

**IN THE EMPLOYMENT COURT OF NEW ZEALAND
AUCKLAND**

**I TE KŌTI TAKE MAHI O AOTEAROA
TĀMAKI MAKĀURAU**

**[2019] NZEmpC 124
EMPC 130/2019**

IN THE MATTER OF challenges to determinations of the
Employment Relations Authority

AND IN THE MATTER OF interlocutory applications

BETWEEN AHMED ALKAZAZ
Plaintiff

AND ASPARONA LIMITED
First Defendant

AND DELOITTE LIMITED
Second Defendant

AND DELOITTEASPARONA LIMITED
Third Defendant

Hearing: On the papers

Appearances: A Alkazaz, plaintiff in person
G Service and J Hardacre, counsel for defendants

Judgment: 9 September 2019

**INTERLOCUTORY JUDGMENT OF JUDGE M E PERKINS
(Application for stay of execution of costs determination,
description of parties and disclosure of documents)**

[1] These proceedings involve challenges to determinations of the Employment Relations Authority (the Authority) dated 11 April 2019¹ and 2 August 2019.² The second determination imposed an order for costs on the plaintiff, Mr Alkazaz. He was

¹ *Alkazaz v Asparona Ltd* [2019] NZERA 215.

² *Alkazaz v DeloitteAsparona Ltd* [2019] NZERA 456.

ordered to pay costs to the third defendant, DeloitteAsparona Limited, in the sum of \$4,500.

[2] So far as the challenges to the determinations are concerned, a hearing date has been allocated by the Court for four days commencing on 3 December 2019. When the challenges were set down for hearing, Mr Alkazaz, who is representing himself in the proceeding, indicated that there were no outstanding interlocutory matters. Counsel for the defendants indicated that an application for security for costs was pending. Such an application has now been filed and will be dealt with in due course, once documents in answer and reply are received.

[3] Following the allocation of a hearing date, Mr Alkazaz has now filed an application for stay of proceedings. This is really an application for stay of execution of the costs award against him pending the hearing of his substantive challenges. In the application, which is dated 26 August 2019, and emailed to the Court on that date, Mr Alkazaz also includes a somewhat obscure application, which appears to relate to the identity of the proper defendant in the proceedings. By implication, this may relate to an issue as to who of the three defendants was Mr Alkazaz's employer, but it is not exactly clear whether that is an issue that arises.

[4] Mr Alkazaz has also filed a further application, which he has called an application for leave. This was also dated and emailed to the Court on 26 August 2019. The second application appears to have been filed because the substantive proceedings were set down for hearing following a telephone directions conference dated 1 July 2019, and therefore leave would now be required for the filing of any further interlocutory applications after that date.

[5] In the second application, Mr Alkazaz seeks leave to apply for a stay of execution of the costs determination, that the correct naming of the defendants be dealt with as an interlocutory matter and that an issue relating to disclosure of documents also be dealt with as an interlocutory matter. Any issue as to disclosure of documents was not raised in the first application filed.

[6] The defendants have filed a notice of opposition to the application for stay of execution of the costs order in the Authority. This notice of opposition is supported by an affidavit sworn and filed on 5 September 2019 by Selena Jean Skilton, who is General Counsel for Deloitte New Zealand partnership. She states in the affidavit that Deloitte New Zealand partnership is ultimately the owner of Deloitte (I think she means Deloitte Limited), DeloitteAsparona Limited and Asparona Limited. She therefore states that she is authorised to swear the affidavit on behalf of the defendants.

[7] In a memorandum of counsel for the defendants also dated 5 September 2019, Ms Service and Ms Hardacre have helpfully dealt with the three matters now raised by Mr Alkazaz in his applications and which are the subject of this judgment. They also deal with the application for security for costs filed by the defendants. That matter needs to be deferred at this stage until all procedural requirements are completed.

[8] In respect of the three applications made by Mr Alkazaz, counsel for the defendants indicate, in respect of the application for stay of execution of the costs determination, that the opposition will be withdrawn if Mr Alkazaz agrees, as he previously indicated he would, to make payment of the costs award to the Court. This would then be held in an interest-bearing account pending resolution of the substantive challenges. That payment would be held pending further order of the Court.

[9] In respect of the second of the applications made by Mr Alkazaz, relating to the identity of the defendants, counsel for the defendants indicated that this is a matter which would need to be resolved at the substantive hearings once evidence is presented and tested.

[10] In respect of the third application, relating to the disclosure of documents, counsel for the defendants have indicated that they would not be opposing that application. They indicate that the defendants are collating all relevant documents, and they will be provided to Mr Alkazaz. They emphasised appropriately that it was only relevant documents that are required to be disclosed.

[11] Following the filing of the defendants' notice of opposition, supporting affidavit and memorandum of counsel on 5 September 2019, I issued a minute to the parties on the same date. So far as the application for stay of execution was concerned, I indicated in the minute that, if Mr Alkazaz remains agreeable to making the payment into Court as a condition for grant of stay, then he should indicate that urgently to the Registrar of the Court, and an order would be made accordingly. I indicated that any stay granted would be conditional upon the payment into Court being made within a matter of days from the order.

[12] So far as the issue relating to the identity of the defendant is concerned, I indicated in the minute that I agreed with the submission of counsel for the defendants on that matter that it is an issue which will be dealt with at the substantive hearing. It is not an issue which can be appropriately dealt with by way of an interlocutory application.

[13] Finally, so far as the issue of disclosure of documents is concerned, I indicated that no further orders are presently necessary in view of the steps now being taken by the defendants and their agreement to provide Mr Alkazaz with any documents that they are required to disclose, and which are relevant to the proceedings. However, if any issues do arise, then I reserved leave to the parties to apply to the Court on notice for directions.

[14] Since receiving the minute, Mr Alkazaz has advised the Court Registry by email as follows:

I acknowledge receipt of this minute and I also confirm that I'm willing to make the payment in to Court in accordance with paragraph [6].

[15] Mr Alkazaz's reference to paragraph [6] relates to paragraph [6] of the minute dated 5 September 2019. In view of the agreement of Mr Alkazaz, there will now be an order staying execution of the Authority's determination on costs against Mr Alkazaz dated 2 August 2019 pending hearing of the substantive challenges. The order for stay will lapse unless Mr Alkazaz pays the sum of \$4,500 to the Registrar of the Employment Court at Auckland on or before 4 pm on 13 September 2019. Such

payment when made by Mr Alkazaz is to be held by the Registrar in an interest-bearing account pending further order of the Court.

[16] So that it is clear, the payment into Court of the costs award must be on the condition that the Court will ultimately be entitled to direct disbursement of those funds in a way consistent with the eventual outcome of his challenges.

[17] So far as the issue relating to the naming of defendants is concerned, as I agree with the submission of counsel for the defendants that that is a matter which needs to be dealt with at the hearing of the substantive challenges, that part of Mr Alkazaz's application is dismissed.

[18] The issue relating to disclosure of documents can simply be adjourned at this stage. Leave is reserved for the parties to apply on notice for the issue of disclosure to be considered if dispute arises.

[19] Costs in respect of the matters dealt with in this judgment are reserved.

M E Perkins
Judge

Judgment signed at 10.30 am on 9 September 2019