IN THE EMPLOYMENT COURT OF NEW ZEALAND
WELLINGTON

I TE KŌTI TAKE MAHI O AOTEAROA
TE WHANGANUI-A-TARA

[2019] NZEmpC 45
EMPC 176/2018

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
BETWEEN	ALLEN CHAMBERS LIMITED AND GEORGE ALLEN CHAMBERS Plaintiffs
AND	FLORIAN PELABON Defendant

Hearing:	18 February and 26 March 2019 (heard at Wellington)
Appearances:	G Chambers as representative for Allen Chambers Ltd, and in person B Laracy, advocate for the defendant
Judgment:	18 April 2019

JUDGMENT OF JUDGE B A CORKILL

Introduction

[1] The plaintiffs filed a de novo challenge to a determination of the Employment Relations Authority (the Authority) in which compliance orders were granted against them, and a company with which they were associated, Zumo Retail Nelson Ltd (ZRNL); it was a judgment debtor under determinations issued by the Authority.

[2] The Authority's first determination was issued on 6 October 2017, ordering ZRNL to pay Mr Pelabon $10,824.07 in wages, holiday pay and compensation.[1] In a

[1] *Pelabon v Zumo Retail Nelson Ltd* [2017] NZERA Wellington 101.

subsequent determination of 2 February 2018, the Authority ordered ZRNL to contribute $2,250 towards costs associated with Mr Pelabon's substantive claim.[2] Neither determination was challenged.

[3] Since ZRNL did not pay these amounts, Mr Pelabon sought compliance orders in respect of those payments against not only the company, but also Allen Chambers Ltd (ACL) and Mr Allen Chambers. They were joined as parties to the compliance proceedings, which provided them with an opportunity to be heard.

[4] The Authority found that ZRNL had been Mr Pelabon's employer, but ACL was the holding company for that entity as is verified on records held by the Companies Office, with Mr Chambers owning 100 per cent of ACL's shares. He is also the sole director of both companies.[3]

[5] In the determination which is challenged,[4] the Authority considered that compliance orders should be made against the two companies and Mr Chambers, on the strength of a judgment of the Labour Court, *Northern Clerical Workers Union v Lawrence Publishing Co of New Zealand Ltd.*[5] The Authority held it was appropriate to order all three respondents to ensure ZRNL made the payments ordered. The orders which it made reflected those made in *Lawrence Publishing*. Pursuant to s 137 of the Employment Relations Act 2000 (the Act), and within 14 days of the determination:

a) ZRNL was to comply with the orders contained in the determinations of 6 October 2017 and 2 February 2018 and pay Mr Pelabon the sum of $13,074.07.

b) Mr Chambers was ordered to make the payment referred to above as agent of ZRNL.

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2 *Pelabon v Zumo Retail Nelson Ltd* [2018] NZERA Wellington 10.
3 *Pelabon v Zumo Retail Nelson Ltd*, above n 1, at [5]-[6].
4 *Pelabon v Zuma Retail Nelson Ltd* [2018] NZERA Wellington 44.
5 *Northern Clerical Workers Union v Lawrence Publishing Co of New Zealand Ltd.* [1990] 1 NZILR 717 (LC).

c) ACL was ordered to advance to ZRNL whatever funds would be necessary, if any, to enable Mr Chambers and ZRNL to comply with the compliance orders which had been made.[6]

d) ZRNL was also ordered to pay Mr Pelabon interest in the sum of $249.67, with Mr Chambers and ACL being ordered to take whatever action was necessary to ensure that payment was made. Interest was to accrue until the date of payment.[7]

e) Costs associated with the application were awarded at $500 plus a filing fee of $71.56.[8]

Good faith issues

[6] In an interlocutory judgment of the Court issued on 27 September 2018, the Court considered whether the plaintiffs had participated in the Authority's investigation meeting regarding the making of the compliance orders in a manner that was designed to resolve the issues involved, whether the hearing of the present challenge should proceed on a de novo basis, and if not, what directions should be made under s 182(3) of the Act.[9]

[7] The Court reviewed the way in which ZRNL and ACL, as well as Mr Chambers, had participated in the Authority's investigation meeting.

