

**IN THE EMPLOYMENT COURT  
AUCKLAND**

**[2015] NZEmpC 63  
ARC 22/11**

IN THE MATTER OF proceedings removed from the  
Employment Relations Authority

AND IN THE MATTER matter of interlocutory applications

BETWEEN PREMIER EVENTS GROUP LIMITED  
First Plaintiff

AND BA PARTNERS LIMITED (IN  
LIQUIDATION AND RECEIVERSHIP)  
Second Plaintiff

AND MALCOLM JAMES BEATTIE  
First Defendant

AND ANTHONY JOSEPH REGAN  
Second Defendant

AND PATRICIA PANAPA  
Third Defendant

AND BETWEEN MALCOLM JAMES BEATTIE  
First Plaintiff

AND ANTHONY JOSEPH REGAN  
Second Plaintiff

AND PATRICIA PANAPA  
Third Plaintiff

AND PREMIER EVENTS GROUP LIMITED  
First Defendant

AND BA PARTNERS LIMITED (IN  
LIQUIDATION AND RECEIVERSHIP)  
Second Defendant

Hearing: 24 April 2015 and by written submissions filed on 28 April and 1 May 2015  
(Heard at Auckland)

Appearances: A Lloyd and M Pascariu, counsel for Premier Events Group Limited  
J Eichelbaum, counsel for Malcolm James Beattie, Anthony Joseph Regan and Patricia Panapa

Judgment: 14 May 2015

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**INTERLOCUTORY JUDGMENT (NO 6) OF CHIEF JUDGE G L COLGAN**

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[1] Premier Events Group Limited (PEGL) has applied for two orders. The first is to stay the remnants of these proceedings until associated litigation in the High Court has been concluded. There are other parties and different (non-employment-related) causes of action in the High Court proceedings which, themselves, have been and remain stayed. PEGL has applied to the High Court to lift its stay on those proceedings and that Court has reserved its decision until the outcome of PEGL's application for stay in this Court is known. PEGL also seeks to have included in its order a stay of this Court's determination of costs until the proceedings in the High Court are concluded.

[2] The second and associated interlocutory order claimed by PEGL is that the Registrar should not seal a certificate of judgment in respect of Malcolm Beattie's successful claim against PEGL for remuneration arrears. The individual defendants oppose these orders.

[3] In a Minute issued on 1 April 2015 I indicated that I hoped to be able to release this judgment before the end of April. That was not possible for two reasons. First, that estimate was given at a time when counsel anticipated that the matter could be dealt with on papers already filed without necessity for a hearing. Mr Lloyd, for PEGL, subsequently sought a hearing which took place on 24 April 2015, delaying consideration of the issue. The second reason for the delay is that at the conclusion of his submissions, Mr Eichelbaum sought an opportunity to make submissions on a question that he was not prepared to argue at the hearing. This was

granted and the period for reply by Mr Lloyd extended the timetable to 1 May 2015. Counsel undertook to advise the Registrar of the High Court at Auckland and Ellis J, who is dealing with the question of stay in that jurisdiction, of this delay and the reasons for it.

[4] Before turning to PEGL's claim for an order staying the balance of the proceedings in this Court (being an assessment of damages that may be due by Mr Beattie to PEGL), it is important to record formally what the Court has and has not done to date. In respect of those causes of action by PEGL against Mr Beattie that remain alive, the Court has not entered judgment for PEGL. Rather, on questions of liability alone, it has found that Mr Beattie was in breach of his relevant contractual obligations to PEGL. Put another way, as it was in the substantive judgment, PEGL has succeeded in those claims against Mr Beattie on questions of liability. Whether or not the sealing by the Registrar of a certificate of judgment amounts to the entering of judgment formally against Mr Beattie, the Court's conclusions reached so far in those causes of action do not amount to the entering of a judgment against him.

### **Stay of remaining proceedings**

[5] I first deal with PEGL's grounds in support of an order staying those remaining proceedings.

[6] The parties elected, by agreement, to separate trials concerning questions of liability and liquidated damages on the one hand and, on the other, concerning the assessment of unliquidated damages. That has meant that the only remaining issue (except for costs) for this Court is to hear and assess is the damages for which Mr Beattie may be liable to PEGL for breach of his contract.

