

**IN THE EMPLOYMENT COURT  
AUCKLAND**

**[2013] NZEmpC 14  
ARC 65/12**

IN THE MATTER OF      an application for compliance order

BETWEEN                HOWARD DELL  
                                 Plaintiff

AND                        ABC01 LIMITED (FORMERLY  
                                 PRIMARY HEART CARE LIMITED)  
                                 First Defendant

AND                        JOHN WILLIAM HINCHCLIFF (ALSO  
                                 KNOWN AS JOHN-WILLIAM:  
                                 HINCHCLIFF)  
                                 Second Defendant

Hearing:                18 February 2013  
                                 (Heard at Auckland)

Appearances: Plaintiff in person by video link  
                                 Te Awhina (Diana-Jane: Bongard), agent for first defendant  
                                 Second defendant in person

Judgment:             18 February 2013

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**JUDGMENT OF CHIEF JUDGE G L COLGAN**

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[1]      The applications before the Court to be dealt with today now relate only to the second defendant who has identified himself as also going by the name of John-William: Hinchcliff. Mr Dell accepts that the Court has made orders for enforcement of the Employment Relations Authority's determinations against the first defendant ABC01 Limited (formerly Primary Heart Care Limited).

[2]      As regards the first defendant company, the Court has previously penalised it for non-compliance<sup>1</sup> with the Employment Relations Authority's compliance order.<sup>2</sup>

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<sup>1</sup> [2012] NZEmpC 198.

Although Mr Dell claims an order for sequestration of its assets, as I have already explained,<sup>3</sup> this is a complex technical procedure requiring an applicant to take a number of steps before the Court can appoint a sequestrator and give directions for the sequestration of assets. One example of the required steps before an order for sequestration can be made is that the sequestrator appointed must be indemnified by the applicant for his or her costs or losses. That is problematic in the case of a plaintiff resident outside the jurisdiction. That is, of course, not the only issue to be dealt with on an application for sequestration but, in the absence of any further pursuit of his application for sequestration against the company by Mr Dell, no further progress can be made. It is really a remedy that should be pursued by a professional representative in the jurisdiction. These remarks apply also to any sanction that may be sought for non-compliance by Mr Hinchcliff with the orders to be made against him.

[3] The only other statutory remedy, that of imprisonment, is clearly inapplicable to an inanimate corporate entity so that there is nothing further that the Court can do in respect of the first defendant's debt owed to Mr Dell and the fine owed to the Crown. It is, of course, open to Mr Dell to pursue these remedies in other courts and/or by other procedures for debt recovery.

[4] The case today concerns the claims against Mr Hinchcliff. Until this hearing, Mr Hinchcliff has not participated in the proceedings and there has, until now, been no proof of service of the claims on him. The Court had to be satisfied that he has been served with those proceedings if he is to be at risk of the imposition of a fine, of an order sequestering his assets, or of imprisonment, as Mr Dell seeks.

[5] I am now satisfied that Mr Hinchcliff was served with the proceedings and also brought to his notice has been the Court's requirement set out in the Minute of 1 February 2013 that he appear today to answer questions arising out of the affidavit filed by him after he was served with the proceedings.

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<sup>2</sup> [2012] NZERA Auckland 318.

<sup>3</sup> [2012] NZEmpC 198 at [12].

[6] At today's hearing Te Awhina, who also identified herself as Diana-Jane: Bongard, appeared as the representative of ABC01 Limited but confirmed that she did not represent Mr Hinchcliff who was, nevertheless, present in the courtroom and eventually addressed the Court, albeit, as he said, on a 'without prejudice' basis. Mr Hinchcliff denied being that person but asserted, rather, that he is John-William: Hinchcliff. I was satisfied (and Mr Dell confirmed via video link) that the second defendant, John William Hinchcliff, was the person present in court. Although Mr Hinchcliff was present, he declined to recognise the Court's jurisdiction and, therefore, to comply with the direction that he answer questions on the affidavit that he affirmed on 23 January 2013 and filed with the court on 24 January 2013. In the circumstances, I did not compel Mr Hinchcliff to be sworn or to affirm or to answer questions in the witness box. The corollary of this, however, is that little, if any, weight can be given to those assertions made by Mr Hinchcliff in his affidavit.

