

**IN THE EMPLOYMENT COURT
AUCKLAND**

**AC7A/09
ARC 31/08**

IN THE MATTER OF an application for strike out

BETWEEN PACIFIC PALMS INTERNATIONAL
 RESORT & GOLF CLUB LIMITED
 Plaintiff

AND BRUCE WALTON SMITH
 Defendant

Hearing: 7 August 2009
 (Heard at Auckland)

Appearances: Mr Cribb, advocate for plaintiff
 Mr Danny Jacobson, counsel for defendant

Judgment: 7 August 2009

SECOND ORAL INTERLOCUTORY JUDGMENT OF JUDGE B S TRAVIS

[1] Mr Smith has brought a further application to the Court to strike out the challenge lodged by the plaintiff. The grounds are similar to those that have been advanced in the past and are not without merit. They turn on the continued failure of the plaintiff to be able to meet the obligation the Court has imposed upon it to place the funds that are in dispute into the security of the Court's hands as a condition of the challenge being able to be pursued. I appreciate that the continuation of the challenge may create some difficulties for the enforcement by Mr Smith of the remedies that he has in his favour but on the other hand the challenge does not appear to be without merit and I am loath to strike it out at this point in time.

[2] That is particularly so because Mr Cribb on behalf of the plaintiff has been able to provide documentation which suggests that, at long last, the financial

arrangements may be coming to a head and from those payments Mr Cribb has undertaken as I understand it to ensure the monies are paid into Court so that the challenge may proceed.

[3] For that reason only, and in the knowledge that I have made an “unless” order in my judgment of 5 March 2009, I am prepared to grant yet a further indulgence to the plaintiff.

[4] Because of the need to keep this matter under close surveillance, however, that indulgence will only be for a further 30 days from today’s date.

[5] The other factor which has swayed me into doing this is that as long as the Court has the control over the challenge it may be able to produce for Mr Smith the desirable result that if the challenge proceeds and is unsuccessful the monies are secured in Court.

[6] I am, however, because of the indulgence being granted, prepared to allow costs to Mr Smith on the basis outlined by Mr Jacobson. In addition to the \$2,500 I have already awarded there is to be a further \$400 for disbursements in relation to airfares on that occasion. For today’s hearing, I allow costs in the sum of \$1,500 in favour of Mr Smith together with a further disbursement of \$405 for airfares. Those funds are to be paid in any event, regardless of the outcome of the challenge, whether it is dismissed for the failure to pay the monies into Court. They should, however, be paid at the latest at the point of time when the monies are paid into Court.

[7] I regret that the current situation is unsatisfactory to all the parties and hope that it will be resolved in a timely manner as the documentation has indicated. I direct that the confidential document produced today be given back to Mr Cribb and the ones filed in Court to remain confidential in the mean time.

B S Travis
Judge

Second oral judgment signed at 1pm on 7 August 2009