

**IN THE EMPLOYMENT COURT
CHRISTCHURCH**

**[2013] NZEmpC 104
CRC 52/12**

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

AND IN THE MATTER of an application for stay of execution of
order for costs

BETWEEN MARGOT ELIZABETH GAZELEY
Plaintiff

AND OCEANIA GROUP (NZ) LIMITED
Defendant

Hearing: By memoranda of submissions filed by the plaintiff on 27 May
2013 and by the defendant on 4 June 2013

Appearances: Anjela Sharma, counsel for plaintiff
Kylie Dunn, counsel for defendant

Judgment: 6 June 2013

INTERLOCUTORY JUDGMENT OF JUDGE M E PERKINS

[1] The plaintiff, Mrs Gazeley, was unsuccessful before the Employment Relations Authority with her claims related to an allegation that she was unjustifiably suspended or dismissed from her employment by the defendant. The Authority Member at Christchurch issued a determination on 30 November 2012.¹ The issue of costs was reserved.

[2] In a subsequent determination on costs by the Authority dated 15 April 2013² Mrs Gazeley was ordered to pay costs to the defendant in the sum of \$30,000 together with disbursements of \$2,954. She has now filed de novo challenges to those determinations in this Court. On 3 May 2013 she filed an application for stay

¹ [2012] NZERA Christchurch 261.

² [2013] NZERA Christchurch 67.

of execution of the determination on costs against her until the outcome of her challenges is known. In support of that application for stay of execution, she has sworn and filed an affidavit and annexed a copy of an affidavit she filed with the Authority in respect of the costs' issue there. These affidavits set out her current financial position.

[3] In addition to those documents, on 20 May 2013 Mrs Gazeley's counsel, Ms Sharma, prepared and filed a memorandum on her behalf.

[4] In response to the application for stay and accompanying documents, on 17 May 2013 the defendant simply filed a notice of opposition to the plaintiff's application for stay of execution. The grounds put forward by the defendant in opposition were:

- a. It is not in the interests of justice.
- b. The plaintiff's appeal of the Authority's determination on costs would not be rendered nugatory by declining a stay.
- c. The plaintiff has indicated that she intends to apply for an order that the hearing, scheduled to commence on 19 August 2013, deal with liability only. A hearing on quantum (if necessary) would then follow at a later date. As a result, it is not yet clear how long the execution of the Authority's costs' determination would be stayed.

[5] It was in response to that third ground of opposition that Mrs Gazeley's counsel filed the memorandum dated 20 May 2013. Ms Sharma indicated in that memorandum that while there was a suggestion that there might be a separate hearing on liability first, that was not now pursued actively by Mrs Gazeley.

[6] On 20 May 2013 the Registrar of this Court, at my direction, sent an email to both counsel setting out timetabling for the filing of any further submissions. Mrs Gazeley's counsel was given until 27 May 2013 to file submissions in support and counsel for the defendant was to have a further seven days from receipt of such

submissions in which to file any submission in reply. The Registrar then indicated that the Court would determine the matter as to the application for stay of execution on the papers.

[7] Following the filing of submissions by Ms Sharma on 27 May, submissions were received from counsel for the defendant, Ms Dunn, on 4 June 2013.

[8] Mrs Gazeley's present financial position would have to be described as precarious. She does have some assets. These are in the form of a residential home, which is effectively owned by herself and her husband through a family trust, two second-hand motor vehicles, and relatively meagre retirement savings. In addition to that, her husband has recently suffered an accident which, along with Mrs Gazeley's own loss of employment, clearly places a financial strain on their household so far as income is concerned.

[9] It is clear that Mrs Gazeley would have substantial difficulty in meeting the costs' award at this stage. In answer to her stated position, the defendant has filed no evidence or any other document apart from counsel's submissions in support of the allegations contained in the notice of opposition. Certainly there is nothing before the Court which would suggest that the defendant would suffer any substantial prejudice if a stay is granted. It is a substantial organisation. Ms Dunn makes the submission that the defendant will be injuriously affected by a stay. This is on the basis that if successful in the case, the defendant may be unable to enforce its award.

[10] Both counsel, in their submissions, have set out authorities which prevail in setting general legal principles, which the Court follows in dealing with an application for stay such as this. Ms Dunn also refers to the enabling legislative provisions granting the Court power to order a stay.³ Ultimately, the matter needs to be dealt with in the interests of justice and in this Court within the Court's equity and good conscience jurisdiction.

[11] While it is not possible to say that Mrs Gazeley's challenges would be rendered nugatory if a stay was not granted, forcing her to pay the order for costs at

³ Employment Court Regulations 2000, reg 64.

this stage would place substantial financial difficulties in her way in pursuing the challenges. No suggestion has been made by the defendant that the challenges are not being genuinely pursued. In this case a balancing exercise is required between the possible effect on the defendant if a stay is granted, and the prospect that the plaintiff's financial position will result in her being unable to fund the litigation if it is not. Ms Dunn refers in her submissions to the fact that Mrs Gazeley's counsel is taking a benevolent approach to legal costs at this stage. That does not mean, however, that liability is being waived.

[12] Having considered the matter in the light of the principles applying and in considering the circumstances prevailing in respect of each of the parties involved, the overall balance of convenience favours the plaintiff. It is appropriate that there be an order staying execution of the costs' award of the Authority and such a stay is granted. That stay will prevail until further order of the Court.

[13] The trial of the matter is scheduled to take place for two weeks commencing on 19 August 2013. Unless there is a substantial change in circumstances requiring the Court to reconsider the matter on an urgent basis, I anticipate that the order for stay would remain in force until the outcome of the challenges is determined on their merits.

[14] Insofar as this present application is concerned, costs are reserved.

ME Perkins
Judge

Judgment signed at 2.15 pm on Thursday 6 June 2013