

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

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

**[2020] NZEmpC 223
EMPC 49/2019**

IN THE MATTER OF	proceedings removed in full from the Employment Relations Authority
AND IN THE MATTER	of an application for stay of proceedings
BETWEEN	BAY OF PLENTY DISTRICT HEALTH BOARD Plaintiff
AND	CULTURES SAFE NEW ZEALAND LIMITED First Defendant
AND	ALLAN HALSE Second Defendant
AND	ANA SHAW Third Defendant

Hearing: On the papers

Appearances: M Beech and C McGregor, counsel for plaintiff
C Sawyer, counsel for defendants

Judgment: 10 December 2020

**INTERLOCUTORY JUDGMENT OF JUDGE B A CORKILL
(Application for stay of proceedings)**

[1] In this proceeding, the plaintiff alleges that the defendants obstructed, delayed or prejudiced a proceeding of the Employment Relations Authority (the Authority), by failing to comply with multiple directions which it made. On the basis of these allegations, the plaintiff seeks declarations and penalties under s 134A of the

Employment Relations Act 2000 (the Act); and findings of contempt under s 196 of that Act.

[2] In a judgment which I issued on a preliminary point, I concluded the Authority had jurisdiction to make three of four directions, and that the Court therefore has jurisdiction to consider whether orders under s 134A and/or s 196 of the Act should be made. I directed the Registrar to arrange a telephone conference with counsel to set a date for the making of appropriate directions for the hearing of the outstanding issues.¹

[3] The proceeding in which the various directions were made concerned a relationship problem brought by Ms Ana Shaw, represented by Mr Allan Halse, against the Bay of Plenty District Health Board (the DHB). The directions were made against Mr Halse, and were subsequently extended to the entity through which he operates, CultureSafe NZ Ltd (CultureSafe), and to Ms Shaw. The substantive determination of the Authority was challenged by Ms Shaw, and that challenge will be heard in this Court by way of a separate proceeding.

[4] Following the issuing of my judgment on the preliminary point, I understand that no application for leave to appeal its judgment has been filed in the Court of Appeal.

[5] However, the defendants have filed an application for stay of the balance of this proceeding. They say this is necessary because a relevant application for judicial review has been brought in the Court of Appeal which relates to several determinations of the Authority, and to judgments of this Court.

[6] Amongst matters referred to in that proceeding are the directions made by the Authority when it was considering Ms Shaw's case, and which were subsequently considered by the Court for the purposes of the preliminary issue.

[7] Ms Sawyer, counsel for the defendants, states that the statement of claim seeking judicial review will be amended to include reference to this Court's judgment on the preliminary point.

¹ *Bay of Plenty District Health Board v CultureSafe New Zealand Ltd* [2020] NZEmpC 149.

[8] It is accordingly submitted that the Court should stay the balance of this proceeding, whilst the judicial review proceedings are in train.

[9] Mr Beech, counsel for the DHB, advises that it is one of eight respondents in the judicial review proceedings, in addition to the Authority and the Court.

[10] He also confirms that Mr Halse has filed an application for stay in the Court of Appeal, which is opposed. The same Court also has before it an application to strike out the judicial review proceeding on the basis it does not give rise to matters capable of judicial review and that it is being brought to circumvent the effect of other courts' determinations. The Court understands that both such applications have yet to be heard.

[11] In light of these circumstances, I am concerned that the issue of stay in this proceeding is academic for so long as there is a pending application for stay in the Court of Appeal, or if that Court were to issue an order of stay.

[12] I therefore issued a minute stating that my preliminary view is that it is preferable for the Court of Appeal to resolve the application for stay, since it relates to proceedings which are before it and not this Court.

[13] I proposed that the application for stay in this Court be adjourned until early April 2021, with the intention that the parties could then advise the Court as to the stage reached in the Court of Appeal as to the applications which are currently before it.

[14] I offered counsel an opportunity to comment on this possibility.

[15] Ms Sawyer did not file any memorandum in response. Mr Beech opposes a possible adjournment, submitting that adjourning the application for stay would be tantamount to granting it. He said that the application for stay should be declined and that the balance of this proceeding should be timetabled for disposition.

[16] Whilst that concern is understood, it does not deal with the procedural complexities which would arise. If the order were not to be granted in this Court, as

Mr Beech urges and about which I express no view, I would nonetheless have to consider making an interim order of stay until the Court of Appeal, as the senior Court, had resolved the same question.

[17] I am not satisfied it is appropriate for this Court to consider the application at present. I accordingly adjourn it to 9 am on 12 April 2021. Counsel are to file memoranda as to this position in the Court of Appeal prior to that date.

B A Corkill
Judge

Judgment signed at 11.45 am on 10 December 2020