

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKĀURAU ROHE**

[2025] NZERA 134
3200740

	BETWEEN	ALINA LIANG Applicant
	AND	SANVI PROPERTIES LIMITED Respondent
Member of Authority:	Rachel Larmer	
Representatives:	Claire Mansell, counsel for the Applicant William Fotherby and Nicole King, counsel for the Respondent	
Investigation Meeting:	28, 29, 30 August, 9 and 11 September 2024 in Auckland and by AVL	
Submissions and Other Information Received:	3, 24, 29 and 31 October 2024 and 14 February 2025 from the Applicant 21, 22 and 24 October 2024, 8 November 2024, 22 January and 14 February 2025 from the Respondent	
Determination:	5 March 2025	

PRELIMINARY DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The parties agreed that the jurisdiction issue regarding the status of the parties' relationship, should be determined before the substantive claims were investigated. Accordingly, this preliminary determination determines the status of the parties' relationship only.

Identification of people and entities referred to in this determination

[2] The witnesses in this matter used multiple names in their documentation and correspondence with each other and when describing each other. For ease of reference, the main witnesses involved in this matter are referred to in this determination as follows:

- (a) Ms Liang, also known as Alina Liang, Liang Yan, and Megan;
- (b) Mr Wu, also known as Ho Ng, Uncle Wu, Boss, and Boss Wu;
- (c) Mr Chen, also known as Yongwen Chen, and Aiven Chen;
- (d) Ms Kong, also known as Meihong Kong, Helen Kong, and Mrs Liang;
- (e) Mr Liang, also known as David Liang, Bingxiang Liang, and Ah Liang.

[3] Ms Liang is the applicant. Ms Kong is her mother. Mr Liang is her father. Mr Wu and Mr Chen reside in China and are experienced and successful international businesspersons.

[4] Mr Wu is one of Sanvi's three directors. Mr Wu is also a director and shareholder in Sanco Trading International Limited (Sanco) which is Sanvi's ultimate holding company. Mr Wu holds 33% of the shares in Sanco. Sanco holds 8000 shares (80%) in Sanvi and Peaceful Investment Limited (Peaceful) holds 2000 shares (20%) in Sanvi.

[5] According to the Companies Register Peaceful acquired its Sanco shares from the minority shareholders on 6 May 2021. Mr Wu said he provided the funding for Peaceful's share purchase of the Sanco minority shares.

[6] Mr Liang is Peaceful's sole director and Ms Kong is Peaceful's sole shareholder. Ms Kong holds the Peaceful shares as a trustee for the Peaceful Trust (the Trust), which was established in 2010. Mr Liang and Ms Kong are the "Principal Beneficiaries" and Ms Liang and her brother are "Class B and Class C discretionary beneficiaries" in the Trust.

[7] Mr Wu represented Sanco in respect of Sanvi's operations. Mr Wu was authorised to be Sanco's decision maker regarding Sanvi's operational expenses. If matters related to Sanvi needed to be implemented in China, then Mr Wu handled that himself or he assigned it to Mr Chen to do.

[8] Mr Chen oversees Mr Wu's funds and businesses all over the world. Mr Chen is the primary point of contact for all funding related matters regarding Mr Wu's investments since 2018. Although Mr Chen described himself as Mr Wu's "personal assistant" it was clear he was a highly trusted and sophisticated financial manager of Mr Wu's global interests. Mr Chen operated on Mr Wu's behalf and under his delegated

authority. Mr Chen conveyed Mr Wu's views and decisions on business related matters to others who had sought or needed Mr Chen's input.

[9] Mr Chen was engaged by Mr Wu to deal with the purchase of Sanco's minority shares. Mr Chen was more familiar with the China-based Sanvi minority shareholders, so he was considered to be best placed to oversee the share transfer. Mr Wu therefore designated Mr Chen to lead the share purchase of Sanvi's minority shareholders. Mr Wu also delegated the employment agreement negotiations with Ms Liang to Mr Chen to attend to on Sanvi's behalf.

[10] Mr Wu personally paid Mr Chen over the period 1 October 2020 to 2 August 2022 for the time he spend on the various Sanvi and Sanco related matters that were addressed in this determination.

Ms Liang's claims

[11] Ms Laing claimed she was employed by the respondent, Sanvi Properties Limited (Sanvi), from December 2020 to August 2022. Ms Liang said she was employed by Sanvi as its General Manager to progress a multi-million dollar property development it had at 131A Clark Road in Hobsonville, Auckland (the Project).

[12] Ms Liang said she worked for Sanvi as its General Manager on the understanding she was an employee who would be compensated for her work. However, Ms Liang has not been paid.

[13] Ms Liang claimed Sanvi breached its obligations to her as an employer because it failed to provide her with a signed employment agreement, it failed to pay her any of the agreed annual salary for the work she did, and it failed to provide her with any minimum code entitlements she was entitled to as an employee. Ms Liang also claimed Sanvi constructively unjustifiably dismissed her in August 2022.

High Court litigation

[14] Sanvi, Mr Liang and Ms Kong are currently involved in High Court litigation. Those proceedings have been consolidated with another High Court proceeding between Mr Wu personally and Mr Liang, Ms Kong, Ms Liang, Infinite and Peaceful. These proceedings involved disputes over the ownership of shares in Sanco and Peaceful.

[15] Mr Wu's High Court cause of action against Ms Liang does not relate to Sanvi or the land/development at the 131A Clark Rd property (the Project property). Ms Liang believed Sanvi failed to pay her salary because of the dispute between Sanvi and her parents. Sanvi believed Ms Liang's Authority claims had been made to exert pressure on it regarding the High Court litigation.

Sanvi's position

[16] Sanvi disputed the Authority's jurisdiction over Ms Liang's claims, because it said she was not an employee and the parties had never been in an employment relationship.

[17] Sanvi said that although the parties had communications in 2022 about whether Ms Liang would become an employee, no employment relationship was entered into because they had been unable to reach agreement on the final terms of an individual employment agreement.

[18] Sanvi acknowledged that Ms Liang had been appointed as its General Manager and that she had not been paid for the work she did in that role. However, Sanvi said Ms Liang had not paid because "Ms Liang's family stood to gain handsomely" if the Project was successful. Sanvi also claimed Ms Liang was not paid for the work she did because she was volunteering to help out her mother, who had given a personal guarantee to ANZ bank, in her capacity as Sanvi's only New Zealand based director. Sanvi said Ms Liang worked on the Project to help make it successful so her mother's personal guarantee was not called on.

[19] Sanvi described Ms Liang's work as its General Manager as "voluntary" because it "aligned with the Liang family's collective financial goal". The reference to "family" referred to Ms Liang's parents. Sanvi had assumed the work Ms Liang did as its General Manager was done on a voluntary basis, because it potentially benefited her parents. Sanvi had never discussed that assumption with Ms Liang or her parents.

The Liangs' response to Sanvi's claim that Ms Liang was working as a "volunteer"

[20] The Liang family disputed that Ms Liang was a volunteer who had agreed to work for Sanvi without pay. Ms Liang's mother, Ms Kong, told the Authority she had been released from her personal guarantee on 31 January 2024. Ms Kong said the

personal guarantee was not relevant to her daughter's work for Sanvi, because Ms Kong was never at risk of it being called upon.

[21] Ms Liang's parents had not asked her to help them with the Project and they had not needed her help. Ms Liang's parents believed she had been employed by Sanvi as its General Manager on a salaried basis. They denied she had been doing work for Sanvi as a volunteer in order to benefit them (her parents/her family).

[22] Ms Kong graduated with a degree in accounting from Tianjin University of Finance and Economics. She obtained a master's degree in finance from Shenzhen University. Ms Kong worked as an Accounting/Finance Manager from 1992-1997. Sanvi's claims that Ms Liang had to help her mother because Ms Kong had "limited financial knowledge" or "lacked the required financial knowledge", so was unable to deal with the financial requirements of her General Manager role, was not accepted.

[23] Ms Kong was clearly qualified and experienced in financial matters. She had also been employed by Sanvi as its General Manager from July 2015 until October 2020 and that had occurred without Ms Liang having to step in to do the role for her mother. Ms Kong likely had the required financial knowledge to do the General Manager role without her daughter's input.

