

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2012] NZERA Auckland 98
5369067

BETWEEN JAMES McCALL
 Applicant

AND QUE WESTGATE LIMITED
 Respondent

Member of Authority: Rachel Larmer

Representatives: Applicant in person
 Respondent in person

Investigation Meeting: 19 March 2012 by telephone conference

Determination: 19 March 2012

DETERMINATION OF THE AUTHORITY

- A Que Westgate Limited (“QWL”) is ordered to pay James McCall, by way of international transfer deposit into his Australian bank account,¹:**
- (a) \$NZ1,000 on or before 17 April 2012;**
 - (b) \$NZ1,000 on or before 6 June 2012.**
- B QWL is also ordered to pay any transaction/transfer fees/costs that may be associated with it making the above payments to an Australian bank account. These must be paid by QWL at the time it makes each of the two payments above.**

Employment Relationship Problem

[1] Mr James McCall and QWL attended mediation and entered into a s.149 Record of Settlement (“RoS”) under the Employment Relations Act 2000. The RoS dated 19 October 2010 was signed by a mediator from the Department of Labour.

¹ The bank account details were provided to Mr Selby during the telephone IM. They were also emailed to him by the SO immediately after the TC IM. He was also provided with Mr McCall’s telephone and email contact details and agreed to contact him directly if there were any difficulties with the international money transfer.

[2] The RoS provided for QWL to pay \$2,000 to Mr McCall. The parties agreed that no payments had been made or received. Mr McCall has now sought a compliance order to compel QWL to pay the money owed under the RoS.

Investigation Meeting

[3] Mr McCall resides in Australia and had no immediate plans to return to New Zealand. Mr Steven Selby, the sole director and shareholder of QWL, lives outside Auckland, and he advised the Authority he was not well enough to travel to Auckland for an investigation meeting (“IM”).

[4] The Authority therefore decided to hold its IM by way of a telephone conference, which was attended by both parties.

Leave to defend this matter

[5] The Respondent did not file a Statement in Reply (“SiR”) within 14 days of being served with the Statement of Problem (“SoP”). It therefore required the leave of the Authority to defend this matter.

[6] QWL was advised that in order to defend this matter it had to file an application for leave to file its SiR out of time and that its application should explain the delay and attach a copy of its proposed SiR.

[7] QWL did not file a SiR but Mr Selby emailed a letter to the Authority on 6 March 2012 which acknowledged no money had been paid as required under the RoS because the business had been trading poorly. He proposed paying \$100 per month to settle the matter. That proposal was not acceptable to Mr McCall.

[8] The Authority directed QWL to file and serve specific information about its financial position and Mr Selby was directed to provide a statement setting out QWL’s full financial position by 12 March 2012. This information was not provided.

[9] On 15 March 2012 Mr Selby emailed the Authority saying that QWL had not traded post 31 March 2012, that it had no assets and had a six figure debt to the Inland Revenue Department, and a combined six figure bank and trade debts.

[10] Because Mr Selby fully and properly participated in the IM today, I have decided to grant QWL leave to defend this matter.

Evidence during IM

[11] During the IM Mr Selby told me that QWL had owned and operated two bars, one which was successful and which was not. The assets and some of the debts of the successful bar were transferred to a new company called Rocksalt Bar Limited (“RBL”) on 31 March 2011. Mr Selby is the sole director and shareholder of RBL.

[12] Mr Selby told me that QWL retained the underperforming bar and liabilities in excess of \$600,000. He said QWL had not been wound up and it is in the process of trying to restructure its debt so that it does not go into liquidation. Mr Selby said that the two bars were separated so that the successful bar was not dragged down by the unsuccessful bar.

[13] Mr Selby said that Mr McCall had not been paid because all available funds had been applied to other creditors. He confirmed that any payments made to other creditors were the result of voluntary agreements to pay, and were not subject to Court order(s). Mr Selby confirmed that none of QWL’s other creditors have taken legal action to enforce their debts.

Orders

[14] During the course of the IM, Mr Selby increased his initial settlement offer. He offered to pay Mr McCall \$NZ1,000 on or before 17 April 2012 and \$NZ1,000 on or before 6 June 2012. He also said he would pay any costs² associated with depositing the funds into Mr McCall’s Australian bank account.

² Bank deposit fees, international transfer/transaction fee, currency conversion fees etc

[15] Mr Selby told me that the funds to settle QWL's debt to Mr McCall would come from him personally and/or from RBL.

[16] Mr McCall accepted that offer.

[17] I am therefore satisfied that QWL has access to funds to enable it to comply with its obligations under the RoS. Accordingly, I order that:

i. Que Westgate Limited ("QWL") must pay Mr McCall by way of international transfer deposit into his Australian bank account³:

- (i) \$NZ1,000 on or before 17 April 2012;
- (ii) \$NZ1,000 on or before 6 June 2012.

(b) must pay any transaction/transfer fees/costs that may be associated with it making the above payments to an Australian bank account. These must be paid by QWL at the time it makes each of the two payments above.

Costs

[18] Neither party was represented so there is no issue as to costs.

Rachel Larmer
Member of the Employment Relations Authority

³ Ibid 1.