

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Safe Site Systems Limited (Applicant)

AND Nicki Bee (Respondent)

REPRESENTATIVES Brian Orpen, Director, Applicant
No appearance for Respondent

MEMBER OF AUTHORITY Robin Arthur

INVESTIGATION MEETING 16 January 2006

DATE OF DETERMINATION 16 January 2006

DETERMINATION OF THE AUTHORITY

[1] The applicant seeks orders for enforcement of a settlement agreement (“the agreement”) made on 19 July 2005 and certified by a mediator under s149 of the Employment Relations Act 2000 (“the Act”).

[2] The agreement was reached with the assistance of a Department of Labour mediator. The parties signed the agreement, including a section confirming that, before signing, the mediator had explained the agreement’s terms were final, binding and enforceable. This acknowledgement noted that, except for enforcement purposes, neither party could appeal or seek review of the terms of the agreement.

[3] The applicant filed an application for enforcement orders on 30 September 2005 on the grounds that the respondent had not made any of the payments by instalment that were a term of the agreement. Payments were due to be made fortnightly from 5 August 2005.

[4] The respondent filed a statement in reply on 21 October 2005. The reply was accompanied by a brief statement from the respondent saying that she considered the outcome of the mediation was unfair and that she felt pressured by the mediator but states no reason she has not complied with the terms of the agreement.

[5] An investigation meeting was notified to the parties for 16 January 2006. The respondent did not attend the meeting at the scheduled time of 10am or provide any explanation for her absence. I waited a further 15 minutes before starting the meeting. I am satisfied that she was properly notified. She had advised the Authority of two changes of address. The meeting notice was despatched to her most recent address. She then contacted an Authority support officer seeking advice on whether she could attempt to settle the matter directly with the applicant. The matter was not settled prior to the investigation meeting.

[6] Brian Orpen, a shareholder and director of the applicant, did attend the investigation meeting. He gave evidence by affirmation that the respondent had worked for the applicant company in New Plymouth and Auckland. In 2003 she had transferred to Auckland. Around this time the applicant loaned the respondent some money to assist with her transfer. That money is the subject of arrangements for repayment under the terms of the agreement.

[7] Mr Orpen confirmed that the applicant has not received from the respondent any of the payments by instalment required under the terms of the agreement.

[8] At around 10.40am, during the investigation meeting, I attempted to contact the respondent at the mobile telephone number she gave on her statement in reply. There was no answer and I left a telephone message advising that it was likely there would be an order requiring her to comply with the terms of the agreement.

[9] I am satisfied from the terms of the certificate signed by the mediator under s149 of the Act that the respondent was aware that the terms of settlement could not be reviewed and were enforceable.

[10] The agreement was stated to be "a full and final settlement of all matters between the parties". It was agreed that the respondent would repay the applicant the sum of \$2500. The applicant was also to pay the respondent the amount of \$250 by a set date and Mr Orpen confirmed that this amount had been paid to the respondent.

[11] I am satisfied that the applicant is now entitled to orders for the enforcement of the terms of the agreement. Having failed to meet the conditions of the agreement for payment by instalments, the respondent is liable to pay the entire amount without delay. The applicant has sought immediate payment of arrears to date and a deadline for the payment of the remainder.

[12] The respondent was due to have made 12 fortnightly payments by instalment during the period from 5 August 2005 to 13 January 2006 to a total value of \$960. A further payment of \$80 due on 27 January 2006 will bring that total to \$1040. A further \$1460 then remains due under the agreement.

Order of the Authority

[13] **Under s 137 of the Act I order the respondent to comply with the terms of the agreement by:**

(i) paying to the applicant the sum of \$1040 by no later than 31 January 2006 (that is within 14 days of the date of this order); and

(ii) making arrangements for payments to the applicant of \$80 each fortnight from no later than 10 February 2006 until the outstanding debt of \$1460 is paid in full (that is a further 18 payments of the fortnightly amount due and one part-payment of \$20).

[14] Should the respondent continue to breach the terms of the agreement, the applicant is also entitled to apply to the Authority for a penalty to be imposed on the respondent. In the case of an individual the Authority may order a penalty of up to \$4000. If the respondent fails to comply with the orders made in this determination, the applicant is entitled to ask the Employment Court to order, among other things, that the applicant be sent to prison for up to three months and/or fined up to \$40,000.

[15] Leave is reserved for the applicant to make immediate further application to the Authority, including applying for a penalty under s149(4) of the Act, in the event that the respondent further breaches the terms of the agreement or does not comply with the orders made in this determination.

Reimbursement of filing fee

[16] The applicant is also entitled to reimbursement by the respondent of its fee in filing an application for compliance with the agreement. **The respondent is ordered to reimburse to the applicant the sum of \$70.00 for its filing fee.**

Robin Arthur
Member of Employment Relations Authority