

**IN THE EMPLOYMENT COURT
CHRISTCHURCH REGISTRY**

**[2013] NZEmpC 130
CRC 34/09**

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

BETWEEN BRIAN SAMUEL BATES
 Plaintiff

AND ADEN ELECTRICAL LIMITED (in
 liquidation)
 Defendant

Hearing: on the papers - memoranda received 8 June 2012 and 22 April
 2013

Appearances: Jennifer Guthrie, counsel for the plaintiff

Judgment: 12 July 2013

JUDGMENT OF JUDGE A A COUCH

[1] The plaintiff was employed by the defendant from 2005 until January 2008. He pursued two personal grievances arising out of events which occurred during the employment relationship and the manner in which it ended. Those claims were investigated by the Employment Relations Authority which dismissed them in its determination dated 16 November 2009.¹ The plaintiff challenged that determination in a statement of claim filed on 14 December 2009.

[2] The defendant was placed in liquidation on 5 March 2010. Section 248 of the Companies Act 1993 provides that, unless the liquidator agrees or the High Court orders otherwise, legal proceedings against the company could not then be continued. Through the Registrar, an enquiry was made of the liquidators whether

¹ CA 188/09.

they consented to the matter continuing. They replied in unequivocal terms that they did not consent.

[3] The plaintiff was then asked whether he intended to apply to the High Court for leave to proceed. While it was suggested on his behalf later in 2010 that he might make such an application, that never occurred. Rather, Mrs Guthrie corresponded with the liquidators in an effort to settle the matter with them but they steadfastly refused to become involved.

[4] Through the Registrar, the plaintiff was made aware that it was unacceptable for a proceeding to remain before the Court with no prospect of resolution. The plaintiff was asked to either make an application to the High Court or file a notice of discontinuance. He did neither.

[5] The Court then became aware that the Authority had issued a second determination dated 17 March 2010,² ordering the plaintiff to pay the defendant \$3,800 for costs. In explanation of the plaintiff's inactivity, Mrs Guthrie submitted that, as a result of this order against him, the plaintiff was "stuck". She accepted that the plaintiff could not proceed with his challenge but suggested that, while it remained before the Court, the liquidators could not insist that the plaintiff pay the money ordered by the Authority.

[6] In a minute dated 23 April 2012, I identified the error in that analysis. Section 180 of the Employment Relations Act 2000 provides that, unless the Court or the Authority so orders, a challenge to a determination of the Authority does not operate as a stay of proceedings for execution of orders made by the Authority. Thus, any valid orders made by the Authority were enforceable by the liquidators.

[7] I used the word "valid" because it was questionable whether the Authority was permitted to make a costs order after the liquidation had commenced, the issue being whether that amounted to continuation of the proceeding before the Authority. I noted, however, that this issue appeared to have been resolved by Judge Shaw in

² CA 70/10.

*Orakei Group (2007) Ltd v Doherty (No 2)*³ where she found that it was open to the Court to make an order for costs against a company in liquidation without the leave of the High Court.

[8] In concluding the minute, I expressed the view that, unless Mrs Guthrie could persuade me otherwise, the proceeding should be struck out as serving no possible purpose.

[9] Mrs Guthrie filed an extensive memorandum in response in which she suggested that, if the liquidators attempted to enforce the Authority's costs order, that would amount to a continuation of the proceedings and open the door for the plaintiff to continue his challenge. She submitted that the proceeding should be allowed to remain alive until the liquidation had concluded to allow for that possibility.

[10] While I had serious misgivings about the rationale for that submission, I allowed the matter to remain dormant before the Court in expectation that the liquidation would be completed within a few more months.

[11] When the position remained unaltered for nearly a year, I issued a further minute in March 2013 in which I gave Mrs Guthrie an opportunity to advise the Court of any change in circumstances or to advance any reasons for allowing the proceeding to remain alive which had not previously been aired. Mrs Guthrie filed a further memorandum in response but this very largely repeated the submissions made previously.

[12] There comes a time when the Court must bring proceedings such as this to an end. In this case, that time has been well and truly reached. The proceeding is struck out. There is no order as to costs.

AA Couch
Judge

Signed at 3.00 pm on 12 July 2013.

³ [2008] ERNZ 505.