

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Donald Montrose Graham (Applicant)
AND Crestline Pty Limited (Respondent)
REPRESENTATIVES Kelly Rowell, Counsel for Applicant
Sherridan Cook, Counsel for Respondent
MEMBER OF AUTHORITY R A Monaghan
MEMORANDA RECEIVED 10 October and 8 November 2006
DATE OF DETERMINATION 10 November 2006

DETERMINATION OF THE AUTHORITY ON COSTS (No 2)

[1] This determination addresses an application by Crestline Pty Limited for costs associated with Mr Graham's application for a stay of a determination of the Authority.

[2] The differences between the parties have already been the subject of a determination from the Authority that Crestline was not Mr Graham's employer¹, a determination from the Authority on costs², and a judgment of the Employment Court to which I will return. The differences have also been the subject of commercial litigation in Western Australia.

[3] Mr Graham filed a challenge the Authority's determinations and, on 23 February 2006, sought in person from the Authority an order for the stay of the determination on costs. He relied primarily on his inability to pay, but gave very little supporting detail. In response Crestline said there were no grounds for a stay and filed supporting documentation questioning Mr Graham's assertions about his ability to pay. That documentation called for a response, which the Authority spent several months attempting to obtain from Mr Graham.

[4] As far as the Authority was concerned, from February 2006 onwards there was a live application for a stay before it. Mr Graham's delays and inadequate responses to the requests for further information meant he obtained a stay de facto, an unsatisfactory state of affairs.

[5] The Authority was not advised that all litigation between the parties was alleged to have been settled on 3 May 2006. In the course of attempting to progress the application for a stay the Authority became aware during a conference call in early September of the alleged settlement, and of the fact that issues associated with it were to be heard in the Employment Court the following week.

¹ **Graham v Crestline Pty Limited**, 4 October 2005, AA 393/05

² **Graham v Crestline Pty Limited**, 7 February 2006, AA 23/06

[6] The Court has now issued its judgment, part of which confirmed the existence of the settlement.³

[7] The application for costs now before the Authority is expressly concerned with proceedings in the Authority since 3 May 2006, and associated with the application for a stay. Much of the work which incurred the costs appears to have been carried out in August 2006, and extends to the conference call at which the Authority was advised of the alleged settlement.

[8] The sum of \$2,882.55 is sought. It was said that, in the light of the court's decision, Crestline ought not to have been put to these costs.

Determination

[9] I do not consider that this application has any merit.

[10] Crestline was the party relying on the settlement. Had it informed me at an early stage of the existence of the settlement, and its intention to rely on it, I would have addressed the application for a stay very differently. There should have been no need for the exchanges of memoranda in August or the September conference call.

[11] Thus counsel for Crestline is quite right to say that, in the light of the Court's decision, the respondent ought not to have been put to the expense it was. However that prospect is something Crestline should have considered in May 2006 and addressed more appropriately than it did. That is not a matter to be visited on Mr Graham in costs.

[12] I therefore decline the application.

R A Monaghan
Member of Employment Relations Authority

³ **Graham v Crestline Pty Limited**, 15 September 2006, AC 53/06