The Liangs' relationship with Mr Wu

[24] Mr Wu and Ms Liang's parents had a longstanding business relationship. Between the late 2000s and 2015 Mr Liang and Ms Kong referred numerous real estate properties in New Zealand with development potential to Mr Wu as investment opportunities. They then carried out several property developments together (via entities they were closely involved with) in Pinehill, Auckland for which:

- (a) Mr Wu (directly or via his entities) funded the purchase costs of the development land;
- (b) Mr Liang and Ms Kong (directly or via their entities) funded the development costs; and
- (c) Mr Liang and Ms Kong shared the profits arising from the developments equally with Mr Wu.

[25] Due to the success of these developments, in or around 2016, Mr Liang and Ms Kong entered discussions with Mr Wu regarding other real estate properties with

development potential in New Zealand. That led to the acquisition of a number of subsequent properties.¹

[26] Between November 2016 and January 2019, Mr Wu and entities he controlled transferred approximately \$20 million to bank accounts operated by Mr Liang and Ms Kong. These funds were applied towards property development projects managed by Mr Liang and Ms Kong, as well as to the operating costs of the respective companies.

Acquisition of the Project land

[27] In early 2015 Ms Kong and Mr Wu discussed the potential to acquire and develop the property situated at 131A Clark Road, Hobsonville Auckland (the Project land).

[28] Sanvi was established in New Zealand on 24 July 2015 as a corporate vehicle to operate the Project. Sanvi's main scope of business was to develop the 43,220 square metres of the Project land.

[29] Sanvi purchased the Project land from Golden Garden Limited (GGL). At the material time, Ms Kong was GGL's sole director and Mr Liang was its sole shareholder. According to the Companies Register the title transfer for 131A Clark Road to Sanvi occurred on 18 December 2015.

Sanvi's directors

[30] On incorporation in July 2015, Sanvi had the following five directors:

- (a) Ms Kong;
- (b) Naiya Wang;
- (c) Mr Wu;
- (d) Xaiohang Ye;
- (e) Ching Ip Ko.

[31] In January 2021 Naiya Wang indicated an intention to resign as a director and the Sanvi shareholders agreed Ms Liang would be appointed as the replacement

¹ As set out in paragraph 4.5 of Sanvi's submissions.

director. The Companies Register recorded these changes as having formally occurred on 9 February 2021, but they were discussed and agreed before then.

[32] Ms Liang was therefore one of Sanvi's directors from 9 February 2021 until 2 August 2022. She was not paid for her director role.

[33] Sanvi's Financial Statement for the Year Ended 31 March 2022, prepared by its accountants Nexus and signed by Mr Wu, recorded that Sanvi had four directors (Ching Ip Ko; Ms King; Ms Liang and Mr Wu). On 2 August 2022 Sanvi's directors were recorded on the Companies Register as Mr Wu, Mr Chen and Tiger Tseng.

Sanvi's original shareholding

[34] On incorporation in July 2015, Sanvi had three shareholders:

- (a) Sanco Trading (International) Limited (Sanco), a Hong Kong registered company, held 8000 shares (80 %);
- (b) Visong Investment Limited (Visong), a Hong Kong registered company, held 1880 shares (18.8 %); and
- (c) Xuan Kuang, an individual residing in Shenzhen, China, held 120 shares (1.2%).

Sanvi's General Manager role

[35] Ms Kong was employed as Sanvi's General Manager from its incorporation in July 2015 until her resignation in August 2018. In July 2018 the development of the 131A Clark Rd property (the Project) was put on hold and the land was listed for sale, but did not sell. Ms Kong continued to do limited unpaid work as Sanvi's General Manager from August 2018 until Ms Liang replaced her in October 2020.

[36] Sanvi had employed Ms Kong as its General Manager on a \$60,000.00 per annum salary plus an incentive reward of two percent of the net profit rate that exceeded 20 percent, which would be paid to her upon completion of the Project. Sanvi also employed an assistant to help Ms Kong with her General Manager role. The assistant was paid \$40,000 per annum.

[37] The salaries of these two Sanvi employees stopped in August 2018. Neither Ms Kong or her assistant were given written individual employment agreements, although they were recognised (and paid) by Sanvi as employees.

[38] As at 26 October 2020, the parties estimated that if the Project was successful it could realise an estimated profit of close to \$14 million. Ms Kong's General Manager remuneration component of 'two percent of the project's net profit greater than 20 percent' therefore represented a significant potential personal benefit to her on top of her salary as the General Manager.

[39] On 29 October 2019 Sanvi's Board had resolved to find another New Zealand citizen or permanent resident to take over the General Manager role Ms Kong had resigned from. Ms Liang initially indicated an interest in the General Manager role. She had experience in the development and construction fields and was familiar with the Project.

[40] Mr Wu discussed the General Manager role with Ms Liang. Mr Wu also discussed Ms Liang's interest in the role with Ms Kong. She said that before Ms Liang started doing work for Sanvi in October 2020, Mr Wu told her (Ms Kong) he was going to offer Ms Liang the General Manager role and that he would pay her a "generous salary". Mr Wu denied that.

[41] At the relevant time, Sanvi believed its Resource Consent would lapse on 5 February 2021, and that the Engineering Plan Approval was set to expire. Based on that belief, there was some urgency in appointing a General Manager to renew the Resource Consent. However, it subsequently turned out that the Resource Consent was valid until 14 September 2021.

[42] Sanvi provided new designs to Auckland Council and Ms Liang lodged the new Resource Consent on 19 October 2021. Ms Liang also lodged the CCC via the Auckland Council online portal on 2 February 2022.

[43] There was a conflict in the evidence of Mr Wu and Ms Liang regarding what had been discussed, agreed, and when that had occurred regarding the General Manager role.

[44] Ms Liang said she and Mr Wu discussed the General Manager role from September to November 2020 and that she accepted the role. Ms Liang said she was an employee, with a start date of 1 December 2020 and a salary of \$160,000.00, which would be paid annual in a lump sum at the end of 12 months. She said there was no discussion about providing an employment agreement.

[45] Ms Liang and Ms Kong both said Ms Liang's appointment as Sanvi's General Manager was formally announced by Mr Wu to Sanvi's shareholders at a shareholders' meeting in December 2020. Ms Liang then acted as the General Manager in the subsequent weekly shareholder meetings, which she had to set up with Mr Wu and/or his assistant. These weekly meetings were recorded and noted. However, Sanvi did not produce any of these recordings or notes to the Authority, as it said they could no longer be located.

[46] Mr Wu's evidence was that there was no conversation about employment with Ms Liang in 2020. He said that around the end of 2021 he had expressed a willingness to negotiate possible employment with her, but that there was no agreement to employ her or to pay her.

[47] Ms Kong's and Ms Liang's accounts of their discussions with Mr Wu was preferred over his version of events, because their evidence better aligned with the relevant documentation and the parties' actions at the material times.

[48] In October 2020 Ms Kong stopped undertaking the minimal General Manager duties she had been covering since her resignation from that role. Ms Liang took on the General Manager duties, which at that time had focused on getting the Project ready to break ground in October 2021.

[49] Ms Liang was Sanvi's only employee. Sanvi held Ms Liang out to others as its General Manager. She also actually undertook the work that someone in the General manager role would have needed to have done to have progressed the Project to the 'breaking ground' stage.

[50] When Ms Liang was first offered Sanvi's General Manager role, she was reluctant to accept it, so Mr Wu asked her parents to help convince her to take it on. After accepting the General Manager role, Ms Liang sent a WeChat message to Mr Wu's designate, Mr Chen on 26 October 2020 expressing her nervousness about taking on such a big Project. Mr Chen reassured her with positive feedback.

[51] Ms Liang's response and reference to the size of the role undermined Sanvi's claim she was just doing "administrative work" and/or helping her mother to provide financial information to Sanvi for the share transfer.

[52] It was more likely that Ms Liang was employed by Sanvi in its General Manager role as a result of the oral offer Mr Wu made her in November 2020, which she accepted. In accordance with the oral terms, Ms Liang's agreed start date was 1 December 2020 and her agreed salary was \$160,000, which would be paid to her at the end of 12 months. She remained in that role until 2 August 2022.

[53] Prior to the parties entering into their relationship there was no discussion between Mr Wu (on Sanvi's behalf) and Ms Liang of her being anything other than Sanvi's employee.

