

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 363
3378643

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| | BETWEEN | SANVI PROPERTIES LIMITED Applicant |
| | AND | ALINA LIANG Respondent |
| Member of Authority: | Rachel Larmer | |
| Representatives: | William Fotherby and Nicola Kang, counsel for the Applicant Claire Mansell, counsel for the Respondent | |
| Investigation: | On the papers | |
| Information provided: | 15 May and 13 June 2025 from the Applicant 22 May 2025 from the Respondent | |
| Determination: | 24 June 2025 | |

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

Removal application

[1] The applicant, Sanvi Properties Limited (Sanvi), has applied to remove Ms Alina Liang's, claims in matter AEA 3200740 to the Employment Court in the first instance.

[2] Sanvi relied on two of the four potential grounds for removal in s178(2) of the Employment relations Act 2000 (the Act), namely that:

- (a) The Employment Court already had proceedings involving these parties before that involved similar or related issues;¹

¹ Section 178(2)(c) of the Act.

(b) In all the circumstances, removal was warranted.²

[3] Ms Liang advised the Authority that she did not consent to removal, but that she did not wish to be heard on the removal application.

Preliminary determination and challenge

[4] Ms Liang said she was employed as Sanvi's General Manager to progress a multi-million dollar property development it had at 131A Clark Road in Hobsonville, Auckland (the Project). Sanvi agreed that Ms Liang had been appointed as its General Manager, but it claimed she had worked for it on a voluntary (unpaid) basis in order to benefit her family because they had a financial interest in the Project succeeding.

[5] The parties agreed that Ms Liang's claim she had been employed by Sanvi as its General Manager from December 2020 to August 2022 should be dealt with as a preliminary jurisdiction issue.

[6] The Authority held a five day in-person investigation meeting in August and September 2024 to determine the status of the parties' relationship. Sanvi's two witnesses reside in China, so they attended the investigation meeting by AVL.

[7] A Mandarin interpreter was required for all of the evidence heard during the preliminary investigation meeting, as Sanvi's witnesses did not speak English. The Authority received more than 700 pages of documents for the investigation on the preliminary jurisdiction issue.

[8] A preliminary determination dated 5 March 2024 resolved the disputed relationship status, and therefore jurisdiction issues, in Ms Liang's favour.³ Sanvi challenged that determination on a de novo basis, but the challenge has not yet been set down for a hearing by the Employment Court.

² Section 178(2)(d) of the Act.

³ *Liang v Sanvi Properties Ltd* [2025] NZERA 134.

Relevant background

The parties and their witnesses

[9] Ms Liang is the applicant in the substantive matter AEA 3200740 and she is the respondent in this removal application. Ms Kong is Ms Liang's mother and Mr Liang is her father.

[10] 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.

[11] 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.

[12] 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.

[13] 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.

[14] Mr Wu and Mr Chen both reside in China and they are experienced and successful international businesspersons.

[15] Mr Chen oversees Mr Wu's funds and businesses all over the world. Mr Chen has been the primary point of contact for all funding related matters regarding Mr Wu's investments since 2018. Mr Chen is a highly trusted and sophisticated financial manager of Mr Wu's global interests. Mr Chen was authorised to act on Mr Wu's behalf and under his delegated authority. Mr Chen would convey Mr Wu's views and decisions on business related matters to others who had sought or needed Mr Wu's input.

[16] 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 regarding Sanvi's General Manager role to Mr Chen to attend to on Sanvi's behalf.

[17] Ms Liang was one of Sanvi's directors from 9 February 2021 to 2 August 2022. Ms Kong was a Sanvi director from its incorporation on 24 July 2015 to 2 August 2022. Ms Kong was employed as Sanvi's General Manager from its incorporation in July 2015 until she resigned in August 2018.

