

**IN THE EMPLOYMENT COURT
WELLINGTON**

**WC 2/07
WRC 22/06**

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

AND IN THE MATTER OF an application for stay of proceedings

AND IN THE MATTER OF an application to strike out the
proceedings

BETWEEN FRANCIS WESTON
Plaintiff

AND GARY FRASER
Defendant

Judgment: 5 February 2007

JUDGMENT OF JUDGE C M SHAW

[1] The plaintiff, Mr Weston, has failed to comply with the Court orders¹ made on 13 December 2006 that he pay \$2,500 to the defendant by 19 January 2007 and that he pay the balance of the Employment Relations Authority's order into the Wellington Employment Court by 19 January 2007. These orders were made as a condition of the stay of proceedings sought by the plaintiff under the Authority's determination to prevent execution of the orders made against him.

[2] The defendant's advocate applied for the plaintiff's challenge to be struck out for non-compliance with the Court's orders. At about the same time counsel for the plaintiff sought an order directing surety over two specified properties with a further direction that the order be registered against the titles of those properties to secure the amounts to be paid rather than the plaintiff paying the money as directed.

[3] Other than an assertion in his lawyer's memorandum that Mr Weston has stated through counsel that there is sufficient equity in the properties to meet the sum of \$25,055 and that he will register an order against both properties without delay, there is no sworn evidence that the equity in these properties is sufficient to secure the amounts outstanding.

[4] The defendant's advocate has responded querying the sufficiency of the equity in the properties. He alleges that there are already substantial charges registered against these properties and other creditors are pursuing the plaintiff including the Department of Inland Revenue. He further notes that payment should have been made on 19 January 2007 and any application for sureties should have been made before that date.

Decision

[5] Following a phone conference with the parties on 11 December 2006, the plaintiff's challenge was set down and timetabled to a hearing in New Plymouth on 19 and 20 February 2007 but these dates were contingent on the Court orders being complied with as was the granting of the stay of execution sought by the plaintiff.

[6] I accept the concerns of the defendant as to the lateness of the application for security and for the lack of evidence in support of it.

[7] Although he had a month to do so and was warned in the judgment that non-compliance may result in his proceedings being struck out, the plaintiff has failed either to comply with the Court's orders or to provide a timely and substantiated alternative which would give security to the defendant for the costs and compensation awarded to him by the Employment Relations Authority. The conditional stay granted on 13 December 2006 therefore lapses and the application for stay is dismissed.

[8] The fixture for the hearing of the challenge and the timetabling for that challenge is vacated. The defendant's application to have the challenge struck out is adjourned for a notice of opposition to be filed by the plaintiff by 16 February 2007.

¹ Unreported, Shaw J, 13 December 2006, WC 24/06

The strike out application will be set down by the Registrar for a call-over to set a date for that to be heard.

C M Shaw
JUDGE

Judgment signed at 2.30pm on 5 February 2007