

**ATTENTION IS DRAWN TO THE CURRENT ORDERS FOR
NON-PUBLICATION OF PARTIES' NAMES**

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

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

**[2020] NZEmpC 205
EMPC 84/2019
EMPC 24/2020
EMPC 25/2020
EMPC 26/2020
EMPC 27/2020
EMPC 28/2020**

IN THE MATTER OF	challenges to determinations of the Employment Relations Authority
AND IN THE MATTER OF	applications for leave to extend time to file challenges to determinations of the Employment Relations Authority
AND IN THE MATTER OF	an application for stay of proceedings
BETWEEN	H First Plaintiff
AND	C Second Plaintiff
AND	RPW Defendant

Hearing: On the papers

Appearances: C Sawyer, counsel for plaintiffs
S Hood, counsel for defendant

Judgment: 24 November 2020

**INTERLOCUTORY JUDGMENT OF JUDGE M E PERKINS
(Application for stay of proceedings)**

[1] On 4 September 2020, I issued a judgment¹ dismissing challenges by H and C to two determinations of the Employment Relations Authority.² The determinations of the Authority were dated 5 March 2019 and 21 June 2019 respectively. The determinations had quantified penalties and costs awarded against the plaintiffs. The judgment of 4 September 2020 apportioned penalties between the defendant and the Crown.

[2] On 13 November 2020 I issued a judgment on costs, awarding costs against H and C in respect of the unsuccessful challenges.³

[3] The plaintiffs have applied to the Court of Appeal to judicially review the Employment Court judgments already referred to.

[4] On 24 September 2020, the plaintiff applied to the Employment Court for a stay of the proceedings. An application in support from the first plaintiff, sworn on 14 October 2020, was filed. The defendant has filed a notice of opposition to the application for stay.

[5] While it does not specifically say so, the application must in fact be an application for stay of enforcement of the monetary awards now outstanding against the plaintiffs. This would also include the costs awarded on 13 November 2020. There are no other outstanding matters against which an order for stay could apply.

[6] Submissions have now been received from counsel in respect of the application for stay. Timetabling had been set for the filing of submissions. Under that timetabling, the plaintiffs were given until 4 pm on 13 November 2020 to file any submissions in reply. No submissions in reply have been received and I now presume that the plaintiffs do not intend to file any reply submissions.

¹ *H v RPW* [2020] NZEmpC 141.

² *RPW v H (No 6)* [2019] NZERA 121 (Member Larmer); *RPW v H* [2019] NZERA 367 (Member Larmer).

³ *H v RPW* [2020] NZEmpC 192.

[7] While she does not address it in her submissions in support of the application for stay, Ms Sawyer, counsel for the plaintiffs, has attached a copy of an application for directions and interim orders dated 16 October 2020 which appears to have been filed in the Court of Appeal. This application also seeks an interim order staying the Employment Court proceedings. Presumably, this is an application seeking a stay of enforcement of the monetary awards against the plaintiffs pending the outcome of the judicial review application.

[8] In the circumstances, it would not be appropriate for me to consider further the plaintiffs' stay application filed in the Employment Court while the same application is pending in the Court of Appeal. Accordingly, the present application is adjourned pending the outcome of the application for stay now before the Court of Appeal.

[9] In case the defendant has already embarked upon enforcement action and, therefore, in order that the application to the Court of Appeal is not rendered nugatory, it is appropriate in the interim to order a stay of enforcement in this Court. Accordingly, there is an interim order staying enforcement of the monetary awards and costs ordered against the plaintiff in this Court's judgments of 4 September 2020 and 13 November 2020. That interim order for stay will lapse upon the Court of Appeal issuing its judgment in respect of the plaintiffs' application for stay to that Court.

[10] The application for stay before this Court is adjourned, to be brought on at seven days' notice if necessary. If the plaintiffs do not pursue the application for interim stay in the Court of Appeal with due diligence, leave is reserved to the defendant to apply to the Court for directions if required in the meantime.

[11] Costs are reserved.

M E Perkins
Judge

Judgment signed at 3 pm on 24 November 2020