

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 169/09
5165503

BETWEEN JEANIE MAY HOBBS
 LABOUR INSPECTOR
 Applicant

AND WILSON PROPERTY CARE
 LIMITED
 Respondent

Member of Authority: James Crichton

Representatives: Jeanie Hobbs in person
 Rex Wilson for Respondent

Investigation Meeting: 5 October 2009 at Christchurch

Determination: 5 October 2009

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant Labour Inspector (Ms Hobbs) alleges that the respondent employer (Wilson Property) has failed to honour an agreement to pay arrears of wages and holiday pay to Patricia Robinson (the employee) under an agreed instalment plan.

[2] Wilson Property had not filed a statement in reply nor provided the Authority with any other information until the telephone conference I convened on 9 September 2009 at which Mr Wilson made clear that the debt was not denied but that Wilson Property was not in a position to make payment as agreed.

[3] I determined that the proper course of action was to give Wilson Property the opportunity to provide further and better particulars to the Authority by way of oral evidence and a date and time was set for this to take place with Ms Hobbs in attendance.

[4] In the course of the investigation meeting at which Mr Wilson gave evidence on behalf of Wilson Property, he indicated that both the company and he personally were impecunious. He indicated that the company had lost its principal contract and was in the process of being wound up. He indicated to the Authority that it was anticipated that the wind up of Wilson Property would be complete by the end of January 2010. He said the company had no money and few assets and those assets that did exist were encumbered.

[5] It seemed the principal assets of Wilson Property were a collection of cleaning machines which Wilson Property had purchased for a contract with Woolworths. Those machines were purchased at a cost of around \$120,000 and the money to purchase them was borrowed. When Wilson Property fell behind in the payments for those items, further security was sought by the lender and Mr Wilson gave his home as additional security for the advance. Mr Wilson's house property became encumbered by a caveat in favour of the lender as a consequence.

[6] When the Woolworths contract was lost by Wilson Property, the ability of both Wilson Property and Mr Wilson himself to continue to meet the obligations on the equipment loan failed completely and the lender is now pursuing its rights both against the assets of Wilson Property and against Mr Wilson's personal assets, in particular his home. Mr Wilson told me (and I have no reason to disbelieve him) that the High Court sheriff was shortly to serve him with a Property Law Act notice, the effect of which will be that he must either repay the outstanding money (which both he and Wilson Property are unable to do), or his house property will be sold to defray the debt.

[7] His home is subject to a first mortgage to his bank and the subsequent charge to the finance company so its sale will likely not result in full payment of the debt to the finance company.

[8] Mr Wilson hopes to obtain work with the contractor that successfully tendered for the Woolworths job in replacement of Wilson Property, but he will simply be employed there (if at all) as a waged worker. Given that his personal circumstances are unlikely to improve greatly as a consequence of the circumstances I have just described, it seems unlikely that Mr Wilson personally will have any surplus cash resources.

[9] In any event, Wilson Property is likely to be wound up with a surplus of debts over assets which will leave the employee with her unpaid wages still owing.

[10] Notwithstanding that, and despite Mr Wilson's distressing personal circumstances, the employee is entitled to an order from the Authority requiring payment by Wilson Property of the amount owing to her. Mr Wilson, for Wilson Property, accepts that the employee was employed by the company, accepts the computation of the moneys outstanding as prepared by the Labour Inspector and acknowledges that there is still money owing to the employee as a consequence of the failure of the instalment payment arrangement.

Determination

[11] The Labour Inspector has asked for orders directing Wilson Property to pay the outstanding sum, for interest and costs.

[12] In the particular circumstances of this case, I am not persuaded that an award of interest and costs is an appropriate exercise of the Authority's discretion.

[13] Pursuant to section 229 (4) of the Employment Relations Act 2000 I order that Wilson Property is to pay to the Labour Inspector at Christchurch for the use of the employee the sum of \$2,958.10 gross in respect of arrears of wages and holiday pay. For the avoidance of doubt, I note that the Department of Labour will assume responsibility for the payment of income tax on that sum.

Costs

[14] Costs are to lie where they fall.

James Crichton
Member of the Employment Relations Authority