[7] PEGL submits that if proceedings in this Court are not stayed it will be prevented effectively from pursuing its remedies against the full range of defendants in the High Court proceedings. The wrongs that PEGL claim against Mr Beattie in the High Court proceedings are not dissimilar to, and in some cases probably overlap significantly with, the common law claims for breach of contract determined in this Court and in respect of which PEGL has been successful on at least one.

[8] The claims in the High Court are brought in causes of action not justiciable here, including breach by Mr Beattie of fiduciary duties owed to PEGL as a director of that company. Those High Court claims for breach of fiduciary duties and other causes of action include: that Mr Beattie secured the termination of existing contractual arrangements between PEGL and its clients; that he negotiated with PEGL's clients to provide them with equivalent services; and that he established substitute contractual arrangements for his own benefit and that of his corporate interests.

[9] Further, PEGL alleges that Mr Beattie and Anthony Regan interfered with PEGL's ongoing joint venture negotiations with the US entity known as Cartan in respect of the 2012 Olympic Games and established substitute contractual arrangements with Cartan for their own benefit. PEGL's case to lift the stay in the High Court is that findings of fact made in this Court's judgment on liability will not need to be traversed again in the High Court proceedings, so that there is no risk of inconsistent findings or duplication of processes in relation to evidence.

### **PEGL's arguments**

[10] PEGL invokes the doctrine of res judicata. This doctrine operates to prevent a party to a final judgment from challenging, in a subsequent proceeding, matters that have already been determined finally. The rationale for this is the public policy objective of fairness to litigants and the desirability generally of bringing an end to litigation.

[11] It cannot have been objectionable that the proceedings in both courts have run in parallel to date, and indeed the Court of Appeal has affirmed that principle in this case in *Beattie v Premier Events Group Ltd*.<sup>1</sup> A theoretical issue of potential double recovery could arise at the point where PEGL seeks a judgment on remedies in this court. However, in this regard PEGL relies on the judgment of the Privy Council in *Tang Man Sit v Capacious Investments Ltd* where this was said:<sup>2</sup>

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<sup>1</sup> *Beattie v Premier Events Group Ltd* [2014] NZCA 184, (2014) 11 NZELR 755 at [49].

<sup>2</sup> *Tang Man Sit v Capacious Investments Ltd* [1996] 1 AC 514 (PC) at 521.

Faced with alternative and inconsistent remedies a plaintiff must choose, or elect, between them. He cannot have both. The basic principle governing when a plaintiff must make his choice is simple and clear. He is required to choose when, but not before, judgment is given in his favour and the judge is asked to make orders against the defendant.

[12] So, PEGL says that if the Employment Court proceeds to determine the appropriate remedy in relation to PEGL's successful liability claims against Mr Beattie, it will be open to Mr Beattie to contend that the principle of election precludes PEGL from pursuing any further remedies against him in the High Court.

[13] Next, PEGL submits that some of the claims to remedies it has against Mr Beattie are not justiciable in the Employment Court. These are where there are issues of apportionment, contribution and contributory negligence which, although they have been raised in the claims of parties to the Employment Court proceedings, may only be determined by the High Court. Mr Lloyd submitted that this was recognised by this Court in its judgment on liability where it held:<sup>3</sup>

... the justification for those acts or omissions are not matters for decision by this Court in an employment law context. That is particularly so in relation to the allegations about Mr Regan who was never an employee of PEGL. But even in the case of Mr Beattie, his allegations of improper conduct by PEGL relate to issues not governed by their employment relationship. Rather, Mr Beattie's claims in this regard concern the sale of his shares in 2004 and the fixing and payment of the sale price for these over subsequent years. This conclusion means that there cannot be any apportioning of any losses between the plaintiffs and the defendants on the grounds advanced by Mr Beattie in such proceedings as the Court concludes are justiciable.

[14] Mr Lloyd submits that to the extent that this Court may consider issues of apportionment and contribution, in the sense that PEGL may have contributed to its losses, this must be limited to the matters justiciable in the Employment Court proceedings. Counsel says this does not extend to the multiple extra-jurisdictional issues raised unsuccessfully by Mr Beattie in the Employment Court which can only be determined in the High Court proceedings.<sup>4</sup>

[15] Next, Mr Lloyd submits that the election issues arising out of PEGL's remedies include claims brought in the High Court but not able to be determined by the Employment Court. These include:

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<sup>3</sup> *Premier Events Group Ltd v Beattie* [2014] NZEmpC 231 at [295].

