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Oldco Pti Limited v Houston [2010] NZEmpC 68 (27 May 2010)

Last Updated: 4 June 2010

IN THE EMPLOYMENT COURT AUCKLAND

[\[2010\] NZEMPC 68](#)

ARC 43/07

ARC 27/09

IN THE MATTER OF an application for stay

AND IN THE MATTER OF an application for costs

BETWEEN OLDSCO PTI LIMITED Plaintiff

AND PHILIP ERIC HOUSTON Defendant

Hearing: By memoranda of counsel

Judgment: 27 May 2010

COSTS JUDGMENT OF JUDGE M E PERKINS

[1] On 29 April 2010 I issued a judgment in respect of the plaintiff's urgent application for stay of a determination of the Employment Relations Authority (the Authority) at Auckland dated 20 June 2007. The stay was sought pending the hearing of a challenge to the determination commenced in the Court. The matter was urgent because of pending enforcement proceedings commenced by the defendant against the plaintiff in the High Court at Auckland. Those proceedings were by a way of an application to wind up the plaintiff company.

[2] In my judgment I granted the application for stay conditional upon the plaintiff paying into the Registrar of the Employment Court sums sufficient to cover total awards of the Authority together with interest accruing.

[3] On the issue of costs I reserved any decision pending receipt of memoranda from counsel, which were to be filed within 14 days of the date of the judgment.

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[4] The defendant filed a memorandum as to costs on 12 May 2010 within the time limit specified. The plaintiff filed its memorandum as to costs one day outside the time limit specified. Accordingly, counsel for the plaintiff has filed a further memorandum seeking an extension of time of one day for the filing of the memorandum as to costs. That extension of time is opposed by counsel for the defendant.

[5] The extension of time sought by the plaintiff of one extra day to file its memorandum as to costs is granted. I have read and considered the memoranda on behalf of both parties as to costs. I am referred to the principal authorities relating to such applications in this Court. [1]The principles applying are now well established.

[6] The issue of whether an award of costs is made and the quantum of any such award, is entirely the discretion of the Court. Costs usually follow the event although when an indulgence of the Court is granted on an out-of-time application then the applicant, even though successful, would generally be ordered to make a contribution to the respondent's costs.

[7] As I indicated in my judgment of 29 April 2010, there have been considerable delays in bringing the plaintiff's challenge to trial. The responsibility for that delay primarily, although not entirely, rests with the plaintiff. Nevertheless, I have asked the Registrar to maintain contact with counsel so that two outstanding interlocutory matters can be resolved quickly and the

matter can proceed.

[8] I note from the memoranda as to costs, which have been filed, that each of the parties has incurred a similar sum in costs in respect of the application for stay. At the time that the application for stay was made it was clear that the plaintiff still wished to proceed with the challenge but was facing pending liquidation proceedings in the High Court. Those proceedings would substantially alter the status of the plaintiff company and any liquidator appointed would then need to consider whether to continue with, the challenge. Accordingly, the stay order was seen as necessary to preserve the position that existed at that particular time. I am informed by the

Registrar that the plaintiff did not pay the sum specified in my judgment into the Registrar's account but I am unaware as to whether liquidation proceedings were then concluded in the High Court.

[9] Having considered all of the circumstances of this matter including the fact that the defendant has some responsibility for the delays that have occurred, which in turn led to the necessity for a stay application, I have decided not to make any award of costs in respect of the application for stay. Accordingly, the costs of that particular application for each of the parties will have to lie where they fall.

[10] I am not aware whether counsel for either party have contacted the Registrar to arrange a telephone call-over conference as I directed in my judgment. If the challenge is to be proceeded with the arranging of such a conference needs to be attended to as soon as possible. However, if the plaintiff does not intend to proceed with the challenge then that should be notified to the Registrar so that these long outstanding proceedings can be concluded.

M E Perkins
JUDGE

Judgment signed at 12.15pm on 27 May 2010

[1] *Victoria University of Wellington v Alton-Lee* [2001] NZCA 313; [2001] ERNZ 305; *Binnie v Pacific Health Ltd* [2002]

1 ERNZ 438; *Health Waikato Ltd v Elmsly* [2004] NZCA 35; [2004] 1 ERNZ 172.

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