

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

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

**[2023] NZEmpC 135
EMPC 306/2022**

IN THE MATTER OF a challenge to a determination of the
 Employment Relations Authority

AND IN THE MATTER OF an application to adjourn a hearing

BETWEEN MGK HOMES LIMITED
 Plaintiff

AND BOMI YOON
 Defendant

Hearing: 23 August 2023 (by telephone)

Appearances: Mingon (David) Kang and A Kim, agents for plaintiff
 Seungmin Kang, counsel for defendant

Judgment: 23 August 2023

**INTERLOCUTORY JUDGMENT (NO 3) OF JUDGE KATHRYN BECK
(Application to adjourn a hearing)**

[1] These proceedings involve a non-de novo challenge to a determination of the Employment Relations Authority, which found that the plaintiff, MGK Homes Ltd (MGK), had unjustifiably dismissed the defendant, Ms Yoon.¹ She was awarded \$15,576.84 (gross) as lost wages, \$20,000 pursuant to s 123(1)(c)(i) of the Employment Relations Act 2000 (the Act), and \$4,544.25 as special damages under s 123(1)(b) of the Act.² In a subsequent costs determination, the Authority also awarded Ms Yoon \$6,876.31 in costs.³

¹ *Yoon v MGK Homes Ltd* [2022] NZERA 377 (Member Blick).

² At [93].

³ *Yoon v MGK Homes Ltd* [2022] NZERA 515 at [25] (Member Blick).

[2] The plaintiff applied for a stay of execution of the Authority's determination. This was granted subject to the payment into Court of \$46,997.40, which has been paid.⁴

[3] The proceedings are scheduled to be heard on 29 and 30 August 2023 in Tauranga.

[4] The plaintiff has now applied for an adjournment of that fixture; the defendant opposes that application.

[5] The grounds on which the plaintiff applies to adjourn the matter are:

- (a) The company has been through some financial difficulties which has impacted cash flow and subsequently the ability to pay for a lawyer.
- (b) The company will be prejudiced if the hearing proceeds without a lawyer.
- (c) The defendant has legal aid.
- (d) The defendant was unsuccessful in her application for security for costs. Because the defendant has legal aid, the company was unable to recover costs against her in relation that unsuccessful application.
- (e) The company is not in a position at present to contribute costs for an interpreter which has been ordered.
- (f) The company is expected to complete a build project within the next two months which will then be able to be sold, allowing the company to have funds to engage a lawyer.
- (g) The company is also negotiating with a potential investor.

⁴ *MGK Homes Ltd v Yoon* [2023] NZEmpC 22 at [28].

[6] The grounds on which the defendant opposes the adjournment are:

- (a) The application was made too late, having been formally filed 11 days (or six working days) prior to the hearing.
- (b) As a result, if the leave sought is granted, it will unduly prejudice the defendant, her counsel and a third party (mutually appointed interpreter) where all of them have made travel arrangements to attend the hearing in Tauranga (from the South Island, Napier and Auckland, respectively), and in particular:
 - (i) The defendant has already taken annual leave from work to attend the hearing, and has made childcare arrangements for her daughter, which was difficult.
 - (ii) Three nights' accommodation booked by the defendant's counsel (at a cost of \$765) has now become non-refundable.
 - (iii) It will be difficult for the mutually appointed interpreter to find an alternative job in those hearing dates at the last minute, so she will likely be left with no income for those dates.
 - (iv) While the plaintiff seeks an adjournment for approximately two months as it is "expected to complete a build project" within that time "which will then be able to be sold" and is "also negotiating with a potential investor", there is no definite answer as to whether it will successfully obtain investment, whether the build project will actually be completed within two months, and/or how long it will take for the property to be sold. There are too many unknowns as to how long the proceeding would be delayed while the funds to which the defendant is entitled, under the Authority proceeding commenced in November 2020, are held in the Court's trust account.

[7] A telephone hearing was convened to hear the application.

[8] At the hearing, Mr Seungmin Kang, counsel for the defendant, expanded on how stressed Ms Yoon was with the uncertainty of waiting for a hearing and her inability to access the remedies awarded to her in the Authority. In order to facilitate the hearing proceeding, he advised that Ms Yoon was prepared to take responsibility for the full cost of the interpreter in the first instance, subject to her being able to claim such cost back in the event she is successful.

[9] Ms Kim, on behalf of Mr Mingon Kang, a director of the plaintiff, submitted that it would be unfair for him to be required to proceed without legal representation as he does not have an understanding of the legal issues. She asked for further time to be able to retain a lawyer.

[10] However, the uncertainty presented by the plaintiff's current financial circumstances does not provide any comfort that the issue around legal representation will be resolved, even within the two months suggested.

[11] In a situation such as this, the Court must decide where the interests of justice lie.⁵

[12] This is a non-de novo hearing in relation to the matters set out in the amended statement of claim dated 21 March 2023. The statement of claim was prepared by the plaintiff's lawyers and sets out clearly what the issues for the Court are, and the remedies sought. Briefs of evidence and a bundle of documents have already been filed. Further, as noted by Mr Seungmin Kang, such documents are essentially a duplicate of those filed in the Authority. Accordingly, Mr Mingon Kang will be familiar with them. The interpreter will be available to interpret the entire proceedings for Mr Mingon Kang and Ms Kim has indicated that she will attend the hearing to assist him.

⁵ See r 10.2 of the High Court Rules 2016, applied via reg 6 of the Employment Court Regulations 2000.

[13] While the plaintiff should already have a copy of anything filed in Court and a full file of these proceedings from its previous lawyers, Mr Seungmin Kang has agreed to liaise with Ms Kim to ensure that she is aware of what has been filed in Court and to ensure that she has copies of the same. He has also helpfully agreed to supply a copy of the company's legal submissions in the Authority to Ms Kim and the Court, the legal issues being the same as those litigated there.

[14] I consider that the above arrangements mitigate the prejudice to the plaintiff of proceeding without legal representation.

[15] Given those arrangements and weighing up the interests of justice in this instance, I consider that those interests lie with the hearing proceeding on 29 and 30 August 2023.

[16] Accordingly, the application for an adjournment is denied.

[17] If there are any issues that arise in the meantime, they can be dealt with at the beginning of the hearing on Tuesday 29 August 2023.

[18] Costs are reserved.

Kathryn Beck
Judge

Judgment signed at 4.15 pm on 23 August 2023