

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 179/09
5125074

BETWEEN ERIC HENRY CLIFFORD
 DITTMER
 Applicant

AND PROGRESSIVE
 INVESTMENT ENTERPRISE
 LIMITED
 Respondent

Member of Authority: Marija Urlich

Representatives: Matt Bailey, for Applicant
 Nagi Faltaus, for Respondent

Investigation Meeting: 18 September and 6 October 2008

Further Information and 7, 9, 21, 24, 30 October, 6, 7 November 2008
Submissions Received:

Determination: 11 June 2009



DETERMINATION OF THE AUTHORITY

[1] Mr Dittmer says he was employed by Progressive Investment Enterprises Limited (“PIEL”) as a manager between April 2007 and April 2008 on agreed terms of annual salary of \$150,000, a car and a laptop. He seeks findings to that effect from the Authority.

[2] PIEL is a property investment business owned and managed by Enyi Dong. Mr Dong also owns and manages a bathroom fit out business which operates from the same premises – Progressive Interiors Limited. Mr Dongs says Mr Dittmer was never employed by his business. He says Mr Dittmer acted as an agent for PIEL on property deals for which he received commission payments.

The issues

[3] This determination deals solely with the preliminary issue whether Mr Dittmer was an employee or independent contractor. If this issue is resolved in Mr Dittmer's favour then the Authority will investigate the substantive claim. If not the Authority does not have jurisdiction to consider the matter further.

The real nature of the relationship - employee or independent contractor?

[4] Section 6 of the Employment Relations Act 2000 provides the meaning of employee and requires the Authority to determine the real nature of the relationship between the parties¹. The Authority must consider whether the evidence establishes the existence of a contract of or for services having viewed the evidence in its totality².

[5] The tests applicable to a consideration of the real nature of the relationship include³:

- Analysis of the terms and conditions agreed by the parties;
- The intention of the parties (though not decisive); and
- Analysis of the historical control, integration and fundamental tests

[6] In applying these tests to the parties' factual matrix I am required to consider all relevant matters, including anything which may indicate the intention of the parties, though any statement by the parties describing the relationship is not determinative. The operation of the relationship in practise is to be assessed.

(i) the terms and conditions agreed by the parties

[7] Mr Dong says Mr Dittmer approached him in April 2007 and asked whether he would consider employing him. He said in evidence that he told Mr Dittmer employing him was not an option because his main business related to tiles and bathroom ware and Mr Dittmer did not have experience in that area, Mr Dong had

¹ Section 6(2) Employment Relations Act 2000

² *Smith v Practical Plastics Ltd* [1998] 1 ERNZ 323

³ *Bryson v Three Foot Six Ltd* [2005] 3 ERNZ 729 (SC)



sufficient employees at that time, he could not afford to take on a new employee because his company had suffered a substantial loss and he would receive commissions as a commissioned agent when a transaction was successful.

[8] Mr Dittmer says that from 1 April 2007 he worked on a permanent basis for Mr Dong when he accepted his offer of a salary of \$150,000 per annum, a car, a mobile telephone, a laptop computer plus all expenses paid.

[9] There is no dispute Mr Dittmer did not receive any of these terms – he was not paid a salary, he did not receive a car, mobile telephone or laptop and he did not claim or receive reimbursement for expenses. Mr Dittmer did receive several lump sum payments during his association with Mr Dong and Mr Dong gave him some petrol vouchers and paid for some travel Mr Dittmer undertook with him.

[10] Mr Dittmer and Mr Dong first meet in late 2005 when Mr Dong looked at sections in Henderson which Mr Dittmer was marketing. Mr Dittmer was acting as the vendor's agent. He is not a real estate agent. In relation to the Henderson sections Mr Dittmer described this role to me as one of a commissioned agent. During this meeting Mr Dittmer asked Mr Dong about the type of property he might be interested in and said he would let him know if he became aware of anything which might be of interest. Mr Dittmer and Mr Dong remained in contact and the relationship developed into a friendship.

[11] Subsequent to this meeting Mr Dittmer introduced Mr Dong to his friend and business associate Barry Sutton. Mr Dong said in evidence to the Authority that Mr Sutton told him Mr Dittmer was engaged by him as a commissioned agent. Mr Sutton gave evidence to the Authority. He told me that Mr Dittmer was engaged by him as a commission only sales person and that he was not an employee. Mr Sutton said Mr Dittmer worked his own hours, holiday and sick leave were part of any commission received, that PAYE was not deducted at source and he did not know what tax Mr Dittmer paid on commission payments he received.

