

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2017] NZERA Auckland 332
3003592

BETWEEN MPM INVESTMENTS
 LIMITED
 Applicant

AND CLINT STEWART
 Respondent

Member of Authority: Vicki Campbell

Representatives: Michael McGlone for Applicant
 Sara Wadworth for Respondent

Investigation Meeting: 20 October 2017

Oral Determination: 20 October 2017

Record of Oral
Determination: 20 October 2017

**RECORD OF ORAL DETERMINATION OF THE
AUTHORITY**

- A. Mr Stewart was not an employee of MPM Investments Limited.**

- B. MPM Investments Limited's application for reimbursement of a loan is declined.**

- C. Costs are reserved.**

Employment relationship problem

[1] Mr Clint Stewart was offered the opportunity to purchase shares in Marine Engineering Limited. Marine Engineering is a fully owned subsidiary of MPM Investments Limited. Mr Michael McGlone is the sole director of both companies.

[2] Mr Stewart did not have the capacity to raise finance to purchase the offered shares because he was building a house and until it was completed it was not suitable for him to use as collateral for a loan.

[3] On 20 February 2013 MPM loaned Mr Stewart \$12,500 to cover the cost of completing his house. This was done on the understanding that once the house was completed Mr Stewart would raise the finance to complete the share purchase and repay the \$12,500 to MPM plus a further \$18,000 which Mr McGlone says Mr Stewart owed to Marine Engineering.

[4] Mr Stewart did not complete the house and consequently did not raise the finance to complete the share purchase.

[5] MPM seeks reimbursement of the \$12,500 plus interest at a notional rate of 7%. Mr Stewart denies the loan arose out of the employment relationship and says the Authority has no jurisdiction.

Issue

[6] In order to resolve this problem I must first determine:

- a) Does the Authority have jurisdiction to make the orders sought by MPM?
- b) If so, should an order be made for payment of the amount claimed plus interest?

[7] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has not recorded all the evidence and submissions received from MPM and Mr Stewart but has stated findings of fact, expressed conclusions on issues necessary to dispose of the matter and specified orders made as a result.

Jurisdiction

[8] Mr Stewart was listed on the companies register as a shareholder and director of Marine Engineering between 2009 and 2015. There is no dispute that during this time he was also an employee of Marine Engineering and was engaged as its General Manager.

[9] The Authority's jurisdiction is set out at s 161 of the Act. In particular the Authority has exclusive jurisdiction to make determinations about any action arising from or related to the employment relationship.¹ An employment relationship is relevantly defined to include the relationship between an employer and an employee employed by the employer.

[10] An employment relationship problem is one that directly and essentially concerns the employment relationship, where an employment relationship was a necessary component of the cause of action.² An employment relationship can co-exist with another relationship.³

[11] Mr Stewart was clearly in an employment relationship with Marine Engineering. There is no evidence that Mr Stewart was in an employment relationship with MPM.

[12] I have considered whether there is a joint relationship between Mr Stewart and the holding company, MPM, and its subsidiary, Marine Engineering.⁴ Mr McGlone was clear in his oral evidence that Marine Engineering is the sole employer. This is consistent with the documents which Mr McGlone had at the investigation meeting which he told me were all related to Mr Stewart's employment and the documents belonged to Marine Engineering.

[13] I find Mr Stewart was not an employee of MPM and was not in a joint employment relationship with MPM and Marine Engineering. He was an employee of Marine Engineering.

¹ Employment Relations Act 2000 s 161(1)(r).

² *JP Morgan Chase Bank NA v Lewis* [2015] NZCA 255; [2015] 2 NZLR 618; [2015] ERNZ 37.

³ *Ryan v Mason* [2011] 2 NZLR 791 at [33].

⁴ *Hutton v Provencocadmus Ltd (in Rec)* [2012] NZEmpC 207 at [79].

[14] The Authority does not have jurisdiction to investigate MPM's claims because there is no employment relationship between it and Mr Stewart.

[15] Even if I had found an employment relationship existed, Mr McGlone would have had to establish that the loan of \$12,500 arose out of the employment relationship. The evidence shows that the loan was of a personal nature to allow Mr Stewart to finish his house. The motive for the loan was to allow Mr Stewart to raise the necessary capital to purchase shares in Marine Engineering. At the time Mr McGlone loaned Mr Stewart money it did not directly and essentially concern the employment relationship. Having an employment relationship between MPM and Mr Stewart was not a necessary component of the transaction.⁵

General

[16] Mr McGlone has had proceedings declined in the Disputes Tribunal due to a finding that the matter was an employment relationship problem. I have found that is not the case. My determination should now clear the way for the matter to be pursued in the civil jurisdiction.

Costs

[17] Costs are reserved. The parties are invited to resolve the matter. If they are unable to do so Mr Stewart will have 14 days from the date of this determination in which to file and serve a memorandum on the matter. MPM will have a further 14 days in which to file and serve a memorandum in reply. All submissions must include a breakdown of how and when the costs were incurred and be accompanied by supporting evidence.

[18] The parties could expect the Authority to determine costs, if asked to do so, on its usual "daily tariff" basis unless particular circumstances or factors require an adjustment upwards or downwards.

Vicki Campbell
Member of the Employment Relations Authority

⁵ Above at n 2.

