

**IN THE EMPLOYMENT COURT
AUCKLAND**

**[2013] NZEmpC 193
ARC 53/13**

IN THE MATTER OF an application for stay of execution

BETWEEN RAINBOW FALLS ORGANIC FARM
 LIMITED
 Plaintiff

AND ALAN ROCKELL
 Defendant

Hearing: By telephone conference on 18 October 2013

Appearances: Richard Mark, counsel for plaintiff
 Bryce Quarrie, counsel for defendant

Judgment: 18 October 2013

INTERLOCUTORY JUDGMENT OF JUDGE CHRISTINA INGLIS

[1] The plaintiff applies for a stay of execution of the determination of the Employment Relations Authority (the Authority),¹ awarding monetary remedies in the defendant's favour, pending resolution of its challenge in this Court.

[2] The Authority issued its determination on 11 June 2013. Initially the Authority awarded the sum of \$5,557.27 by way of wage arrears. The Authority subsequently recalled its determination and re-issued it, awarding wage arrears of \$42,793.12. Costs were subsequently awarded in the defendant's favour in a costs determination dated 4 September 2013.²

[3] The sums due under the Authority's substantive and costs determinations have not been paid to the defendant.

¹ [2013] NZERA Auckland 242.

² [2013] NZERA Auckland 395.

[4] The Authority's determination has been challenged by the plaintiff on a non de novo basis. There are two limbs to the challenge, relating to:

- The conclusion that the defendant worked the days said to have been worked;
- The dismissal of the plaintiff's claim that the defendant had breached his contractual obligations, resulting in significant loss and damage.

[5] It is common ground that a challenge does not operate as a stay of proceedings on the determination of the Authority unless the Court so orders.³ The defendant opposes the plaintiff's application, and seeks an order that the amounts owing to it under the Authority's determinations be paid into Court on an interest bearing account.

[6] The plaintiff's challenge was filed on 9 July 2013. It appears that no steps were taken to enforce payment of the Authority's determination until 9 September 2013. Mr McKenzie, the director of the plaintiff company, says in his affidavit filed in support of the application that he understood that there was an agreement that the determination would not be enforced until the challenge had been determined. He says that if he had appreciated that Mr Rockell would not wait, he would have instructed his lawyer to seek a stay at an earlier date.

[7] In its determination the Authority stated that there had been no dispute about the days that the defendant actually worked. Mr McKenzie takes issue with this and says that the wage arrears claim was vigorously disputed during the course of the Authority's investigation, including by way of challenging the defendant's evidence as to the days he worked. Mr McKenzie says that the company's claim that Mr Rockell caused significant loss far in excess of the wage arrears awarded by the Authority is strong and that he fully expects to pursue the company's challenge to a successful conclusion.

³ Employment Relations Act 2000, s 180.

[8] While I accept that some legal issues will (as Mr Mark, counsel for the plaintiff, suggested) arise on the challenge, much will turn on the resolution of contested facts. The strength of the plaintiff's case accordingly remains difficult, if not impossible, to assess at this stage.

[9] The plaintiff expressed concerns about its ability to recover from the defendant in the event it succeeds on its challenge. The basis for such concerns remained opaque.

[10] Counsel for the plaintiff submitted that a stay was necessary because of cash-flow difficulties that the company has been suffering from following Mr Rockell's departure. While counsel for the defendant, Mr Quarrie, raised concerns about the ability of the company to meet its obligations if it fails in its challenge, it is apparent from Mr McKenzie's affidavit that it has substantial equity in the farm and that the company's financial position is improving.

[11] As Mr Quarrie submits, the defendant is entitled to be secure in the knowledge that the plaintiff can meet the substantial awards against it if it fails in its challenge. It is submitted that such comfort can be gained from a payment into Court. Mr Mark confirmed that the plaintiff would be prepared to pay a sum into Court, suggesting an amount commensurate with the Authority's determination prior to its reissue and its costs award. Mr Quarrie suggested that the full amount of the orders made against the plaintiff in the Authority would be appropriate.

[12] I am satisfied that it is in the overall interests of justice that a stay be granted on condition. In the circumstances, and having regard to the respective interests of the parties, I make an order that execution of the determinations of the Authority between the parties is to be stayed on condition that, within 14 days of the date of this order, the plaintiff pays to the Registrar of the Employment Court at Auckland the sum of \$20,000, to be held on interest bearing deposit by the Registrar and disbursed only by agreement in writing of both parties or by direction of the Court.

Scope of the hearing

[13] As I have said, the plaintiff's challenge is being pursued on a non de novo basis. No challenge is mounted in relation to the Authority's determination that the defendant was unjustifiably dismissed, and no cross challenge has been filed in respect of the finding that any relief was to be reduced by 100 per cent for the defendant's contributory conduct. The focus of the challenge is accordingly on the findings relating to wage arrears and the breach of contract claim. The evidence given at the hearing is to be confined to these two issues.

[14] Costs are reserved.

Christina Inglis
Judge

Judgment signed at 2.30 pm on 18 October 2013