Ms Liang's substantive claims

[18] Ms Liang's substantive claims included that she was owed wage arrears for working as Sanvi's General Manager from December 2020 to August 2022, because she had not been paid at all and had not received any of the statutory entitlements that applied to all employees. Ms Liang also said Sanvi failed to provide her with a signed employment agreement and that it constructively unjustifiably dismissed her in early August 2022.

High Court litigation

[19] 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 and Mr Liang, Ms Kong, Ms Liang, Infinite and Peaceful. The Authority was told that these High Court proceedings involved disputes over the ownership of shares in Sanco and Peaceful.

[20] 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). However, Ms Liang believed that Sanvi has failed to pay her salary because of the unresolved dispute between Sanvi and her parents. Sanvi denied that, and said it believed Ms Liang's employment claims had been made to exert pressure on it regarding the High Court litigation.

Long standing relationship between Mr Wu and the Liang family

[21] Mr Wu and Ms Liang's parents have had a longstanding business relationship that dates back to the late 2000s. They have carried out several successful property developments in Auckland together, via entities they were closely involved with. Mr Wu and Ms Liang's parents have also acquired other properties together through entities they control or are closely associated with. Mr Wu said he had provided the funds and Ms Liang's parents had managed the projects.

[22] Ms Liang was employed by Infinite Voyage Investment Limited (Infinite) from 9 November 2017 to 16 December 2021, on a salary of \$500.00 per week. Infinite was created by Ms Liang's parents and Mr Wu as a vehicle for property developments. Ms Liang also worked as Mr Wu's personal assistant over the same period she was employed by Infinite.

[23] Ms Liang told the Authority that because of Mr Wu's longstanding and close association with her parents he was like "an uncle" to her, so she deferred to him as a sign of respect. That meant she did not feel able to press him regarding Sanvi's failure to provide her with a written employment agreement or regarding his decision to pay her salary in a lump sum at the end of 12 months.

The Liang family's interests

[24] Sanvi claimed 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 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, her husband their son and Ms Liang).

[25] Ms Liang's parents and Ms Liang denied that she had worked for Sanvi without payment to in order to benefit them, or their family or family trust. Ms Liang's parents had not asked her to help them with the Project and they had not needed her help. Ms Liang had lived and worked on her own since 2018. Her parents were successful property developers so did not need her to contribute to the family's finances.

The Authority's investigation

[26] This removal application was determined 'on the papers'.

[27] A case management conference (CMC) was held on 25 March 2025 to discuss progressing Ms Liang's substantive claims. A challenge had not yet been lodged when the CMC was held, but Sanvi indicated a de novo challenge was likely.

[28] The possibility of removal (among other things) was discussed during the CMC. The parties took some time after the CMC to discuss matters to see if a way forward could be agreed, in light of the various options the Member had raised with the parties during the CMC.

[29] Sanvi's de novo challenge was lodged on 2 April 2025. It's removal application followed on from the matters that were discussed in some detail during the CMC. Because the parties had addressed the Authority on removal issues during the CMC, the Authority did not require the parties to lodge evidence or submissions, although the parties were given an opportunity to do so had they wanted to.

[30] The Authority had sufficient information from prior involvement in the parties' issues to be able to determine removal without the need for the parties to incur additional legal costs. Accordingly, neither party elected to lodge evidence or submissions.

Relevant law

[31] Section 178 of the Act deals with removal of matters from the Authority to the Employment Court to hear and determine without the Authority first investigating. Section 178(2) of the Act sets out four possible grounds for removal, namely:

- (a) An important question of law is likely to arise other than incidentally;⁴
- (b) The case is of such nature and of such urgency that it is in the public interest that it be removed immediately to the Court;⁵
- (c) The Court already has proceedings before it between the same parties which involve the same or similar or related issues;⁶

⁴ Section 178(2)(a) of the Act.

⁵ Section 178(2)(b) of the Act.

⁶ Section 178(2)(c) of the Act.

