



Employment Court of New Zealand

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Franix Construction Limited v Tozer [2014] NZEmpC 130 (22 July 2014)

Last Updated: 27 July 2014

IN THE EMPLOYMENT COURT AUCKLAND

[\[2014\] NZEmpC 130](#)

ARC 40/14

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

AND IN THE MATTER of an application for stay of
execution

AND IN THE MATTER of an application for costs

BETWEEN FRANIX CONSTRUCTION LIMITED
Plaintiff

AND BRYCE TOZER Defendant

Hearing: By submissions filed on 7 and 14 July
2014

Appearances: D Dickinson, counsel for plaintiff
H Fulton, counsel for defendant

Judgment: 22 July 2014

INTERLOCUTORY JUDGMENT OF JUDGE CHRISTINA INGLIS IN RELATION TO COSTS

[1] The defendant claims costs in relation to an unsuccessful interlocutory application for a stay of execution. I dismissed the plaintiff's application, for reasons set out in my earlier judgment.¹

[2] The defendant seeks a contribution of \$2,000 towards its costs in opposing the plaintiff's application, based on the steps that were required to deal with the application and what is said to be the usual range of costs in this Court. Counsel for the plaintiff submits that a costs order of between \$500 and \$1,000 would be

appropriate.

¹ *Franix Construction Ltd v Tozer* [\[2014\] NZEmpC 112](#).

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[3] Clause 19(1) of sch 3 to the [Employment Relations Act 2000](#) confers a broad discretion as to costs. It provides that:

The court in any proceedings may order any party to pay to any other party

such costs and expenses ... as the court thinks reasonable.

[4] The usual approach to costs in this Court is to adopt a starting point of two-thirds of costs actually and reasonably incurred by the successful party. That proportion can then be adjusted up or down according to the circumstances of the case.

[5] There is a paucity of information before the Court as to the costs actually incurred in responding to the plaintiff's application. However, rather than put the parties to additional expense I propose to fix costs on the basis of the information before the Court, having regard to the steps reasonably required to respond to the application, and the usual range of costs orders in analogous cases.

[6] The application was dealt with on the papers. It did not raise any issues of complexity, from either a legal or factual perspective. I am satisfied that a contribution to costs of \$1,000 is appropriate in the circumstances. Accordingly, the plaintiff is ordered to pay to the defendant a contribution towards his costs of \$1,000.

Christina Inglis

Judge

Judgment signed at 10 am on 22 July 2014

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