Employment Court of New Zealand

North Dunedin Holdings Limited v Harris [2011] NZEmpC 146 (9 November 2011)

Last Updated: 18 November 2011

IN THE EMPLOYMENT COURT CHRISTCHURCH

[2011] NZEmpC 146

CRC 13/11

IN THE MATTER OF a challenge to a determination of the

Employment Relations Authority

BETWEEN NORTH DUNEDIN HOLDINGS LIMITED AND MAITLAND COLIN BOOTH

Plaintiffs

AND KAREN HARRIS AND ROBYN COUSINS

Defendants

Hearing: 9 November 2011 (Heard at Dunedin)

Appearances: Maitland Booth, in person and as agent for North Dunedin Holdings

Ltd

Janie Kilkelly and Nicholas Eketone-TeKanawa, counsel for defendants

Judgment: 9 November 2011 at 11:03 AM

ORAL JUDGMENT OF JUDGE A A COUCH

[1] This case involves a challenge to a determination of the Employment Relations Authority[1] in which it made a compliance order requiring the plaintiffs to pay the defendants $20,000. The matter proceeded before me today by way of a hearing de novo.

[2] It is common ground that a record of settlement was entered into by the parties on 22 July 2010. That record of settlement was in the form described in s149

NORTH DUNEDIN HOLDINGS LIMITED AND BOOTH V HARRIS AND COUSINS NZEmpC CHCH 9

November 2011

of the Employment Relations Act 2000 (the Act). It was certified by a mediator who is employed by the Department of Labour under the Act.

[3] The parties are described in the heading. Ms Harris and Ms Cousins were the applicants. The other parties are described as North Dunedin Holdings Ltd and Maitland Booth, respondent.

[4] The record of settlement provides that North Dunedin Holdings Ltd was to pay $20,000 into a lawyer's trust account by 20 December 2010. It then provides that "the respondent", which can only be Mr Booth, guaranteed that payment. The document

is then signed separately by Mr Booth for himself and again as a director

of North Dunedin Holdings Ltd.[2]

[5] The document then has the statutorily required statement which includes:

We confirm that we fully understand that once the Mediator signs the agreed terms of settlement:

1. The settlement is final and binding on us; and

2. except for enforcement purposes, neither of us may seek to bring those terms before the Authority or Court whether by action, appeal, and application for review, or otherwise; and

...

[6] Beneath those terms, the document is again signed by all parties including Mr Booth, he having signed it both for himself and for the company. Accordingly, the document is subject to s 149(3)(b) of the Act which does indeed mean that the validity of it and the background to it cannot be called into question in the Court.

[7] It is for that reason that I said to Mr Booth at the outset of this hearing that the only issue is whether a compliance order should be made in relation to the payments required by this record of settlement. Notwithstanding that, I allowed Mr Booth to give a good deal of evidence of his concerns about the fairness of the agreement and the circumstances in which it was concluded. Even though I have

heard that evidence, those are not matters that I can enter into.

[8] The document is clear on its face. The obligation to pay crystallised on 20

December 2010. That was an obligation on both North Dunedin Holdings Ltd and on Mr Booth personally.

[9] I am not satisfied that there is any good reason why payment has not been made or indeed why payment cannot now be made. In the course of his evidence, Mr Booth referred to various offers of payment having been made but all of those offers were made conditional upon Ms Cousins and Ms Harris accepting them as a compromise on what was owed under the agreement. When they were not accepted on those terms, no payment was made in reduction of the debt owing. While Mr Booth made very broad and general statements about being in difficult financial circumstances, he provided no quantitative evidence of his means or that of North Dunedin Holdings Limited. There is therefore no basis on which to question the presumption that both he and the company are able to pay their debts.

[10] There will therefore be a compliance order. The terms of the order are that

North Dunedin Holdings Ltd and/or Maitland Colin Booth are to pay the sum of

$20,000 to Karen Harris and Robyn Cousins within 10 working days after today. The sum currently held by the Court in respect of the stay of proceedings, namely

$11,500 plus any interest accrued on that sum, is to be disbursed to Ms Harris and Ms Cousins in part payment. That means the balance of a little less than $8,500 is payable by the plaintiffs within the time period I have specified.

[11] The money which must now be paid to the defendants was agreed to be paid by 20 December 2010. It follows the defendants have been kept out of their money since that date. It is appropriate that they be compensated for that loss by an award of interest.

[12] The difficulty that arises in ordering the payment of interest is that the provisions of the Act relating to interest have changed during the period in question. Prior to 1 April 2011, the Employment Relations Act contained a curious provision based on the 90 day bill rate for the time being plus 2 percent. That was an extremely inconvenient provision to implement and one which was abandoned when the Employment Relations Amendment Act 2010 came into effect on 1 April this

year. The Court's power to award interest is now at the rate prescribed under the

Judicature Act 1908 from time to time. The rate currently prescribed is 5 percent.3

Rather than try and do an arithmetic calculation for the periods covered by each statutory provision, I propose to order the payment of a fixed amount of money as interest. In addition to the sum of $20,000, the plaintiffs must also pay the defendants the sum of $800 by way of interest.

[13] Ms Kilkelly has provided me with a brief memorandum saying that the defendants have incurred costs totalling a little over $8,000 in relation to the proceeding before the Court and seeking a contribution to that amount. Those costs include solicitors' fees of $3,000 and Ms Kilkelly's fee of $4,000, both excluding GST. In response to that claim, Mr Booth has made the

valid point that, while it is every party's right to instruct counsel of their choice, an unsuccessful party should not be required to contribute to costs in excess of what was strictly necessary and reasonable in relation to the proceeding. In this case the issue was a very narrow one and, in most respects, quite a straight forward one. There was certainly no need for two counsel. I fix costs at $3,000. The plaintiffs are to pay that sum to the defendants.

[14] By operation of s 183(2) of the Act, the determination of the Authority which was the subject of challenge is set aside and this decision stands in its place.

[15] The Authority's determination in which it ordered the plaintiffs to pay the defendants $1,500 for costs4 was not challenged. That order therefore remains in

effect in addition to the orders I have made.

Oral decision given at 11.03 am on 9 November 2011.

A A Couch
Judge

3 By paragraph 4 of the Judicature (Prescribed Rate of Interest) Order 2011

4 [2011] NZERA Christchurch 71

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[1] [2011] NZERA Christchurch 86

[2] The signature is actually over the name "Dunedin North Holdings Limited" but that is clearly an

unintentional transposition of North Dunedin Holdings Limited.
