

**IN THE EMPLOYMENT COURT  
AUCKLAND**

**[2012] NZEmpC 106  
ARC 42/12**

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

BETWEEN                 SIMON MAXWELL EDWARDS  
Plaintiff

AND                        TWO DEGREES MOBILE LIMITED  
Defendant

Hearing:                 Following a chambers telephone conference at 4pm on 5 July 2012  
(Heard at Auckland)

Counsel:                 Michael O'Brien and Nura Taefi, counsel for plaintiff  
Penny Swarbrick, counsel for defendant  
Harry Waalkens QC, counsel for Eric Bennett Hertz

Judgment:               6 July 2012

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**INTERLOCUTORY JUDGMENT OF JUDGE B S TRAVIS**

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[1]     These proceedings were originally intituled ARC 42/12 Simon Maxwell Edwards v Two Degrees Mobile Limited (first defendant) and Eric Bennett Hertz (second defendant) when they were filed on 5 July 2012. An urgent telephone chambers conference was convened at 4pm on that day. Mr Waalkens QC, counsel for the second defendant, Eric Bennett Hertz stated that he was astonished the second defendant was being sued. The statement of claim in support of the challenge and the application for interim injunction sought no relief from the second defendant.

[2]     By consent it was agreed that the second defendant would be struck out from these proceedings. Mr Waalkens was excused further attendance.

[3] Ms Swarbrick, counsel for the first defendant, indicated that a renewed offer had been made to extend the notice terminating the plaintiff's employment until 31 August 2012 on condition that he be placed on garden leave.

[4] Mr O'Brien advised that this was unacceptable to the plaintiff who wished to be able to continue to work. Ms Swarbrick claimed there was no work available for the plaintiff. However, as the offer was rejected, it could not be taken into account for the purpose of determining whether or not the application for an interim injunction was urgent.

[5] I determined that, as the plaintiff was seeking to restrain the first defendant from terminating his employment as at Sunday 15 July 2012, a hearing would be required prior to that date in order to enable the plaintiff to pursue his present challenge. After that date, if the dismissal took effect, the plaintiff would have to apply for interim reinstatement to the Authority. He would therefore be prevented from being able to pursue his current challenge against the Authority's refusal to restrain the dismissal.<sup>1</sup>

[6] Having determined that the matter did require urgent resolution prior to 15 July 2012, the Court will hear the matter at 2.15pm on Thursday 12 July 2012.

[7] The defendant will file and serve a notice of opposition and any affidavits in opposition ancillary to the affidavit material already placed before the Authority by 1pm on Wednesday 11 July 2012.

[8] By consent, the parties may file any affidavits used in the Employment Relations Authority in support of or in opposition to the plaintiff's interim injunction application.

[9] If, however, the first defendant is prepared to extend the notice period for the termination of the plaintiff's employment, until 10am on Friday 20 July 2012, then the injunction hearing will take place at 10am on Monday 16 July 2012.

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<sup>1</sup> [2012] NZERA Auckland 224.

[10] If the hearing takes place on Monday 16 July then the defendant will file and serve its notice of opposition and any ancillary affidavits by 1pm on Friday 13 July 2012.

[11] Leave is reserved for the defendant to file any affidavits in reply to any ancillary affidavits the defendant may file by 9am on the day finally allocated for the hearing of the fixture.

[12] Mr O'Brien for the plaintiff undertook to file in Court a set of the submissions presented by the parties to the Authority by 4pm on Monday 9 July 2012.

[13] Ms Swarbrick undertook to obtain instructions and will advise plaintiff's counsel and the Court which of the two fixture dates for the hearing of the interim injunction will apply.

[14] Leave is reserved to the parties to apply for further directions.

[15] In future the proceedings will be named with the omission of the second defendant and the first defendant simply being described as the defendant.

B S Travis  
Judge

Judgment signed at 4.30pm on 6 July 2012