Employment Court of New Zealand

Packwood v ANZ Bank New Zealand Limited [2019] NZEmpC 130 (23 September 2019)

Last Updated: 25 September 2019

IN THE EMPLOYMENT COURT OF NEW ZEALAND WELLINGTON

I TE KŌTI TAKE MAHI O AOTEAROA TE WHANGANUI-A-TARA

[2019] NZEmpC 130
EMPC 65/2019

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER	of an application to strike out proceedings
AND IN THE MATTER	of an application for leave to extend time to file pleadings
BETWEEN	HELEN PACKWOOD Plaintiff
AND	ANZ BANK NEW ZEALAND LIMITED Defendant

Hearing:	On the papers
Appearances:	Plaintiff, in person H Kynaston, counsel for the defendant
Judgment:	23 September 2019

JUDGMENT OF JUDGE B A CORKILL

(Application to strike out proceedings)

Introduction

[1] Part-way through a hearing before the Employment Relations Authority (the Authority), Helen Packwood and her former employer, ANZ Bank New Zealand Limited (ANZ), entered into a full and final settlement of a personal grievance.

[2] As a result, the Authority issued a consent determination which stated:1

1 *SHR v KPU* [2019] NZERA 75 (footnotes omitted).

HELEN PACKWOOD v ANZ BANK NEW ZEALAND LIMITED [2019] NZEmpC 130 [23 September 2019]

[1] During the investigation meeting the parties adjourned to discuss their differences. These were resolved and the parties ask I record their settlement as a consent determination. I accept the request and order the parties' agreement (recorded in a separate memorandum) be incorporated into this determination. Its terms, which remain confidential to the parties, have the status of and are enforceable as an order of the Authority.

[2] The parties also asked their identities and the fact of their involvement in this matter be suppressed. The rationale warranted acceptance. I therefore order a prohibition on publishing anything which identifies the parties and their witnesses.

[3] The parties are to be commended for settling this matter on their own terms.

[3] The underlying settlement agreement contained this provision:

This agreement is a full and final settlement of any complaint or claim that either party may have against the other, including these proceedings.

[4] Now, Ms Packwood has instituted proceedings in the Employment Court, challenging the consent determination.

[5] Her statement of claim includes the following assertions:

...

10. The Authority gave a preliminary decision too early, which prejudiced the consent agreement.
11. The defence lawyer wrote the terms of the consent agreement.
12. The plaintiff was not taken through the terms of the agreement with the [defence] lawyer to ensure understanding of the consent agreement.
13. The plaintiff was not taken through the terms of the consent agreement by the Authority to ensure she understood what she was signing.
14. The plaintiff was not given any other options that may have been available to her prior to signing the consent agreement.
15. The plaintiff was not given any opportunity to seek legal advice before signing the agreement.
16. The plaintiff signed the agreement without reading the agreement as in a state of duress
17. The plaintiff was sleep deprived only having had 2-3 hours per night for 3 consecutive nights ... prior to signing the agreement.
18. The plaintiff denies that serious misconduct occurred.

...

[6] Her challenge was brought on a de novo basis.

[7] ANZ then filed an interlocutory application seeking a strike out order on the grounds that the parties had reached a full and final settlement, that any attempt to relitigate the matter would be frivolous and vexatious and would constitute an abuse of the Court's process were it to permit Ms Packwood to continue with her proceeding; that she was estopped from bringing the challenge; and that there was no duress.

Non-publication

[8] ANZ applied for a non-publication order on several alternative bases. Its primary position is that the Court should order the non-publication of the names and identifying details of the parties, and of the settlement into which they entered. It also sought non-publication of name and identifying details of former ANZ managers who gave evidence to the Authority, in view of adverse statements made by Ms Packwood in the present proceedings, to which they have not had an opportunity of responding.

[9] Ms Packwood opposed the application for a non-publication order, first in respect of the names of the parties. She said publication of the names of the parties was necessary to ensure accountability. Second, she opposed the possibility of an order of non-publication of name and identifying details of the former ANZ managers who had given evidence in the Authority. She asserted that they had given false evidence, and that to grant non-publication of their names would amount to an injustice.

