

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

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

**[2023] NZEmpC 212  
EMPC 425/2021**

IN THE MATTER OF	an application for judicial review
AND IN THE MATTER OF	an application for stay of proceedings
AND IN THE MATTER OF	an application for extension of time to file notice of opposition to costs application
BETWEEN	ALLAN GEOFFREY HALSE Applicant
AND	EMPLOYMENT RELATIONS AUTHORITY First Respondent
AND	NEW PROGRESS ENTERPRISE CHARITABLE TRUST OPERATING AS PROGRESS TO HEALTH Second Respondent
AND	CULTURES SAFE NEW ZEALAND LIMITED (IN LIQUIDATION) Third Respondent

Hearing: On the papers

Appearances: Applicant in person  
No appearance for first respondent  
K McLuskie, counsel for second respondent  
No appearance for third respondent

Judgment: 24 November 2023

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**INTERLOCUTORY JUDGMENT (NO 4) OF JUDGE KATHRYN BECK  
(Application for stay of proceedings)  
(Application for extension of time to file notice of opposition  
to costs application)**

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[1] On 21 June 2023, I ordered that a claim brought by the applicant, Mr Halse, be struck out on the basis that the Court did not have jurisdiction to consider the claim and also on the basis that the claim did not disclose a reasonably arguable cause of action.<sup>1</sup> I reserved the issue of costs.<sup>2</sup>

[2] I directed that the parties attempt to agree in the first instance, but noted if that did not prove possible, application should be made by the respondents within 21 days, with a reply from Mr Halse within 14 days of receipt of any application.

[3] On 12 July 2023, New Progress Enterprises Charitable Trust Board operating as Progress to Health (Progress to Health) filed an application for costs in this Court.

[4] On 19 July 2023, Mr Halse filed an application in the Court of Appeal seeking leave to appeal this Court's judgment. Mr Halse's reply to Progress to Health's application for costs was due on 26 July 2023; however, on 25 July 2023, instead of filing a reply, he filed applications for a stay of the costs proceedings pending the Court of Appeal decision, and for an extension of time to file a notice of opposition to the costs memorandum filed by Progress to Health. These applications are made on the basis that, should the Court of Appeal find in Mr Halse's favour, Progress to Health would not be entitled to costs.

[5] Progress to Health opposes these applications. It submits that the application for leave to appeal to the Court of Appeal does not act as a stay, that costs should follow the event, and that the criteria for a stay are not met. In particular, it submits that the application for leave is a delay tactic and that the effect of the delay on it would be detrimental to its financial position, would undermine its right to justice, and could otherwise be injurious to it. It says it would not oppose deferring the enforcement of any costs award until the outcome of the appeal process was known, and so Mr Halse's right to appeal would not be rendered nugatory by virtue of such an award being issued. It further notes that there is no novelty or importance in the questions raised by Mr Halse.

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<sup>1</sup> *Halse v Employment Relations Authority* [2023] NZEmpC 96, [2023] ERNZ 397 at [58].

<sup>2</sup> At [61].

[6] Progress to Health also opposes the extension of time to file an opposition to the application and submits that Mr Halse was on notice with regard to timeframes and has provided no reason as to why he was unable to file his opposition on time. It submits that preparing an application for the Court of Appeal does not excuse not meeting the timeline set by the Court. It submits that granting leave would undermine the purpose of the Employment Relations Act 2000 (the Act), including reducing the need for judicial intervention, and that granting an extension would exacerbate the already existing delays in relation to the proceedings in the Employment Relations Authority.

### **Application for a stay**

[7] Section 214(6) of the Act indicates that where an appeal is filed, there is no presumption in favour of a stay being issued in relation to related Court proceedings:

Neither an application for leave to appeal nor an appeal operates as a stay of proceedings on the decision to which the application or the appeal relates unless the court or the Court of Appeal so orders.

[8] Progress to Health has provided a number of authorities which it says outline the factors to be considered when the Court is dealing with an application for a stay of proceedings.<sup>3</sup> However, I consider that there are other recent authorities which are also of assistance to me.

[9] When dealing with an application for a stay of execution of Authority proceedings, the Court has borrowed freely from the approach adopted in the High Court and the Court of Appeal under the relevant rules of both Courts.<sup>4</sup> Orders for stay are approached with restraint, and the interests of each party are balanced against each other. In balancing the interests of each party, the Court considers a number of non-exhaustive factors including:

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<sup>3</sup> *Foodtown Supermarkets Ltd v The New Zealand Shop Employees' Industrial Assoc of Workers* [1983] ACJ 775 (Arbitration Court); *New Zealand Post Primary Teachers' Assoc v Attorney-General (on behalf of Ministry of Education) (No 3)* [1993] 3 ERNZ 708 (EmpC); and *Hill v Workforce Development Ltd* [2015] NZEmpC 1.

