



# Employment Court of New Zealand

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## Ryan v Bryan [2014] NZEmpC 72 (15 May 2014)

Last Updated: 20 May 2014

### IN THE EMPLOYMENT COURT AUCKLAND

#### [\[2014\] NZEmpC 72](#)

ARC 5/14

IN THE MATTER OF      a challenge to a determination  
                                 of the  
                                 Employment Relations  
                                 Authority

AND IN THE MATTER   of interlocutory applications

BETWEEN                STEPHEN JOHN RYAN Plaintiff

AND                        CHANELLE BRYAN Defendant

Hearing:                15 May 2014  
                                 (Heard at Auckland)

Appearances:        S Buckingham, counsel for  
                                 plaintiff  
                                 Defendant in person

Judgment:             15 May 2014

### ORAL INTERLOCUTORY JUDGMENT (NO 2) OF CHIEF JUDGE G L COLGAN

[1] There are two interlocutory decisions to be made in respect of this case, the

background to which is set out in the Court's first interlocutory judgment issued on

2 April 2014.<sup>1</sup>

[2] The first application filed in time is the plaintiff's for a stay of execution of the Employment Relations Authority's determination.<sup>2</sup> An interim order was made urgently on 2 April 2014 staying, for the time being, execution of the Authority's determination on condition that Mr Ryan paid into court the sum of \$5,000 which he has done. That judgment, however, put Mr Ryan on notice that the Court might well

augment the sum concerned at today's hearing.

<sup>1</sup> *Ryan v Bryan* [\[2014\] NZEmpC 52](#).

<sup>2</sup> *Bryan v Ultimate Ltd (in liquidation) and Ors* [2013] NZERA Auckland 584.

STEPHEN JOHN RYAN v CHANELLE BRYAN NZEmpC AUCKLAND [\[2014\] NZEmpC 72](#) [15 May 2014]

[3] As has been noted in the earlier judgment, Mr Ryan's liability to Ms Bryan is for monetary penalties for inciting, instigating, aiding and/or abetting 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 Ms Bryan. The Authority imposed penalties on Mr Ryan totalling \$20,000 and directed that one-quarter of those penalties be paid to the Crown with the balance being payable to Ms Bryan. The Authority has, subsequently, determined that Mr Ryan must pay Ms Bryan costs amounting to

\$4,750.

[4] Mr Ryan's resistance to an order staying the enforcement by Ms Bryan of the Authority's orders is based principally on technical arguments that appear to be about the receipt or non-receipt of documents by the Authority, and on the admissibility of much of the evidence considered by it under the provisions of the [Evidence Act 2006](#). In the latter regard, it probably needs to be stated or re-stated that the provisions of the [Evidence Act](#) do not apply to proceedings in the Authority.

[5] In addition, although Mr Ryan's is currently a non-de novo challenge in the strict sense of that phrase, that is that all issues decided by the Authority are not challenged, those other issues not the subject of this challenge relate to the liability of other parties. All the findings made by the Authority against Mr Ryan are challenged and it is likely that a Judge will direct a full hearing with evidence on those issues.

[6] Without determining the merits of Mr Ryan's challenge, which will be heard by this Court in due course, the position is that an experienced member of the Authority has determined that Mr Ryan is liable as a party to breaches of the defendant's employment agreement. In a comprehensively reasoned determination, the Authority awarded those penalties in circumstances where, at least arguably, more substantial penalties could have been imposed in view of its findings of multiple breaches committed to which Mr Ryan was a party.

[7] In these circumstances, I propose doing what was foreshadowed in the judgment of 2 April 2014 and now impose, as an additional condition on the granting

of the order for stay made in that judgment, that Mr Ryan pay to the Registrar of the Employment Court at Auckland the further sum of \$15,000, to be held on interest bearing deposit and to be disbursed only by order of a Judge. That new and additional condition must be fulfilled by Mr Ryan in two tranches:

1. Mr Ryan must pay the sum of \$5,000 to the Registrar within 30 days of the date of this judgment.
2. Mr Ryan must pay the balance of \$10,000 to the Registrar within 60 days of the date of this judgment.

[8] Those conditions will allow Mr Ryan to assemble the funds from overseas accounts as his counsel has said will be necessary.

[9] As with the first order for stay made by the Court on 2 April 2014, in the event that these conditions are not fulfilled, enforcement of the Authority's orders against Mr Ryan will be available to Ms Bryan.

[10] I now turn to the second matter for determination today, Ms Bryan's application for security for costs. It relies principally on her contention that Mr Ryan either resides beyond the jurisdiction or at least spends substantial periods of time outside New Zealand. It is based also on what Ms Bryan alleges was a history of prevarication and delay by Mr Ryan in the Authority.

[11] Ms Bryan's application for security for costs must fail for two reasons.

[12] The first is that she is not represented by a lawyer in these proceedings so that any costs of defending them successfully that she might incur and be awarded, will probably be minimal at best. It appears that Ms Bryan has chosen to have and retain counsel for those proceedings in the Authority which are still ongoing, but not in this Court.

[13] Second, even if it could be shown that Ms Bryan would be likely to incur legal costs that should be the subject of an order for security, she has not established any more than her suspicion that Mr Ryan will be more difficult to recover costs

from than a person within the jurisdiction. There is no evidence which elevates Ms Bryan's suspicion about Mr Ryan's absences from New Zealand beyond that. Even if someone travels out of the jurisdiction frequently for legitimate purposes, that does not of itself make recovery of remedies less convenient. In these circumstances, the defendant's application for security for costs against Mr Ryan is dismissed. On that application I propose, however, not to make any award of costs in Mr Ryan's favour. Costs are to lie where they fall on that application.

[14] On the plaintiff's application for stay of execution of the Authority's determination, and despite the Court having had to convene in effect two hearings because of the lateness of that application by Mr Ryan, I also conclude that each party should meet his and her own costs. If Ms Bryan had incurred legal costs in defending the application for stay and achieving the result that was probably predictable from the outset, she might have been entitled to reimbursement of those costs, but as none appear to have been incurred, there will be no order.

[10] It is really now time for the parties to get on with the plaintiff's challenge to the Authority's determination. To achieve that, the Registrar should arrange for a telephone directions conference with a Judge shortly after the expiry of 60 days from the date of this judgment. That will enable Mr Ryan to meet the conditions of the stay as I have timetabled them but also will enable a Judge to timetable Mr Ryan's challenge to a hearing.

GL Colgan  
Chief Judge

