IN THE EMPLOYMENT COURT
AUCKLAND

[2013] NZEmpC 162
ARC 62/13

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER	of an application for stay
BETWEEN	SHABEENA SHAREEN NISHA (NISHA ALIM) Plaintiff
AND	LSG SKY CHEFS NEW ZEALAND LIMITED Defendant

Hearing: 28 August 2013
(heard at Auckland)

Appearances: Anthony Drake and Ben Nicholson, counsel for the plaintiff
Jo Douglas, counsel for the defendant

3 September 2013

INTERLOCUTORY JUDGMENT OF JUDGE A D FORD

Introduction

[1] There are some unusual features with the application before the Court. The case has its genesis in a personal grievance claim lodged by the plaintiff, Ms Nisha Alim, with the Employment Relations Authority (the Authority) on 27 March 2012. The Authority's investigation into the personal grievance is still ongoing. On 25 June 2013, the Authority issued preliminary findings of fact and invited the parties to advise whether they wished to call further evidence in response to those findings. On 5 July 2013, the plaintiff made an application to the Authority alleging apparent bias in its preliminary findings and requesting the Authority Member to recuse himself from continuing with the investigation. On 22 July 2013,

the Authority determined[1] the application for recusal, declining the application. The plaintiff then challenged that determination.

[2] The plaintiff's challenge, filed in this Court on 9 August 2013, seeks a hearing de novo. In a minute dated 13 August 2013, Chief Judge Colgan drew the attention of the parties to the fact that there is now a division of judicial opinion in this Court as to whether such a challenge, if it is about the "procedure" that the Authority has followed or intends to follow, is justiciable - see the recent judgments of the Court in *Morgan v Whanganui College Board of Trustees*[2] and *McConnell v Board of Trustees of Mount Roskill Grammar School*.[3] The Chief Judge indicated that, in the circumstances, this may be an appropriate case for the issue of justiciability to be heard by a full Court which would, in turn, be likely to delay the disposition of the challenge.

[3] No doubt in the knowledge that the hearing of Ms Alim's challenge by a full Court might still be some way off, the plaintiff made an urgent application on 15 August 2013 for a stay of proceedings before the Authority. That is the application presently before me. Counsel for the plaintiff, Mr Drake, stated in a supporting memorandum that it was appropriate for the application to be accorded urgency "as the Authority has imposed short and immediate timeframes under which it will complete its investigation."

The law relating to stay applications

[4] The principles relating to a stay application were considered by this Court in *Superior Motor Cycles Ltd v Patterson*[4] where Judge Couch repeated what he had earlier stated in *North Dunedin Holdings Ltd v Harris*,[5] relevantly:

> [5] The starting point must be s 180 of the Act [the Employment Relations Act 2000]:
>
> **180 Elections not to operate as stay**

[1] [2013] NZERA Auckland 312.
[2] [2013] NZEmpC 55.
[3] [2013] NZEmpC 150.
[4] [2012] NZEmpC 196 at [6].
[5] [2011] NZEmpC 118.

> The making of an election under section 179 does not operate as a stay of proceedings on the determination of the Authority unless the Court, or the Authority, so orders.
>
> [6] It is clear from this provision that the orders of the Authority remain in full effect unless and until the Court sets them aside. The defendants are entitled to enforce those orders unless a stay of proceedings is granted. ...
>
> [7] The discretion conferred by s 180 is not qualified by the statute but must be exercised judicially and according to principle. I note two key principles. There must be evidence before the Court justifying the exercise of the discretion. The overriding consideration in the exercise of the discretion must be the interests of justice.

[5] In *Assured Financial Peace Ltd v Pais*,[6] Chief Judge Colgan referred to reg 64 of the Employment Court Regulations 2000 (the Regulations) which is the provision granting power to the Authority and the Court to order a stay of proceedings. It provides:

> **64 Power to order stay of proceedings**
>
> (1) If an election is made under section 179 of the Act, the Authority and the court each have power to order a stay of proceedings under the determination to which the election relates.
>
> (2) If an application for a rehearing is made under clause 5 of Schedule 3 of the Act, the court has power to order a stay of proceedings under the decision or order to which the application relates.
>
> (3) An order under subclause (1) or subclause (2)—
>
> (a) may relate to the whole or part of a determination or decision or order, or to a particular form of execution; and
>
> (b) may be made subject to such conditions, including conditions as to the giving of security, as the Authority or the court thinks fit to impose.