[10] I have viewed the terms of settlement. It is plain that the parties intended those details would remain confidential. In these circumstances, I am satisfied that a non- publication order should be made to respect the parties' agreed confidentiality of the terms of settlement.

[11] I am also satisfied that there should be an order of non-publication of the names of the managers who gave evidence to the Authority. As I will explain, later, this Court cannot review the substance of Ms Packwood's original claims, unless the settlement agreement is vitiated. Absent that possibility, there is no basis on which the Court could review the merits, allow the individuals to give their response, and then consider Ms Packwood's assertions as to the veracity of their evidence. There is

accordingly an obvious natural justice issue. In all these circumstances, the interests of justice require the making of an order of non-publication of their names and identifying details.

[12] I am not persuaded that there is any reason why the names and identifying details of the parties themselves should be the subject of a non-publication order. In that respect, the normal principles of open justice should apply.

Evidence of ANZ

[13] Shane Deegan, head of employee relations and a senior corporate lawyer, gave affidavit evidence as to the relevant events. He said Ms Packwood was dismissed from her employment on 28 July 2016, as a result of which she filed a statement of problem in the Authority claiming she had been unjustified dismissed and disadvantaged.

[14] Eventually, Ms Packwood's claims were set down for an investigation meeting on 12 and 13 February 2019. Mr Deegan was present.

[15] Mr Deegan said Ms Packwood was not represented. However, she was supported by her family throughout the investigation meeting.

[16] Ms Packwood presented her evidence on the first day of the investigation; ANZ presented its evidence on the second day. Ms Packwood cross-examined ANZ's witnesses in detail.

[17] Mr Deegan went on to say that shortly before the lunchtime adjournment on the second day and before ANZ concluded its evidence, the Authority Member commented generally on the benefits of parties resolving matters between themselves. He advised them that on the basis of what he had heard to that point, acknowledging there was still some evidence and submissions to be presented which meant he had yet to reach a concluded view, it was unlikely he would order reinstatement.

[18] At the end of the lunchtime adjournment, counsel for ANZ, Mr Kynaston, presented an offer of settlement to Ms Packwood, who was sitting with her mother,

sister and daughter in an adjacent room. This offer was rejected, but a counter-offer was made. Negotiations continued for some time, and the investigation meeting was placed on hold by agreement while this process carried on. A number of offers were exchanged. Ms Packwood was supported by her family throughout the discussions. The parties were unable to reach agreement at this time, so the Authority Member resumed the investigation.

[19] Shortly after this, Ms Packwood received a call on her mobile phone, which she said was from her husband. She asked to take the call, indicating that it related to the parties' settlement discussions. ANZ, and the Authority Member, agreed to her doing so. She left the hearing room; Mr Deegan said she was away for some time.

[20] When Ms Packwood returned to the hearing room, she asked that the investigation pause, so as to allow negotiations to be recommenced. The Authority Member left the hearing room to facilitate this.

[21] Mr Deegan says that negotiations continued in the adjacent room between ANZ's lawyers, and Ms Packwood, with her family present. Agreement was reached in principle, except for some issues Ms Packwood had with her final pay. She and her family then re-entered the hearing room to discuss these issues with other persons present from ANZ.

[22] Ms Packwood then said she would settle if ANZ agreed to a further request. ANZ agreed to this. Ms Packwood said there was a deal and shook hands with a representative of ANZ.

[23] It was then agreed that counsel for ANZ would draw up a settlement agreement. This was drafted by hand in the hearing room, with Ms Packwood and her family present. Representatives of ANZ approved the draft.

[24] Mr Deegan said that Mr Kynaston then sat down with Ms Packwood and read through the draft agreement with her clause by clause. She had some questions which Mr Kynaston answered, having noted that he was not her lawyer, so was not able to provide her with advice. She said she was happy to sign the agreement. Mr Deegan

said she did not seem to be pressured or tired, and appeared outwardly calm, confident and engaged.

