

**IN THE EMPLOYMENT COURT
AUCKLAND**

**[2014] NZEmpC 186
ARC 82/13**

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

BETWEEN DONALD PHILLIPS
 Plaintiff

AND CROFT POLE DISTRIBUTORS
 LIMITED
 Defendant

Hearing: By plaintiff's memorandum filed on 15 August 2014 and
 affidavit filed on 26 September 2014

Appearances: G Bennett, advocate for plaintiff
 M Broadbelt, advocate for defendant

Judgment: 26 September 2014

JUDGMENT OF CHIEF JUDGE G L COLGAN

[1] Donald Phillips's challenge to the determination of the Employment Relations Authority on 18 September 2013 dismissing his claims,¹ was filed by his advocate, Gregory Bennett, on 16 October 2013.

[2] At a directions conference held on 20 February 2014 the parties, by their representatives, agreed to attempt to resolve the litigation in a judicial settlement conference from which, if the case was not settled, directions would be given to a hearing.

[3] A judicial settlement conference was not able to be conducted.

¹ *Phillips v Croft Pole Distributors Ltd* [2013] NZERA Auckland 423.

[4] Mr Bennett has now lost all contact with the plaintiff and advises the Court that it appears that Mr Phillips is no longer residing in Whangarei and is not contactable by land line or mobile telephone.

[5] By a Minute issued on 15 August 2014 the Court required both the Registrar and Mr Bennett to take a number of steps to bring to Mr Phillips's attention the fact that his challenge would be dismissed for want of prosecution if he did not take any step within 21 days of the date of that Minute. Those directions included requirements that:

- Mr Bennett leave a voicemail message to this effect on Mr Phillips's (extant) mobile phone number;
- Mr Bennett send a paper copy of the Court's Minute by ordinary post to Mr Phillips's last known residential address;
- Mr Bennett advise the Registrar of Mr Phillips's mobile telephone number; and
- the Registrar send a picture text (pxt) or a PDF of the Court's Minute to that telephone number.

[6] The Registrar followed those directions and indeed took the further step of sending a copy of the Minute to Mr Phillips's mobile phone number by the Viber social media program, but reports that Mr Phillips did not contact the Court or otherwise respond following those advices.

[7] Mr Bennett has now confirmed that he, too, took the steps required of him by the Court.

[8] In those circumstances, I am satisfied that, despite making all reasonable attempts to contact Mr Phillips, he has failed to take a step in the proceeding despite being made aware that it would be dismissed for want of prosecution if he did not do so.

[9] In the foregoing circumstances, the plaintiff's challenge is dismissed for want of prosecution.

[10] If the defendant seeks a contribution to its costs, it must file a memorandum supporting such application within 14 days of the date of this judgment. The Court will then give consideration to directions for service of that application on Mr Phillips.

GL Colgan
Chief Judge

Judgment signed at 3 pm on Friday 26 September 2014