<sup>4</sup> At [341].

- claims against the former directors of PEGL for breach of their fiduciary obligations;
- claims against Messrs Beattie and Regan in respect of their conduct following the termination of their respective employment agreements with PEGL and BA Partners Limited and not justiciable in this forum against Mr Regan who was not an employee of PEGL but a director of it;
- claims against the corporate defendants in the High Court proceedings; and
- claims for equitable remedies against the defendants in the High Court proceedings.

[16] There is therefore, PEGL submits, a real risk that it may be precluded from litigating the broader claims it has made against Mr Beattie in the High Court proceedings if the balance of the proceeding in this Court is progressed to judgment on PEGL's remedies against Mr Beattie. Mr Lloyd submits that this would preclude PEGL from obtaining the remedies it is seeking and, in particular, an account of profits against its former director. In summary, therefore, PEGL says it is entitled to make an election after trial in the High Court, and a stay of the balance of the proceedings in this Court will enable it to do so effectively.

[17] Next, PEGL advanced an argument that it will be a more efficient use of court and litigants' resources that proceedings are now conducted in the High Court and stayed in this forum. Mr Lloyd submitted that if the proceedings in the Employment Court are stayed and the High Court proceedings determined, the likely outcome will be that the Employment Court will not be required to give judgment on PEGL's remedies against Mr Beattie in the proceedings in this forum. That is said to be that the broader scope of the claims made in the High Court, the additional parties in that forum, and the availability of a wider range of remedies are likely to encompass in practice those remedies which are available to PEGL in this jurisdiction. In those circumstances, counsel submits, the parties will avoid the

further cost associated with determining PEGL's appropriate remedies in this forum. This practical consideration was one identified by Chisholm J in a similar context in *Rooney Earthmoving Ltd v McTague*<sup>5</sup> upon which Mr Lloyd relies and which is relevant to the question for decision now.

[18] *Rooney Earthmoving* is a judgment of the High Court. In that case there were concurrent proceedings in the Employment Court largely for the same jurisdictional reasons as there are in this case. What were eventually the proceedings in the Employment Court (on challenge from the Authority) were filed first in time.<sup>6</sup> The parties in *Rooney* agreed that the hearing in the Employment Court would be confined to an initial determination on issues of liability, as is the case here. In addition to the three individual ex-employees who were defendants in both sets of proceedings, their new company, BMW Contracting Ltd which was not a party to the Employment Court proceedings, was the fourth defendant in the High Court.

[19] After that hearing in the Employment Court had been commenced and a month after this Court's judgment on liability in that case had been issued, the plaintiff in *Rooney* applied without notice to the High Court for freezing orders. Subsequently, its substantive proceedings in the High Court claimed general and special damages, relying on four causes of action in tort which were not within the Employment Court's jurisdiction. The High Court stayed the proceedings in that forum until the Employment Court's had been concluded.

[20] Turning to the balancing exercise of the advantages and disadvantages to each party, and thereby to overall justice, counsel for PEGL submits that the interests of justice favour the grant of a stay of the balance of proceedings in this case. Mr Lloyd points out that the High Court proceedings were due to go to a five-week fixture beginning in March 2014 but that this was vacated pending the issuing of this Court's liability judgment. It is unclear whether this vacated trial was one only on questions of liability: counsel's advice that there are even now complex interlocutory matters for decision in the High Court proceedings tends to indicate that there was to be a split trial there too.

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<sup>5</sup> *Rooney Earthmoving Ltd v McTague* HC Christchurch, CIV-2009-476-471, 30 April 2010 at [25].

<sup>6</sup> *Rooney Earthmoving Ltd v McTague* [2009] ERNZ 240.

[21] Next, in this regard, Mr Lloyd submitted that Mr Beattie and PEGL have not concluded the mutual discovery of documents and information affecting damages, including some that will be relevant to this Court's determination of PEGL's entitlement to damages.