<sup>4</sup> See *Broadspectrum (NZ) Ltd v Nathan* [2017] NZCA 434, [2017] ERNZ 733, applying *Keung v GBR Investment Ltd* [2010] NZCA 396, [2012] NZAR 17 at [11], and *Dymocks Franchise Systems (NSW) Pty Ltd v Bilgola Enterprises Ltd* (1999) 13 PRNZ 48 (HC) at [9].

- (a) Will the challenge be rendered ineffectual if the stay is not granted?
- (b) Will a stay negatively affect the interests of the successful party or third parties?
- (c) Is the challenge being brought and pursued in good faith?
- (d) Are the questions novel, important, or of public interest?
- (e) Is it possible to describe the merits of the challenge as either clearly strong or clearly weak?
- (f) Where does the balance of convenience lie?

[10] These factors overlap with and expand on the factors set out in the earlier authorities provided by *Progress to Health*. Two additional factors from those cases, however, which can be considered are what the effect of delay would be in the circumstances of the case and whether the status quo would be preserved.<sup>5</sup>

[11] Although these principles have been developed within the context of applications for stay of execution, they are also capable of assisting the Court, as evidenced in *Hill v Workforce Development Ltd*, in considering whether to order a stay of proceedings where those proceedings are still ongoing. However, in cases such as the present, it will not normally be possible for the Court to take any view of the merits of the appeal as the issues on appeal are no longer before it.

[12] Finally, once these factors have been balanced, consideration will then be given to the overall interests of justice.

*Will a stay undermine the benefit of a successful appeal?*

[13] *Progress to Health* says it would not oppose the deferment of enforcement of any costs award until the outcome of the appeal process is known. As a result, it says

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<sup>5</sup> *Hill v Workforce Development Ltd*, above n 4, at [3], citing *Foodtown Supermarkets Ltd v The New Zealand Shop Employees' Industrial Assoc of Workers*, above n 3. These two additional factors likely also find expression in the balance of convenience factor.

Mr Halse's right to appeal would not be rendered nugatory by virtue of an award of costs being issued.

[14] I accept that a stay would not substantially undermine the benefit to Mr Halse of a successful appeal; however, the absence of a stay would require the expending of resource by him in relation to the issue of costs and his opposition to Progress to Health's application. Mr Halse is correct when he says that a successful outcome in the Court of Appeal would result in Progress to Health not being entitled to costs and could also result in a claim by him against it.

*Would a stay negatively affect the interests of Progress to Health or third parties?*

[15] Progress to Health says that the effect of granting a stay would be detrimental to its financial position, delaying the recovery of costs. It also says that such a stay would delay its right to justice and to have its case heard. Counsel for Progress to Health has pointed to concerns set out in the affidavit of Karen Covell sworn on 15 May 2023 in relation to the impact on Progress to Health of the continued delays in relation to this proceeding. Ms Covell says that further delays will result in a strain on the funding it receives.

[16] However, as already noted, Progress to Health also indicated that it would not oppose the deferment of enforcement of any costs award, so any award made by the Court would effectually be subject to a stay of enforcement until the Court of Appeal has resolved Mr Halse's application. Therefore, although a stay may lead to a delay in the Court considering the costs application, the delay ought not to be substantial. Once the outcome of the application for leave to appeal is known, the costs application ought to be able to be resolved efficiently.

[17] I do not consider that the other respondents will be negatively affected by a stay. As I understand it, files currently stayed before the Authority will remain that way until this matter has run its course (including in the Court of Appeal). That would be the case whether the costs issue was resolved or not. As noted in the strike-out judgment, it is not clear why Ms Nicholson's proceedings could not be heard

independently from the claims against Mr Halse.<sup>6</sup> Her right to have her matters heard and determined should not be delayed while he works through his matters.

*Is the appeal being brought and pursued in good faith?*

[18] Progress to Health submits that the application for leave is a delay tactic to prevent costs from being determined against Mr Halse personally.

[19] Mr Halse's application for leave in the Court of Appeal is a restatement of arguments that have been dealt with by this Court. However, that is often the nature of an appeal. As noted by Mr Halse in his submissions, it cannot be assumed that, because the arguments have been rejected in this Court, a higher court will agree. He submits that the judicial system is founded on the premise that lower courts will get things wrong and that we have extensive appeal processes in a hierarchy of courts for this very reason. I agree.