[25] Mr Deegan says that Ms Packwood and a representative of ANZ signed the agreement, and it was taken to the Authority Member to prepare a consent determination.

[26] Once there was agreement in principle, and while the consent determination was being drafted, Mr Deegan said there was a positive feeling in the hearing room, and the parties and Ms Packwood's family stayed and talked together. Preparation of the consent determination took at least half an hour.

[27] The Authority Member returned with that document, unsigned. Before he did so, he congratulated the parties on

reaching agreement, and Ms Packwood on her approach. He commented that she was one of the most prepared self-represented litigants he had ever seen, and that she could take up a career as an employment advocate. He also asked if the parties had any questions. There were none, and he signed the determination.

[28] Mr Deegan says that before the parties left the room, Ms Packwood said to the representative of ANZ with whom she had been dealing, that she was happy the parties had been able to reach an agreement, and that she believed going through the investigation meeting and being able to explain her side of the story had been necessary for her to feel able to settle. As the parties left the room, Ms Packwood and her family hugged all the ANZ witnesses and representatives, goodbye.

Evidence of Ms Packwood

[29] Ms Packwood filed a notice of opposition opposing the application for strikeout and signed it, but it is not an affidavit. Since it is plain from the signed notice of opposition that it sets out her evidence as to the key events, I receive it accordingly, even although it is not sworn.

[30] In the first part of her document, Ms Packwood says that false evidence was given to the Authority by two members of ANZ, and that what she described as new evidence was also presented at that hearing. She also says that evidence which she had requested from ANZ, which she says would have absolved her, was never given (because that point was not reached).

[31] Then, responding to the strike out grounds raised by ANZ, she referred to the events that occurred on the second day of the investigation meeting.

[32] She said that towards the latter end of the negotiations which the parties had entered into, ANZ's lawyer had told her that the organisation was not prepared to increase their offer.

[33] She said ANZ's lawyer also said that he was not sure if she would know this, but that if she did not succeed in establishing her personal grievance, costs would be ordered against her, the daily rate of which could be confirmed on the Authority's website.

[34] Ms Packwood said that upon being told this, her mother "freaked out and turned all motherly" and told her to settle for the proposed amount. She was very concerned with how much it could cost if she lost the case.

[35] She said that her mother and sister had lost faith in her, and felt she was going to lose. She said that matters were not proceeding well, because lies had been told.

[36] Her mother reminded her as to the Authority Member's preliminary statement that reinstatement would be unlikely. Consequently, her mother said, she needed to settle.

[37] Ms Packwood said that there was "division in our camp". She wanted to continue, but her mother wanted her to settle, and in this was supported by a sibling. Her daughter was unable to be heard with regard to her particular comments.

[38] Ms Packwood said that her mother was full Samoan, and that she had been raised to be obedient to her.

[39] She said that counsel for ANZ had no right or authority to advise or counsel her family concerning cost issues. In her opinion, the raising of this issue was a scaremongering tactic that had succeeded.

[40] She then referred to the process by which the draft settlement agreement was rewritten, so as to be legible. She said that, at this point, changes were made in the document relating to annual leave payments; the scope of a confidentiality provision; a provision was included that neither party admitted liability; and in regard to a provision that the agreement was a full and final settlement, an addition was made stating that the discharge was in respect of any complaint or claim that either party may have against the other, including in the proceedings.

ANZ's evidence in reply

[41] In response, Mr Deegan gave further evidence as to the steps taken during the process leading to the parties' settlement. He said that although he was not present during the discussion between Mr Kynaston and Ms Packwood as to costs, it was not disputed that those were explained. He said that the figures given to her in respect of the Authority's orders for costs would have been $4,500 for the first day, and $3,500 for the second day. I interpolate that these figures were reversed in Ms Packwood's evidence. Mr Deegan said this was consistent with ANZ's instructions, and in his experience a normal part of any negotiation when attempting to settle a personal grievance which is before the Authority.

