

**IN THE EMPLOYMENT COURT  
HAMILTON**

**AC 36A/09  
ARC 77/08**

IN THE MATTER OF     an application for compliance order

BETWEEN               MARTIN BROEKS  
                              Plaintiff

AND                     PETER ROSS TRADING AS PETER  
                              ROSS CONTRACTING  
                              Defendant

Hearing:           11 December 2009  
                      (Heard at Hamilton)

Appearances: Martin Broeks in person and Brenda Broeks, support person  
                      No appearance defendant

Judgment:        11 December 2009

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**ORAL JUDGMENT OF JUDGE M E PERKINS**

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[1] This matter has been recalled today in the Hamilton Employment Court following an earlier appearance before his Honour, Chief Judge G L Colgan on 15 October 2009. On that date Chief Judge Colgan delivered a judgment in which the defendant, Mr Ross, was ordered to make compliance with the determination of the Employment Relations Authority ("the Authority"). In that judgment his Honour determined that the money owing to Mr Broeks by Mr Ross on that date was the sum of \$9,406.27. Interest has also been awarded and is running on on the debt until payment.

[2] Matters as to how the decision might be enforced were discussed on that day and at the conclusion of the judgment his Honour adjourned the case until 9.00 am, Friday 11 December 2009, with the direction that if Mr Ross had not complied with the orders made in the judgment, then further enforcement remedies would be considered. There was a direction that the decision, and also a notice as to the

adjourned hearing date, would be served on Mr Ross. Ms Brenda Broeks, who is appearing in support of her brother Mr Broeks, filed a statutory declaration on 3 December 2009 confirming service of the documents on Mr Ross.

[3] The Court is aware that Mr Ross knew of the hearing date today. This is because yesterday, 10 December 2009, Mr Ross telephoned the Registrar of the Employment Court in Auckland and he indicated that he knew of the hearing date today. He believed that it was a hearing before the Authority rather than a Judge and apparently expressed some surprise to the Registrar when he was informed that the hearing today was to be before a Judge of this Court. Mr Ross indicated that he was in the South Island working as a driver on wages and would be unable to attend. The Registrar informed him that it would be in his best interests to make every effort to appear in Court today. Prior to the matter proceeding today, I asked the Registrar to call for Mr Ross outside the precincts of the Court; that has been done and Mr Ross has not appeared.

[4] I have discussed the matter now with Mr Broeks and his sister and have indicated that this is not an appropriate case for Mr Ross to be sentenced to any term of imprisonment as a result of his failure to comply with the Court orders. The suggestion of sequestration has been discussed. That is not really an appropriate option available to Mr Broeks because of the expense which would be incurred in having a person appointed to carry out the sequestration. Any person appointed would obviously wish to be paid and until monies are recovered from Mr Ross, Mr Broeks would be left with paying that expense.

[5] The suggestion that I have made is that, pursuant to s141 of the Employment Relations Act 2000 ("the Act"), the orders in this Court be sealed and filed in the District Court so that they then can be enforced using the remedies which are available under the District Courts Act and Rules. Those remedies are more diverse and more effective than remedies which may be available in this Court.

[6] I have also discussed the option of applying to the High Court to have Mr Ross adjudicated bankrupt. That is an expensive process and I imagine that Mr Broeks would need to employ a solicitor to carry out that process. Remedies

which would be available in the District Court would include carrying out an examination of Mr Ross as to his means and taking steps to attach his wages. There is also the remedy of issuing a garnishee summons against any money which may be owing to Mr Ross or held by him on deposit, say in a bank. Mr Broeks and his sister are going to investigate whether information may be available for that purpose.

[7] Effectively, those are the remedies which are available to Mr Broeks. It is not entirely satisfactory, but it is one thing to obtain a judgment or a compliance order, it is always a difficult matter to enforce it if the debtor is unwilling to make payment.

[8] The final matter which I wish to deal with today is the further remedy of fine available under s140(6)(d) of the Act. Mr Ross has acted in flagrant disregard of the processes of the Authority and this Court. He is in default. He has consistently failed to appear in Court when required to do so. Indeed, as I understand it, the original orders in the Authority were made against him by default. He has treated the Court, the Authority and Mr Broeks with complete contempt and disregard.

[9] In my view it is appropriate that a fine be imposed upon him. Accordingly, I order him to pay a fine of \$1,000, which is also to be paid to Mr Broeks and that sum can be added to the money which is now owing under the other orders. I consider that I have jurisdiction to order that the fine be paid to Mr Broeks. That cannot be done in the ordinary courts with criminal jurisdiction because of provisions of the Sentencing Act. But the Sentencing Act only applies to courts exercising criminal jurisdiction. As the jurisdiction of this Court is not within that category, and the Employment Relations Act 2000 does not impose any caveat as to where any fines are to be paid, I consider that in this case it is appropriate that the fine be paid to Mr Broeks.



M E Perkins  
Judge