

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Hai Yan Sun (Maggie) (Applicant)
AND Snapper Investments Ltd (First Respondent)
AND Ashley Business Investments Ltd (Second Respondent)

REPRESENTATIVES Hai Yan Sun (Maggie) In person
No appearance for the respondents

MEMBER OF AUTHORITY R A Monaghan

INVESTIGATION MEETING 11 November 2005

DATE OF DETERMINATION 22 November 2005

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Maggie Sun seeks an order for payment of wages not paid to her for her last week of employment, as well as holiday pay not paid in respect of her employment. The gross amounts she seeks are \$865.38 as unpaid wages and \$1,732.70 as holiday pay.

[2] Ms Sun worked as administration and accounts manager for a newspaper named the Tourist Times, commencing 12 August 2004. Although there was no written employment agreement her ostensible employer was Tourist Times (Auckland) Limited – a company which changed its name to Snapper Investments Limited on 31 May 2005. A closely associated company, Outlook New Zealand Limited, changed its name to Ashley Business Investments Limited on the same date. The Tourist Times newspaper has been renamed ‘Outlook NZ’ and continues to be published.

Employer’s participation in the investigation process

[3] Gary Donald Ashley is the sole director and shareholder of Snapper Investments Limited, and of Ashley Business Investments Limited. The companies were served with Ms Sun’s statement of problem on 25 and 26 August 2005 respectively, and one of them was served again on 9 September 2005. Covering letters advised of the companies’ obligations regarding the filing of a statement in reply. No statement in reply has been filed.

[4] I asked the Authority’s support staff to convene a conference call between Ms Sun and Mr Ashley. A call was arranged for 10 am on 18 October 2005. The support officer attempted to connect Mr Ashley to the call, was told he was available, the call was put through, and there was no answer. The conference call did not go ahead, although Mr Ashley subsequently informed the Authority he had been ‘around the office’ that day.

[5] In those circumstances I sought to set the matter down for an investigation meeting. During a discussion with Mr Ashley on 27 October 2005, and at my instruction, the support officer offered Mr Ashley a choice of three possible dates. Mr Ashley told the support officer he did not know whether he would be available, but would call the support officer back the following Tuesday, 1 November 2005. I instructed the support officer to advise Mr Ashley that was not an acceptable response, and that if the suggested dates were unsuitable he should suggest suitable dates. At Mr Ashley's request the support officer confirmed the Authority's position in a letter dated 27 October 2005. The letter was sent to the offices of Ashley Business Investments Limited by courier post, and was received there.

[6] Mr Ashley did not respond. Accordingly a meeting was set down for 11 November 2005. I am satisfied the notice of meeting was served on Ashley Business Investments Limited. Neither Mr Ashley nor a representative attended.

[7] I record this information in case this matter comes before the Employment Court, and with reference to the possibility of a report being requested under s 181 of the Employment Relations Act 2000.

[8] Further, because of the above, I have proceeded to determine this matter without the participation of Mr Ashley or his companies.

Orders for payment

[9] Ms Sun resigned from her employment by giving two weeks' written notice of her intention in a letter dated 24 May 2005, addressed to both companies. Mr Ashley gave her an undated cheque for her final payment, incorporating wages and holiday pay less tax, on or about 15 June 2005. He asked her to hold the cheque, and said he would contact her early the following week about when to bank it. The delay was to enable him to deposit the necessary funds.

[10] Ms Sun did not receive the expected call, and Mr Ashley did not respond to her attempts at telephone contact. He did, however, reply to an email message from Ms Sun, dated 22 June 2005. He told Ms Sun she could not bank the cheque on 23 June, but was sure he could 'clear it next week'. He said he would phone her 'on Tuesday'. Again, the call did not come.

[11] This time Ms Sun dated the cheque 29 June 2005 and banked it. It was returned marked 'refer to drawer'. Ms Sun attempted to bank it again on or about 12 August 2005, and it was again returned marked 'refer to drawer'.

[12] Thus there is no dispute that the money is owed, or about how much is owed. Mr Ashley has simply made no attempt to ensure Ms Sun was paid.

[13] As to which company is liable for payment, where one or more companies are closely integrated it is open to the Authority to treat them as one employer entity for the purposes of the employment relationship¹. Here, the sole director and shareholder of both companies was the same individual. Both companies were concerned with the publication of the newspaper known first as Tourist Times and later as Outlook NZ. Ms Sun was employed to work on that newspaper. It is therefore appropriate that both companies be treated as one employer entity in respect of Ms Sun's employment.

¹ *New Zealand Seafarers Union Inc v Silver Fern Shipping (No 2)* [1998] 3 ERNZ 786.

[14] Accordingly Snapper Investments Limited and Ashley Business Investments Limited are ordered jointly and severally to pay to Ms Sun:

- (a) \$865.38 as unpaid wages; and
- (b) \$1,732.70 as holiday pay

Costs

[15] The companies are also ordered jointly and severally to reimburse Ms Sun for the filing fee of \$70.

R A Monaghan
Member, Employment Relations Authority