

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**AA 420/09
5126234**

BETWEEN HAMID REZA KHODABANDEH
Applicant

AND STUART MORRISON
First Respondent

KELSTON REDEVELOPMENTS
LIMITED
Second Respondent

Member of Authority: Leon Robinson

Representatives: Applicant In Person
Stuart Allen Morrison in Person and as agent for Second
Respondent

Investigation Meeting: 23 June 2009

Determination: 25 November 2009

DETERMINATION OF THE AUTHORITY

The problem

[1] The applicant Mr Hamid Reza Khodabandeh ("Mr Khodabandeh") seeks to recover arrears of wages in the sum of \$5,109.16 from his former employer. The only issue for determination is which of the respondents is liable to Mr Khodabandeh.

[2] The matter was set down for investigation meeting at Tauranga on 23 June 2009. On the morning of the investigation meeting, a letter from Mr Stuart Allen Morrison, the director of the second respondent ("Mr Morrison"), was provided to the Authority. That letter advised Mr Morrison would not attend the investigation meeting because he was required to attend to contracted maintenance work. It further advised that the second respondent had always been Mr Khodabandeh's employer "through wages and taxed payed(sic) monies, never Stuart Morrison".

[3] I did not accept that the respondents had shown good reason for their failure to attend the investigation meeting and so I proceeded to act as fully in the matter as if they had attended. Mr Morrison's decision to accord his private affairs priority over the Authority's business means that Mr Khodabandeh's evidence is unchallenged.

The facts

[4] The second respondent Kelston Redevelopments Limited ("the company") is limited liability company incorporated on 23 May 2002. The first respondent Mr Morrison is the company's sole director and shareholder.

[5] Mr Khodabandeh commenced employment with either the first or second respondent in February 2007 as a painter. It is to be determined which of the respondents was Mr Khodabandeh's employer.

[6] Mr Khodabandeh had placed an advertisement in local newspapers seeking employment. Mr Morrison responded to the advertisement. He called at Mr Khodabandeh's home and offered employment to Mr Khodabandeh doing manual maintenance work at his house and orchard and marina work. He said he would have other plastering and interior painting work for Mr Khodabandeh. Mr Morrison offered Mr Khodabandeh work from Monday to Friday each week at \$20.00 per hour.

[7] Mr Khodabandeh accepted the offer of employment and he and Mr Morrison shook hands in agreement. Mr Khodabandeh says at no stage was he informed of the second respondent and Mr Morrison made no mention whatsoever about the company.

[8] The terms of the employment were not recorded in a written individual employment agreement.

[9] Mr Khodabandeh commenced employment and tells the Authority that he had no knowledge of the company. He says there was no reference to or any evidence of it as he worked.

[10] Mr Khodabandeh left the employment in February 2008. He was not paid outstanding annual and public holidays or for sick leave at the termination of his employment.

[11] Mr Khodabandeh submitted a complaint to the Labour Inspector seeking to recover his minimum holiday and sick leave entitlements in May 2008.

[12] The labour inspector investigated and by letter dated 17 December 2008 wrote to Mr Khodabandeh and advised her opinion that Mr Khodabandeh was owed the total of \$5,109.16 as arrears of wages.

The merits

[13] Mr Khodabandeh says he had no knowledge of the company. That evidence is not challenged because Mr Morrison elects not to attend before the Authority to be heard. An employment contract is a contract of personal service. When Mr Khodabandeh and Mr Morrison shook hands and agreed that Mr Khodabandeh would be employed, I accept Mr Khodabandeh's evidence he was not told of the company and that he was contracting with it. That was the time the contract was entered into. If Mr Morrison was acting as the agent of the company, he was obliged to disclose that fact to Mr Khodabandeh so that Mr Khodabandeh knew who precisely he was contracting with. Because Mr Morrison did not disclose that fact, Mr Khodabandeh quite rightly as he now asserts, believed he was contracting with Mr Morrison personally.

[14] There was no written employment agreement evidencing the true identity of the employer. The employer was responsible for recording the terms of the agreement in writing. It failed to do so.

[15] I have been provided with the time sheets and wage record in respect of Mr Khodabandeh's employment. There is no reference to the company or any employer on those source documents.

[16] It appears that the company accounted to the Inland Revenue department for PAYE deductions from Mr Khodabandeh's wages. I do not regard that accounting

arrangement as determinative of the identity of the contracting employer. I note too such an arrangement was effected after the contract was entered into.

The determination

[17] Taking all the factors into consideration, on balance I now determine that Mr Khodabandeh was employed by Mr Stuart Morrison personally. I further find that Mr Morrison is liable to Mr Khodabandeh as the employer for the gross sum of \$5,109.16 as arrears of wages. **I order Mr Stuart Allen Morrison to pay to Mr Hamid Reza Khodabandeh the gross sum of \$5,109.16 as arrears of wages.**

Leon Robinson
Member of Employment Relations Authority