

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2014] NZERA Auckland 304
5449627

BETWEEN	CHANELLE BRYAN Applicant
A N D	STEPHEN JOHN RYAN First Respondent
A N D	JOANNA WILSON Second Respondent

Member of Authority: Rachel Larmer

Representatives: Michael Smyth, Counsel for Applicant
Simon Buckingham, Counsel for Mr Ryan
No appearance by Ms Wilson

Investigation Meeting: 15 July 2014

Date of Determination: 15 July 2014

CONSENT DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The Authority has issued three determinations involving these parties. The first was a substantive determination dated 19 December 2013.¹ The second was a costs determination dated 18 February 2014.² The third determination was a compliance order against Ms Wilson dated 04 April 2014.³

[2] Mr Ryan did not file a Statement in Reply in respect of this application and he has not applied for leave to file a Statement in Reply out of time. The Notice of Hearing was served on Mr Ryan and he appeared with counsel at the Authority's investigation meeting today.

¹ [2013] NZERA Auckland 584

² [2014] NZERA Auckland 57.

³ [2014] NZERA Auckland 128.

[3] The compliance order applications against Mr Ryan and Ms Wilson have been heard separately because Mr Ryan obtained an oral interlocutory judgement (No 2) dated 15 May 2014 from the Employment Court⁴ ordering an interim stay subject to certain conditions regarding the payment into Court of a total of \$15,000.⁵

[4] Mr Ryan failed to pay the first payment of \$5,000 into Court which was due 30 days from the Employment Court's interlocutory judgement (No 2). As a consequence the Employment Court's stay of execution over the Authority's substantive and costs determinations in so far as they relate to Mr Ryan lapsed.

[5] Ms Bryan seeks orders that Mr Ryan be ordered to comply with paragraph R of the Authority's substantive determination⁶ and paragraph A of the Authority's costs determination.⁷

[6] During the investigation meeting today the parties advised the Authority that they had resolved matters on an agreed basis and they jointly sought a consent determination from the Authority recording the agreed terms of settlement.

Outcome

[7] By consent the Authority makes the following orders:

- a. Mr Ryan owes Ms Bryan a total of \$20,603 inclusive of any interest that has been awarded. I note that this amount has been agreed by Mr Ryan and Ms Bryan as the total amount due and owing.
- b. Mr Ryan will file a notice of discontinuence regarding all matters which are currently before the Employment Court on or before 3pm this Friday 18 July 2014.
- c. The parties will file a joint memorandum with the Employment Court on or before 3pm this Friday 18 July 2014 asking for the funds it is holding to be released into the trust account of Dyer Whitechurch who are Mr Ryan's longstanding firm of solicitors.

⁴ [2014] NZEmpC 72.

⁵ \$5,000 within 30 days and a further \$10,000 within 60 days of the Court's second interlocutory judgment.

⁶ Ibid 1.

⁷ Ibid 2.

- d. Out of the money refunded by the Employment Court into Dyer Whitechurch's trust account \$5,000 will be immediately released to Ms Bryan by direct deposit into her nominated bank account (counsel has the relevant bank account details). This \$5,000 is to be received as cleared funds by Ms Bryan within seven days of the Employment Court releasing the funds to Dyer Whitechurch.
- e. Mr Ryan shall pay directly into Ms Bryan's nominated bank account:
 - i. \$4,000 on or before 3pm on 10 October 2014;
 - ii. a further \$4,000 on or before 3pm on 10 January 2015;
 - iii. a final payment of \$7,603 on or before 3pm on 10 April 2015.
- f. Unless Ms Bryan advises Mr Ryan in writing that her bank account details have changed then he is required to make the necessary payments into the same account that Dyer Whitechurch will be paying the refunded funds into. Mr Ryan has the account details. If he loses this information then he is expected to obtain that information from Dyer Whitechurch (who is required to hold this information on file until all payments have been made). These arrangements are agreed to ensure all payments are made on time.
- g. These amounts in paragraph 8d must be received as cleared funds into Ms Bryan's bank account on or before each of the three dates specified in paragraph 8e.
- h. If any of the payments required under paragraph 8d are not received as cleared funds into Ms Bryan's bank account on or before the specified due dates (i.e the payment is received late, a partial payment only is received or a payment is missed) then the full amount of any remaining outstanding balance becomes payable immediately and must be deposited as cleared funds into Ms Bryan's bank account within 7 days of the late, partial or defaulted payment falling due.
- i. Ms Bryan and Mr Ryan agree not to make disparaging comments about each other.

j. Costs for this application shall lie where they fall.

Rachel Larmer
Member of the Employment Relations Authority