[42] With regard to the content of the agreement, he said that the document was drafted by hand in the investigation meeting room in the presence of the parties, including Ms Packwood's family. He said that the terms were consistent with those that had been discussed with Ms Packwood, and that no changes were made to the settlement agreement that she

signed.

[43] An issue had been raised about annual leave by Ms Packwood. Mr Deegan said that during the settlement discussions, Ms Packwood was concerned initially she had not been paid all of her annual leave. Mr Deegan took her through her final payslips line by line and pointed out where any outstanding annual leave had been paid. She accepted the explanation.

Submissions

[44] Mr Kynaston referred to the factual circumstances giving rise to the settlement agreement and consent determination, as already summarised.

[45] The legal principles relating to strike out grounds were referred to in detail. It was then submitted that whether the case was considered as one relating to abuse of process, estoppel, or duress, the challenge should not be permitted to proceed. It was submitted in essence that Ms Packwood had actively negotiated and freely entered into an agreement that settled her grievance on a full and final basis.

[46] It was argued the terms were brief and straightforward, Ms Packwood plainly understood them, and she was supported by her family throughout. She also received valuable consideration for the settlement, which had not been returned.

[47] While she no doubt experienced the pressure that inevitably comes with an investigation meeting, it was submitted there was no illegitimate pressure, and she was not coerced in any way into entering into the agreement. In short, it was submitted Ms Packwood should honour the agreement she had entered into, and that her claim should be struck out.

[48] In her submissions, Ms Packwood outlined the basis in which she asserts she was entitled to a finding that she should not have been dismissed, stating there were both substantive and procedural flaws in the process adopted by ANZ which led to her dismissal. She also repeated that false evidence had been given by ANZ's witnesses, in testimony provided to the Authority for ANZ.

[49] Ms Packwood then referred to the assertions contained in her statement of claim, on the basis of which she asserts, in effect, that the settlement agreement and consent determination are invalid.

[50] She then submitted that if ANZ was "trying to enforce" the agreement under s 149A of the Employment Relations Act 2000 (the Act), this was not possible. I interpolate that the section has no relevance to the present circumstances, since the settlement reached between the parties was not one made with the assistance of a mediator under s 149 of the Act, or one which involved such a person making a recommendation to the parties, as described in s 149A. Nor does ANZ assert that either section applies.

Legal issues

Sections 179 and 182 of the Employment Relations Act 2000

[51] In her statement of claim and notice of opposition, Ms Packwood referred to her perception of the merits of the dispute which gave rise to her dismissal grievance, and as to the reliability of the evidence which ANZ's witnesses gave on that topic. In effect, she is inviting the Court to reconsider the merits which were under investigation by the Authority prior to the negotiations and eventual settlement which was concluded. She said she had brought a challenge de novo, from which I infer she is of the view that the Court could and should reconsider her claims in their entirety.

[52] Section 179(1) of the Act provides that a party who is dissatisfied with a written determination of the Authority may bring a challenge. It is well established that a right of review, including appeal, exists in respect of a consent order.2 The language of s 179(1) does not suggest a challenge could not relate to such an order.

[53] Section 179(3) confirms that the party may in doing so seek a full rehearing of the entire matter. That does not, however, mean that such a party has an automatic right to rerun a claim in its entirety.

2. *Waitemata City Council v MacKenzie* [1988] NZCA 142; [1988] 2 NZLR 242; *Stead v The Ship "Ocean Quest of Arne"* [1995] 3 NZLR 415; *Kain v Hutton* [2007] NZCA 199; [2007] 3 NZLR 349 (CA). See generally David Foskett *Foskett on Compromise* (8th ed, Sweet & Maxwell, London, 2015) at 29-47.

[54] Section 182(1) of the Act states that where the party bringing the challenge seeks a hearing de novo, the hearing is to be conducted on that basis unless the parties otherwise agree, or the Court "otherwise directs".

[55] The Court could "otherwise direct", if there were legitimate grounds of strike out, for instance that there had been a valid settlement, or what lawyers call an accord and satisfaction.

