



Employment Court of New Zealand

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Barry v Anoop Investments Limited AC 19B/08 [2008] NZEmpC 119 (19 December 2008)

Last Updated: 28 December 2008

IN THE EMPLOYMENT COURT

AUCKLANDAC 19B/08ARC 4/07

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

AND

IN THE MATTER OF an application for an order requiring security for costs

BETWEEN CHRISTOPHER BARRY

Plaintiff

AND ANOOP INVESTMENTS LIMITED

Defendant

Hearing: on the papers

Judgment: 19 December 2008

INTERLOCUTORY JUDGMENT OF JUDGE A A COUCH

[1] This proceeding was commenced in the Court on 15 February 2007. It has since had a chequered history involving default by both parties and two previous interlocutory judgments.

[2] Following a telephone conference with the representatives of the parties on 8 September 2008, the Chief Judge issued a minute in which he noted that there were no outstanding interlocutory issues and set the matter down for hearing on 3 February 2009.

[3] On 1 December 2008, counsel for the defendant filed an application for an order that the plaintiff provide security for costs. That application was accompanied by two affidavits. In response, Mr Young filed a notice of opposition. Both the application and the notice of opposition set out the grounds relied on.

[4] The principles on which the Employment Court considers applications for security for costs are well established. Because of the special nature of the employment jurisdiction and, in particular, the unique nature of an election under [s179](#) of the [Employment Relations Act 2000](#), the Court will be less inclined to order security for costs than other courts might be. Potential inability to pay an award of costs which might be made will usually not, on its own, justify an order. In every case, the grounds relied on must be properly made out on the evidence.

[5] In this case, the application relies solely on the ground that the plaintiff may not be able to pay an award of costs if he is unsuccessful in his challenge to the Authority's determination. The evidence in support of this

proposition is scant and unsatisfactory. The principal affidavit in support was sworn by Gurpreet Singh. The only parts of that affidavit which assist the application are:

4. *To my knowledge, the plaintiff is un-employed. He has not found employment since his employment at our company was terminated.*
6. *I also understand through my solicitors that a property search was undertaken and it became apparent that the plaintiff does not have any real-estate registered under his name.*

[6] In support of this latter statement, a second affidavit was sworn by Rajiv Masrani who said:

3. *I conducted a title search on 12th November 2008 in search for real-estate registered under Christopher Barry's name. However, I did not find any property registered under his name.*

[7] This evidence is far too vague and limited to enable me to draw any conclusions about Mr Barry's potential ability to meet an award of costs should one be made against him. In the absence of any other relevant evidence, I find that there are no grounds on which to make the order sought. The application is refused.

[8] Costs are reserved.

A A Couch
Judge

Judgment signed at 2.00pm on 19 December 2008

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