

**IN THE EMPLOYMENT COURT
WELLINGTON**

**WC 19/09
WRC 12/09**

IN THE MATTER OF a claim for money owed under an
employment agreement

BETWEEN BRC LIMITED
Plaintiff

AND TONY MAGELE
Defendant

Hearing: on the papers

Judgment: 26 August 2009

JUDGMENT OF JUDGE A A COUCH

[1] On 8 April 2009, the plaintiff filed a statement of claim in the Court. It alleges that the defendant owes the plaintiff two sums of money. The first is said to be 4 weeks' wages forfeited for failure to work out a period of notice. The second is the value of goods purchased by the defendant for personal use and charged to the plaintiff's account with suppliers. The total sum claimed is \$5,027.95.

[2] There are two major difficulties with this proceeding. The first is that the Court has no jurisdiction to hear it. The Employment Relations Authority has exclusive jurisdiction to determine claims for money owing under an employment agreement and any other actions relating to an employment relationship which are not specifically within the jurisdiction of the Court.

[3] The second problem with the proceeding is that the claims appear to be the subject of a settlement reached with mediation assistance on 28 April 2008. On its face, that settlement complies with the requirements of s149 of the Employment

Relations Act 2000 and, as such, is final and binding. Claims which have been settled in this manner may not be relitigated.

[4] For these reasons, the proceeding is struck out.

[5] Although I have been obliged to strike out the proceeding before the Court, I have a measure of sympathy for the plaintiff's position. It appears that the defendant has failed to make payments he agreed to make under the terms of settlement. When the plaintiff sought and obtained a compliance order from the Authority, the defendant failed to do as directed by the Authority. The Employment Relations Act 2000 provides two specific methods of enforcement of a mediated settlement. They are set out in s151:

151 Enforcement of terms of settlement agreed or authorised

Any agreed terms of settlement that are, under section 149(3), enforceable by the parties and any decision that, under section 150(3), is enforceable by the parties, may be enforced—

(a) by compliance order under section 137; or

(b) in the case of a monetary settlement, in one of the following ways:

(i) by compliance order under section 137:

(ii) by using, as if the settlement or decision were an order enforceable under section 141, the procedure applicable under section 141.

[6] As the plaintiff has already obtained a compliance order from the Authority in relation to part of the agreed terms of settlement, it is also open to the plaintiff to apply to the Court under s138(6). If the Court is satisfied that the defendant was aware of the terms of the compliance order and has not observed those terms, the Court may make one or more of the orders provided for in s140(6). These include, in the case of an individual, a fine, a sentence of imprisonment or sequestration of property. It must be noted, however, that these are powers rarely used by the Court and would require proof to a high standard of all the relevant facts.

A A Couch
Judge

Signed at 4.00pm on 26 August 2009