[8] I recorded that Mr Chambers had sent certain emails to the Authority, one of which concerned ZRNL, stating that it was "essentially wound up".[10]

[9] Subsequently, it was established in the Authority that the company had not been, nor was it in the process of being, liquidated. The Authority recorded that Mr Chambers had, however, said the structure regarding the Zumo group of companies

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6 *Pelabon v Zumo Retail Nelson Ltd*, above n 4, at [24].
7 At [25].
8 At [26].
9 *Allen Chambers Ltd v Pelabon* [2018] NZEmpC 114.
10 At [10].

had been altered, and that ZRNL had no funds to pay for the sums for which it was liable.[11]

[10] The Authority directed that an affidavit be filed and served, setting out the timing and detail of the restructuring of the companies which Mr Chambers said had occurred. It went on to say that if it was to be argued that the company could not meet its liabilities to Mr Pelabon, "it must provide certified copies of relevant bank statements and provide information as to the value of any asset, plant and chattels it owns on the same date".[12]

[11] No affidavit was filed. Mr Chambers sent an email to the Authority on 24 January 2018, attaching a screenshot of what the Authority later said was the Zumo group of companies' bank and general ledger account numbers. No balances in respect of those accounts were provided. Also attached was a letter which the Authority said was purportedly sent to the New Zealand Police on 3 March 2017, making certain allegations as to the nature of the evidence Mr Pelabon had given to the Authority previously.[13]

[12] The Authority considered this material to be meaningless for the purposes of its investigation. Not only was there no affidavit, there were no certified bank accounts or other information which the Authority had directed should be produced.[14]

[13] Then the Authority stated:[15]

> In the statement of reply concerning Mr Pelabon's initial claims, Mr Chambers accused Mr Pelabon of illegal conduct, including (but not limited to) allegations that statements in the original statement of problem amounted to criminal action under the Crimes Act. In almost every interaction (written and oral) with the Authority during that investigation and subsequently, Mr Chambers in various ways reiterated the charges and alleged the Authority, endorsed by the State, provided an avenue for and assisted criminal conduct.

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11 At [11].
12 At [12].
13 At [13].
14 At [14].
15 At [16].

[14] Ultimately, the Authority concluded that the respondents had not facilitated the Authority's investigation, but obstructed it, and had not acted in good faith towards the other party during the investigation.[16]

[15] In considering the good faith issues which then arose, I concluded that no adequate explanation had been given regarding the concerns raised by the Authority. Limited information was provided to the Authority in the form of Mr Chambers' email of 24 January 2018, and its attachments. Neither Mr Chambers nor any representative attended the investigation meeting to explain the issues, as needed to occur.[17]

[16] I also found that the tenor of remarks made in Mr Chambers' email were disrespectful and unhelpful, and clearly demonstrated an absence of good faith towards Mr Pelabon. Their contemptuous nature was apparently intended to have the effect of undermining the earlier determination of the Authority which had not been challenged, and the Authority's approach to the compliance issues.[18]

[17] I was concerned at the Authority's conclusion that the plaintiffs' actions in providing limited financial information to it, and in not attending the investigation meeting, were steps taken consciously, deliberately, and which amounted to an obstruction of the Authority's investigation.[19]

[18] In all the circumstances, I was satisfied that none of the plaintiffs participated in a manner that was designed to resolve the issues involved.[20]

[19] In these circumstances, I directed that the plaintiffs could proceed with their challenge, but on a non-de novo basis where the nature and extent of the hearing would be as follows:[21]

> ...
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> a) The hearing will be limited to the following questions:

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16 At [17].
17 At [25].
18 At [26].
19 At [27].
20 At [28].
21 At [35].

i. Was the Authority correct in concluding that *Lawrence Publishing* provides an appropriate precedent with regard to the obligations of the plaintiffs?

ii. Was the Authority correct in concluding that the plaintiffs exercised some degree of control over ZRNL, so that it was appropriate to order that they should ensure ZRNL make the necessary payments to Mr Pelabon, as well as ZRNL itself?

