

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 123/08  
5100287 and 5091019

BETWEEN                      GARETH HUNT  
   Applicant in 5100287

AND                              ANTHONY GRAIMES  
   Applicant in 5091019

AND                              IVAN ERCEG  
   Respondent

Member of Authority:      Robin Arthur

Representatives:            Gareth Hunt in person  
   No appearance for Anthony Graimes  
   No appearance for Respondent

Investigation Meeting:     26 March 2008 at Auckland

Determination:              1 April 2008

---

**DETERMINATION OF THE AUTHORITY**

---

**Employment Relationship Problem**

[1]     By statements of problem lodged separately, the two Applicants each sought recovery of wages said to be owed to them by the Respondent.

[2]     I directed that the two matters be jointly investigated as the cases were of the same type and involved the same Respondent (“Mr Erceg”).

[3]     Mr Graimes, the Applicant in 5091019, attended a directions conference by telephone on 29 February 2008 and was sent a Notice of Investigation Meeting. He also provided a written statement of additional information that was requested of him however he did not attend the Investigation Meeting. Accordingly I have not been able to conclude an investigation of his claim.

[4] No appearance was made by or for Mr Erceg at the investigation meeting but I am satisfied from the courier records on the Authority's file that he was properly notified at his business address from which previous correspondence on this matter had been sent on his behalf.

[5] Neither did Mr Erceg provide a statement in reply to Mr Hunt's claim although an extension to do so was sought on Mr Erceg's behalf by Paul Sills, managing director of Sensation Yachts Limited ("SYL"), a company of which Companies Office records show Mr Erceg is a director and shareholder. The extension was granted but no reply was lodged.

[6] Mr Sills had also written to the Authority confirming that he would act as Mr Erceg's representative, would attend any directions conference or hearing, and that Mr Erceg would apply for leave to present both a defence and evidence. No application for leave was received in the intervening month before a directions conference by telephone was arranged. Messages were left at Mr Sills' office regarding arrangements for the directions conference but he was not available when called at the scheduled time. Neither he or Mr Erceg attended the investigation meeting.

[7] I am satisfied that Mr Erceg has had sufficient opportunity to reply to and participate in the Authority's investigation of Mr Hunt's claim, either in person or through a representative. As noted on the Notice of Investigation Meeting, if the Respondent does not attend, the Authority may, without hearing evidence from the Respondent, issue a determination in favour of the Applicant.

[8] I now proceed to determine Mr Hunt's claim on the basis of his unchallenged, affirmed evidence taken at the investigation meeting and from information in documents provided by both parties, including correspondence from Mr Sills.

### **The facts**

[9] Mr Hunt seeks payment for 24 days work as a deck hand aboard the Motor Yacht Sensation from 21 April to 14 May 2007. He started work in port at Cairns, after flying from New Zealand to Australia. He worked aboard during the vessel's voyage via Darwin to Singapore and left the vessel by agreement with its skipper after

a dispute with the engineer. He also seeks the cost of his return flight from Singapore to Auckland.

[10] Mr Hunt had previously worked for SYL for short periods during 2004 and 2005, as shown by payslips he produced. He worked on the MY Sensation from mid-December 2006 to mid-January 2007 while it was at SYL's yard in Henderson and then at a berth after being launched. Bank deposit records show he was paid for this work.

[11] Around three months after that work ended he was telephoned by Mr Erceg. Mr Erceg asked if Mr Hunt was available and willing to join the crew onboard MY Sensation. The yacht has left New Zealand on a delivery voyage.

[12] Mr Erceg offered Mr Hunt NZ\$1000 a week for the work. He said Mr Hunt would have to fly to Cairns to get aboard the yacht and would be flown home after its voyage.

[13] Mr Hunt says that while he had previously had a "contract" when working with SYL, Mr Erceg made no reference to any employment agreement for work aboard the vessel. The request to Mr Hunt to join the crew was made directly by Mr Erceg. Mr Erceg did not refer to Mr Hunt being employed by SYL or any other company or other person, either in New Zealand or abroad.

[14] On 19 April 2007 Mr Erceg rang Mr Hunt again and told him to contact a secretary at the SYL offices about flight arrangements. Mr Hunt flew to Cairns on 21 April and began work on the vessel the next day.

[15] After the yacht reached Singapore on 7 May, Mr Hunt's father – who was an engineer on the vessel – left the crew and the skipper asked Mr Hunt if he wanted to leave as well. Mr Hunt agreed to remain on board but a few days later had a "run in" with another engineer over conflicting orders from the first mate. After speaking with the skipper, Mr Hunt asked to leave the boat and the skipper agreed. The skipper asked Mr Hunt to make his own flight arrangements which he did, returning to Auckland on 15 May 2007. The skipper also told Mr Hunt to contact the secretary at SYL's offices to get his pay.