[12] In his statement of problem Mr Dittmer listed the projects he was involved in with Mr Dong. These projects commenced prior to the date Mr Dittmer says his relationship with Mr Dong became that of employee/employer. Between February

PROPERTY OF
OF THE E.A.

and October 2006, before Mr Dittmer says he became an employee, he says he spent considerable time researching exporting boats, meat and ice cream from New Zealand to China and that this work was undertaken at Mr Dong's request. There is no evidence Mr Dong paid Mr Dittmer for this research or that there was any further development of these projects. There is no evidence Mr Dittmer expected to be paid for this work or requested payment for this work.

[13] Mr Dittmer provided three draft agreements dated 4 June 2007, 16 August 2007 and 8 October 2007 respectively. Mr Dittmer drafted these documents and sent them to Mr Dong. Mr Dong said in evidence that he recalled receiving the first draft agreement from Mr Dittmer but not the second two. There is no dispute that these documents were not discussed between the parties and were not executed. The first and second agreements could be characterised as employment agreements. The third could not – it requires GST to be paid on salary.

[14] Mr Faltaus submits that the third draft document is the clearest possible evidence that Mr Dittmer never intended to be an employee. Mr Dittmer said he sent the document by accident and Mr Bailey, in submissions, stated Mr Dittmer must have sent the document out of frustration.

[15] There is insufficient evidence to find there were any agreed terms between the parties.

(ii) the intention of the parties

[16] There was a meeting in early April 2007 where Mr Dong and Mr Dittmer discussed their relationship. Because the evidence of the parties' intention when they entered this agreement is difficult to ascertain in the absence of a written agreement, the parties' dealings with each other are relevant to the nature of the agreement between them⁴.

[17] PIEL employed a number of staff in April 2007. There is no dispute that Mr Dittmer did not go onto the payroll. He was not paid a regular salary.

⁴ *Hemi Kiwikipi* AK AC 55/07, 2 November 2007, Shaw J



[18] There is no written evidence that Mr Dittmer asserted his employment status during the period he says he was employed. For example there is no written demand for wages or salary, car, mobile telephone, laptop, etc. Mr Dittmer says he repeatedly asked Mr Dong for payment. There is no record of these demands. Mr Dittmer was unclear as to why he did not put any of these requests in writing when the volume of email correspondence between himself and Mr Dong establishes this was a standard method of communication.

[19] Mr Dittmer received four lump sum payments during the period in question. No PAYE was deducted from these payments and Mr Dittmer deposited them into his business banking account. Mr Dittmer was unable to tell me what tax has been paid on these sums. Mr Dong says the payments were made at Mr Dittmer's request with the intention that they would be off set against future commission payments. Mr Dittmer says they were salary payments made with the intention of off setting them against a promised payment of \$100,000 in January 2008. There is no written record of the parties' intention in relation to these payments. The tax treatment of these payments by PIEL (ie, that tax was not deducted at source), with Mr Dittmer's consent (there is no evidence Mr Dittmer objected to the tax treatment), indicates the parties' intention was that the payments were not to be treated as wages or salary.

[20] Mr Dittmer says the relationship ended on 13 April 2008 when it became evident to him Mr Dong would not pay him what he was owed by way of salary. Mr Dittmer did not resign. He said he did not tender a resignation because Mr Dong had said he was not an employee. On 13 April Mr Dittmer went to China to, I am satisfied on the information presented to the Authority, pursue other business opportunities unrelated to PIEL.

[21] An email dated 5 May 2008 was put to Mr Dittmer to comment on during the investigation. This email is from Mr Dittmer and copied to Mr Dong and proposes a heads of agreement in relation to the development of a property in Henderson. He said he was representing Mr Dong in relation to that development and the date of the email must be wrong. It appears from this email that Mr Dittmer continued to represent Mr Dong's interests after he says his employment ended and that representation was in the same form as the proceeding 13 months.



(iii) control test

[22] This involves *an assessment of the manner in which the person providing the work exercises and assumes supervision and control over the person performing it. The greater the level of control the more likely the Court will be prepared to find that a contract for services exists*⁵.