iii. If the Authority was incorrect in concluding that *Lawrence Publishing* provides an appropriate precedent with regard to the obligations of the plaintiffs, did the Authority err in making the orders it did under s 137 of the Act?

iv. What orders, if any, should it have made in respect of the plaintiffs?

b) The hearing is to proceed, as far as the plaintiffs' case is concerned, on the basis of Mr Chambers' email of 24 January 2018; and on affidavit evidence which the plaintiffs are to file and serve within 28 days of this judgment. That evidence is to comply with the intent of the direction made by the Authority on 22 December 2017. It is to describe fully, supported by necessary documentation, the timing and detail of ZRNL's restructuring. If the plaintiffs propose to argue that the company cannot meet the monetary awards which have been made by the Authority in favour of Mr Pelabon, it is to provide certified copies of relevant bank statements, and documentation establishing the value of ZRNL's assets and liabilities as at the date of the affidavit.

...

[20] Eventually, Mr Chambers filed some evidence in the Court relating to the restructuring, but it did not fully comply with the direction made by the Court because there was no independent evidence as to the alleged restructuring.

[21] The substantive hearing commenced on 18 February 2019. Mr Chambers gave evidence, including by way of cross-examination. It emerged that his primary point was that the parent company, ACL, had exercised rights under a General Security Agreement (GSA); that ZRNL did not thereafter trade; that he and ACL were not in any employment relationship with Mr Pelabon; and that in all these circumstances it was not appropriate to issue compliance orders against him and that company.

[22] In the course of that hearing, he indicated there would be further documents he could produce to the Court to support his contentions. The hearing was accordingly adjourned part-heard to allow him to produce those documents. Mr Chambers was directed to file the further material in advance of the resumed hearing. He filed some

material which was of limited assistance, since again it consisted of internal ACL documents that provided no independent verification of the steps said to have taken place in 2017, such as bank records or financial statements.

[23] An issue had also arisen with regard to the status of ZRNL. The Registrar of Companies (the Registrar) had instituted a process for removal of the company from the Companies Office Register (the Register), due to non-compliance with its obligations to file an annual return. Plainly, if the company was removed from the Register, it would be inappropriate for the plaintiffs to be ordered to place in it funds to meet the judgment debt. Mr Laracy, advocate for Mr Pelabon, was directed to file updated information as to the status of the company. Subsequently, correspondence from the Registrar was placed before the Court confirming that Mr Pelabon had filed an objection to the removal of ZRNL from the Register, and the Registrar had accordingly suspended removal action. In a letter dated 13 February 2019, the Registrar stated she would be reviewing Mr Pelabon's objection in six months' time, at which point he would be requested to provide evidence to support a continuation of the objection.

The facts

Conclusions of the Authority

[24] Because the challenge is proceeding on a non-de novo basis where the focus must be on whether the Authority erred, it is necessary to summarise the relevant conclusions it reached on the facts and the law. The Authority found:

a) The Register records that ACL is the ultimate holding company of ZRNL.[22]

b) Mr Chambers owns 100 per cent of the shares in ACL.[23]

c) He is the sole director of both ACL and ZRNL.[24]

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22 *Pelabon v Zuma Retail Nelson Ltd*, above n 4, at [4].
23 At [5].
24 At [6].

d) In his email of 24 January 2018, Mr Chambers said that ZRNL owed $346,523.64 to ACL, with ZRNL having assets, excluding depreciation, of $491,813.67, as at 31 March 2016.[25]

e) He said ACL seized ZRNL's property on 1 November 2017, following defaults in payments due. ACL had guaranteed ongoing supplier relations, and two entities covering operations formerly run by ZRNL were set up.[26]

f) ZRNL had not furnished any profit and loss or cash flow records, balance sheets, or bank records which would allow an objective body such as the Authority to properly assess ZRNL's financial position.[27]

g) Having regard to the findings of the Labour Court in *Lawrence Publishing*, it was not necessary to go behind the corporate veil, as had been requested by Mr Pelabon. In that particular case, the focus was on "who is responsible to carry out the act [the employer] had been ordered to perform?".[28]

h) The Labour Court had found that the managing director of the employer company, and the holding company had complete control over the employer company. It held it was well within the power of each of them to put the employer in a position where it could pay the monies. The Court concluded it had jurisdiction to order, and did order, that the employer company, its managing director and the holding company should put the employer company in a position where it could pay the monies owed.[29]

