

**IN THE EMPLOYMENT COURT  
CHRISTCHURCH**

**CC 4/07  
CRC 31/05**

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

AND IN THE MATTER OF an application by the defendant for  
orders

BETWEEN MONACO VILLAGE MANAGEMENT  
LIMITED  
Plaintiff

AND CARMON BENSON  
Defendant

Hearing: Written submissions from the defendant received 30 January 2007

Judgment: 1 March 2007

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**JUDGMENT OF JUDGE C M SHAW**

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[1] Ms Benson brought a personal grievance claiming unjustified dismissal to the Employment Relations Authority. On 9 December 2005 the Authority determined that she had been offered and accepted employment by Monaco Village Management Ltd of which Mr R M Gepp was a director. It found that she had been unjustifiably dismissed before she had an opportunity to take up her employment. The company was ordered to pay her lost wages of \$7,248 and \$5,000 compensation for distress to Ms Benson. Costs were reserved.

[2] On 21 December 2005 the company filed a challenge to that determination. A statement of defence, cross-challenge, and third party claim was then filed on behalf of Ms Benson.

[3] The statement of defence supports the Employment Relations Authority determination; the cross-challenge seeks an increase in the lost wages awarded to her; and the third party claim is an application to join Robert Michael Gepp to the proceedings on the basis that he contracted without disclosing his intended principal.

[4] On 18 September 2006 the previous solicitors for the plaintiff advised the Court that they had no instructions from the plaintiff company. It had ceased trading and its director and principal shareholder has left New Zealand. The lawyers withdrew as the solicitors acting for the plaintiff.

[5] The Court then contacted the company's address for service, a firm of accountants. On 6 October 2006 that firm advised that it merely acts as the registered office of the company which had ceased trading and has no assets. The remaining director has gone offshore to either Fiji or Australia but no one seemed to know exactly the whereabouts of this person. It also had no instructions in the matter.

[6] In January 2007 the defendant filed an application for the plaintiff's challenge and the defendant's cross-challenge to be dismissed and costs to be fixed. The grounds for this application are that the plaintiff has ceased trading, that Mr Gepp has gone offshore, and that the solicitors are no longer acting. Mr Zindel submitted that there is an evident want of prosecution on the part of the plaintiff. He relied on the decision of *Grovit v Doctor*<sup>1</sup> which held that once the Court is satisfied that the plaintiff has no intention of bringing proceedings to trial the continuation of the proceedings amounts to an abuse of process.

[7] I am satisfied that there is a want of prosecution in this case. The plaintiff has taken no steps at all since filing the statement of claim over a year ago and is not able to be contacted in any way by the Court or the solicitors for the defendant.

[8] As to costs, the defendant has provided no evidence relating to the costs application but in light of the circumstances I do not propose to put the defendant to

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<sup>1</sup> [1997] 2 All ER 417

any further cost or expense in relation to this matter and will treat the application for costs as relating to those in both the Authority and the Court.

**Costs in the Authority**

[9] The determination shows that there was an investigation meeting on 22 September 2005 with further evidence provided on 21 November 2005. Two days of hearing at the Authority's usual rate of costs of \$2,000 a day makes costs in the Authority payable by the plaintiff of \$4,000.

[10] Beyond the filing of the statement of defence and the application before the Court, there have been no other steps taken by the defendant in the Court and there will be no order for costs other than any disbursements which may be fixed by the Registrar if applicable.

[11] The plaintiff's challenge to the Employment Relations Authority determination of 9 December 2005<sup>2</sup> is dismissed for want of prosecution.

[12] The defendant's cross-challenge is deemed to be withdrawn.

**C M Shaw  
JUDGE**

Judgment signed at 10am on 1 March 2007

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<sup>2</sup> CA 158/05