

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON OFFICE**

[2011] NZERA Wellington 28
5310978

BETWEEN JENNIFER GINI
 Applicant

AND LITERACY TRAINING LIMITED
 First Respondent

AND LINDA CLAREBURT-STURGESS
 Second Respondent

Member of Authority: G J Wood

Representatives: Patrick O'Sullivan, for Applicant
 Susan-Jane Davies, for First Respondent
 Tim Cleary, for Second Respondent

Investigation Meeting: By way of submissions received by 16 February 2011

Determination: 23 February 2011

DETERMINATION OF THE AUTHORITY

1. On behalf of Ms Clareburt-Sturgess Mr Cleary seeks to have the claims against her dismissed, on the ground that there was no employment relationship between her and the applicant, Ms Gini. Literacy Training Ltd does not oppose this application.

2. The application was opposed by Mr O'Sullivan on behalf of Ms Gini on three grounds:
 - (a) First, that Ms Clareburt-Sturgess is properly a party because claims have been made against her under s.134(2) for inciting, instigating aiding or abetting a breach of an employment agreement and is thus liable to penalties;

 - (b) Second, that she is *inextricably and integrally involved as an employer regardless of any notion of labelling and limitation of liability*; and

(c) Third, that there is a *compelling argument for lifting the corporate veil*.

3. At the relevant time Ms Clareburt-Sturgess was the Managing Director of Literacy Training Ltd.

Determination

4. Mr Cleary's claim is dismissed because Ms Gini has brought claims against Ms Clareburt-Sturgess for inciting, instigating, aiding or abetting breaches of the employment agreement by Literacy Training Ltd. Those are claims that can only be determined in a substantive investigation meeting. Ms Gini should note, should she be successful in her claims however, that in the ordinary course of events the Authority does not allow for the doubling up of remedies by the use of penalties.
5. While the above determines the matter I should note that Ms Gini faces substantial hurdles to overcome if she is to be successful in her claim that in fact Ms Clareburt-Sturgess was her employer. She was offered and accepted employment with Literacy Training Ltd and appears to have entered into a written employment agreement to that effect accordingly. The principles of limited liability companies and the liability of directors are so well established that Ms Gini faces substantial hurdles to overcome the ordinary inference that, having entered into an employment agreement with a company then that company was her employer in fact and law.
6. Similarly, there are substantial hurdles to overcome if the corporate veil is to be lifted. First, there would need to be an inability of Literacy Training Ltd to pay any remedies should Ms Gini be successful in her claim. Second, the common law has long held, since *Salomon v. Salomon and Co Ltd* [1897] AC 22, that the veil covering a corporate relation is not lightly to be disturbed.

7. Given the formidable obstacles facing Ms Gini in being able to prove that there is liability on Ms Clareburt-Sturgess (other than potentially as a party to a breach), then it is appropriate to inform Ms Gini that should her claims over fundamental liability prove to be unsuccessful I will seriously consider a claim for indemnity costs. Thus she could face paying full indemnity costs for any costs and expenses incurred by Ms Clareburt-Sturgess in pursuing any part of the claims against her, other than those under s.134(2).

G J Wood
Employment Relations Authority Member