

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

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

**[2024] NZEmpC 62  
EMPC 291/2023**

IN THE MATTER OF            an application for a compliance order

AND IN THE MATTER OF    an application for a judgment by default

BETWEEN                      RICHARD GUERRA  
   Plaintiff

AND                                WILSON-GRANGE INVESTMENTS  
   LIMITED TRADING AS THE  
   GRANGE BAR AND RESTAURANT  
   Defendant

Hearing:                        9 April 2024  
   (Heard at Christchurch via Audio Visual Link)

Appearances:                K Hudson, counsel for plaintiff  
   No appearance for defendant

Judgment:                    10 April 2024

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**JUDGMENT OF JUDGE K G SMITH**

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[1] Richard Guerra was employed by the defendant company from October 2019 to 31 August 2020. In the Employment Relations Authority Mr Guerra successfully pursued a personal grievance for unjustified disadvantage.<sup>1</sup> Remedies were awarded to him.

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<sup>1</sup> *Guerra v Wilson-Grange Investments Ltd* [2022] NZERA 70 (Member Larmer).

[2] Wilson-Grange Investments Ltd unsuccessfully challenged the Authority's determination. In a judgment dated 14 March 2023 the Court dismissed the company's claims and held that Mr Guerra was entitled to costs.<sup>2</sup>

[3] In a subsequent judgment, dated 22 June 2023, the company was ordered to pay Mr Guerra the sum of \$23,422 in costs within 14 days.<sup>3</sup> It has not paid Mr Guerra or entered into any compromise with him to satisfy that debt.

[4] Mr Guerra has applied for a compliance order under s 139(2) of the Employment Relations Act (the Act). That section applies where any person has not observed or complied with the provisions of pt 8 of the Act, or any order, determination, direction or requirement made or given under the Act by the Court. The purpose of a compliance order is to prevent a further breach from occurring.

[5] A party seeking such an order must show that there has been a breach and that further non-observance or non-compliance is likely.<sup>4</sup> If those circumstances are established the Court may make an order under s 139(2) compelling the party in breach to do any specified thing, or to cease any specified activity, for the purposes of preventing further non-observance or non-compliance.

[6] If a compliance order is made the Court must specify a time within which it is to be obeyed.<sup>5</sup>

[7] Mr Guerra's application proceeded as a formal proof hearing because the company took no steps in the proceeding. Ms Hudson addressed two preliminary matters in her submissions. The first of them was to ensure that the correct name of the defendant is recorded in any compliance order. The defendant is a limited liability company, which is apparent from the earlier judgments and an amendment to record

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<sup>2</sup> *Wilson-Grange Investments t/a The Grange Bar and Restaurant v Guerra* [2023] NZEmpC 39 at [51].

<sup>3</sup> *Wilson-Grange Investments t/a The Grange Bar and Restaurant v Guerra* [2023] NZEmpC 97 at [3].

<sup>4</sup> See *Fletcher Development and Construction Ltd v NZ Labourers etc IUOW* [1988] NZILR 114 (LC) at 120; and *Nathan v Broadspectrum (New Zealand) Ltd* [2017] NZEmpC 72.

<sup>5</sup> Employment Relations Act 2000, s 139(3).

its full name was requested. There is no detriment to the defendant in making that correction and its name is amended accordingly to Wilson-Grange Investments Ltd. The second issue was that the claim for interest was abandoned.

[8] In considering a potential compliance order the first issue is to establish if there has been a breach. In this case the breach relied on is that the Court's order in June last year, requiring costs to be paid within 14 days, remains unsatisfied. In addition to the order requiring payment, Mr Guerra, through his lawyers, demanded it. Payment has not been made and there has been no communication from or on behalf of the defendant about its obligation to pay. I accept that this limb of s 139(2) is satisfied.

[9] Is the breach likely to continue? Self-evidently the breach is continuing because the company has not paid the debt, compromised it, or taken any other steps to satisfy its liability to pay. This limb of the test is satisfied and it follows that a compliance order can be made.

[10] I am satisfied that the circumstances of this case justify a compliance order being made to ensure that the costs order that is now several months old is, in fact, complied with.

[11] Ms Hudson applied for costs for this proceeding of \$3,000 and disbursements for a filing fee of \$306.67. Additionally, Mr Guerra deposed to paying a fee of \$200 to serve documents on the company. I am also satisfied that it is appropriate to award the costs and disbursements as claimed.<sup>6</sup>

## **Conclusion**

[12] Wilson-Grange Investments Ltd is ordered to comply with the judgment of 22 June 2023 by paying the amount of \$23,422 in costs to Richard Guerra no later than **24 April 2024**.

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<sup>6</sup> Employment Relations Act 2000, sch 3 cl 19; and Employment Court Regulations 2000, reg 68. See too High Court Rules 2016, r 14.6(4)(b).

[13] Wilson-Grange Investments Ltd is to pay costs and disbursements to Mr Guerra of \$3,506.67.

K G Smith  
Judge

Judgment signed at 4.45 pm on 10 April 2024