

**NOTE: ORDER PROHIBITING PUBLICATION OF NAMES AND
IDENTIFYING DETAILS AT [6]**

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

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

**[2024] NZEmpC 114
EMPC 236/2024**

IN THE MATTER OF a challenge to a determination of the
Employment Relations Authority

AND IN THE MATTER OF an application for non-publication orders

AND IN THE MATTER OF an application for stay of execution

BETWEEN IDEA SERVICES LIMITED
Plaintiff

AND JOYCE WISHART
Defendant

Hearing: On the papers

Appearances: G Ballara and S Radcliffe, counsel for plaintiff
E Griffin, counsel for defendant

Judgment: 27 June 2024

**INTERLOCUTORY JUDGMENT OF CHIEF JUDGE CHRISTINA INGLIS
(Application for non-publication orders)
(Application for stay of execution)**

[1] Idea Services Ltd seeks to challenge a determination of the Employment Relations Authority.¹ In its determination the Authority concluded that Mrs Wishart had been unjustifiably constructively dismissed and ordered remedies in her favour, namely compensation for lost wages under ss 123(1)(b) and 128 of the Employment Relations Act 2000 (the Act) for the period of three months and any associated

¹ *Wishart v Idea Services Ltd* [2024] NZERA 335 (Member Kinley).

benefits, including holiday pay and any ancillary payments such as KiwiSaver on those lost wages; and compensation under s 123(1)(c)(i) of the Act in the amount of \$15,000 without deduction. These sums were to be calculated and paid to Mrs Wishart within 28 days of the date of this determination. Costs were reserved.

[2] Idea Services Ltd has applied for two interlocutory orders. First, for permanent orders of non-publication in respect of third parties; and, second, an order staying execution of the remedies ordered against it. I deal with each in turn.

[3] The application is directed at any evidence or material which does or may identify any person with intellectual disability, or their family members referred to in connection with this matter. While the defendant consents to the application for non-publication orders, the Court must be satisfied that it is appropriate to exercise its discretion to make the orders sought. I am satisfied that it is appropriate to do so, essentially for the same reasons that the Authority relied on.

[4] The context of the application can be summarised as follows. The plaintiff is a registered charity providing disability services, including residential and community support services for intellectually disabled people. In order to address the subject matter of the plaintiff's challenge, it is said to be necessary to refer to intellectually disabled third parties and their family members, who the defendant was employed to support at relevant times. I accept that is so.

[5] I also accept the plaintiff's submission that there is no material public interest in allowing publication of any evidence or material which does or may identify any such third party or their family members. Rather, and as counsel for the plaintiff points out, there is a risk of harm and distress to very vulnerable people or to their families if publication occurs. I agree too with the submission that the interests of justice will not be offended if the order is made; rather I see such orders in the present circumstances as supporting the interests of justice. My view is reinforced by the fact that an order of non-publication is necessary to protect the integrity of the order made in the Authority.

[6] Accordingly, I consider it desirable to exercise the discretion conferred by the Act, sch 3 cl 12, and make a permanent order prohibiting publication of any evidence or material before the Court of the name or any identifying information of any person with intellectual disability or their family members referred to in connection with these proceedings.

[7] The Court may grant a stay of execution in appropriate circumstances. The factors generally taken into account when exercising this broad discretionary power are well established.² The defendant consents to a stay and the parties have agreed the terms of it. I am satisfied that it is appropriate to make the orders sought by consent. Accordingly, I make orders as follows:

- (a) The total sum ordered by the Authority in its determination of 7 June 2024 at [80]–[81] is to be paid into the trust account of McBride Davenport James and is to be held on an interest-bearing basis until either:
 - (i) the written agreement of the parties; or
 - (ii) further order of the court.

[8] The plaintiff's challenge is to be pursued diligently.

[9] I do not understand any issue of costs to arise on these applications.

Christina Inglis
Chief Judge

Judgment signed at 11.30 am on 27 June 2024

² *Dymocks Franchise Systems (NSW) Pty Ltd v Bilgola Enterprises Ltd* (1999) 13 PRNZ 48 at [9]; *Assured Financial Peace Ltd v Pais* [2010] NZEmpC 50 at [5]; *New Zealand Cards Ltd v Ramsay* [2013] NZCA 582 at [7].