

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 221/10
5318854

BETWEEN BLAIR ELLIOTT CORKRAN
Applicant

A N D GRANT THORNTON as
receiver for LIVINGSPACE
PROPERTIES LIMITED
Respondent

Member of Authority: Helen Doyle

Representatives: Applicant in person
David Appleton, Counsel for respondent
Dean Kilpatrick, Counsel for the entities proposed to be
joined Hotel S0 Operations Limited and Hotel S0
Corporations Limited both in receivership

Submissions Received: 21 October and 5 November 2010 from

Date of Determination: 3 December 2010

**PRELIMINARY DETERMINATION OF THE AUTHORITY
AS TO JOINDER**

Employment relationship problem

[1] Blair Corkran seeks payment of four weeks' notice and three weeks' holiday pay from Grant Thornton, receiver for LivingSpace Properties Limited.

[2] Grant Thornton, as receiver for LivingSpace Properties Limited, says they have have no liability in law in relation to the problem and further that there are three companies that could potentially be the employer of the applicant. They are Hotel SO Corporation Limited and Hotel SO Operations Limited and LivingSpace Properties Limited, all currently in receivership.

[3] During a telephone conference with Mr Corkran and Mr Appleton, counsel for the respondent, the Authority proposed, amongst other matters, joining Hotel SO

Operations Limited (in receivership) and Hotel SO Corporation Limited (in receivership) to the proceedings before it. The Authority asked for Hotel SO Operations Limited (in receivership) and Hotel SO Corporation Limited (in receivership) to make any submissions on the proposal by 21 October 2010 having provided them with Mr Corkran's application and statement in reply and a Minute from the Authority dated 14 October 2010.

[4] The Authority had asked that the respondent provide it with any wage and time records with respect to Mr Corkran and schedules sent to IRD with respect to PAYE. In response to the request for those documents, Mr Appleton duly wrote to the Authority on 26 October 2010 and advised that PAYE and wage and time records relating to Mr Corkran from 1 April 2010 onwards were in the possession of the Hotel SO entities and not Grant Thornton as Receiver for LivingSpace and wage and time records predating 1 April 2010 were not in the possession of the respondent and believed to be in the possession of LivingSpace Properties Limited (in receivership). Mr Appleton explained that while technically the receivers had control over these documents by virtue of the Receiverships Act 1993, the receivers had not been able to obtain these records despite twice having formally requested the directors for all books, documents and information relating to LivingSpace Properties Limited.

[5] In accordance with Mr Appleton's suggestion, the Authority also asked the solicitor for Hotel SO Operations Limited and Hotel SO Corporation Limited both in receivership to ascertain whether they had any documents relating to Mr Corkran in terms of wage, time and PAYE records. I am grateful to Mr Kilpatrick for providing those documents.

[6] Whilst these documents were being gathered, the Authority also asked the directors of LivingSpace Properties Limited (in receivership) for the relevant time and wage and PAYE schedules within five days from 27 October 2010. The directors of the company have not complied with the direction.

[7] The Authority also thought it helpful if Mr Corkran obtain his own records from the Inland Revenue Department to ascertain whether there was any information from those records that may clarify his employer. He was able very recently to obtain and provide some material.

[8] The proposal to join Hotel SO entities (in receivership) to the application before the Authority was opposed. In a memorandum to the Authority received 21 October 2010 Mr Kilpatrick submitted that the determinative evidence of who the applicant's employer was is the individual employment agreement that is before the Authority. Mr Kilpatrick submits that reliance has been placed on the part of the employment agreement to give rise to uncertainty that is purely technical. The part he refers to is as follows:

The remuneration provided under this contract shall be deemed to fully compensate you for all time worked and duties performed under this agreement. It also recognises that Hotel SO Limited is your sole employer, if you are employed, directly or under contract, by any other parties you are obliged to seek written approval from Hotel SO Limited.

[9] Hotel SO Limited is an entity whose incorporation it appears postdates the date of commencement of employment of Mr Corkran and that company has since changed its name. It is suggested that its reference in the agreement is a mistake by Mr Appleton on behalf of the receivers for Living Space.

[10] Mr Kilpatrick submits in his memorandum that the individual employment agreement otherwise defines the company as LivingSpace Properties Limited and that the company employer is the same entity.

[11] The IRD Records such as have been provided by Mr Corkran tend to support that Mr Corkran was paid by LivingSpace Properties Limited until 1 April 2010, after which payment was received through the Hotel SO entities (in receivership). Mr Corkran has stated in correspondence that at that time he never agreed to a change in employer.

[12] The Authority has carefully considered the documents in determining the merits of joining the Hotel SO entities (in receivership) to the application currently before it. It is quite clear that the Authority will need to determine, as a preliminary matter, who the employer was of Mr Corkran. The receiver for both LivingSpace Properties Limited and the Hotel SO entities (in receivership) have stated that Mr Corkran is employed by the other. Mr Corkran therefore is in a very unfortunate position.

[13] The employment agreement is unsatisfactory in that amongst other matters it contains no definition of who the contracting parties are. On the signature page the employer part refers to Russell Bent Maintenance Manager Hotel SO/LivingSpace. On the first page of the agreement at the top referred to as “the company” is LivingSpace Properties Limited and LivingSpace Properties Limited appears as a footer on every page.

[14] Mr Corkran was it appears along with employees of the Hotel SO entities and LivingSpace Properties Limited (all now in receivership) on the LivingSpace Properties Limited payroll until March 2010 but that in the new financial year, on 1 April 2010, Mr Corkran’s pay was operated by the Hotel SO Corporation Limited payroll. That does not necessarily indicate an employment relationship which should be ascertained at the start of the relationship and, unless agreed otherwise, remain with that employer.

[15] In all the circumstances I have decided against joinder of the Hotel SO entities in receivership.

[16] I will now proceed to determine the identity of Mr Corkran’s employer. The Authority could accommodate a short investigation meeting before the end of the year for this purpose to hear further evidence and/or submissions. A support officer will discuss with the parties a suitable date and time.

Costs

[17] It may be that no application will be made in this regard however the Authority reserve costs in terms of the proposed joinder.

Helen Doyle
Member of the Employment Relations Authority