Share purchase

[54] In early 2020 there was a difference in opinion between the majority and minority shareholders about whether the Project should be restarted or the land sold. In late 2020 Mr Wu said he decided to buy out the minority shareholders, via the Peaceful entity, so the project could be progressed.

[55] Sanvi's position in these Authority proceedings was that Ms Liang, as a member of the Liang family, had a "vested interest" in the outcome of the acquisition of some of the Sanvi shares by Peaceful so the Project could continue, because the successful completion of the Project would directly financially benefit her parents.

[56] However, that argument overlooked the legal reality that Ms Liang was neither a director of, or a shareholder in, or employed by Peaceful. Ms Liang did not work for Peaceful, was not engaged or instructed by Peaceful. Ms Liang had no profit sharing arrangement with Peaceful. She did not report to Peaceful and that entity did not remunerate her.

The bonus payments

[57] The Sanvi shareholders had a meeting on 28 January 2021 during which they decided to pay a "bonus" to "commend the work performance of" Mr Chen and Ms Liang. A notice to that effect was issued on 24 February 2021. Mr Wu signed the payment approval form for these bonus payments on 25 May 2021.

[58] The share acquisition was completed in May 2021. Ms Liang received her bonus of NZ\$30,000.00 on 8 June 2021. No PAYE was deducted from Ms Liang's bonus. Mr Chen (who resides in China) received a bonus of NZ\$70,000.00. These bonuses were paid by Sanvi.

[59] Ms Liang said the bonus was payment for her work for Sanvi, but Sanvi denied that. Sanvi said the bonus payment was “a reward” for Ms Liang’s contribution to helping with the acquisition of Sanvi’s minority shareholders’ shares.

[60] The material point was that Sanvi recognised it had rewarded Ms Liang, the payment of a bonus, for the work she had done. That evidence fundamentally undermined Sanvi’s claim that Ms Liang had been working as a “volunteer”, who had not been paid for the work she had done.

Suspension and relaunching of the Project

[61] On 19 July 2018 Sanvi suspended the Project. After the minority shareholders, who had not wanted to progress the Project had been brought out in May 2021, the remaining Sanvi shareholders decided to push the construction date for breaking ground back to October 2021.

[62] There was a dispute between the parties regarding the date the Project was “relaunched”. Ms Liang said the relaunch occurred in December 2020 when she was employed to move the Project forward. Sanvi said the Project was not relaunched until December 2021.

[63] This conflict has been resolved by finding that Ms Liang was engaged as the General Manager in December 2020 to progress the Project by undertaking/overseeing a lot of the preparatory work for Sanvi, which was needed before onsite earthworks could commence, which had been planned to start in late 2021.

[64] That finding was based on the nature of the work Ms Liang was doing in December 2020 and during 2021. This work had included having new designs signed off by Council, and renewing the Resource consents for the Project, creating a Construction Plan, dealing with financial matters relating to the Project, preparing multiple reports on a range of pre-construction matters, tendering and entering into contracts, site inspections and visits, addressing health and safety matters, attending meetings with the shareholders, the Council, neighbours, consultants, construction companies and the like.

Dispute about the work Ms Liang did

[65] Sanvi claimed Ms Liang assisted her mother, Ms Kong, “as a daughter” because her mother had limited English, which meant that Ms Liang often interacted on her mother’s behalf regarding Sanvi matters. Ms Liang and her mother both denied that.

[66] Ms Kong had operated perfectly well as Sanvi’s General Manager in a paid capacity without her daughter’s assistance from July 2015 to August 2018 and in an unpaid capacity from September 2018 to October 2020.

[67] Mr Wu claimed Ms Liang’s role as Sanvi’s General Manager was limited and administrative. Mr Wu described Ms Liang as being mainly engaged in translation work and on-site tasks in New Zealand in order to assist her mother. However, Mr Wu’s evidence about that was not accepted.

[68] Mr Wu told the Authority he was not familiar with the details of Ms Liang’s work. Ms Liang provided considerable evidence that established her work was consistent with her General Manager role, so was not simply administrative or providing interpretation for her mother.

[69] The evidence also did not establish that Ms Liang was working with, or under the direction of, or for or on behalf of her mother Ms Kong. Nor did the evidence establish that the work Ms Liang did in her role as General Manager had involved any translation or interpretation work for her mother.

[70] Sanvi is a multi-million dollar entity with sophisticated, highly experienced and very well resourced shareholders. It was not credible that Sanvi would appoint a General Manager into a limited administrative role which focused mainly on providing translation services to Ms Kong. There was no need for that to have occurred and such an appointment would not have made good business sense.

The written employment agreements

[71] Three different written individual employment agreements were produced by the parties, none of which were finally agreed on or signed.

[72] On 15 December 2021 Ms Liang instructed a lawyer who had acted for her family and for Sanvi to draft an employment agreement (the first IEA) and a letter of offer for her role as General Manager of Sanvi. Ms Liang said that was based on

Mr Wu's instructions to do so, which she actioned in her capacity as Sanvi's General Manager.

[73] On 20 December 2021 Mr Wu instructed Mr Chen to engage lawyers regarding Ms Liang's employment agreement. Mr Wu tasked Mr Chen to deal with the employment agreement negotiations for Sanvi. Mr Chen said he did so, but based on instructions from Mr Wu about what terms were or were not acceptable.

[74] Mr Chen did not make those decisions himself, but instead reverted to Mr Wu who said he had obtained input from Sanco regarding the proposed employment agreements. Mr Wu told the Authority he was not aware of the detail of the negotiations regarding Ms Liang's employment agreement, as Mr Chen had been tasked to deal with that for him.

[75] The first employment agreement was submitted to Sanco for its opinion on 23 March 2022. The Authority finds that in reality although Mr Wu consulted Sanco, he was effectively in charge and was the main decision maker. Mr Wu delegated the duties associated with that to Mr Chen to execute on his behalf.

[76] On 26 March 2022 Mr Chen and Ms Liang had a video call to discuss the first IEA.

[77] On 2 April 2022 Mr Chen on behalf of Sanvi, and based on legal advice from Sanvi's lawyer, sent an amended draft employment agreement to Ms Liang (the second IEA), which included new terms. Ms Liang indicated she had forwarded it to her lawyer, whose feedback to her was that there were no major issues but some of the individual clauses may need adjustment.

[78] Mr Chen and Ms Liang had another video call on 17 April 2022 about the employment agreement issues.

[79] On 17 June 2022, Ms Liang sent a further revised employment agreement (the third IEA) to Mr Chen. This version had deleted clauses relating to restraint of trade, intellectual property rights, company records and non-competition which Sanvi had inserted into the second agreement to protect its interests. Ms Liang and Mr Chen had further communications about the proposed employment agreement after that, but a final version of the employment agreement was not agreed.

[80] On 5 July 2022 Ms Liang sent the first IEA back to Mr Chen and he responded by sending the second IEA back to her, saying the first IEA was “too different” from the second IEA. He said they needed to go back to the second IEA from 2 April 2022 as the basis for any edits that were to occur, as discussed in their video call meeting on 17 April 2022.

[81] Ms Liang was not prepared to accept that, because the second IEA did not allow her to continue her studies and it would have restricted the work she did in/for/on her own companies. Ms Liang proposed that new disputed clauses Sanvi had inserted regarding intellectual property, the company’s property, and restraint of trade should be changed.

[82] On 28 July 2022 Mr Chen indicated to Ms Liang that “there may be a deadlock in relation to terms”. No signed agreement was entered into, and the relationship between the parties completely broke down in early August 2022.

Ending of the parties’ relationship

[83] On 1 August 2022 Sanvi removed Ms Liang’s access to its bank account.

[84] At 4.16pm on 2 August 2022 Sanco’s lawyer sent letters to Ms Kong and Ms Liang removing them as directors of Sanvi.

[85] Ms Liang was not given any work by Sanvi after she lodged financial accounts on 31 July 2022 and without access to financial information she could not do her role. Ms Liang considered herself to have constructively dismissed by Sanvi on 2 August 2022.

