

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 192/10
5308802

BETWEEN

CHUN WING KO
Applicant

A N D

MAKE IT KITCHENS LTD
Respondent

Member of Authority: James Crichton
Representatives: Applicant in person
No appearance for respondent
Investigation Meeting: 6 September 2010 at Christchurch
Determination: 8 October 2010

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant (Mr Ko) alleges that he is due wages and allowances totally \$10,573.00. There has been no statement in reply filed by the respondent employer (Make It Kitchens) notwithstanding the efforts of the Authority's support staff to serve the statement of problem on Make It Kitchens in the normal way, and the subsequent efforts of Mr Ko himself.

[2] The particular difficulty with this application to the Authority was that, because Mr Ko had ceased his employment with Make It Kitchens and his permission to be in this country was a function of his continued employment, Mr Ko was required to leave the jurisdiction on or before 10 September 2010. The statement of problem was filed in the Authority on 14 June 2010 and despite the difficulties in serving documentation on Make It Kitchens, the Authority has endeavoured to give priority to Mr Ko's application.

[3] In fact, once it became clear to the Authority per medium of a letter from the Immigration Division of the Department of Labour dated 20 August 2010 that Mr Ko

was required to leave New Zealand on or before 10 September 2010, the Authority immediately took extraordinary steps to deal appropriately with Mr Ko's application before his departure from New Zealand. To that end, by notice of direction dated 1 September 2010, I noted the attempts made by a private investigator to serve the statement of problem on a director of Make It Kitchens, formed the view that that director Mr Brodie was deliberately avoiding service and, conscious of Mr Ko's imminent departure from the jurisdiction, I made orders for the abridgement of time to file a statement in reply together with orders for substituted service in reliance on Regulations 8 and 21 of the Employment Relations Authority Regulations 2000.

[4] A fixture date for the investigation meeting was set for Monday, 6 September 2010 at 3pm.

[5] Then the Christchurch earthquake of 4 September 2010 intervened. The result of that catastrophic event was that the Authority's offices were unable to be accessed because of extensive damage within the inner city and, in consequence, the opportunity to contact parties and make fresh arrangements was made even more difficult. In the result, and despite the obvious difficulties, the Authority's senior support officer at Christchurch took extraordinary steps to contact Mr Ko so that his evidence could be given and taken prior to his departure from New Zealand. While the consequence of the earthquake was to require the vacating of the 6 September 2010 date, the senior support officer was able to arrange for me to interview Mr Ko on Wednesday 8 September 2010 at 10am. The interview took place away from the Authority's premises and while otherwise informal, did enable the Authority to formally record Mr Ko's evidence.

[6] Since that evidence has been given and taken, efforts to obtain any engagement in the Authority's process from Make It Kitchens have failed. Because of the efforts made by both the Authority's support staff and Mr Ko to engage with Make It Kitchens and their obvious attempts to avoid service of relevant documents, I am satisfied that the respondent employer has deliberately chosen to avoid engaging in the Authority's process. For the avoidance of doubt I confirm that, since taking the evidence of Mr Ko, the Authority's support staff have made every reasonable endeavour to obtain engagement in the Authority's process from Make It Kitchens, without success. On that footing then, I have determined it is appropriate to proceed to decide this matter in accordance with my statutory function.

[7] Mr Ko's claim has been well documented in his application to the Authority and that application has been appropriately supported by Mr Ko's subsequent evidence in oral form. The essence of Mr Ko's claim amounts to the sum of \$10,573.00 in total which comprises four separate amounts viz:

- (a) \$633.00 gross being arrears of wages;
- (b) \$70 net being unpaid allowances for Mr Ko's trip to China in August and September 2009;
- (c) \$7,670.00 gross of unpaid wages and allowances for the same trip to China; and
- (d) \$2,200.00 gross in unpaid wages for work performed in New Zealand on the China matter.

[8] Mr Ko told me that he was employed by Make It Kitchens on an individual employment agreement as the China Trade Factory Manager from 15 September 2009. In that role, he was effectively required to liaise between the New Zealand operation and a Chinese factory producing product for the New Zealand operation. One of his particular tasks was to effectively act as a "trouble-shooter" in respect to the operation of the Chinese factory which he told me in his oral evidence was "out of control". Of course, this necessitated him working in China for a period and the principal elements of his claim relate to a trip to China in August and September 2009.

[9] When the employment relationship came to an end, Mr Ko's evidence is that he used his best endeavours to seek a resolution of the matter with Make It Kitchens but was unsuccessful. For their part, Make It Kitchens made various offers to compromise the debt, but these were not acceptable to Mr Ko and the matter remained unresolved when he filed his statement of problem on 14 June 2010.

Determination

[10] I am satisfied on the evidence before the Authority that Mr Ko has made out his claim for unpaid wages and allowances and I now make the following orders to address that conclusion:

- (a) Make It Kitchens Ltd is to pay to Mr Ko the gross sum of \$10,503.00;

- (b) Make It Kitchens Ltd is to pay to Mr Ko the net sum of \$70 as a reimbursing payment.

Costs

[11] Costs are to lie where they fall.

James Crichton
Member of the Employment Relations Authority