

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

[2016] NZERA Wellington 22  
5585508

BETWEEN            JOHN RICHARD POTTS  
                                 Applicant  
  
AND                    COLLINGWOOD PLUMBING  
                                 LIMITED  
                                 Respondent

Member of Authority:     Michele Ryan  
  
Representatives:           Applicant in person  
                                 No attendance by or on behalf of the Respondent  
  
Investigation Meeting:     12 February 2016  
  
Oral determination:        12 February 2016  
  
Written determination:     12 February 2016

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**DETERMINATION OF THE AUTHORITY**

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This determination is a written record of an oral determination delivered on 12 February 2015.

**Background information and the employment relationship problem**

[1]     On 17 April 2015 the applicant Mr John Potts, and his wife Ms Yvette Potts, each signed separate settlement agreements with Collingwood Plumbing Ltd (CPL). Both agreements were made in accordance with s 149 of the Employment Relations Act.<sup>1</sup>

[2]     On 1 September 2015 CPL was ordered to comply with its obligations pursuant to the settlement agreement with Ms Potts.<sup>2</sup>

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<sup>1</sup> certified by a mediator employed by the Ministry of Business, Innovation and Employment date.

<sup>2</sup> *Potts v Collingwood Plumbing Ltd* [2015] NZERA Wellington 85

[3] This determination concerns Mr Potts' claim that CPL has not complied with clause 2 of the settlement agreement between him and CPL.

[4] Clause 2 provides:

*The respondent shall pay the applicant all holiday pay pursuant to the Holidays Act 2003 as calculated and agreed to be \$3240 (gross). This sum shall be paid in three instalments of \$1080.00 with the first instalment to be deposited by direct credit 17 July 2015, 17 August 2015 and the final instalment to be paid on 17 September 2015.*

[5] Mr Potts says none of the agreed instalment payments have been made. He too now seeks an order to have CPL comply with the settlement agreement.

### **No appearance by CPL**

[6] Mr Richard Collingwood is the director of CPL. On behalf of CPL he provided a statement in reply in response to Mr Potts' claim but neither he nor a representative of CPL attended the corresponding investigation meeting. The investigation meeting was deferred for 15 minutes whilst an Authority Officer called Mr Collingwood's phone and left voicemail requesting an urgent response if CPL wished to attend the meeting.

[7] I am satisfied however that CPL was aware of the event. A 'Notice of Investigation Meeting' was served on CPL's registered address on 27 November 2015 and the Authority received a "read-receipt" from Mr Collingwood's email address in response to the same information having been sent electronically on the same date.<sup>3</sup>

[8] CPL did not respond to the Authority's voice message and I decided to proceed with the investigation meeting.<sup>4</sup>

### **Relevant information**

[9] Section 138(4A) of the Act provides that the Authority may order compliance, in respect to payment of a sum of money to an employee, by ordering payment by instalments "*but only if the financial position of the employer requires it*". Determinations by the Authority have previously observed that s 138(4A) sets a high

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<sup>3</sup> At 5.59pm on Friday, November 27 2015

<sup>4</sup> cl. 12 of Schedule 2 of the Employment Relations Act

threshold for the exercise of the Authority's discretion to order payment by instalments.<sup>5</sup>

[10] A bank statement setting out the status of various accounts belonging either to CPL or Mr Collingwood personally as at 20 November 2015 was attached CPL's written statement in reply. CPL advised it was not in a financial position to pay Mr Potts. No information was furnished to confirm CPL's financial position at the date of the investigation meeting. There is nothing recorded on the Companies Office Register to indicate CPL is no longer trading or is insolvent.

[11] Mr Collingwood's absence from the investigation meeting means I am unable to reliably assess whether CPL's current financial position requires an order for instalment payments. In any event CPL has not observed its previous agreement to reimburse monies by instalment payments and I am not persuaded that the mechanism will be any more successful going forward.

#### **Orders and costs**

[12] Pursuant to s. 151(2) and s.137 of the Employment Relations Act Collingwood Plumbing Limited is ordered to comply with clause 2 of the settlement agreement between it and Mr John Potts. In particular it must pay Mr Potts the outstanding sum of \$3,240 (gross).<sup>6</sup> I further order CPL to reimburse Mr Potts \$71.56 as the cost of filing his application with the Authority. Both these sums must be paid within 10 days of this determination.

[13] Mr Potts was self-represented and costs are not at issue.

Michele Ryan  
Member of the Employment Relations Authority

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<sup>5</sup> For example: *Sinclair v Datum Connect Ltd* [2014] NZERA Auckland 463; *Stein v Garrard's (NZ) Ltd* ERA Auckland AA287/08

<sup>6</sup> This sum is calculated as 2,714.52 (nett) following PAYE and KiwiSaver contributions