

**IN THE EMPLOYMENT COURT
WELLINGTON**

**[2013] NZEmpC 187
WRC 21/13**

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

AND IN THE MATTER of an application for a stay of proceedings,
an application for urgency

BETWEEN MAS ZENGRANGE (NZ) LIMITED
Plaintiff

AND HDT LIMITED
First Defendant

AND MARK RALPH CLIFFORD
Second Defendant

AND IAN CHRISTOPHER GARNETT
Third Defendant

AND JOHN EMERY SULE
Fourth Defendant

Hearing: (by memorandum filed on 8 October 2013)

Counsel: Charles McGuinness, counsel for the plaintiff
Susan Hornsby-Geluk, counsel for the first, second, third and
fourth defendants

Judgment: 9 October 2013

INTERLOCUTORY JUDGMENT OF JUDGE A D FORD

[1] In a statement of claim dated 4 October 2013 the plaintiff elected to challenge by way of de novo hearing the whole of a determination¹ of the Employment Relations Authority dated 23 September 2013. The “determination” in question is intitled “Direction of the Authority”. It orders the plaintiff to provide the Authority with certain documents, either by way of affidavit, or by appearing at an

¹ [2013] NZERA Wellington 113.

investigation meeting scheduled for 14 October 2013 with the documents in question.

[2] On the same date, the plaintiff filed an application for a stay of proceedings on the basis that the Authority's determination "goes beyond its jurisdiction, misapplies the law and is a breach of natural justice." The plaintiff claims, in effect, that the determination is a general requirement for discovery of documents and, as such, it exceeds the jurisdiction of the Authority. The application was accompanied by a request for urgency.

[3] The grounds for seeking the stay are that unless the determination is stayed prior to 11 October 2013, the practical benefit of the plaintiff's challenge will be lost.

[4] Responsibly, counsel for the defendants' promptly filed a memorandum in response consenting to the application for a stay subject to certain conditions. Counsel for the plaintiff subsequently confirmed through the Registrar that the conditions were acceptable.

[5] Accordingly, the following orders are made by consent:

- (a) A stay is granted in relation to the enforcement of the Directions of the Authority dated 23 September 2013 until further order of the Court.
- (b) The plaintiff undertakes to expeditiously prosecute the challenge and accept the earliest available fixture date from the Court.
- (c) Should the plaintiff be unsuccessful in its challenge and then seek leave to appeal to the Court of Appeal, or should the plaintiff fail to expeditiously prosecute its appeal with all due diligence, then the defendants' consent to the stay will lapse and the defendants reserve the right to oppose the continuation of the stay.

[6] Costs are reserved.

A D Ford
Judge

Judgment signed at 11.45 am on 9 October 2013