

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

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

**[2020] NZEmpC 186  
EMPC 397/2019**

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

AND IN THE MATTER OF an application for stay of execution

BETWEEN AHMED ALKAZAZ  
Plaintiff

AND ENTERPRISE IT LIMITED  
Defendant

Hearing: On the papers

Appearances: Plaintiff in person  
R Bryant, counsel for defendant

Judgment: 9 November 2020

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**INTERLOCUTORY JUDGMENT (NO 6)  
OF CHIEF JUDGE CHRISTINA INGLIS  
(Application for stay of execution)**

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[1] This judgment deals with an interlocutory application for a stay of execution of a costs determination, pending the outcome of a challenge to the Court. The defendant opposes the application. The parties agreed that the application could be dealt with on the papers.

[2] The Court has a broad discretionary power to order a stay and may do so subject to conditions.<sup>1</sup> The factors that may be relevant to the exercise of the discretion are well established.<sup>2</sup>

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<sup>1</sup> Employment Court Regulations 2000, reg 64.

<sup>2</sup> See *ESKA Ltd v Beloous* [2019] NZEmpC 14 at [9]; *Assured Financial Peace Ltd v Pais* [2010]

[3] The current application is made against the following backdrop. The plaintiff challenged a determination of the Employment Relations Authority declining to reopen an investigation into a grievance he had brought against the company. The company sought, and obtained, an order for security for costs on the challenge. The plaintiff lives overseas. The plaintiff complied with the order and paid the sum of \$24,000 into Court. The plaintiff's substantive challenge was dismissed, for reasons set out in my judgment of 22 October 2020.<sup>3</sup> The plaintiff had also sought to challenge the Authority's costs determination, ordering him to make a contribution of \$7,000 to the company's costs in that forum.<sup>4</sup> The costs challenge has yet to be dealt with in the Court. The plaintiff applies for a stay of execution pending the outcome of the challenge.

[4] The plaintiff submits that in the particular circumstances it would be just to stay execution of the Authority's costs determination. The defendant's opposition is effectively two-fold. It says that it should be entitled to enjoy the fruits of its success in the Authority and it has concerns that it will not be able to recover costs if the plaintiff's challenge fails, including because the plaintiff lives overseas. It submits that, if the Court is inclined to grant a stay, it ought to be on condition that the plaintiff pay the amount ordered by the Authority into Court.

[5] I accept that the costs challenge is brought in good faith. While it is true, as the plaintiff says, that security for costs have been paid, that sum is directed at costs on the plaintiff's substantive challenge. I do not think that it can confidently be said that the sum will suffice to meet any costs liability once costs have been determined following the costs challenge, even in the event that the costs challenge succeeds. The defendant is entitled to be protected from the risk of non-payment. It seems to me that both parties' interests can most appropriately be dealt with by the grant of a stay on conditions. That will preserve the position insofar as the plaintiff is concerned and will address the issues of potential prejudice raised on behalf of the company.

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NZEmpC 50 at [5].

<sup>3</sup> *AlKazaz v Enterprise IT Ltd* [2020] NZEmpC 171.

<sup>4</sup> *AlKazaz v Enterprise IT Ltd* [2020] NZERA 332.

[6] There will be an order staying execution of the Authority's costs determination on the following conditions:

- (a) Within 14 days from the date of this judgment, the plaintiff will deposit the sum ordered to be paid by the Authority by way of contribution to costs (namely \$7,000) into the Employment Court;
- (b) The amount referred to in [6](a) is to be held by the Registrar in an interest-bearing account and will be paid out, with interest, on further order of the Court or on receipt by the Court of a joint memorandum signed by both parties;
- (c) If the amount referred to in [6](a) is not paid into Court within the 14 days allowed, the order staying execution lapses;
- (d) The challenge is to be pursued diligently.

[7] Costs on this application are reserved.

Christina Inglis  
Chief Judge

Judgment signed at 3:50pm on 9 November 2020