[20] There is no evidence that this appeal is not being brought in good faith. He is merely continuing to argue matters that were put before this Court, which it is apparent he feels genuinely strongly about.

*Are the questions on appeal novel, important, or of public interest?*

[21] In his application for leave to appeal to the Court of Appeal, Mr Halse has stated that it is a matter of general public importance as to whether this Court has properly applied and interpreted various rules of law in relation to judicial review under the Act. Progress to Health submits that there is no novelty or importance in the questions raised by Mr Halse. It says that various matters raised by him are matters of settled practice for courts and tribunals and that he had ample opportunity to be heard.

[22] I consider that the issue of whether the questions are of general or public importance, or indeed whether they are novel or important questions of law, is a matter for the Court of Appeal.

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<sup>6</sup> *Halse v Employment Relations Authority*, above n 1, at [60].

*Is there interest in preserving the status quo?*

[23] The current status quo is that the issue of costs has not yet been determined. Progress to Health says it would not oppose the deferment of the enforcement of any costs award until the outcome of the appeal process, and so Mr Halse's actual position will not change in the interim. Then, if Mr Halse was ultimately successful on appeal, the Court of Appeal could overturn the strike-out judgment and he would no longer be liable for costs.

[24] As noted above, to determine the issue of costs will require investment of time and resources by both the Court and Mr Halse. There is some benefit in the preservation of the status quo until the outcome of the appeal is known.

*Balance of convenience and interests of justice*

[25] While it is correct that the mere fact of applying for leave to appeal does not necessarily justify the grant of a stay, having considered the interests of the parties, I consider that it is in the interests of justice to order a stay. Although a stay may cause some delay in the costs issue being determined, I consider that is justified in the interests of preserving the status quo. This is particularly the case here where there is no evidence of a lack of good faith from Mr Halse in pursuing his appeal.

**Application for extension of time to file submissions on costs**

[26] Mr Halse missed the deadline set by the Court to file submissions on costs. He now seeks an extension of time to file those submissions on the basis of a successful application for a stay.

[27] In the event that Mr Halse is unsuccessful on his application for leave to appeal, the issue of costs will need to be determined. In those circumstances, as matters stand at the moment, the Court would not have the benefit of any submissions from Mr Halse in relation to the application for costs. He has asked for an extension of time to make such submissions.

[28] As noted by Progress to Health, despite being on notice regarding timeframes, Mr Halse has not provided any evidence or explanation as to why he was unable to

meet the timetable other than the fact that he was applying for a stay. On that basis, Progress to Health submits that there is no basis for the Court to grant an extension of time.

[29] The Court has jurisdiction to extend time under s 221(c) of the Act. In the event that the determination of costs becomes necessary, it would be helpful, given the exchange of correspondence between the parties that has been provided to the Court, that there be submissions from Mr Halse.

[30] Accordingly, in the event that it is necessary that an extension of time would be granted and in the event the stay is lifted, he will have seven days to make any submissions in relation to costs.

[31] Mr Halse also seeks a hearing for the submissions on costs. This is opposed by Progress to Health. If it becomes necessary for him to file submissions on costs, he may then at that time indicate to the Court whether he still wishes a hearing, and if necessary, a directions conference can be convened to resolve the matter.

[32] Any prejudice to Progress to Health by these arrangements can be mitigated by an order of costs on the costs application.

## **Outcome**

[33] Therefore, I order a stay of proceedings of Progress to Health's application for costs in the Employment Court in relation to the strikeout judgment in which it was successful. The stay will continue until the Court of Appeal has resolved Mr Halse's application for leave to appeal that decision.

[34] If the Court of Appeal grants leave to appeal, the stay will be extended until the appeal is resolved before that Court. I ask that Mr Halse advise the Court once the judgment concerning the application for leave to appeal is issued. At that point, I will either discharge the order for stay if the application is declined, or extend it if leave to appeal is granted.

[35] If the appeal is unsuccessful, the stay will be lifted, and Mr Halse will have seven days to file any submissions on Progress to Health's application for costs. As previously ordered, Progress to Health will then have seven days to file any submissions in reply.

[36] Finally, the issue of the delay of the substantive matter between the parties remains a grave concern. As noted above, I encourage them to move to pursue this separately in the Authority. The stay of these proceedings need not impact those proceedings.

[37] Although Mr Halse has been successful on this application, I do not consider that it would be in the interests of justice to make an orders of costs. Costs on this application will lie where they fall.

Kathryn Beck  
Judge

Judgment signed at 9 am on 24 November 2023