[16] By 1 June Mr Hunt had not been paid. He tried repeatedly to contact Mr Erceg by telephone but was not successful. After several weeks he made an appointment to see Mr Sills. They discussed the list of days work and the cost of the flight back to Auckland. Mr Sills told Mr Hunt he could not see a problem with him getting paid and to call again if he had not received a cheque during the next week. No cheque arrived and Mr Hunt was told Mr Sills was not available when he called his office again.

[17] On 26 July 2007 Mr Hunt went to SYL's offices and waited until he saw Mr Erceg leaving the premises. He spoke to Mr Erceg while sitting in his car in the road outside the premises.

[18] Mr Erceg told Mr Hunt he would not be paid and that this was recorded in the yacht's log and to contact the first mate. Mr Hunt later did contact the first mate and received a text reading: "*Hi. I know nothing about that. You should be paid up till the day you left*".

[19] Mr Hunt lodged his wage recovery claim in the Authority on 19 September seeking payment of wages of \$3200 and reimbursement of the cost of his one way ticket from Singapore to Auckland of \$735.

### **The actual employer**

[20] Although Mr Erceg has not provided a statement in reply, Mr Sills did provide a statement by way of a letter dated 27 September 2007 denying that the company SYL had any employment relationship with Mr Hunt. That letter incorrectly claimed that Mr Hunt had "*never*" and "*at no time*" been employed by SYL. That is at odds with payslips for 2004 and 2005 that Mr Hunt produced identifying SYL.

[21] However I accept, on Mr Hunt's evidence, that he was not employed by SYL for his work on MY Sensation between 21 April and 14 May.

[22] Mr Sills' letter of 27 September offered this explanation of the position regarding Mr Erceg, who Mr Hunt identified as his employer:

*Mr Ivan Erceg is the shareholder of Sensation Yachts Limited. However, he did not employ any staff for the operation of the vessel in question in his own name. He also did not employ any staff for the vessel in the name of Sensation Yachts Limited, the company registered under the New Zealand Companies Act.*

*The crew of the vessel were employed by the owner of the vessel which is a Caymans Island registered company, Sensation Yachts. It is perhaps here that the confusion has arisen.*

[23] It may be that when Mr Erceg spoke to Mr Hunt in mid-April about working on the yacht Mr Erceg was not intending to employ Mr Hunt “in his own name”. It may be that he was acting for a Caymans Island registered company said to be the yacht’s owner. However, regardless of any other intention or agency he may have had, Mr Erceg did not identify some legal entity other than himself as the employer. If he were acting for another party, he did not disclose that fact to Mr Hunt.

[24] In these circumstances, the rule regarding an undisclosed principal applies: *Cuttance v Perkis* [1994] 2 ERNZ 321, 333. If Mr Erceg were the agent of another party, he did not discharge the onus of making the identity of that party as the employer plain to Mr Hunt. Consequently personal liability as the employer lies with Mr Erceg.

[25] Mr Erceg did not provide a written employment agreement. Having made the agreement in New Zealand for Mr Hunt to work as a deck hand, and for his travel to and from the job to start and finish in New Zealand, I am satisfied that New Zealand law and the Authority’s jurisdiction applies to the employment relationship created.

[26] Mr Hunt is entitled to an order for the amount of wages sought for the number of days worked. He is also entitled to the airfare for returning from the job, from which he was released by the boat’s skipper with instructions to organise his flight home. A return flight was a condition of employment offered by Mr Erceg.

### **Determination**

[27] Mr Erceg was Mr Hunt’s employer for work done between 21 April and 14 May 2007 and is to pay to Mr Hunt the sum of \$3200 in wages and \$735 in reimbursement of an airfare from Singapore to Auckland.

[28] This is also a matter where it is fit to order inclusion of interest on the sum of money ordered to be paid to Mr Hunt: clause 11 of Schedule 2 of the Act.

[29] For the period from 1 July 2007 to the date of this determination – being 275 days – Mr Hunt is to have interest at the rate of 10.84 per cent, being today's ninety-day bill rate plus two per cent. Interest owed to this date is \$321.37. From today until the sum owed is paid by Mr Erceg to Mr Hunt, Mr Hunt is to continue to accrue interest at the rate of \$1.17 a day and Mr Erceg is to pay him that interest.

[30] Mr Erceg is also to pay Mr Hunt a further \$70 in reimbursement of his application fee in the Authority.

### **Summary of orders**

[31] Mr Erceg is to pay Mr Hunt the following sums:

- (i) \$3200 in wages; and
- (ii) \$735 in reimbursement of an airfare; and
- (iii) \$321.37 in interest on the above two sums for the period from 1 July 2007 to 31 March 2008; and
- (iv) \$1.17 a day in interest from 1 April 2008 until the sums owed are paid; and
- (v) \$70 in reimbursement of Mr Hunt's application to the Authority.

[32] A certificate of determination is to be issued with this determination.

Robin Arthur  
Member of the Employment Relations Authority