[23] Numerous emails have been provided to the Authority containing instructions from Mr Dong to Mr Dittmer. These emails concern the progress of potential property deals and other business activity Mr Dittmer was involved with on Mr Dong's behalf. They do not concern the nature of Mr Dittmer's role and are not prescriptive as to function or standards. For example there is no element of supervision or quality control in the emails.

[24] Mr Dittmer was not required to work set hours. He was not required to attend staff meetings. He did not have a position description or list of duties. He had no ongoing functional relationships with any other employees. He did not use PIEL contact details in his dealings with clients. He was a free agent who could come and go from PIEL's premises as he pleased.

(iv) integration test

[25] With this test the Authority must consider whether Mr Dittmer was employed as part of the business and whether his work was an integral part of that business; this can be contrasted with a contract for services where the work is accessory to the operation of the business rather than integral.

[26] Mr Dong's main business concerned bathroom fit outs. Mr Dittmer's involvement with this business was peripheral – he did not attend staff meetings, he did not have a work space, he asked permission before using the telephone in that office. I accept Mr Dittmer visited Mr Dong regularly and that those visits concerned Mr Dong's property investment business. I find it is not determinative that Mr Dittmer had some contact with the fit out business because the two strands of Mr Dong's business interests were quite separate.

⁵ Clark v Northland Hunt Inc, AC 66/06, 27 November 2006, Perkins J

[27] Mr Dittmer asserted in evidence that he was employed as a manager of PIEL. During the course of the investigation of this employment relationship problem he readily accepted that he altered documents before the Authority in evidence with the purpose of strengthening his claim by adding the title “manager” to documents from business contacts. The minute dated 8 October 2008 should be attached to this determination.

[28] Mr Dittmer has provided letters from his doctor and occupational therapist which state that judgement can be impaired after a stroke, which Mr Dittmer suffered on 26 June 2008. I understand Mr Dittmer has provided this information to demonstrate that his actions in altering evidence are out of character and should not be considered by the Authority in any assessment of credibility.

[29] There is no reliable evidence that Mr Dittmer was a manager of PIEL.

(v) **fundamental test**

[30] The fundamental test asks the question – is this person in business of their own account?

[31] Mr Dittmer operated as a business and held himself out as in business on his own account. The business card he used in his dealings on Mr Dong’s behalf described him as a director of two registered companies which Mr Dittmer owns and operates. The contact telephone numbers, email address and postal address set out on those cards are his personal details. The cards themselves were not provided by PIEL. The lump sum payments PIEL made to Mr Dittmer were paid into Mr Dittmer’s business banking account. PIEL did not provide any of the tools Mr Dittmer used to pursue business on Mr Dong’s behalf – PIEL did not provide a car, laptop, work space, email address, mobile telephone.

[32] I accept Mr Dittmer attended the premises of PIEL regularly and that he doggedly pursued Mr Dong’s business interests. However, he did this as an independent contractor. On the extensive evidence received it is clear that the parties had a business relationship prior to 1 April 2007 which continued on an identical basis after 13 April 2008, the date Mr Dittmer says the relationship ended. The relationship



never changed. The final paragraph of the statement of problem filed in the Authority supports this conclusion:

In my business world a hand shake is considered as good as a signature and Mr Dong shook hands when he made the job offer to me.

Many times I had to go back to associates that I have known and introduced to Mr Dong and apologize for his actions. It has affected my standing in the business community. This is something I do not take lightly.

Costs

[33] Costs are reserved. The parties are invited to attempt to resolve this issue themselves. If they are unable to then leave is granted to request a timetable be set for the filing of such within 28 days of the date of this determination.

Mj - Urlich
Marija Urlich

Member of the Employment Relations Authority



**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

BETWEEN

ERIC DITTMER
Applicant

AND

PROGRESSIVE
INVESTMENTS LIMITED
Respondent

Member of Authority: Marija Urlich

Representatives: Matt Bailey, for applicant
Nagi Faltaus, for respondent

Date: 8 October 2008

MEMBER'S MINUTE

[1] Serious issues concerning the conduct of Mr Dittmer and his representative Mr Bailey have come to my attention. This minute records those concerns and the steps necessary to address them.

Mr Dittmer's conduct

[2] Mr Dittmer accepted during the course of the investigation meeting on Monday 6 October 2008 that he had deliberately altered documents with the intention of strengthening his claim.

