

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2015] NZERA Wellington 23
5532371

BETWEEN OLIVER SCRIPPS
 Applicant

AND ENTERPRISE 7 LIMITED
 Respondent

Member of Authority: P R Stapp

Representatives: Oliver Scripps in person and Karyen Partington support
 person for Applicant
 No attendance for the Respondent

Investigation Meeting: 17 March 2015 at Wellington

Determination: 17 March 2015

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The application has to do with the enforcement of a record of settlement signed off by Mr Oliver Scripps and Ms Michelle Spooner for and on behalf of Enterprise 7 Limited, and certified by a mediator from Ministry of Business, Innovation and Employment (MBIE). There is a sum of money and holiday pay under the record of settlement that has not been paid. Compliance is being sought by the applicant against Enterprise 7 Limited. Michelle Spooner, director, signed a personal guarantee in the record of settlement.

[2] There has been no reply from Enterprise 7 Limited. I am satisfied that Enterprise 7 Limited has been served. This is supported by an affidavit from a professional server. Ms Spooner has been contacted as she is the director for Enterprise 7 Limited. It failed to attend or be represented at the investigation meeting and the meeting was delayed in the event that somebody would turn up. There has

been no good cause for the failure to attend today's investigation meeting. Indeed the matter has been ignored despite the respondent being served and given advice on replying to the statement of problem.

[3] I have proceeded under clause 12 of Schedule 2 of the Act to fully act in the matter as if the respondent was present or represented.

Issues

[4] This is a matter of compliance with a record of settlement with a personal guarantee to pay by a director. In the matter I require proof that the payment has not been made, and it is for me to consider against whom the compliance order should be made.

Facts

[5] On 16 October 2014 Mr Scripps and Michelle Spooner signed off a record of settlement that was certified by a mediator from MBIE, under s 149 of the Act. The record included Ms Spooner signing for and on behalf of Enterprise 7 Limited and she signed a personal guarantee to make any outstanding payments.

[6] The sum of \$1,000 has not been paid, Mr Scripps says. Also, Mr Scripps says he has not been paid his holiday pay that was due under the record of settlement. Mr Scripps did not have the holiday pay figures available at the investigation meeting, but has undertaken to provide them later and requested that they be included in a compliance order. In the meantime he has asked me to continue with an order on the outstanding \$1,000 not paid. Mr Scripps has incurred \$71.56 filing fee to enforce his entitlement to the money he is owed.

Determination

[7] The sum that has not been paid to Mr Scripps is \$1,000 nett.

[8] The application has only cited Enterprise 7 Limited as the respondent. Ms Spooner's personal guarantee is an extension of the employment arrangement for payment and as Ms Spooner is a director, I accept that her personal guarantee would

be enforceable under the terms of the record of settlement. However she has not been properly put on notice to be joined to the action. Mr Scripps has agreed that enforcement first should be against the respondent, Enterprise 7 Limited. If this fails leave has been granted for him to return to the Authority to join Ms Spooner personally for compliance with her personal guarantee to pay any outstanding money.

[9] I am satisfied that the record of settlement has been breached with the non-payment. This is a matter for a compliance order under s 137 and s 138 of the Act.

[10] Ms Spooner needs to understand that non-compliance with the Authority's order can mean that the applicant may apply to the Employment Court to exercise its powers under s 140 (6) of the Act. S 140 (6) of the Act enables the Court to do one or more of the following things:

- (a) if the person in default is a plaintiff, order that the proceedings be stayed or dismissed as to the whole or any part of the relief claimed by the plaintiff in the proceedings;
- (b) if the person in default is the defendant, order that the defendant's defence be struck out and that judgment be sealed accordingly;
- (c) order that the person in default be sentenced to imprisonment for a term not exceeding three months;
- (d) order that the person in default be fined a sum not exceeding \$40,000;
- (e) order that the property of the person in default be sequestered.

Order of the Authority

[11] Enterprise 7 Limited is required to pay Oliver Scripps the sum of \$1,000 net. The amount is to be paid by Enterprise 7 Limited in full by 31 March 2015.

[12] In addition, Enterprise 7 Limited is required to pay Oliver Scripps \$71.56 filing fee.

[13] Mr Scripps did apply for damages, but I hold he does not have the evidence to establish a claim.

[14] Leave has been granted to Mr Scripps to produce the figures for unpaid holiday pay to be enforced.

[15] There will be a certificate of determination issued shortly.

P R Stapp
Member of the Employment Relations Authority