

**IN THE EMPLOYMENT COURT OF NEW ZEALAND  
AUCKLAND**

**I TE KŌTI TAKE MAHI O AOTEAROA  
TĀMAKI MAKĀURAU**

**[2024] NZEmpC 96  
EMPC 99/2024**

IN THE MATTER OF a compliance order under s 138(6) of the  
Employment Relations Act 2000

AND IN THE MATTER OF a sequestration order under s 140(6)(e) of the  
OF Employment Relations Act 2000

BETWEEN TECH 5 RECRUITMENT LIMITED  
Plaintiff

AND NATHAN WINDERS  
Defendant

Hearing: On the papers

Appearances: J Dustow, advocate for plaintiff  
N Winders, defendant in person

Judgment: 6 June 2024

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**CONSENT JUDGMENT OF JUDGE J C HOLDEN**

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[1] The parties to these proceedings entered into a record of settlement on 9 August 2023 pursuant to which Nathan Winders agreed to pay Tech 5 Recruitment Ltd the sum of \$18,000 by monthly instalments of \$1,500 per month. The settlement was certified pursuant to s 149 of the Employment Relations Act 2000. Mr Winders made one payment of \$1,500 but failed to make any further payments.

[2] After Tech 5 went to the Employment Relations Authority, the Authority issued a compliance order.<sup>1</sup> Pursuant to that order, Mr Winders was to pay Tech 5 \$16,500

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<sup>1</sup> *Tech 5 Recruitment Ltd v Winders* [2024] NZERA 39 (Member Urlich).

in accordance with the settlement; a penalty of \$1,500, half of which was to be paid to Tech 5 and half to the Crown; and \$71.56, being the filing fee for the application to the Authority.<sup>2</sup>

[3] Mr Winders has failed to comply with the Authority's orders. He accepts that \$17,321.56 is due to Tech 5 but says he cannot afford to make that payment.

[4] Tech 5 applied to the Employment Court for remedies, including for a sequestration order under s 140(6)(e) of the Employment Relations Act.

[5] Mr Winders wishes to settle his debt and to access his KiwiSaver account to do so. Generate Investment Management Ltd, Mr Winder's KiwiSaver provider, has advised that it can look into withdrawing funds from Mr Winders' KiwiSaver account, provided there is a court order.

[6] The parties have now jointly sought a sequestration order from the Court under s 140(6)(e) of the Employment Relations Act, sequestering \$16,250 from Mr Winders' KiwiSaver account managed by Generate Investment Management Ltd for the purposes of paying his debt to Tech 5. If that is able to be done, then the matter will be resolved with no issue as to costs.

[7] I have considered the position of the parties and agree that, in the circumstances, a sequestration order is appropriate. While sequestration is usually an order of last resort,<sup>3</sup> the circumstances suggest that an order should be made. Mr Winders consents to that course of action and there is evidence that, were the Court to make an order, it would assist him in accessing the funds in his KiwiSaver account, potentially avoiding further delays which may accompany him having to make an application for essential debt repayment and the processing of that application. It will allow for the parties to move on from their differences and prevent Tech 5 from having to take other debt enforcement actions against Mr Winders in an effort to recover the monies owed to it. The amount sought is relatively modest.

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<sup>2</sup> At [25]–[27].

<sup>3</sup> *Peter Reynolds Mechanical Ltd v Denyer* [2016] NZCA 464, [2017] 2 NZLR 451, [2016] ERNZ 828 at [56].

[8] Accordingly, I make a sequestration order under s 140(6)(e) of the Employment Relations Act 2000 in respect of \$16,250 in Mr Winders' KiwiSaver account managed by Generate Investment Management Ltd.

[9] Generate Investment Management Ltd is to pay that sum to the nominated bank account for Tech 5, to be advised by the parties forthwith. That payment is to be made within 28 days of this judgment being provided to Generate Investment Management Ltd.

[10] These proceedings will be discontinued on advice being received by the Court that payment has been made.

J C Holden  
Judge

Signed at 4.30 pm on 6 June 2024