

**IN THE EMPLOYMENT COURT
AUCKLAND**

**AC 5/09
ARC 18/08**

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	an application to dismiss proceeding for want of prosecution
BETWEEN	PAUL EDWARD ROEBECK First Plaintiff
AND	DAVID JOHN PAKIETO Second Plaintiff
AND	BRADFORD TRUST LIMITED Defendant

Hearing: by application filed on 3 February and affidavit filed on 23 February
2009

Judgment: 4 March 2009

JUDGMENT OF CHIEF JUDGE GL COLGAN

[1] In a judgment delivered on 30 May 2008 I stayed execution of the orders of the Employment Relations Authority, pending delivery of the Court's judgment on the challenge to the Authority's determination, on the following conditions.

[2] The plaintiffs had 30 days to give security for, or to pay to the Registrar of the Employment Court at Auckland, the sum of \$164,000 plus interest at the rate of 8 percent per annum from 26 February 2008 to the date of payment in, or of other provision of security.

[3] Each of the plaintiffs was also to pay to the Registrar the sum of \$5,000, to be held on interest bearing deposit. A further condition of the stay was that the plaintiffs were to prosecute expeditiously their challenge. At paragraph [20] of that

judgment I concluded: *“If these conditions are not fulfilled or lapse, the order for stay will either not crystallise or will terminate.”*

[4] Leave was reserved to any party to apply on reasonable notice for further orders or directions but no such application was made by the plaintiffs. I allowed the defendant costs on the stay application of \$1,500.

[5] Subsequently, in a second interlocutory judgment delivered on 21 July 2008, I gave directions as to the nature and extent of the challenge following receipt by the Court of a report from the Employment Relations Authority under s181 of the Employment Relations Act 2000. I allowed the defendant costs on that exercise but directed that the amount of these costs would be determined when the case was decided finally.

[6] The defendant has now applied to the Court to dismiss the plaintiff's challenge on the grounds that they have failed to prosecute their challenge expeditiously and that it is just in all the circumstances to dismiss their case.

[7] I am satisfied that the defendant's present application has been served on the plaintiffs and that they have taken no steps to oppose it.

[8] I agree that continuation of the challenge will be an abuse of process, that the plaintiffs have failed without explanation to prosecute their challenge, and that it is just in all the circumstances to now formally dismiss it as I do. Accordingly, I also revoke the order for stay made conditionally on 30 May 2008.

[9] The defendant may now supply by memorandum details of the costs it seeks against the plaintiffs which issue I will then determine without further reference to the plaintiffs because they have failed to participate in their proceedings.

GL Colgan
Chief Judge

Judgment signed at 11.30 am on Wednesday 4 March 2009