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25 At [14].
26 At [14].
27 At [17].
28 At [20].
29 At [21].

i) The Authority was satisfied that ACL and Mr Chambers exercised at least the same degree of control over ZRNL, if not more given the corporate structure of ZRNL and ACL as reflected in the Register.

[25] In light of those findings, the Authority made the orders set out earlier in this judgment.[30]

Evidence in the Court

[26] Although Mr Chambers was directed to file records that would enable objective verification of his assertions on several occasions, that material was not provided. Although Mr Chambers says he has significant qualifications, including in management and finance, his failure to provide the documents on the grounds he did not understand why this material should be produced was disingenuous; the repeated failure to provide independent verification of the steps taken was deliberate. He flouted multiple directions of the Authority and the Court, which inevitably compromised the reliability of his evidence.

[27] However, the Court has enough information as to be able to assess whether the conclusions reached by the Authority were accurate. I am satisfied that although the limited information provided to the Authority meant it could only form an overview of the circumstances, its summary was accurate save for one matter which in the end is of no consequence.

[28] Having regard to the information provided to the Court, I find:

a) Mr Chambers was at all material times the director of both ACL and ZRNL.

b) ACL is the sole shareholder of ZRNL.

c) Mr Chambers is the sole shareholder of ACL.

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30 Above at para [5] of this judgment.

d) ACL was the lender under a GSA entered into with ZRNL on 31 October 2011. That agreement provided a security interest over the assets of ZRNL. In that agreement, ACL was described as a "bank". Mr Chambers signed the GSA as director of ZRNL.

e) The security interest under the GSA was over ZRNL's "collateral", described as "all present and after acquired property".

f) Mr Chambers said ACL was in the business of coffee manufacture and wholesale distribution; and that the company was a "benevolent investor, supplier, and banker", to ZRNL, rather than a "simple holding company".

g) Whilst it was trading, ZRNL operated a coffee outlet in Nelson and another in Wellington on premises leased from ACL. Mr Chambers stated ACL accordingly made cash transfers to ZRNL's accounts, to enable it to pay its bills.

h) In January 2017, Mr Chambers, as director of ACL, determined that ZRNL was insolvent; in evidence he acknowledged that in fact it had been trading whilst insolvent prior to that date. It continued to trade whilst insolvent until the end of March 2017.

i) Cash advances by ACL to ZRNL ceased on 31 March 2017, and ACL purported to exercise its rights under its GSA on that date. It achieved this, Mr Chambers said, by internal journal entries which he made. He also said the amount of cash held by ZRNL in its bank account was insignificant. But ACL did not close the bank account. It "seized it". No statements from the bank were produced to support this statement.

j) From then on, ZRNL ceased to trade. ACL operated the two retail outlets, until two substitute companies were incorporated. Mr Chambers said relevant assets were transferred by ACL to the new entities on 1 November 2017.

k) Mr Chambers said the final amount owed by ZRNL to ACL as at 31 March 2017 was $354,969.77; that ACL purportedly seized ZRNL's assets with a net book value of $404,616.56; that there was impairment of $129,738.82, which meant that of the sum owed to ACL, ZRNL was unable to pay $80,092.03.

[29] From the evidence produced to the Court, I find that the factual findings made by the Authority were correct except for the conclusion that ACL seized ZRNL's property on 1 November 2017. Having regard to the evidence presented to the Court, this occurred on 31 March 2017, as described above.

Analysis

First issue: was Lawrence Publishing an appropriate precedent?

[30] The first question is whether the Authority was correct in concluding that *Lawrence Publishing* provides an appropriate precedent with regard to the obligations of the plaintiffs.

