

**IN THE EMPLOYMENT COURT OF NEW ZEALAND
AUCKLAND**

**I TE KŌTI TAKE MAHI O AOTEAROA
TĀMAKI MAKĀURAU**

**[2020] NZEmpC 104
EMPC 139/2020**

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	an application for stay of execution
AND IN THE MATTER OF	an application for costs
BETWEEN	MARK SINTON Plaintiff
AND	COATESVILLE MOTORS 2013 LIMITED Defendant

Hearing: On the papers

Appearances: P Mathews, advocate for plaintiff
P McBride, counsel for defendant

Judgment: 15 July 2020

**COSTS JUDGMENT OF CHIEF JUDGE CHRISTINA INGLIS
(Application for costs on application for stay of execution)**

[1] The defendant applies for costs following the withdrawal by the plaintiff of an application for a stay. The plaintiff asks that costs be reserved pending the outcome of the substantive challenge and, if not, that any costs be minor.

[2] The application for a stay had been directed at the sum of \$380, ordered against the plaintiff in the Authority,¹ together with any future costs award that might (but had not yet) been made. The application was withdrawn following a telephone conference.

¹ *Sinton v Coatesville Motors 2013 Ltd* [2020] NZERA 166 (Member Campbell).

I indicated during the course of the conference that I would likely deal with costs in this case on an ongoing basis, rather than deferring them. In this regard it was noted that, although the substantive claim itself involved a relatively modest amount of money, it appeared to be generating a degree of interlocutory activity which – while open to the parties – comes at a cost. In the particular circumstances I consider it appropriate to deal with costs on the withdrawn application at this stage, rather than reserving them to a later date.

[3] The defendant seeks a contribution to costs based on the daily recovery rate for a Category 2 proceeding. I accept, based on the material before the Court, that the defendant incurred costs in excess of the claimed amount.

[4] The general rule is that costs follow the event. The plaintiff took the step of advancing, and then withdrawing, an interlocutory application. The steps taken on behalf of the plaintiff put the defendant to unnecessary cost. The defendant is entitled to a contribution to those costs. However, I am not satisfied the costs actually incurred were reasonable for such a simple procedural matter.

[5] Having regard to all the circumstances, I consider that an order of \$750 is appropriate and reasonable, including having regard to the need to retain a sense of proportionality in both incurring costs and fixing them in matters such as this.

[6] The plaintiff is ordered to pay the defendant the sum of \$750 within 20 working days of the date of this judgment.

Christina Inglis
Chief Judge

Judgment signed at 12.30 pm on 15 July 2020