

that Mr Sime was employed not by *Your Cleaners Limited* but by *Your Cleaners (Auckland) Limited* of which he is also a director. Mr Smith said that payments to Mr Sime (pursuant to the terms of settlement) stopped because of inability to pay.

Issues

[4] The issues for determination are whether the mediated terms of settlement can be enforced in the face of claims that:

- i. the employer party has been incorrectly identified, and
- ii. the actual employer is unable to pay.

[5] In a conference call between the Authority, Mr Sime and Mr Smith in April 2010 Mr Smith advised that he was located in the South Island and would find it difficult to attend an investigation meeting in Auckland. He also confirmed that he was expecting his business (by which he seemed to mean one or more of his companies) to go into liquidation in the near future. I proposed that in the circumstances the employment relationship problem should be determined “*on papers*” and both parties agreed. I therefore proceed to determine the matter on the basis of the parties’ submissions.

[6] Mr Sime began by telling me that:

“I was employed by Your Cleaners Limited in late December 2006. The ad I responded to on the Trade Me Job site was in the name of Your Cleaners Ltd. As per the copy from the Companies Office Your Cleaners (Auckland) was not registered until 30 October 2007 therefore did not exist when I was employed in 2006.”

[7] It is indeed correct that the Companies Office register shows that *Your Cleaners (Auckland) Limited* was not registered until October 2007.

[8] Mr Smith responded by agreeing that Mr Sime was initially employed by *Your Cleaners Limited* but said that when he registered the new company in October 2007:

“assets were transferred and Steve was told. His employment and holiday pays were transferred to the new company on the 31st October 2007, Steve was also issued with a personalised credit card in the name of your cleaners akl ltd. [sic] His employment continued under your Your Cleaners AKL [sic] from then.

In Late September 2008 Steve requested to be paid out some of his holiday pay, The [sic] holiday pay that initially related to Your Cleaners Ltd was paid out over a 4 week period in October 2008.”

[9] The respondent’s submission then goes on to set out some reasons why *Your Cleaners (Auckland) Limited* finds itself unable to pay the balance of the agreed settlement.

[10] In reply submissions Mr Sime told the Authority:

“At no time was I informed of the new company being formed. The first I actually knew about it was when ... Ben alluded to it when refusing to continue the payment he agreed to pay me...”

Determination

[11] Mr Smith’s assertion that Mr Sime’s employment was transferred from *Your Cleaners Limited* to *Your Cleaners (Auckland) Limited* does not appear to have been raised at any time prior to the lodging of these enforcement proceedings. The terms of settlement (which Mr Smith personally signed) are expressed to be with *Your Cleaners Limited* and two instalment payments were made (apparently on his authority) pursuant to those terms. Against that background, I am not satisfied that there is sufficient basis for me to conclude that the employer party has been wrongly identified in the terms of settlement.

[12] If I have understood Mr Smith correctly, the argument about inability to pay may relate to both companies (*Your Cleaners Limited* and *Your Cleaners (Auckland) Limited*.) Inability to pay is not however a matter which would result in the setting aside of mediated terms of settlement. The respondent, through Mr Smith, agreed to

the mediated terms and Mr Sime is entitled to enforce that agreement through orders for the payment of the balance of the settlement sum.

[13] I therefore make the following order for compliance with the Terms of Settlement entered into between the parties on 19 August 2008:

- i. The respondent, Your Cleaners Limited, is ordered to pay the balance outstanding to the applicant, Mr Steve Sime, being the sum of \$2,076.16 net of PAYE, ACC earner's premium and any other taxes owing;**
- ii. The abovementioned sum is to be paid to Mr Sime no later than 28 May 2010.**

Yvonne Oldfield

Member of the Employment Relations Authority