- (d) The Authority believes that in all the circumstances the Court should determine the matter.⁷

[32] The Court of Appeal in *A Labour Inspector v Gill Pizza Ltd & Others* recognised that removal under s 178(1) of the Act is “contemplated in relatively limited circumstances, with particular caution expected in cases that have not been fully investigated by the Authority”.⁸ However, that statement did not apply an additional gloss to s 178 of the Act, which expressly recognised that removal to the Employment Court in the first instance would be appropriate for some cases.⁹

[33] The Employment Court in *Jackson v The Aorere College Board of Trustees* recognised that the Act “generally requires proceedings to be filed in the Authority, and for matters to be dealt with in that forum with rights of challenge to the Court”.¹⁰ However, the Act recognises there will be some limited circumstances where matters may be appropriately removed to the Court in the first instance, as identified in s 178(2) of the Act.

[34] At least one of the four possible grounds of removal must be met before the Authority may remove a matter to the Court. Once the removal criteria has been met, the Authority must exercise its removal discretion.

[35] There is no presumption either way for or against removal once a ground for removal has been established.¹¹ The Authority retains a residual discretion to decline removal, even if one or more of the s 178(2) grounds for removal have been established.

Issues

[36] The following issues are to be determined:

- (a) Have any of the grounds for removal in s 178(2) of the Act been established?

⁷ Section 178(2)(d) of the Act.

⁸ *A Labour Inspector v Gill Pizza Ltd & Ors* [2021] NZCA 192.

⁹ *Pilgrim v Overseeing Shepherd* [2024] NZEmpC 146.

¹⁰ *Jackson v The Aorere College Board of Trustees* [2021] NZEmpC 109.

¹¹ *Johnston v Fletcher Construction Company Ltd* [2017] NZCA 192.

(b) If so, should the Authority exercise its discretion not to remove this matter to the Court?

(c) What if any costs should be awarded?

Have any of the s 178(2) grounds for removal been established?

Section 178(2)(c) of the Act – does the Employment Court currently have the same, similar or related matters before it?

[37] Section 178(2)(c) of the Act requires the Court to already have proceedings before it between the same parties which involved the same, similar or related issues.

[38] That ground was established. Sanvi's de novo challenge is currently before the Employment Court. The challenge involves sufficiently similar issues to the substantive claims to meet the s 178(2)(c) ground for removal, because both required an examination of what work Ms Liang had done, when and on whose instructions.

[39] The practical effect of the similarity in issues meant that much of the same evidence that would be heard on the preliminary jurisdiction issue would also resolve her wage arrears and breach of minimum code legislation claims. This was discussed with the parties during the CMC.

[40] The preliminary jurisdiction issues currently before the Court were an intrinsic part of the factual matrix relating to the substantive claims, so were sufficiently the same or similar to warrant removal.

[41] Sanvi's de novo challenge involved the same, similar or related issues to those being investigated by the Authority in Ms Liang's original statement of problem. It would therefore be more efficient and beneficial for the Court to have the entire matter before it when addressing the challenge rather than just the disputed jurisdiction issues.

[42] This ground for removal was therefore established.

Section 178(2)(d) of the Act – was the Authority of the opinion the Court should determine the matter?

[43] Section 178(2)(d) of the Act reserves the Authority a discretion to determine that a matter should be determined by the Employment Court in the first instance.

[44] The nature of the case, the entrenched views of the parties, the type of legal arguments and the significant money at stake meant that any substantive determination of the Authority was likely to be subject to challenge in the Employment Court.

[45] While that is normally a neutral factor in removal applications, in this particular case there would likely be considerable additional delay in having Ms Liang's claims finally determined, to the point where (if successful) she was in a position to be able to recover any monetary remedies she may be awarded.

[46] The parties agreed the substantive matter should remain on hold pending the outcome of Sanvi's challenge to the Authority's jurisdiction. That was an appropriate position to adopt, so neither party incurred additional legal costs until the Court had resolved whether or not the Authority had jurisdiction over Ms Liang's claims.