[31] Mr Chambers' first point on this issue was that the decision had been made under repealed legislation.

[32] Mr Laracy said that recent cases made it clear the principles outlined in the judgment continue to be regarded as applicable.

[33] In *Lawrence Publishing*, the court proceeded under s 207 of the Labour Relations Act 1987. That section provided that where any person had not observed or complied with, amongst other things, any order of the Labour Court, it could:[31]

> (1)
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> ...
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> ... in addition to any other power it may exercise, *by order require* in or in conjunction with any proceedings under this Act to which that person is a party, *that person to do any specified thing*, or to cease any specified activity, *for the purpose of preventing further non-observance of or non-compliance*

[31] Labour Relations Act 1987, s 207(1)-(2) (emphasis added).

with that ... order ... and shall specify a time within which that order is to obeyed.

(2) Where any person (being a union or an employers organisation or an association or a worker or an employer) alleges that that person has been prejudicially affected by a non-observance or non-compliance of the kind described in subsection (1) of this section, that person may commence proceedings against *any person* in respect of the non-observance or non-compliance by applying to the Labour Court for an order of the kind described in subsection (1) of this section.

...

[34] The Employment Contracts Act 1991 repealed the Labour Relations Act 1987. However, it enacted an identical provision. Section 55 of that Act stated that where any person had not observed or complied with any order of the Employment Tribunal, it possessed exactly the same power to order compliance, as had been the case for the Labour Court.

[35] The Employment Contracts Act 1991 was repealed by the Employment Relations Act 2000. The material provision of the Act is s 137, which provides the Authority with the power to order compliance, where there is a breach of any determination. The relevant parts of the section are as follows:

...

(2) Where this section applies, the Authority may, in addition to any other power it may exercise, by order require, in or in conjunction with any matter before the Authority under this Act to which that person is a party or in respect of which that person is a witness, that person to do any specified thing or to cease any specified activity, for the purpose of preventing further non-observance of or non-compliance with that ... order, determination, ...

(3) The Authority must specify a time within which the order is to be obeyed.

(4) The following persons may take action against *another person* by applying to the Authority for an order of the kind described in subsection (2):

(a) any person (being an employee, employer, union, or employer organisation) who alleges that that person has been affected by non-observance or non-compliance of the kind described in subsection (1):

...

(emphasis added)

[36] Section 138 of the Act provides further provisions relating to such compliance orders, as follows:

> (1) The power given to the Authority by section 137(2) may be exercised by the Authority—
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> (a) of its own motion; or
>
> (b) on the application of—
>
> (i) any party to the matter; or
>
> ...
>
> (2) Before exercising its power under section 137(2) in relation to *a person who is not a party to the matter*, the Authority must give that person an opportunity to appear or be represented before the Authority.
>
> ...
>
> (emphasis added)

[37] I find that there is no material difference in the language used in the compliance provisions under the current Act, when compared with the statutory provisions which applied to the Labour Court, as considered in *Lawrence Publishing*. This fact strongly suggests that the principles outlined in that case remain relevant.

[38] I turn to statutory context. In *Peter Reynolds Mechanical Ltd v Denyer (Labour Inspector)*, the Court of Appeal considered these provisions in some depth.[32] It noted that the stated object of the Act includes acknowledging and addressing "the inherent inequality of power in employment relationships".[33] Similar objects were inherent in the relevant provisions of the preceding statutes. This factor also suggests that the principles outlined in *Lawrence Publishing* remain relevant.

[39] Judgments of this Court are also of assistance. In *McLennan v Internet Productions Ltd (in liq)*, the Court was required to consider whether a compliance order could be made under s 55 of the Employment Contracts Act 1991, when that company was in liquidation.[34] Judge Colgan found that an important precedent was the *Lawrence Publishing* case. He found that the power to order compliance in

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32 *Peter Reynolds Mechanical Ltd v Denyer (Labour Inspector)* [2016] NZCA 464, [2017] 2 NZLR 451.

