

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN David John Tindall & Rosalyn Adrienne Oakley (Applicant)
AND NJG Holdings Limited (Respondent)
REPRESENTATIVES David John Tindall & Rosalyn Adrienne Oakley, the Applicants
Ian McElwee, for the Respondent
MEMBER OF AUTHORITY Dzintra King
CONSIDERATION OF PAPERS 5 November 2005
DATE OF DETERMINATION 7 November 2005

DETERMINATION OF THE AUTHORITY

The applicants have applied for a compliance order. The respondent has applied to have the matter struck out. The main argument for the respondent is that the applicants' claim is trivial and vexatious. The criteria applicable to strike out applications are taken from NZ etc Shipwrights Union v NZ Amalgamated Engineering IOUW (1989) ERNZ Sel Cas 516; [1989] 3 NZILR 284 and are as follows:

- 1 It must be demonstrated that the case pleaded is so clearly untenable that it cannot possibly succeed.
- 2 The jurisdiction is to be exercised sparingly and only in a clear case where the Court is satisfied that it can reach a definite and certain conclusion.
- 3 It is not a valid criticism of an application to strike out that extensive and complex argument and even evidence is necessary to demonstrate that the case is clear enough for the Court to exercise its summary powers of striking out.
- 4 The Court will not strike out a proceeding if, on the way to doing so, it has to decide disputed questions of fact.
- 5 Even if jurisdiction exists and the absence of a tenable case is established, the Court has a residual discretion to decline the application if the justice of the case so requires, but that discretion will often be exercised if the Court has been able to form a clear view of the case.

While I appreciate that the respondent feels that the claim is trivial and vexatious the issue is clearly important to the applicants. The fact that something may be of little value financially does not of itself render the matter trivial or the claimants vexatious.

The application to strike out is declined. I will deal with the matter of costs in regard to this application when determining the compliance order application.

Dzintra King
Member of Employment Relations Authority