

**IN THE EMPLOYMENT COURT
CHRISTCHURCH REGISTRY**

**[2013] NZEmpC 231
CRC 40/13**

IN THE MATTER OF a challenge to a determination of the
 Employment Relations Authority

BETWEEN PYNE GOULD CORPORATION
 LIMITED
 Plaintiff

AND JAMES WEST
 Defendant

Hearing: on the papers - memoranda received 21 October, 11 November,
 19 November and 5 December 2013.

Appearances: Gillian Service, counsel for the plaintiff
 Linda Ryder, counsel for the defendant

Judgment: 6 December 2013

INTERLOCUTORY JUDGMENT OF JUDGE A A COUCH

[1] The issue decided in this judgment is whether there should be a stay of execution of remedies awarded to the defendant by the Employment Relations Authority and, if so, on what terms it should be granted.

[2] The defendant was employed by the plaintiff in a senior role until 16 April 2012. Following the end of his employment, the defendant raised two personal grievances; that he had been unjustifiably dismissed and that he had been unjustifiably disadvantaged prior to his dismissal in relation to the disestablishment of his position. The defendant also sought payment of a bonus to which he claimed to be entitled. The Authority upheld the dismissal grievance and awarded the defendant remedies totalling more than \$150,000. The claim for the bonus was dismissed. The plaintiff challenged some aspects of the Authority's determination.

The defendant cross challenged other aspects of it. The Authority then issued a costs determination which the plaintiff has also challenged.

[3] The plaintiff has applied for a stay of execution in respect of all sums it has been ordered by the Authority to pay to the defendant. They total \$140,954.69. The principal ground relied on is concern that the defendant may not be able to repay that amount if the challenge is successful. There is also evidence that a *Calderbank* offer was made prior to the Authority's investigation meeting which could be the basis of a claim for costs against the defendant in the Authority if the plaintiff's challenge is successful.

[4] In support of its application, the plaintiff has paid the full amount required to satisfy the Authority's orders into the trust account of its solicitors, Russell McVeagh. Unless there has been some change of which the Court is unaware, those funds are being held on interest bearing deposit "pending Court hearing".

[5] The defendant opposes the application, principally on the grounds that it is a delaying tactic by the plaintiff, motivated by personal animosity towards him. He deposes to there having been extensive delay in the Authority's investigation as a result of the plaintiff's failure to comply with orders in a timely manner. In answer to the suggestion that he may have difficulty in repaying the sum in question if he is unsuccessful in the Court, the defendant says that he has substantial assets and an income of \$180,000 per year.

[6] In terms of the established principles upon which applications for stay are decided, the plaintiff has a weak case. It is supported only by the subjective and generalised view of Mr Mogridge. His concerns have been effectively answered by the defendant.

[7] A factor of considerable importance was, however, drawn to the attention of the Court yesterday in a memorandum filed by Ms Ryder. On 14 November 2013, the plaintiff announced to the New Zealand Stock Exchange that it intends to move its operations to Guernsey in the near future. The announcement records that the plaintiff "does not have any material investments or assets remaining within New

Zealand” but later says that its “present New Zealand assets primarily consist of a number of residential and commercial investment properties, which amounted to approximately \$4.8 million ... and these New Zealand assets are in the process of being sold.”

[8] In her memorandum, Ms Ryder expresses concern that the money currently held in trust by Russell McVeagh is in the sole name of the plaintiff and may be dealt with “at the discretion of the plaintiff”. In the circumstances disclosed by the plaintiff’s recent announcement, that is a valid concern if a stay is granted without condition.

[9] Although the defendant opposes an unconditional stay, he is amenable to a stay on terms. He suggests that \$30,000 be retained in trust and the balance paid to him now. In its second amended application for stay, the plaintiff also indicated that it is agreeable to a stay being subject to terms. In all the circumstances, it is in the interests of justice that a stay be granted but on terms different to those suggested by the parties.

[10] One of the orders made by the Authority was for \$22,065.55 being holiday pay and interest. That order was made by consent and is not challenged by the plaintiff. There is no reason why payment of that sum ought not to be made immediately.

[11] A stay of execution of the orders made by the Authority is granted on the following conditions:

- (a) The plaintiff is to pay \$22,065.55 to the defendant no later than 4pm on Thursday 12 December 2013. Payment is to be made to the trust account of Goldstein Ryder for the use of the defendant.
- (b) A partner of Russell McVeagh is to provide a written undertaking to the Court no later than 4pm on Thursday 12 December 2013 that \$118,889.14, together with all interest earned on that sum, will be held in trust by the firm on interest bearing deposit pending the

outcome of this proceeding, and will be dispersed only in accordance with the written agreement of the parties or by order of the Court.

(c) The plaintiff is to pursue its challenge diligently.

[12] If these conditions are not fulfilled, the defendant will be entitled to enforce the orders of the Authority.

[13] Costs in relation to this application are reserved.

AA Couch
Judge

Signed at 1.50 pm on 6 December 2013.