[22] Further, Mr Lloyd submitted that despite Mr Beattie's argument that PEGL's application for stay has been made too late, the authorities establish that a party such as PEGL is able to defer its election until the conclusion of a trial.<sup>7</sup> This approach is said to have been confirmed by the High Court in the earlier unsuccessful strike-out application in Mr Beattie's proceedings which resulted in the imposition of the stay in that forum.<sup>8</sup>

[23] Finally, counsel submitted that the Court of Appeal also held that PEGL was neither required to, nor could, make an election in respect of remedies until this Court's liability judgment was released.<sup>9</sup>

[24] In response to Mr Beattie's assertions, PEGL denies that its application for stay is motivated by a desire to avoid paying him costs. It says, first, that this assumes that Mr Beattie will be awarded costs although this is said to be "highly unlikely given the relative successes and failures of both Mr Beattie and PEG in their claims and defences." That contention will be answered, at least in part, by the costs judgment that will not be stayed and will issue shortly.

[25] Next, PEGL rejects Mr Beattie's argument that if the Employment Court proceedings are stayed at this point, it would cause PEGL to leave this forum "empty-handed", with no monetary damages being awarded to it, meaning, in turn, that Mr Beattie was successful and should be entitled to costs based on that. Mr Lloyd submits that this proposition is misconceived because the liability judgment of this Court will still stand irrespective of whether a stay is granted.

[26] PEGL's case is, in a nutshell, that if the Employment Court now hears and determines damages payable by Mr Beattie to it on the cause of action in which it

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<sup>7</sup> *Tang Man Sit*, above n 2 at 521.

<sup>8</sup> *Premier Events Group Ltd v Beattie* [2013] NZHC 2755 at [21].

<sup>9</sup> *Beattie v Premier Events Group Ltd*, above n 1 at [56].



has succeeded in this Court, it will be deprived of its right in law to make an election in the High Court proceedings (assuming liability is established against Mr Beattie) as to whether it wishes to have judgment entered in its favour. If it does, it will seek to recover its losses in the High Court proceedings and not do so in the proceeding currently before this Court. If it does not so elect, however, PEGL wishes to leave open to itself the opportunity to elect not to have judgment entered in the High Court and then to pursue its damages claim in the Employment Court.

## **Discussion**

[27] It is common ground that despite there being no express power contained in the Act to stay proceedings, the Court nevertheless has a discretion, exercisable judicially, to do so.<sup>10</sup>

[28] The causes of action faced by Mr Beattie at the suit of PEGL in this Court are said to be based on very similar, if not the same, facts as those causes of action between the same parties in the same capacities in the High Court which are yet to go to trial. The only difference is in the categorisation of the causes of action, necessarily because of the split and exclusive jurisdiction of this Court to hear and decide causes of action arising out of an employment relationship. So, for example, in the High Court, PEGL's claims against Mr Beattie include for breach of fiduciary obligations and other causes of action over which the Employment Court has no jurisdiction. If PEGL is successful in the High Court against Mr Beattie in those causes of action, the damages are therefore likely to be coextensive with the damages that this Court may order in respect of the cause of action already established against Mr Beattie. PEGL accepts that it cannot recover more than once against Mr Beattie for the same losses, howsoever these may be categorised in terms of causes of action.

[29] Questions of assessing unliquidated damages (particularly in this Court but in the High Court also I understand) are not ready for trial. Document disclosure is still to be sought, perhaps both ways, between those parties. Mr Beattie's concern is that if this Court does not go ahead and set down a damages hearing, so fixing the

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<sup>10</sup> *Transpacific All Brite Ltd v Sanko* [2012] NZEmpC 7 at [3].

amount of his liability to PEGL in the Employment Court proceedings, the delays in interlocutory matters in the High Court and, subsequently, before a trial and judgment (counsel expect the trial to be in late 2016 at the earliest), mean that he will have to wait an inordinate amount of time before knowing if, as he claims, PEGL has not suffered any compensable loss or, if it has, how much he will be required to pay to it.

[30] Mr Lloyd submits that the relevant considerations on an application such as this were summarised in the judgment in *McKay Refined Sugars v NZ Sugar Co.*<sup>11</sup> These include:

- (a) Whether the termination of one proceeding is likely to have a material effect on the other;
- (b) the public interest;
- (c) which proceeding was commenced first;
- (d) the undesirability of two courts competing to see which of them determines common facts first;
- (e) consideration of circumstances relating to witnesses;
- (f) whether work done on pleadings, particulars, discovery, interrogatories and preparation might be wasted;
- (g) the undesirability of substantial waste of time and effort if it becomes a common practice to bring actions in two courts involving substantially the same issues.
- (h) how far advanced the proceedings are in each court;

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<sup>11</sup> *MacKay Refined Sugars (NZ) Ltd v NZ Sugar Co Ltd* [1997] 3 NZLR 476 (HC) at 482, (1997) 11 PRNZ 295 at 301.