[3] The altered documents were filed prior to the first investigation meeting into his employment relationship problem. The first investigation meeting was held on 18 September 2008. The respondent's evidence was filed on 2 October 2008 and included the original unaltered documents. Copies of the original and altered documents should be attached to this minute.

[4] Mr Dittmer said he altered the documents after he suffered a stroke earlier this year. He said the stroke had impaired his judgment.

[5] I record that I told Mr Dittmer that tampering with documents was a very serious matter and that, in relation to these proceedings, the issue could sound in costs. I told Mr Dittmer that his actions undermined the integrity of the Authority's investigation process. I also told Mr Dittmer that if he intended to defend his actions by saying his stroke was causative that he would need a specialist medical report to that affect.

Mr Bailey's conduct

[6] During the investigation meeting Mr Bailey said he knew, before the issue was raised in the respondent's evidence, that Mr Dittmer had altered documents before the Authority. He took no steps to draw this issue to the Authority's attention. Subsequent to the respondent's evidence being filed Mr Bailey filed submissions in response seeking to explain Mr Dittmer's actions on the grounds of ill health.

[7] Mr Bailey's failure to draw this serious issue to the Authority's attention as soon as he became aware of it is totally unacceptable.

[8] Included in the respondent's documents was a letter sent to the parents of the respondent director, Enyi Dong, on 17 September 2008. A copy of that letter and translation should be attached to this minute. The letter is under the name of Barry Sutton. Mr Sutton has given evidence in support of Mr Dittmer's claim. Mr Bailey said he drafted the letter in English and arranged its translation and facsimile to Mr Dong's parents. The letter contains serious and unfounded allegations, including that Mr Dong could be liable to penalty and imprisonment under the Health and Safety legislation. Mr Bailey confirmed no such prosecution is afoot. The letter then invites Mr Dong's parents to enter settlement discussions. The letter is misleading and threatening.

[9] Mr Bailey is not an enrolled solicitor. I do not know if he is a member of the Employment Law Institute. If he is a member of ELI he should advise the Authority forthwith and a copy of this minute will be sent to that organisation.

[10] In correspondence to the Authority Mr Bailey has signed himself as *Bailey & Damini Limited contracting to Employment Disputes Services*. A copy of this minute should be sent to Employment Disputes Services. I understand EDS is on the list of legal aid providers.

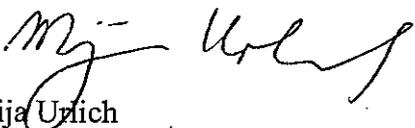
Next steps

[11] A copy of this minute is to be sent to the Chief of the Employment Relations Authority.

[12] As this issue concerns tampering of documents and misleading and threatening correspondence a copy of this minute should be sent to the Solicitor General.

[10] The timetable set at the conclusion of the investigation meeting stands:

- All relevant material is to be filed by **9 October 2008**;
- The applicant's closing submissions filed by **16 October 2008**;
- The respondent's closing submissions filed by **30 October 2008**;
- Any submission in reply filed by **6 November 2008**.



Marija Urlich

Member of the Employment Relations Authority

— Original Message —

From: Emmanuel Richards

To: Eric

Sent: Wednesday, July 23, 2008 5:14 PM

Subject: Letter.

To Whom it may concern,

Progressive Interiors joined Bartercard as a member in May 2007.

As far as Bartercards dealing with Progressive Investments Enterprise Ltd there have been 2 main points of contact.

Enyi (Roy) Dong – Owner, overseeing the proposed deals, final say with product sourcing and property investments, signing authority on the account, being heavily involved
Eric Dittmer ~~Manager~~ Main point of contact with with national and international product sourcing and property investments, being equally involved in these areas.

Regards

Emmanuel Richards | Auckland North Regional Trading Manager | Bartercard New Zealand

A: PO Box 101-563, NSMC, Auckland | 42 Tawa Drive, Albany

T: +64 9 414 6817 | F: +64 9 415 3473 | W: www.bartercard.co.nz

This e-mail, including attachments, may be confidential and/or privileged. Only the intended recipient may access or use it. Any dissemination, distribution or copying of this e-mail is strictly prohibited. If you are not the intended recipient please notify us immediately by return e-mail and then erase the e-mail. Any confidentiality or privilege is not waived or lost if you have received this e-mail in error.