Ms Liang’s other interests outside the Sanvi General Manager role

[86] Ms Liang had other business interests in addition to her General Manager role with Sanvi, which Mr Wu knew about before he offered her the General Manager role. These included:

- (a) Infinite Voyage Investment Limited (Infinite). Mr Liang was the director of Infinite and Guardian Harbour Limited (GHL) was its shareholder. Mr Liang was the sole director and shareholder of GHL;
- (b) 231 Manukau Road, which was a property that Ms Liang was the registered proprietor of;

- (c) Mingcheng Investment Limited (Mingcheng), which was a project that occurred from 2017 to 2021. Mr Wu was the director and shareholder of Mingcheng;
- (d) AKL Properties Limited (AKL), which was Ms Liang's own company.

[87] Ms Liang was employed by Infinite and she received a weekly salary of \$500.00 taxed from 9 November 2017 until 16 December 2021. However, Ms Liang said she continued to perform tasks for Infinite until 2 August 2022, on the understanding Sanvi would pay her for that work. The parties told the Authority Ms Liang worked as "Mr Wu's personal assistant" and "Infinite's employee" over that period.

[88] Infinite was created by Ms Kong, Mr Liang and Mr Wu as a vehicle for property developments. The Companies Register records Infinite's sole director as Mr Liang and its sole shareholder is Guardian Harbour Limited (GHL).

[89] GHL's sole director and shareholder is Mr Liang. Mr Liang holds fifty percent of GHL's shares as a trustee for Mr Wu, which is why the parties described Ms Liang's employment by Infinite as her "working for Mr Wu".

[90] Ms Liang managed settlements, organised defect records, and engaged construction contractors for Mingcheng and AKL Properties. AKL Properties' financial statements for 31 March 2021 showed significant income.

[91] Ms Liang also studied part time during the period she said she also worked for Sanvi.

The Authority's investigation

[92] The Authority conducted a five day in-person investigation meeting which consisted of a three-day investigation meeting (IM) followed by two separate one-day investigation meetings. The investigation meeting started at 11am each day to accommodate the time-zone differences.

[93] The Authority was assisted by a full translation of the entire proceedings by a Mandarin interpreter.

[94] Mr Wu and Mr Chen attended the investigation meeting by a Teams video link because they both live in China and were unable to travel to New Zealand. They were Sanvi's only witnesses.

[95] The Authority heard from Ms Liang, her mother Ms Kong, and another witness who Ms Liang had professional dealings with who was the Operations Manager for an electrical company. One of Ms Liang's witnesses (Mr Lei) provided a witness statement but elected not to attend the investigation meeting, so his statement was withdrawn.

[96] Ms Kong lodged an affidavit to deal with new evidence that came to light after the investigation meeting had been completed. Mr Wu also lodged an affidavit in response to the new evidence Ms Kong's affidavit had introduced.

[97] The Authority was provided with more than 700 pages of relevant documents. This included documents that were produced prior to, during the investigation meeting, as well as after it had concluded.

[98] The parties lodged written submissions in accordance with an agreed timetable. They also responded in writing to specific queries the Authority had after the investigation meeting had been completed.

Issues

[99] The sole issue to be determined in this preliminary determination was the status of the parties' relationship. In particular, whether or not the parties were in an employment relationship from 1 December 2020 to 2 August 2022.

Relevant law

Definition of employee

[100] Section 6 of the Act defines the meaning of an employee. It includes any person employed to do work for hire or reward under a contract of service.²

[101] As per s 6(1)(c) of the Act, the definition of employee excludes a volunteer. A volunteer is someone who does not expect to be rewarded for the work they do, and who is not rewarded for the work they do. The meaning of "reward" is wider than just the payment of money.

² Section 6(1)(a) of the Act.

[102] The Employment Court’s finding that the plaintiffs in *Pilgrim v Attorney-General* were employees and not volunteers is currently on appeal to the Court of Appeal.³

[103] The Authority must determine “the real nature of the relationship”, by considering “all relevant matters”, but it must not treat as determinative any statement by the parties that described the nature of their relationship.⁴ The term “all relevant matters” included any indicated mutual intention of the parties at the time they entered into the relationship, but on the understanding their description of the relationship was not to be viewed as determinative of the status of the relationship.

[104] An assessment of “all relevant matters” in accordance with s 6(3)(a) of the Act starts with an examination of the terms and conditions of the contract and the way in which it had operated in practice. Once that had been assessed then the three widely recognised common law tests of control, integration and the fundamental/economic reality test were to be applied.

[105] Other relevant factors, such as industry practice and taxation arrangements, were also to be assessed as part of the mix, but were not to be viewed as the main ingredient, as the primary factor was at how the relationship had actually operated in practice.

[106] The Supreme Court in *Bryson v Three Foot Six Limited* stated that the following factors had to be assessed when the employment institutions were considering the status of a disputed relationship:⁵

The written and oral terms of the contract between the parties ... any divergences from or supplementation of those terms and conditions which are apparent in the way in which the relationship has operated in practice ... the way in which the parties have actually behaved in implementing their contract ... features of control and integration and ... whether the contracted person has been effectively working on his or her own account.

[107] The Court of Appeal in *Rasier Operations BV & Ors v E Tū Incorporated Anor* reviewed *Bryson* and held that a two-step inquiry into the status of a relationship was required.⁶ That involved examining the terms and conditions and analysing those in

³ *Pilgrim v Attorney-General* [2023] NZEmpC 105 and *Temple v Pilgrim* [2024] NZCA 147.

⁴ Section 6(2) and (3) of the Act.

⁵ *Bryson v Three Foot Six Ltd* [2005] NZSC 34 at [32].

⁶ *Rasier Operations BV & Ors v E Tu Inc* [2024] NZCA 403 at [97] – [99].

accordance with the common law tests. The Court of Appeal described the application of s 6 in the Act as follows:

We think it helpful to distinguish between two stages in the inquiry. The first stage involves identifying the substance of the parties' mutual rights and obligations as a matter of reality. The second stage involves determining whether those rights and obligations amount to a contract of service. The (modest) departures from the common law effected by s 6 are confined to the first stage of the analysis. Section 6 reinforces the common law requirement to focus on the substance of the parties' agreement when determining their mutual rights and obligations. It emphasises the importance of the real nature of the relationship, ascertained by reference to how that relationship operates in practice. And it emphasises that labels in the parties' agreement, or in other statements by the parties, are not determinative. At the second stage of the analysis, the common law test for what qualifies as a contract of service is applied to the (real) relationship between the parties. That continues to turn on the three common law tests: the control test, the integration test, and the fundamental test. Section 6 did not alter these common law criteria.

Put another way, clarity of analysis is enhanced by distinguishing between:

- (a) what is being classified (the agreement between the parties, which s 6 of the ERA requires the court to assess as a matter of reality, not form); and
- (b) the criteria for classification (the common law tests for classification of contracts as contracts of service).

Where there is a written contract governing the relationship between the parties, that will usually be the logical starting point for the first stage of the analysis. As the Supreme Court said in *Bryson*, "all relevant matters" in s 6(3)(a) "certainly include the written and oral terms of the contract between the parties". The Supreme Court also referred to "the need to begin by looking at the written terms and conditions which [have] been agreed to". In doing so, the focus is on the substance of the parties' mutual rights and obligations, interpreted objectively, rather than any labels that may have been attached to the relationship in the written contract.

[108] The "real nature of the relationship" must be assessed objectively, rather than subjectively, so evidence by one party of their subjective intention was irrelevant.⁷

[109] The contract-centric approach, which focused on first establishing whether or not the usual contract formation elements had been established (such as offer, acceptance, certainty, intention to create legal relations, consideration) was not consistent with the Supreme Court's approval of *Bryson*, which required a relationship-centric approach that focused on the real nature of the parties' relationship.

[110] A party cannot contract out of the Act, so it was unable to do so by applying an inaccurate label to describe the parties' relationship.⁸ The Authority therefore had to be

⁷ *Raiser* above n6.

⁸ *Raiser*, above n6 at [7] and [112].

mindful to identify cases in which a fictitious description of a relationship had been adopted to avoid minimum code legislation.

Was Ms Liang a volunteer?

