



Employment Court of New Zealand

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Adamar No 1 Limited v Patel [2014] NZEmpC 55 (8 April 2014)

Last Updated: 26 April 2014

IN THE EMPLOYMENT COURT AUCKLAND REGISTRY

[\[2014\] NZEmpC 55](#)

ARC 15/14

IN THE MATTER OF a challenge to a determination of the

Employment Relations Authority

AND IN THE MATTER of an application for stay of proceedings

BETWEEN ADAMAR NO 1 LIMITED Plaintiff

AND JYOTI SUMANBHAI PATEL Defendant

Hearing: By memorandum of plaintiff filed on 28 March and written submissions of defendant filed on 4 April 2014

Appearances: M Robson, counsel for plaintiff

J K Goodall, counsel for defendant

Judgment: 8 April 2014

INTERLOCUTORY JUDGMENT OF JUDGE M E PERKINS

[1] The plaintiff has filed a challenge de novo to a determination of the Employment Relations Authority dated 23 January 2014.¹ The effect of the determination was that the plaintiff was ordered to pay to the defendant certain sums for unpaid salary, holiday pay, and interest. In addition, the plaintiff was ordered to pay to the defendant certain sums by way of compensation. The defendant has now calculated that the total amount owing under the determination is \$16,874.09. There does not appear to be any dispute from the plaintiff as to the calculation of that

amount.

¹ [2014] NZERA Auckland 23.

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[2] The Authority reserved its position in respect of costs. Submissions have been filed by the parties in the Authority and a further determination on costs is awaited.

[3] In addition to filing the challenge in this Court, the plaintiff has applied for a stay of proceedings. I perceive that this is really an application for an order by the Court staying execution of the monetary awards of the Authority as a challenge does not automatically operate as a stay of such execution.

[4] In a Minute dated 5 March 2014 I indicated that there were certain errors in the statement of claim, which would need amendment. In addition, in view of the fact that allegations of fraud and dishonesty were being pleaded, I directed the plaintiff to give further particulars. As far as the application for stay of proceedings was concerned, I indicated that, in the normal course of events, if a stay of execution was granted, the total amount of the Authority's determination would be required to be paid into a trust account pending the outcome of the challenge. I indicated that the parties may wish to discuss

the matter but if no agreement could be reached, then submissions would be required and the Court would deal with the application.

[5] As it transpired, the parties were unable to reach any agreement as to the terms or conditions of a stay of execution. The parties agreed to having the matter dealt with on the papers. Submissions from each of the parties are now filed.

[6] The Court's power and the procedures to be adopted in dealing with an application for a stay of proceedings are prescribed by regs 64, 65 and 66 of the [Employment Court Regulations 2000](#). The matter is discretionary. Any order may be made subject to such conditions as the Court thinks fit to impose.

[7] It appears from the memorandum from counsel for the plaintiff that he has misunderstood the nature of the application, which the plaintiff itself has made. He has treated the matter as if it was an application by the defendant against the plaintiff for an order for security for costs. That is not the position at all. This is an application made by the plaintiff for a stay of execution of the Authority's determinations pending hearing of the challenge. Submissions therefore made by Mr

Robson on behalf of the plaintiff, and the authorities to which he has referred, have no relevance. Mr Goodall's submissions, on the other hand, deal directly with the issues to be determined in respect of the present application. He has referred to the appropriate regulations and previous authorities from this Court dealing with such matters. The defendant herself has not applied for any stay. Indeed, she would not do so as presently she has full entitlement, pending any order for stay, to enforce the awards she has obtained from the Authority.

[8] Mr Goodall, on behalf of the defendant, primarily opposes the order for stay of execution. However, he has appropriately submitted further that if the Court is to order a stay, the amount presently owing under the Authority's determination be paid into court. In addition, he seeks that any determination as to costs made by the Authority should also be paid into court within 10 working days of the Authority's decision on costs.

[9] While Mr Robson has dealt with the alleged factual position in this case in his submissions, it is not possible for the Court to make any assessment as to the respective merits. The Authority has delivered a comprehensive determination but, on the other hand, the amended statement of claim now filed in the Court raises substantive issues by way of a challenge. In the circumstances, it is appropriate that pending the outcome of the challenge, there should be a stay of execution of the Authority's determination presently made, together with a stay of execution of any subsequent award of costs. However, it is also appropriate that the amounts presently owing to the defendant, and the amount of any subsequent award of costs be paid into court and be held pending the outcome of the challenge. Unless this is done, the defendant will be deprived of her present entitlement to enforce the awards in her favour without her claim being secured.

[10] It is surprising that, following my earlier Minute, the parties were not able to resolve this matter. That may well be because of the total misunderstanding by counsel for the plaintiff as to the nature of the plaintiff's own application to the Court.

[11] There is an order that the defendant is stayed from executing the determination of the Authority dated 23 January 2014. In addition, there is an order staying execution of any subsequent determination of the Authority as to costs. The conditions of such stay are that the plaintiff is to pay into Court the sum of

\$16,874.09. This sum is to be paid into court within seven days from the date of this judgment. In addition, the amount of any subsequent determination of the Authority on costs is to be paid into Court within 10 working days of the Authority's decision. The amounts paid to the Court are to be held in an interest bearing account pending further order of the Court. Failure by the plaintiff to pay the sums into Court within the times specified leave the defendant free to enforce the determinations of the Authority as she chooses.

[12] Costs on this present application are reserved.

[13] Once the defendant has filed her statement of defence to the amended statement of claim in this challenge, the Registrar may allocate a date for a telephone directions conference.

ME Perkins
Judge

Judgment signed at 4 pm on 8 April 2014