

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

**CA749/2018
[2019] NZCA 161**

BETWEEN INFINITY AUTOMOTIVE LIMITED
Applicant

AND PETER D'ARCY LORIGAN
Respondent

CA761/2018

BETWEEN INFINITY AUTOMOTIVE LIMITED
Applicant

AND PETER D'ARCY LORIGAN
Respondent

Court: Williams and Gilbert JJ

Counsel: E J Coats for Applicant
Respondent in person

Judgment: 15 May 2019 at 3.00 pm
(On the papers)

JUDGMENT OF THE COURT

The applications for leave to appeal are declined.

REASONS OF THE COURT

(Given by Williams J)

Introduction

[1] The parties to these applications are engaged in an employment dispute. The respondent has brought two personal grievance claims against the applicant in relation to this dispute.

[2] On 8 August 2018, as the case proceeded toward a December 2018 fixture in the Employment Court, that Court issued an “unless order”.¹ It required that the respondent file all his evidence by 5 November 2018. The order was necessary because of the respondent’s past timetabling non-compliances. The respondent filed evidence by that date as directed, but on 14, 19 and 20 November 2018 he sought to file yet further evidence.

[3] The applicant applied to the Employment Court to strike the proceeding out for non-compliance with the unless order.

[4] Judge Corkill in the Employment Court refused the application in a judgment dated 3 December 2018.²

[5] He reasoned that since he had already ruled in the judgment that the late filed evidence be excluded (for multiple reasons: lateness, relevance, admissibility and credibility), the respondent was only entitled to adduce the evidence filed in compliance with the unless order.³ This the Judge considered, rendered the strikeout application moot.⁴

The applications

[6] Leave is sought to appeal that ruling. The applicant also seeks leave to appeal against a minute of Judge Corkill dated 5 December 2018, repeating the ruling’s conclusion. We have considered these applications together. The applicant argues that the Judge made the following errors of law in refusing to strike out the respondent’s proceedings:

- (a) an unless order is automatic on non-compliance, with relief from such automatic effect only available in extreme cases productive of serious injustice to the non-compliant party;

¹ *Lorigan v Infinity Automotive Ltd* [2018] NZEmpC 89.

² *Lorigan v Infinity Automotive Ltd* [2018] NZEmpC 143.

³ At [39]–[40].

⁴ At [40].

- (b) the Court should therefore have automatically struck out the challenges when the respondent sought to file further late evidence;
- (c) the Judge took into account irrelevant considerations (the respondent's subsequent application for special leave to admit the late evidence and the Court's refusal of that application) and failed to take into account relevant considerations (the Court's ruling on 8 August 2018 that non-compliance with the filing deadline would result in the challenges being struck out).

[7] Further, the applicant submits that the appeal raises issues of significance beyond the narrow interests of the parties to the substantive proceeding.

Assessment

[8] It is not seriously arguable that the unless order had been breached as at the imposed filing date. Whether the further evidence could or should be filed was a separate matter to be dealt with on its own merits. There can have been no prejudice to the applicant in the way in which the Judge dealt with what was a straightforward subsequent case management issue involving a lay litigant.

[9] In any event, the grounds advanced are case specific and do not raise for decision any matter of general or public importance.

Result

[10] The applications for leave to appeal are declined.

Solicitors:
Bell Gully, Auckland for Applicant