

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

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

**[2020] NZEmpC 76
EMPC 465/2019**

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	an application for stay of proceedings
BETWEEN	BR & SL PORTER LIMITED Plaintiff
AND	JAMES HIGGS Defendant

Hearing: On the papers

Appearances: M Beech, counsel for plaintiff
P Mathews, advocate for defendant

Judgment: 28 May 2020

**INTERLOCUTORY JUDGMENT OF CHIEF JUDGE CHRISTINA INGLIS
(Application for stay of proceedings)**

[1] The plaintiff has applied for a stay in relation to a determination of the Employment Relations Authority, finding that Mr Higgs had been unjustifiably dismissed and awarding him remedies under ss 123(1)(b) and 123(1)(c)(i) of the Employment Relations Act 2000 (the Act).¹ The plaintiff seeks orders staying execution of the remedies awarded against it.

[2] The principles applying to applications for a stay of execution are well established. The Court has a broad discretion, in the interests of justice, which must

¹ *Higgs v BR & SL Porter Ltd* [2019] NZERA 655 (Member Campbell).

be exercised judicially and in accordance with principle. In exercising its discretion the Court must weigh the rights of the successful litigant to have the benefits of any determination being challenged, and those of the party challenging a determination to have the position preserved in case the challenge succeeds.²

[3] The considerations that may apply to a greater or lesser extent in any case are:³

- (a) If no stay is granted, whether the plaintiff's right of challenge will be ineffectual;
- (b) whether the challenge is brought and prosecuted for good reasons, in good faith;
- (c) whether the successful party at first instance will be affected injuriously by a stay;
- (d) the effect on third parties;
- (e) the novelty and importance of the questions involved in the case;
- (f) the public interest in the proceedings; and
- (g) the overall balance of convenience.

[4] In summary, the plaintiff says that a stay is appropriate because if it succeeds on its challenge, the financial remedies awarded in its favour will be reduced, perhaps to nil; the defendant's capacity to repay any remedies paid to him if required to do so appears dubious; and any prejudice to the defendant will be mitigated by the plaintiff's proposal to pay the amount ordered in his favour into Court pending the outcome of the challenge.

² *ESKA Ltd v Belooos* [2019] NZEmpC 14 at [9].

³ *Assured Financial Peace Ltd v Pais* [2010] NZEmpC 50 at [5].

[5] The defendant opposes the application. He is concerned that the challenge is being brought for ulterior purposes, namely to ‘burn him off’. He wishes to travel to Christchurch, and wants access to the money awarded in his favour to do so. He disputes the plaintiff’s assertions as to his financial position.

[6] A litigant is entitled, absent good reason, to the fruits of their success. The company was held to have unjustifiably dismissed Mr Higgs from his employment and was ordered to pay him \$1,480.77 (gross) by way of reimbursement for lost wages and \$10,000 compensation for humiliation, loss of dignity and injury to feelings. The company is entitled to pursue a non-de novo challenge to the Authority’s determination against it, and has done so, but there is no presumption that a challenge supports a stay – indeed the Act expressly states that it does not operate in this way.⁴ Something more than disappointment at the result in the Authority is required, or a vague concern that it might be difficult to recover any money paid. And while the plaintiff is content to pay the money into Court, I would need to be satisfied that such a step was reasonably required. That is because a payment into Court would also cut across the starting point that the orders in the defendant’s favour are payable and enforceable.

[7] In the present case I am not satisfied that the grounds for a stay of execution have been sufficiently made out. I am unable to discern any good reason why Mr Higgs should be prevented from being paid in accordance with the Authority’s orders. Nor am I satisfied that there is a sufficient degree of uncertainty about Mr Higgs’ financial position to warrant an order that the money be paid into Court as a precautionary measure.

[8] The application is accordingly declined. Mr Higgs is entitled to costs. If costs cannot be agreed I will receive memoranda.

Christina Inglis
Chief Judge

⁴ Employment Relations Act 2000, s 180.

Judgment signed at 3.15 pm on 28 May 2020