[47] If the Authority's preliminary determination was upheld, then the matter would need to be scheduled for a substantive investigation meeting. That was unlikely to occur before the second half of 2026, at the earliest.

[48] A delay of such magnitude was undesirable as the case involved key disputed facts that related to what was said, done and agreed by the parties over the October to December 2020 period. That would be at least six years prior to a substantive investigation meeting by the Authority and possibly even longer, depending on when the Court's decision on the challenge is released and in light of the Authority's workload and setting down schedule during the latter part of 2026.

[49] If the Court agreed with the Authority that it has jurisdiction, then Ms Liang is looking at an award in her favour for the wage arrears and other unpaid statutory entitlements elements of her claims that will start in the six figures, before even factoring in what a successful unjustified dismissal claim could be worth in remedies. There is potentially hundreds of thousands of dollars at stake in this matter, so it is not in the overall interest of justice for a final substantive outcome to be delayed for what will almost certainly be a lengthy period of time.

[50] If a challenge to the Authority's substantive determination occurred (which based on the currently available information was likely given how entrenched the parties are), then the parties would likely have to wait until 2027 to get closure, possibly later depending on when the Court issued its decision on a challenge to the substantive

determination. That would be seven years after the terms of the employment relationship were first discussed between the parties.

[51] The timeline involved with the Authority keeping the substantive matter is in stark contrast to the likely timeline if this matter was removed, so the Court could have the option of hearing the entire case in one hearing.

[52] The parties would achieve a far timelier and more cost effective final outcome if the Employment Court was able to deal with Ms Liang's substantive claims in the first instance, in addition to Sanvi's challenge to the Authority's determination.

[53] One of the main purposes of the Authority conducting its investigation first was to use its flexible investigation powers to provide a speedy low cost forum for resolving the parties' employment relationship problems. To some extent those tools have been brought to bear on the parties by the Authority during the preliminary investigation meeting held last year and during the CMC held in March this year, so the parties have not been deprived of those opportunities.

[54] The substantive claims cannot be progressed by the Authority until the current challenge has been dealt with by the Court. It would therefore be the most efficient use of the parties' time and resources for all matters to be before the Employment Court from the outset. That would avoid the necessarily long involved, drawn out, costly process that would necessarily follow on from the Authority keeping the substantive matter.

[55] In such circumstances removal was preferable, given two of the four potential grounds for removal in s 178(2) of the Act had been established for removal to occur.

[56] While none of these factors identified above in themselves would have established a discrete ground for removal, the Authority's discretion under s 178(2)(d) of the Act allowed it to assess a wide range of factors to ensure that the overall interests of justice were met in each particular case in which removal was being considered.

[57] The factors referred to under the s 178(2)(d) of the Act ground for removal are viewed as discretionary factors that it was appropriate for the Authority to assess when exercising its removal discretion.

[58] The ground for removal in s 178(2)(d) of the Act has been made out.

Findings on whether any of the s 178(2) grounds for removal were established

[59] Two of the grounds for removal specified in s 178(2) of the Act were established, namely:

- (a) Section 178(2)(c) of the Act – the court has before it proceedings involving the same parties or the same, similar or related issues; and
- (b) Section 178(2)(d) of the Act - the Authority was of the opinion that in all the circumstances the court should determine this matter.

Should the Authority exercise its discretion against removal?

[60] Having concluded that two of the four grounds for removal in s 178(2) of the Act had been met, the Authority still had to consider whether to exercise its discretion against removing this matter to the Court.

[61] Having done so, the Authority was satisfied there was no good reason to decline Sani's application for removal, and there were good reasons for it to be removed.

Outcome

[62] Sanvi's removal application succeeded. Accordingly, Ms Liang's original claim AEA 3200740 is to be removed to the Employment Court.

What costs should be awarded?

[63] Costs should lie where they fall because neither party incurred the costs associated with lodging evidence or submissions.

Rachel Larmer
Member of the Employment Relations Authority