[6] Adopting the guidelines taken from the judgment of the High Court in *Dymocks Franchise Systems (NSW) Pty Ltd v Bilgola Enterprises Ltd*,[7] Chief Judge Colgan set out the following seven considerations which may apply, to a greater or lesser extent, in the exercise of the Court's broad discretion in relation to a stay application, stressing that they are not a comprehensive list of relevant factors in the exercise:[8]

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[6] [2010] NZEmpC 50.

[7] (1999) 13 PRNZ 48 (HC) at [9]. The judgment of Hammond J was upheld on appeal in *Bilgoa Enterprises Ltd v Dymocks Franchise Systems (NSW) Pty Ltd* (1999) 13 PRNZ 48 (CA).

[8] At [5].

- If no stay is granted, whether the applicant's right of appeal will be ineffectual;
- whether the appeal is brought and prosecuted for good reasons, in good faith;
- whether the successful party at first instance will be affected injuriously by a stay;
- the effect on third parties;
- the novelty and importance of the questions involved in the case;
- the public interest in the proceedings; and
- the overall balance of convenience.

[7] At this interlocutory stage, I propose to say little about the background facts apart from what is necessary to give context to the application before the Court. I will endeavour to confine my observation to matters which do not appear to be in dispute. The Authority outlined the factual background in these terms:

> [8] Ms [Alim] became employed by LSG by statutory entitlement, under Part 6A of the Employment Relations Act 2000, to transfer to that employer from 23 February 2011. Until then she had been employed in the business of PRI Flight Catering Ltd (PRI) a company trading under the name Pacific Flight Catering (PFC), which I shall refer to as PRI-PFC. The object of the transfer was to protect and continue her employment in the work of providing food catering services after PRI-PFC had lost to LSG a contract to provide those services to Singapore Airlines. Ms Alim was one of 40 workers who transferred from PRI-PFC to LSG under Part 6A of the Act.

[8] In the statement of claim, the facts giving rise to the personal grievance are stated as follows:

> 6 Ms Alim elected to transfer her employment from PRI Flight Catering Limited ('PRI') to the defendant pursuant to Part 6A of the Employment Relations Act 2000 on 23 February 2011.
>
> 7 From 23 February 2011, the applicant's transfer terms and conditions were not recognised by the defendant, which became unjustified actions to her disadvantage. This resulted in the plaintiff resigning and raising a personal grievance for constructive dismissal.

[9] In para [10] of its preliminary findings of 25 June 2013, referred to in [1] above, the Authority made certain findings in relation to what it referred to as, "the major issue in the present case as to the pay rate Ms Alim had been entitled to under

her employment agreement with PRI-PFC immediately before her transfer." It stated:

> [10] The pay rate was increased by PFC/PRI from $15.96 per hour to $17.68. This occurred without prior notification to Ms Alim or discussion with her. On 23 May 2011 the rate was purportedly increased again, to $18.03 which is the rate for a Supervisor under the collective agreement. *The letter written on 23 May 2011 by Ms Gorgner about the increase (No.50 of the Bundle of Documents) is not reliable evidence as to the reason for the increase.*
>
> (Emphasis added)

[10] In the determination under challenge, the Authority, after quoting the above passage from para [10] of its preliminary findings, went on to state:

> [15] The last sentence of para.[10] is contended to indicate bias or prejudice against Ms Gorgner in relation to the current matter between Ms Alim and LSG. Ms Gorgner's letter of 23 May 2011 was produced to the Authority in a Bundle of Documents prepared by LSG. It reads:
>
> > Dear Nisha,
> >
> > We are writing to apologise for the mistake in calculation (sic) your hourly rate affected from 31.1.11.
> >
> > As per CEA your new rate was $18.03 per hour; however we paid you $17.68 per hour.
> >
> > We understand now that you are on a Kiwi Saver holiday and we mistakenly deducted the Kiwi Saver contribution from your hourly rate.
> >
> > To cover the difference for the period from 31.1.11 to 20.2.11 we will be making a payment of $34.38 into your account.
> >
> > Our apologies for the mistake and thank you for raising the issue with us.
> >
> > Please, do not hesitate to contact us if you have any further questions.
> >
> > Yours sincerely,
> >
> > Gerda Gorgner
> > Pacific Flight Catering
>
> [16] Para.[11] of my preliminary findings is also relevant in this regard;
>
> > [11] The pay rate was not altered by PFC/PRI to reflect the seniority of Ms Alim's position, or supervisory content of it. She had not been employed by PFC/PRI as a team leader or supervisor. The pay rate was not altered to correct a "mistake".