- (i) whether the law should strive against permitting multiplicity of proceedings in relation to similar issues; and
- (j) generally balancing the advantages and disadvantages to each party.

[31] Addressing what might be called these *McKay Refined Sugars* tests, I conclude as follows.

[32] This being private litigation, there is little, if any, public interest in the resolution of the litigations.

[33] The High Court proceedings were issued after those in the Authority which have come on to this Court and were not progressed in the same way as were those earlier proceedings now in the Employment Court. In May 2010, after Mr Beattie left PEGL in March, PEGL issued proceedings in the High Court alleging breach of fiduciary duties owed as a director by him to the company. Those proceedings related to the securing of the termination of existing contractual arrangements between PEGL and its clients, negotiating directly with PEGL's clients to provide them with equivalent services, and establishing substitute contractual arrangements for Mr Beattie's own benefit and that of his corporate interests.

[34] Those High Court proceedings were stayed in that forum on 22 October 2013 and the High Court's decision to do so has subsequently been upheld by the Court of Appeal. PEGL has now applied to remove the High Court's stay order and that Court has postponed its consideration of that application until the claims dealt with in this interlocutory judgment have been decided.

[35] The current situation is that separate causes of action have been advanced, largely contemporaneously, based on the same facts. Whilst it is undesirable for two courts to determine liabilities arising out of common facts, that is a consequence of legislative dictate; and the scope of the relevant inquiry by the High Court (for example, into the fiduciary relationship between the parties) will be broader than it was for the Employment Court considering their employment relationship.

[36] PEGL emphasised that, having obtained a decision on liability in its favour on causes of action relating to Mr Beattie's dealings with the American corporation Cartan, if it is successful in its High Court causes of action against Mr Beattie in respect of the same facts determined by this Court (whether separately on liability and subsequently on damages or together in a single judgment), PEGL will then be entitled to elect whether its potential High Court judgment is to be entered against Mr Beattie. If it so elects, PEGL accepts that it must thereby be deemed to have abandoned its claims against Mr Beattie in this Court. If, in those circumstances, PEGL elects not to have judgment entered against Mr Beattie in the High Court, it will then be in a position to pursue its claims for damages against him in the Employment Court.

[37] Summarising Mr Beattie's position in submissions in reply, Mr Eichelbaum advances what he described as a single simple proposition following which the Court should decline to stay PEGL's remaining proceedings against Mr Beattie. That proposition is that the High Court has no jurisdiction to determine the damages that the Employment Court may award against Mr Beattie because of ss 187 and 191 of, and sch 3 to, the Act.

[38] I am inclined to think that, so put, Mr Eichelbaum is correct technically and strictly. However, that is not the simple position here. The causes of action brought by PEGL against Mr Beattie in the High Court must be brought against him there as the employment-related causes of action had to be brought by PEGL against Mr Beattie in this Court. That is the consequence of strict and clear statutory mandates. If, however, those causes of action in the High Court seek the same amounts of damages for the same losses incurred by PEGL arising from all of Mr Beattie's breaches, then, if liability is established in the High Court proceedings as it has been in this Court, the damages for those losses will be the same. PEGL cannot recover twice for the same losses. So, if it elects to recover its losses by an award of damages in the High Court proceedings, it will have elected to forego that remedy in this Court and vice versa.

[39] Mr Eichelbaum says that he has already advanced this argument before the Court of Appeal without success. The Supreme Court has also declined leave to

appeal to it on this question. Mr Eichelbaum, for Mr Beattie, is intent on re-litigating the point, however, relying on such judgments as that of the Privy Council in *Indian Endurance*.<sup>12</sup> Also relied upon by Mr Eichelbaum is the judgment of Gummow J in *Effem Foods*.<sup>13</sup>

[40] I am told that document discovery or disclosure procedures have not been completed in this Court in respect of the damages claims by PEGL against Mr Beattie. That is also the position in the High Court although in that forum, I understand that other document discovery questions may be outstanding as well as other interlocutory matters. So, issues both for trial in the High Court, and for resumed trial in the Employment Court, are not yet concluded enabling a hearing in either court to be scheduled, at least in the near future.

