

**IN THE EMPLOYMENT COURT
AUCKLAND**

**[2013] NZEmpC 185
ARC 5/13**

IN THE MATTER OF an application for stay of proceedings

BETWEEN KEVIN RUTAKEWHENUA ROGERS
 Plaintiff

AND BRIAN WILLIS
 Defendant

Hearing: On the papers filed by the defendant on 23 August 2013 and the
 plaintiff on 11 September 2013

Appearances: Gregory Bennett, advocate for plaintiff
 Elliot Hudson and Wende Bennetti, counsel for defendant

Judgment: 30 September 2013

INTERLOCUTORY JUDGMENT OF JUDGE M E PERKINS

[1] This matter involves a challenge against a determination of the Employment Relations Authority dated 24 January 2013.¹ Subsequent to the determination there was a further costs determination of the Authority dated 28 February 2013.² That costs determination is not subject to any challenge.

[2] The defendant filed an application against the plaintiff for an order for security for costs. That was opposed by the plaintiff and at a telephone directions conference on 14 May 2013, I gave a direction that the application for an order for security for costs was to be allocated a one hour fixture. In addition on that day I also set timetabling directions so that, assuming the issue of security for costs was satisfactorily dealt with, the substantive proceedings could be allocated a hearing date.

¹ [2013] NZERA Auckland 25.

² [2013] NZERA Auckland 71.

[3] Before the application for an order for security for costs could be heard, the parties reached agreement on that issue. A consent order requiring the plaintiff to pay the sum of \$5,500 to the Court on or before 24 June 2013 as security for costs was made.

[4] The plaintiff has not made payment of the security for costs as required. The defendant has now applied for an order staying the proceedings until such time as the security for costs is paid into Court as ordered.

[5] The plaintiff has filed a notice of opposition to the application for an order staying the proceedings accompanied by an unsworn affidavit in support. The notice of opposition and the unsworn affidavit contain matters, which appear to be an attempt to relitigate the earlier application for an order for security for costs upon which the consent orders were made.

[6] Even though the registry staff have indicated to the advocate for the plaintiff that the affidavit in support of the opposition would need to be sworn, no further steps have been taken by the plaintiff to do so. In the circumstances the defendant asks that the application for stay be considered.

[7] It is not appropriate at this stage for the plaintiff to endeavour to relitigate the issue for security for costs when he in fact consented to the order being made. There is no application filed seeking to set aside the consent order and it would seem unlikely in any event that such an application would be successful.

[8] The plaintiff is required to comply with the order for security for costs. In view of his failure to do so and in view of the time, which has now transpired since the order was made, it is appropriate that there be a stay of the proceedings. Accordingly, the proceedings by the plaintiff are stayed until such time as he makes payment into Court of the sum he agreed to pay by way of security for costs.

M E Perkins
Judge

Judgment signed at 12.30pm on 30 September 2013