[7] Although he has filed documents (including an affidavit) in relation to the hearing, it seems only fair to Mr Hinchcliff that I set out the background to the order or orders that I may make today.

[8] Mr Hinchcliff was a principal in the defendant company, ABC01 Limited which was formerly Primary Heart Care Limited. It is clear that he was the personification of that corporation in its dealings with Mr Dell as these are outlined in the Employment Relations Authority's determination.<sup>4</sup>

[9] ABC01 Limited applied for leave to challenge the Authority's determination out of time and for a stay of execution of its orders. These applications were granted<sup>5</sup> but on conditions which ABC01 Limited did not meet. The leave to challenge out of time and the staying of execution of the Authority's remedies did not occur in these circumstances.

[10] Mr Dell then sought compliance orders to enforce the Authority's compliance order requiring ABC01 Limited to pay the monies due as directed by the Authority. Mr Dell also applied to join Mr Hinchcliff as a party to his application for a

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<sup>4</sup> [2012] NZERA Auckland 272.

<sup>5</sup> [2012] NZEmpC 188.

compliance order against ABC01 Limited. In respect of Mr Hinchcliff personally, the compliance order would be to require him to ensure ABC01 Limited's compliance with the Authority's determination.

[11] When those applications first came before the Court, Mr Hinchcliff did not appear and there was then no proof of service of the application upon him. In those circumstances, the Court ordered the imposition of a penalty against ABC01 Limited for non-compliance with the Authority's determination but adjourned that part of the proceeding affecting Mr Hinchcliff personally so that he could be served and service proved.<sup>6</sup> That has now occurred and Mr Dell's application for a compliance order against Mr Hinchcliff was before the Court for consideration today.

[12] Mr Hinchcliff is not accused of a crime. He has had opportunities to take competent legal advice which would include an explanation of his rights and obligations and he has had an opportunity to defend that application on its merits if he wishes to do so. Mr Hinchcliff has chosen to participate in the hearing by filing documents but these are a continuation of his assertion of immunity, using the same arguments that the Court found against when ABC01 Limited asserted that it was not subject to the Employment Court's jurisdiction in this case.<sup>7</sup>

[13] Mr Hinchcliff is not entitled to the directions that he seeks but can nevertheless be assured that he has had an opportunity to take advice about his position and to participate in the hearing in a fair way but has chosen not to do so.

[14] These steps that I have just described (not to mention his presence in the courtroom today) have, however, confirmed that Mr Hinchcliff has both been served with the proceedings and is aware of their nature and, in particular, what is sought against him.

[15] Because Mr Hinchcliff declined to engage with the Court to any extent beyond refusing to recognise its jurisdiction, I should add the following.

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<sup>6</sup> [2012] NZEmpC 198 at [9].

<sup>7</sup> [2012] NZEmpC 190.

[16] Mr Hinchcliff has made some very unfortunate choices about how he deals with this litigation and how he and the first defendant are represented. Describing himself as “a creation of Almighty God and a bond Servant thereof” does not relieve Mr Hinchcliff of his liability in law. Nor does furnishing the Court with a copy of its Minute of 1 February 2013, replete with numerous fingerprints and handwritten comments, assist his situation. I do not accept that what Mr Hinchcliff describes as a “non-negotiable declaration of the violation of his rights” relieves him of liability. The Court’s orders are not, contrary to his handwritten notes on the Court’s minute, an “offer to contract” that is open for acceptance or rejection as Mr Hinchcliff claims.

[17] Very belatedly, Mr Hinchcliff appears to also challenge the correctness of the Authority’s determination in favour of Mr Dell for unpaid wages. That application has already been heard and allowed on conditions, but those conditions were not only not satisfied by Mr Hinchcliff and the defendant company, but were met with renewed claims of immunity from jurisdiction which have already been the subject of a judgment addressing Maori sovereignty immunity issues.