[11] Reference is made in the statement of claim to some historical comments made in other cases by the Authority Member in relation to PRI-PFC and Ms Gorgner but it is clear from the pleadings and from statements made by the Authority in its determination that the application made to the Authority Member to

recuse himself from the investigation on the grounds of apprehension of bias and predetermination was based on what he had stated in para [10] of his preliminary findings of fact about Ms Gorgner (see [9] above, in particular the highlighted sentence) without hearing from Ms Gorgner.

[12] In its determination, the Authority proceeded to consider the legal test of bias accepting the submission from Mr Drake, that the test is, based on the decision of the Supreme Court in *Saxmere Company Ltd v Wool Board Disestablishment Co Ltd*,[9] "whether a fair-minded lay observer might reasonably apprehend that the judicial officer might not bring an impartial and unprejudiced mind to the resolution of the question the judicial officer is required to decide." It then continued:

> [33] Mr Drake raised a further issue that the Authority should itself have called Ms Gorgner and questioned her about her 23 May 2011 letter ... It is correct that the Authority is an investigative body which has an obligation to investigate employment relationship problems, but it is also permitted to follow whatever procedure it considers appropriate. The Authority does not have unlimited time to investigate and before itself calling any witness may exercise discretion in deciding whether a witness may be able to assist in the investigation.
>
> ...
>
> [35] ... There seems to be no practical reason why PRI-PFC and Ms Gorgner could not have been presented as witnesses if they had been thought by Ms Alim or her counsel to be able to assist this investigation.

[13] In relation to its preliminary factual findings, the Authority stressed that its findings, "have been expressly 'preliminary' findings of fact and they were made with an invitation to the parties to provide further evidence if they wish". It then went on to conclude:

> [41] For the above reasons, I find there is no basis in principle arising from any of the grounds put forward for disqualifying or recusing myself from completing the investigation in this case. Ms Alim's request in that regard is declined.
>
> [42] I also decline to exercise any discretion I might have to step aside from this case of my own volition.

[14] The Court was told that the Authority subsequently issued directions requiring the plaintiff to file final submissions by 2 September 2013, the defendant

[9] [2010] 1 NZLR 35 (SC).

was given until 23 September 2013 in which to file submissions in response and the plaintiff was then to file submissions in reply by 26 September 2013.

[15] It is common knowledge that the Authority Member, Mr Alastair Dumbleton, who is Chief of the Authority, has announced his intention to retire as both Chief and a Member of the Authority. Counsel were unsure as to whether Mr Dumbleton's retirement date had yet been fixed but they understood that it will be either at the end of September 2013 or early October 2013.

Plaintiff's submissions

[16] Mr Drake first dealt with an issue that had been raised by the Chief Judge in one of his minutes, namely whether the Court had jurisdiction to entertain an application for a stay of proceedings in a case where the Authority has already considered and declined an application for a stay. Mr Drake submitted that the clear legislative intent of both s 180 of the Act and reg 64 of the Regulations is to confer jurisdiction to grant an order staying proceedings on both the Authority and the Court each and there was nothing inconsistent with applying to the Court for a stay in the event of such an application being rejected by the Authority. Counsel for the defendant, Ms Douglas, agreed with that submission and I accept that it does appear to be consistent with the relevant wording in both the Act and the Regulations.

[17] In a rather lengthy passage in his submissions, Mr Drake then dealt with the other jurisdictional issue that had been raised by the Chief Judge, referred to in [2] above. Counsel submitted that although the Court was not required to decide that matter in relation to the application for a stay, he wished to deal with the issue insofar as it may be a discretionary factor in determining whether the Court should grant a stay of proceedings. In short, the issue revolves around the effect of s 179(5) of the Act. Section 179(1) allows a party who is dissatisfied with a determination of the Authority to challenge that determination in the Court. Subsection 5 then provides:

> (5) Subsection (1) does not apply–

> (a) to a determination, or part of a determination, about the procedure that the Authority has followed, is following, or is intending to follow; and
>
> (b) without limiting paragraph (a), to a determination, or part of a determination, about whether the Authority may follow or adopt a particular procedure.

