

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON OFFICE**

**BETWEEN** Edward Oscar Hertel (Applicant)  
**AND** GCB Construction Limited  
(First Respondent)  
**AND** Jenny and Gary Brawley (Second and Third  
Respondents)

**REPRESENTATIVES** Megan Williams for Applicant  
Gary Brawley for Respondents

**MEMBER OF AUTHORITY** G J Wood

**INVESTIGATION  
MEETING** Napier 18 April 2007

**DATE OF  
DETERMINATION** 19 April 2007

**DETERMINATION OF THE AUTHORITY**

1. Mr and Mrs Brawley are the owners of the first respondent, GCB Construction Limited (“GCB”). GCB operated the local franchise of Signature Homes. On 31 October 2006 a company called Signature Homes Hawkes Bay Limited (“SHHB”), previously a respondent in this matter but which has now resolved its issues with Mr Hertel, bought the business of GCB.
2. At the time of this transaction Mr Hertel was owed the sum of \$10,275.42 gross in unpaid bonuses, amongst other things. This sum remains unpaid, apparently due to a dispute between GCB and SHHB over liability under the sale and purchase agreement. Mr Hertel seeks payment of the sum, together with interest and costs. A claim for a personal grievance due to non-payment of the sum was not pursued, on the basis that any loss suffered by Mr Hertel could be dealt with by way of interest and costs.
3. In terms of employment law responsibility for payment lies with CGB Construction Limited, as all accept. The issues between GCB and SHHB are separate matters to

be dealt with in another jurisdiction, although I was informed by Mr Brawley that success for GCB would mean that Mr Hertel would be paid the bonuses he is owed.

4. Following the sale of CGB's business it had no assets and was unable to pay Mr Hertel the sum owed above. Mr Brawley, as the principal of CGB, undertook, in an email dated 21 November, to personally take responsibility for the bonus "*if Signature Homes do not honour their agreement*".
5. At the Authority's investigation meeting Mr Brawley acknowledged that he had personally undertaken to make payment to Mr Hertel, but he has since resiled from that undertaking because he believes that he cannot afford to make such a payment.
6. I conclude that it is clear that Mr Hertel was employed by GCB and that it owes him the sum of \$10,275.42 gross. Thus that sum is appropriately claimed. Mr Hertel is also entitled to interest at the rate of 7.5% per annum from 1 November 2006, until payment, calculated on a simple interest basis.
7. On Mr Hertel's behalf Ms Williams sought \$2,000 in costs. Much of this sum must have been related to Mr Hertel's claims against the other respondent that have been settled. In terms of preparation time, liability for the bonuses has never been disputed. Instead it is simply a matter of how and when Mr Hertel is to be paid. In these circumstances I consider that payment of costs in the sum of \$400 is appropriate.
8. I therefore order the first respondent, GCB Construction Limited, to pay to the applicant, Edward Oscar Hertel, the following sums - \$10,375.42 gross in unpaid remuneration, plus interest at 7.5% per annum on a simple interest basis from 1 November 2006, until payment, and \$400 in costs.
9. I reserve the issue of Mr Brawley's personal liability for the purposes of enforcement action, if necessary. The claim against Mrs Brawley is dismissed.

**G J Wood**  
**Member of the Employment Relations Authority**