

**IN THE EMPLOYMENT COURT
AUCKLAND**

**[2011] NZEmpC 23
ARC 4/11**

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 DRAPAC LTD
Plaintiff

AND ROBERT WENDUO PENG
Defendant

Hearing: by memoranda of submissions filed on 7, 14 and 17 March 2011

Appearances: Quan Shu, agent for plaintiff
Royal Reed, counsel for defendant

Judgment: 21 March 2011

**SUPPLEMENTARY INTERLOCUTORY JUDGMENT
OF CHIEF JUDGE GL COLGAN**

[1] The plaintiff has applied to recall the judgment of 23 February 2011¹ and to vary its terms because of the effect upon its fiscal position of the Christchurch earthquake of 22 February 2011.

[2] At para [6] of the judgment of 23 February 2011 (incorrectly recorded at its foot as 23 March 2011) I made an order staying execution of the Authority's remedies on condition that, within seven days, the plaintiff was to pay into court the sum of \$26,750.28.

¹ [2011] NZEmpC 16.

[3] I accept that the plaintiff's ability to do so has been affected by damage to its Christchurch premises, and thereby to its financial circumstances, although the company has paid in one-half of that sum, \$13,375.14.

[4] In these circumstances, I consider it just to vary the conditions of the order for stay made on 23 February 2011. That order will now be conditional upon payment in of the balance of the sum in dispute (\$13,375.14) by Wednesday 20 April 2011 to enable a directions conference to be scheduled on or after 20 April 2011 at which directions can be given for the hearing of the challenge.

[5] I consider there should be no order for costs on this successful application for recall and variation of the judgment.

GL Colgan
Chief Judge

Judgment signed at 3 pm on Monday 21 March 2011