



Employment Court of New Zealand

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Ryan v Bryan [2014] NZEmpC 52 (2 April 2014)

Last Updated: 4 April 2014

IN THE EMPLOYMENT COURT AUCKLAND

[\[2014\] NZEmpC 52](#)

ARC 5/14

IN THE MATTER OF a challenge to a determination of the

Employment Relations Authority

AND IN THE MATTER of an application for interim stay of execution of Employment Relations Authority determinations

BETWEEN STEPHEN JOHN RYAN Plaintiff

AND CHANELLE BRYAN Defendant

Hearing: 2 April 2014

(Heard at Auckland by telephone conference call)

Appearances: S Buckingham, counsel for plaintiff

Defendant in person

Judgment: 2 April 2014

INTERLOCUTORY JUDGMENT OF CHIEF JUDGE G L COLGAN

[1] The question for urgent decision is whether there should be an interim order staying execution or enforcement of the monetary penalties awarded by the Employment Relations Authority in its determination of 19 December 2013.¹

[2] In this determination the Authority held that the plaintiff, Stephen Ryan, incited, instigated, aided and/or abetted the breach of Ms Bryan's employment agreement by Joanna Wilson and the Ultimate Recruitment Company Limited (subsequently renamed Runty Limited and now in voluntary liquidation), as employers of Chanelle Bryan. In addition to directing a number of monetary

remedies against Ms Wilson, which are not the subject of these proceedings, the

¹ *Bryan v Ultimate Ltd (in liquidation) and Ors* [2013] NZERA Auckland 584.

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Authority imposed penalties on Mr Ryan for inciting, instigating, aiding and/or abetting breaches by Ms Bryan's employers. The penalties ordered totalled \$20,000. One-quarter of those penalties awarded (\$5,000) was directed to be paid by Mr Ryan to the Crown bank account with the balance (\$15,000) being payable to Ms Bryan. The parties tell me that the Authority has subsequently determined costs must be paid by Mr Ryan to Ms Bryan amounting to approximately \$5,000.

[3] Mr Ryan has challenged the Authority's determination in the Employment Court although the substance of that proceeding has not yet gone beyond the filing and service of statements of claim and defence.

[4] On 4 March 2014, some time after filing his challenge, Mr Ryan, then unrepresented, applied to the Court for an order said

to be for “a stay of proceedings” but which is probably more correctly described as for an order for stay of execution of the Authority’s determination.

[5] By Ms Bryan’s account, she applied some six weeks ago to the Authority for the compliance orders which are to be investigated on 4 April 2014. Ms Bryan says that it was only after she had sought to enforce the Authority’s determination that Mr Ryan sought a stay of that enforcement.

[6] By a minute dated 11 March 2014, the Court gave directions on that application for stay including that Mr Ryan was to file and serve affidavit evidence in support. The Court timetabled steps to be taken by Ms Bryan in opposition. Ms Bryan’s timetable is still running and she has until 15 April 2014 to file and serve any notice of, and affidavit evidence in opposition to, the application for stay.

[7] In the meantime, Ms Bryan has applied to the Authority to enforce, by compliance order under [s 137](#) of the [Employment Relations Act 2000](#), its orders made against Mr Ryan on 19 December 2013 and subsequently for costs. The Authority has scheduled an investigation meeting on 4 April 2014 to deal with those enforcement proceedings brought by Ms Bryan. Despite Mr Ryan’s requests through the lawyer instructed by him, the Authority has declined to adjourn its investigation

meeting, now less than two days hence, to await the outcome of Mr Ryan’s

application for stay of any such proceedings.

[8] If the Authority proceeds to investigate Ms Bryan’s application for compliance orders and makes such orders against Mr Ryan, his current application to the Court which is awaiting steps to be taken by Ms Bryan will be, if not rendered ineffectual, then substantially prejudiced. The plaintiff is entitled to a hearing on its merits of his application for stay of execution of the Authority’s remedies. Once Ms Bryan has taken steps to oppose that application under the timetable, a hearing will take place at 10.00 am on Thursday 15 May 2014 in the Employment Court at Auckland. If, however, no interim order for stay is made and Ms Bryan obtains a compliance order from the Authority or pursues other enforcement mechanisms against Mr Ryan, his challenge to the Authority’s determination may become effectively academic.

[9] In these circumstances, the interests of justice require that an interim order staying execution or other enforcement of the Authority’s determination of 19

December 2013 is made. This will be as follows.

[10] Until further order of the Court, Chanelle Bryan is not to commence or prosecute any proceedings for enforcement of those orders against Mr Ryan specified by the Employment Relations Authority in its determination of 19

December 2013 under [2013] NZERA Auckland 584 or subsequently.

[11] This order is conditional upon Mr Ryan paying to the Registrar of the

Employment Court at Auckland, before 9 am on Friday 4 April 2014, the sum of

\$5,000, which sum is to be held by the Registrar on interest bearing deposit and to be disbursed only by order of a Judge.

[12] This order is further conditional upon Mr Ryan prosecuting promptly his application for a substantive order for stay of execution after Ms Bryan takes the steps in that proceeding, which she is entitled to do, before 15 April 2014.

[13] This interim order will expire upon the decision of the Employment Court on that substantive stay application.

[14] For the sake of clarity, this interim order applies only to those parts of the Authority’s determination of 19 December 2013 and to any subsequent costs’ determination involving the plaintiff that affects Mr Ryan’s personal liability.

[15] I will reiterate what I advised Mr Buckingham and Ms Bryan earlier today during the hearing. Without deciding what may happen as a result of the plaintiff’s substantive application for a stay, Mr Ryan should be on notice that any stay then granted may be on condition also that he pay into court a further sum towards the amounts ordered by the Authority against him and in its costs’ award. The amount that I have required Mr Ryan to pay in immediately will barely cover the Authority’s costs’ award without taking account of the penalties that it ordered against him, three-quarters of which are payable to Ms Bryan. Although the condition of payment-in may be regarded as a token, it must take account of Mr Ryan’s ability to come up with the funds at very short notice and this solution seeks to achieve a balance between those two imperatives.

[16] Ms Bryan has advised the Court (and this was not contradicted by Mr Buckingham) that Mr Ryan resides out of the jurisdiction. The defendant is clearly, and perhaps with justification, concerned that in these circumstances she will not be paid either what the Authority has ordered to be her entitlements or whatever this Court, in the proceedings currently before it, may order in her favour. Ironically, although Ms Bryan has been, and continues to be, represented by counsel in the Authority, she is unrepresented in these proceedings. If issues of enforceability of costs do arise where a litigant is domiciled out of the jurisdiction, I recommend that Ms Bryan take advice as to her rights in that regard.

Judgment signed at 5.50 pm on Wednesday 2 April 2014

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