[111] Section 6(1)(c) of the Act set out two elements that both had to be satisfied in order for a person to be viewed as a volunteer. Neither of these requirements were established on the facts of this matter. There was no direct evidence to establish that Ms Liang did not expect to get paid for the work she did, and the evidence established she had been paid \$30,000.00 by Sanvi for the work she did.⁹

[112] There was no discussion between that parties that Ms Liang would be undertaking work on a voluntary basis without payment, nor was there any discussion that Ms Liang's involvement was to "help out" her family either for free, or in the expectation of a future reward from them if the Project succeeded.

[113] Ms Liang did not propose to Sanvi that she would work for it without being paid, nor was she asked by Sanvi to work for free. To the contrary. Ms Kong said Mr Wu had told her that he intended to offer Ms Liang "a generous salary". Mr Wu's WeChat voicemail message dated 1 April 2022 to Ms Kong and Mr Liang confirmed that Ms Liang had also would be paid an annual salary.

[114] There was never any mutual agreement that Ms Liang was working for Sanvi as a volunteer. Mr Wu told the Authority he had just assumed that was the case.

[115] However, it was illogical to assume that Ms Liang would happily work for free for a \$30,000,000.00 company, which Sanvi was at the relevant time, without ever having discussed that with her. It was even more unlikely in circumstances where Ms Liang was also studying for around 10 to 15 hours a week, had her own business interests and was also employed by Infinite, that she would take on a General Manager role for a multi-million dollar company without any expectation of reward.

[116] Ms Liang's work for Sanvi as its General Manager was work that would usually always be remunerated, particularly where the individual performing the work had no beneficial interest in the company they were working for, unlike a new business owner who was contributing "sweat equity" to a start-up would have had.

⁹ The bonus payment Ms Laing received on 8 June 2021.

[117] The work Ms Liang did in her capacity as Sanvi's General Manager had significant commercial value to Sanvi. If Ms Liang had not performed this work for Sanvi then it would have had to pay someone else market rate to do so. Before Ms Liang was appointed Sanvi had tried to find someone for the General Manager role, without success.

[118] Mr Wu's assertion that Ms Liang worked for Sanvi as its General Manager on a volunteer basis in order to "help her family out" did not withstand scrutiny.

[119] Ms Liang was a mature person who at the material time had her own life, her own business interests, and even her own employment. She was an independent high earning adult who had lived and worked on her own since 2018. Ms Liang had no financial or beneficial interest in Sanvi and had never been a shareholder in Sanvi.

[120] Contrary to Sanvi's arguments, Ms Liang had no "vested interest" in the outcome of the Project, because she could not directly financially benefit from it. Ms Liang's only interest was therefore in managing the Project, in her capacity as Sanvi's General Manager and in ensuring Sanvi met its legal obligations as a registered entity, in her capacity as one of Sanvi's unpaid directors.

[121] Sanvi's reliance on the 'Liang family's business' argument was a red herring. Ms Liang was not in business with her parents.

[122] Ms Liang did not work for Peaceful. Nor did Peaceful ever ask Ms Liang to do any work for Sanvi, much less did Peaceful ask her to do work for Sanvi for free. Neither Ms Liang's mother (Ms Kong as the sole shareholder in Peaceful), or her father Mr Liang (as the sole director of Peaceful) asked Ms Liang to do any work for Sanvi in order to benefit Peaceful. Neither of Ms Liang's parents asked her to work for Sanvi for free in order to benefit their family. They had no reason to do so.

[123] Ms Kong had a company Alimamani Limited she used for property development. Alimamani employed a casual employee to help Ms Kong with her development projects. There was no need for Ms Liang to have to support her mother by working for free. Ms Kong's previous assistant was employed by Sanvi on a salary of \$40,000.00. Ms Kong also had Alimamani's casual employee to call on if need be, so she did not have to rely on her daughter to help her.

[124] Sanvi's claim that Ms Liang was working as her mother's translator was not accepted because it was not supported by the available evidence.

[125] Ms Kong was not present for almost all of the work Ms Liang did for Sanvi. Most people involved in the Project spoke Mandarin. If Ms Kong required the assistance of an interpreter then she used a local lawyer (not her daughter) for that, as she had done throughout the many years when she had been employed as Sanvi's General Manager. The Sanvi directors and shareholders all spoke Mandarin.

[126] Ms Liang's parents did not personally allocate Ms Liang any of the work she did for Sanvi. Ms Liang's work was mainly allocated to her by Mr Chen (on behalf of Mr Wu) or during the weekly meetings Sanvi's shareholders had to discuss the Project. Where Ms Liang required authorisation in order to legally commit Sanvi to a contract or course of action, she obtained that authorisation from Mr Chen and/or Mr Wu, not from one or both of her parents.

[127] Sanvi's submission that the work Ms Liang did for it was done voluntarily in order to "support her parents" was not accepted. Ms Liang's parents were prosperous, experienced and successful, they did not need her to support them by working for Sanvi for free.

[128] There was no dispute that Sanvi paid Ms Liang \$30,000.00 on 8 June 2021. Sanvi described this payment as a "bonus" but said it was for Ms Liang's work for her mother on the share transfer. That position was not accepted as it was at odds with the contemporaneous documents, which established:

- (a) The payment was made by Sanvi, not Ms Kong;
- (b) Mr Wu instigated the bonus payment;
- (c) Mr Chen and Ms Liang were advised of the payment via WeChat messages from Mr Wu on 29 January 2021, which he said was due to their "hard work" and in recognition that they had "done a lot of things";
- (d) It was authorised by the Sanvi shareholders at a board meeting on 24 February 2021;
- (e) The Sanvi board minutes recorded the payments were made "in order to commend the work performance of Mr Chen, ... and Ms Liang ...";

(f) It was paid by Sanvi from its bank account, and the payment was not reimbursed to Sanvi by Ms Kong.

[129] Sanvi's alternative claim that the \$30,000.00 it paid Ms Liang was for work she did for Mr Wu personally was not accepted. Why would Sanvi pay someone to do personal work for Mr Wu? Mr Wu was already doing that via Infinite. It was therefore far more likely that Sanvi paid Ms Liang in recognition of the work she had done for Sanvi.

[130] Ms Liang's work over the period to which the bonus related was far wider than just assisting with the share transfer that occurred on 6 May 2021. Much of her work was for Sanvi on laying the groundwork for restarting the Project, which involved reconciling Sanvi's financial accounts and determining the status of the development, so the shareholders could determine whether it was commercially viable to continue with the Project or to sell the property. That work had involved considerable time.

[131] Sanvi's submission that Ms Liang worked for it as a volunteer (i.e. for free) as part of a family enterprise/arrangement was not supported by evidence, so was an entirely speculative position. Mr Wu accepted this position was based on his own assumptions that he had not discussed with anyone.

[132] This was also not a typical family arrangement. Sanvi, the Liang family and Peaceful are currently involved in High Court litigation. One of the matters of dispute is whether Peaceful actually has shares in Sanvi, or whether its shares were held on trust for Mr Wu. There is also a dispute about whether or not Sanco holds 30 percent of its shares in Sanvi on trust for Ms Kong.

[133] According to Sanvi's position in the High Court litigation, neither Ms Kong nor the Liang family had any beneficial interests in Sanvi. There was no reason for Ms Liang to donate her time and resources to work for non-family shareholders who were conducting a very substantial commercial enterprise which was anticipated to result in profits of around 14 million dollars in the foreseeable future.

[134] There was also no explanation provided to the Authority by Sanvi for it to have appeared to have argued in the High Court that the Liang family had no beneficial interest in Sanvi, while simultaneously arguing in the Authority that Ms Liang had worked for free as Sanvi's General Manager for almost two years, because doing so supported her mother's business interests in Sanvi, as the sole shareholder of Peaceful.

[135] Mr Wu is a very experienced and wealthy international businessperson, who has extensive business interests outside New Zealand. Ms Liang and Mr Wu are not related, so any work conducted for his personal benefit or for entities he owns and operates cannot be said to be part of a “family arrangement.”

[136] Ms Liang’s communications over an extended period of time made it clear she expected to be paid. In a WeChat message dated 1 April 2022, Mr Wu informed Ms Kong that Ms Liang and Mr Chen would be paid “an annual salary” for the work they were doing for Sanvi. Mr Chen confirmed to the Authority that he has been paid for the work he did for Sanvi. He did not work for free.

