

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

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

**[2020] NZEmpC 18
EMPC 182/2019**

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
BETWEEN	KENNY OMEN LIMITED Plaintiff
AND	MAHABIR SINGH Defendant

Hearing: On the papers

Appearances: P Vlastic, liquidator by memorandum

Judgment: 2 March 2020

STAY JUDGMENT OF JUDGE K G SMITH

[1] On 11 June 2019, Kenny Omen Ltd filed a proceeding seeking to set aside the Employment Relations Authority's determination in favour of Mahabir Singh, which held that he was entitled to a substantial sum for unpaid wages and holiday pay.¹

[2] The statement of claim made an election to challenge the whole determination.²

[3] This challenge has not progressed very far since being filed, because the plaintiff has failed to satisfy the Court that it has served the proceeding on the defendant in a way complying with the Employment Court Regulations 2000.³

¹ *Singh v Kenny Omen Ltd formerly known as Punjabi Dhaba Ltd* [2019] NZERA 286.

² Pursuant to Employment Relations Act 2000, s 179(2).

³ Employment Court Regulations 2000, reg 28.

[4] On 7 February 2020 a telephone directions conference was conducted, the subject of which was the Court's concerns about compliance with the Regulations. The company was represented at that conference by one of its directors, Hardeep Singh.

[5] After that conference it came to the Court's attention for the first time that the plaintiff was placed in liquidation on 13 June 2019 and remains in liquidation. That information was not disclosed by Mr Singh in the telephone conference in February 2020.

[6] As a result of this new information a minute was sent to the liquidators, and Mr Singh, seeking confirmation that the company was in liquidation and to ascertain the intention of the liquidators in relation to the proceeding.

[7] The liquidators have responded confirming that the company remains in liquidation and that they do not consent to the litigation continuing, but they stopped short of withdrawing the proceeding.⁴

[8] Clearly the proceeding cannot continue given the liquidators' response and the most appropriate course is for the proceeding to be stayed. I order accordingly.

K G Smith
Judge

Judgment signed at 9.30 am on 2 March 2020

⁴ See Companies Act 1993, ss 248(1)(b)–(c) and 269.