

**IN THE EMPLOYMENT COURT  
AUCKLAND**

**[2013] NZEmpC 169  
ARC 65/13**

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

AND IN THE MATTER    of an application for stay of proceedings

BETWEEN                SUPER FINANCE LIMITED  
   Plaintiff

AND                        LINDA THOMPSON-FRIEND  
   Defendant

Hearing:                On the papers filed by defendant on 19 August and 3,  
   4 September 2013 and by plaintiff on 22, 26 and 27 August and  
   9 September 2013

Appearances:        Ms Andersen, representative for plaintiff  
   Ms Thompson-Friend, defendant

Judgment:            10 September 2013

---

**INTERLOCUTORY JUDGMENT OF JUDGE CHRISTINA INGLIS**

---

[1] The plaintiff has filed a de novo challenge to a determination of the Employment Relations Authority (the Authority).<sup>1</sup> Section 180 of the Employment Relations Act 2000 (the Act) provides that the making of an election under s 179 does not operate as a stay of proceedings unless the Court so orders. The plaintiff has applied for stay of execution of the monetary remedies ordered by the Authority. The application is opposed by the defendant.

[2] The parties have agreed that the Court may deal with the plaintiff's application on the papers.

---

<sup>1</sup> [2013] NZERA Auckland 304.

[3] The Court has a broad discretion in relation to applications for stay, which must be exercised judicially and according to principle. The overriding consideration is the interests of justice.<sup>2</sup>

[4] Mr Raza, the director of the plaintiff company, has sworn an affidavit identifying concerns about the defendant's "precarious" financial position and her ability to repay if the challenge (which he says is being pursued on a bona fide basis) succeeds. He suggests that the Authority Member overlooked certain material facts in reaching her determination that the defendant was a permanent full time employee and that she had been unjustifiably dismissed. Mr Raza confirms that the plaintiff is prepared to pay the amount in issue into Court pending the Court's determination of the challenge.

[5] The defendant opposes the application. She submits that the challenge is not a genuine one as the Authority heard all of the relevant evidence in the case and the parties were both questioned thoroughly by the Authority Member. She further says that a stay would have an adverse effect on her in that she would continue to suffer emotional stress due to the delay in bringing the proceedings to a conclusion. The defendant also raises a concern about whether the plaintiff's application for a stay was filed within 28 days.

[6] I accept that ongoing litigation can be stressful. I also accept that the Authority's determination appears, on its face, to be thorough and cogent. However, on a de novo challenge the Court will hear the evidence and make its own assessment as to the facts and the applicable law. The application for stay was filed together with the statement of claim, within the timeframe for bringing a challenge. It appears, based on the material before the Court, that the challenge is brought in good faith and that there are serious concerns about whether the defendant will be in a position to repay the amounts awarded by the Authority in the event the challenge succeeds.

---

<sup>2</sup> For a useful summary of the sort of factors that may be relevant see *Assured Financial Peace Ltd v Pais* [2010] NZEmpC 50 at [5].

[7] I am satisfied that it is in the overall interests of justice that an order for stay be made. There is accordingly an order that execution of the determination of the Authority between these parties is to be stayed upon condition that, within 7 days of the date of this order, the plaintiff pays to the Registrar of the Employment Court at Auckland the sum of \$9,650.25 to be held by the Registrar on interest bearing deposit and disbursed only by agreement in writing of both parties or by direction of the Employment Court.

[8] Costs are reserved.

[9] The Registrar should now set up a directions conference with a Judge so that the matter can be timetabled to a fixture.

Christina Inglis  
Judge

Judgment signed at 12 noon on 10 September 2013