



[3] The Blacklocks were employed by the previous owners of the Fairlie Hotel as managers and they worked in that capacity in 2005 and 2006. The original owners placed the hotel on the market for sale in early 2006. The Blacklocks sought to purchase the hotel with other parties but those arrangements did not proceed.

[4] The Blacklocks say that Mr McLeish contacted them about their continuing to manage the hotel if he were to purchase it; conversely, Fairlie Hotel is equally clear that the Blacklocks contacted Mr McLeish to see if he would be interested in joining them in the purchase of the hotel.

[5] Either way, it is common ground that the name of the respondent was suggested by Mr Blacklock. There is further dispute between the parties as to the source of a draft partnership agreement between the Blacklocks and their former potential partners in the purchase of the hotel. It is common ground that the Fairlie Hotel has a copy of the draft agreement; what is not common ground is how the Fairlie Hotel obtained it. The Blacklocks say that they did not provide the agreement to the Fairlie Hotel and that the Fairlie Hotel must have obtained the agreement from the real estate agent who was acting in the transaction. Conversely, Mr McLeish said that he was given the copy of the draft agreement by Mr Blacklock. Mr McLeish says that the draft agreement was the basis of the partnership agreement between himself and the Blacklocks while the Blacklocks contend that the draft agreement had no place in the arrangements between these parties.

[6] What is certain is that a company was incorporated as Fairlie Groggy Hotel Limited to be the legal entity owning the hotel. The Fairlie Hotel contends that it entered into a partnership with the Blacklocks (which was unwritten) and which was to be in similar terms to the proposed agreement between the Blacklocks and their former potential partners. The terms of that partnership were said to be that the capital would be provided almost exclusively by Mr McLeish for the purchase of the hotel and that he would hold a 51% share of the business created with the Blacklocks holding the balance and running the enterprise. The Blacklocks' share of the profit was to be used to pay the unfunded capital which was estimated to take five years.

[7] The payment to the Blacklocks over that five year period, according to the Fairlie Hotel, was to be \$30,000 per annum and because the Blacklocks had requested it, that payment was to be split between Mr and Mrs Blacklock and paid as wages.

[8] There was also an amount agreed of \$100 per week to be paid by Fairlie Hotel to the Blacklocks as *entertainment expenses* which was in addition to the other moneys received by the Blacklocks. For their part, the Blacklocks introduced the sum of \$3,800 to the business which it is common ground was used as a cash float in the enterprise.

[9] The Blacklocks deny absolutely that there was any partnership agreement created immediately between the parties and contend that it was their understanding that a partnership agreement was going to be created in five years, once the Fairlie Hotel had reduced the mortgage which had substantially funded the purchase of the hotel. Their understanding was simply that they were paid the very modest salaries they agreed to because that was all that the business could afford with the heavy mortgage debt.

[10] The relationship between the parties, whatever its nature, commenced on 19 August 2006 and ended on 22 July 2008. During that time, the Blacklocks were each receiving a gross weekly wage of \$288.46 from which PAYE was deducted. Mr McLeish explains the PAYE deduction arrangement as simply the way that he pays himself for his efforts in the businesses he owns and he does not consider it is indicative necessarily of an employment relationship.

[11] The parties attended mediation in early 2009 with a view to try and resolve matters by agreement and subsequently a Labour Inspector became involved in the Blacklocks' claim. In the context of the Labour Inspector's work, there are two important documents. The first is a long email from Alyn Higgins of the Hotel Association of New Zealand (HANZ). HANZ clearly states that the Blacklocks were employed. Subsequently, there is a much shorter email from Tim McGinn, a specialist employment lawyer retained by the Fairlie Hotel which indicates that the Fairlie Hotel denies there was an employment agreement and contends that the parties were in a partnership.

## **Issues**

[12] Plainly, the most significant issue for determination in the present matter is whether the relationship was a partnership or an employment relationship. If I determine that the relationship was indeed one of employment, then the next question is the amount owed to the Blacklocks by the Fairlie Hotel.