No virus found in this incoming message.

Checked by AVG.

Version: 7.5.524 / Virus Database: 270.5.3/1564 - Release Date: 21/07/2008 6:42 a.m.

No virus found in this incoming message.

Checked by AVG.

Version: 7.5.524 / Virus Database: 270.6.0/1602 - Release Date: 9/08/2008 1:22 p.m.

10/08/2008

"Q"

Emmanuel Richards

Subject: FW: Letter.

This is the email I supplied in regards to Progressive Interiors.

Regards



Emmanuel Richards | Auckland North Regional Trading Manager | Bartercard New Zealand

A: PO Box 101-563, NSMC, Auckland | 42 Tawa Drive, Albany

T: +64 9 414 6817 | **F:** +64 9 415 3473 | **W:** www.bartercard.co.nz

From: Emmanuel Richards

Sent: Wednesday, 23 July 2008 5:14 p.m.

To: 'Eric'

Subject: Letter.

To Whom it may concern,

Progressive Interiors joined Bartercard as a member in May 2007.

As far as Bartercards dealing with Progressive Interiors there have been 2 main points of contact.

Enyi (Roy) Dong – Owner, overseeing the proposed deals, final say with product sourcing and property investments, signing authority on the account, being heavily involved
Eric Dittmer –Main point of contact with with national and international product sourcing and property investments, being equally involved in these areas.

Regards

Emmanuel Richards | Auckland North Regional Trading Manager | Bartercard New Zealand

A: PO Box 101-563, NSMC, Auckland | 42 Tawa Drive, Albany

T: +64 9 414 6817 | **F:** +64 9 415 3473 | **W:** www.bartercard.co.nz



We mean business.

Building A, 1st Floor, 42 Tawa Drive, Albany
PO Box 101-563, N.S.M.C
Auckland, New Zealand
Email: info@bartercard.co.nz

Phone: (09) 414 6621
Fax: (09) 415 8388
Freephone: 0508 227 837
www.bartercard.co.nz

Eric

From: "Eric" <ericdittmer@dra.co.nz>
To: "Eric Dittmer" <ericdittmer@dra.co.nz>
Sent: Monday, 11 August 2008 9:50 a.m.
Subject: Fw: LETTER ATTACHED

----- Original Message -----

From: Eric
To: Eric Dittmer
Sent: Monday, August 11, 2008 9:47 AM
Subject: Fw: LETTER ATTACHED

----- Original Message -----

From: In-Sync
To: 'Eric'
Sent: Sunday, August 10, 2008 3:18 PM
Subject: RE: LETTER ATTACHED

In-Sync Trustees Ltd
310 Papamoa Beach Rd
PO Box 11 284
Papamoa
Ph 07 574 3779
Fx 07 574 3449
Mb 021 979 031

To whom it may concern

I meet Eric Dittmer in Late July of 2007 when he visited a property known as Heron Point located at Galatea in the Bay of Plenty.

This property was owned by Malolo Paradise Company (NZ) Ltd and I was a director of the company at that time.

Heron Point was, and still is been marketed by Paul Sanford of Harcourts Rotorua and he introduced Mr Roy Dong as a possible purchaser of the property.

At that time and on all other future occasions, over a period of 8 months, Eric Dittmer accompanied Mr Dong at all our meeting and throughout many negotiations.

Although Mr Dong or his company Progressive Investments Enterprises Ltd did not purchase the subject property it was clearly understood that Eric Dittmer was the Manager of his company in fact this was confirmed by Mr Dong on a number of occasions.

Yours truly

Murray Brough

No virus found in this incoming message.

Checked by AVG.

Version: 7.5.524 / Virus Database: 270.6.0/1602 - Release Date: 9/08/2008 1:22 p.m.

No virus found in this incoming message.

Checked by AVG.

Version: 7.5.524 / Virus Database: 270.6.0/1603 - Release Date: 10/08/2008 6:13 p.m.

24/08/2008

Nagi Faltaus

From: Roy [enyi@enyi.co.nz]
Sent: Tuesday, 30 September 2008 10:44 p.m.
To: 'Nagi Faltaus'
Subject: Fw: LETTER ATTACHED

Hi Nagi: This is THE ACTUAL letter Murray gave to Eric. Have a read.

