



phone conference in November 2008 when arrangements were made for an investigation meeting on 27 January 2009.

[4] By July 2008 the company was facing liquidation proceedings. That culminated with the company being placed in liquidation on 19 January 2009.

[5] At the investigation meeting there was no appearance for the respondent. There being no good reason for the non-appearance I decided to proceed with the investigation meeting.

### **The identity of the respondent**

[6] The crucial point for determination is who was Ms Watson's employer? If the employer was the company then the proceedings can go no further without the agreement of the liquidator or an order of the High Court.

[7] Ms Watson was involved with re-establishing the business following its closure by the previous owner in late December 2005. She then managed the business with day to day responsibility for its operation. Ms Watson says that she was told by Mr Knight in early January 2006 that she was employed and she worked from then until February 2008. She commenced working from home contacting former customers and doing other work associated with re-establishing the business. Soon after, the business got possession of premises and then took delivery of stock and plant from the former owners. Ms Watson kept a record of her hours of work from 18 January 2006 through to 28 February 2006, a total of 297 hours which she says she is owed at her pay rate of \$20.00 per hour. From March 2006 Ms Watson was paid but perhaps not entirely on a regular basis.

[8] In his letter dated 5 March 2008 Mr Knight claims that he was only the financial partner of the business and that Ms Watson was employed by his former business partner Mr Chris Brien. That is an attempt by Mr Knight to distance himself from the employment arrangements. However in its statement in reply the company says that Ms Watson approached Mr Knight to take over the business. In an unsigned and unsworn statement Mr Knight also says that *Ms Watson ...may have made some phone calls in February to customers but at no time was she employed on a full time basis and certainly was not authorised to work 40 plus hours.* Ms Watson on the other hand says in her evidence that the discussion about employment in early January

2006 was with Mr Knight and Mr Brien was not present. There is no reason to disbelieve Ms Watson's evidence on this point.

[9] The company Classic Art and Framing Limited was incorporated on 7 February 2006. Ms Watson as the manager was well aware of the existence of the company that owned and operated the business from shortly after 7 February 2006. Indeed she was involved in hiring other staff, she did the wages and prepared PAYE and GST returns for the company. Ms Watson also received wages from the company from the beginning of March 2006. Clearly enough, after its incorporation, it was the company that employed Ms Watson until she resigned in February 2008. There was no employment relationship between Ms Watson and Mr Knight personally between 7 February 2006 and February 2008.

[10] To the extent that there was an contractual arrangement for Ms Watson to work before 7 February 2006 made by Mr Knight, that must have been done by him in contemplation of the company to be formed and on its behalf. Classic Art and Framing Limited must be taken as having ratified this employment agreement within a reasonable period after 7 February 2006 by its conduct in continuing her employment as its manager. The effect of this ratification is that the pre-incorporation employment agreement is as valid and enforceable as if the company had been a party to the contract when it was made: see s.182(3) of the Companies Act 1993. It follows that to the extent that Ms Watson has a valid claim for arrears of wages relating to work prior to 7 February 2006, it is a claim against Classic Art and Framing Limited and not Mr Knight personally. Because the company is now in liquidation, these proceedings cannot continue unless the liquidator agrees or the High Court so orders: see s.248 of the Companies Act 1993.

### **Conclusion**

[11] The Authority can take this matter no further.

Philip Cheyne  
Member of the Employment Relations Authority