

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2019] NZERA 410  
3058574

BETWEEN

ANOOP SINGH  
APPLICANT

AND

FADI ALHADDADIN  
RESPONDENT

Member of Authority: Eleanor Robinson

Representatives: Matt McCarten, Advocate for the Applicant  
Vance Leach, Counsel for the Respondent

Investigation Meeting: On the papers

Determination: 12 July 2019

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**FIRST DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] The Applicant, Mr Anoop Singh, is claiming that he was unjustifiably dismissed by the Respondent, Mr Fadi Alhaddadin.

[2] Mr Alhaddadin claims he was not the employer of Mr Singh, but that JH Limited t/a Cheers Liquor is the correct identity of the Employer of Mr Singh.

**Note:**

[3] The parties agreed to the Authority determining this issue ‘on the papers’ based on the Statements of Problem and in Reply, affidavit evidence, the written submissions, and documentation received from the parties.

**The issue**

[4] This determination addresses as a preliminary issue whether or not Mr Alhaddadin or JH Limited t/a Cheers Liquor was the employer of Mr Singh in the period 1 December 2014 to 28 June 2018.

## **Background**

[5] J H Limited, trading as Cheers Liquor, is a limited registered company and Mr Alhaddadin is the sole director.

[6] Mr Singh was employed as a Store Manager on 26 May 2016 until 28 June 2018 when he was dismissed. He had been issued with an individual employment agreement (the Employment Agreement which he signed on 24 May 2016). Mr Alhaddadin's name was inserted in the section identifying the parties as the Employer Mr Alhaddadin had also signed it.

[7] Mr Singh claims that Mr Alhaddadin was his employer during the time he was employed as Store Manager at Cheers Liquor. Mr Alhaddadin denies that he was the employer, and claims that this was JH Limited.

[8] Both parties have submitted documentation in support of their claims as to the identity of the employer.

## **Was Mr Alhaddadin or JH Limited the Employer of Mr Singh?**

[9] In proceeding to determine the identity of the employer of Mr Singh I apply s.6 of the Employment Relations Act 2000 (the Act) which provides:

s.6 Meaning of employee:

(1) In deciding ... whether a person is employed by another person under a contract of service, the .... Authority-... must determine the real nature of the relationship between them.

(3) For the purposes of subsection (2)... or the Authority-

(a) must consider any relevant matters, including any matters that indicate the intention of the parties

(b) is not to treat as a determining matter any statement by the persons that describes the nature of their relationship

[10] In determining this matter I take into consideration all relevant matters which have a bearing on identifying the employer.

## *Employment Agreement*

[11] Mr Alhaddadin stated in his sworn affidavit dated 25 June 2019 that he understood that the Employment Agreement had been prepared by a lawyer on Mr

Singh's behalf and it had been based on the template employment agreement to be found on the Ministry of Business, Innovation and Employment website.

[12] He had not taken legal advice prior to signing the Employment Agreement and signed it as presented. He had however created a cover sheet which he attached to the Employment Agreement prior to returning it to Mr Singh. The cover sheet identified the Employer as JH Limited t/a Cheers Liquor.

[13] An employment agreement, although persuasive evidence of the identities of the parties to an employment relationship is not of itself determinative and I therefore turn to consider any other relevant matters which would identify the intention of the parties.

#### *IRD Records*

[14] The IRD records submitted by the Respondent show Mr Singh as an employee of JH Limited.

[15] IRD records submitted by Mr Singh for the period 1 April 2015 – 31 March 2018 also state his employer was JH Limited.

[16] A letter submitted by the Respondent written to JH Limited by a Revenue Assessment Officer and dated 27 May 2019 states:

In responses to your request of 21 May I can confirm that the returns filed with Inland Revenue show that employee Anoop Singh was employed by the company JH Limited for the period June 2015 to October 2018 and deducted PAYE from his wages.

#### *Bank Statements*

[17] The bank statements filed by the Respondent show regular payments being made to Mr Singh from JH Limited.

[18] The two bank statements for his personal account filed by Mr Singh for the period 2018 show wage payments into his bank account from the payee JH Limited during 2018.

#### *Work Visa*

[19] The Work Visa issued by Immigration New Zealand on 30 June 2017 states that it was valid from 30 June 2017 until 30 June 2019, and states: "The holder may only work as Store Manager in Auckland for JH Limited T/A Cheers Liquor".

*Emails from the Applicant*

[20] The Respondent has also submitted emails which Mr Singh sent to Mr Alhaddadin which it submits are an acknowledgment by Mr Singh that JH Limited was his employer.

[21] The email dated 11 May 2018 sent by Mr Singh states: “I have enjoyed working at JH LTD T/A Cheers Liquor for the past three years”

[22] The email dated 27 June 2018 from Mr Singh states: “Could you please send me a new contract. with those changes so I can continue my work with JH LTD”.

[23] I find that the evidence as submitted by the parties as to the identity of the employer supports the conclusion that this was JH Limited t/a Cheers Liquor and not Mr Alhaddadin which employed Mr Singh..

[24] I determine that JH Limited is the correct identity of the employer of Mr Singh during the period 26 May 2016 until 28 June 2018.

[25] Although I accept from the evidence of the emails sent to Mr Alhaddadin that Mr Singh regarded him as a controlling influence, it is well established that a company is a separate legal identity in its own right.<sup>1</sup>

[26] A director cannot be held that personally liable for the actions taken by a company pursuant to s 15 of the Companies Act 1993, unless he or she was involved in a default for payment in wages or other money due to the employee pursuant to s 142Y of the Employment Relations Act 2000 (the Act) which states:

- (1) A Labour Inspector or an employee may recover from a person who is not the employee’s employer any wages or other money payable to the employee if—
  - (a) there has been a default in the payment of wages or other money payable to the employee; and
  - (b) the default is due to a breach of employment standards; and
  - (c) the person is a person involved in the breach within the meaning of section 142W.

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<sup>1</sup> Saloman v Saloman and Co [2897] AC 2

[27] . In this case the claim made by Mr Singh is in respect of unjustifiable dismissal and therefore I find that s142Y of the Act is not applicable.

### **Next Steps**

[28] I have found that Mr Fadi Alhaddadin is the not the correct Respondent in this case. Consequently if Mr Singh wishes to pursue his claim he is to file an Amended Statement of Problem identifying JH limited as the Respondent.

### **Costs**

[29] Costs are reserved. The parties are encouraged to agree costs between themselves. If they are not able to do so, the Respondent may lodge and serve a memorandum as to costs within 28 days of the date of this determination. The Applicant will have 14 days from the date of service to lodge a reply memorandum. No application for costs will be considered outside this time frame without prior leave.

[30] All submissions must include a breakdown of how and when the costs were incurred and be accompanied by supporting evidence.

**Eleanor Robinson**  
**Member of the Employment Relations Authority**