[18] Mr Drake accepted that it was clear that the subsection provided a bar to challenging procedural decisions of the Authority and he noted that the Court in the *Morgan* and *McConnell* cases had differed on the definition of procedure. In *McConnell*, as counsel expressed it:

> ... the Court held that the intention of the provisions was to limit the Court's intervention in the Authority to allow the proceedings to [be] dealt with in a timely and cost-effective manner. The Court considered that the availability of a challenge after the proceeding has been determined was sufficient to remedy any procedural issues that the parties may be dissatisfied with.

Mr Drake said that in *Morgan* the Court had adopted a more restrictive interpretation of procedure so as to "allow challenges where they [affect] the substantive rights of the parties involved."

[19] Mr Drake submitted that under the approach in either *Morgan* or *McConnell*, the Court has jurisdiction in the present case to consider the plaintiff's challenge because, "the issue of apparent judicial bias or predetermination is not an issue of procedure." In counsel's words, "the issue of apparent judicial bias or predetermination is fundamental to the concept of natural justice ... failure to comply with the principles of natural justice is more than a matter of procedure and is therefore not subject to s 179(5)".

[20] Turning to the discretionary factors referred to in [6] above, Mr Drake submitted that if no stay is granted and the Authority proceeds to make a final determination then the plaintiff's right of appeal will be ineffectual because, "the remedy sought by the plaintiff is to stop the particular decision maker, due to apparent bias or predetermination, from determining this matter." Mr Drake stressed the principle that justice must not only be done but must be seen to be done, and further submitted that the plaintiff's application was made in good faith and that the granting of a stay would not adversely affect the defendant. He also submitted that

the application involved novel and important questions including the Court's power to regulate the Authority "in respect of important issues like judicial bias or predetermination." Counsel further submitted that there was a high level of public interest in the proceedings, "because bias goes to the heart of public confidence in the judiciary, as all matters of bias do".

[21] Finally, in relation to the overall balance of convenience and the pending resignation of the Authority Member, Mr Drake submitted:

> 79 The current Authority timetable requires the final submissions in reply to be filed on 27 September 2013. The Authority Member has indicated his warrant runs out by October 2013. There is a real apprehension that there may be a miscarriage of justice if the Authority proceedings are rushed through in order to allow the Authority Member to deal with them before he leaves the Authority. The focus should be on the interests of justice for the parties, not the timetable of a departing Authority Member.

Defendant's submissions

[22] For the defendant, Ms Douglas submitted that a stay would prevent the parties completing the "last step" in the Authority investigation. Ms Douglas told the Court, and her statements were not challenged, that the Authority investigation was "99 per cent completed". She said that the investigation meetings had occupied one day in September 2012 and two subsequent days. In reference to the overall delay since the statement of problem was filed in March 2012, Ms Douglas submitted:

> 5. ... The matter has been protracted due to numerous interlocutory applications being filed by the applicant which have caused delay and additional cost to the defendant. This application is another unnecessary application which unduly prolongs the ERA's final determination being issued.

[23] One of the interlocutory applications Ms Douglas referred to in this regard was an application filed with the Court on 30 August 2012 pursuant to s 178 of the Act for special leave to have the matter removed from the Authority to the Court to hear and determine without the Authority investigating. At that stage the Authority

had set down an initial investigation meeting to hear the plaintiff's evidence on 3 September 2012. The application was unsuccessful.[10]

[24] Ms Douglas stated that "such applications are contrary to the spirit and intention of the purpose of the Employment Relations Authority's process". Ms Douglas referred to the role of the Authority as being able to carry out its investigations in an informal manner without intervention by the courts. Counsel made reference to s 143 of the Act which sets out the objects of Part 10 of the Act (Institutions) and subs (f) and (fa):

> **143 Object of this Part**
>
> The object of this Part is to establish procedures and institutions that–
>
> ...
>
> (f) recognise that judicial intervention at the lowest level needs to be that of a specialist decision-making body that is not inhibited by strict procedural requirements; and
>
> (fa) ensure that investigations by the specialist decision-making body are, generally, concluded before any higher court exercises its jurisdiction in relation to the investigations; ...

