



Employment Court of New Zealand

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Martin v Solar Bright Limited (in liquidation) [2021] NZEmpC 58 (30 April 2021)

Last Updated: 5 May 2021

IN THE EMPLOYMENT COURT OF NEW ZEALAND CHRISTCHURCH

I TE KŌTI TAKE MAHI O AOTEAROA ŌTAUTAHI

[\[2021\] NZEmpC 58](#)

EMPC 312/2020

IN THE MATTER OF an application for rehearing
AND IN THE MATTER of an application for a stay
BETWEEN PATRICK MARTIN
 Applicant
AND SOLAR BRIGHT LIMITED (IN
 LIQUIDATION)
 Respondent

Hearing: On the papers

Appearances: P Martin in person
 M Taefi, counsel assisting the
 Court

Judgment: 30 April 2021

INTERLOCUTORY (NO 2) JUDGMENT OF JUDGE K G SMITH

(Application for a stay)

[1] In September 2020 Patrick Martin's challenge to a determination of the Employment Relations Authority, imposing a penalty on him for breaching his employment agreement, was dismissed.¹

[2] Mr Martin has applied for a rehearing of that decision. He has also applied for a stay of the rehearing application pending resolution of a High Court proceeding where he is one of the defendants. The plaintiffs in the High Court are former investors in Solar Bright Ltd (in liquidation).

1 *Martin v Solar Bright Ltd (in liq)* [\[2020\] NZEmpC 144](#).

PATRICK MARTIN v SOLAR BRIGHT LIMITED (IN LIQUIDATION) [\[2021\] NZEmpC 58](#) [30 April 2021]

[3] Mr Martin challenged the Authority's determination because he considered his employment agreement had not been breached and his conduct did not warrant a penalty.²

[4] Solar Bright was placed in liquidation after the Authority investigation meeting but before the determination was issued.³ The liquidator consented to the Authority continuing to decide the employment relationship problems that were raised. Subsequently, the liquidator consented to Mr Martin's challenge being heard, but in a limited way by excluding from consideration ownership of intellectual property in inventions the Authority decided belonged to Solar Bright.⁴ As was recorded in the substantive judgment, Mr Martin was interested only in seeking to set aside the penalty and conducted the challenge in accordance with the liquidator's limited consent.

[5] Mr Martin's application for a stay relies on the same grounds as his application for a rehearing. They are:

1. Miscarriage of Judgment
2. Conflict of Judgments between Court and [the Authority]

3. Solar Bright Ltd breaching Contract not being considered
4. Patent Law mis-understood ...

[6] In Mr Martin's affidavit supporting the application for a rehearing he stated that material errors were made by the Court. Specifically, he took issue with how the Court dealt with the intellectual property in an invention known as DATAeye.

[7] In subsequent submissions a further ground was added, that there is an overlap of the issues to be decided in the application for a rehearing and in the High Court proceeding.

[8] While Mr Martin made brief comments about the High Court proceeding he did not explain that litigation. He was requested, by minute from the Court, to explain the relationship between the two proceedings to enable a better understanding of the

2 *Martin v Solar Bright Ltd (in liq)* [2019] NZERA 463 (Member Hickey).

3 At [17].

4 *Martin*, above n 1, at [3].

connection relied on to support the application for a stay. He was asked to provide at least the pleadings in the High Court.

[9] In response, Mr Martin filed an affidavit but did not supply the pleadings or any further information about the issues to be decided in the High Court. Instead he concentrated on his concerns that errors were made in the September judgment.

[10] Ms Taefi, counsel assisting the Court, helped to fill the void by referring to a recent interlocutory decision of the High Court that provides some assistance in understanding the dispute being heard in that jurisdiction.⁵ The plaintiffs, Mr Spackman and Mr Moore, were both investors in Solar Bright. They allege being misled by Mr Martin about the ownership of DATAeye prior to investing in the company. The causes of action against the defendants in the High Court are alleged breaches of the [Fair Trading Act 1986](#) and a claim based on the tort of deceit.⁶

[11] Mr Martin is defending the High Court proceeding and denies any wrongdoing.

Analysis

[12] The Court has a discretion to order a stay if doing so is in the interests of justice.⁷

[13] In exercising the Court's discretion the factors that can be taken into account are:⁸

- (a) Which proceeding was started first.
- (b) Whether the termination of one proceeding is likely to have a material effect on the other.

5 See *Spackman v Martin* [2021] NZHC 157.

6. The causes of action are not referred to in the High Court decision, but Mr Spackman disclosed them in a separate affidavit which formed part of a discontinued application to this Court seeking to be joined as a party to the proceeding.
7. By reference to the [Employment Relations Act 2000, ss 189\(1\)](#) and [221\(d\)](#); and see *Transpacific All Brite Ltd v Sanko* [2012] NZEmpC 7.
8. See *Mackay Refined Sugars (NZ) Ltd v New Zealand Sugar Co Ltd* [1997] NZHC 1852; [1997] 3 NZLR 476 (HC); *Rooney Earthmoving Ltd v McTague* HC Christchurch CIV-2009-476-471, 30 April 2010. See also *Speed v Board of Trustees of Wellington Girls College* [2017] NZEmpC 74.

