

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH OFFICE**

CA 165A/09  
5140576

BETWEEN	PAUL HOLMES Applicant
AND	META NZ LTD Respondent
AND	GRAHAM HEENEN, DAVID MACKENZIE, JOHN NICOL, KENNETH SPARROW First Intended Respondents
AND	CCC TWO LIMITED Second Intended Respondents
AND	PAUL ANDERSON, ANTHONY MARRYATT Third Intended Respondents

Member of Authority: Philip Cheyne

Representatives: Faye Birch and Kevin Murray, Representatives for the Applicant  
Peter Zwart, Representative for the Respondent  
Kerry Smith, Counsel for the First Intended Respondents  
Susan Hornsby-Geluk, Counsel for the Second and Third Intended Respondents

Costs Submissions received: 9 November for the Applicant  
Nothing required from Respondent  
15 October for the First Intended Respondents  
25 September for the Second and Third Intended Respondents

Determination: Wednesday 11 November 2009

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**DETERMINATION OF THE AUTHORITY**

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[1] In a determination dated 1 October 2009 I dismissed an application by Mr Holmes to join additional parties to his claims against his former employer. The

application was ill conceived. Costs were reserved and the additional parties joined solely for that purpose. Their claims for costs are resolved by this determination.

[2] Each of the additional parties is entitled to costs because of the reckless conduct by or for the applicant in seeking their joinder without grounds. That caused them, as strangers to the employment relationship, to incur costs when they should not have been involved.

[3] Counsel for the second and third intended respondents sought \$1,000.00 as a reasonable contribution to costs which are considerably higher. The applicant's representative accepts that that an award of \$1,000.00 is warranted. Accordingly, I order the applicant to pay \$1,000.00 to the second and third intended respondents.

[4] A little more must be said about the claim by the first intended respondents. Their costs are over \$8,000.00 including GST. The relevant figure will be the GST exclusive amount. The claim is for indemnity costs or at least a substantial contribution. I have every sympathy with the latter position because anything else will leave them with a substantial bill when they should not have been troubled by this matter. Indeed it may properly be a case for indemnity costs. The only hesitation I have in ordering at least a substantial contribution is that costs for the second and third intended parties have been set at only \$1,000.00 essentially by agreement.

[5] The first intended respondents are (or were at the time) directors of Mr Holmes' former employer so they will be indemnified by that company for their costs. Costs between Mr Holmes and his former employer may become an issue eventually. I will order Mr Holmes to pay \$1,000.00 in costs to the first intended respondents but reserve for later consideration whether Meta NZ Limited can bring to account any expense incurred by it in indemnifying the directors if there is subsequently a claim for costs between Meta NZ Limited and Mr Holmes.

Philip Cheyne

Member of the Employment Relations Authority