

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2015] NZERA Wellington 24
5524819

BETWEEN EDWIN ALOYSIUS
ROZARIO
Applicant

AND MICHELLE SPOONER
Respondent

Member of Authority: P R Stapp

Representatives: Karyen Partington support person for Applicant
No appearance 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 Edwin Rozario and Michelle Spooner for and on behalf of MC2IT Ltd, and certified by a mediator from Ministry of Business, Innovation and Employment (MBIE). There is a sum of money under the record of settlement that has not been paid. Compliance is being sought by the applicant against Michelle Spooner, director, personally as she signed a personal guarantee in the record of settlement, instead of MC2IT Ltd.

[2] Ms Spooner has not replied. I am satisfied that she has been personally served. This is supported by an affidavit from a professional server. She has been contacted for failing to attend the investigation meeting and the meeting was delayed in the event she would turn up. There has been no good cause for her failure to

attend. Indeed she has ignored the matter despite 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(s) has/have not been made and that MC2IT Ltd is not trading for the personal guarantee to apply.

Facts

[5] On 9 September 2014 Mr Edwin Rozario 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 MC2IT Limited (previously known as MSS Associates Ltd), which was Mr Rozario's employer, and Ms Spooner signed a personal guarantee to make any outstanding payments if the company ceases trading.

[6] The sum of \$6,000 has not been paid, Mr Rozario says. He is waiting for a further \$1,000 to be paid on 20 March 2015 and the last payment by instalment of \$700 on 20 April 2015. Mr Rozario 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 Rozario is \$6,000 net. Mr Rozario is waiting on two further instalments that are not included in this order because they are still to be paid and a compliance order cannot be issued prospectively.

[8] I am satisfied that MC2IT Ltd has ceased trading. This is supported by a file note that records that Ms Spooner has said that the company has not operated for

about a year. Furthermore I take Ms Spooner's decision not to provide a proper reply to the statement of problem means that she is not challenging Mr Rozario's claims. As MC2IT Ltd has ceased trading the personal guarantee is an extension of the employment arrangement for payment and as Ms Spooner is a director, I accept that her personal guarantee is enforceable under the terms of the record of settlement.

[9] I am satisfied that the record of settlement has been breached with the non-payment of instalments from 20 September 2014 until 20 February 2015. 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] Michelle Spooner is required to pay Edwin Rozario the sum of \$6,000 net. The amount is to be paid by Ms Spooner in full by 31 March 2015. Mr Rozario is granted leave to return to the Authority for any compliance required on the remaining

two instalments if there is a default in payment after 20 March for \$1,000 and 20 April 2015 for \$700 or after 20 April 2015 for the total.

[12] In addition Ms Spooner is required to pay Mr Rozario \$71.56 filing fee.

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

P R Stapp
Member of the Employment Relations Authority