



# Employment Court of New Zealand

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## Davidson v Kelly [2016] NZEmpC 21 (15 March 2016)

Last Updated: 5 April 2016

IN THE EMPLOYMENT COURT AUCKLAND

[\[2016\] NZEmpC 21](#)

EMPC 269/2014

IN THE MATTER OF an application to enforce a compliance order under [s 138](#) of the [Employment Relations Act 2000](#)

BETWEEN JUDITH ANN DAVIDSON Plaintiff

AND STEPHEN ROBERT KELLY Defendant

EMPC 282/2014

AND IN THE MATTER of a challenge and an application to have a matter heard in the Employment Court under [s 139](#) of the [Employment Relations Act 2000](#)

AND BETWEEN JUDITH ANN DAVIDSON Plaintiff

AND STEPHEN ROBERT KELLY Defendant

Hearing: (by telephone conference held on 14 March 2016) Appearances: M Beresford, counsel for the plaintiff

M Locke, counsel for the defendant

Judgment: 15 March 2016

**JUDGMENT OF JUDGE B A CORKILL**

[1] In the course of the hearing of an application to enforce an existing compliance order made by the Employment Relations Authority (the Authority) in respect of certain clauses of a previous settlement agreement,<sup>1</sup> and of a challenge to a

decision of the Authority declining to issue a further compliance order in respect of the same agreement.<sup>2</sup> On 4 December 2015, the parties reached an agreement to settle their differences. Its terms were that Mr Kelly would pay Ms Davidson the sum of \$300,000 in accordance with an agreed schedule of payments.

[2] Subject to payment as agreed, the terms of settlement resolved all issues which were outstanding in the Court. The proceedings were adjourned sine die so as to permit Mr Kelly to make the payments.

[3] Leave was reserved to either party to apply by memorandum to return to the

Court on seven days' notice. It was also agreed that:

a) The Court would make a compliance order or compliance orders by consent in respect of any obligation or obligations of the agreement in respect of which there was a default, and that any such order would be recorded in a short judgment to that effect.

b) If Mr Kelly failed to meet any such obligations, Ms Davidson would be entitled to claim her costs of enforcement on a solicitor/client basis, and disbursements as part of any judgment of the Court.

c) If Mr Kelly failed to meet any such obligations, Ms Davidson would be entitled to claim interest on the unpaid sum or sums

at five per cent running from the date of default to the date of payment, as part of any judgment issued by the Court.

d) The terms of the settlement were confidential under cl 12(2) of Sch 3 to the [Employment Relations Act 2000](#), except where it was necessary for the Court to make a compliance order; in that instance it was agreed that a brief reference would be made to the procedural history of the matter.

[4] Under the schedule of payments, the sum of \$35,000 was due on

29 February 2016. By memorandum of 3 March 2016, Mr Beresford, counsel for Ms Davidson, advised the Court that Mr Kelly had failed to make that payment. By memorandum of 10 March 2016, Mr Locke, counsel for Mr Kelly, advised that the default was due to cash-flow difficulties which Mr Kelly had suffered.

[5] I convened a telephone conference with counsel on 14 March 2016. Mr Locke explained that Mr Kelly had intended that funds would be available from the settlement of a commercial transaction on Friday, 11 March 2016, but this had been delayed. It was anticipated settlement would take place later on

14 March 2016, and that the funds would then be available. He requested the Court to review the matter later in the week.

[6] Mr Beresford stated that there could be no impediment to a compliance order being made immediately in respect of the sum which Mr Kelly had not paid, so that Ms Davidson could then enforce the debt.

[7] Mr Locke then confirmed that Mr Kelly offered no defence or grounds of opposition to the making of a compliance order.

[8] I directed that unless the Court received a joint memorandum of counsel by

4.00 pm on 15 March 2016 confirming that the payment had been made, I would issue a judgment making the compliance order later that day.

[9] The Court has received no confirmation from counsel that the payment has been made.

[10] Accordingly, in terms of the parties' agreement I make a compliance order

directing that Mr Kelly pay Ms Davidson the sum of \$35,000 by 5.00 pm on

16 March 2016. If payment is not made, Ms Davidson will be at liberty to enforce payment of the debt.

[11] I reserve any issues as to interest payable from the date of default to the date of payment, and as to costs in respect of Ms Davidson's application for the above compliance order.

B A Corkill

Judge

Judgment signed at 4.30 pm on 15 March 2016