

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

[2015] NZERA Wellington 25  
5535174

BETWEEN            MARAEROA MARAE  
                             ASSOCIATION INCORPORATED  
                             Applicant

AND                    MATEKINO (MISSY) MCLEAN  
                             Respondent

Member of Authority:     Michele Ryan

Representatives:         Dana Maniapoto, Counsel for Applicant  
                                     Respondent in person

Investigation Meeting:    16 March 2015 at Levin

Determination:            18 March 2015

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1]     Maraeroa Marae Association Incorporated lodged its application with the Employment Relations Authority on 18 December 2014. It seeks to have Matekino (Missy) McLean comply with a s.149 Record of Settlement certified and signed by a Mediator<sup>1</sup> on 17 September 2014<sup>2</sup>, as well as interest on monies alleged to be owed.

**The Authority's investigation**

[2]     Maraeroa's application was lodged with the Employment Relations Authority on 18 December 2014. There were difficulties in locating Ms McLean but service of Maraeroa's statement of problem and associated documents was effected on

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<sup>1</sup> Employed by the Ministry of Business, Innovation and Employment

<sup>2</sup> The statement of problem also sought an order for a caveatable interest against Ms McLean's property which was in the process of being sold at that time. In a telephone conference Maraeroa agreed it was no longer seeking that remedy.

31 January 2015. A telephone conference was held on 2 March 2015 and Ms McLean furnished a statement in reply on 6 March 2015.

[3] The Authority's investigation meeting was held on 16 March 2015 in Levin. Ms McLean represented herself at the Authority's investigation and Mr Michael Sweeney, President of Maraeroa attended with the assistance of a solicitor.

### **The Record of Settlement**

[4] The Record of Settlement contains a confidentiality provision. For the purpose of determining whether enforcement action should be ordered it has been necessary to set out the material clauses contained in that document. These are as follows:

*4. Maraeroa Marae Association Incorporated shall, within 7 days of today's date, provide Matekino (Missy) Mclean with a certificate of service that details the start and end dates of employment, the roles and their associated responsibilities and the employment ended through resignation. The certificate of service will be verbally supported by an elected member of Maraeroa Marae Association Incorporated upon request, however, no further information will be provided.*

*5. Matekino (Missy) Mclean shall reimburse Maraeroa Marae Association Incorporated by way of payments to the Marae account under the following schedule:*

- *A one-off lump sum payment of \$1,000 (one thousand dollars) within 7 days of today's date.*
- *Weekly payments of \$100 (one hundred dollars) to be paid by way of automatic payment to start on Thursday 2 October 2014, and each subsequent Thursday, to the Marae account (details to be provided) until such time as the debt of \$23,778.35 (twenty three thousand seven hundred and seventy eight dollars and thirty five cents) has been satisfied.*

...

*In the event that there is a default of payment under the agreed schedule, the parties agree that the outstanding balance becomes immediately due and payable.*

### **Determination**

[5] Ms McLean did not make the first "one off lump sum" payment due on 24 September 2014. Maraeroa did not take issue with that matter and in any event Ms McLean deposited that payment via internet banking on 30 September 2014.

[6] In her statement in reply Ms McLean conceded that no further payments had been made. Her explanation was that those payments were dependent on her receipt of a Certificate of Service which she had not received, and further, nor had she received confirmation from Maraeroa of her internet banking transaction on 30 September 2014. She said Maraeroa's delay and inaction forced her to default on the terms of the Record of Settlement.

[7] Mr Sweeney conceded that Maraeroa had overlooked its obligation to provide Ms McLean with a Certificate of Service. He says Maraeroa was unaware of the error until the telephone conference of 2 March 2015. Maraeroa provided Ms McLean with a Certificate of Service during the course of the Authority's investigation.

[8] I do not accept Ms McLean's explanation that payments set out in the Record of Settlement only became due on her receipt of the Certificate of Service. The obligation on Maraeroa to provide a Certificate of Service as set out at clause 4 is entirely separate to Ms McLean's obligations set out at clause 5. There is nothing in the Record of Settlement which provides that one party's obligations become void if the other party does not comply with its obligations. If Ms McLean had been concerned with Maraeroa's failure to provide a Certificate of Service it was open to her to make an application to the Employment Relations Authority for compliance with that provision. She did not.

[9] I also do not accept that it was reasonable for Ms McLean to ignore her obligations under the Record of Settlement because she had not received confirmation of her first payment. There is no requirement contained in the Record of Settlement for Maraeroa to provide Ms McLean with confirmation of payment(s) made.

[10] Towards the end of the Authority's investigation Ms McLean accepted she was in default of the agreed schedule of payments and that the outstanding balance of moneys owed is now immediately due and payable. I agree with that assessment.

[11] Ms McLean cast some doubt on her ability to pay the outstanding debt but did not provide any evidence to her financial situation. The Record of Settlement confirms Ms McLean fully understood that once the Mediator signed the agreed terms of settlement, the terms contained within it were final, binding and enforceable. As a matter of public policy it is important for parties to be assured that settlement

agreements made pursuant to s.149 will be enforced if not complied with at first instance.

### **Orders**

[12] Pursuant to s. 151(2) and s.137 of the Employment Relations Act I order Ms Matekino (Missy) McLean to comply with the Record of Settlement and pay Maraeroa Marae Association Incorporated the sum of \$22,678.35 within 14 days of this determination.

[13] I also order interest on the sum referred to above should be paid<sup>3</sup> from 31 January 2015 (the date of service of Maraeroa's application on Ms McLean) until the debt is paid.

### **Costs**

[14] Costs are reserved.

Michele Ryan  
Member of the Employment Relations Authority

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<sup>3</sup> The rate to be applied is prescribed in the Judicature (Prescribed Rate of Interest) Order 2011 (2011/177). It is currently 5%.