

**IN THE EMPLOYMENT COURT OF NEW ZEALAND  
AUCKLAND**

**I TE KŌTI TAKE MAHI O AOTEAROA  
TĀMAKI MAKĀURAU**

**[2023] NZEmpC 8  
EMPC 425/2021**

IN THE MATTER OF            an application for judicial review

AND IN THE MATTER OF    an application to strike out proceedings

AND IN THE MATTER OF    an application for stay of proceedings

BETWEEN                    ALLAN GEOFFREY HALSE  
   Applicant

AND                            EMPLOYMENT RELATIONS  
   AUTHORITY  
   First Respondent

AND                            NEW PROGRESS ENTERPRISE  
   CHARITABLE TRUST OPERATING AS  
   PROGRESS TO HEALTH  
   Second Respondent

AND                            CULTURES SAFE NEW ZEALAND  
   LIMITED (IN LIQUIDATION)  
   Third Respondent

Hearing:                    3 February 2023  
   By telephone

Appearances:              Applicant in person  
   No appearance for first respondent (excused)  
   K McLuskie, counsel for second respondent  
   No appearance for third respondent

Judgment:                   7 February 2023

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**INTERLOCUTORY JUDGMENT OF JUDGE KATHRYN BECK  
(Application for adjournment and extension of time)**

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[1] These proceedings were the subject of a telephone directions conference with the parties' representatives on 3 February 2023. They involve:

- (a) an application for judicial review of a decision of the Employment Relations Authority to accept a counterclaim by the second respondent against the applicant and the third respondent in proceedings in the Authority;<sup>1</sup>
- (b) an application by the second respondent to strike out the application for judicial review which has been heard and is awaiting determination; and
- (c) the applicant's application for a stay of the application for strike-out.

[2] As noted previously, the Court has received an application for a stay from Mr Halse together with supporting affidavits in relation to these proceedings. It is submitted that the application is brought in order to prevent a further miscarriage of justice occurring pending the resolution of an appeal that is yet to be filed.

[3] The first respondent has filed a memorandum but otherwise proposes taking no further steps and will abide the decision of the Court.

[4] The second respondent has taken no steps and in order to avoid further cost, advises that it will abide the decision of the Court.

[5] I had previously discussed with Mr Halse whether, rather than a stay of proceedings, he was in reality applying for leave to make further submissions and/or file further affidavit evidence in opposition to the application to strike out the proceedings. He advised that he considers the application for a stay to be the appropriate course of action and that he wishes to pursue that application. That remains his position.

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<sup>1</sup> Minute, 23 April 2021.

[6] In the previous directions conference Mr Halse had advised that he would be prejudiced if the hearing of his application was to proceed without the documentation that he intends to file in the Court of Appeal being before this Court.

[7] Mr Halse advised the Court that any further documentation in support of his application for a stay would be filed in this Court by 31 January 2023 at the latest. On that basis, it was agreed that the hearing of the stay application would be set down for a half-day in Auckland on 10 February 2023 at 2.15pm, and consent orders were made accordingly.

[8] Mr Halse intended to appear in person. As already noted above, Ms Lawson for the first respondent and Ms McLuskie for the second respondent advised that the Authority and Progress to Health<sup>2</sup> will abide the decision of the Court and so did not intend to appear. If, after consideration of the documentation filed by Mr Halse, either the first or second respondent considered it appropriate to appear, they were to advise the Registrar and other parties accordingly.

[9] On 31 January 2023, Mr Halse filed a memorandum advising the Court that the documentation he had planned to file on 31 January 2023 was taking longer than anticipated to prepare given his heavy workload and the Christmas break. He advised that he anticipated that it would be filed before 28 February 2023, which is the date that had been agreed to by the Court in other (unrelated) proceedings.

[10] Mr Halse did not specifically apply for an extension of time or adjournment of the hearing that is to take place on Friday 10 February 2023. The purpose of the conference was to ascertain how to proceed.

[11] During the directions conference Mr Halse applied for an extension of time to file his further documentation until 28 February 2023, and also asked for an adjournment of the hearing set down on 10 February 2023 on the basis that it should not proceed until such documentation had been received.

[12] Ms McLuskie opposes the extension of time and adjournment.

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<sup>2</sup> New Progress Enterprises Charitable Trust Board operating as Progress to Health.

[13] Mr Halse explains that the reason he has been unable to file the documentation is that while he and his legal team have been working on preparing it, it is taking longer than anticipated due to his heavy workload and the Christmas break. He says that his team has not yet fully developed the argument for the Court of Appeal and that they are currently honing such legal argument. He considers it essential that this Court hears the fully developed argument before making a decision in relation to the stay.

[14] Mr Halse has confirmed that the documentation that the applicant intends filing in the Court of Appeal does not relate to these proceedings. He says, however, that it relates to what he considers to be identical proceedings. He says that any Court of Appeal decision in relation to those proceedings would impact the case at hand and the decision of this Court in relation to the strike-out application (which is yet to be determined).

[15] Ms McLuskie submits that the matter should proceed on Friday 10 February 2023. She argues that as the documentation to be filed in the Court of Appeal does not relate to this proceeding, its absence should not affect this case and that the parties to this proceeding are entitled to have their application determined. She notes that the matter has been unresolved for some time and that the proceedings in the Authority are also on hold pending the resolution of the current matters before the Court. She says that it is not appropriate for the application for a strike out to remain unresolved indefinitely.

[16] The strike-out application was initially heard in April 2022, and further delay is undesirable. This is particularly the case given that the substantive proceedings in the Authority are also on hold as a result. It is important that the parties know where they stand.

[17] Given that the documentation to be filed in the Court of Appeal does not relate to the proceeding at hand, it is apparent that it could only form the basis for legal argument in this case.

[18] While Mr Halse says that he requires more time to hone such legal argument and that it is not yet fully developed, that does not amount to sufficient grounds for an

adjournment. The application for a stay was filed on 13 October 2022; there has been ample time for Mr Halse to file any further documentation and refine or finalise his legal argument in support of such application.

[19] It is not in the interests of justice that this matter be delayed any further, and accordingly the application for an extension of time and adjournment is declined. The hearing of the applicant's stay application will take place on 10 February 2023 as currently scheduled.

[20] Given the nature of the submissions likely to be made as set out in the documentation previously filed by the applicant, counsel for the first respondent is requested to attend.

[21] Leave is reserved for any party to apply to the Court for further directions or orders on reasonable notice.

[22] Costs are reserved.

Kathryn Beck  
Judge

Judgment signed at 2.55 pm on 7 February 2023