

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2017] NZERA Christchurch 39
3000034

BETWEEN DAVID JOHN ROBINSON
 Applicant

A N D EVERLAST DESIGN LIMITED
 Respondent

Member of Authority: Helen Doyle

Representatives: Applicant in person
 No appearance by or on behalf of Respondent

Investigation Meeting: 17 March 2017 at Christchurch

Date of Determination: 21 March 2017

DETERMINATION OF THE AUTHORITY

- A. Everlast Design Limited is ordered to pay to David John Robinson \$2288.44 gross (\$1607.42 net) being unpaid wages and holiday pay together with reimbursement of the lodgement fee of \$71.56.**

Employment relationship problem

[1] David Robinson was employed by Everlast Design Limited from 15 April 2016 to on or about late June 2016 as an architect. He was party to a written individual employment agreement with Everlast Design Limited signed on 14 April 2016.

[2] Mr Robinson says that he has not been paid his final pay which includes holiday pay. He seeks wages and holiday pay from Everlast Design Limited in the

gross amount of \$2,288.44 (\$1,607.42 net) together with his lodgement fee in the sum of \$71.56.

[3] Everlast Design Limited (Everlast Design) is a duly incorporated company having its registered office in Christchurch and carrying on the business of provision of architectural services. Its sole director is Dillon Lewis.

[4] Everlast Design has taken no steps in this process. There was no attendance on behalf of the company at a telephone conference scheduled for 22 February 2017 with the Authority. I am satisfied that an email sent to Mr Lewis confirming the time of the telephone conference was read as there is a read receipt confirmation on file.

[5] When the Authority officer attempted to call Mr Lewis on a number provided by Mr Robinson on the day of the telephone conference there was a disconnected signal. The Authority proceeded to set the matter down for an investigation meeting.

[6] There was clarification during the telephone conference about an additional payment sought for an invoice submitted on 1 August 2016 to Everlast Design by Mr Robinson. Mr Robinson said that he entered into a new agreement after the employment relationship ended with Everlast Design to complete work on a contracting basis and a new hourly rate was negotiated. Mr Robinson accepted that the Authority did not have jurisdiction to deal with that matter as it was not work undertaken in an employment relationship. Mr Robinson said that he had apportioned two payments of \$200 each received in September and October toward the invoice for work done as a contractor.

[7] The notice of direction prepared after the telephone conference set out the matters discussed. It confirmed Mr Robinson was claiming \$1607.42 net together with his filing fee of \$71.56, and that the Authority had no jurisdiction in relation to the work performed as a contractor.

[8] I have on my file an affidavit from a process server confirming that he served a person who identified himself as Dillon Lewis, at the registered office and address for service of Everlast Design, with the notice of direction, notice of investigation meeting and statement of problem on 2 May 2017.

[9] I was satisfied therefore that the respondent has had notice of the application, the notice of direction and the investigation meeting time and date.

[10] On the date of the investigation meeting I delayed the start time for about five minutes to enable an appearance on behalf of Everlast Design in the event that there was some unforeseen delay. There was no appearance and no reason advanced as to why that may be so. I proceeded under clause 12 of the Second Schedule to the Employment Relations Act 2000 (the Act) to hear evidence from Mr Robinson.

Determination

[11] Mr Robinson was given a series of payslips at the end of the employment relationship. The payslip for the final period of employment for the pay period 20/06/16 – 26/04/16, on its face, looks like it had been paid. Mr Robinson confirmed in his evidence that he had not been paid the amount on the final payslip. He said that for an extended period of time after the relationship had terminated he had been in communication with Mr Lewis asking for payment of the amount and there is some communication attached to the statement of problem which confirms that. Mr Robinson said that he had been promised payment over an extended period of time by Mr Lewis but that had not eventuated.

[12] Mr Robinson confirmed that he had checked his bank accounts shortly before the investigation meeting and no payment had been received.

[13] I am satisfied that the amount in the final payslip remains unpaid and is due and owing in the sum of \$2,288.44 gross (\$1,607.42) net. The gross amount is \$1232 being ordinary time worked of 40 hours at the rate of \$30.80 and holiday pay of \$1,056.44.

[14] I order Everlast Design Limited to pay to David John Robinson unpaid wages and holiday pay in the sum of \$2,288.44 gross or \$1,607.42 net.

Costs

[15] Mr Robinson was not represented but is entitled to reimbursement of his lodgement fee. That is in the sum of \$71.56.

[16] I order Everlast Design Limited to reimburse David John Robinson in the sum of \$71.56 for his lodgement fee.

Helen Doyle
Member of the Employment Relations Authority