

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

**I TE KŌTI TAKE MAHI O AOTEAROA  
TE WHANGANUI-A-TARA**

**[2020] NZEmpC 29  
EMPC 297/2019**

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER	of an application for strike out of proceedings
BETWEEN	MAHARAJA INDIA LIMITED First Plaintiff
AND	SUBHASH CHANDER RAIZADA Second Plaintiff
AND	A LABOUR INSPECTOR OF THE MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT Defendant

Hearing: (on the papers)

Appearances: No appearance for the plaintiffs  
C English, counsel for the defendant

Judgment: 12 March 2020

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**JUDGMENT OF JUDGE B A CORKILL  
(Application for strike out of proceedings)**

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**Introduction**

[1] This judgment resolves an application made by the Labour Inspector to strike out a challenge brought by Maharaja India Ltd (MIL) and Subhash Chander Raizada. In essence, the Labour Inspector contends that the second plaintiff, Mr Raizada, as an

undischarged bankrupt did not have capacity to bring the proceeding either as a purported director of MIL, or personally.

[2] In the determination which gives rise to the challenge, the Employment Relations Authority recorded that the Labour Inspector had investigated MIL and Mr Raizada, finding that three employees had not received minimum wages and holiday pay.<sup>1</sup>

[3] This led to a claim being made to the Authority which then investigated the issue of unpaid entitlements. After determining that MIL was the employer, and not Mr Raizada personally, the Authority ordered MIL to pay a total of \$59,390.47 to the three employees. It is this order which was the subject of the proposed challenge.

[4] Soon after the filing of the statement of claim raising the challenge, the Labour Inspector filed an application to strike it out. That application was served on Mr Raizada at the address for service given for both plaintiffs in the statement of claim, on 21 November 2019. No step was taken by either MIL or Mr Raizada to oppose the application thereafter.

### **Key facts**

[5] I am satisfied from the evidence brought by the Labour Inspector that Mr Raizada was adjudicated bankrupt on 27 June 2019.

[6] As a result, all property belonging to Mr Raizada vested in the Official Assignee.<sup>2</sup> The provisions of the Insolvency Act 2006 make it clear that property includes any litigation right.<sup>3</sup> Accordingly, on or after the date of adjudication, only the Official Assignee could authorise a challenge on behalf of Mr Raizada. The Official Assignee has confirmed that he has not provided such a consent and does not intend to do so.

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<sup>1</sup> *A Labour Inspector v Maharaja India Ltd* [2019] NZERA 465 (Member Crichton).

<sup>2</sup> Insolvency Act 2006, s 101.

<sup>3</sup> Insolvency Act 2006, ss 3 and 117(4)(a)(iii).

[7] Turning to the position of MIL, at the date of adjudication Mr Raizada was the sole director and shareholder of that company. A person who is an undischarged bankrupt is disqualified from holding office as a company director.<sup>4</sup> Thus, Mr Raizada ceased to be a director of MIL upon being declared bankrupt.<sup>5</sup> That meant that as an undischarged bankrupt, he had no standing to institute a challenge on behalf of MIL.

[8] He sought to deal with this problem by purporting to appoint a substitute director. The Official Assignee subsequently advised him that neither he nor MIL was able to appoint a new director, since his shareholding had vested in the Official Assignee. The Official Assignee has confirmed he has no intention to appoint a director.

[9] In summary, when the challenge was issued on 26 August 2016 by Mr Raizada, he did not have the legal capacity to institute the proceeding either on behalf of MIL, or personally.

### **Legal principles**

[10] The principles as to the striking out of pleadings are well settled. The Court has power to strike out all or part of a pleading:

- a) If it discloses no reasonably arguable cause of action, is frivolous or vexatious, or is otherwise an abuse of the processes of the Court.<sup>6</sup>
- b) For a cause of action to be struck out, it must be so untenable that it cannot possibly succeed.<sup>7</sup> The jurisdiction is exercised sparingly and only in clear cases.<sup>8</sup>

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<sup>4</sup> Companies Act 1993, s 151(2)(b).

<sup>5</sup> Companies Act 1993, s 157(1)(c).

<sup>6</sup> Employment Court Regulations 2000, reg 6(2)(a)(ii); High Court Rules 2016, r 15.1.

<sup>7</sup> *Leigh v Attorney-General* [2010] NZCA 624, [2011] 2 NZLR 148 at [17].

<sup>8</sup> *Watts & Hughes Construction Ltd v de Buyzer* [2019] NZEmpC 18 at [28] citing *Attorney-General v Prince and Gardener* [1998] 1 NZLR 262 (CA) at 267.

[11] In *Head v Provincial Finance Ltd*, the High Court held that a person who was an undischarged bankrupt lacked standing to issue a proceeding; and that to do so was an abuse of process.<sup>9</sup> In *New Zealand Experience (Rotorua) Ltd (in rec) v Blakely*, decided under the Insolvency Act 1967, the same Court held it was an abuse of process for a receiver to bring a proceeding without leave of the Court or the consent of the liquidator.<sup>10</sup> These cases illustrate the application of strike out principles in circumstances similar to the present.

## Discussion

[12] The challenge brought by Mr Raizada is not valid having regard to his status as an undischarged bankrupt. The above analysis of the relevant provisions of the Insolvency Act 2006 and the Companies Act 1993 clearly establishes this proposition.

[13] I find that the bringing of an unauthorised challenge by Mr Raizada as an undischarged bankrupt, whether on behalf of MIL or in his own right, constitutes an abuse of the Court's processes.

[14] Whilst I acknowledge the importance of the principle of freedom of access to the courts, that principle must give way to the statutory requirements which override that right where the party purporting to bring the challenge has no status to do so. To permit a challenge to proceed which is contrary to law would produce unfairness and undermine confidence in the administration of justice.<sup>11</sup>

## Conclusion

[15] Accordingly, the statement of claim dated 26 August 2019 is struck out.

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<sup>9</sup> *Head v Provincial Finance Ltd* HC Christchurch CIV-2005-409-2166, 21 November 2005.

<sup>10</sup> *New Zealand Experience (Rotorua) Ltd (in rec) v Blakely* HC Auckland CP 2142/91, 8 October 1996 at 91.

<sup>11</sup> *Reid v New Zealand Trotting Conference* [1894] 1 NZLR 8 (CA) at 9.

[16] In the circumstances, it is not appropriate to make an order for costs against MIL, the shares of which have vested in the Official Assignee who was of the view that the proceedings should not be brought; or against Mr Raizada as an undischarged bankrupt.

B A Corkill

Judge

Judgment signed at 3.15 pm on 12 March 2020