[25] Ms Douglas also referred to s 157(1) of the Act which defines the role of the Authority:

> **157 Role of Authority**
>
> (1) The Authority is an investigative body that has the role of resolving employment relationship problems by establishing the facts and making a determination according to the substantial merits of the case, without regard to technicalities.
>
> ...

[26] In relation to the criteria applicable to stay applications referred to in [6] above, Ms Douglas submitted that if a stay was not granted and the Authority Member proceeded to issue his final determination in the matter before his warrant expired, it would still be open to the plaintiff if she so wished to have her perceived concerns regarding bias considered afresh through a de novo challenge to the Authority's determination under s 179 of the Act. On the other hand, as counsel expressed it, "if a stay is granted the Defendant will be injuriously affected by this as

[10] See *Alim v LSG Sky Chefs New Zealand Ltd* [2012] NZEmpC 147.

it would inevitably result in further delay, increased costs and inconvenience to the Defendant."

[27] Ms Douglas strongly refuted the plaintiff's claim that her challenge and stay application were being pursued in good faith. Many of the factual matters counsel referred to in this part of her submissions were challenged by Mr Drake and, therefore, I will not repeat them but she did submit that the findings made by the Authority about the reliability of Ms Gorgner's letter (see [9] above) did not indicate bias. Ms Douglas said: "Ms Alim's counsel will have the opportunity to comment on the weight or importance of the letter during the course of final submissions which are yet to be filed."

[28] In terms of the novelty of the application and the balance of convenience, Ms Douglas submitted that even if the case could be said to be novel that did not "justify a stay which will have a prejudicial effect on [the] defendant, when it is submitted that the novelty of [the] claim is self-serving." Counsel concluded:

> 46. ... The overall justice, taking into account the significant problems with the challenge, favours the Court allowing the ERA to continue with its investigation and potentially issue its determination pending the consideration of the recusal challenge.

Discussion

[29] In most cases where a stay is sought in this jurisdiction, the applicant will be the unsuccessful party in proceedings before the Authority seeking a stay order in relation to remedies awarded in favour of the successful party, pending the hearing of an appeal to this Court either by way of challenge or judicial review. That is not the situation in the present case, however, and consequently the facts do not readily lend themselves to being categorised in terms of one or other of the seven relevant factors listed in [6] above. The overriding consideration in the exercise of my discretion, nevertheless, must be the interests of justice.

[30] In terms of the first factor identified, namely, whether a refusal to stay would defeat or prejudice the challenge, the plaintiff claims that if a stay was not granted her challenge would be ineffectual because the remedy she seeks is to stop the

Authority Member, "due to apparent bias or predetermination, from determining this matter." I agree with counsel for the defendant, however, that the grant of a stay is not going to render the plaintiff's challenge ineffectual. If a stay is not granted, it would not alter in any way the plaintiff's statutory right to seek judicial review or a challenge by way of hearing de novo so her appeal rights would not be rendered nugatory.

[31] On the other hand, I think that there is considerable force in Ms Douglas' submission that the defendant would be injuriously affected by the grant of a stay as it would result in further, perhaps even considerable, delay and increased costs. The challenge to Member Dumbleton's refusal to recuse himself could not be disposed of prior to his resignation at the end of September 2013. In turn, that would mean that a new Authority Member would need to be appointed to conduct the investigation, starting afresh, and that would inevitably involve attendant further costs and inconvenience to the defendant.

[32] I also accept the submission made by Ms Douglas that, given Member Dumbleton's pending imminent retirement, if a stay was granted at this stage, it would effectively give the plaintiff the same outcome as she seeks under the recusal application without the merits of her challenge having to be assessed. In other words, without going into the contentious factual matters raised by Ms Douglas as to the bona fides of the application, it is difficult to avoid the conclusion that the application for a stay is being pursued for tactical reasons rather than in good faith.

[33] To some extent in this case, the novelty, public interest and balance of convenience factors overlap. They can only be properly considered, in my view, by making some prima facie assessment of the merits of the plaintiff's allegations of bias and predetermination. Such assessment, in turn, is likely to have a bearing on the significance of the novelty and public interest factors and perhaps influence the balance of convenience considerations.

