

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
ER AUTHORITY AUCKLAND OFFICE**

**BETWEEN** Lina Wu and Huiguan Li  
**AND** Natasha Jiao  
**REPRESENTATIVES** Kun Wu, Counsel for Applicant  
Respondent in Person  
**MEMBER OF AUTHORITY** Leon Robinson  
**INVESTIGATION MEETING** 27 April 2006  
**DATE OF DETERMINATION** 28 April 2006

**DETERMINATION OF THE AUTHORITY**

**The Problem**

[1] The applicants claim they are owed wages by the respondent.

[2] The applicants did not attend the Authority's scheduled investigation meeting because they are advisedly in China on business. Mr Kun Wu, who is the applicant Lina Wu's father, attended as the applicant's representative. He attempted to give their evidence but I refused to allow him to do so. The applicants' decision not to attend the Authority's investigation meeting is not only discourteous but also very unwise because without their evidence, the Authority's investigation is seriously constrained. The result is that the respondent's evidence is taken unchallenged.

[3] Nonetheless, I proceeded to explore the issues with both Ms Jiao and Mr Kun Wu. With the assistance of an interpreter, I have been able to determine the matter on the basis of their sworn evidence and relevant documentation without requiring any further assistance from the applicants.

**The issues**

[4] The question of liability to pay wages is premised on whether the applicants were employees. I have concluded that the applicants were not employed by Ms Jiao.

**The facts**

[5] In March 2003 Ms Jiao saw an advertisement for home renovation in a Chinese newspaper. Mr Kun Wu denied placing the advertisement for the advertising company of which he was a director. He disavowed any knowledge of the advertisement or the telephone numbers specified. He said his boarder was responsible. It turns out the said boarder is his son and the said telephone number his own residential home telephone number.

[6] Equally Mr Kun Wu denied conversing with Ms Jiao when she responded to the advertisement although he had no difficulty whatsoever conceding he had signed a written agreement with Ms Jiao to carry out renovation work at her property. That written agreement

is dated 19 March 2003 and is signed by both Ms Jiao and Mr Kun Wu as director for the company Hong Yu Company Limited.

[7] The interpreter has translated the agreement into English and both Ms Jiao and Mr Kun Wu take no issue with the translation presented to the Authority. There is nothing in the agreement which evidences an employment relationship between Ms Jiao and the applicants.

[8] Mr Kun Wu told me that on 9 April 2003, he said he agreed that Ms Jiao could personally employ the applicants and that the written agreement was no longer operative as of that date.

### **The merits**

[9] I do not accept what Mr Kun Wu says. Firstly, the agreement is merely an ordinary commercial building contract specifying progress payments and the work that is to be carried out. There is nothing in the document which evidences any employment agreement or any suggestion of an employment relationship. Secondly, Ms Jiao produces receipts she was given from Hong Yu Company Limited for payments she made to it under the agreement, after 9 April 2003. Thirdly, I do not consider that as a matter of law, the applicants could be transferred like chattels by Mr Kun Wu into the employ of another without either their knowledge or consent. Finally, I simply do not regard Mr Kun Wu as a reliable witness and I accept Ms Jiao's complete denial and rejection of Mr Kun Wu's evidence.

### **Determination**

[10] For the reason outlined above, I conclude that Lina Wu and Huiguan Li were not employed by Natasha Jiao under a contract of service. There being no employment relationship between the parties, the issue of liability for arrears of wages does not fall to be determined. I am unable to be of any further assistance to these parties.

[11] As neither party was represented by professional representative, I do not expect to be asked to address costs.

Leon Robinson  
**Member of Employment Relations Authority**