Regards

Roy

发件人: In-Sync [mailto:in-sync@wave.co.nz]
发送时间: 2008年9月30日 14:23
收件人: 'Roy'
主题: FW: LETTER ATTACHED

Roy copy of original email Murray

In-Sync Trustees Ltd
310 Papamoa Beach Rd
P O Box 11 284
Papamoa
Ph 07 574 3779
Fx 07 574 3449
Mb 021 979 031

From: In-Sync [mailto:in-sync@wave.co.nz]
Sent: Sunday, 10 August 2008 3:18 p.m.
To: 'Eric'
Subject: RE: LETTER ATTACHED

In-Sync Trustees Ltd
310 Papamoa Beach Rd
P O Box 11 284
Papamoa
Ph 07 574 3779
Fx 07 574 3449
Mb 021 979 031

To whom it may concern

I meet Eric Dittmer in Late July of 2007 when he visited a property known as Heron Point located at Galatea in the Bay of Plenty.

This property was owned by Malolo Paradise Company (NZ) Ltd and I was a director of the company at that time.

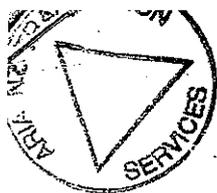
Heron Point was, and still is been marketed by Paul Sanford of Harcourts Rotorua and he introduced Mr Roy Dong as a possible purchaser of the property.

At that time and on all other future occasions, over a period of 8 months, Eric Dittmer accompanied Mr Dong at all our meeting and throughout many negotiations.

Although Mr Dong or his company Progressive Investments Enterprises Ltd did not purchase the subject property it was clearly understood that Eric Dittmer was an adviser to Mr Dong and expected that he would have been remunerated for his services; in fact this was confirmed by Mr Dong on a number of occasions.

Yours truly

Murray Brough



TRANSLATION
OF
CORRESPONDENCE

“B”



ARIA NZ TRANSLATION SERVICES

Unit 4C, Level 4 Canterbury Arcade, 170 Queen Street
PO Box 105 574, Auckland City, New Zealand
Phone: 309 2277 Fax: 309 2270
Email: translation@aria-nz.com
Website: www.aria-nz.com

Language of Original:
Chinese

Dear Mr Dong,

How are you doing? The purpose of my letter is to advise you of what has actually happened to your son with his business in New Zealand.

Your son, Dong Enyi has been so far working for about 13 months with Eric, who is well-respected and honoured gentleman of about 70 years old. He is well known for his self motivation and particularly his commitment to meet his promises.

Eric was appointed as the Manager at your son's both companies involving investment and renovation businesses, and he was on an annual salary of NZ\$150,000, put aside using the company's vehicle and some other expenses on the company.

Eric has worked for your son's companies total of 2,900 hours (An average of 50 hours a week) during which time he participated in 50 company's projects

There have been quite a few times that Eric has requested your son for the payment of his unpaid wages, however each time he received the same answer that his wages will be paid in either following week or month. This has been very stressful situation for Eric, and eventually caused him a stroke. This actually meant the end to Eric's career.

Eric, who has a home loan, received a correspondence dated the 27 August from the finance company and was asked to pay immediately the due amount of NZ\$7,451 as mortgage repayment, or else he has been warned by the finance company that legal action would be taken against his property title. That obviously means he is likely to lose his property as well.

Mr Dong Enyi, your son has now been ordered by the New Zealand Employment Tribunal to attend an arbitration meeting on the 29 August. We have contacted him by phone in order to resolve the problem. This was actually the first time ever I had communicated with him. Unfortunately he is



not prepared to pay Eric the claimed amount. No doubt this has made Eric a great deal of stress. We had a long discussion after the meeting and we eventually decided that we would have to take the case to the Court, where the authority may make the right decision. We are however well aware that this might even add to the stress Eric is presently suffering; and I am worried if Eric will have another stroke.

In the dispute between Eric and your son, there have been great supporting evidence in Eric's favour, which will surely help him to win the court case. If this happens, the case would be widely publicised by the Media in New Zealand, internet and the most prominent paper 'New Zealand Herald' as well as the media in mainland China. I would like to remind you that this is going to have a very negative impact on you and your family as well if your son loses the case. In which case, your son may be liable to pay a monetary fine of NZ\$500,000 as well as two years imprisonment for violating the Employment Health and Safety Act of New Zealand. Furthermore, he may be ordered to pay the claimed salary and even other said expenses incurred by the Company. This may well include Eric's living expenses as he is no longer capable to work.

