



Employment Court of New Zealand

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Adison Group Limited v Belliard [2017] NZEmpC 137 (9 November 2017)

Last Updated: 13 November 2017

IN THE EMPLOYMENT COURT AUCKLAND

[\[2017\] NZEmpC 137](#)

EMPC 254/2017

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

AND IN THE MATTER of an application for stay of
proceedings

BETWEEN ADISON GROUP LIMITED Plaintiff

AND SERGIO BELLIARD Defendant

Hearing: On the papers filed on 11 and 27 September, 25
October and
6 November 2017

Appearances: R Parmenter, counsel for plaintiff
A Steele, counsel for defendant

Judgment: 9 November 2017

INTERLOCUTORY JUDGMENT OF JUDGE J C HOLDEN

Introduction and outcome

[1] Adison Group Ltd, the plaintiff in this challenge, was found by the Employment Relations Authority (the Authority) to have unjustifiably dismissed Mr Belliard, the defendant.¹

[2] It was ordered to pay Mr Belliard lost earnings, a short-fall in holiday pay, and compensation pursuant to [s 123\(1\)\(c\)\(i\)](#) of the [Employment Relations Act 2000](#) (the Act). Adison Group Ltd now applies for a stay of the orders of the Authority.

For the reasons set out in this judgment, that application is declined.

¹ *Belliard v Adison Group Ltd* [2017] NZERA Auckland 245.

The Authority found for Mr Belliard

[3] Mr Belliard successfully claimed that he had been unjustifiably dismissed by

Adison Group Ltd.

[4] The Authority ordered that Adison Group Ltd pay:2

(a) \$5,298.72 net as lost salary;

(b) any taxes due to the Inland Revenue Department in respect of \$9,840 that was paid or payable to Mr Belliard;

(c) \$12,350 gross less Mr Belliard's earnings for the 13 weeks

commencing on 25 January 2016;

(d) \$9,310 gross in respect of holiday pay;

(e) \$10,000 pursuant to [s 123\(1\)\(c\)\(i\)](#) of the [Employment Relations Act](#)

2000.

[5] A consent determination also was issued, awarding \$3,000 costs to Mr

Belliard together with \$71.56 for the filing fee.³

Adison Group Ltd has applied for a stay

[6] Mr Parmenter, counsel for Adison Group Ltd, candidly acknowledges that he

has a “tolerably threadbare cloth” on which to base his submissions.

[7] The grounds for Adison Group Ltd’s application for a stay are:

...

- a. Ordinarily, fears by the challenger plaintiff, that the moneys paid to the successful applicant/defendant would be forever lost, would be met by

2 At [43]-[56].

3 *Belliard v Adison Group Ltd* [2017] NZERA Auckland 258.

an order that the moneys should be paid into a trust account pending the outcome of the challenge.

- b. In this case, the plaintiff would not be able to pay the amount of the Determination into a trust account, which would cause the defendant to apply to the High Court to wind-up the plaintiff.

- c. It is highly unlikely that a liquidator would want to continue with the challenge, so that it is likely that a refusal of a stay would render the challenge nugatory.

- d. As appear from the affidavit of Bhushan Arolkar filed in support.

[8] Mr Arolkar deposes that the plaintiff has no cash with which to pay the sums ordered by the Authority. He says that, without a stay, Mr Balliard would be able to wind up Adison Group Ltd.

[9] Mr Arolkar further deposes that he “cannot imagine that any liquidator would want to carry on the challenge, so the plaintiff would lose, effectively, its right to have the Determination challenged”. Mr Arolkar says that grounds of challenge raised by Adison Group Ltd are substantial and that he is quite confident that Adison Group Ltd will be able to establish that Mr Belliard’s claim for unpaid holiday pay was baseless.

[10] Mr Arolkar says that it would be “unfair to deny [Adison Group Ltd] to

establish that the findings against it in the Authority were incorrect”.

[11] No documentary evidence has been provided by Adison Group Ltd as to its financial position.

Orders of the Authority have effect unless stayed

[12] In *North Dunedin Holdings Ltd v Harris* the Court identified that:⁴

[5] The starting point must be [s 180](#) of the Act:

180 Election not to operate as stay

⁴ *North Dunedin Holdings Ltd v Harris* [2011] NZEmpC 118.

The making of an election under [section 179](#) does not operate as a stay of proceedings on the determination of the Authority unless the court, or the Authority, so orders.

[6] It is clear from this provision that the orders of the Authority remain in full effect unless and until the Court sets them aside. The defendants are entitled to enforce those orders unless a stay of proceedings is granted. It follows that the plaintiffs are asking the Court to exercise its discretion to intervene in what is a perfectly lawful enforcement process.

[7] The discretion conferred by [s 180](#) is not qualified by the statute but must be exercised judicially and according to principle. I note two key principles. There must be evidence before the Court justifying the exercise of the discretion. The overriding consideration in the exercise of the discretion must be the interests of justice.

Both parties point to the same considerations

[13] Both parties point to *Assured Financial Peace Ltd v Pais* as setting out seven considerations that may apply when considering whether a stay should be ordered:⁵

- If no stay is granted, whether the applicant's right of appeal will be

ineffectual;

- whether the appeal is brought and prosecuted for good reasons, in good faith;
- whether the successful party at first instance will be affected injuriously by a stay;
- the effect on third parties;
- the novelty and importance of the questions involved in the case;
- the public interest in the proceedings; and
- the overall balance of convenience.

Interests of justice favour Mr Belliard

[14] As Mr Parmenter acknowledges, there are no novel or important questions evidenced nor is there any public interest in these proceedings. There is no identifiable effect on third parties.

[15] In the present case, a number of matters stand out. First, although Adison Group Ltd submits that no one would be hurt by the stay, that cannot be true. As Mr Steele, counsel for Mr Belliard notes, if Adison Group Ltd does not have the funds to pay the determination sum into Court, or to Mr Belliard, then any further sums expended by the company will further diminish any likelihood of Mr Belliard recovering anything from his success in the Authority. Further, if the matter is to proceed to the Court, then Mr Belliard would be put to the cost and inconvenience of having to defend himself in the Court with there being no suggestion that, should he be successful in the Court, he would be better able to recover the sums awarded, let alone the additional costs he incurs in the Employment Court.

[16] Even though he has sworn an affidavit in support of the application for a stay, Mr Arolkar has given no evidence as to any steps he or the company has taken in an effort to secure the money currently ordered to be paid so that it can be paid into Court or held in a trust account pending the outcome of the Employment Court proceedings.

[17] Nor is there any evidence that, should Adison Group Ltd obtain funding to pay Mr Belliard the amount currently due to him as a result of the Authority determination, it would not be able to recover that from him should Adison Group Ltd ultimately be successful in the Employment Court.

[18] For these reasons, I am persuaded that the interests of justice favour Mr

Belliard and that no stay ought to be granted. **Application declined, Mr Belliard entitled to costs** [19] The application for a stay of proceedings is declined.

Mr Belliard is entitled to costs on this application. If the parties cannot reach agreement, then Mr Belliard is able to apply to the Court for costs with such application to be made within four weeks of the date of this judgment. Adison

Group Ltd then has a further four weeks to respond after which Mr Belliard can file any submissions in reply within a further two weeks.

J C Holden

Judge

Judgment signed at 9.45 am on 9 November 2017