

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2013] NZERA Auckland 141
5409901

BETWEEN IOAN-PETREA PAULET
Applicant
AND MURRAY BROOKE
Respondent

Member of Authority: James Crichton
Representatives: Applicant in Person
Respondent in Person
Investigation Meeting: On the papers
Date of Determination: 24 April 2013

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant (Mr Paulet) alleges that he is owed wages from his employment by a company incorporated as One Maintenance Limited. The respondent (Mr Brooke) was a director of One Maintenance Limited (the company) and a 50% shareholder of the company.

[2] Mr Brooke executed a personal guarantee on 14 September 2010 wherein he guaranteed payment of Mr Paulet's outstanding wages to the extent of \$11,689 and further undertook that those wages would be paid "*as quickly as possible, by 30 December 2010. I will pay half owed within four weeks*".

[3] Mr Paulet says that an amount of \$9,839.41 remains outstanding notwithstanding the personal guarantee.

[4] Subsequent to the events just described, the company ceased trading and was placed into liquidation and Mr Brooke was himself adjudicated bankrupt.

[5] It follows that there is no legal basis on which Mr Paulet can look either to the company or indeed to Mr Brooke per medium of a decision of the Employment Relations Authority.

[6] Mr Paulet can proceed against the liquidated company if the liquidator agrees or the High Court approves the action.

[7] Similarly, if Mr Paulet wishes to progress his claim against Mr Brooke personally, in reliance on the personal guarantee, he can only do that by making a claim against the bankrupt estate of Mr Brooke. If Mr Paulet wishes to register a claim against the bankrupt's estate he must do that by completing the appropriate claim form provided by the Insolvency and Trustee Service of the Ministry of Business, Innovation and Employment.

Determination

[8] There is no legal basis on which Mr Paulet's claim can proceed in the Authority's jurisdiction, either against Mr Brooke or against the company, One Maintenance Limited.

[9] Mr Paulet may have rights in another jurisdiction, as described earlier in this determination, but the Authority has no power to grant the relief sought and Mr Paulet's claim must, in consequence, be dismissed.

James Crichton
Member of the Employment Relations Authority