[137] A multi-million dollar commercial enterprise like Sanvi cannot simply assume that its General Manager (Ms Liang) was working for it as a volunteer, with no expectation of reward.

[138] The evidence established Ms Liang was not a volunteer. She expected to be paid and she was paid. Ms Liang and Mr Wu made an oral agreement in early October 2020 that she would be paid a salary of \$160,000.00 for 35 hours work a week. Mr Wu had also agreed in writing in 2022 that Ms Liang would be paid “an annual salary”. Prior to that he had told Ms Kong that Ms Liang would be paid a “generous salary” if she accepted the General Manager role.

[139] Having established that Ms Liang did not fall within the exception in s 6(1)(c) of the Act because she was not a volunteer, the Authority then had to determine whether she was an employee, as defined by s 6 of the Act.

Was Ms Liang an employee?

What were the terms of the contract?

[140] There was no signed contract or employment agreement. An examination of the terms of the contract therefore focused on what oral agreement the parties reached before their relationship had commenced. An employment relationship can be created by way of an oral agreement, because the fact that there was no written employment agreement did not invalidate the existence of an employment relationship.

[141] The parties discussed Ms Liang being appointed as Sanvi’s General Manager in October 2020. That occurred almost a year after the Sanvi Board had decided to appoint a replacement for Ms Kong, but had been unable to find someone to do so. Prior to

October 2020, Mr Wu told Ms Kong he intended to offer the General Manager role to Ms Liang, and he then did so.

[142] Mr Wu and Ms Liang had verbal discussions about the General Manager role in October 2020. Ms Liang started doing work for Sanvi in October 2020 and Ms Kong had ceased undertaking any General Manager duties by then. Ms Liang therefore cannot reasonably be said to have been “helping her mother”, because her mother was not doing any work in that role.

[143] Ms Liang told the Authority she had verbally agreed with Mr Wu that she would be:

- (a) Required to work under the instruction of Mr Chen;
- (b) Required to work flexible hours to accommodate the time difference between New Zealand and China;
- (c) Responsible for getting the Project ready to restart;
- (d) Responsible for the daily operations of the Project;
- (e) Paid a salary of \$160,000.00 for 35 hours work a week.

[144] Based on the conversation Ms Liang had with Mr Wu in October 2020 and on a subsequent conversation she had with him around late November/early December 2020, Ms Liang arranged for an offer letter dated 15 October 2021 to be prepared by lawyers that had previously acted for Sanvi, along with a draft employment agreement (the first IEA).

[145] Ms Liang sent the offer and employment agreement to Mr Wu in a WeChat message on 16 December 2021, that stated “the contents are consistent with our communications”. The specific terms she highlighted in the WeChat message included:

- (a) The role of General Manager;
- (b) Salary of \$160,000 per annum, payable fortnightly, with PAYE to be deducted;
- (c) Commencement date 1 October 2021;
- (d) KiwiSaver Compulsory Employer Contribution of 3%;
- (e) Sanvi responsible for purchasing personal liability insurance for the General Manager role;

(f) Ms Liang to continue with her studies during the first term of 2021.

[146] Mr Wu responded by saying he would “take a close look tomorrow.”

[147] Mr Wu did not reply to Ms Liang disputing that the first IEA and WeChat message did not accurately record what they had previously discussed and agreed. As a sophisticated businessperson, Mr Wu could reasonably be expected to have taken immediate issue with Ms Liang if she had recorded terms in the first IEA that did not align with the terms of employment they had recently discussed and agreed on.

[148] Accordingly, the oral terms are reflected in:

- (a) What was agreed during Mr Wu’s and Ms Liang’s conversation in early October 2020;
- (b) What was set out in the offer letter dated 15 December 2021 and the first IEA Mr Wu received on 16 December 2021 ;
- (c) The WeChat message Ms Liang sent Mr Wu on 16 December 2021, highlighting the key agreed terms.

What was the parties’ mutual intention (if any)?

[149] On 20 December 2021 Sanvi (via Mr Chen) engaged legal advice about Ms Liang’s employment agreement. This action, along with Ms Liang’s and Mr Wu’s conversations in early October 2020 and in late November/early December 2021, the content of the offer letter and the first IEA dated 15 December 2021, and the WeChat message on 16 October 2021 taken together provided clear evidence that, from the outset, the parties had a mutual intention that they would enter into an employment relationship.

[150] Mr Wu’s subjective assertion, which arose for the first time in connection with these proceedings, that there was never any employment relationship was irrelevant to the status of the relationship. The objective inquiry is on what the parties mutually intended before they entered into a relationship, which was clearly an employment relationship.

[151] No other discussions about any other type of relationship, such as a volunteer or an independent contracting arrangement, ever occurred. Even though the parties did not get to the point where there was a signed employment agreement, the only type of relationship they ever discussed prior to Ms Liang starting work for Sanvi, and over the

entire period Ms Liang claimed she had been employed by Sanvi was an employment relationship. However, that was not determinative of the status of the parties' relationship, as it was just one factor in the overall mix.

[152] Mr Wu told the Authority that he did not agree that Ms Liang would be paid a salary of \$160,000.00 gross per annum. However, Mr Wu also agreed that neither he nor Mr Chen had advised Ms Liang that Sanco/Sanvi did not want to pay her a salary at that level for her role as its General Manager. The first time that information arose was during the Authority's investigation.

How did the relationship operate in practice?

[153] There was obviously an ongoing relationship because Ms Liang took on the role as Sanvi's General Manager from October 2020 until 2 August 2022. Ms Liang's appointment as Sanvi's General Manager was announced to the shareholders in December 2020.

[154] Sanvi's view that there was no employment relationship entered into because the final terms of the employment agreement were not agreed or signed by the parties was not accepted. During the material period Sanvi had treated Ms Liang as its General Manager and had held her out to others as such. Sanvi obtained the benefit of the work she did for it, so it was disingenuous for it to now claim it had no relationship with her, and any work she did only benefited her family, not Sanvi.

[155] Ms Liang functioned as Sanvi's General Manager. She reported to Sanvi via Mr Chen, who was her main designated contact, and to Sanvi's shareholders during weekly meetings. Ms Liang identified tasks that needed to be addressed in order to move the Project forward.

[156] Non-exhaustive examples of the type of work Ms Liang did for Sanvi included:

- (a) Updating the Council consent;
- (b) Relaunching the Project;
- (c) Meeting contractors;
- (d) Preparing progress reports;
- (e) Examples of some (but not all) of the specific reports produced included for Fees; Start Plan; Road Naming; Public Construction; Shared Service

Facility; Shared Costs for Sewerage and Stormwater Facilities;
Estimating Construction Schedule Timetable;

- (f) Supervising the Project;
- (g) Co-ordinating and arranging Project meetings both on and off-site;
- (h) Dealing with onsite operations;
- (i) Engagement with consultants;
- (j) Negotiating with neighbours;
- (k) Attending pre-start meetings with the Council;
- (l) Dealing with the tendering process;
- (m) Weekly reporting to shareholders;
- (n) Attending to site safety issues;
- (o) Attending onsite safety meetings;
- (p) Preparing budget estimates;
- (q) Preparing cashflow estimates;
- (r) Meetings with lawyers, accountants and consultants;
- (s) Signing Chorus contract;
- (t) Frequent engagement by phone, WeChat and email with Mr Chen including late at night.

[157] Ms Liang also responded to all specific requests that Mr Chen and Mr Wu made of her. Ms Liang worked under the direction of Mr Chen, in terms of being required to respond to his queries and meet his demands in a timely manner.

[158] A WeChat message dated 22 October 2021 recorded that Sanvi needed Ms Liang involved in the Project and that she would be “under the command of Mr Chen”, which was consistent with Ms Liang’s evidence about what had been agreed with Mr Wu in October 2020.

[159] Ms Liang produced work to the Authority that she had done for Sanvi starting from October 2020. She had been working as the General Manager, and was recognised as the General Manager by others from October 2020 onwards.

[160] Ms Liang also continued to attend her studies in 2021, while working for Sanvi. That was discussed with Mr Wu in early October 2020, which he had agreed to by offering her the role with the knowledge she was also employed by Infinite and would be continuing her studies. Mr Chen was also aware of these additional commitments Ms Liang had.

