



# Employment Court of New Zealand

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## Able Owl XL Limited v Gladden [2015] NZEmpC 231 (21 December 2015)

Last Updated: 23 December 2015

### IN THE EMPLOYMENT COURT AUCKLAND

#### [\[2015\] NZEmpC 231](#)

EMPC 217/2014

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

AND IN THE MATTER    of an application for stay of  
                                 execution of judgment

BETWEEN                ABLE OWL XL LIMITED Plaintiff

AND                      NEIL GLADDEN Defendant

Hearing:                By written submissions and evidence filed on 6, 16, 19  
                                 and 26  
                                 November, and 15 December 2015

Appearances:          P Oulton, agent for plaintiff (until 15 December 2015)  
                                 P Churchman QC, counsel for plaintiff (after 15  
                                 December  
                                 2015)  
                                 Defendant in person

Judgment:              21 December 2015

### INTERLOCUTORY JUDGMENT OF CHIEF JUDGE G L COLGAN

[1] This judgment decides Able Owl XL Limited's (Able Owl) application for an order staying execution of the Employment Court's judgment delivered on 24

September 2015.<sup>1</sup> This directed Able Owl to pay to Neil Gladden sums totalling

\$1,871.37, together with interest at the rate of five per cent per annum on that sum for the period from 12 June 2013 until the date of payment of that sum to Mr Gladden. The Court also directed Able Owl to pay to Mr Gladden the sum of \$5,000 as was awarded for costs in the Authority, together with interest on that sum at the rate of five per cent per annum calculated from 29 August 2014 to the date of payment.

<sup>1</sup> *Able Owl XL Ltd v Gladden* [\[2015\] NZEmpC 166](#).

ABLE OWL XL LIMITED v NEIL GLADDEN NZEmpC AUCKLAND [2015] NZEmpC [21 December 2015]

[2] The post-judgment history of this application is relevant because the order for stay sought by the plaintiff is discretionary.

[3] Ignoring elements of the case relating to costs, which should be determined by the trial Judge, the following is the chronology of the plaintiff's application for stay. On 6 November 2015 Mr Oulton, as agent for the plaintiff, filed an inadequately brief application for stay

of execution of the Court's judgment on the following grounds: "Payment of amounts awarded to be stayed subject to an appeal at the Appeal Court."

[4] On 12 November 2015 the Registrar of the Court of Appeal wrote to Mr Oulton rejecting his application for leave to appeal and "strongly" suggesting that Mr Oulton and the plaintiff take legal advice.

[5] On 16 November 2015 the defendant, Mr Gladden, filed a notice of opposition to the plaintiff's application for stay, categorising it as "vexatious and simply a stalling tactic by the Plaintiff".

[6] On the same dated, 16 November 2015, his Honour Judge ME Perkins issued a Minute addressing the plaintiff's inadequate application for stay. The Judge pointed out that the filing of an application for leave to appeal did not operate as a stay of the proceedings appealed from. The Judge's Minute allowed the plaintiff further time to put before the Court matters which would usually be contained in such an application. At the end of that Minute the Judge noted:

7. The plaintiff should be aware that the usual procedure adopted by the Court in such matters is that if a stay is granted it will be on the basis that the party seeking the stay would need to lodge with the Court the full amount that is owing to the opposing party under the judgment. This sum would then be held in an interest bearing account pending further order of the Court.

[7] On 19 November 2015 the plaintiff filed an amended application for stay of proceedings which included the original ground set out above but added further allegations relating to Mr Gladden's ability to repay amounts "should the appeal be successful". When this amended application was signed by Mr Oulton on

18 November 2015, I assume that he had received the letter from the Registrar of the

Court of Appeal dated 12 November 2015 and posted to Mr Oulton at the plaintiff's Hamilton Post Office Box number. If that was so, Mr Oulton would have been aware that the Court of Appeal had rejected his attempt to appeal. Nevertheless, Mr Oulton filed an affidavit in support of his amended application for stay on the same date, 19 November 2015, reiterating his allegations about Mr Gladden's inability to repay any money that he might receive, and referring to his doubt whether Mr Gladden could "... hold down ... a job for any period".

