

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON OFFICE**

**BETWEEN** Maurice Douglas (Applicant)  
**AND** Richard Black (Respondent)  
**REPRESENTATIVES** Gail Irwin for the Applicant  
Danny Jacobson for the Respondent  
**MEMBER OF AUTHORITY** P R Stapp  
**AFFIDAVITS AND  
SUBMISSIONS** 1, 17 & 28 June & 7 July 2005<sup>1</sup>  
**DATE OF DETERMINATION** 15 July 2005

**DETERMINATION OF THE AUTHORITY**

**Background**

[1] This application has come before the Authority following an earlier application (filed on 21 December 2004) against a company called Sea to Sky Limited. The applicant filed a new statement of problem against Mr Black personally on 23 December 2004. The Company went into liquidation on 12 April 2005. The liquidator did not consent to the action against Sea to Sky Limited continuing in the Authority on 13 April 2005.

[2] The respondent, Mr Black has applied for the proceedings to be struck out because he was never personally Mr Douglas's employer.

**Employment Relationship Problem**

[3] The issue is a preliminary one and I decided to deal with it as such. The parties agreed to provide affidavits and submissions so as to determine who Mr Douglas's employer was, or if there is any reason for Mr Black to remain personally the respondent in the proceedings.

---

<sup>1</sup> Affidavits file by Maurice Douglas the applicant, John Flannery general manager Sea to Sky Limited in reply and Richard Black the respondent

**The facts**

[4] Mr Douglas applied for a job with Sea to Sky Innovations and had an interview with John Flannery, general manager. Mr Flannery formally offered him a position and confirmed it in a letter dated 29 January 2004, as the general manager of Sea to Sky Limited. Mr Douglas claims he did not get to see the actual letter.

[5] Mr Douglas referred to Sea to Sky Limited in a letter dated 4 May 2004 raising a personal grievance. He commenced his first claim against Sea to Sky Limited. There is no evidence that Mr Douglas had any dealings with Mr Black, the owner, prior to 2 February 2004

[6] Mr Douglas says he formed an employment arrangement prior to any mention of a Company with a business called Sea to Ski Innovations. This he says was consistent with the employment advertisement and letterhead. There was no employment agreement.

**Comment**

[7] Notwithstanding that the advertisement for the vacancy did not identify the Company, and there were verbal discussions between Mr Douglas and Mr Flannery, there is a formal acceptance of employment. A letter dated 29 January from the company has some of the terms. It was prepared before Mr Douglas started work on 2 February 2004, even although he says he did not receive it. The detail of the acceptance was not challenged at any time by the applicant. He applied to the Authority against Sea to Sky Limited on 21 December. His own letter dated 4 May 2004 raising a personal grievance was sent to Sea to Sky Limited. The business card also had the name of the company on it. It is more than likely that Sea to Sky Limited was his employer, especially where the statements of problem do not identify an issue about who the employer was. Mr Douglas must have considered his employer to be Sea to Sky Limited.

[8] Because Mr Black was identified as the owner and Mr Douglas met him does not waive the employment relationship between the Company and the applicant. This is especially so since Mr Black had no direct involvement in Mr Douglas' employment, which was left to Mr Flannery. The nature of the employment relationship problem relates to the employer and the applicant.

[9] Therefore, Mr Douglas's employment relationship problem has more to do with his employer against whom he cannot proceed because the Company is in liquidation.

[10] Mr Douglas has produced no evidence that Mr Black has directly or indirectly attempted to avoid any of the Company's obligations towards Mr Douglas to be personally liable or that Sea to Sky Limited was set up as a sham by Mr Black to avoid any of its responsibilities in the employment of Mr Douglas. Mr Douglas has also referred to section 234 of the Employment Relations Act to proceed against Mr Black personally. Such an action can only be taken by a Labour Inspector. There is no Labour Inspector involved.

### **Conclusion**

[11] The application from Mr Douglas is dismissed.

### **Costs**

[12] Costs are reserved.

P R Stapp  
Member of the Authority