

**IN THE EMPLOYMENT COURT  
WELLINGTON**

**[2013] NZEmpC 65  
WRC 18/12**

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

BETWEEN                MARUNUI GRAEME MEROITI  
Plaintiff

AND                      LINDALE LODGE LTD  
Defendant

Hearing:                18 February 2013  
(Heard at Wellington)

Appearances: Graeme Ogilvie, advocate for the plaintiff  
No appearance for the defendant

Judgment:             19 April 2013

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**JUDGMENT OF JUDGE A D FORD**

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**Introduction**

[1] Mr Graeme Meroiti claimed in the Employment Relations Authority (the Authority) that on 14 August 2011 he was summarily dismissed by the defendant from his employment as manager of the Lindale Motor Lodge at Paraparaumu. The sole director of the defendant company was Mr Meroiti's sister-in-law, Ms Jill Meroiti (Jill), the wife of his brother, Mr John Meroiti (John). The dismissal allegedly followed on from a verbal and physical altercation between the two brothers which brought an end to their relationship. Jill was in Australia at the time. The Court was told that the siblings have not spoken to each other since that incident.

[2] It is clear from the Authority's determination<sup>1</sup> issued on 5 June 2012 that there were numerous conflicts in the evidence presented in the course of the Authority's investigation which were quite impossible to reconcile but, significantly, the Authority concluded that Mr Meroiti had been an independent contractor rather than an employee and, accordingly, it dismissed his personal grievance claim.

[3] Mr Meroiti then commenced a de novo challenge in this Court to the whole of the Authority's determination. At a directions conference on 27 August 2012, a fixture was confirmed for the hearing on 29 and 30 November 2012. On 24 September 2012, counsel for the defendant filed an application seeking an adjournment of the hearing until February 2013 on the grounds that Jill had suffered a ruptured Achilles tendon in Sydney and was unable to travel back to New Zealand. The application for an adjournment was opposed but on 8 October 2012, I issued an interlocutory judgment<sup>2</sup> in which I granted the application. A new fixture was confirmed for 18 and 19 February 2013. On 25 January 2013, counsel for the defendant then filed a further memorandum respectfully seeking leave to withdraw from the proceeding on the grounds that he no longer had instructions in the matter. Leave was granted and the defendant took no further part in the proceedings.

### **The Authority's findings**

[4] The Authority's conclusion that Mr Meroiti had not been employed by the defendant was based principally on a contract for services which had been produced by John in which the parties agreed and acknowledged that Mr Meroiti was an independent contractor. For his part, Mr Meroiti denied ever having seen the agreement prior to the Authority investigation and he denied signing the document although he accepted that the signature on the signature page was his own. The Authority appears to have had some concerns about the genuineness of the document because it noted that the signature page did not have "a fold like the rest of the pages" and it had different numbering from the other pages. It also noted that the fonts, general layout and typeface on the schedule to the contract were different to the rest of the document. Despite these observations, and in the face of Mr Meroiti's vehement denials of any knowledge of the contract, the Authority concluded that:

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<sup>1</sup> [2012] NZERA Wellington 64.

<sup>2</sup> [2012] NZEmpC 175.

[31] In totality I hold that Mr Meroiti had a loosely defined arrangement to contract for services on an individual basis with his brother and sister in law.

...

[5] In reaching its conclusions, the Authority had regard to the definition of “employee” in s 6 of the Employment Relations Act 2000 (the Act) and it then proceeded to apply and assess the recognised control, integration and fundamental economic reality tests for ascertaining the real relationship between the parties. That analysis, however, proceeded on the basis that the contract in question was a genuine document. It was not produced before me and in his sworn evidence Mr Meroiti was adamant that he had never seen the document prior to the Authority investigation.

## **The facts**

[6] Mr Meroiti told the Court that he returned to New Zealand in about February 2009 after spending a number of years living in Australia. While living in Australia he had worked as a taxi driver, a store-man and a carpet cleaner. The Lindale Motor Lodge (Lindale) has 10 units and a conference room. Mr Meroiti understood that the complex was owned by John and Jill but later, after he began working for them, he learned that Jill was the sole director and owner of the defendant company.

[7] In about September 2009, Mr Meroiti was approached by John who told him he was in the process of dismissing the managers (a married couple) at Lindale and he asked if he would be interested in carrying out “security and grounds work” at the complex. Mr Meroiti explained to his brother that he was interested although he had never done that sort of work before but he was willing to learn. John told him that Jill wanted to pay \$175 a week for the work but after discussion, it was agreed that he would be paid \$350 per week. Mr Meroiti commenced work in October 2009. His evidence was that no employment agreement existed but one Sunday afternoon about three weeks after he commenced working, John made a list of duties which Mr Meroiti was required to sign. He had been unable to subsequently locate that particular document. I am satisfied that in all his dealings with Mr Meroiti, John was acting as the defendant’s authorised agent.

[8] Soon after he commenced working at Lindale, Mr Meroiti discovered that his duties were not limited to security and grounds but he was required to do all the

motel work that had previously been carried out by the managers. This work included, in his words:

3. ... booking guests in and out, arranging bookings (including the follow-up for online bookings made by a customer), answering emails, preparing breakfasts for the guests, setting up for meetings and conferences and functions, as well as grounds and maintenance work. ...

[9] Mr Meroiti told the Court that he had not carried out any work of this nature before (apart from lawn mowing). Mr Meroiti lived in one of the motel units. John and Jill lived at Waikanae. Jill would usually go to Lindale for two to three hours on a Wednesday and do the accounts. John ran his own computer business from another part of the complex. John had some staff working for him but Mr Meroiti had no other staff assisting him in his duties.

[10] Mr Meroiti's pay was deposited in his bank account every Wednesday. He considered himself an employee. He provided no tools or other equipment of his own, nor did he have his own vehicle. He was not registered for GST and at no stage did he provide any invoices to the company. Before the Authority, but not before the Court, the defendant apparently produced computerised invoices but Mr Meroiti denied that he had produced them. The Authority concluded, "From the evidence it remains unexplained who produced them."

## **Conclusions**

[11] Admittedly, the Court has only heard one side of the story presented to the Authority but I am bound to say that I found Mr Meroiti's evidence convincing. I do not accept that he signed any contract for services and I do not accept that he produced any invoices in respect of his work. I find it highly improbable that Mr Meroiti would have agreed, or for that matter would have been asked, to enter into a contract for services in an area of work which he had absolutely no previous experience in. Having regard to the provisions of s 6 of the Act and the traditional tests for identifying the real nature of the relationship between the parties, I am satisfied that at all relevant times Mr Meroiti was an employee of the defendant and not an independent contractor.

[12] For the foregoing reasons, I uphold Mr Meroiti's challenge and, in terms of s 183(2) of the Act, the determination of the Authority on the matter is set aside and this judgment now stands in its place.

[13] Mr Ogilvie sought an award of costs of \$3,000 in respect of the Authority investigation and \$1,000 for costs in this Court along with disbursements of \$71.56 for filing fees in the Authority and \$204.44 for the Court filing fee.

[14] The claim appears to be reasonable and I hereby confirm an award of costs to the plaintiff in the total sum of \$4,276.

A D Ford  
Judge

Judgment signed at 9.45 am on 19 April 2013