



Employment Court of New Zealand

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Mani v Sharma [2018] NZEmpC 155 (18 December 2018)

Last Updated: 24 December 2018

IN THE EMPLOYMENT COURT
AUCKLAND

[\[2018\] NZEmpC 155](#)
EMPC 159/2018

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|----------------------|--|
| IN THE MATTER OF | a challenge to a determination of the Employment Relations Authority |
| AND IN THE MATTER OF | an application for security for costs |
| BETWEEN | HAROLD MANI First Plaintiff |
| AND | ICON CONCEPTS 2012 LIMITED Second Plaintiff |
| AND | SUMIT SHARMA Defendant |

Hearing: On the papers
Appearances: H Mani, in person and as agent for the second plaintiff D Gelb, advocate for defendant
Judgment: 18 December 2018

INTERLOCUTORY JUDGMENT OF JUDGE J C HOLDEN

(Application for security for costs)

[1] The defendant, Mr Sharma, succeeded in his claim before the Employment Relations Authority (the Authority), which found that he had been unjustifiably dismissed by the second plaintiff, Icon Concepts 2012 Ltd (Icon).¹ The Authority also found that Mr Mani, who had supervised Mr Sharma's work, had aided and abetted Icon's breaches of Mr Sharma's terms of employment and ought to pay a penalty.² As

¹ *Sharma v Icon Concepts 2012 Ltd* [2018] NZERA Auckland 154.

² Harold Mani is General Manager of Icon and son of Icon's sole shareholder and director, Masla Mani.

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a result of the Authority's findings, it ordered that Icon pay the following sums to Mr Sharma:

- (a) \$6,894.72 arrears of wages and holiday pay;
- (b) \$241.85 interest on those arrears;
- (c) \$8,400 reimbursement of wages lost as a result of Mr Sharma's grievance; and
- (d) \$12,000 compensation for humiliation, loss of dignity and injury to Mr Sharma's feelings.

[2] The Authority ordered Mr Mani pay a penalty of \$5,000 directly to Mr Sharma.

[3] The Authority also awarded \$4,500 to Mr Sharma as a contribution towards his costs of representation, with those costs being apportioned in equal measure to Icon and Mr Mani, so that they each must pay \$2,250 of that amount.

[4] Icon and Mr Mani have challenged the determination of the Authority.

[5] Mr Sharma has been taking steps to enforce the Authority's orders but so far has not received any payment from either Icon or Mr Mani.

[6] Mr Sharma now applies for an order requiring Icon and Mr Mani to pay

\$15,000 as security for costs.

[7] He also applies for an order that the plaintiffs pay the wages, holiday pay and interest awards, totalling \$7,136.57 to Mr Sharma and the balance of the orders of the Authority, totalling \$29,900 into Court, pending the outcome of the challenge, and that the challenge be stayed until those payments are made.

[8] Mr Mani and Icon oppose the making of the orders on the basis:

(a) they are waiting for a Court hearing;

(b) they are genuine in their challenge and not using it as a stalling tactic;

(c) any delay in moving to a hearing is as a result of Mr Mani's ill health; and

(d) they will argue that no employment offer was made to Mr Mani and wish to raise issues of "ill faith" and credibility.

Security for costs may be ordered where the plaintiffs may be unable to pay the defendant's costs

[9] The Employment Court has jurisdiction to order a party to pay security for costs and to stay the proceedings until payment has been made or security, in the quantum ordered by the Court, has been given.³ As no procedure for ordering security is provided for in the [Employment Relations Act 2000](#) or in the [Employment Court Regulations 2000](#), the Court looks to the procedures provided for in the [High Court Rules 2016](#).⁴

[10] Before the Court may make an order for security for costs a threshold test must be met. One circumstance satisfying this test is if there is reason to believe that a plaintiff will be unable to pay the costs of the defendant if the plaintiff is unsuccessful in the proceedings.⁵ If this threshold is met, the Court may order the giving of security for costs if it considers that such an order is just in all the circumstances.⁶ That assessment will include the Court having regard to the merits of the challenge.⁷

[11] In considering whether to make an order for security for costs, the Court must weigh the interests of all parties, including a plaintiff's right of access to the Courts and a defendant's right to be protected against being drawn into unjustified litigation.⁸

[12] Mr Sharma seeks security for costs in the amount of \$15,000, referring to costs calculated using the Guideline Scale in the Employment Court Practice Directions based on a Category 2B classification for a one day hearing.⁹

³ *Quality Consumables Ltd v Hannah (No 2)* [2017] NZEmpC 155 at [11].

⁴ [Employment Court Regulations 2000](#), reg 6; [High Court Rules 2016](#), r 5.45.

⁵ Rule 5.45(1)(b).

⁶ Rule 5.45(2).

⁷ *Quality Consumables Ltd*, above n 3, at [13].

⁸ *McLachlan v MEL Network Ltd* [2002] NZCA 215; (2002) 16 PRNZ 747 (CA) at [15]- [16].

⁹ Employment Court Practice Directions at 18 <www.employmentcourt.govt.nz/legislation-and-rules>.

An order for security for costs is justified

[13] There is reason to believe that the plaintiffs will be unable to pay Mr Sharma's costs if they are unsuccessful. Before the Court, in a directions conference, Mr Mani advised that neither he nor Icon currently have the financial means to

make the payments sought. Mr Mani also has had recent health issues. He has been unable to work and currently resides at his parents' house.

[14] Mr Sharma has given evidence of the difficulties he has had in pursuing the plaintiffs for payment of the sum ordered by the Authority, and of his concern that they will continue with their behaviour of not paying amounts ordered.

[15] Although the plaintiffs claim that they are genuine and not engaging in the challenge for tactical reasons, their case is not strong. Their current position, that Mr Sharma was not an employee of Icon, is inconsistent with the statement in reply that they filed in the Authority and, while the Court will need to reach its own view based on the evidence before it, the Authority's determination on its face is well reasoned and credible.

[16] Taking all matters into account here, I consider that an order for security for costs is justified and the appropriate amount for security for costs is \$8,000. In my view that figure is neither illusory nor oppressive and balances the interests of all parties.¹⁰

[17] Accordingly, the plaintiffs are required to give security for costs by payment into Court of \$8,000. That payment must be made within 20 working days of the date of this judgment and is to be held by the Registrar of the Employment Court in an interest-bearing account until further order of the Court.

[18] Mr Mani and Icon's challenge is stayed until the payment is made or there is a further order of the Court.

10 *Concorde Enterprises Ltd v Anthony Motors (Hutt) Ltd (No 2)* [1977] 1 NZLR 516 (SC) at 521.

No orders with respect to amounts awarded by Authority

[19] As noted, Mr Sharma also sought orders in relation to the amounts awarded by the Authority.

[20] The challenge does not operate as a stay on the orders made at the Authority.¹¹ Accordingly, Mr Sharma is entitled to enforce the monetary orders of the Authority. There is no basis for any further order of the Court.

Mr Sharma entitled to costs

[21] Mr Sharma is entitled to costs from the plaintiffs on this application, which I fix at \$600.

J C Holden Judge

Judgment signed at 3.15 pm on 18 December 2018

11 [Employment Relations Act 2000, s 180](#).

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