[56] Consequently, the Court must resolve the strike out application first. The Court will not be able to look at the merits of

the original employment relationship problem, unless it is satisfied that the settlement agreement, and thus the consent determination, can be vitiated.

[57] Accordingly, I must place the various points made by Ms Packwood concerning the merits of her grievance to one side, until the issues relating to the settlement arrangements have been considered under the principles relating to strike out applications.

Strike out applications

[58] In *New Zealand Fire Service Commission v New Zealand Professional Firefighters' Union Inc*, the Court of Appeal said it saw no reason as to why the Employment Court should not approach strikeout applications on any basis other than that applying to the High Court.3

[59] Rule 15.1 of the High Court Rules 2016 provides that the Court may strike out all or part of a pleading if it discloses no reasonably arguable cause of action, is frivolous or vexatious, or is otherwise an abuse of the process of the court.

[60] I refer briefly to particular relevant examples where it has been held it was appropriate to grant a strikeout order because the parties had entered into a settlement agreement.

3. *New Zealand Fire Service Commission v New Zealand Professional Firefighters' Union Inc* [2005] ERNZ 1053 at [13].

[61] The Employment Court has held that attempting to relitigate a matter which is subject to a settlement agreement may be both frivolous and vexatious.4 It has also held that it may also be an abuse of Court processes to attempt to revive, or continue with, litigation that has been settled.5

[62] It has also been held that where there is a settlement amounting to accord and satisfaction, a plaintiff may be "estopped" from proceeding with litigation.6

[63] Finally, a settlement reached under duress is unenforceable.7 Although no legal argument was raised as to a mistake or misrepresentation, these grounds could also be considered in respect of a settlement agreement, as they could in respect of any contract.8

Analysis

[64] There are two issues for resolution:

a. Was there a binding settlement agreement which precludes the possibility of a challenge being brought?
b. Can the settlement agreement be vitiated?

First issue: was there a binding settlement agreement?

[65] I referred earlier to the topic of accord and satisfaction. A classic definition of such an agreement is as follows:9

Accord and satisfaction is the purchase of a release from an obligation arising under contract or tort by means of any valuable consideration, not being the actual performance of the obligation itself.

4 *Stams v MM Metals Ltd* [1993] 1 ERNZ 115.

5 *X v A* [1992] 2 ERNZ 1079.

6 *CableTalk Astute Network Services Ltd v Cunningham* [2004] NZEmpC 43; [2004] 1 ERNZ 506 at [53].

7 At [44] and [45].

8 *Foskett on Compromise*, above n 2, ch 4.

9. *British Russian Gazette and Trade Outlook Ltd v Associated Newspapers Ltd* [1933] All ER Rep 320 at 327.

[66] Whether such a release has been given depends on the language used in the relevant settlement agreement, determined by applying orthodox principles of contractual interpretation.

[67] The discharge clause is expressed in broad and clear language.10 The parties agreed to settle any complaint or claim that either may have against the other, including in the proceedings which were before the Authority.

[68] There can be no doubt from the words used that the parties intended the employment relationship problem which was before the Authority to come to an end.

[69] They also intended their agreement to be recorded in a consent determination, and it was.

[70] That brought the proceeding which was before the Authority, and Ms Packwood's employment relationship problem, to an end.

[71] The parties' agreement reflected an object of finality.

[72] That being the case, there is a binding settlement agreement and neither party is at liberty to take any further proceedings against the other arising from Ms Packwood's employment by ANZ – unless the agreement can be vitiated.

Second issue: can the settlement agreement be vitiated?

[73] The second issue requires an assessment of whether it is reasonably arguable the agreement is capable of being challenged because there was duress, as asserted by Ms Packwood in her statement of claim. For completeness, I will also consider whether there is an arguable case of contractual mistake or misrepresentation; these topics are not specifically pleaded in the statement of claim, although in her documents, Ms Packwood appears to assert that such difficulties occurred.

