

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 77/08  
5101463

BETWEEN CHAO GU (“Vivian Gu”), KIAT  
WAI WOO (“Christine Evangel  
Woo”), XIFUENG XU (“Frank  
Xu”), JAI LI (“Sandy Li”), YIXIN  
WANG, MING XIANG, LU  
ZHANG, PING ZENG and  
SIYUAN HUANG  
Applicants

AND KEW HOLDINGS LIMITED  
First Respondent

AND CGP HOLDINGS LIMITED  
Second Respondent

AND NEW ZEALAND WHO’S WHO  
PUBLICATIONS LIMITED  
Third Respondent

AND NEW ZEALAND WHO’S WHO  
AOTEAROA LIMITED  
Fourth Respondent

AND RUPERT ALISTER HALLS  
TAYLOR (“Alister Taylor”)  
Fifth Respondent

Member of Authority: Robin Arthur

Representatives: Applicants in person  
No appearance for Respondents

Investigation: On the papers

Determination: 6 March 2008

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] By letter of 22 January 2008 the Applicants raise two issues for resolution regarding their employment relationship problems that were the subject of Authority determination AA363/07 (20 November 2007).

[2] Determination AA363/07 was made by consent of the parties and provided for the payment, within 30 days, of wages accepted as owed to the Applicants. It also made a non-publication order to keep the names of the respondent parties and the terms of settlement confidential, “except, if necessary, for enforcement purposes”.

[3] The Respondents have not paid the sums owed as wages to the Applicants by the due date.

[4] The Applicant do not seek a compliance order. Rather they have attempted to commence enforcement measures in the District Court, as provided by s141 of the Employment Relations Act 2000 (“the Act”). An order of the Authority filed in the District Court is then enforceable in the same manner as the Court’s own orders.

### **The issues**

[5] In filing for enforcement in the District Court a question has arisen as to whether the Fifth Respondent is solely liable for the wages or whether the Respondents are jointly and severally liable. That is not an issue expressly determined in the consent determination of 20 November 2007 and remains open for resolution by the Authority.

[6] The Applicants have also asked for further directions regarding the non-publication order in that determination.

### **Investigation**

[7] On 15 February 2008 a Minute of the Authority was sent by courier to five postal addresses for the Respondents, comprising the addresses for registered offices and service given in Companies Office records for the First and Third Respondents and the last known residential address of the Fifth Respondent. The latter address is also that given for the Fifth Respondent in his capacity as director and shareholder of the First Respondent. Companies Office records show that these addresses were updated by the Fifth Respondent as recently as 25 and 28 January 2008. An email (attaching a copy of the Minute) was also sent to the Fifth Respondent at an email address he provided to the Authority in November 2007.

[8] The Minute provided parties with seven days to advise whether they wished to be heard further on the issues now raised by the Applicants. It also notified the parties that the Authority would otherwise proceed to consider and determine the matter on the basis of the information already available on the papers lodged and the earlier investigation meetings.

[9] No reply was received from or on behalf of the Respondents, either within seven days or within the 17 days to the date of this determination.

[10] I am satisfied that reasonable endeavours have been made to provide the Respondents with an opportunity to be heard and that the further issues raised by the Applicants are now open to be determined.

[11] Investigation meetings regarding the Applicants' wage claims were notified and held on 5 November and 20 November 2007. The Fifth Respondent did not attend the first meeting but sought an adjournment which was granted. He attended the second meeting as the Respondents' representative and sought the consent determination subsequently issued as AA 363/07.

[12] I am satisfied that I have sufficient information from the papers lodged and the evidence given at the investigation meetings held to determine the present issues.

**Which respondents are liable for the wages owed?**

[13] At the 20 November 2007 investigation meeting, the Fifth Respondent, under oath, stated that there was "*no question*" that the Respondents accepted the Applicants were owed the wages claimed.

[14] The Fifth Respondent was earlier joined to this matter on the motion of the Authority. He had provided personal cheques for the Applicants' outstanding wages and given a so-called personal guarantee to the Applicant owed the largest amount that her wages would be paid. The cheques bounced.

[15] According to Companies Office records as of today's date the First and Third Respondents remain registered – Mr Taylor being sole director of both those companies and sole shareholder of the First Respondent. It owns all the shares in the

Third Respondent. The Second Respondent is not a registered company. The Fourth Respondent has been struck off the register.

[16] From the information provided by the Applicants I am satisfied that each worked in the Fifth Respondent's publishing business, and that the business operates through various entities including the First and Third Respondents. While one applicant, Vivian Gu, had a written employment agreement purporting to identify the First and Second Respondents as her employer, the reality of her situation was that she was working for the Fifth Respondent. The other applicants did not have employment agreements but were engaged by Ms Gu acting as agent of the Fifth Respondent. For all, the reality was that they were employed by and were working for the Fifth Respondent.

[17] In all the circumstances, including the employer's failure to complete written employment agreements with each of the Applicants when they were employed, and exercising the Authority's powers to dispose of matters before it according to the substantial merits and equities of the case (s157 and s221 of the Act), I am satisfied the Fifth Respondent is the party liable to the Applicants for wages owed to them.

**Should the non-publication order be lifted?**

[18] In requesting the non-publication order made in the consent determination of 20 November 2007, the First Respondent averred that having the matter "on the record" would be detrimental to his business and his ability to secure funds to pay the wages owed.

[19] Having failed to pay the sums due within the time frame to which the Fifth Respondent agreed, he is no longer entitled to whatever benefit there was in the order made.

[20] The Applicants initially opposed the non-publication order because they were concerned that the Fifth Respondent was advertising to employ other Chinese migrant workers in his publishing businesses. The Applicants, correctly, understood that the order would prevent them taking steps that might warn others of the risk of being underpaid by the Fifth Respondent. I see no good reason to continue that restriction.

**Determination**

[21] For the reasons given I find that the Fifth Respondent owes the following sums in outstanding wages to the Applicants and is ordered to pay those sums immediately: Vivian Gu, \$21,242; Christine Evangel Woo, \$600; Frank Xu, \$1000; Sandy Li, \$500; Yixin Wang, \$400; Ming Xiang, \$640; Lu Zhang, \$400; Ping Zeng, \$366 and Siyuan Huang, \$600.

[22] A Certificate of Determination is to be issued with this determination.

[23] The non-publication order made in Authority determination AA363/07 is lifted. The names of the Respondents and the circumstances of this case are now again open in the public record.

Robin Arthur  
Member of the Employment Relations Authority