

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

**I TE KŌTI TAKE MAHI O AOTEAROA
ŌTAUTAHI**

**[2019] NZEmpC 56
EMPC 94/2019**

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

AND IN THE MATTER OF an application for stay of proceedings

BETWEEN MURRAY BOYD
 Plaintiff

AND HELEN BLANCHARD
 Defendant

Hearing: On the papers

Appearances: M Hardy-Jones, counsel for plaintiff
 D Beck, counsel for defendant

Judgment: 13 May 2019

**INTERLOCUTORY JUDGMENT OF CHIEF JUDGE CHRISTINA INGLIS
(Application for stay of proceedings)**

[1] The plaintiff has filed a challenge to a determination of the Employment Relations Authority, together with an application for a stay of execution of the orders the Authority made against him.¹ The defendant has filed a notice of opposition but advises that she is content to leave the matter in the Court's hands.

[2] The Employment Court may order a stay under reg 64 of the Employment Court Regulations 2000. Absent a stay, the Authority's determination may be enforced against the plaintiff.² In deciding whether to grant a stay, a range of factors may be

¹ *Blanchard v Boyd* [2019] NZERA 122.

² Employment Relations Act 2000, s 180.

relevant, including whether the applicant's right of challenge will be rendered ineffectual if no stay is granted; whether the challenge is brought and pursued in good faith; the extent to which a stay would impact on third parties; the novelty and/or importance of the question involved; whether the successful party will be injured or prejudiced by a stay; the balance of convenience; and the public interest in the proceedings. The overarching consideration is the interests of justice.³

[3] The application in this case is primarily focussed on the claimed financial circumstances of the defendant. Mr Boyd expresses concern that, if he is required to pay the awards made against him, the impact on his business will be significant if he is not otherwise able to recover the money against the defendant, although no detail is provided as to why this might be so. Mr Boyd has indicated that he could pay the money ordered by the Authority into Court but that it would not be easy.

[4] There is no evidence supporting the contention that Ms Blanchard's present financial position is such that a stay might otherwise be warranted. Mr Boyd's recollection of comments (which themselves appear vague) that Ms Blanchard was said to have made to him while she was employed do not assist. Further, Mr Boyd confirms his understanding that Ms Blanchard has secured alternative employment since her departure.

[5] Mr Boyd expresses a strong view as to the merits of his challenge. The challenge is being heard on a de novo basis, centring on the claim that Ms Blanchard was unjustifiably constructively dismissed. Much will depend on the way in which the facts come out at hearing. Seeking to quantify the prospects of success at this stage, and in the context of these proceedings, does not assist in determining whether the application for a stay ought to be granted.

[6] There is a need to consider the defendant's interests. I do not accept Mr Boyd's suggestion that, because there have been delays to date (the defendant's departure occurred in February 2018; the Authority's investigation took place in November 2018; the determination was issued in March 2019), any further delay will be insignificant and the potential prejudice to the defendant in granting a stay is minimal. The court process,

³ *Assured Financial Peace Ltd v Pais* [2010] NZEmpC 50 at [4]-[5].

which Mr Boyd has initiated (as he is entitled to do) will take some time. There is a further point. If Mr Boyd's financial position is strained, as it appears it may be, granting the orders sought by him may prejudice Ms Blanchard's ability to recover the Authority's awards in the event that the challenge fails.

[7] As I have said, the thrust of the application was based on financial impact and the prejudice that would likely be suffered if no stay was granted and the challenge ultimately succeeded. I am not prepared to make the orders sought on the basis of the material before the Court. For completeness I have considered the reference in Mr Boyd's affidavit to the fact that he would reluctantly be prepared to make a payment into court if a stay was granted. I am not, however, minded to do so. That is because I am not satisfied that a stay, conditional or otherwise, is appropriate in the circumstances and balancing the broader interests of justice.

[8] The application for a stay is accordingly declined.

[9] Ms Blanchard is entitled to a contribution to costs on this application which, given the limited steps that were taken to respond to the application, are likely to be modest. If costs cannot be agreed, I will receive memoranda within 15 working days.

Christina Inglis
Chief Judge

Judgment signed at 3.35 pm on 13 May 2019