



# Employment Court of New Zealand

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## Davidson v Kelly [2017] NZEmpC 43 (4 May 2017)

Last Updated: 11 May 2017

IN THE EMPLOYMENT COURT AUCKLAND

[\[2017\] NZEmpC 43](#)

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

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 submissions dated 16 and 29 March and 13 April 2017

Appearances: M Blomfield, advocate for the plaintiff

Judgment: 4 May 2017

JUDGMENT (NO 7) OF JUDGE B A CORKILL

JUDITH ANN DAVIDSON v STEPHEN ROBERT KELLY NZEmpC [AUCKLAND [\[2017\] NZEmpC 43](#) [4

May 2017]

[1] On 4 December 2015, the parties reached an agreement to settle their differences, the essence of which was that Mr Stephen Kelly would pay Ms Judith Davidson the sum of \$300,000 in accordance with an agreed schedule of payments. It was also agreed that the Court would make a compliance order if there was a breach of the payment obligations.

[2] Regrettably, non-compliance has resulted in the Court making compliance orders directing payment on six previous occasions.<sup>1</sup> Mr Blomfield, advocate for the plaintiff, has now advised the Court that there are further defaults.

[3] Initially, Mr Blomfield sought a compliance order for the outstanding balance of the \$300,000 which Mr Kelly was to pay under the agreed terms of settlement, in the sum of \$175,000. However, it emerged that this figure included sums which were already the subject of compliance orders which had been made in previous judgments.

[4] The only compliance orders which the Court can in fact now make are in respect of the final two sums which have not been the subject of compliance orders to this point, for the total amount of \$40,000.

[5] Mr Kelly communicated with the Court on 29 March 2017, in which he referred to steps that had been taken with a view to the possible sale of a property in order to reduce the sum due to Ms Davidson. It appears from the material before the Court that the transaction has not proceeded to this point, so that the possibility of payment by this means must be put to one side.

[6] Accordingly, I am of the view that Ms Davidson is at liberty to seek a compliance order for the sums totalling \$40,000 which have not been the subject of

orders to this point.

1 *Davidson v Kelly* [2016] NZEmpC 21; *Davidson v Kelly* [2016] NZEmpC 41; *Davidson v Kelly* [2016] NZEmpC 82; *Davidson v Kelly* [2016] NZEmpC 90; *Davidson v Kelly* [2016] NZEmpC 108; *Davidson v Kelly* [2016] NZEmpC 132.

[7] Nor is there any other reason for not making the compliance order sought, in terms of the parties' agreement to that effect.

[8] I make a compliance order directing that Mr Kelly pay to Ms Davidson the sum of \$40,000 by 5.00 pm on 8 May 2017. If payment is not made, Ms Davidson will be at liberty to enforce payment of the debt.

[9] Secondly, Mr Blomfield has applied for interest in respect of the delayed payments. The settlement agreement provided that in the event of the agreed timetable not being adhered to, Ms Davidson could claim interest on the unpaid sum or sums at the rate of five per cent per annum, running from the date of default to the date of any judgment making a compliance order.

[10] Mr Blomfield provided his calculations as to the sums payable. I do not accept that those calculations are correct. It has been necessary for the Court to carry out the relevant calculations which are summarised in the schedule attached to this judgment.

[11] The amount payable for interest in respect of each sum which has been the subject of a compliance order is \$2,209.59; I direct Mr Kelly to pay this amount to Ms Davidson.

[12] Finally, an order for costs has been sought. Again the possibility of costs was referred to in the parties' settlement agreement. Ms Davidson is entitled to claim her costs of enforcement on a "solicitor/client basis", as well as disbursements.

[13] Relevant invoices have been placed before the Court. Initially, there were claims made in respect of costs incurred with regard to enforcement in the High Court. That is not a liability which could be the subject of an award of costs in this Court, a point which Mr Blomfield now accepts.

[14] Although Mr Blomfield is not a solicitor, I accept that the intent of the agreement was that professional costs would be recoverable. In any event, the Court has power to award such costs, under cl 19 of Sch 3 of the Employment Relations

Act 2000; reg 68 of the [Employment Court Regulations 2000](#) emphasises the wide discretion which the Court has in this regard.

[15] I am satisfied that Ms Davidson should be reimbursed in respect of the costs which have been incurred on her behalf, in the total sum of \$4,841. This amount includes GST, for which it is appropriate in the circumstances of this case for Ms Davidson to be reimbursed. I order payment of this sum by Mr Kelly to Ms Davidson.

B A Corkill

Judge

Judgment signed on 4 May 2017 at 12.15 pm

#### Annexure 1

Payment Amount Due per Schedule	Date Due	Date of Default	Date Received	Date of Judgment/Compliance Order	Num of Days Late (Date of Judgment less date of	Interest Due at 5 per cent per annum	Notes	Related Judgment
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						default)			
1	30,000	23/12/2015	23/12/2015	23/12/2015	N/A	0	N/A	No compliance order made.	N/A
2	35,000	29/02/2016	29/03/2016	5/05/2016	15/03/2016	15	71.92	Compliance order made on 15 March 2016 directing payment of \$35,000 by 5.00 pm on 16 March 2016.	Judgment 1
3	20,000	31/03/2016	31/03/2016	5/05/2016	15/04/2016	15	41.10	Compliance order made on 15 April 2016 directing payment of \$20,000 by 5.00 pm on 18 April 2016.	Judgment 2
4	75,000	30/04/2016	30/04/2016		14/07/2016	75	770.55	Plaintiff agreed that defendant could pay late on 30 June 2016. However, the default date is in fact 30 April 2016. Then in Judgment 4, compliance order made 14 July 2016 directing payment of \$20,000 and \$75,000 by 5.00 pm on 16 July 2016.	Judgment 4
5	20,000	30/05/2016	30/05/2016		29/06/2016	30	82.19	Compliance order made 29 June 2016 directing payment of \$20,000 by 5.00 pm on 1 July 2016.	Judgment 3
6	20,000	30/06/2016	30/06/2016		14/07/2016	14	38.36	Compliance order made 14 July 2016 directing payment of \$20,000 and \$75,000 by 5.00 pm on 16 July 2016.	Judgment 4
7	20,000	30/07/2016	30/07/2016		25/08/2016	26	71.23	Compliance order made 25 August 2016 directing payment of	Judgment 5

								\$20,000 by 5.00 pm on 29 August 2016.	
8	20,000	30/08/2016	30/08/2016		21/10/2016	52	142.47	Compliance order made 20 October 2016 directing payment of \$20,000 and \$20,000 by 5.00 pm on 25 October 2016	Judgment 6
9	20,000	30/09/2016	30/09/2016		21/10/2017	186	57.53	Compliance order made 21 October 2016 directing payment of \$20,000 and \$20,000 by 5.00 pm on 25 October 2016.	Judgment 6
10	20,000	30/10/2016	30/10/2016		4/05/2017	186	509.59	Compliance order will be made dated 4 May 2017 directing payment of \$20,000 and \$20,000 by 8 May 2017.	Judgment 7
11	20,000	30/11/2016	30/11/2016		4/05/2017	155	424.66	Compliance order will be made dated 4 May 2017 directing payment of \$20,000 and \$20,000 by 8 May 2017.	Judgment 7
<b>Total Debt:</b>	<b>300,000</b>						<b>Total interest:</b>	<b>2,209.59</b>	