

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

**I TE KŌTI TAKE MAHI O AOTEAROA
TE WHANGANUI-A-TARA**

**[2023] NZEmpC 61
EMPC 298/2021**

IN THE MATTER OF	proceedings removed from the Employment Relations Authority
AND IN THE MATTER	of an application for costs
AND IN THE MATTER	of an application for stay of proceedings
BETWEEN	FGH Plaintiff
AND	RST Defendant

Hearing: On the papers

Appearances: SM Henderson, counsel for plaintiff
M Richards, counsel for defendant

Judgment: 20 April 2023

**JUDGMENT OF JUDGE B A CORKILL
(Application for stay of costs issues)**

[1] My substantive judgment of 6 December 2022 reserved costs.¹ I directed that these be discussed in the first instance between the parties and stated that if any application were to be made, RST would need to file it by 31 January 2023, with a reply from FGH by 21 February 2023.

[2] On 13 January 2023, FGH filed an application in the Court of Appeal seeking leave to appeal this Court's judgment.

¹ *FGH v RST* [2022] NZEmpC 223 at [405].

[3] On 31 January 2023, RST filed an application for costs. To date, no substantive response has been filed for FGH.

[4] Rather, on 15 February 2023, FGH filed an application for a stay of the costs determination. FGH filed an affidavit stating that she had a substantial liability for her own costs in connection with the hearing. FGH stated that she had few assets and little ability to pay both her own and RST's legal costs were the Court to order her to pay them, and would have to consider insolvency. She also said that she was applying for legal aid for the purposes of her application for leave to appeal.

[5] In addition, FGH sought an extension of time to file a memorandum in response to RST's costs application should the stay be refused by the Court.

[6] RST's position is that it does not oppose these applications. It submits that the Court is best placed to determine the appropriate course of action in the particular circumstances.

[7] RST says it is disappointed with various circumstances surrounding the making of the application. It requests that if a stay is granted, it be promptly reviewed by the Court following the Court of Appeal's decision in relation to FGH's application for leave to appeal. Counsel for RST advises that the Court of Appeal has indicated it will consider the application for leave to appeal in the week of 15 May 2023. A decision on that application is anticipated sometime after that date.

[8] I need not set out the various factors which are considered in granting an application for a stay since these are well known.²

[9] I have concluded that the interests of justice will be met by deferring consideration of the costs issues in this Court for a short period whilst the application for leave is dealt with by the Court of Appeal.

² *Dwyer v Air New Zealand Ltd* [1997] ERNZ 156 (EmpC) at 158; *New Zealand Cards Ltd v Ramsay* [2013] NZCA 582 at [7].

[10] I am mindful of the responsible position taken by RST, being a government organisation. It has appropriately allowed for the application for leave to be determined prior to the topic of costs being addressed.

[11] I ask that counsel advise the Court as soon as the judgment concerning the grant of 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.

[12] Once this process has concluded, I will resolve FGH's application for an extension of time for the filing of a response to RST's application for costs.

[13] I reserve costs in respect of the present application.

B A Corkill
Judge

Judgment signed at 11 am on 20 April 2023