

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

WA 21/09
5127888

BETWEEN Sharon Goudsblom
Applicant

AND Totally Kiwi Real Estate Limited
Respondent

Member of Authority: Denis Asher

Representatives: Ms Goudsblom represented herself
No appearance by or for the company

Investigation Meeting Wellington, 3 March 2009

Determination: 3 March 2009

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The parties agree that Ms Goudsblom is owed one months notice of termination and outstanding holiday pay but the respondent says it is unable to meet its obligations to the applicant.

Background

- [2] Ms Goudsblom's employment with the company came to an end because of redundancy – refer to the letter of 16 April 2008 from the respondent attached to the statement of problem.
- [3] The redundancy was as a result of the company ceasing trading. In its advice of 16 April the company described its cash reserves as at critical levels. It said it had in place a plan to sell some of the respondent's assets and to increase another company's revenues: the respondent's director, Mr John Bradley, and his partner expressed the hope that by the end of May 2008 they would be able to restructure their finances and *"personally pay off any outstanding debts and liabilities. Before then we will pay everyone when possible"*.
- [4] No payments have been made to the applicant.
- [5] In the statement in reply filed on 4 August 2008 Mr Bradley did not dispute Ms Goudsblom's claims. He said all of the companies would be placed *"into voluntary liquidation but the costs of this are beyond us"*.
- [6] Attached to the statement in reply was an email to Ms Goudsblom updating her as to the situation: it advised the respondent's hope to have everything sorted by the end of June 2008 had not happened. The company still had no funds and was unable to make any payments. It was still Mr Bradley's plan *"to pay everyone"*.
- [7] In an email to the Authority dated 20 February 2009 Mr Bradley reiterated the company's position: it was insolvent and had no assets, while owing Ms Goudsblom holiday pay and four weeks payment in lieu of notice. The company could make no offer of compensation. Mr Bradley regretted the failure of his businesses and apologised to staff and creditors who remained unpaid. He said he and his partner had lost everything including their house. They would be working for the next few years to pay off their personally guaranteed remaining debt to the bank.
- [8] No other evidence as to the company's financial situation has been provided by the respondent.

- [9] Mr Bradley advised he would not be attending the Authority's investigation as he was required by his employer.
- [10] The current advice appearing on the Companies Office website in respect of the respondent is that the Registrar of Companies is satisfied the company has ceased to carry on business and has initiated action to remove the company from the register.

The Applicant's Position

- [11] During today's investigation, having been advised of the above and notwithstanding the company's apparent trading and financial situations, Ms Goudsblom confirmed she sought a determination from the Authority for one month's notice (i.e. \$629.55 nett X 4-weeks, or \$2,518.20), 23 days holiday pay (i.e. \$3715.38 nett) and her filing fee of \$70.

Discussion and Findings

- [12] As the respondent was aware of today's investigation but choose not to attend I was satisfied it was appropriate for me to proceed and hear this matter: clause 12 of Schedule 2 of the Employment Relations Act 2000 applied.
- [13] As the parties are agreed as to what is owed the applicant, and as the respondent is not in liquidation and no evidence, independent or otherwise, has been directly provided as to its financial situation, I am satisfied is appropriate to find in favour of Ms Goudsblom's claims.
- [14] As it was necessary for the applicant to bring her claim so as to obtain a determination I am satisfied it is appropriate to direct the reimbursement of her filing fee.

Determination

- [15] The company is to pay to Ms Goudsblom one month's notice of her termination, i.e. \$2,518.20 nett (two thousand, five hundred and eighteen dollars and twenty cents) and 23 days holiday pay, i.e. \$3715.38 nett (three

thousand, seven hundred and fifteen dollars and thirty-eight cents) and her filing fee of \$70 (seventy dollars).

Denis Asher

Member of the Employment Relations Authority