



Employment Court of New Zealand

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Read v Trends Publishing International Limited [2018] NZEmpC 5 (15 February 2018)

Last Updated: 19 February 2018

IN THE EMPLOYMENT COURT AUCKLAND
[2018] NZEmpC 5 EMPC 180/2015

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER	of an application for a stay of execution
AND IN THE MATTER	of an application for security for costs
BETWEEN	BEVAN READ Plaintiff
AND	TRENDS PUBLISHING INTERNATIONAL LIMITED Defendant

Hearing:	(on the papers filed on 3 and 26 January and 7 February 2018)
Appearances:	H White, counsel for plaintiff K Johnson, agent for defendant
Judgment:	15 February 2018

INTERLOCUTORY JUDGMENT OF JUDGE B A CORKILL APPLICATIONS FOR STAY OF EXECUTION AND SECURITY FOR COSTS

Introduction

his judgment resolves two applications. First, Mr Bevan Read seeks a stay of execution of a costs order made by the Employment Relations Authority (the Authority), which he has challenged. In the second application, Trends Publishing International Ltd (Trends) seeks an order that Mr Read pay security for its costs.

he substantive challenge was initiated in 2015. It was set down for hearing in mid-2017, but the fixture was adjourned shortly before the case was to be heard because there are related and relevant proceedings in the High Court which should be heard first. It is understood that the High Court hearing will take place shortly.

BEVAN READ v TRENDS PUBLISHING INTERNATIONAL LIMITED NZEmpC AUCKLAND [2018]

NZEmpC 5 [15 February 2018]

or the purposes of the first application, I record that in a costs determination of 7 December 2015, the Authority ordered Mr Read to pay \$4,000 as a contribution to costs incurred by to Trends in the Authority.¹

t is common ground that Mr Read agreed to pay this sum either into a lawyer's trust account, or into Court, so as to stay enforcement of the liability pending the hearing of the costs challenge. But he said this should be on the basis that if Trends were to be placed in receivership or liquidation, the money would be returned to him. It is this element of his offer to make a payment into Court that was not agreed.

t appears from the evidence that there were some communications on this topic between the parties in mid-2016, but this particular detail was not resolved.

he application for security is made on the grounds that there is reason to believe Mr Read would be unable to pay Trends' costs if he were to be unsuccessful in his challenge.

part from a description of the history of the issues arising from the Authority's cost determination, no other evidence has been placed before the Court to support Trends' application.

s far as the company's position is concerned, it is not currently represented in this proceeding by a lawyer or advocate. Ms Johnson, as agent for Trends, says the company previously had legal representation and advice for the purposes of the proceedings and has "incurred significant legal costs to date". No particulars of these are given.

Discussion

he first application is straightforward.

TTT

1 F v G [2015] NZERA Auckland 382.

r Read is willing to pay the sum of \$4,000 which is the subject of the challenged costs determination into either a lawyers' trust account or the Court.

however, he proposes that this be subject to a condition that the sum be repaid in the event of a receivership or liquidation of the defendant company.

ubsequent repayment of the sum to Mr Read could be ordered, if this was in the interests of justice. Where a costs challenge succeeds, it may be appropriate for some or all of a sum paid into Court to be repaid to the challenger. But any such step is case specific.

hether repayment should occur in the event of receivership or liquidation of the company could depend on a range of circumstances; one such consideration may relate to the question of whether the defendant would then be in a position to actively oppose the challenge if it had not yet been determined. That would be an issue for the Receiver, the Liquidator or the High Court. The Court cannot speculate on such possibilities at present.

n my view, it is not appropriate for the Court to attach a condition to payment. But the parties can be assured the Court will review all relevant circumstances that are raised with it, when the time arrives for consideration of payment out of any monies paid into Court, including the implication of receivership and/or liquidation if one or both of those events have occurred.

turn now to the second application. I am not satisfied that an order for security should be made.

irst, there is no reliable evidence before the Court as to the extent of any costs previously incurred by Trends.

second, it is not currently represented; it would appear, therefore, that it is not incurring the costs of a lawyer or advocate on an ongoing basis.

third, there is no reliable evidence as to Mr Read's financial circumstances, such as would convince the Court that there is a potential risk of non-payment of a future costs order.

fourth, the application is made at a late stage in the proceeding, with no explanation as to why it was apparently not relevant earlier but is now.

n my view, the interests of justice do not require an order for security for costs to be made on the current application.

Disposition

r Read is to pay the sum of \$4,000 to the Registrar of the Employment Court at Auckland. That sum is to be held on an interest-bearing account until further order of the Court. The payment is to be made within 28 days of the date of this judgment. If the payment is not made by the due date, a stay of the costs challenge will operate from the date of default.

o order for security is made.

n my view, it is not appropriate to make an order for costs in respect of the applications which this judgment resolves.

B A Corkill Judge

Judgment signed at 4.00 pm on 15 February 2018

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