

# Unsuccessful attempt to oust jurisdiction of the Employment Relations Authority

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A High Court action by an ex-employer to recover monies taken by a defaulting employee recently went awry. As the employer in *Aztec Packaging Limited v Malevris* [2012] NZHC 243 discovered, establishing the proper court for your claim is vital before issuing proceedings.

Ms Malevris had been employed by Aztec Packaging as a senior office administrator for four years. Following her resignation, Aztec discovered that Ms Malevris had made unauthorised payments to herself during the course of her employment, totalling \$24,883.31.

Aztec sought summary judgment against Ms Malevris in the High Court for money had and received and breach of fiduciary duty. Ms Malevris took no steps in her own defence. Of its own motion, and by reference to the jurisdiction accorded to the Employment Relations Authority pursuant to the Employment Relations Act 2000 (the **ERA**), the High Court questioned whether it had any jurisdiction to award judgment against her.

The ERA provides that the Authority has “exclusive jurisdiction” in relation to employment relationship problems, which expressly includes matters related to a breach of an employment agreement. In making unauthorised payments to herself, thereby causing loss to Aztec, Ms Malevris was in breach of the terms on which she was employed.

Her misconduct, the judge said, went to the heart of her job. Accordingly, the situation fell clearly within the Authority’s jurisdiction.

Aztec, in vain, pointed to two other High Court cases where employers had claimed against employees in similar circumstances and judgment had been awarded. The judge’s response was to observe that the failure of any party to address the jurisdiction issue in those cases did not prevent it from being raised in this case.

The application for summary judgment was refused and the claim was struck out, leaving Aztec to pursue its claim in the Authority if it so wished, albeit now out of pocket in connection with wasted legal costs on the High Court action. The lesson? If you have a claim against any party, always ensure that you discuss carefully with your lawyer your options for pursuing the claim, in order that the best (and correct) process can be followed.

**Shelley Eden**

**Shelley Eden** is a Senior Associate in Shieff Angland’s commercial litigation team with particular expertise in employment law.

Contact her on +64 9 300 8756 or [shelley.eden@shieffangland.co.nz](mailto:shelley.eden@shieffangland.co.nz)

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