**Was this an employment relationship?**

[13] I am satisfied on the factual matrix before me that this was not an employment relationship. Issues of credibility in a case like this are paramount and I found the evidence of Mr McLeish more consistent and reliable than the evidence of the Blacklocks. Both protagonists agree that a partnership arrangement was discussed and agreed on; the only question is when that partnership agreement was to start. The Blacklocks said it was not to start until the mortgage raised to assist in the purchase of the hotel was paid down, a process they understood would take five years, while the Fairlie Hotel's position was that the partnership started immediately and that five years hence the arrangements between the parties would change because, by then, it was estimated that the Blacklocks would have repaid Mr McLeish with their labour for their 49% share in the venture.

[14] A number of factors impel me to the conclusion that Mr McLeish's recollection of events is more accurate than the Blacklocks. The first is that it seems to me somewhat incongruous that, after the Blacklocks had worked at the Fairlie Hotel under its previous ownership for a couple of years and then tried to purchase the hotel with another party when it was put up for sale that they would then be approached by Mr McLeish to see if they would be interested in managing the hotel if he purchased it. Mr McLeish lived and was based in Christchurch and of course the Fairlie Hotel is in South Canterbury, some 80 miles away from Christchurch. It seems to me far more likely that the initiative for the connection came from Mr and Mrs Blacklock who were already in Fairlie, had already tried to purchase the hotel with others and who would then have been in the position of seeking another purchaser with cash to put into the deal.

[15] Furthermore, I think it much more likely than not that Mr McLeish was given a copy of the unsuccessful partnership proposal between the Blacklocks and the third party by the Blacklocks themselves. Mr and Mrs Blacklock denied that in evidence before the Authority, but I think their recollection of events is mistaken. I consider it much more likely that Mr McLeish got the draft partnership agreement from the Blacklocks because, after all, it had been their deal that they were trying to put together. Furthermore, it seems extraordinarily coincidental that the arrangement that they now deny having entered into with Mr McLeish was in exactly similar terms to the one that they previously would have agreed to with the third party.

[16] Another issue impelling me toward the conclusion that this was in truth a partnership agreement rather than an employment relationship, is the fact that, at the time these events happened, the parties were friends. There was a lengthy period, for instance, when Mr and Mrs Blacklock stayed in Mr McLeish's home when their business failed. So the parties were closer than simply casual acquaintances. It seems to me this personal relationship would have encouraged the parties to do things *on a handshake* as Mr McLeish maintained, or put another way, the absence of a personal relationship would have made a written partnership agreement much more likely.

[17] The Blacklocks protest that they were paid wages on a PAYE basis and that there was no partnership agreement. Dealing with the second issue first, it is true that there is no written partnership agreement, but as I said to the parties at the investigation meeting, this sort of dispute between former friends is the best evidence one could possibly have for the importance of putting commercial and employment arrangements into writing. Reliance on handshakes and verbal understandings is a recipe for confusion and unhappiness. Having said that, there is no legal rule that requires a partnership agreement to be in writing. Notwithstanding that, the draft agreement with the original third party is in exactly similar terms to the agreement I am satisfied was reached between the parties.

[18] The question of the payment of wages to the Blacklocks on a PAYE basis needs to be addressed. The fact that these payments were made with PAYE deducted at source does not provide definitive evidence that the Blacklocks were employees of the Fairlie Hotel. It simply confirms that the portion of their income from drawings from their arrangement with Mr McLeish was paid with the tax deducted at source. This is a perfectly legitimate commercial arrangement and is not necessarily indicative of an employment relationship.

[19] As I have already observed, both protagonists accept that there was to be a partnership arrangement; the only matter in dispute was when that partnership arrangement was to start. I am satisfied that the facts available to the Authority make it more rather than less likely that the partnership agreement was to commence immediately on the purchase of the hotel by the company incorporated by Mr McLeish on the terms set out in the draft partnership agreement between the Blacklocks and the third party.

**Determination**

[20] I am satisfied this is not an employment relationship but a partnership agreement that has turned sour and destroyed a friendship. It follows that the Blacklocks' claim fails.

**Costs**

[21] Costs are to lie where they fall.

James Crichton  
Member of the Employment Relations Authority