

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2013] NZERA Auckland 532  
5428046

BETWEEN

REBECCA FINLAY  
Applicant

A N D

BLACKWOODS BAKERIES  
LIMITED  
Respondent

Member of Authority: James Crichton

Representatives: Keshila Fayen, Advocate for Applicant  
Paul Whiteford, Advocate for Respondent

Investigation Meeting: On the papers

Date of Determination: 19 November 2013

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] The applicant (Ms Finlay), seeks a compliance order against the respondent (Blackwoods Bakeries Limited), seeking to enforce two determinations of the Authority being [2013] NZERA Auckland 92 and [2013] NZERA Auckland 243.

[2] The first of those determinations dealt with Ms Finlay's substantive claim against her former employer and the second fixed costs.

**Process**

[3] The statement of problem was filed on 6 August 2013 and on 13 August 2013 Ms Finlay's representative was advised that the Authority had been unable to serve the statement of problem on the address for service of the respondent (Blackwoods Bakeries). In the result, Ms Finlay herself subsequently served the documents on

Mr Paul Whiteford on Tuesday, 15 October 2013. Mr Whiteford was the director of Blackwoods Bakeries when Ms Finlay was employed by Blackwoods Bakeries and she regarded him as the person from whom she took instructions during the employment.

[4] A subsequent telephone discussion was convened by the Authority on 14 November 2013 at which Mr Whiteford and Ms Fayen (for Ms Finlay) participated.

[5] Mr Whiteford indicated that he had sold his right and interest in Blackwoods Bakeries and he understood that the entity was no longer trading and that as a consequence there was no longer an employer in existence and therefore no legal entity from whom compliance could be sought.

[6] However, it is apparent from the Companies Office record that Blackwoods Bakeries Limited is still a legal entity although its single director is not apparently a person known to Ms Finlay as being involved in the employment.

### **Determination**

[7] A full search of the Companies Office website discloses that the entity now registered as Blackwoods Bakeries Limited is a new entity which has no involvement in the affairs of the former entity, Blackwoods Bakeries Limited, which was the entity that employed Ms Finlay.

[8] On 1 July 2012, after Ms Finlay had ceased employment but before she was dismissed, the Companies Office website discloses that Blackwood Bakeries Limited had a name change to Providence Foods Limited. Notwithstanding that, Ms Finlay's proceedings against her employer, which followed the dismissal, incorrectly identified the employer as Blackwoods Bakeries Limited.

[9] Then, on 6 May 2013, there was a further name change from Providence Foods Limited to PW Holdings Limited.

[10] Accordingly, it is PW Holdings Limited that any proceeding for compliance should proceed against. The present proceedings, framed as they are against Blackwoods Bakeries Limited, is in effect a suit against the wrong legal entity and as a consequence, the Authority is unable to take matters further.

[11] Worse than that though, the original proceedings against Blackwoods Bakeries Limited would also appear to be misconceived because by the time those proceedings were filed, the correct name of the employer was not Blackwoods Bakeries Limited but Providence Foods Limited.

[12] To remedy that, the Authority intends to reopen its investigation principally to identify the correct employer. Both parties will have the opportunity to appear, if they wish. In addition to dealing with the correct identification of the employer at the time of the original determinations, the Authority will also deal, in its reopened investigation, with the correct identity of the respondent for the purposes of the present compliance order.

[13] On the face of it, that should be a proceeding against PW Holdings Limited, because, as the Authority noted above, PW Holdings Ltd is now the company name of the entity previously Providence Foods Limited, and before that Blackwoods Bakeries Limited.

[14] The Support Officer will contact the parties to make the necessary arrangements for the investigation to be re-opened. For the avoidance of doubt, the Authority has determined to re-open its original investigation, and to stay the effect of the orders made pursuant to determinations [2013] NZERA Auckland 92 and [2013] NZERA Auckland 243: Employment Relations Act 2000 Schedule 2 Clause 4(1) applied.

James Crichton  
Member of the Employment Relations Authority