At present, your son is applying for New Zealand permanent residency and the divert result of the court case will surely cause his application be declined. I am willing to clearly state that I have no intention to threaten you in any way, but to help you to well understand that what consequences might occur, if your son refused to resolve the case. Both my client and I believe that your son will have to pay compensation for what he has done.

If you would like to discuss this matter further with us, with the help of an professional interpreter, we would surely try to resolve the matter to the benefit of both parties. You can email us at bvsutton@slingshot.co.nz and give us your contact details and to arrange a date for discussion and meeting.

(Signature) Barry Sutton

This is a certified translation by:
ARIA NZ TRANSLATION SERVICES

Signed  Date 2/10/2008

Translator's remarks: Translated from a photocopy of the Original.

This is a correct translation of the attached document. It does not establish the authenticity of the original or the correctness of the statement therein. CAUTION: Any person, who falsifies any particular on this document or uses as true, knowing the original to be false or inaccurate, is liable to prosecution.



令尊：

您好！我写这封信是想告诉您关于您的儿子在新西兰做生意发生的一些事。您的儿子董恩
昌与艾瑞克先生一起工作了近 13 个月，艾瑞克先生是一位 70 岁高龄的杰出而又令人尊
敬的绅士，认识他的人都称赞他是一位信守称若而又自强的人。

您的儿子任命艾瑞克作为他的投资公司和装修公司的经理，除了配给他一辆车以及支付他
所有商业用途的开销外并支付艾瑞克先生 \$150,000 新西兰币的年薪。

在您的儿子雇佣艾瑞克先生期间，他参与了 50 个项目的工作，每周工作 50 个小时以
上，总计工作 2,900 小时。

艾瑞克先生曾多次向您的儿子索要未支付的工资，每次所得到的答复却总是下个星期或者
下个月。所有这些给艾瑞克先生带来了巨大的压力，最后导致了艾瑞克先生的中风，这意
味着结束了他的工作生涯。

在 8 月 27 日这天，艾瑞克先生收到了他的房屋金融公司的信，信中要求他立即支付
\$7,451 新西兰币的房屋贷款，否则将采取合法手段收回艾瑞克先生的房屋，这意味着他
或许将失去他的住房。

8 月 29 日，您的儿子董恩昌按照法律要求出席了新西兰劳动部调解中心的调解会议，我
们曾设法通过电话与他沟通将问题解决，这是第一次我与董恩昌先生谈话，不幸的是他并
没有准备赔偿艾瑞克先生。艾瑞克先生非常沮丧，通过会后长时间的交谈，我们不得不决
定将此上诉到法院，法院将有权利作出有利的判决。这将给艾瑞克先生增加更大的压力，
我担心这会让他再次中风。

在他们的纠纷中，我们掌握了大量的并且有利的证据确保艾瑞克先生的胜诉。一旦如此，
新西兰的媒介，互联网以及最具权威的新西兰先驱报甚至中国大陆的传媒都将对此进行大
篇幅的报导。我不得不提醒您，一旦您的儿子败诉，这将会给您以及您的家人带来诸多的
负面影响。

董先生的败诉将意味着他触犯了劳工健康与安全法，这很有可能给他带来最高 2 年以及最
高 \$500,000 新西兰币的罚款，并且加上未对艾瑞克先生支付的工资，为公司垫付的费



用，罚款的利息，以及对艾瑞克先生今后生活保障的费用。现在，您的儿子正在申请新西兰的永久居住权，这件事也会直接导致他的申请遭到拒绝。

在此我要申明我并不是在敲诈您，但是希望您清楚的明白一旦董先生拒绝解决纠纷将会导致一个什么结果。

我跟我的委托人都相信，您的儿子需要对他所做的作出赔偿。

如果您愿意与我们谈论此事，我们会有专业的翻译帮助我们与您交流，尽快了解这个问题对艾瑞克先生和您的儿子都是非常有益的。您可以发邮件告诉我您的联系方式以及一个适当时间，我的电子邮件地址是 bvsutton@slingshot.co.nz。

Bazzy Sutton.

Hel

He

