

**IN THE EMPLOYMENT COURT
AUCKLAND**

**[2012] NZEmpC 104
ARC 29/12**

IN THE MATTER OF a challenge to a determination of
Employment Relations Authority

BETWEEN ALLAN ONG & NEENEE ONG T/A
PHARMACY 72
Plaintiff

AND AEDENE JUNE MASSIE
Defendant

Hearing: Following a telephone conference 6 July 2012
(Heard at Auckland)

Counsel: Garry Pollak, counsel for plaintiff
Stephen Tee, counsel for defendant

Judgment: 6 July 2012

INTERLOCUTORY JUDGMENT OF JUDGE B S TRAVIS

[1] Mr Pollak advised that he appeared for the plaintiff “Families Pharmacy Limited t/a Pharmacy 72, 72 East Coast Road, Milford, Auckland” (the company). Mr Pollak had pleaded this in an amended statement of claim filed on 12 June 2012.

[2] However, the case brought by the defendant in the Employment Relations Authority and dealt with in its determination issued on 10 April 2012, was against “Allan & Neenee Ong t/a Pharmacy 72”. The Authority’s determination makes no mention at all of a limited liability company.

[3] Mr Tee, counsel for the defendant, confirmed that it had not been asserted by Mr or Mrs Ong that the company was the defendant’s employer.

[4] Mr and Mrs Ong filed a statement of claim on 7 May 2012 electing to challenge the determination in which, apparently for the first time, they claimed that they were officers of “the company trading as Pharmacy 72”. They also plead that the defendant was appointed by Neene Ong as the qualified pharmacy technician for Pharmacy 72. It is not expressly pleaded that the company was the actual employer of the defendant.

[5] The statement of defence filed by Mr Tee on behalf of the defendant on 7 June states, in paragraph [2] “She denies the Plaintiffs are officers of a company and states further the Plaintiffs’ trade personally as Pharmacy 72”.

[6] The amended statement of claim filed by Mr Pollak as solicitor for the company names the company for the first time and asserts that it is the plaintiff in the proceedings.

[7] I find that the company is a stranger to these proceedings and cannot be inserted in place of Mr and Mrs Ong unilaterally by the filing of an amended statement of claim.

[8] After some discussion, Mr Pollak, who advised that he also acted for Mr and Mrs Ong, accepted that this was so. Accordingly I have struck out the amended statement of claim as a nullity.

[9] The proceedings therefore remain as originally intitled and the current statement of claim is that filed by the Mr and Mrs Ong.

[10] Mr Pollak sought the opportunity to re-plead the original statement of claim. In view of its discursive nature and without objection from Mr Tee, it was clearly appropriate that such a course be adopted if Mr and Mrs Ong intend to proceed with their challenge. An amended statement of claim should be filed and served within 30 days from today’s date.

[11] All other matters, including costs, are reserved.

B S Travis
Judge

Judgment signed at 2.45pm on 6 July 2012