

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

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

**[2023] NZEmpC 13  
EMPC 348/2022**

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

AND IN THE MATTER OF    an application for security for costs

BETWEEN                      PEOPLE MEDIA GROUP LIMITED  
   Plaintiff

AND                                TRISH GALLIGAN  
   Defendant

Hearing:                      On the papers

Appearances:                R Parmenter, counsel for plaintiff  
   M McGoldrick, counsel for defendant

Judgment:                    16 February 2023

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**INTERLOCUTORY JUDGMENT OF JUDGE J C HOLDEN  
(Application for stay of proceedings and an application for security for costs)**

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[1] People Media Group Ltd (People Media Group) has challenged a determination of the Employment Relations Authority (the Authority) that found that Ms Galligan had been unjustifiably disadvantaged and unjustifiably dismissed.<sup>1</sup>

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<sup>1</sup> *Galligan v People Media Group 2011 Ltd* [2022] NZERA 482 (Member Gane). The name of the plaintiff was amended in the Court proceedings after the parties confirmed that the proper name of the employer was People Media Group Ltd.

- [2] The Authority ordered People Media Group to pay Ms Galligan:<sup>2</sup>
- (a) three months' salary as lost wages with the parties to agree on the calculated amount with leave granted to return to the Authority to calculate the amount;
  - (b) compensation under s 123(1)(c)(i) of \$12,000;
  - (c) four weeks salary in lieu of notice, again to be calculated or for the parties to return to the Authority; and
  - (d) interest.

[3] The parties' assessment of the amount due is in the vicinity of \$27,000–\$29,000. That does not include costs, which are yet to be agreed or determined.

[4] There are now two applications before the Court:

- (a) an application for a stay of the Authority proceedings from People Media Group, which is effectively an application for stay of execution of the Authority's orders; and
- (b) an application from Ms Galligan for security for costs in the amount of \$25,334, which is Ms Galligan's calculation for scale Employment Court costs, including for opposing the application for a stay and for applying for security for costs.

[5] Both applications are opposed.

### **Affidavits have been filed**

[6] The parties have each filed affidavits in relation to the two applications. Ms Galligan expresses her concern that the evidence provided by People Media Group

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<sup>2</sup> At [47].

indicates that there is a risk it will go into liquidation without meeting its obligations to her. She notes she has already spent a significant sum of money on legal costs.

[7] She confirms she is in current employment and that she would have no difficulty paying back the Authority's award should People Media Group's challenge be successful.

[8] The evidence for People Media Group shows that it is a small business whose main source of income ceased as a result of the COVID-19 pandemic and closings. It does not have significant equity and has no cash. It says other avenues for funding are not available and that a "natural consequence" of having to pay Ms Galligan the amounts due to her pursuant to the Authority's determination would be liquidation.

[9] The director of People Media Group says it is continuing with the challenge because it considers that, if it is successful and they do not have to pay Ms Galligan, they may be able to continue in business and the directors would not be seen as being directors of a failed company. People Media Group accepts that Ms Galligan's financial position is such that she should be able to repay the Authority's award should the challenge be successful.

### **The principles on an application for a stay are well settled**

[10] As the successful party at first instance, Ms Galligan is entitled to the fruits of her success unless good grounds have been established otherwise, in which case the Court may order a stay.<sup>3</sup>

[11] It is common for a stay to be ordered or made by consent on the basis that the plaintiff pay the sums awarded by the Authority into Court. The usual reason for that condition is a concern that the defendant would not be able to repay the award should the challenge succeed. It is common ground that this concern does not exist in this proceeding. There is no reason for an order with such a condition here, and it has not been suggested by either party.

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<sup>3</sup> *Dymocks Franchise Systems (NSW) Pty Ltd v Bilgola Enterprises Ltd* (1999) 13 PRNZ 48 (CA) at [30].

[12] The parties agree that the principles for applications for a stay are well established. They were recently set out in the judgment of her Honour Judge Beck in *UBP Ltd v Rangitaawa-Kauī*:<sup>4</sup>

[6] A challenge to the determination of the Authority does not function as a stay of execution of the determination. The Court has the power to order a stay but must first be satisfied that to do so would be in line with the overarching consideration of the interests of justice.