[41] Particularly significant in deciding this issue of election is the judgment of the Court of Appeal in *Beattie v Premier Events Group Ltd*.<sup>14</sup> That was the judgment delivered on Mr Beattie's appeal against the judgment of the High Court declining the application of Mr Beattie and others to strike out claims brought against them in the High Court because those claims were an abuse of process.<sup>15</sup>

[42] As the judgment of the Court of Appeal records,<sup>16</sup> one of the issues for that court concerned the principle of election. In the Court of Appeal, counsel for Mr Beattie contended that a plaintiff seeking compensation twice for the same business loss retains a right of election (between litigations in different courts) only up to the point that the plaintiff seeks judgment. Counsel for Mr Beattie argued in the Court of Appeal that PEGL had brought its employment litigation to judgment by asking the Employment Court to enter judgment on liability in its favour. In this, counsel for Mr Beattie relied on the judgment of Lord Atkin in *United Australia Ltd v Barclays Bank Ltd*.<sup>17</sup>

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<sup>12</sup> *India v India Steamship Co Ltd (The Indian Endurance and the Indian Grace) (No 2)* [1996] CLC 1548 (CA Civ).

<sup>13</sup> *Trawl Industries of Australia Pty Ltd (in liq) v Effem Foods Pty Ltd* [1992] 108 ALR 335 (FCA).

<sup>14</sup> *Beattie* (CA), above n 1.

<sup>15</sup> *Premier Events Group Ltd* (HC), above n 9.

<sup>16</sup> *Beattie*, above n 1 at [36]-[40].

<sup>17</sup> *United Australia Ltd v Barclays Bank Ltd* [1941] AC 1, [1940] 4 All ER 20 (HL).

[43] At [55] of the Court of Appeal's judgment, Cooper J wrote:

... We do not consider that the liability hearing in the Employment Court constituted bringing the claim to "judgment" in the sense contemplated in *United Australia*. Rather, that case is authority for the proposition that separate causes of action may be advanced at the same time and based on the same facts. In this case, it is the statute that requires that to happen in two separate Courts. But it is only at the point when the respondent seeks entry of judgment that an issue of double recovery could arise. As was observed in *Tang Man Sit*:<sup>18</sup>

"Faced with alternative and inconsistent remedies a plaintiff must choose, or elect, between them. He cannot have both. The basic principle governing when a plaintiff must make his choice is simple and clear. He is required to choose when, but not before, judgment is given in his favour and the judge is asked to make orders against the defendant."

[56] If the respondent succeeds in the Employment Court on liability issues, it would still be necessary to deal with the issue of remedy. And the implications of seeking remedies in that Court would then need to be weighed in respect of any overlap with the High Court claim. Once again, until the outcome of the Employment Court proceeding is known we do not see how any issue of election or double recovery can arise.

[44] So, if PEGL elects to recover its same losses as it may have incurred as a result of Mr Beattie's breach of his employment agreement in this Court, but by an award of damages in the High Court proceedings, it will have elected to forego that remedy in this Court and vice versa.

### **Decision on stay application**

[45] This is a finely balanced decision but I have been persuaded in favour of granting a stay by Mr Lloyd's election arguments. Accepting that PEGL cannot recover in both courts for the same losses, it nevertheless has, in law, a right to elect the forum in which it will pursue those losses, a right that is exercisable by it (if it is successful in the High Court) up to the point where both courts have made liability findings in favour of the company against Mr Beattie. That has already occurred in this Court but has yet to take place in the High Court (if it does). To deprive PEGL of that election now by refusing to stay the remnants of the proceedings in this Court, and bringing the damages hearing on for trial before the High Court proceedings can get to trial (at least on liability), would be unfair and unjust to the

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<sup>18</sup> *Personal Representatives of Tang Man Sit v Capacious Investments Ltd* [1996] 1 AC 514 at 521.

company. Although, on Mr Eichelbaum's strongest argument, further delay both to Mr Beattie and generally to the finality of litigation is understandable, that is a lesser injustice in all the circumstances than would be visited upon PEGL if a stay of the remnants of the proceedings in this Court were not granted.

[46] For that reason, there will be an order staying further matters in this Court in relation to the hearing and determination of such damages for which Mr Beattie may be liable to PEGL.

