

**IN THE EMPLOYMENT COURT
AUCKLAND**

**AC 32/09
ARC 6/09**

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

BETWEEN RAMESH LAL TRADING AS GLOMAX
SUPER TAILORS
Plaintiff

AND RAMA YELESWARAM (LABOUR
INSPECTOR)
Defendant

Hearing: 8 September 2009 (by telephone conference call)

Appearances: Sanjay Sharma, Counsel for Plaintiff
Sarah Blick, Counsel for Defendant

Judgment: 8 September 2009

Reasons: 9 September 2009

INTERLOCUTORY JUDGMENT OF CHIEF JUDGE GL COLGAN

[1] These are my reasons for granting an adjournment of today's hearing and confirming the conditions attaching to that adjournment. This is the second adjournment of the plaintiff's challenge at his request made at the proverbial 11th hour before a fixture.

[2] The defendant is a labour inspector who brought proceedings in the Employment Relations Authority on behalf of Padmini Raju for arrears of wages, holiday pay, and a penalty.

[3] The Authority issued a determination on 29 January 2009 finding that Ms Raju was an employee of Ramesh Lal, who trades as Glomax Super Tailors, but was largely unpaid for several months' employment. The Authority awarded the inspector, to the use of Ms Raju, wage arrears of \$9,638.23, and arrears of holiday pay of \$578.29. The Authority also ordered the payment of interest on these sums at the rate of 6 per cent per annum from 25 March 2008 to the date of payment. Mr Lal was also directed to reimburse the inspector for the \$70 filing fee in the Authority and was ordered to pay a penalty to the Crown of \$3,000.

[4] No payment of any of these sums was made by Mr Lal although he exercised his right to challenge the Authority's determination and has sought a hearing de novo, again denying that Ms Raju was an employee at the relevant times.

[5] In late February 2009, Mr Lal applied for an order staying execution of the Authority's determination. The inspector did not oppose the application and on 27 March 2009 I made an unconditional order of stay.

[6] At a callover of the case on 27 May 2009, it was timetabled to a 2-day fixture on 3 and 4 August 2009. As requested by counsel for Mr Lal, arrangements were made for a Tamil translator to be present.

[7] On 31 July 2009, the last working day before the scheduled hearing, counsel for Mr Lal wrote to the Court seeking an adjournment on medical grounds. These included that Mr Lal had just received an appointment letter for a surgical clinic at Auckland Hospital on 4 August 2009, one of the dates of hearing. Mr Sharma advised that this related to Mr Lal's urgent need for surgery, followed a 3-month delay in getting the appointment, and it was unlikely that he would get another for a further 3 months if it could not be kept. Mr Sharma's advice was also of further medical risk if this procedure was not undertaken. There were other medical conditions advanced by Mr Sharma on behalf of Mr Lal that were said to make difficult, if not impossible, his ability to give evidence. This request was supported by doctors' letters.

[8] Although opposed by the labour inspector on principled grounds, I concluded, in a minute issued on 31 July 2009:

Given the medical information supplied by counsel for the plaintiff and Mr Lal's entitlement to be present, there is no alternative but to adjourn next Monday and Tuesday's hearing. The case will now be heard at the same times on Wednesday 9 and Thursday 10 September 2009.

[9] Yesterday morning, on the eve of this resumed hearing, Mr Lal's counsel again wrote to the Court seeking an adjournment. Mr Sharma advised that Mr Lal's previously arranged surgery could not go ahead because of other complications to his health which are ongoing. Counsel advised the Court that although he had tried to contact the surgeon about when surgery might take place, this had not been successful. Mr Sharma speculated about surgery for the plaintiff in late October 2009 and said that until then his movements will be restricted and he will be unable to appear at tomorrow's hearing. Mr Sharma included a letter from Mr Lal's general practitioner confirming that he "*is unable to attend work for the next 4 week (sic)*". In these circumstances, I heard counsel by telephone conference call. Mr Sharma expressed his confidence that Mr Lal will be available for a hearing by mid-October.

[10] I accept that Mr Lal suffers from significant and chronic health problems making difficult, if not impossible, his appearance as a witness. There are, however, other witnesses who could give evidence about his business and indeed the Authority determination and the briefs of evidence filed in this Court tend to confirm that Mr Lal was not a completely hands-on business owner but delegated a number of its functions to others who could give relevant evidence.

[11] Although the order for stay of execution of the Authority's determination was made unconditionally and without opposition by the inspector, I consider that justice to both parties can best be achieved by allowing the application for adjournment but to a specified date and on condition that the plaintiff gives security for some of the amounts directed to be paid by him under the Authority's determination.

[12] Accordingly, today's fixture was adjourned to 19 and 20 November 2009 on condition that the plaintiff is to pay to the Registrar of the Employment Court at Auckland, to be held in an interest bearing account and payable on direction of the

Court, or otherwise to give security to the Registrar's satisfaction in, the sum of \$11,135.99. This represents the principal sums for wages arrears and holiday pay determined by the Authority together with an amount of interest (\$919.47) calculated at the rate of 6 per cent per annum from 25 March 2008 until approximately the date of payment in, or other giving of security.

[13] Payment of this sum, or the giving of other security to the Registrar's satisfaction, is to be made by the plaintiff no later than Monday 5 October 2009, about one month hence. In the event that the plaintiff fails to make payment in as directed or otherwise to give security for this sum to the satisfaction of the Registrar, the order for stay made on 27 March 2009 will lapse and the inspector will be at liberty to enforce the remedies granted by the Authority against Mr Lal.

[14] Although sympathetic to Mr Lal's medical circumstances and reluctant to constrain his rights of access to a challenge in this Court, which have persuaded me to grant a further adjournment on this occasion, fairness to the inspector and to Ms Raju means that the challenge cannot be postponed indefinitely or repeatedly. I will not constrain otherwise Mr Lal's rights to prosecute his challenge or his ability to apply for an adjournment on merits, but any further such application should be made before the proverbial 11th hour.

GL Colgan
Chief Judge

Judgment signed at 9.30 am on Wednesday 9 September 2009