- (c) The undesirability of two Courts competing to see which of them determines common facts first.
- (d) Consideration of the circumstances relating to witnesses.
- (e) Whether work done on pleadings, particulars, discovery, interrogatories, and preparation might be wasted.
- (f) The undesirability of a substantial waste of time and effort if it becomes a common practice to bring actions in two Courts involving substantially the same issues.
- (g) How far advanced the proceedings are in each Court.
- (h) Striving against permitting multiple proceedings in relation to similar issues.
- (i) Generally balancing the advantages and disadvantages to each party.
- (j) The public interest.

[14] Those considerations that are relevant are discussed below.

Which proceeding was first?

[15] The application for a rehearing and the High Court proceeding were both filed in 2020. This factor is neutral.

Potential material effect on the other proceeding and multiple proceedings

[16] It is obviously undesirable to have courts in different jurisdictions making decisions that might, potentially, be inconsistent with each other or lead to an unnecessary duplication of effort and cost.

[17] There is no real risk of that sort of clash arising if this Court continues to consider Mr Martin's application for a rehearing while the High Court deals with the

claim by Solar Bright's investors. The subject matter of the application is different from what is likely to be in issue in the High Court proceeding. To be successful in his application for a rehearing Mr Martin will need to establish that the Court's September decision has been placed in issue by some special or unusual circumstances.⁹ Ms Taefi submitted that examples of successful applications include where:

(a) fresh or new evidence has been discovered that could not with reasonable diligence have been discovered prior to the hearing, which is of such character as to appear to be conclusive; or

(b) a significant and relevant statutory provision or authoritative decision has been inadvertently overlooked or misapprehended.

[18] While those examples illustrate the tightly focussed test that is to apply, successful applications must establish that there is a real or substantial risk of a miscarriage of justice if the judgment is allowed to stand.¹⁰

[19] Ms Taefi submitted that the grounds relied on by Mr Martin in his application show that he is intending to rely on the second of the examples she referred to; namely that there is a significant and relevant statutory provision or authoritative decision that has been overlooked.

[20] I agree with Ms Taefi. While the grounds of Mr Martin's application appear very broad it is apparent that he will concentrate his arguments on the law relating to patents. He has not applied to call further evidence and his affidavit does not mention the existence of any. In the evidence already given Mr Martin acknowledged having applied for a patent for DATAeye in his own name, explaining that he had to do that as its inventor. This assertion, about who must apply for a patent, is central to the application.

⁹ *Davis v Commissioner of Police* [2015] NZEmpC 38, [2015] ERNZ 27 at [13].

¹⁰ *Davis*, above n 9, at [13]; and see *Ports of Auckland Ltd v New Zealand Waterfront Workers Union*

[1995] NZCA 390; [1995] 2 ERNZ 85 (CA).

[21] No doubt the application will traverse Mr Martin's other evidence, contesting that the employment agreement was breached, to support his case that a penalty ought not to have been imposed.

[22] This analysis indicates a reasonably confined hearing in this Court can be expected, drawing on the evidence already given and considering submissions about whether the test for a rehearing has been satisfied. Conversely the High Court proceeding will concentrate its efforts elsewhere. The issues in that proceeding are about why the plaintiffs agreed to invest in Solar Bright. Presumably the High Court will be required to resolve disputes about how the funding for Solar Bright was obtained. It might be expected to hear evidence about steps taken to attempt to patent DATAeye, but that is unlikely to lead to cover the same ground as this Court.

[23] Neither Court will make findings about the ownership of DATAeye, because the Authority has already held that it belongs to Solar Bright. That decision is no longer open to dispute.¹¹ How Solar Bright was funded is immaterial to considering granting a rehearing based on claimed errors about how patents are obtained. Likewise, whether there was any breach of the employment agreement, and if there has been its consequences, will be immaterial to the High Court's decisions about how and why Solar Bright was funded by investors. The two proceedings do not give rise to the risk of divergent decisions being arrived at based on the same evidence.

[24] This factor points away from granting a stay.

Consideration of circumstances relating to witnesses

[25] There are no issues about the circumstances of witnesses such as them having to be available for two hearings. Evidence in this proceeding has already been given and the grounds relied on do not refer to an intention to attempt to present new evidence.

[26] This factor points away from granting a stay.

11 Under [s 161\(qa\)](#) of the Act.

State of preparation

[27] The High Court is presently dealing with interlocutory steps as the interlocutory judgment referred to earlier illustrates. The available information suggests the proceeding is not yet ready to be set down for a hearing. Conversely, the application for a rehearing can be set down almost immediately and may be able to be dealt with by an exchange of submissions.

[28] This factor points away from granting a stay.

Duplication and waste

[29] Given the narrow focus of the application for a rehearing, it is difficult to see that there would be any duplication and/or waste if Mr Martin is also involved in the High Court proceeding.

[30] While Mr Martin will need to dedicate time to preparing submissions, and to be present at a hearing of his application if one is needed, those tasks are unlikely to be overly burdensome or interfere with his preparation for the High Court case.

[31] This factor points away from granting a stay.

Public interest

[32] There are no relevant issues of public interest, aside from ensuring the best use of judicial resources and the timely resolution of both proceedings.¹²

[33] This factor is neutral.

Outcome

[34] There are insufficient grounds to justify a stay being granted. The interests of justice are best served if the application for a rehearing is dealt with as soon as is reasonably possible.

12 See *Speed*, above n 8.

[35] The application is unsuccessful and it is dismissed.

[36] Costs are reserved.

K G Smith Judge

Judgment signed at 4.20 pm on 30 April 2021