### **Application to stay judgment sealing**

[47] I deal finally with PEGL's application to stay Mr Beattie's application to the Registrar to seal a certificate of judgment against it in respect of his successful claim to unpaid remuneration. This was a discrete cause of action not linked directly to PEGL's claims for damages for breach of contract against Mr Beattie. PEGL's argument in support of an order staying execution of that judgment is that its claims for breach of contract against Mr Beattie will, when finalised, exceed significantly Mr Beattie's judgment against PEGL. At that point there will have to be an offsetting of the amounts owed by each to the other, in which exercise Mr Beattie will owe PEGL money and it will owe him none.

[48] Not only was Mr Beattie's claim a discrete one, but it was for unpaid employee remuneration which came about as a result of an unlawful reduction of his salary by PEGL. Irrespective of whether PEGL may be correct that, in the long run, Mr Beattie may end up owing it more money than it owes him, I consider that he is entitled to the fruits of his judgment against PEGL without further delay.

[49] In support of its application to stay the sealing of a certificate of judgment, PEGL relies on the judgment in *Grant v New Zealand Motor Corporation Ltd*.<sup>19</sup> There the Court of Appeal determined:<sup>20</sup>

The defendant may set-off a cross-claim which so affects the plaintiff's claim that it would be unjust to allow the plaintiff to have judgment without bringing the cross-claim to account. The link must be such that the two are in

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<sup>19</sup> *Grant v New Zealand Motor Corporation Ltd* [1989] 1 NZLR 8.

<sup>20</sup> At 9-10.

effect interdependent: judgment on one cannot fairly be given without regard to the other; the defendant's claim calls into question or impeaches the plaintiff's demand. It is neither necessary, nor decisive, that claim and cross-claim arise out of the same contract.

[50] Whilst that may be the position in civil litigation in the courts of ordinary jurisdiction, this is a case which includes elements of unpaid remuneration to an employee as well as claims at common law for losses allegedly caused by breaches of the same employment contract. Employment law regards the payment of wages or other remuneration by employers to employees as a fundamental and primary obligation that should not be deflected or delayed by other claims by the employer against the employee. That is confirmed by such statutes as the Wages Protection Act 1983 and the unpaid wages claims provisions in the Employment Relations Act. In ordinary employment law cases, for example, an employer is not entitled to deduct from wages, holiday pay, or other fundamental remuneration payable to an employee, money that the employer may claim is owed by the employee irrespective of the circumstances in which that claim arises. There are some statutory exceptions to that principle (not applicable in this case) but they illustrate its continuing applicability.

[51] In these circumstances, I decline to apply the principles enunciated by the Court of Appeal in *Grant* to the employment related circumstances of this case. Accordingly, I refuse PEGL's application for an order directing that the Registrar not issue a certificate of judgment in Mr Beattie's claim.

### **Summary of orders**

[52] The most just course, in all the circumstances, is to decline PEGL's application for an order staying the sealing of a certificate of judgment in Mr Beattie's proceedings against it but, at the same time, to allow PEGL's application for a stay of the remnants of the proceeding in which PEGL has been successful against Mr Beattie.

[53] There will be an order staying the remnants of the proceedings between PEGL as plaintiff and Mr Beattie as defendant. That stay is, however, made on conditions. The first is that it is to apply until the conclusion of the High Court



litigation between these parties or until further order of this Court. The second condition attaching to this order for stay is that counsel are to report to the Registrar by memorandum no less frequently than four-monthly as to the progress of the proceedings in the High Court.

[54] As to PEGL's application to stay determination of costs in this Court, I make an order for partial stay of those questions of costs. To be stayed, on the same conditions as attached above to the remnants of the proceedings between PEGL and Mr Beattie, are questions of costs on the Court's liability findings generally in those causes of action between PEGL as plaintiff and Mr Beattie as defendant. There will not, however, be a stay of costs on the balance of the matters determined by this Court. A costs judgment will issue shortly in the form of an interim judgment because of the further reservation of costs on other causes of action between the parties.

[55] On the matter of the application to stay the issuing of a certificate of judgment by the Registrar, in respect of those causes of action which have now been finalised, I decline PEGL's application. After 20 working days following the delivery of this judgment, the Registrar may issue a certificate of judgment in respect of all matters determined by this Court except as have been stayed.

GL Colgan  
Chief Judge

Judgment signed at 2.45 pm on Thursday 14 May 2015