10 Above at [3].

[74] Ms Packwood's position on the issue of duress is confused by a statement in the notice of opposition that she understands she cannot claim there was a situation of duress, because she was not under physical threat or harm.

[75] Notwithstanding that acknowledgment, I deal with the topic since it was formally pleaded in the statement of claim.

[76] The elements of duress that must be satisfied are:

a. Was there a threat or the exertion of illegitimate pressure?
b. If so, did that threat or pressure result in the individual being coerced into entering into the agreement?11

[77] The fact that one party to a contract has exerted pressure on the other does not, on its own, amount to duress. A claim of duress cannot succeed unless there has been the exertion of illegitimate pressure.12

[78] Illegitimate pressure is often framed in terms of "lawfulness". Lawful pressure can be illegitimate in rare cases, but there is a high bar. An example is where express threats have been made to disclose information which would discredit the other party.13

[79] The test for coercion is whether there is "no reasonable alternative" available to the party in the circumstances.14

[80] Ms Packwood's claims in respect of duress, as pleaded, appear to be:

a. The Authority Member, having heard her evidence and some of ANZ's evidence, gave an indication of what his decision was likely to be with regard to reinstatement.15

11 *McIntyre v Nemesis DBK Ltd* [2009] NZCA 329; [2010] 1 NZLR 463 (CA) at [20].

12 At [26].

13 At [30].

14 At [66] and [67].

15 Statement of claim, above at [5], at 10.

b. Counsel for ANZ wrote the settlement agreement, and neither those lawyers nor the Authority Member took Ms Packwood through the terms.16

c. Subsequently, it was rewritten and changed from "This agreement is a full and final settlement" to "This agreement is a full and final settlement of any complaint or claim that either party may have against the other including these proceedings".17

d. She was not told about other options available to her at the time of signing the settlement agreement, nor was she given any opportunity to seek legal advice.18
e. She did not read the settlement agreement.19
f. She was sleep-deprived when she signed the agreement.20
g. She was under pressure from her family to sign the settlement agreement, having been informed about the daily tariff approach to costs in the Authority by counsel for ANZ.

[81] According to Mr Deegan's evidence, which I accept, Ms Packwood appeared confident and self-assured in the Authority investigation and settlement negotiations. This is also evident from what the Authority Member said about Ms Packwood before he signed the consent determination.

[82] There was obviously an extended period over which the negotiations occurred, with an opportunity for Ms Packwood to consult with her family.

16 Statement of claim, above at [5], at 11 – 14.

17 Notice of opposition, at 95 – 96.

18 Statement of claim, above at [5], at 15 and 16.

19 Statement of claim, above at [5], at 17.

20 Statement of claim, above at [5], at 17.

[83] In her statement of claim, Ms Packwood asserts that counsel for ANZ did not take her through the terms of settlement; then, she acknowledges in her submission that the terms she says were indeed explained to her, stated the agreement was a "full and final settlement". I find the latter statement is correct. The discharge clause was explained. It was readily understood. There could be no doubt as to the objective meaning to be assigned to that language. It obviously meant the employment relationship problem would come to an end.

[84] It was not impermissible for ANZ's counsel to refer to the topic of costs during the negotiations. The reference to costs consequences was factually correct. The information was publicly available on the Authority's website. Any litigant should be aware that all proceedings could have costs consequences if the claim is unsuccessful. The provision of this information could not amount to "illegitimate pressure".

[85] Duress must usually arise as a result of threats or similar conduct for which the other party to the contract is responsible. That is not the situation here. Thus, I do not accept that the pressure of family members, both those present at the investigation, and the family member with whom she spoke by telephone, could constitute the placing of illegitimate pressure on Ms Packwood.

[86] The settlement discussions took place over time. There was an opportunity for Ms Packwood to make counter-offers; initially she decided to proceed with the hearing. At a later stage she decided to re-engage settlement discussions. She was able to consider settlement options in the absence of representatives of ANZ. I also note that the evidence for the plaintiff does not disclose any difficulties in functioning from significant sleep deprivation that could amount to duress.

