

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

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

**[2023] NZEmpC 83
EMPC 25/2023
EMPC 111/2023**

IN THE MATTER OF challenges to determinations of the
Employment Relations Authority

AND IN THE MATTER OF applications to stay proceedings

BETWEEN CARRINGTON RESORT JADE LP
Plaintiff

AND PAULA KNIGHT
Defendant

Hearing: On the papers

Appearances: W Tan, agent for plaintiff
R Mark, counsel for defendant

Judgment: 6 June 2023

**INTERLOCUTORY JUDGMENT OF JUDGE K G SMITH
(Applications for stay of proceedings)**

[1] Paula Knight was successful in the Employment Relations Authority in her claim against Carrington Resort Jade LP.¹

[2] The Authority held that Ms Knight was unjustifiably suspended and unjustifiably dismissed by Carrington. She also succeeded in a claim for wage reimbursement. Carrington was ordered to pay to Ms Knight:

¹ *Knigh t v Carrington Resort Jade LP* [2022] NZERA 692 (Member Gane).

- (a) Three months' salary of \$12,500.
- (b) Compensation under s 123(1)(c) of the Employment Relations Act 2000 (the Act) for humiliation, loss of dignity and injury to feelings of \$18,750.
- (c) Wage arrears of \$2,757.92.
- (d) Holiday pay of \$961.53.

[3] Interest was awarded on the arrears and Carrington was ordered to pay these amounts within 28 days.

[4] Subsequently the Authority ordered Carrington to pay costs arising from the investigation meeting of \$5,000 and to reimburse Ms Knight's lodgement fee of \$71.56 within 14 days.²

[5] Carrington has challenged both determinations and seeks to set them aside.

Applications for stay

[6] Carrington separately applied to stay both determinations pending resolution of its challenges to them. The applications are materially the same and were considered together. The company accepted that, if stays were granted, they would be subject to a condition requiring it to pay the amounts ordered by the Authority to a stakeholder to be held on terms.

[7] Ms Knight opposed the applications. She did not object to stays being granted provided any order was subject to a condition that a sum of approximately half the amount the Authority awarded be paid to her and the balance placed with a stakeholder.

² *Knight v Carrington Resort Jade LP* [2023] NZERA 80 (Member Gane).

[8] The proposed conditions were unsatisfactory to both parties and a decision is required.

Test to apply

[9] The approach to an application for a stay is well established. Carrington's challenges to the determinations do not operate as stays of execution of them.³ In exercising the Court's power to order a stay of the Authority's determination⁴ the overarching consideration is whether granting one is in the interests of justice.⁵ That decision is informed by factors such as:

- (a) Whether the challenge will be rendered ineffectual if the stay is not granted.
- (b) Whether the challenge is brought and pursued in good faith.
- (c) Whether the successful party at first instance will be injuriously affected by the stay.
- (d) The extent of any impact of granting it on third parties.
- (e) The novelty and/or importance of the question involved.
- (f) The public interest in the proceeding.
- (g) The overall balance of convenience.

[10] As part of assessing an application the competing considerations of the parties must be taken into account. That is because the successful party at first instance is entitled to the benefit of the decision, but the unsuccessful party's ability to challenge that decision should not be unreasonably fettered.

³ Employment Relations Act 2000, s 180.

⁴ Employment Court Regulations 2000, reg 64.

⁵ *Dymocks Franchise Systems (NSW) Pty Ltd v Bilgola Enterprises Ltd* (1999) 13 PRNZ 48 (HC) at [8] and [9]; *Assured Financial Peace Ltd v Pais* [2010] NZEmpC 50; and *New Zealand Cards Ltd v Ramsay* [2013] NZCA 582.

[11] Where what is primarily in issue is an award of monetary compensation the balance between those competing considerations is often reached by granting a stay subject to a condition that the money is paid to a stakeholder to be held on trust or to the Registrar of this Court.

Analysis

[12] While several assessment factors were touched on, Carrington concentrated on the challenges being ineffectual if stays are not granted. It is concerned about Ms Knight's financial situation and her ability to repay any amount paid to her if the challenges succeed.

[13] William Tan is Carrington's General Manager. His evidence was that Ms Knight has recently had sporadic employment. He considered that her recent work as a real estate agent must have been impacted by a downturn in the Northland market, where she lives. He acknowledged that Ms Knight owns a house but claimed, without explaining how he knew, that she was planning to sell it due to financial pressure. He expressed concern about declining house values in Northland and, consequently, a risk to Carrington that it will be unable to secure repayment if the challenges succeed.

[14] For completeness, Mr Tan's affidavit contained other comments touching on Ms Knight's health and previous work history. That information is irrelevant to these applications and does not need to be considered any further.

[15] Ms Knight accepted that her financial circumstances are reduced from what they were, but she did not accept that they were affected to the extent Mr Tan claimed. Ms Knight described returning to real estate after leaving Carrington and accepted that the industry has declined in the recent past. She acknowledged looking to find other ways to earn income and described some casual work she has undertaken.

[16] Ms Knight owns a house which was purchased in 2018. She accepted that the house's value may have dropped recently but considered it had still appreciated since being purchased.

[17] Ms Knight's property is mortgaged and her loan repayments are up to date. She stated the purchase price of the property and the amount owed under the mortgage, but it is not necessary to describe that information. It is enough to note that the mortgage principal for repayment is about five per cent of the 2018 purchase price.

[18] The equity Ms Knight has in her house shows she has sufficient financial resources to be able to repay Carrington if the company's challenges succeed. This assessment factor points strongly against granting the applications.

Other factors

[19] Only brief comments are required about the other assessment factors mentioned earlier. If stays are granted Ms Knight will be deprived of the benefit of her success at first instance which factor points away from granting the applications. I accept that the challenges are brought in good faith which points towards granting the applications. There are no adversely affected third parties and this factor is therefore neutral in this assessment. There is no public interest in this proceeding and there is nothing novel or significant in the litigation that would affect Carrington's applications. Those factors are, therefore, neutral.

[20] While there is one factor that might support Carrington's applications and some are neutral what overwhelmingly tells against granting stays is Ms Knight's financial position. There is more than sufficient equity available in her property to enable repayment to Carrington if required.

Balance of convenience

[21] The balance of convenience heavily favours Ms Knight and points towards declining the applications.

Conclusion

[22] Carrington's applications are unsuccessful and are dismissed.

[23] Ms Knight is entitled to costs. The parties are encouraged to agree as to costs but if that is not possible memoranda may be filed.

K G Smith
Judge

Judgment signed at 2.45 pm on 6 June 2023