33 At [50] referring to the Employment Relations Act 2000, s 3(a)(ii).

34 *McLennan v Internet Productions Ltd (in liq)* [2003] 1 ERNZ 282 (EmpC).

governing that case was materially identical to s 55 of the Employment Contracts Act 1991, the statutory provision under which an application had been made in *McLennan*.

[40] In *Health and Body Clinic Ltd v Zhao*, Judge Perkins was also required to consider orders of a type which had been made in *Lawrence Publishing*, with reference to s 137 of the Act.[35] The Court said:[36]

> In the *Lawrence* decision I have referred to, similar orders to those made in the present case were made against the proprietors of the employer company to enforce remedies provided in a personal grievance. *That case considered powers under predecessor legislation to the Act, but nevertheless the same considerations apply*. In that case the Court formed the view that the third party could take steps to ensure the company, which had the financial means to do so, made payment ...

[41] In these judgments, this Court has considered that the compliance jurisdiction as exercised in *Lawrence Publishing* was materially identical to the compliance jurisdiction bestowed on the Authority under s 137 of the Act.

[42] I respectfully agree. There is no possible reason for concluding otherwise. The discussion in *Lawrence Publishing* is relevant to a s 137 application, in circumstances such as those arising here.

Second issue: was the Authority correct to conclude that the plaintiffs exercised some degree of control over ZRNL, so that it was appropriate to order that they should ensure ZRNL make the necessary payments to Mr Pelabon, as well as ZRNL itself?

[43] A difficulty with regard to Mr Chambers' submissions arises from his acknowledgment that he had not read the decision of *Lawrence Publishing*. Had he done so, he might have disabused himself of some of the concerns he held.

[44] The first point I deal with is his contention that neither he, nor ACL, were in an employment relationship with Mr Pelabon. However, s 137 of the Act imposes a wide discretion, which enables the Authority to consider an application made against "another person" as is described in s 137(4).

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35 *Health and Body Clinic Ltd v Zhao* [2011] NZEmpC 51.
36 At [14] (emphasis added).

[45] The topic of relationships was specifically addressed by the Court in *Lawrence Publishing*. It was emphasised that the section then under consideration enabled an application to be made against "any person in respect of an alleged non-compliance". The Court referred to three previous judgments where:[37]

> ... Third persons were bound by compliance orders, not to make payment of a respondent's debt from their own pockets, but to take the steps which were in their power to ensure that the liability was met by the person upon whom the liability fell.

[46] The Act does not specify the third party must be in an employment relationship with the party seeking compliance. This point is misconceived.

[47] Next, Mr Chambers argued that ACL was not an ordinary holding company because of its activities, and that the present circumstances were wholly different from those considered by the Labour Court in *Lawrence Publishing*. However, the issue does not necessarily relate to the nature of the activities carried out by the relevant parties; more likely is the need to focus on the structures within which those activities occur, and the control exercised by third parties over a liable party. In this case, the Authority was required to consider, and did consider, whether it was within the power of ACL and Mr Chambers to put ZRNL in a position where it could and will pay the money owed to Mr Pelabon.

[48] That the seizure of assets undertaken on 31 March 2017 was able to be effected merely by a journal entry, confirms the close proximity of the relevant entities, and Mr Chambers who made that entry, with each of them.

[49] Mr Chambers confirmed he was "the same person wearing respective hats in two entities". The totality of the evidence confirms a close relationship. Furthermore, there was no evidence to suggest that either Mr Chambers or ACL were unable to place ZRNL in funds, if either those parties decided to do so, or if they were ordered to do so.

[50] These facts indicate sufficient connections between the relevant parties as to give rise to an irresistible inference that both Mr Chambers and ACL, have such power.

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[37] *Lawrence Publishing*, above n 5, at 722.

[51] Next, Mr Chambers submitted that since ACL had exercised seizure powers under the GSA, it would not now be appropriate for an order to be made under s 137 of the Act which would have the effect of reversing the exercise of those powers.