[18] On 14 February 2013 Mr Hinchcliff filed a document the nature and intention of which is enigmatic but which I assess to be as follows.

[19] In it, Mr Hinchcliff describes himself as “beneficiary of the Ngai-Tupango-Hapu Incorporation: Native Authority; earthling Command”. He says that he is a beneficiary and shareholder of the Ngai-Tupango-Hapu Incorporation and is protected under “the laws of Nu Tirini, enforced by Te Ture Whenua Maori/Maori Land Act 1993 amended by Te Ture Whenua Maori Amendment Act 1994.

[20] Mr Hinchcliff describes himself as a “corporation entity accused in these proceedings”. He regards the application for a compliance order against him requiring ABC01 Limited (formerly Primary Heart Care Limited) to comply with the Court’s compliance order made against it on 26 November 2012, as a charge. Mr Hinchcliff uses the language of the criminal law describing the claims against him as “charges” and himself as the “accused”. That is, however, to mis-state

fundamentally the civil nature of these proceedings and the application against him for a compliance order.

[21] Mr Hinchcliff purports to wish to be informed by a sworn statement of claim by me as the presiding Judge to answer a number of questions as to my “commercial liability”. He has purported to require that my sworn statement setting out the answers to his specific questions be received by him within 72 hours from the electronic receipt by the Court of his document.

[22] As to today’s hearing, Mr Hinchcliff states: “I return your offer to attend the hearing at 10 am, Monday 18 February 2013 ... and await your sworn statement”. Failing this, Mr Hinchcliff seeks to have the matter vacated or dismissed and purports to direct me “as a trustee, to close these accounts completely”.

[23] This morning, two documents were filed in court. The first is an address for service of Mr Hinchcliff which both confirms service of the proceedings upon him and will now expedite the service of any further documents on Mr Hinchcliff.

[24] The second document filed this morning by Ngai-Tupango-Hapu Incorporation dated 16 February 2013 appears to be in the form of a record of the Incorporation’s Te Kooti Marae (Marae Court) on 16 February 2013 finding that the Employment Court has no authority to intervene in the affairs of the Incorporation and its beneficiaries and shareholders that are said to include Mr Hinchcliff. The document also purports to cancel and annul the orders of this Court in these cases pursuant to s 237 of the Te Ture Whenua Maori Land Act, Te Kooti Marae exercising the jurisdiction of the High Court.

[25] For reasons already given in this Court’s interlocutory judgment issued last year, no more needs to be said than that the Employment Court is and remains seized of the proceedings brought by Mr Dell. Whatever ABC01 Limited and Mr Hinchcliff may do otherwise and elsewhere in relation to them, Mr Dell is entitled to bring his proceedings in this Court under the Employment Relations Act 2000 and, if appropriate, to the statutory remedies he seeks.

[26] Pursuant to ss 139 and 140 of the Employment Relations Act 2000, I make a compliance order requiring John William Hinchcliff also known as John-William: Hinchcliff, to arrange to have ABC01 Limited pay to the plaintiff the sums due to him pursuant to the Authority's orders, together with interest on those sums at the rate of 5 per cent per annum calculated from the 10th day of August 2012 to the date of payment of those sums to Mr Dell.

[27] Mr Hinchcliff must comply with this compliance order within 14 days of the date of service of a copy of this judgment upon him at his address for service. Pursuant to s 140(5) I adjourn sine die the applications for penalty, imprisonment and sequestration in respect of Mr Hinchcliff. They may be brought on in the event of disobedience. If Mr Hinchcliff fails or refuses to comply with this order for compliance, he will face the prospect of enforcement orders including those sought by Mr Dell for his imprisonment, for the imposition of a penalty against him, and for the sequestration of his assets.

[28] I reserve costs on this application.

GL Colgan  
Chief Judge

Judgment signed at 5 pm on Monday 18 February 2013