

**IN THE EMPLOYMENT COURT
AUCKLAND**

**[2013] NZEmpC 132
ARC 39/11**

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

BETWEEN DAVID NEWICK
Plaintiff

AND WORKING IN LIMITED (IN
LIQUIDATION)
Defendant

Hearing: On the papers

Appearances: David Neutze, counsel for plaintiff
Michael O'Brien, counsel for defendant (until 28 May 2013)
Gareth Hoole, liquidator (from 28 May 2013)

Judgment: 17 July 2013

INTERLOCUTORY JUDGMENT OF JUDGE CHRISTINA INGLIS

[1] This proceeding was heard on 15-17 April 2013. On 28 May 2013 the defendant company was placed into liquidation. No judgment had been given by this stage. I issued a minute inviting the parties to advise what, if any, impact the defendant's liquidation had on the proceeding.

[2] Mr Hoole, who is one of the liquidators, has advised the Court that the liquidators do not consent to the continuation of this proceeding. Counsel for the plaintiff, Mr Neutze, has filed a memorandum advising that he does not have instructions to formally oppose the liquidators' view of the legal effect of s 248(1)(c) of the Companies Act 1993 and nor does he have instructions to seek the leave of the High Court to continue the proceeding. Counsel does, however, seek to reserve the

plaintiff's position on the issue and reserve his rights to pursue judgment in the future.

[3] In my subsequent minute of 5 July 2013 I advised that I was proposing to stay the proceeding, but reserve leave to the plaintiff to bring the matter back before the Court. The parties were invited to be heard further on that proposal, and to notify the Registrar no later than 5.00pm 12 July 2013 if they wished to do so. They have not done so.

[4] In light of the circumstances and the position adopted by both parties the proceeding will be stayed. Leave is reserved to the plaintiff to bring the matter back before the Court in the event that the High Court grants leave, the liquidators consent, or the plaintiff wishes to pursue an argument as to the interpretation of s 248(1)(c).

Christina Inglis
Judge

Judgment signed at 9am on 17 July 2013