[161] In terms of departures from the agreed terms, Ms Liang was not paid for the work she did, so Sanvi did not pay her the Compulsory Employment Contribution to KiwiSaver. Nor did Sanvi obtain personal liability insurance for Ms Liang, on the grounds it was apparently too expensive so would not be purchased until the earthworks had actually started on the Project.

[162] Ms Liang told the Authority that after she had repeatedly raised concerns with Mr Wu about not being paid at all, he agreed she would be paid one year's salary at the end of 12 months' employment. That arrangement diverted from what was recorded in the clause 8 of the IEAs, which required salary to be paid fortnightly into Ms Liang's bank account.

[163] Ms Liang's evidence was supported by the WeChat message Mr Wu sent Ms Kong on 1 April 2022 confirming that Ms Liang and Mr Chen would be paid "in the form of an annual salary" as opposed to "an annual salary". This message was consistent with Ms Liang's evidence that Mr Wu said he would pay her in arrears in a lump sum after 12 months.

[164] The parties, shareholders, the Council, outside contractors and consultants all recognised and treated Ms Liang as Sanvi's General Manager. However, she was not paid for the work she did, other than a \$30,000.00 payment on 8 July 2021 that was described as a "bonus". Sanvi's failure to pay Ms Liang her agreed salary has resulted in these proceedings.

[165] The first stage of the Court of Appeal's two stage test in *Raiser* established that the reality of the situation was that the parties intended for Ms Liang to be employed by Sanvi to work as its General Manager, and that she expected to be paid at the agreed rate of \$160,000.00 gross per annum for 35 hours work per week.¹⁰

¹⁰ *Raiser*, above n6.

Application of the three common law tests

[166] The second stage of the *Raiser* test involved an assessment of the three common law tests.

The control test

[167] The control test considered the level of control Sanvi had over Ms Liang. High levels of control are often indicative of an employment relationship.

[168] The WeChat messages established that Sanvi had a significant degree of control over the work Ms Liang was required to do. She was allocated particular tasks, she had to meet deadlines set by Mr Chen or Mr Wu, she had to obtain Mr Chen's and/or Mr Wu's permission for taking steps such as signing contracts on Sanvi's behalf (such as the Terra Consultants contract).

[169] Mr Chen reviewed and provided feedback and occasionally criticism on Ms Liang's work. She was expected to be available to Mr Chen when he made inquiries of her at times that suited his schedule.

[170] Ms Liang was assigned tasks at the weekly shareholder meetings and had to provide weekly reports of the work she had done and what work she was intending to do. The level of control exercised by Sanvi over Ms Liang was consistent with her role as its General Manager.

[171] The reality was that Mr Wu and his designated representative Mr Chen, exercised a high level of control over Ms Liang's work on Sanvi's behalf. Although Mr Wu told the Authority he was not aware of Ms Liang's daily tasks, because of the weekly reports she gave the shareholder, Mr Wu therefore knew what Ms Liang was working on in any given period, even if he did not know her exact days of work or start and finish times.

[172] Ms Liang had a degree of flexibility in terms of the actual hours and days she worked, provided she worked (or was available to work) for 35 hours a week. This flexibility benefited both parties; Sanvi because it allowed for the time-zone differences between China and New Zealand and Ms Liang because she could continue her studies, other work and her own business interests while working for Sanvi.

[173] This flexibility did not preclude the existence of an employment relationship. Such flexibility is often the feature of modern employment relationships, even though it has historically been viewed as indicative of an independent contracting arrangement.

[174] The control test supported the existence of an employment relationship.

The integration test

[175] The integration test considered how integral Ms Liang's role was to Sanvi's business operations.

[176] Ms Liang's role as General Manager was highly integral to the success of Sanvi's business operations and in particular to it being able to restart and progress the Project. She represented Sanvi when dealing with others, who would have seen her as Sanvi's most senior employee. Ms Liang signing documents and contracts on Sanvi's behalf demonstrated that.

[177] There was nothing that would have alerted others that Ms Liang was not an employee or was not an integral part of Sanvi's business. Mr Wu confirmed when questioned during the investigation meeting that Ms Liang was "part and parcel of Sanvi's operations" and that third parties would see Ms Liang as part of Sanvi, not as an independent third party. In a WeChat message dated 13 July 2021, Mr Wu told the shareholders "we trust her [Ms Liang], and we need her to do this [progress the Project]."

[178] The integration test supported the existence of an employment relationship.

The fundamental/economic reality test

[179] The fundamental/economic reality test considered whether Ms Liang was in reality in business on her own account.

[180] The fact Ms Liang had other businesses she was running, was also employed by Infinite and was undertaking a course of study are factors that would normally tend to weigh against the existence of an employment relationship.

[181] However, the focus needed to be on whether Ms Liang was running her own business regarding the work she did for Sanvi. The evidence established she was not. She did not invoice Sanvi, but expected to be paid a salary. She did not take on any risk

regarding Sanvi, instead being paid only as an employee who was required to work (or be available to work) 35 hours a week.

[182] Ms Liang had no ability to profit from the work she did for Sanvi, or through her own endeavours, other than by receiving her agreed salary. She did not get paid overtime, so could not increase her income/earnings by working longer hours. Ms Liang could not sub-contract Sanvi's General Manager duties out to others to do, as her agreed salary was linked to her personally doing the work the role required.

[183] Ms Liang did not hire her own helpers. She could not refuse to do the work Mr Chen or the shareholders asked her to do or had allocated to her, and her personal performance of the work was a key obligation. Ms Liang did not take any actions regarding the work she did for Sanvi that indicated she was not an employee, but was operating as an independent contractor in business for herself.

[184] The fundamental/economic reality test established Ms Liang was working in the General Manager role as Sanvi's employee. She was not performing the work as someone who was genuinely in business on her own account.

Other relevant factors to consider

Date the development project was relaunched

[185] There was a dispute between the parties over the date the development Project was re-launched. Sanvi said that did not occur until December 2021. However, Ms Liang said that had occurred in December 2020, which was when steps were taken to move the Project forward. Ms Liang cited the work she had done on establishing the fees and costings for the Project and the "Construction Start Plan" she had sent Mr Chen on 19 December 2020.

[186] This dispute could be a matter of semantics. The evidence established Ms Liang had taken numerous steps and actions from December 2020 to December 2021 that were required in order to restart the Project.

[187] These actions included the preparation of various reports and an Estimated Construction Schedule Timetable. Ms Liang had also signed the contract with Terra Consultants for tendering work for the Project and a Chorus agreement in her capacity as Sanvi's General Manager. She had attended various meetings, including with Land

Consultants Group. Ms Laing had attended site inspections and had on site meetings. These were all steps that had to be taken in order to relaunch the Project.

[188] It was therefore likely that Sanvi was referring to “relaunch” to mean the date it had intended to break ground (start the earthworks on site), while Ms Liang was using that term to mean the date from when she started taking the actions needed to move the Project forward. The different meanings each party gave to the term “relaunch” was not relevant to whether or not Ms Liang was an employee, because the evidence proved she had actually been doing work for Sanvi over the period December 2020 to 2 August 2022.

Differing start dates provided by Ms Liang

[189] Sanvi pointed out the different start dates that Ms Laing had referred to during the course of these proceedings.

[190] Ms Liang said that in October 2020 she had entered into an oral agreement with Mr Wu that she would start working for Sanvi, on a salary of \$160,000.00. Ms Liang was unsure of her exact start date, but had started working by December 2020, as her appointment was announced in a weekly meeting in or around December 2020.

[191] Ms Liang said that in mid-2021 she raised with Mr Wu the issue of formalising her employment agreement. She was told to provide him with a draft employment agreement, which she did on 15 December 2021. Mr Wu was presented with a draft offer of employment dated 15 December 2021, which attached the first IEA.

[192] The WeChat message Ms Liang sent Mr Wu that had attached these documents stated:

The contents inside are consistent with our communications:

The job position is general manager, the salary is 160,000 a year, payable fortnightly, starting 01/10/2021.

Employer’s 3% KiwiSaver contribution and PAYE are included in the above salary.

The company shall be responsible to buy the personal liability insurance for the general manager.

Also I’ve inserted a clause that the company is already aware that I’ll continue with my study in the first term of next year contemporaneously.

[193] Mr Wu replied to Ms Liang's WeChat message by saying "...I just saw it now, I'll take a close look tomorrow."

