



- *A weekly payment of \$50.00 (fifty dollars) per week commencing on Wednesday 31 July 2013.*

[3] Clause 3 of the Settlement is also relevant and states that:

*If in the event that there is a default in any payment the remaining balance becomes due and owing immediately ...*

[4] The Settlement was certified under s 149 of the Act by the Mediator. That certification confirmed that before making the agreement, the parties were advised and accepted they understood the agreed terms as set out in s 148A, and in s149(1) & (3) :

- a. were final, binding and enforceable; and
- b. could not be cancelled under section 7 of the Contractual Remedies Act 1979; and
- c. could not be brought before the Authority or the court for review or appeal, except for the purposes of enforcing those terms.

[5] Mr Pillay said that whilst Artite had commenced the scheduled payments, these had ceased with effect from 29 January 2014.

[6] Mr Spooner confirmed that, as a result of Artite's adverse financial situation, payment of the agreed instalments to Mr Pillay had ceased with effect from 29 January 2014. However following financial support from its bank, Artite had been able to restart the weekly payments with effect from 25 July 2014, and had done so at an increased rate of \$65.00 per week.

[7] Mr Pillay agreed that he had received the increased weekly instalments with effect from 25 July 2014, however due to the hiatus in the payment schedule; the anticipated completion date for payment of the compensatory sum under clause 3 of the Settlement had not been achieved. The outstanding monies owed to him currently totalled \$815.00 and accordingly he was seeking compliance for that amount pursuant to clause 3 of the Settlement.

### **Determination**

[8] I am satisfied that Artite has not complied with the terms of the Settlement and that it is just in the circumstances for an order to be made requiring it to comply with the Settlement.

[9] Mr Pillay indicated that, provided Artite continues to make payment by weekly instalments at the present rate of \$65.00, he will not seek to enforce the compliance order. However in the event of any further default he will seek enforcement.

[10] **In order to effect compliance with clause 3 of the Settlement, I therefore order, in the event of any further default of the weekly payment, that Artite pay Mr Pillay no later than 7 days from the date of the first default, the outstanding amount required to fulfil the compensatory sum due under clause 3 of the Settlement.**

#### **Costs**

[11] Mr Mita and Mr Tatā have applied for costs on behalf of Mr Pillay.

[12] I see no reason in the current case for departing from the normal level of awards made by the Authority in similar circumstances. The normal rule is that costs follow the event and Mr Pillay is entitled to a contribution towards his costs.

[13] For a case of this kind \$3,500.00 is accepted as the notional daily rate. The Investigation Meeting took less than a quarter day. Accordingly, Artite is ordered to pay Mr Pillay the sum of \$550.00 towards his costs, pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000 to be paid as agreed between the parties.

**Eleanor Robinson**  
**Member of the Employment Relations Authority**