

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 221/09
5117379

BETWEEN STEVEN PATRICK MURPHY
Applicant

AND AIRDRIE TOWING (2007)
LIMITED
First Respondent

KEITH RITCHIE
Second Respondent

BEV RITCHIE
Third Respondent

Member of Authority: Robin Arthur

Representatives: Applicant in person
Keith Ritchie and Bev Ritchie for Respondents

Investigation Meeting: 3 July 2009 in Auckland

Determination: 6 July 2009

DETERMINATION OF THE AUTHORITY

[1] In January 2008 Keith and Bev Ritchie made an agreement to pay Steve Murphy the sum of \$4000. The agreement was handwritten by Mrs Ritchie and signed by the three individuals. Its terms state the agreement is “*in full and final settlement*” and that “*neither party shall have any claim against the other*” and “*payment to be made on or before 20th February 2008*”.

[2] On 27 February 2008 Mr Murphy lodged a statement of problem seeking payment of outstanding wages and holiday pay totalling \$6200. He made this claim because he said he had been paid only \$1400 of the previously agreed \$4000 sum so that he now considered the previous agreement “*null and void*”.

[3] Airdrie Towing (2007) Limited lodged a statement in reply referring to Mr Murphy as a partner in the company. The company's position is that Mr Murphy was never its employee and any work done was only as a prospective partner who was learning about the day-to-day running of the business which he subsequently never invested in.

[4] Inland Revenue Department records show that Mr Murphy received payments from the company between June and November 2007 from which PAYE tax was deducted. His claim for unpaid wages relates to some weeks within that period and eight weeks after then.

[5] The Authority's file shows that this matter was twice directed to mediation during 2008 but neither resulted in the parties attending mediation. In March 2009 Mr Murphy asked the Authority to proceed to investigate his claim.

Investigation

[6] At its own volition (by Minute of 2 June 2009) the Authority joined Mr Ritchie and Mrs Ritchie as respondents to the proceedings. This was done because the January 2008 agreement to settle Mr Murphy's claim for wages and holiday pay referred to them as individuals and not the company.

[7] Mr Ritchie is the sole shareholder of Airdrie Towing (2007) Limited. Mrs Ritchie is its manager and responsible for administration. Mr and Mrs Ritchie's son, Marshall Ritchie, is the company's sole director.

[8] The initial investigation meeting was postponed to accommodate overseas travel plans by Mr and Mrs Ritchie.

[9] At the investigation meeting Mr Murphy, Mrs Ritchie and Mr Ritchie each answered questions under affirmation and had the opportunity to ask additional questions and provide a closing summary.

Issues

[10] The first issue for resolution by the Authority is whether the handwritten agreement made between Mr Murphy and the Ritchies in February 2008 is enforceable if the agreed sum has not been paid in full. If it is not, other issues would need to be addressed as to whether Mr Murphy was entitled to the larger amount he now claims for outstanding wages and holiday pay.

Determination

[11] I find that Mr Murphy, Mr Ritchie and Mrs Ritchie made an agreement in late January 2008 which they each intended to be full, final and binding in respect of claims that Mr Murphy could make against the Ritchies or the company. I am satisfied, on the basis of Mr Murphy's evidence, supported by the IRD information about income received and PAYE deductions made, that there was an employment relationship and this agreement was made in settlement of claims in relation to the end of that relationship. The agreement remains binding on each signatory. Mr Murphy cannot resile from it and seek the greater amount of wages and holiday pay he says he was otherwise owed.

[12] The agreement does not set out any arrangements or indication of the parties' intentions in that event that the Ritchies defaulted on the agreed payment.

[13] Mrs Ritchie confirmed that a bank payment of \$1000 and a cash payment of \$400 had been made to Mr Murphy. However she also gave evidence that she had made additional payments of cash for the remainder due under the settlement agreement. She had no proof of this although she said that she would have made a note of such payments in her diary but that diary was in storage after having moved house in May 2008.

[14] I note that no reference to having made those additional payments was made in the company's statement in reply in March 2008. Neither, until the investigation meeting, was any suggestion made that the Ritchies had already paid the amount that Mr Murphy claims is due. Given the many months that have passed during which such a defence could have been raised, and the ample opportunity to have produced

possible evidence of it (such as the alleged diary notes), I find, on the balance of probabilities that no further payments were made.

Orders

[15] Disposing of this matter according to the substantial merits and equities of this matter, and in accordance with the intention of the parties as expressed in their agreement of January 2008, I order Mr and Mrs Ritchie jointly and severally to comply with the terms of that agreement by:

- a. paying to Mr Murphy the sum of \$2600; and
- b. for payment of that sum to be made in full by no later than 14 days from the date of this determination.

[16] Failure by the Ritchies to comply with this order would entitle Mr Murphy to seek further orders from the Employment Court or to file this order in the District Court and have it enforced in the same manner as an order of the District Court under s141 of the Employment Relations Act 2000).

[17] Mr and Mrs Ritchie are also ordered to pay to Mr Murphy the further sum of \$70 as reimbursement of his fee for lodging this matter in the Authority.

Robin Arthur
Member of the Employment Relations Authority