

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 149/07
5091990

BETWEEN

ANDREW GILLEN
MACBETH
Applicant

AND

COOKIE TIME LIMITED
Respondent

Member of Authority: Paul Montgomery

Representatives: Kerry Smith and Susan Rowe, Counsel for Applicant
Scott Fairclough, Counsel for Respondent

Joint submission received: 4 December 2007

Determination: 7 December 2007

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The Authority has received a joint application for removal of the whole matter to the Employment Court.

[2] The primary ground is the need to determine whether the applicant was an employee or contractor. The factual matrix is complex and counsel for each party submits that an important question of law will arise in this context other than incidentally.

[3] Counsel also submit that there are issues relating to the discovery and inspection which include applications for orders for non-party discovery on behalf of the applicant. It is submitted that such specific orders are best decided by the Employment Court.

[4] It is also submitted that the quantum sought is at a level such that it is probable that either party, if unsuccessful, will seek to challenge any determination of the

Authority and on the basis of avoiding unnecessary costs in the Authority, they seek removal.

[5] Significantly, neither party opposes removal on the basis that either party will be deprived of the right to challenge an Authority determination in the Employment Court.

[6] The grounds for removal are set out in s.178 (2) of the Employment Relations Act 2000.

The Authority may order the removal of the matter, or any part of it, to the Court if –

- (a) An important question of law is likely to arise in the matter other than incidentally; or*
- (b) The case is of such a nature and of such urgency that it is in the public interest that it be removed immediately to the Court; or*
- (c) The Court already has before it proceedings which are between the same parties and which involve the same or similar or related issues; or*
- (d) The Authority is of the opinion that in all the circumstances the Court should determine the matter.*

[7] Having considered this application in the round, and also in the light of a 20/20 television programme which canvassed some aspects of this case and thus placed it in the public domain, the Authority is of the view that *in all the circumstances*, the whole matter should be removed to the Court for its decision.

[8] I order the matter removed in its entirety to the Employment Court for its decision.

Paul Montgomery
Member of the Employment Relations Authority