

MEDIA STATEMENT

Tuesday 31 May 2022



Third parties can now be pursued for underpayments claims, thanks to a landmark case by JobWatch

Representing eight international students in underpayments cases against the same employer or accessory, JobWatch, an employment rights community legal centre, has won a landmark case which will allow workers across Australia to ask the court for orders against third parties who were knowingly involved in the underpayments in small claims proceedings.

In this ground-breaking decision, Judge Forbes of the Federal Circuit and Family Court of Australia ruled that “[i]n a proceeding being dealt with as a small claim procedure under s 548 of the FW Act the Court has jurisdiction to make a compensatory order against a person involved in a contravention of a civil remedy provision” thereby overturning the former legal precedent of *Beer v Lim & Anor* [2012] which found the Court did not have power to make an order against an accessory in a small claims proceeding.

“The path is now clear for people to use the Court’s small claims jurisdiction and pursue not only the employer but also any third party who was knowingly involved in underpaying employees,” says Gabrielle Marchetti, Principal Lawyer of JobWatch who has been representing the eight international students.

“Too often, our clients in small claims matters have been hampered by having court orders made only against the employer and not against any accessories. This has allowed unscrupulous company directors to avoid liability, in circumstances where they might deregister the company or shift assets from the company to another legal entity and thereby make it impossible for our clients to get the money that was ordered to be paid to them.”

“Now, vulnerable workers can name the person who employed them as a third party in their small claim applications – and have a much higher success rate of recovering their entitlements.”

In this case, the eight international students claim to have been employed either by the respondent directly or by one of two legal entities owned and controlled by him, in performing cleaning, housekeeping and related duties in relation to guest accommodation. Even if the respondent was not the employer, the applicants argue that he was the sole director, company secretary, and shareholder of the two entities which have since been deregistered and he was knowingly involved in the contraventions.

The students claim they were variously unpaid or underpaid for the work performed as employees, between \$675 and \$7,256 each. The matters are now listed for final hearing on 4-5 July 2022.

“Last Friday’s decision will affect many workers,” says Ms. Marchetti. “We have several clients who have been waiting for this decision before proceeding with their small claims applications. They can now go ahead and list third parties who were involved in the underpayments as respondents to the applications. Importantly, they can ask the Court to make orders for compensation against those third parties, as well as the employer. In our view, this will result in greater access to justice, with more people actually receiving the compensation that’s been ordered by the court.”

JobWatch encourages all workers who have been underpaid their entitlements to contact the JobWatch Telephone Information Service for free and confidential legal information on their rights at work: (03) 9662 1933 (Melbourne Metro) or 1800 331 617 (Regional Vic, Qld, Tas).

The Court’s decision can be accessed here: <http://www6.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FedCFamC2G//2022/401.html>

Available for interview

- Gabrielle Marchetti, Principal Lawyer, JobWatch

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