



# Employment Court of New Zealand

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## The Salad Bowl Limited v Howe-Thornley [2013] NZEmpC 77 (9 May 2013)

Last Updated: 23 May 2013

### IN THE EMPLOYMENT COURT NELSON

#### [\[2013\] NZEmpC 77](#)

CRC 10/13

IN THE MATTER OF a challenge to a determination of the

Employment Relations Authority

AND IN THE MATTER OF an application for stay of proceedings

BETWEEN THE SALAD BOWL LIMITED Plaintiff

AND AMBERLEIGH HOWE-THORNLEY Defendant

Hearing: 9 May 2013 (by telephone conference call) Appearances: Bryan Forrest, advocate for plaintiff

Kevin Murray and Shayne Boyce, advocates for defendant

Judgment: 9 May 2013

### INTERLOCUTORY JUDGMENT OF CHIEF JUDGE G L COLGAN

[1] The plaintiff has applied for an order staying execution of the determination of the Employment Relations Authority<sup>[1]</sup> pending the hearing and decision of its challenge to the Authority's determination. The application is made belatedly because a District Court bailiff has already executed the Authority's order by seizing, retaining and intending to sell plant or equipment of the plaintiff to satisfy its debts to Amberleigh Howe-Thornley under the determinations, of \$8,104.06 (including costs) awarded by the Authority but excluding costs of enforcement in the District

Court.

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[2] During a telephone directions conference call this morning, the parties' representatives agreed to the Court dealing with the application for stay of execution on the papers filed so far. There is some urgency attaching to that because Mr Murray advises that although the plant seized by the bailiff in execution of the distress warrant has yet to be sold at auction, this may occur within the next week or so unless a stay is entered.

[3] Recovery of the debt by the defendant happened relatively rapidly. The

Authority's determination, finding the plaintiff liable to the defendant, was issued on

1 February 2013. The plaintiff's challenge was filed in time on 28 February 2013. The defendant's statement of defence was filed on 11 April 2013 and this application for stay was filed on 3 May 2013, although without supporting affidavit evidence which has now been supplied. The defendant has now filed a notice of opposition to the application for stay of execution although, as yet, without evidence.

[4] The defendant's opposition is based on three grounds. They are, first, that the plaintiff's application for stay was not made within 28 days of the Authority's determination being issued on 1 February 2013. The plaintiff relies on [s 179\(2\)](#) of the

[Employment Relations Act 2000](#) (the Act) but that relates to the time for filing of challenges. There is no time limit for filing an application for stay of execution although, as a matter of prudence, an applicant would be well advised to file sooner rather than later if there is a risk of execution such as has occurred in this case. The first ground of opposition is without merit.

[5] The second ground of opposition is associated with the first. That is that the plaintiff has failed to seek the Court's leave to have the application for stay filed. Leave is not necessary in any event and I have already determined that the application has not been made out of time. That disposes of the second ground of opposition.

[6] The third ground of opposition is that a distress warrant filed in the Nelson District Court on 15 March 2013 has already been executed. That is not in itself a sound argument for not staying execution because, even at this relatively late stage, an effective order can be made even if on conditions of giving alternative security for the debt.

[7] Whilst execution of a debt by seizure and sale of a business's plant is no doubt an effective way of persuading an unwilling debtor to pay up, it also means, of course, that in a small business such as the plaintiff operates, the livelihoods of not only the owners but other employees will be affected adversely because the business cannot operate or at least optimally.

[8] I make an order staying execution or further execution of the orders of the Employment Relations Authority upon condition that, within the next 14 days, the plaintiff pays to the Registrar of the Employment Court at Wellington, the sum of \$8,104.06 or otherwise gives security for this sum to the satisfaction of the Registrar. Any money so paid by the plaintiff to the Registrar is to be placed on interest bearing deposit with the capital and interest paid out only by order of a Judge or by the written consent of the parties' representatives.

[9] The effect of this order is that if the condition of payment or other security is satisfied, the bailiff of the District Court at Nelson will return the property seized under the distress warrant to the plaintiff. For that purpose, the Registrar of the Employment Court at Wellington must advise the bailiff (Kyle Turner) at the District Court at Nelson of the satisfaction of the conditions imposed on this order if and when that occurs.

[10] In these circumstances I would expect that the bailiff will retain, and not sell, the goods taken under the warrant for at least 14 days to enable the conditions of the stay to be fulfilled. When payment to the Registrar of this Court has been confirmed, the bailiff can be satisfied that the distress warrant can be cancelled and the plant returned to the plaintiff.

[11] The directions conference is adjourned until 9 am on Tuesday 28 May 2013 of the parties to consider whether the challenge is to proceed.

[12] Costs are reserved.

GL Colgan  
Chief Judge

Judgment signed at 11.30 am on Thursday 9 May 2013

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[1] [2013] NZERA Christchurch 25.