

business in the Marlborough Sounds based at the Bay of Many Coves. A company to be incorporated as BOMC Resort Management Limited was in the course of being formed to run the proposed business. The applicants were to be employed in the venture.

[4] During the period that the Andersons were endeavouring to complete the purchase of the subject business, there were various postponements for reasons that are not germane to this determination and in the end the sale and purchase agreement did not proceed because of the sudden and unexpected withdrawal from the deal of the Andersons' Wellington based partner. The effect of this development was to exclude Mr and Mrs Anderson from the project altogether and thus bring any potential arrangement to an end. The advice that the Andersons' partner was taking over the whole project was conveyed to the applicants on 2 October 2009. From that date on, Mr and Mrs Anderson's position is that they no longer had any interest, business or otherwise, in the project and thus, irrespective of what their intentions may have been earlier, were in no position to contract with or continue to contract with the applicants in relation to the self same project.

[5] For their part, the applicants' view was that they had been offered a verbal contract of employment by Mr and Mrs Anderson to commence on or about 17 July 2009 (the putative settlement date) and that employment agreement continued until it was arbitrarily brought to an end by Mr Anderson's advice on 2 October 2009 to the effect that the deal was off.

Issues

[6] It would be useful for the Authority to consider the following matters:

- (a) Was there an intention to create legal relations?
- (b) Were the applicants employed by the Andersons?

Was there an intention to create legal relations?

[7] I am satisfied on the evidence before the Authority that there was no intention by Mr and Mrs Anderson to create legal relations with the applicants. I reach this conclusion because, despite the applicants' understanding of the position, the evidence is very clear that there was never a concluded commercial arrangement for

Mr and Mrs Anderson, and as a consequence, it seems highly unlikely that they would have entered into an employment arrangement unless and until there was a need for the services of the people to be employed.

[8] I consider this conclusion to be supported by the evidence of Mr and Mrs Anderson that they were horrified when they discovered that the applicants had quit their jobs and their Christchurch home in order to move up to the Marlborough Sounds in anticipation of commencing the employment relationship. Both Mr and Mrs Anderson separately gave that evidence in relation to their different exchanges with the applicants, both jointly and severally, and I believe their evidence.

[9] Ms McGrouther was unable to satisfy me, giving evidence for the applicants, that there was any basis to her claim that the Andersons intended a legal relationship to be created with the applicants in advance of their actually being needed. Ms McGrouther produced evidence to the effect that she and her partner, Mr Ford, had done various things and provided various services in anticipation of the employment, many of which had involved them in significant cost. But there is no acceptance whatever from Mr and Mrs Anderson that those services were ever demanded or even agreed to. One example was the employment agreement prepared between the as yet unincorporated company to be established to run the venture, and each of the applicants. Ms McGrouther said that she drafted each of the agreements and that is common ground. However, Mr Anderson was very clear that he had not sought the preparation of the agreements at this early formative stage and indeed felt pressured by Ms McGrouther in relation to the completion of these draft documents.

[10] In the absence of any intention to create legal relations by Mr and Mrs Anderson, there can be no “meeting of the minds”, no common enterprise which leads to the intention to form a legal relationship.

Were the applicants employed by the Andersons?

[11] I am also satisfied that there is no evidence whatever that the applicants were employed by Mr and Mrs Anderson. The applicants allege that Mr and Mrs Anderson entered into a verbal employment agreement commencing on or about 17 July 2009 and concluding suddenly on 2 October 2009 when the Anderson venture fell apart.

[12] But there is simply no evidence that there was an employment agreement in place at that time. Indeed the only evidence of employment agreements is the

agreements prepared by Ms McGrouther to constitute the employment relationship between her and her partner on the one hand and the company to be incorporated on the other.

[13] Although the applicants allege they were employed by Mr and Mrs Anderson, they call in aid a document that Ms McGrouther prepared which has no reference to Mr and Mrs Anderson as employer at all. Furthermore, that agreement was never signed, not just by the proposed employer but also not even by Ms McGrouther or Mr Ford. Certainly, I can see no basis on which Ms McGrouther and Mr Ford can claim that these unsigned employment agreements with another non-existent entity, can support their claim that Mr and Mrs Anderson were for the period from 17 July down to 2 October 2009 their employers. Amongst other things, there is no evidence of any consideration for the alleged employment relationship, and as I have already noted in the previous section of this determination, no evidence that the work contemplated by the employment relationship was actually required until the consummation of the business arrangements that would lead to the necessity for staff to be engaged.

Determination

[14] I am satisfied on the evidence before the Authority that Ms McGrouther and Mr Ford have no claim whatever against Mr and Mrs Anderson. It is always distressing when personal friendships are destroyed by the failure of commercial or business arrangements and while the Authority must have great sympathy for the situation in which Ms McGrouther and Mr Ford found themselves, Mr and Mrs Anderson have also suffered a reverse in that the project which they worked on did not come to fruition.

[15] I am satisfied that the applicants were not employed by Mr and Mrs Anderson at any point and indeed, on the evidence before the Authority, the applicants were not employed by any entity involved with this particular project.

[16] Of course, in the absence of an employment relationship, the Authority has no jurisdiction, and it follows that there are no further steps that the Authority can take. The applicants' claim must fail.

Costs

[17] In the particular circumstances of this case, and in the absence of advocates or legal advisers being actively engaged in the Authority's investigation process, it seems appropriate to decide the costs issue now.

[18] Therefore, I determine that in the particular circumstances of this case, costs are to lie where they fall.

James Crichton
Member of the Employment Relations Authority