

**IN THE EMPLOYMENT COURT  
AUCKLAND**

**[2014] NZEmpC 193  
ARC 58/14**

IN THE MATTER OF      a challenge to a determination of the  
   Employment Relations Authority

AND IN THE MATTER    of an application for costs

BETWEEN                 DMI HOMESTAGERS LIMITED  
   Plaintiff

AND                         JASWANT BIELAWSKI  
   Defendant

Hearing:                 By memorandum filed by the defendant dated 19 August 2014  
   and by the plaintiff dated 2 September 2014

Judgment:              21 October 2014

---

**COSTS JUDGMENT OF JUDGE M E PERKINS**

---

[1]      This is an application for costs on the filing of a notice of discontinuance of a challenge by the plaintiff.

[2]      The parties had reached a settlement of their differences by way of a mediated settlement before a mediator in March 2014. The settlement was entered into a Record of Settlement dated 3 March 2014. The record was signed by the Mediator pursuant to the requirements of s 149 of the Employment Relations Act 2000. The parties also signed the record. The settlement became binding upon them.

[3]      The plaintiff failed to comply with the terms of settlement agreed. The defendant applied to the Employment Relations Authority and was granted a

compliance order in a determination dated 11 June 2014.<sup>1</sup> The plaintiff then filed a de novo challenge to the determination. The grounds of the challenge were stated to be that the plaintiff had insufficient funds to meet the payments agreed.

[4] The plaintiff also applied for what was effectively a stay of execution of the compliance order. The application was unsupported by any evidence as to the plaintiff's financial position.

[5] Some timetabling orders were made at a directions conference on 23 July 2014. Following that conference the plaintiff, on 6 August 2014, filed a notice of discontinuance of the challenge.

[6] The defendant seeks costs on the discontinuance. The sum claimed is \$830.59 inclusive of GST for legal costs incurred between 11 July 2014 and 5 August 2014. The attendances included advice and drafting of notice of opposition and statement of defence. However, these documents were not able to be filed before the notice of discontinuance.

[7] The plaintiff has filed a memorandum in relation to costs on the discontinuance. That memorandum attempts to revisit issues resolved at the mediated settlement and is not relevant to costs at this stage.

[8] Having put the defendant to the expense of defending the challenge, it is appropriate that the plaintiff make a contribution to such expense. The challenge was clearly unmeritorious and there would have been no basis for staying execution of the determination had the plaintiff's application proceeded.

[9] The charges made to the defendant by her legal advisors appear fair and reasonable. Relatively low hourly rates are contained in the breakdown of costs annexed to the memorandum on costs filed by the defendant.

[10] The usual starting point applying in this Court is that costs will be awarded on the basis that they will follow the event and equate to approximately two thirds of

---

<sup>1</sup> *Bielawski v DMI Homestagers Ltd* [2014] NZERA Auckland 230.

actual and reasonable costs. There is no reason to depart from that in this case. The plaintiff is ordered to pay to the defendant the sum of \$550 as a contribution towards her costs in this matter. This will be payable by the plaintiff in addition to the sums owing under the mediated settlement, if these have not yet been paid. In addition the plaintiff is to pay the costs and disbursements awarded against it by the Authority in its determination dated 11 June 2014. These amount to \$321.56.

M E Perkins  
Judge

Judgment signed at 12 noon on 21 October 2014