[34] In the *Saxmere* case, the Supreme Court confirmed[11] that the tests for apparent bias in the United Kingdom and Australia have become essentially the

[11] At [3].

same. The governing principle adopted in *Saxmere*, correctly recorded by the Authority in its determination (see [12] above), was taken from the leading judgment of the High Court of Australia in *Ebner v Official Trustee in Bankruptcy*.[12] In *Saxmere* the Supreme Court also referred to the High Court of Australia judgment in *Re JRL, ex parte CJL*.[13] Of particular relevance to the present case, in *Re JRL*, Mason J stated:[14]

> It needs to be said loudly and clearly that the ground of disqualification is a reasonable apprehension that the judicial officer will not decide the case impartially or without prejudice, rather than that he will decide the case adversely to one party. There may be many situations in which previous decisions of a judicial officer on issues of fact and law may generate an expectation that he is likely to decide issues in a particular case adversely to one of the parties. But this does not mean either that he will approach the issues in the case otherwise than with an impartial and unprejudiced mind in the sense in which that expression is used in the authorities or that his previous decisions provide an acceptable basis for inferring that there is a reasonable apprehension that he will approach the issues in this way. In cases of this kind, disqualification is only made out by showing that there is a reasonable apprehension of bias by reason of prejudgment and this must be "firmly established". ... Although it is important that justice must be seen to be done, it is equally important: that judicial officers discharge their duty to sit and do not, by acceding too readily to suggestions of appearance of bias, encourage parties to believe that by seeking the disqualification of a judge, they will have their case tried by someone thought to be more likely to decide the case in their favour.

[35] *Re JRL ex parte CJL* was also cited with approval by the English Court of Appeal in *Ansar v Lloyds TSB Bank plc*,[15] which was a case relating to the failure of the Chairman of an Employment Tribunal to recuse himself from a particular proceeding in the face of an allegation of bias and misconduct. The Court of Appeal endorsed the passage from Mason J's judgment quoted in [34] along with a number of other authoritative principles relating to bias.

[36] Against the background of those significant authorities, I do not consider that the allegations of apparent bias and predetermination in the present case can be said to be of such novelty and public interest so as to warrant the granting of a stay.

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[12] [2000] HCA 63, (2000) 205 CLR 337 (HC).
[13] [1986] HCA 39, (1986) 161 CLR 342 (HC).
[14] At 352.
[15] [2006] EWCA Civ 1462.

[37] In terms of the balance of convenience, the overriding considerations, in my view, are that the Authority Member has virtually concluded what has obviously been a complex and very lengthy investigation. The Authority Member is about to retire at the end of this month. If a stay is granted it will mean that, whether or not the plaintiff subsequently succeeds in her recusal application against Member Dumbleton, she will have achieved her objective because the investigation will need to commence again before another Authority Member. In other words, the plaintiff will have achieved through the stay the outcome she seeks through her substantive challenge without the challenge having been tested. Furthermore, not only will the defendant have suffered inconvenience and incurred considerable costs in respect of the aborted investigation to date, but it will be facing similar inconvenience and costs in respect of a new Authority investigation before some other Member. In my view, that would not be a just result.

[38] I have not found it necessary in the overall balancing exercise to deal with the jurisdictional issue raised by the Chief Judge (referred to in [2] above). The thrust of that issue is whether the plaintiff is precluded from proceeding with her challenge to the Authority's determination regarding bias on the grounds that it is a procedural matter given that s 179(5) of the Act precludes a challenge to any determination about the procedure the Authority has followed. Mr Drake submitted that allegations of apparent bias and predetermination raised questions of natural justice rather than those of a strictly procedural nature, but the principles of natural justice are specifically referred to in subs (1)(a) of s 173 of the Act which is headed "Procedure". Perhaps, more significantly, Mr Drake accepted that the usual remedy in respect of allegations of bias is judicial review, but s 184(1A) of the Act provides that there must be a "final determination" issued by the Authority before review proceedings are able to be commenced. That restriction would tend to support the contention that the object of the legislation is to preclude the intervention of the Court on natural justice matters, even bias, until the Authority has completed its investigation and issued a final determination in the matter.

Conclusions

[39] For the foregoing reasons, I decline the plaintiff's application for a stay.

[40] The defendant is entitled to costs in respect of the application. If they cannot be agreed to between the parties then Ms Douglas is to file submissions within 28 days and Mr Drake will have a like period of time in which to respond.

A D Ford
Judge

Judgment signed at 4.30 pm on 3 September 2013