[87] I accept the submission made for ANZ that the evidence shows no more than the level of pressure experienced in other cases, where duress was not found to be present. The present circumstances can be compared with, for example:

a. Being left alone during mediation, and before settling, an employee was told by her lawyer that "they will mince you up".21

21 *Sawyer v The Vice-Chancellor of Victoria University of Wellington* [2018] NZEmpC 71.

b. A manager taking an employee on a car trip, out of the office, to discuss matters prior to signing a settlement agreement.22

[88] Nor, on the evidence before the Court, was there coercion. Ms Packwood had alternative courses of action open to her. She could have refused to agree to the proposed settlement agreement, and either continue negotiations, or ask that the investigation meeting be recommenced.

[89] In summary, the evidence clearly shows Ms Packwood actively negotiated and freely entered into an agreement that fully and finally settled her grievance. The terms were brief and straightforward. Although there was the pressure that is part and parcel of an investigation meeting, this could not be regarded as illegitimate or illegal pressure. Nor is there evidence of coercion.

[90] Accordingly, I find that there is no reasonably arguable claim of duress.

[91] For completeness, I refer to two matters which have not been pleaded but are perhaps implied in the documents filed by Ms Packwood.

[92] The first relates to contractual mistake. Did Ms Packwood make a mistake that vitiates the settlement agreement? I need say only that the circumstances described by Ms Packwood, even from her own perspective, could not lead to a conclusion that the mistake provisions of the Contract and Commercial Law Act 2017 could apply. Under that statute, the Court has the discretion to grant relief where a qualifying mistake has occurred; the Court has the discretion to grant relief to a party to a contract if a mistake is made by one party which is known to the other party, or is common, or is mutual.23 That Act also provides that for these purposes, a mistake in interpretation does not qualify.24 On the evidence before the Court, there is no reasonably arguable basis for the application of these criteria.

22 *Tinkler v Fugro PMS PTY Ltd & Pavement Management Services Ltd* [2012] NZEmpC 102.

23 Contract and Commercial Law Act 2017, s 24.

24 Contract and Commercial Law Act 2017, s 25. See also *Shotter v Westpac Banking Corporation*

[1987] NZHC 18; [1988] 2 NZLR 316.

> [93] Nor do I consider that any assertion of misrepresentation could invalidate the settlement agreement. That is because s 35 of the Contract and Commercial Law Act 2017 provides only for a damages claim, where there is a qualifying misrepresentation; the statute does not provide for the contract to be set aside on such grounds. In any event, I do not consider it is arguable that any statements made to Ms Packwood by employees of ANZ, or its counsel, could found a misrepresentation claim.
>
> [94] Ms Packwood has referred to her belief that witnesses called for ANZ gave false evidence to the Authority. It is clear from her notice of opposition that she held this view at the time of the negotiations.25 Despite that belief, she entered into negotiations, and eventually settled. This is not a situation where significant information has subsequently come to light, which might alter the context within which a settlement agreement was reached.
>
> [95] In summary, then, there is no reasonably arguable case that the settlement agreement could be set aside on the various grounds pleaded.

Conclusion

> [96] Since there is a binding settlement agreement between the parties which constitutes a full and final settlement of any complaint or claim either party may have against the other, including in the proceeding itself, it is an abuse of the process provided for in s 179 of the Act to pursue a subsequent challenge to the consent determination. There is a clear accord and satisfaction. Ms Packwood is therefore estopped from proceeding with her personal grievance by way of a challenge to the consent determination.
>
> [97] Ms Packwood's challenge is struck out.
>
> [98] The issue of filing a statement of defence is no longer relevant. I dismiss the application made in that regard.

25 Above at [30].

> [99] I reserve costs. My provisional view is that these should be assessed on a Category 2, Band B basis, under the Court's Guideline Scale as to costs. It may be that the issue of costs can be resolved directly between the parties. If this does not prove possible, ANZ may make an application for costs within 21 days; Ms Packwood may respond within 21 days thereafter.

B A Corkill Judge

Judgment signed at 10.00 am on 23 September 2019
