



# Employment Court of New Zealand

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## Lorigan v Infinity Automotive Limited [2018] NZEmpC 104 (11 September 2018)

Last Updated: 18 September 2018

### IN THE EMPLOYMENT COURT AUCKLAND

[\[2018\] NZEmpC 104](#) EMPC 377/2015 EMPC 277/2016

EMPC 215/2017

IN THE MATTER OF challenges to determinations of the  
Employment Relations Authority  
AND IN THE MATTER of proceedings removed  
AND IN THE MATTER of an application for a compliance  
order  
BETWEEN PETER D'ARCY LORIGAN  
Plaintiff  
AND INFINITY AUTOMOTIVE LIMITED  
Defendant

Hearing: (on papers dated 17 August to 4 September  
2018)

Appearances: P Lorigan, in person  
R Towner and B Norrie, counsel for defendant

Judgment: 11 September 2018

### COSTS JUDGMENT OF JUDGE B A CORKILL

#### Introduction

[1] This judgment quantifies the costs which should be paid by Mr Lorigan to Infinity Automotive Ltd (Infinity) as a result of orders made in two interlocutory judgments.<sup>1</sup>

1. *Lorigan v Infinity Automotive Ltd (No 3)* [\[2018\] NZEmpC 88](#), *Lorigan v Infinity Automotive Ltd (No 4)* [\[2018\] NZEmpC 89](#).

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[2] In interlocutory judgment (No 3),<sup>2</sup> which dealt with an application for joinder, I ordered Mr Lorigan to pay costs to Infinity on a Category 2, Band B basis as specified in the Court's Guideline as to Costs.<sup>3</sup>

[3] In interlocutory judgment (No 4), which dealt with applications for a stay, timetabling and unless orders, I made a further order that Mr Lorigan pay Infinity costs on a Category 2, Band B basis.<sup>4</sup>

[4] Infinity now brings an application for a compliance order asserting that its lawyers wrote to Mr Lorigan by email requesting payment; the amount sought was

\$5,240.50 for interlocutory judgment (No 3); and \$15,944.50 for interlocutory judgment (No 4).

[5] Mr Lorigan responded asserting that he was not liable for those sums, as he did not agree with the conclusions reached

by the Court in the judgments giving rise to the cost orders.

[6] Infinity then applied for a compliance order. Such an order may be made under [s 139](#) of the [Employment Relations Act 2000](#) (the Act) where a person has not observed or complied with any order, determination or direction requirement made or given under the Act by the Court. In fact, prior to Infinity's application, the Registrar had not in the usual way been asked to issue a certificate of judgment which could then be utilised for enforcement purposes, whether by way of a compliance order or otherwise.<sup>5</sup> Had that occurred, the issues I identify below could have been dealt with by the Registrar.

[7] Since a formal application has been placed before the Court, I consider the appropriate procedure is for the Court to fix the sums involved pursuant to the discretion it possesses under cl 19 of sch 3 of the Act.

<sup>2</sup> *Lorigan v Infinity Automotive Ltd (No 3)*, above n 1.

3. Employment Practice Directions "Costs – Guideline scale" <https://www.employmentcourt.govt.nz/legislation-and-rules/>; reference is incorrectly made in the documents filed for Infinity to the High Court scale.

<sup>4</sup> *Lorigan v Infinity Automotive Ltd (No 4)*, above n 1.

<sup>5</sup> [Employment Court Regulations 2000](#), reg 70.

### **Costs with regard to interlocutory judgment (No 3)**

[8] Infinity calculates these costs to be \$5,240.50.<sup>6</sup>

[9] As already mentioned, Mr Lorigan, asserts in summary that the Court's conclusions are wrong, and states that he is instituting an appeal.

[10] I need only observe that this is not an opportunity to relitigate the matters giving rise to the order for costs made at the conclusion of interlocutory judgment (No 3). The question of any application for leave to appeal is a matter for Mr Lorigan which would involve the Court of Appeal, not this Court. No application for stay of the Court's cost order has been made. I also note that Mr Lorigan has not advanced any submissions with regard to the correct calculation of the costs order.

[11] With regard to the calculation advanced for Infinity, I comment on only one item: the claim for the appearance of second counsel at the half-day hearing. Under Item 33 of the scale, such a claim must be approved by the Court. The case is of sufficient complexity as to justify such a direction; accordingly, I allow for this item. As all other amounts are correctly stated, the claim of \$5,240.50 is allowed in full.

### **Costs with regard to interlocutory judgment (No 4)**

[12] The schedule of costs claimed on behalf of Infinity with regard to interlocutory judgment (No 4) proceeds on the basis that it is entitled to costs for each of the four interlocutory matters that were dealt with in the judgment, on a Category 2, Band B basis.

[13] I agree that filing of applications/notices of opposition in each instance should be allowed and that the claim for these has been made correctly.<sup>7</sup>

[14] Preparation of written submissions has been sought for all the applications, at one day each.<sup>8</sup> Thus, costs are sought amounting to four days' preparation in respect

<sup>6</sup> Reliance is in effect placed on items 29, 30, 32 and 33.

<sup>7</sup> Items 28 and 29.

<sup>8</sup> Relying on in each instance, Item 30.

of the written submissions that were filed for the hearing held on 6 August 2018. Although, technically, such a claim may be made under the scale, it results in an amount that is excessive, since there was a significant overlap in the various applications to which the submissions related, and the issues it canvassed had to some extent been covered in previous interlocutory hearings. Moreover, the submission in question extends to six pages of content. In my view, a fair and reasonable allowance for this item is one day of preparation.

[15] I agree that there should also be an allowance for the appearances of senior and junior counsel at the half-day hearing.<sup>9</sup>

[16] In the result, the appropriate figure is \$9,254.50, rather than the sum sought of

\$15,944.50.

[17] The objections raised by Mr Lorigan, discussed above, were also intended to apply to the claim for costs in respect of interlocutory judgment (No 4). I place them to one side for the same reasons as above.

### **Disposition**

[18] With regard to interlocutory judgment (No 3), Mr Lorigan is to pay Infinity the sum of \$5,240.50.

[19] With regard to interlocutory judgment (No 4), Mr Lorigan is to pay Infinity the sum of \$9,254.50.

[20] For the avoidance of doubt, the application for a compliance order is dismissed. I make no order for costs with regard to that application.

Judgment signed at 10.30 am on 11 September 2018

B A Corkill Judge

9 Item 33.

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