

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

CA 185A/09  
5108651

BETWEEN	MAREE PATRICK Applicant
AND	IOANE OKARE JOHN First Respondent
AND	MANA AWHI LIMITED Second Respondent

Member of Authority: Philip Cheyne

Representatives: Maree Patrick, the Applicant in person  
John Shingleton, Counsel for the Respondents

Submissions Received: 5 November 2009 from the Respondents  
Nothing received from the Applicant

Determination: 2 December 2009

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] In a determination dated 23 October 2009 I dismissed Ms Patrick's claims against Mr John and Mana Awhi Limited by finding that the real nature of the relationship between her and the respondents was never that of employment. I reserved costs for determination following submissions in accordance with a specified timetable. I received the respondents' submissions on 5 November but nothing has been received from Ms Patrick despite the respondents' submissions having been served on her and the Authority reminding her of the need to comply with the timetable. The time for Ms Patrick to lodge and serve any submissions having elapsed, I will proceed to determine costs.

[2] The respondents seek costs of \$12,317.00 (excluding GST) plus disbursements of \$202.50 for photocopying. The investigation meeting took less than one day but

the respondent makes the point that these proceedings were vexatious and intended to cause cost and trouble for Mr John following the ending of the de facto relationship between him and Ms Patrick. I am asked to make the costs award not to punish Ms Patrick but to fully compensate the respondents for their costs in defending a meritless application.

[3] I should mention some aspects of the proceedings. Mr John and Ms Patrick were in a de facto relationship. A business venture based on Ms Patrick's idea was established with Mana Awhi operating the business, Mr John provided some capital and was the sole director and legal owner of all the shares in the company and Ms Patrick performing the function of manager of the business. At first, the business boomed. Their relationship started to sour, the business came to face significant unpaid tax liabilities, Ms Patrick diverted substantial sums of business revenue to her own account, Mr John and his daughter seized control of business records and assets and the de facto relationship ended. In February 2007 Ms Patrick initiated Property (Relationships) Act 1976 proceedings claiming a share of the business and a house from where the company was based. Those proceedings were settled in August 2007. Her Authority proceedings (personal grievance and arrears of wages and holiday pay claim) were commenced in December 2007. Mana Awhi responded with a counter-claim against Ms Patrick as an employee for up to \$141,033.25 of company funds she had paid into her bank accounts apparently without explanation or justification. The personal grievance was eventually discontinued although Ms Patrick later asked the Authority to extend its investigation to include the withdrawn personal grievance. I declined to do so. The single day investigation meeting principally into her arrears claim resulted in a determination that the relationship between Ms Patrick and the respondents was never that of employment under a contract of service. Ms Patrick's claims failed as did Mana Awhi's counter-claim for lack of jurisdiction.

[4] In determining costs the Authority is guided by the principles expressed in *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808. The respondents were successful and there is no reason why costs should not follow the event. Ms Patrick did unreasonably cause costs to be incurred by the respondents and there is good reason to inflate the award of costs that might otherwise be made. There are several aspects to this. First, Ms Patrick lodged her personal grievance claim but later withdrew it. The respondents should not have had to defend themselves against a grievance. The respondents made an open offer to Ms Patrick on 27 July 2009 to

withdraw the counter-claim and not seek costs against her if she withdrew her residual arrears claim. The respondents need not have incurred further costs after 27 July 2009.

[5] There is also the vexatious aspect to Ms Patrick's claims. As to that, Ms Patrick was obviously motivated by a perceived need for vengeance and she sought to achieve that through these proceedings. However, I cannot go as far as to say that the proceedings were always without merit because she did take drawings from the business in the form of wages at a later point in the relationship and the respondents' counter-claim was predicated on the basis of an employment relationship between Ms Patrick and Mana Awhi Limited. Ms Patrick should not have to bear all the costs involved in the counter-claim of over \$140,000 which also failed for lack of jurisdiction. To balance the picture I should also say that the respondents always acknowledged that some of the diverted funds may have been legitimately spent on business purposes – it was an issue of establishing the residue.

[6] From all this I conclude that Ms Patrick should reimburse all the costs incurred after 27 July 2009, a sum amounting to \$7,860.00. She should also make a contribution to the costs incurred before then to recognise the respondents' success and the withdrawal of the grievance. I fix that amount at \$1,000.00. Finally Ms Patrick must make a contribution to the cost of photocopying a bundle of material for the investigation meeting. I am told that the cost is \$202.50. That is often a task given to an applicant but here counsel undertook the task because Ms Patrick did not have easy access to a photocopier. Rounding down produces a total of \$9,000.00. Because I have no submissions from Ms Patrick there is no basis for reducing that sum due to her personal circumstances.

### **Orders**

[7] Ms Patrick is to pay the respondents a total of \$9,000.00 by way of costs.

Philip Cheyne  
Member of the Employment Relations Authority