

**IN THE EMPLOYMENT COURT  
AUCKLAND**

**[2014] NZEmpC 27  
ARC 1/14**

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

AND IN THE MATTER    of an application for urgency and for stay

BETWEEN                    BRENDON RICHARD BOOTH  
   Plaintiff

AND                            BIG KAHUNA HOLDINGS LIMITED  
   Defendant

Hearing:                    21 February 2014 by telephone conference call  
   (Heard at Auckland)

Appearances:            Mr Oldfield, counsel for the plaintiff  
   Ms Golightly, counsel for the defendant

Judgment:                21 February 2014

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**INTERLOCUTORY JUDGMENT (NO 1) OF JUDGE CHRISTINA INGLIS**

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[1]      The plaintiff has filed an application for stay of proceedings together with an associated application for urgency. The applications are advanced on the basis that the defendant has indicated that it will take steps to enforce a determination of the Employment Relations Authority<sup>1</sup> ordering the plaintiff to pay a contribution to the defendant's costs of \$29,400. Both the Authority's substantive determination<sup>2</sup> and subsequent costs determination are the subject of challenge.

[2]      An urgent telephone conference was convened today with counsel to discuss how the applications might best be advanced. Ms Golightly, counsel for the defendant, was at something of a disadvantage as it appeared that she had not yet had

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<sup>1</sup> [2013] NZERA Auckland 566.

<sup>2</sup> [2013] NZERA Auckland 430.

the opportunity to consider the applications. However, she agreed that the application for a stay needed to be dealt with urgently and the application for urgency was granted in the circumstances.

[3] The defendant has indicated that it will oppose the application for a stay. Ms Golightly advised that she had instructions to proceed with bankruptcy against the plaintiff notwithstanding the challenges that have been filed and the observation by the Authority member that:<sup>3</sup>

It is the Authority's usual practice to deal with costs matters even where the substantive determination has gone on challenge, as in this case. No doubt the parties will use their good sense and not seek to enforce this order until the results of the challenge, and any impact that has on costs in the Authority, is known.

[4] Nor was Ms Golightly in a position to give an undertaking that further steps would not be taken pending determination of the plaintiff's urgent application for a stay. In these circumstances I considered it just that interim orders be made preserving the position of the plaintiff. I accordingly ordered that there be an interim stay of execution of the Authority's costs determination (in [2013] NZERA Auckland 566) pending determination of the application for a stay or until further order of the Court.

[5] Timetabling orders were discussed in relation to progressing the stay application. Ms Golightly suggested somewhat more generous timeframes than might usually apply but, as Mr Oldfield acknowledged, the plaintiff was not prejudiced given the interim orders that have now been made. Following discussion orders were made that:

- a) The plaintiff is to file and serve a sworn copy of the affidavit already filed in support of the application for a stay no later than 4pm on Monday 24 February 2014;
- b) The defendant is to file and serve a notice of opposition and any affidavit/s in support by 4pm on 3 March 2014;

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<sup>3</sup> At [23].

- c) The plaintiff is to file and serve any submissions in support of the application 4pm on 6 March 2014;
- d) The defendant is to file and serve any submissions in opposition by 4pm on 10 March 2014.
- e) The application will then be determined on the papers.

[5] Leave is reserved for either party to apply on reasonable notice for any further directions or orders.

[6] Costs are reserved.

Christina Inglis  
Judge

Judgment signed at 4pm on 21 February 2014