[7] A number of well-established factors are to be considered such as:

- (a) whether the challenge will be rendered ineffectual if the stay is not granted;
- (b) whether the challenge is brought and pursued in good faith;
- (c) whether the successful party at first instance will be injuriously affected by a stay;
- (d) the extent to which a stay would impact on third parties;
- (e) the novelty and/or importance of the question involved;
- (f) the public interest in the proceeding; and
- (g) the overall balance of convenience.

[13] The key issues here are those identified in (a) and (c) above. Although Ms Galligan submits that People Media Group's challenge has limited prospects of success, for the purposes of the applications before me, I accept that the challenge has been brought and will be pursued in good faith.

[14] People Media Group, however, says that if a stay is not ordered, or if security is ordered, the challenge will be brought to an end.

[15] While I accept that People Media Group may choose to end its challenge in either circumstance, that is not determinative.

[16] Requiring Ms Galligan to defend the challenge, while not allowing her to seek payment of the monies due under the determination, cuts across her entitlement to the fruits of her success and exposes her to additional legal costs in circumstances where there is a real risk that she would not be able to recover the amounts due to her under

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<sup>4</sup> *UBP Ltd v Rangitaawa-Kauī* [2022] NZEmpC 25 at [6]-[7] (footnotes omitted).

the determination, should the challenge not succeed. That is not in the interests of justice.

[17] The application for a stay is unsuccessful. The amounts awarded to Ms Galligan in the Authority continue to be payable by People Media Group, and Ms Galligan is free to pursue recovery of those amounts.

### **Security for costs is appropriate**

[18] There are no particular provisions relating to security for costs in the Employment Court. Accordingly, pursuant to r 6(2)(a)(ii) of the Employment Court Regulations 2000, the Court looks to the provisions of the High Court Rules 2016 when dealing with applications for security for costs. Under r 5.45(1)(b) of the High Court Rules, the Court has discretion to order the giving of security for costs if there is reason to believe that the plaintiff would be unable to pay the costs of the defendant if the plaintiff is unsuccessful in its proceeding. In exercising this discretion, the Court must consider all the circumstances and balance the interests of both the plaintiff and the defendant.<sup>5</sup> An order may be made if it is just in all the circumstances.<sup>6</sup>

[19] People Media Group accepts that it would not be in a position to pay costs should it be unsuccessful in its challenge. There is the suggestion of possible liquidation. In essence then, essentially as submitted by Ms Galligan, People Media Group is engaging in a gamble, with the person who bears the most risk being Ms Galligan. As portrayed by People Media Group, if it succeeds in its challenge, then it forgoes the liability to pay Ms Galligan. It presumably also would be entitled to a costs award. If, however, it fails in its challenge, it seems Ms Galligan will not receive either her substantive award or any costs award. Such a situation is not just in all the circumstances.

[20] Accordingly, an order for security for costs is appropriate. The plaintiff has not raised any issue with respect to Ms Galligan's calculations. Two components are

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<sup>5</sup> *McLachlan v MEL Network Ltd* (2002) 16 PRNZ 747 (CA) at [15]–[16].

<sup>6</sup> High Court Rules 2016, r 5.45(2).

given by Ms Galligan, \$19,359 with respect to the substantive proceedings and \$5,975 with respect to the applications dealt with in this judgment.

[21] At this stage, it is appropriate to order security for costs for \$19,359. That sum is to be paid into Court within 20 working days of the date of this judgment. As soon as practicable following receipt, the Registrar of the Employment Court is to place that sum on interest bearing deposit until further order of the Court. People Media Group's challenge is stayed until the payment is made or there is a further order of the Court.

[22] Ms Galligan is entitled to costs on these applications. Her calculation of \$5,975 includes a figure for obtaining judgment without appearance. As no further steps were required beyond submissions, such costs are not recoverable. This brings the scale costs to \$5,258, which is appropriate. People Media Group is to pay that sum to Ms Galligan within 20 working days of this judgment.

J C Holden  
Judge

Judgment signed at 12 noon on 16 February 2023