Kang and WIC, did not lodge a statement in reply until 16 March 2009, some two and a half months after the date that step was required to be taken.

[6] The respondents were therefore required to obtain leave from the Authority before replying to the employment relationship problem; Regulation 8 of Employment Relations Authority Regulations 2000. Leave was granted on condition that Mr Kang immediately paid \$70 into the Authority to cover Mr Bak's fee for lodging his latest application. That sum was paid and the investigation meeting proceeded.

[7] Although objection was taken by Mr Kang to Mr Hong representing Mr Bak, I am satisfied that he did not purport to appear as a law practitioner and that therefore Mr Hong was not covered by the Law Society's prohibition as set out in its letter dated 12 November 2008. That prohibition prevents Mr Hong from practising law in relation to making claims, or accepting instructions to make claims, against WIC and/or Mr Kang. As Mr Hong has handed in his practising certificate he did not appear in the Authority as a barrister or solicitor but as a representative under s 236 of the Employment Relations Act 2000, which he is not barred from doing. Neither is his bankruptcy a bar to appearing in that capacity.

[8] During the course of the investigation meeting it emerged that both WIC and WIC & D were put into liquidation in February 2009. Mr Hong accepted this was the case. The winding-up is also advised in the Companies Office on-line files.

[9] The liquidation of the two companies has removed the basis on which this latest application was made by Mr Bak. Mr Kang's involvement was intended to be not as an employer of Mr Bak but as an agent and/or conduit through which money from WIC could be transferred to WIC & D to meet the orders made against the latter on 12 November 2008. That result may have been achievable if the *Lawrence Publishing* line of cases were applicable to the circumstances.

Determination

[10] The Authority determines that no orders may be made against the respondents Mr Kang and Wasan International Co. Ltd.

[11] \$70 is held by the Authority for the use of Mr Bak as the costs of this application paid by Mr Kang.

A Dumbleton
Member of the Employment Relations Authority