

**IN THE EMPLOYMENT COURT  
AUCKLAND**

**[2013] NZEmpC 137  
ARC 47/13**

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

AND IN THE MATTER of applications for stay of proceedings and  
security for costs

BETWEEN HAMILTON TAXI SOCIETY LIMITED  
Plaintiff

AND MOHAMMED HASSAN  
Defendant

Hearing: On the papers filed on 17 and 18 July 2013

Representatives: Andrea Twaddle, counsel for applicant  
Defendant in person

Judgment: 18 July 2013

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**INTERLOCUTORY JUDGMENT OF JUDGE M E PERKINS**

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[1] The plaintiff in this matter is challenging a determination of the Employment Relations Authority dated 21 May 2013.<sup>1</sup> The plaintiff seeks a full hearing of the entire matter by way of hearing de novo. The defendant, Mohammed Hassan, was successful before the Authority and obtained financial remedies totalling \$16,245. Costs were reserved.

[2] The defendant, Mr Hassan, has apparently taken steps to enforce the awards and the plaintiff is now applying for stay of execution of the determination and also seeks an order for security for costs against Mr Hassan.

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<sup>1</sup> [2013] NZERA Auckland 205.

[3] The application for stay and for an order for security for costs was filed with the Court on 17 July 2013. I granted an interim stay of execution of the determination until 4 pm on 18 July 2013. This was to enable the defendant to respond to the application. I indicated that I was not aware of any basis upon which a plaintiff may obtain an order for security for costs against a defendant. The plaintiff relies upon r 5.45 of the High Court Rules but that rule does not provide for the making of an order for security for costs against a defendant.

[4] Mr Hassan has now filed a slightly informal document in answer to the application for stay of execution and I shall treat his document as a notice of opposition.

[5] The grounds of the application for stay put forward by the plaintiff are that if the stay is not granted, the plaintiff's right of appeal will be ineffectual. The plaintiff submits that the challenge is brought for good reasons and in good faith and that the defendant will not be affected injuriously by a stay. It is submitted that the questions of the case are important to the plaintiff and that the overall balance of convenience favours the plaintiff in granting the application. There is no effect on third parties.

[6] Mr Hassan, in his document which I am treating as a notice of opposition, makes the suggestion that the challenge has been lodged out of time. While the originals of the documents initiating the challenge were received by the Court on 25 June 2013, copies of the documents were lodged with the Registry of the Court by way of email on 18 June 2013. This appears to be the last day for filing of the challenge. It has, therefore, been filed within time.

[7] Mr Hassan indicates in his notice that he has indeed taken steps to enforce the determination of the Authority by way of procedures available in the District Court.

[8] The plaintiff, in the affidavit in support of the application for stay, sets forward an inferential basis upon which the challenge to the determination is made. That is not to say, of course, that the challenge will be successful. However, the Court can be reasonably satisfied that the challenge is not frivolous or vexatious. The usual practice adopted by the Court in such circumstances is that, if a stay of

execution is granted, it is on the condition that the party seeking the stay lodges the full amount of the monetary award of the Authority into an interest bearing account, being either that of the Court Registry or an independent bond holder.

[9] Upon the documents filed by the parties, it is appropriate in this case that a stay of execution of the determination be granted and an order is made accordingly. Such order granting a stay is on the condition that on or before 4 pm on Wednesday 24 July 2013, the plaintiff lodges with the Registrar of the Court the sum of \$16,245. That sum is to be placed by the Registrar on an interest bearing account pending further order of the Court. However, in the event that the challenge is withdrawn, that sum, together with the interest accrued, is to be paid immediately to the defendant.

[10] So far as the application for security for costs is concerned, that application is without proper basis and is dismissed.

ME Perkins  
Judge

Judgment signed at 5.15 pm on 19 July 2013