



Employment Court of New Zealand

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Crossen v Yangs House Limited [2021] NZEmpC 30 (17 March 2021)

Last Updated: 23 March 2021

IN THE EMPLOYMENT COURT OF NEW ZEALAND CHRISTCHURCH

I TE KŌTI TAKE MAHI O AOTEAROA ŌTAUTAHI

[\[2021\] NZEmpC 30](#)

EMPC 256/2020

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER	of an application for security for costs
BETWEEN	CHRISTINE CROSSEN Plaintiff
AND	YANGS HOUSE LIMITED First Defendant
AND	LIU YANG Second Defendant

Hearing: On the papers

Appearances: J Hobcraft, advocate for plaintiff
P Brown, advocate for defendants

Judgment: 17 March 2021

INTERLOCUTORY JUDGMENT OF JUDGE K G SMITH

(Application for security for costs)

[1] In a determination dated 30 July 2020 the Employment Relations Authority held that Christine Crossen's claims against Yangs House Ltd and Liu Yang were compromised by a record of settlement they signed under [s 149](#) of the [Employment Relations Act 2000](#) (the Act).¹

1 *Crossen v Yang House Ltd* [\[2020\] NZERA 295 \(Member O'Sullivan\)](#).

CHRISTINE CROSSEN v YANGS HOUSE LIMITED [\[2021\] NZEmpC 30](#) [17 March 2021]

[2] According to the Authority, Ms Crossen had claimed that the settlement agreement related only to her personal grievance and that she had not forgone her right to minimum entitlements under the [Minimum Wage Act 1983](#) and/or the [Holidays Act 2003](#).²

[3] The Authority posed three questions:

- Did the agreement under s 149 of the Act purport to be in full and final settlement of all matters or did it only settle the personal grievances?
- Did the settlement agreement prevent Ms Crossen from bringing her wage claim?
- Did Yangs House and Ms Yang fail to provide wage and time records and, if so, should there be a penalty?

[4] The Authority concluded that the issues the parties were negotiating about, and that were compromised by the

settlement agreement, included whether or not Ms Crossen was owed money for any minimum entitlements. It held that there was no indication in the agreement that the intention was to settle only some matters and not others. It was satisfied that the settlement agreement was designed to be comprehensive, resolving all disputes between the parties.³ It declined to impose any penalty.

[5] Ms Crossen has challenged that determination. She does not seek a full rehearing of the entire matter confining the challenge to pleadings that the Authority:

- (a) failed to interpret the settlement agreement correctly;
- (b) failed to have regard to ss 131(1) and (2) of the Act;
- (c) erred in not imposing a penalty on Yangs House for failing to produce time and wage records; and

2 At [3].

3 At [15].

(d) failed to make a finding about the employment relationship between the plaintiff and Ms Yang.

[6] The claimed remedies include declarations that the settlement agreement is not a bar to recover of minimum entitlements and that a penalty should be imposed.

[7] Yangs House and Ms Yang have defended the proceeding on the basis that the settlement agreement is a full and final one and bars the claims from being considered.

[8] The defendants have applied for security for costs. The grounds of that application are that there is reason to believe that any future costs order will not be satisfied. The application relies on an assertion that Ms Crossen's case is meritless, that she failed on all grounds in the Authority, and that costs have been incurred in defending the claim.

[9] The application sought security in the sum of \$10,000. It was supported by an affidavit from Ms Yang. She deposed to submissions made on Ms Crossen's behalf in the Authority indicating an inability to pay substantial costs and to having paid Ms Crossen \$15,000 plus a contribution towards costs. While she did not say so, presumably these payments arose from the settlement agreement. She went on to comment that her business had been adversely impacted by the pandemic and is likely to be placed under further stress from the expense to be incurred in resisting this challenge.

[10] Ms Yang stated her belief that Ms Crossen can pay both security for costs, and an award for costs, having been informed that she owned a house that was rented out. Aside from that comment information about Ms Crossen's property ownership was scant.

[11] The application was opposed, primarily on the ground that Ms Crossen was applying for legal aid funding. The other ground was a claim that the proceeding involved a matter of public interest concerning the scope of the settlement agreement in the context of wage arrears.

[12] At the time submissions about this application were being exchanged Ms Crossen had an application pending for legal aid. Subsequently she advised that she was successful and had been granted legal aid.

[13] Mr Brown, who acts for Yangs House and Ms Yang, was provided with a further opportunity to make submissions given that Ms Crossen had secured legal aid but declined to do so.

Analysis

[14] There is nothing in the Act, or in the [Employment Court Regulations 2000](#), empowering the Court to order security for costs. The Court does, however, have jurisdiction to make such an order and to stay proceedings until security is provided.⁴

[15] The threshold test in this case is to ask if there is reason to believe that Ms Crossen will be unable to pay future costs to the defendants if her claim is unsuccessful. If that threshold is reached the Court may order security to be given if to do so is just in all the circumstances.

[16] It is trite that considering this test involves carefully balancing the interests of the plaintiff and defendants. That is to ensure access to the Court for a plaintiff is not lightly denied, which could be the result if an order is made. At the same time, the defendants are entitled to some protection against being drawn into unjustified litigation.⁵

[17] The grant of legal aid is, in my view, completely determinative. Under [s 45\(2\)](#) of the [Legal Services Act 2011](#) no order for costs may be made against an aided person in a civil proceeding, unless the Court is satisfied there are exceptional circumstances.

[18] Mr Brown made no submissions at all about the grant of legal aid. In the absence of submissions, I conclude that there

are no exceptional circumstances of the type contemplated by [s 45\(2\)](#).

4. [High Court Rules 2016](#), r 5.45 applied by [Employment Court Regulations 2000](#), reg 6 and see the discussion in *Maheta v Skybus New Zealand Ltd, Formerly Airbus Express Ltd* [[2020\] NZEmpC 236](#).

5 *Maheta v Skybus*, above n 4, at [4]–[43].

Conclusion

[19] It would not be just to make an order for security for costs and the application is dismissed.

[20] Costs are reserved.

K G Smith Judge

Judgment signed at 1.10 pm on 17 March 2021

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