

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

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

**[2020] NZEmpC 65
EMPC 389/2019**

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
BETWEEN	A LABOUR INSPECTOR Plaintiff
AND	LA WHEAT LIMITED (IN LIQUIDATION) First Defendant
AND	WANNAKAWATTAWADUGE JANAKA SUJEEWA FERNANDO Second Defendant
AND	ARUMADURA UDENI LAKMALI FERNANDO Third Defendant

Hearing: On the papers

Appearances: G La Hood, counsel for plaintiff
No appearance for first defendant
P Shaw, counsel for second and third defendants

Judgment: 22 May 2020

**INTERLOCUTORY JUDGMENT OF JUDGE K G SMITH
(Strike out a party)**

[1] In February 2019 the Employment Relations Authority issued a determination to deal with an application by a Labour Inspector against La Wheat Ltd and Wannakawattawaduge Fernando and Arumadura Fernando, the company's directors.¹

¹ *A Labour Inspector v La Wheat Ltd* [2019] NZERA 50 (Member Appleton).

[2] The Labour Inspector sought orders for payment of arrears of wages under the Minimum Wage Act 1983, together with annual holiday pay, public holiday pay, alternative holiday pay and sick leave pay pursuant to the Holidays Act 2003.

[3] The proceedings were issued against the company as the employer of the underpaid, and unpaid, employees. Mr and Mrs Fernando were parties to the litigation because the Inspector also sought orders pursuant to s 142Y of the Employment Relations Act 2000, s 77A of the Holidays Act 1983 and s 11AA of the Minimum Wage Act 1983.

[4] In September 2019, the Authority issued a second determination granting some of the orders requested.² The second determination was challenged by the Inspector and La Wheat was cited as a defendant along with Mr and Mrs Fernando. After the first determination, but before the application that led to the second one, the company was placed in liquidation by a special resolution of its shareholders. That resolution was passed on 15 February 2019.

[5] La Wheat was, therefore, in liquidation when this challenge was filed. The plaintiff did not obtain the consent of the liquidator before filing this challenge or, alternatively, an order of the High Court authorising it.³ In the absence of that consent, or an order, the proceeding against the company cannot continue. The company is struck out as a defendant.⁴

K G Smith
Judge

Judgment signed at 9.30 am on 22 May 2020

² *A Labour Inspector v La Wheat Ltd (in liq)* [2019] NZERA 558 (Member Doyle).

³ Companies Act 1993, s 248(1)(c)(i).

⁴ Employment Relations Act 2000, s 221(a).