



Employment Court of New Zealand

You are here: [NZLII](#) >> [Databases](#) >> [Employment Court of New Zealand](#) >> [2018](#) >> [\[2018\] NZEmpC 23](#)

[Database Search](#) | [Name Search](#) | [Recent Decisions](#) | [Noteup](#) | [LawCite](#) | [Download](#) | [Help](#)

Propellor Property Investments Limited v Elsegood [2018] NZEmpC 23 (20 March 2018)

Last Updated: 29 March 2018

IN THE EMPLOYMENT COURT
AUCKLAND

[\[2018\] NZEmpC 23](#)
EMPC 378/2017

IN THE MATTER OF a challenge to a determination of
 the Employment Relations
 Authority
AND IN THE MATTER of an application of stay of
 execution
BETWEEN PROPELLOR PROPERTY
 INVESTMENTS LIMITED
 Plaintiff
AND CHERIE ELSEGOOD
 Defendant

Hearing: On the papers filed on 19 December 2017; 30 January
 2018;
 26 February 2018; 2, 12 and 13 March 2018
Appearances: V Leach, counsel for plaintiff A Swan, counsel for
 defendant
Judgment: 20 March 2018

INTERLOCUTORY JUDGMENT OF JUDGE J C HOLDEN APPLICATION FOR STAY OF EXECUTION OF THE ORDERS OF THE EMPLOYMENT RELATIONS AUTHORITY

Introduction and outcome

[1] The plaintiff, Propellor Property Investments Ltd (Propellor), was found by the Employment Relations Authority (the Authority) to have unjustifiably dismissed the defendant, Ms Elsegood.¹ Propellor was ordered to pay \$15,000 compensation under [s 123\(1\)\(c\)\(i\)](#) of the [Employment Relations Act 2000](#) (the Act); \$14,583.32 (gross) in lost remuneration with interest accruing at five per cent per annum; \$1,679 in unpaid expenses; and \$3,000 comprising a bonus the Authority found was due to Ms Elsegood.

¹ *Elsegood v Propellor Property Investments Ltd* [2017] NZERA Auckland 374.

PROPELLOR PROPERTY INVESTMENTS LIMITED v CHERIE ELSEGOOD NZEmpC AUCKLAND [\[2018\] NZEmpC 23](#) [20 March 2018]

[2] Propellor has challenged the determination of the Authority. It now applies for a stay of execution of the orders of the Authority pending the outcome of the challenge.

[3] For the reasons set out in this judgment, the application for a stay of execution is granted on the condition that Propellor pays the sums awarded by the Authority into Court.

[4] The challenge is stayed pending the receipt of those sums by the Court.

[5] Ms Elsegood is awarded costs on this application on a 2B basis.

Principles applying to an application for a stay

[6] From time to time the Employment Court is asked to stay execution of the orders of the Authority pending the determination of a challenge. In considering such applications the Court's starting point is [s 180](#) of the Act.

[7] That section provides that the making of an election under [s 179](#) does not operate as a stay of proceedings on the determination of the Authority unless the Court or Authority so orders.

[8] In *North Dunedin Holdings Ltd v Harris* the Court said in relation to [s 180:2](#)

[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.

2 *North Dunedin Holdings Ltd v Harris* [\[2011\] NZEmpC 118](#).

[9] When the Court comes to consider exercising its discretion under [s 180](#) there are seven considerations that have been accepted as applicable to a greater or lesser extent in a particular case. While not comprehensive, the list is:3

- if no stay is granted, whether the applicant's right of appeal (or challenge) will be ineffectual;
- whether the challenge is brought and prosecuted for good reasons, and 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.

[10] There is no identifiable third-party issue, wider interest in these proceedings or novel or important issues involved.

Ms Elsegood has agreed to a conditional stay throughout

[11] When Propellor initially applied for a stay, it said it would be prepared to deposit the sums awarded by the Authority (the sums awarded) totalling \$34,262.32 into its solicitor's trust account pending the challenge. However, its current position is that payment of the sums awarded should be stayed without condition, but that it would be prepared to deposit the sums awarded into its solicitor's trust account "should the Court deem it necessary".

[12] From the outset Ms Elsegood has been prepared to agree that she not receive the sums awarded pending the outcome of the challenge, provided they are paid into

3. *Assured Financial Peace Ltd v Pais* [\[2010\] NZEmpC 50](#) at [\[5\]](#)- [\[6\]](#). *Bilgola Entreprises Ltd v Dymocks Franchise Systems (NSW) Pty Ltd* [\[1999\] NZHC 1324](#); [\(1999\) 13 PRNZ 48 \(CA\)](#) at [\[9\]](#).

a trust account. She is concerned that she may have difficulty in recovering the sums awarded by the Authority should the challenge not succeed, or only succeed in part. Surprisingly, given that position, Propellor's submissions focussed on Ms Elsegood's ability to repay the sums awarded should the stay not be granted, and the challenge is successful.

[13] Its concern that its right of challenge would be ineffectual if a stay is not granted does not arise if the money is held in trust.

[14] Propellor did not advance any particular reasons why it ought not pay the monies into a trust account or into Court.

[15] Further, while Propellor's challenge is a de novo challenge to the whole of the determination, in the application for a stay, Propellor says that its case is that Ms Elsegood materially contributed to her dismissal, and that the sums of compensation awarded and refusal to grant a reduction or award were grossly unfair to Propellor. Therefore, it seems that the focus of the challenge is on the issue of contribution. That may not be surprising given the finding of the Authority that Ms Elsegood was clearly and unequivocally dismissed by text message⁴ and given the description of the text message in the Authority's determination.⁵ If Propellor succeeds, but only in respect of contribution, it is almost certain that there will be

some compensation payable to Ms Elsegood.

[16] Balancing the interests of both parties, and taking account of Ms Elsegood's position, I order a stay of execution of the orders of the Authority on the following basis:

- (a) Propellor must pay the sums awarded by the Authority, together with any interest accrued, into Court within five working days of this judgment;
- (b) Propellor must pay any costs award of the Authority into Court within five working days of the Authority's costs determination.

4 *Elsegood*, above n 1, at [52]-[54].

5 At [45].

[17] Ms Elsegood is entitled to costs on this application. As submitted by her counsel, Propellor's continued pursuit of this application was unnecessary given the parties' respective positions on the payment of the sums awarded by the Authority pending the outcome of the challenge.

[18] Propeller is therefore also ordered to pay Ms Elsegood costs on the application for a stay of execution, to be calculated in accordance with the Court's Guideline Scale, classified as 2B. Any dispute as to the calculation of such costs, or failure by Propellor to pay them within a reasonable time, may be referred to the Court by memoranda for resolution and, if necessary, further orders.

[19] In any event, the Court Registry is to arrange a further directions conference at a convenient time on or after 13 April 2018 to monitor progress and to timetable this challenge to completion.

J C Holden Judge

Judgment signed at 3 pm on 20 March 2018

NZLII: [Copyright Policy](#) | [Disclaimers](#) | [Privacy Policy](#) | [Feedback](#)

URL: <http://www.nzlii.org/nz/cases/NZEmpC/2018/23.html>