

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2017] NZERA Christchurch 202
5571621

BETWEEN AMINE MAAROUFE
Applicant

A N D ADVANCED PIPELINE
CHRISTCHURCH LIMITED
First Respondent

SEYED DERHAMY
Second Respondent

SAAD SADIQ KHAYYAT
Third Respondent

MOHAMMAD BASHIR
RAHIMI
Fifth Respondent

Member of Authority: Trish MacKinnon

Representatives: Robert Thompson for Applicant
Second and Third Respondents self represented

Investigation Meeting: On the papers

Information and Documentation Received: 27 May, 16 June and 17 July 2017 from the Applicant
16 June 2017 from the Second Respondent; 27 June 2017 from the Third Respondent

Date of Determination: 23 November 2017

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] In my determination of 4 January 2017¹ I found Amine Maaroufe had been employed by Advanced Pipeline Christchurch Limited (APCL or the company). Following a subsequent telephone conference with the parties Mr Maaroufe confirmed he wished to proceed with his claims against the first, second, third and

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fifth respondents. The claims are personal grievances for unjustifiable disadvantage and unjustified (constructive) dismissal, an action for breach of good faith, failure to keep or provide wage and time records and failure to supply an employment agreement.

[2] The individuals named as second, third and fifth respondents notified their objection to Mr Maaroufe naming them as respondents in the matter and it was agreed in a further telephone conference that the matter of which respondent or respondents could be cited would be determined on the papers after receiving submissions from the parties.

[3] This determination has been issued outside the timeframe set out in s174D(2) of the Act by leave of the Chief of the Authority under s174D(3).

The first respondent

[4] APCL, which had ceased operating in or around October 2015, was placed into liquidation in the High Court on 23 June 2017. The relevant part of s.248 of the Companies Act 1993 provides for this circumstance as follows:

- (1) With effect from the commencement of the liquidation of a company,—
 - (a) ...
 - (b) ...
 - (c) unless the liquidator agrees or the court orders otherwise, a person must not—
 - (i) commence or continue legal proceedings against the company or in relation to its property; or
 - (ii) exercise or enforce, or continue to exercise or enforce, a right or remedy over or against property of the company:

[5] The consequence of s.248 is that Mr Maaroufe is, in the absence of agreement from the liquidator or an order of the High Court, barred from pursuing his claims in the Authority against the first respondent.

The second, third and fifth respondents

[6] There is only one current Director of the company, Seyed Derhamy, the second respondent. At all relevant times during Mr Maaroufe's employment, the third and fifth respondents were also Directors. They resigned their respective directorships on 18 September 2015.

[7] Submissions for the applicant are that throughout his employment Mr Maaroufe was communicative with all the respondents regarding his concerns over aspects of the employment relationship. He claims they were all aware of the serious issues he raised with them, including bullying, health and safety and employment conditions but all failed to treat his concerns seriously. It is Mr Maaroufe's contention that the then directors of the company were in a position of responsibility and accountable for their actions or inactions.

[8] Two of the personally named respondents, Mr Derhamy and Saad Khayyat, made submissions to the effect that there was no good reason for their being personally cited in the proceedings. The fifth respondent, Mohammad Rahimi, did not make submissions.

[9] Mr Derhamy, who is based in Auckland, submitted he had no involvement in Mr Maaroufe's employment or resignation and had neither seen nor talked to Mr Maaroufe. Nor had he been in Christchurch in relation to the APCL work on which Mr Maaroufe had been employed. The tenor of his submission was that he was not Mr Maaroufe's employer and there was no good reason for him to be named as a respondent in the matter.

[10] Mr Khayyat, who was based in Christchurch and had interviewed Mr Maaroufe when he applied for employment in March 2015, rejected many of the assertions made by the applicant, and said Mr Maaroufe had not advanced any reason for citing him or other directors/former directors personally.

[11] Mr Khayyat had resigned from his employment on 4 September 2015, and subsequently resigned his directorship of APCL. By his account he had passed on Mr Maaroufe's personal grievance to the Managing Director, Mr Dilaimi, the day he received it and had no involvement with the applicant's concerns after his resignation.

[12] None of the former directors personally employed Mr Maaroufe and I do not understand him to be asserting that they did. His representative, Mr Thompson, submits the matters Mr Maaroufe has raised are of a serious nature and need to be tested in an Authority investigation. He submits the respondents took advantage of Mr Maaroufe's immigration status and were "*active participants in breaching their obligation under the Act*".

[13] That is not one of the allegations made in the comprehensive statement of problem lodged by Mr Maaroufe's then representative on his behalf. That document does not support submissions made by his current representative regarding the involvement of Mr Derhamy or Mr Rahimi in Mr Maaroufe's employment issues.

[14] While it does refer to Mr Khayyat as the person who interviewed Mr Maaroufe and had contact with him during his employment, that engagement with Mr Maaroufe does not establish a legal basis for Mr Khayyat to be named in these proceedings as a respondent.

[15] The Act provides that a personal grievance means any grievance that an employee may have against the employee's employer or former employer.² Mr Maaroufe's employer was APCL and the submissions on behalf of Mr Maaroufe have provided no legal basis for any of the directors, at the time, of the first respondent to joined to his claims of unjustifiable disadvantage and constructive dismissal against his employer.

[16] With regard to Mr Maaroufe's claim of a breach of good faith, the Act specifies that the duty of good faith is between the parties to an employment relationship.³ Only the first respondent meets that criterion. The statutory obligations around the provision of an employment agreement to an employee are obligations imposed on "*the employer*"⁴ as are the obligations around the keeping of wage and time records and making them accessible on request of the employee.

[17] After considering the views of the parties I have determined there is no basis upon which Mr Maaroufe can progress his claims against the second, third and fifth

² Section 103(1) of the Act.

³ Section 4 of the Act.

⁴ Section 63A of the Act.

respondents. Nor can he continue his action against the first respondent without the agreement of the liquidator or orders from the High Court.

[18] Accordingly I order the second, third and fifth respondents to be struck out from these proceedings in accordance with s.221 of the Act.

Costs

[19] The issue of costs is reserved.

Trish MacKinnon
Member of the Employment Relations Authority