[52] The GSA contains broad powers, permitting the security-holder, ACL, to do anything necessary to protect and/or exercise certain rights of appropriation. Such rights are without prejudice, or in addition, to any right which the security-holder is entitled to exercise, whether by law, contract, or otherwise (cl 5.3). Part 9 of the Personal Properties Securities Act 1999 provides for the enforcement of security interests. Under those provisions a security-holder has the right to take possession of, and either sell or retain, collateral.

[53] However, even after exercising such rights under the GSA and/or under Part 9 – as apparently occurred here – the material structures and relationships continued. ZRNL remained on the Register. No step was taken by ACL, or any other party, to place ZRNL in liquidation. ACL remained a holding company of ZRNL; it was the sole shareholder. Mr Chambers remained a director of both ZRNL and ACL. In short, the act of seizure was a step which did not affect the ability of ACL and Mr Chambers to put ZRNL in a position where it could pay the money owed to Mr Pelabon.

[54] Mr Chambers suggested the exercise of the jurisdiction would contravene other provisions. He referred to s 120 of the Personal Properties Securities Act 1999, a section which is found in Part 9. It provides that a secured party with priority over all other secured parties, may, after default under the security agreement concerned, propose to take the collateral in satisfaction of the obligation secured by it.

[55] However, the present issue does not relate either to a contest between secured parties, or a proposal to take collateral in satisfaction of the GSA obligations. As already explained, ACL exercised its rights of enforcement. The potential exercise of the discretion under s 137 is a separate and subsequent issue.

[56] Next, Mr Chambers referred to sch 7 of the Companies Act 1993, which describes preferential claims in a liquidation. ZRNL is not in liquidation. It remains on the Register as indicated earlier. The issues presently before the Court must be

considered on that basis, and not on the basis that there is a liquidation. Schedule 7, or any other provisions relating to a company placed in liquidation, do not currently apply.

[57] Finally, Mr Chambers submitted that articles 1, 2, 4, 10 and 17 of the Universal Declaration of Human Rights (the Declaration) precluded the possibility of any jurisdiction being exercised under s 137 of the Act. The gist of the submission was that under these provisions the arbitrary deprivation of property would amount to a breach of human rights. Even were the Declaration to apply, it relates to human beings, not a corporate entity such as ACL. In any event, none of the articles referred to by Mr Chambers in respect of his own circumstances could possibly lead to a conclusion that the orders of the kind made by the Authority amounted to an arbitrary deprivaton of property, or a breach of any other relevant human right.

[58] In summary, I reject the plaintiffs' various assertions that the Authority erred in reaching the conclusions it did. I am satisfied those parties did, and do, exercise the necessary control over ZRNL. It was in the interests of justice for the Authority to exercise its discretion under s 137 by ordering that ACL and Mr Chambers ensure the company make the necessary payments to Mr Pelabon. By 2018, he was a former employee who was owed sums arising from an employment relationship that occurred in early 2016. Payment was long overdue.

Remaining issues

[59] Given the conclusions I have reached, the third and fourth issues identified earlier do not require consideration.[38]

Disposition

[60] The plaintiffs have not established their challenge.

[61] The orders of the Authority stand, subject to one variation. The Authority's orders were to be complied with within 14 days of the determination, that is, by 1 June 2018. Due to the effluxion of time and the subsequent steps taken in

[38] Above at para [19] of this judgment.

challenging those orders, I extend time for due compliance with the orders made by the Authority as set out at para [5](a) to (d) of this judgment to 5.00 pm on 3 May 2019.

[62] I also point out that s 140 of the Act describes the steps that may be taken where there is a failure to comply with compliance orders. Where such a failure occurs, the Court has the power to order that a person in default be sentenced to imprisonment for a term not exceeding three months; and/or order that the person in default be fined a sum not exceeding $40,000; and/or order that the property of the person in default be sequestered. It would be regrettable if the Court was required to consider such an application.

[63] Since the plaintiffs have failed in their challenge, costs should follow the event. Mr Pelabon may make any necessary application in that regard within 21 days of the date of this judgment. Mr Chambers and ACL may respond within 21 days thereafter.

B A Corkill
Judge

Judgment signed at 10.15 am on 18 April 2019