

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 207/07
5087454

BETWEEN Hamish Ferguson
Applicant

AND Pump and Water Solutions Ltd
Respondent

Member of Authority: Vicki Campbell

Representatives: Vanessa White for Applicant
Bill Thompson for Respondent

Investigation Meeting: 3 July 2007 at Taupo

Determination: 11 July 2007

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] On 5 March 2007, with the assistance of an Employment Relations Service mediator, the parties reached a mediated settlement. As required by s.149 of the Employment Relations Act 2000 the settlement was signed by the mediator and endorsed to the effect that the mediator had explained to the parties that the settlement was final, binding and enforceable. The settlement was signed by the parties and acknowledged as a full and final settlement of all matters between the parties arising out of the employment relationship between them.

[2] The financial terms (clauses 3 and 4) of the settlement were:

Pump and Water Solutions Ltd will pay **Hamish Ferguson** in accordance with the schedule below, a compensatory sum of \$28,000 (twenty eight thousand dollars) in terms of the provisions of s.123 1 (c) (i) of the Employment Relations Act 2000. This amount will be paid to the Applicant by way of direct credit.

Within 7 days of signing by a Mediator	\$7,000
On or before 5 April 2007	\$7,000
On or before 5 May 2007	\$7,000
On or before 5 June 2007	\$7,000

Additionally, **Hamish Ferguson** agrees to transfer his 1 share in the business to the prime shareholders for a value of **\$500**. This shall be executed through separate formal documentation and shall be subject to **Hamish Ferguson** receiving full payment pursuant to clause 3 hereof.

Application for compliance

[3] On 15 May 2007 the Authority received an application from Mr Ferguson seeking a compliance order from the Authority requiring Pump and Water Solutions Ltd to comply with the mediated settlement. Mr Ferguson also sought reimbursement of costs incidental to this application.

[4] At the date of filing this application the payment due on 5 May had not been met. At the date of the investigation meeting Mr Ferguson acknowledged that he had received two payments from Mr Thompson, one in the amount of \$1,500 and another in the amount of \$5,500. These amounts together, comprised the total amount due on 5 May 2007. Therefore, the amount remaining to be paid under the terms of the settlement agreement is the final \$7,000 which was due to be paid on 5 June 2007 together with \$500 in exchange for the transfer of a share.

[5] Mr Bill Thompson attended the investigation meeting and provided documentary evidence of cash flow difficulties being experienced by the business. He says he has not been in a financial position to be able to pay the full amount due under the terms of settlement.

[6] It is important that the Authority sends a clear signal that mediated terms of settlement must be honoured and I am satisfied a compliance order would be appropriate in these circumstances.

[7] Section 137(4)(A) of the Employment Relations Act 2000 empowers the Authority to order payment by instalments if it is satisfied the financial position of the employer requires it. I am satisfied this is such a case.

[8] In terms of s.137 of the Employment Relations Act 2000 Pump and Water Solutions Ltd is ordered to comply, on the following terms, with the settlement reached at mediation on 5 March 2007:

- 1. Pump and Water Solutions is to pay Mr Ferguson \$3,500 without deduction, on or before 21 July 2007;**
- 2. Pump and Water Solutions is to pay Mr Ferguson a further \$3,500 without deduction on or before 21 August 2007.**
- 3. The parties shall comply with Clause 4 of the mediated terms of settlement on or before 31 August 2007.**

Costs

[9] Mr Ferguson has had to incur expenses, which would not have been necessary had Pump and Water Solutions Ltd honoured the mediated settlement agreement to which they had agreed. In addition to the payments outlined above **Pump and Water Solutions Ltd is ordered to pay Mr Ferguson \$320.00 as a contribution to his costs** (this being inclusive of the \$70.00 filing fee). This amount is to be paid no later than 28 September 2007.

Vicki Campbell
Member of Employment Relations Authority