

**IN THE EMPLOYMENT COURT
AUCKLAND**

**AC 38/09
ARC 43/09**

IN THE MATTER OF an application for security for costs
AND IN THE MATTER OF an application for stay of proceedings
BETWEEN ARIE NIMKOVSKY
 Plaintiff
AND LORRAINE MATSON
 Defendant

Hearing: 3 November 2009
 (Heard at Auckland)

Appearances: Arie Nimkovsky, plaintiff
 Tony Kurta, advocate for defendant

Judgment: 3 November 2009

ORAL INTERLOCUTORY JUDGMENT OF JUDGE B S TRAVIS

[1] The plaintiff, Mr Nimkovsky, has applied for a stay of the awards made in the Employment Relations Authority, the case in which he is challenging.

[2] The awards total almost \$9,000 in their entirety inclusive of costs.

[3] The main ground for the application was said by Mr Nimkovsky in submission to be that he is unable at this stage to pay the amount and he is of the view that he has a good case for a challenge and can establish that the Authority was mistaken to find him the employer.

[4] The normal ground for granting a stay is that if the defendant acquires the amount of the remedies and is unable to refund them should the challenge be successful, the appellant's appeal would effectively be nugatory, or without effect. I

consider that the appropriate course in this case is to apply the usual condition of an application for stay and that is to direct the plaintiff to pay into Court the total amount of the awards made by the Authority. Mr Nimkovsky says that he is in some difficulties in doing that, but will endeavour to do so over a period of time.

[5] In the meantime and in the knowledge that the defendant has in turn applied for security for costs of \$3,000, I consider that the challenge should not proceed until the condition of the application for stay has been met. Because of that condition I am also satisfied that it would be inappropriate at this stage to grant the defendant's application for security. The amount sought is \$3,000 which does not seem inappropriate and the defendant has filed an affidavit indicating her own impecuniosity. If however, the case is effectively stayed until the amount of the remedies are paid into Court she will have some protection if the challenge proceeds and Mr Nimkovsky is not successful.

[6] I therefore adjourn the application for security for costs rather than dismissing it in case there is any change in the circumstances but direct that the matter not be set down for hearing until the condition of the application for stay has been satisfied.

Costs

[7] I reserve costs in respect of today's hearing.

A handwritten signature in black ink, appearing to read 'B S Travis', with a large, sweeping flourish above the name.

B S Travis
Judge

Oral interlocutory judgment delivered at 10.26am on 3 November 2009