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South Pacific Limited v Tian [2014] NZEmpC 190 (20 October 2014)

Last Updated: 31 October 2014

IN THE EMPLOYMENT COURT AUCKLAND

[\[2014\] NZEmpC 190](#)

ARC 76/12

IN THE MATTER OF a challenge to a determination of the
Employment Relations Authority

AND IN THE MATTER of an application to strike out the
plaintiff's challenge

BETWEEN SOUTH PACIFIC LIMITED Plaintiff

AND JINGXIN TIAN Defendant

Hearing: On the papers filed on 8 August 2014, 8 October
2014

Appearances: M Moncur, advocate for defendant
No appearance for plaintiff

Judgment: 20 October 2014

JUDGMENT OF JUDGE CHRISTINA INGLIS

[1] The defendant has applied for orders striking out the plaintiff's challenge. The plaintiff (South Pacific Limited) has taken no steps to oppose the application. Accordingly it is dealt with on an unopposed basis. The strike out application arises against the following background.

[2] The plaintiff filed a challenge to a determination of the Employment Relations Authority (the Authority) dated 15 October 2012.¹ In its determination the Authority found that the plaintiff had breached s 12A of the Wages Protection Act

1983 and awarded wages and penalties against it. The Authority also found that the defendant had been unjustifiably dismissed and awarded compensation in her favour,

together with a penalty.

¹ *Jingxin Tian v South Pacific Limited* [2012] NZERA Auckland 367.

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[3] A good faith report was called for and subsequently provided by the Authority member. The report was not favourable to the plaintiff. A number of conditions were subsequently imposed on the plaintiff's challenge by way of interlocutory judgment dated 22 March 2013.² I directed that the plaintiff was to strictly comply with all orders and directions of the Court made in the course of the proceedings and that, in default, the plaintiff's challenge was liable to be struck out.³

Timetabling directions were also made for the filing of affidavit evidence. The plaintiff did not comply, though later sought (and obtained) an extension of time.⁴

Compliance orders were subsequently made against the plaintiff in the Authority,⁵

but were not satisfied.

[4] The defendant then applied for security for costs and a stay pending payment of security. This was opposed by the plaintiff. I ordered the plaintiff to pay \$12,000 by way of security for costs.⁶ A further order was made that:⁷

... if payment of security has not been made within 20 working days, then the defendant may apply to the Court for an order striking out the challenge.

[5] The plaintiff has not paid security for costs and it has not taken any steps to do so. This has led to the defendant's most recent application to strike out the challenge, supported by affidavit evidence. No opposition has been filed to the application. I issued a minute on 11 September 2014 indicating that the application would be dealt with on the papers, absent any objection to that course. None was advised within the stated timeframe. Mr Pa'u sought (and is granted) leave to withdraw as advocate for the plaintiff, for reasons set out in a memorandum dated 8

October 2014.

[6] The Court may strike out a claim for failure to pay security for costs.⁸ The plaintiff has had a reasonable opportunity to comply with the order to pay security for costs but has failed to do so. It has done nothing to otherwise progress its

challenge. Nor has it taken any steps to satisfy the orders made against it in the

² *South Pacific Ltd v Jingxin Tian* [2013] NZEmpC 44.

³ At [20].

⁴ Minute of Chief Judge Colgan dated 24 April 2013.

⁵ *Tian v South Pacific Ltd* [2013] NZERA Auckland 235.

⁶ *South Pacific Ltd v Tian* [2013] NZEmpC 214.

⁷ At [23].

⁸ See *Milne v Air New Zealand* [2013] NZEmpC 108 for a summary of the approach to be adopted.

Authority or the Court. There has been a regrettable history of delay and non-compliance with orders made against the plaintiff. The defendant is in a most unfortunate position, and has been for some time. She is entitled to be free from the spectre of litigation hanging over her head, and the potential exposure to ongoing legal costs in circumstances where history suggests there will be very little prospect of recovery. It is in the overall interests of justice that this long running matter be brought to an end.

[7] The challenge is accordingly struck out.

Christina Inglis

Judge

Judgment signed at 10.15 am on 20 October 2014