[194] Clause 1 of the first IEA had a commencement date of "1st day of October, 2021". It also (among other things):

- (a) Provided for Ms Liang to be paid fortnightly by direct debit into her nominated bank account (clause 8);
- (b) Stated once signed, it would supersede any pre-existing employment agreement still in effect between the parties (clause 64);
- (c) Included in clause 65 a statement that it was the "entire agreement between the parties and there are no further items or provisions, either oral or written."

[195] Ms Liang told the Authority that the start date of 1 October 2021 had been used in the first IEA because Mr Wu had told her to use that date but he had also verbally promised her she would still be paid for the previous year's work, so she was not concerned about what date was recorded in the employment agreements.

[196] The second IEA was prepared by a lawyer Mr Chen had instructed, and sent to Ms Liang on 2 April 2022. The second IEA stated Ms Laing's employment was "on a fixed term basis". Clause 1 stated that the commencement date for the General Manager role was 1 April 2022 and the end date was 31 March 2023.

[197] On 17 June 2022 Ms Liang sent the third IEA to Mr Chen. The third IEA kept the same clause 1, about the fixed term nature of the employment being from 1 April 2022 to 1 April 2023, but it had also added "or further renewed date" to record when the employment would end.

[198] Ms Liang sent Mr Chen a letter via WeChat on 7 July 2022 that expressed her views on the employment agreement problems.

[199] This letter stated that she had been working for Sanvi since January/February 2021 and that Mr Wu had told her she would be paid from October 2021. Ms Laing also stated that she had been working for Sanvi for "close to a year and a half" without being paid, which had caused her "huge stress". That reference put her start date as around January 2021.

[200] Ms Liang raised a personal grievance with Sanvi on 1 November 2022 which stated her “employment commenced on 2 February 2021” and that she had not been paid since then.

[201] Ms Liang’s statement of problem (SoP) lodged on 22 November 2022 said she had “commenced work from early 2021”. Ms Liang’s SoP also said “my employment commenced on 2 February 2021”.

[202] Ms Liang’s explanation for the dates recorded in the various employment agreements was that these were the dates Mr Wu had chosen, which she had gone along with on the understanding he would still pay her back-dated salary arrears once the employment agreement had been signed. Ms Liang said the date of 1 February 2021 used in the personal grievance letter and the SoP was done by her former lawyer, who had also previously acted for Sanvi.

[203] While the different start dates Ms Liang has used are distracting, they do not undermine the existence of an employment relationship. It is not uncommon for an applicant to tell the Authority that they had started work but had not been paid, prior to the start date recorded in their employment agreement.

[204] Ms Liang explained to the Authority that she had relied on Mr Wu’s promises that she would be paid, because he was like a family member to her. She called him “Uncle” and gave him a high level of respect, which meant she deferred to him and respected his high status and authority.

[205] When this occurred, Mr Wu still had a very close and long-standing business relationship with Ms Liang’s parents. Ms Liang had also personally worked for Mr Wu as an assistant for many years. She said she had no reason to doubt she would be paid in these particular circumstances.

[206] The start date issue is not determinative of the status of the relationship, as the Authority is required to determine the “real nature of the relationship”. That included making findings about when the work had actually started. The evidence established Ms Liang had been performing work for Sanvi from December 2020 to 2 August 2022.

Industry practice

[207] A General Manager who had no beneficial interest in the company they were performing work for would usually be engaged as an employee, not as an independent

contractor. It would also be unusual for a General Manager to work for a valuable property development company they had no financial interest in as a volunteer.

Taxation

[208] No PAYE or other tax has been paid on the \$30,000.00 bonus payment Ms Liang received on 8 July 2021. However, that is a neutral factor, as according to what the parties agreed in early October 2020 Sanvi was responsible for paying PAYE on Ms Liang's remuneration.

[209] What was more relevant was that Ms Liang did not structure her affairs regarding the work she did as Sanvi's General Manager to take advantage of any benefits being self-employed may have given her. She had taken such advantages in respect of other companies she was running, so knew how to do so. The fact Ms Liang did not do that indicated she was likely working for Sanvi as an employee.

Failure to pay salary and other minimum code obligations

[210] Sanvi's failure to pay Ms Liang, or to meet its other minimum code obligations to her, was not indicative of the fact there was no employment relationship. Ms Liang was not a volunteer and Sanvi had agreed she would be paid a salary, before she had agreed to start working for it.

Family relationship argument

[211] Sanvi's argument that the work Ms Liang had done for it from 1 October 2020 to 2 August 2022 as its General Manager had been done for free, as part of a "family business" arrangement, was not accepted. This agreement was based on an unrealistic assumption that was not supported by the evidence.

[212] Ms Liang's family had not asked her to work for free for the family as a favour to them and they did not need her to support their family. Ms Liang's employment as Sanvi's General Manager could not therefore be an example of unpaid work within the context of a family relationship. Ms Liang's expectation that Sanvi would pay her the agreed salary was evident from the available documentation.

[213] Ms Liang is her own person. She was working for a multi-million dollar company (Sanvi), whose 80 percent shareholder (Sanco) was another multi-million dollar international company. She had no family relationship with Sanvi or Sanco.

[214] In his affidavit dated 29 November 2024, which was not lodged with the Authority until 22 January 2025, Mr Wu exhibited a document he had obtained as part of the High Court litigation. Mr Wu said it showed that when Peaceful had purchased the Sanvi shares in May 2021 “the ultimate beneficiary of these shares and their financial benefit was actually the Liang family (including Alina) as the beneficiaries of the Peaceful Trust.” Mr Wu said that while Ms Kong was listed as the ultimate owner herself, she held the shares on trust for her family (herself, husband and daughter (Ms Liang) and son).

[215] The share purchase was disclosed as a potential conflict of interest, because Ms Kong and Ms Liang were directors of Sanvi at the time Peaceful purchased the minority shareholding. The exhibit Mr Wu attached to his affidavit disclosed that Ms Liang was one of the beneficiaries of the Peaceful Trust. The disclosure was signed by Ms Kong and Ms Liang on 1 May 2021.

[216] This connection was too far removed. Ms Liang had never received a financial benefit from Peaceful’s business activities. She was not entitled under the Trust to receive dividends from Peaceful. Ms Liang was not working as Sanvi’s General Manager in the hope that Peaceful would obtain profits from the success of the development of the Project land, which would then be passed to the Trust which would then be disbursed to her as a discretionary beneficiary under the Trust.

[217] Sanvi’s argument that Ms Liang’s work for it was done for free because it was mutually intended that she would financially benefit due to her “family relationship” did not succeed. Ms Liang is not a trustee of the Trust and she has not received any profits from successful projects completed by the Trust.

What was the real nature of the parties’ relationship?

[218] The substance of the parties’ mutual rights and obligations, interpreted objectively, was that the parties were in an employment relationship, as defined by s 6 of the Act. Ms Liang was employed by Sanvi to work 35 hours per week as its General Manager in exchange for the reward of a \$160,000.00 salary per annum.

[219] Ms Liang was not working for Sanvi as a volunteer. She was employed under an oral contract of service (i.e. oral employment agreement) that she had entered into with Mr Wu in early October 2020. The key terms of the parties’ oral agreement were

set out in the WeChat message Ms Liang sent Mr Wu on 16 December 2021, which included the attachments to that message.

[220] The parties' employment relationship ended on 2 August 2022, when Sanvi removed her as a director and failed to provide her with any more work to do after that date.

Costs

[221] Ms Liang as the successful party is entitled to an award of costs in her favour. This matter involved a five-day investigation meeting, so the notional starting point for assessing costs is \$18,500.00 being \$4,500.00 for the first day then \$3,500.00 for each subsequent day of investigation meeting time.

[222] The parties are encouraged to resolve any issue of costs between themselves.

[223] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Ms Liang may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum Sanvi will then have 14 days to lodge any reply memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[224] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual "daily tariff" basis unless circumstances or factors, require an adjustment upwards or downwards.¹¹ The parties should therefore identify any factors they say should result in adjustments being made to the notional starting tariff of \$18,500.00.

Rachel Larmer
Member of the Employment Relations Authority

¹¹ For further information about the factors considered in assessing costs see:
www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1