

**IN THE EMPLOYMENT COURT
CHRISTCHURCH**

**[2014] NZEmpC 145
CRC 53/13**

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
BETWEEN	STEPHEN LAING Plaintiff
AND	LIQUID FRANKTON LIMITED Second Plaintiff
AND	LIQUID GROUP HOLDINGS LIMITED Third Plaintiff
AND	MT ROSA ESTATE LIMITED Fourth Plaintiff
AND	JOHN GRANT WALKER Defendant

Hearing: (on the papers by document dated 28 July 2014)

Judgment: 7 August 2014

JUDGMENT OF JUDGE B A CORKILL

[1] The first plaintiff, Mr Stephen Laing is or was a Director and Shareholder of several companies carrying on business in Central Otago.

[2] Through discussion with Mr Laing, Mr Walker was employed to work successively in some of those businesses. When Mr Walker's employment came to an end, he pursued a personal grievance alleging that he had been unjustifiably, constructively dismissed. He cited four respondents who are now the plaintiffs in this proceeding. As a preliminary matter, the Employment Relations Authority (the Authority) determined that, the fourth plaintiff, Mt Rosa Estate Limited was

Mr Walker's final employer.¹ Mr Laing challenged that conclusion both in his own right and purportedly as agent for the three corporate plaintiffs. None of those plaintiffs have taken any steps in the proceeding.

[3] On 17 March 2014, there was a telephone conference with the parties' representatives. The Court was concerned about the issue of disclosure. The Court concluded it was highly likely there were documents which would assist in identifying Mr Walker's final employer. It was held they should be disclosed, and the following directions were made:

- a) The parties are to disclose to each other all documents in their possession or power relating to the employment of Mr Walker by any of the plaintiffs or by any other person or legal entity during the period beginning May 2009. By way of example, those documents should include:
 - (i) Employment agreements.
 - (ii) Wage and time records.
 - (iii) Holidays records.
 - (iv) Inland Revenue records such as PAYE returns.
 - (v) Wage slips or other advice of wage and salary payments.
 - vi) Bank records of wage and salary payments.
- b) Disclosure is to be made by the provision of copies of the documents.
- c) Disclosure is to be made no later than Monday 14 April 2014.

[4] On 7 May 2014, the Court noted that the direction as to disclosure had not, as far as Mr Laing was concerned, been attended to. He was directed to file a memorandum explaining the position by 14 May 2014.

[5] That did not occur. In a further minute on 19 May 2014, the Acting Registrar was requested to arrange an immediate telephone directions conference so that the outstanding issues could be explained by the first plaintiff.

[6] That resulted in a directions conference being held with the parties on 30 May 2014 wherein Mr Laing indicated he wished to file an interlocutory

¹ *Walker v Laing* [2013] NZERA Christchurch 248.

application for non-party disclosure and production of documents. He was directed to do so within seven days of the minute which was issued as a result of that telephone conference, i.e. by 6 June 2014. No such application was filed.

[7] On 13 June 2014, the Court issued a minute noting that:

- a) The first plaintiff has not filed an application for non-party discovery according to the timetable directed in minute No. 4.
- b) The memory stick arrangement referred to in paragraph 4 of that minute is in the course of being implemented.
- c) The defendant attended mediation, but the plaintiff did not.

[8] The Court went on to state:

5. So as to advance this proceeding in a timely way the Court wishes to consider whether it is appropriate to make an order of compliance in respect of the direction given by Judge Couch on 17 March 2014 to the effect that the first plaintiff complies with that order within a timeframe which the Court will establish.

6. Before making such a compliance order, however, both parties are offered the opportunity of making submissions as to whether or not the Court should do so; such submissions should be filed and served within seven days of the date of this minute.

7. It should be noted that where a compliance order is made, and if there is a failure to comply with it, then various consequences may be considered by the Court. One of these is provided for in s 140(6)(a) of the Act which states that if the person in default of a compliance order is a plaintiff, the Court may order that the proceedings be stayed or dismissed as to the whole or any part of the relief claimed by the plaintiff in the proceedings.

[9] Mr Laing has taken no step. Mr Walker has filed a submission which in effect submits that the matter must be brought to finality.

[10] In a minute which the Court issued on 23 June 2014, I indicated that this is a case where there had been no ongoing compliance with the Court's direction of 17 March 2014, and that no adequate explanation had been provided. I observed that the interests of justice required that the Court be proactive and act on its own motion as it is authorised to do under s 140(1)(b) of the Employment Relations Act 2000 (the Act).

[11] Accordingly, on 23 June 2014 I made a compliance order under s 139 of the Act in the following terms:

[T]he first plaintiff is to comply with the direction of the Court as set out at para [3] above, by 28 July 2014. If after that date the Court is satisfied that the first plaintiff has failed to comply with the compliance order, it will give immediate consideration to the making of an order under s 140(6) of the Act, that the proceedings be dismissed.

[12] Since the making of that order, no steps have been taken by Mr Laing, as first plaintiff.

[13] Mr Walker has filed a submission to the effect that Mr Laing has not demonstrated any good faith throughout the entire process; he asserts that Mr Laing has deliberately manipulated the process by making false claims and/or applications, but not submitting any evidence to support them. He submits that it must be concluded Mr Laing has no intention of participating in the challenge. He also submits that Mr Laing has deliberately delayed the challenge so that assets of the fourth plaintiff could be sold off prior to a creditor of that company appointing receivers and managers on 17 June 2014. Finally, Mr Walker submits that the Court should, of its own motion, enter judgment against the fourth plaintiff for the sums sought in the statement of problem, and for costs.

[14] I am satisfied that the first plaintiff has failed to comply with the compliance order made by the Court on 23 June 2014.

[15] Section 140(6) of the Act relevantly provides:

Where any person fails to comply with a compliance order made under section 139 ... the court may do 1 or more of the following things:

- a) if the person in default is a plaintiff, order that the proceedings be stayed or dismissed as to the whole or any part of the relief claimed by the plaintiff in the proceedings.

[16] Having regard to the first plaintiff's failure to comply with the Court's compliance order, the challenge is dismissed.

[17] Costs are reserved. They should follow the event. Any application for costs by the defendant should be filed within 14 days; any response by the first plaintiff is to be made within 14 days thereafter.

[18] The defendant has requested that the Court enter judgment against the fourth plaintiff. As the challenge related only to the determination of the Authority of 3 December 2013, in which it was concluded that the defendant was at the time of the cessation of his employment employed by the fourth plaintiff, the Court has no jurisdiction to determine the grievance brought against that company. That is an issue which may now require consideration by the Authority.

B A Corkill
Judge

Judgment signed at 2.15 pm on 7 August 2014