

**IN THE EMPLOYMENT COURT  
WELLINGTON**

**[2012] NZEmpC 119  
WRC 7/12**

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 proceedings

BETWEEN                                  FEI LI  
Plaintiff

AND    WANZHI HUANG  
Defendant

Hearing:            (on the papers and by way of telephone conference call held on 24  
July 2012)

Counsel:           Graeme Ogilvie, counsel for plaintiff  
Wanzhi Huang in person

Judgment:        24 July 2012

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**INTERLOCUTORY JUDGMENT OF JUDGE A D FORD**

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[1]     In a determination<sup>1</sup> dated 12 April 2012, the Employment Relations Authority (the Authority) found that on 5 December 2011 the defendant had been unjustifiably dismissed from his employment with the plaintiff. The plaintiff was ordered to pay wage arrears, holiday pay, lost wages, compensation for emotional distress and disbursements totalling in excess of \$26,000. The plaintiff has challenged the whole of that determination seeking a hearing de novo. In the application before the Court the plaintiff seeks a stay of proceedings pending the hearing of the challenge.

[2]     The plaintiff, Mr Fei Li, owns and operates an internet cafe in Cuba Street, Wellington. The business trades under the name “Eland Internet Cafe and Games”.

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<sup>1</sup> [2012] NZERA Wellington 35.

The Authority found that the defendant, Mr Wanzhi Huang, entered New Zealand on a visa sometime prior to May 2011 and obtained a work visa from Immigration New Zealand which enabled him to work for the plaintiff as an IT Support and Computer Technician. The Authority also found that Mr Huang commenced full-time work with the plaintiff on 1 June 2011 pursuant to an individual employment agreement dated 16 May 2011 but he never received any remuneration during the term of his employment.

[3] Mr Li had claimed before the Authority that the offer of employment was conditional on Mr Huang producing a copy of his work permit and a police clearance from China and as he had never produced either document to the plaintiff there was never an enforceable employment relationship between the parties and thus no unjustified dismissal. The plaintiff denied that Mr Huang carried out any IT support work at the Eland Internet Cafe.

[4] In his statement of claim, Mr Li repeats the allegation made before the Authority that the employment agreement was subject to the production of a valid work permit and as that had never been produced “the employment never commenced but the parties continued a relationship outside of any contract.” There are then further allegations made to the effect that the defendant had used the plaintiff’s name in support of an application for New Zealand residency without the plaintiff’s knowledge, that he had forged documents for Immigration New Zealand in the plaintiff’s name and that he had been charged with forgery by the New Zealand Police.

[5] In a submission on another aspect of the case filed subsequently, Mr Ogilvie explained that the plaintiff became aware of the allegedly fraudulent documentation only during the course of the Authority’s investigation and at that stage it was not possible to obtain expert evidence on the alleged forgeries. That issue, therefore, did not form part of the Authority’s investigation.

[6] In his statement of defence, Mr Huang strongly denies the allegation of forgery and he also denies that his employment agreement was subject to the alleged two conditions referred to above.

[7] The plaintiff relies on the following grounds in support of his application for a stay of proceedings. First, he claims that as a sole trader he runs a very small business which is running at a loss and if he is required to make payment at this stage it will cause him irreparable harm. In an affidavit filed in support, Mr Li states:

6. The Respondent has arranged for a distress warrant which the District Court is trying to enforce by seizing all the computers in the cafe. If that happens I will lose all my income and will have no income from which to make any payment to the Respondent/Defendant in regard to the amounts awarded by the Employment Relations Authority.
7. The computers are old and any amount raised from a sale of the computers will be very small as there is no market for 2-3 year old computers. Therefore the seizure of the computers will meet only a very small proportion of the awards by the Authority.
8. If the computers are seized and I am successful with the challenge I will be seriously disadvantaged as I will have won the claim but lost all of my business but will still have rent commitments for the business. Therefore even if I am successful with the challenge I will have still lost my business and I won't be able to recover anything from the Respondent as he will be out of New Zealand.

[8] The second stated ground for the application is that the defendant "has limited financial means and as he no longer has a work visa for New Zealand he is likely to be deported in the near future" thus, it is alleged, "the challenge will be rendered nugatory if payment is required at this juncture."

[9] Finally, it is alleged that the defendant has "threatened the plaintiff through blackmail".

[10] Section 180 of the Employment Relations Act 2000 provides that orders of the Authority remain in full force and effect unless the Court, or the Authority otherwise orders. It follows that Mr Huang is entitled to have the orders of the Authority enforced unless a stay of proceedings is granted. The power of the Court to grant a stay under s 180 is discretionary and the overriding consideration in the exercise of the discretion is the interests of justice.

[11] Mr Huang initially strongly opposed the stay application. He claimed that he will not be deported by Immigration New Zealand and that his visa does not expire

until May 2013. He also claimed that funds recovered under the distress warrant will not be released to him but will be held in the District Court. Mr Huang did not, however, deny the serious issue of blackmail which appears to be evidenced in an email produced by the plaintiff. That allegation will no doubt need to be answered in due course.

[12] Having weighed up the various competing considerations, I had reached the view that the plaintiff had made out a sound case in support of his application for a stay of proceedings. I had considered making an order for a stay on condition that the plaintiff pay a certain sum into Court but he has provided evidence as to his financial means and I accept that if the computers in his internet cafe are seized then the resulting financial harm to him and to his business is likely to be irreparable as he claims.

[13] I convened a telephone conference call this morning between Mr Ogilvie, acting for the plaintiff, and Mr Huang in person. The outcome of the conference call was that Mr Ogilvie agreed to accept an early fixture for the hearing of the challenge and, in response, Mr Huang agreed to withdraw his objection to the application for a stay. A separate minute will be issued confirming the agreed timetabling orders.

[14] There will therefore be a stay of proceedings effective immediately and continuing until disposal of the substantive challenge. Costs in relation to the application are reserved.

A D Ford  
Judge

Judgment signed at 3.00 pm on 24 July 2012