[8] The supporting grounds for this allegation included serious allegations against the defendant which had not previously formed any part of the case or evidence relating to Mr Gladden's alleged treatment of other employees, together with what Mr Oulton described as Mr Gladden's irascibility and his alleged inability to focus on tasks. Ironically, Mr Oulton also alleged that Mr Gladden's election not to have legal representation indicated a lack of funds on the defendant's behalf. That was even although the plaintiff was not then represented by counsel as it had been previously and Mr Oulton had told Judge Perkins, in support of an interlocutory application, that the plaintiff itself risked insolvency if the proceedings were to be publicised.

[9] In Mr Oulton's amended application for stay, filed on 19 November 2015, he made a serious allegation of criminal offending against Mr Gladden. He also made a very serious allegation of corruption by the trial Judge which he extended also to the "whole system including the court ... in the matter of employment legislation". Another ground for a stay was, therefore, said to be that these matters of judicial corruption should be investigated. Finally, Mr Oulton's application stated that: "Funds in excess of the award are already in a legal firm's trust account".

[10] Mr Oulton's affidavit filed on 19 November 2015 was not properly attested by the Justice of the Peace who took Mr Oulton's oath and the Court directed him to file a properly attested affidavit, which Mr Oulton did on 26 November 2015.

[11] Mr Gladden's affidavit opposing the plaintiff's amended application for an

order for stay, was filed on 26 November 2015. In this, Mr Gladden said:

2.2 ... Mr P Oulton has put two companies, where he was director and shareholder, into receivership.

2.3 In both cases the assets were transferred to a related company (Mr Oulton director and shareholder) operating in the same business space as the companies put in receivership.

[12] Mr Gladden said that another former employee of one of those previous companies had a personal grievance judgment in her favour but that company was then either liquidated or re-named "Roughjustice Limited".<sup>2</sup>

[13] Mr Gladden pointed out that the plaintiff's former solicitors, SBM Legal, held sufficient funds to cover the awards made by the Authority and that this firm had agreed with Mr Gladden not to pay those sums out except by agreement or following the judgment of the Employment Court. Mr Gladden sought a direction to pay out those funds.

[14] On 7 December 2015 Mr Oulton sought an extension of the Court's timetable to file a further affidavit in support of his application for stay. He had been required to do so by 3 December 2015. Mr Oulton told the Court that he had been "trying hard to get an appeal lodged at the Appeal Court" but that this had been rejected. Mr Oulton said that he had been trying for many days to find a lawyer who could and would act for the plaintiff, having done so finally on Friday 4 December 2015.

[15] By a Minute dated 8 December 2015, the Court allowed the plaintiff a "final extension" of that time to midday on Tuesday 15 December 2015 within which to file and serve the affidavit directed by the Court's Minute of 26 November 2015, saying that "In default of doing so, however, the application for stay will be dismissed".

[16] More than four hours after the expiry of that deadline, however, the plaintiff filed a number of documents. First was a notice of

change of lawyer including

advice of the appointment of Mr Churchman QC as the plaintiff's counsel.

2 *AbleOwl Ltd v Hennessy* AC43/03, 30 June 2003.

[17] Second was a further application for stay of execution of judgment, filed on the same day. The grounds in support of that further application included that the plaintiff would, "within the next week, apply to the Court of Appeal for leave to appeal the judgment [of the Employment Court], and for leave for an extension of time to appeal".

[18] Third, together with the foregoing documents, the plaintiff filed a further affidavit by Mr Oulton. This affidavit, sworn on 15 December 2015, confirmed that an application for leave to appeal the Court's substantive judgment would be filed in the Court of Appeal "this week". The affidavit confirmed that sufficient funds covering the Authority's determination are held in the trust account of SBM Legal, the plaintiff's former solicitors, and that Mr Oulton had instructed that firm to hold those monies pending further instructions from him or the Court.

[19] I am heartened to see that the plaintiff and Mr Oulton have finally had the good sense to instruct counsel again. Although marginally beyond the deadline given by the Court for filing an affidavit, I propose to grant a stay of execution of the remedies ordered by the Authority, modest though they are, but on two conditions.

[20] The first condition is that the sums ordered by the Authority to be paid by the plaintiff to the defendant, together with interest thereon, calculated (up to the date of paying into court) at the rate of five per cent per annum, shall be lodged with the Registrar of the Employment Court at Auckland no later than 4 pm on Friday

8 January 2016, to be placed on interest bearing deposit and paid out only by order of the Court.

[21] The second condition upon which a stay is granted relates to Mr Oulton's allegations of judicial corruption as referred to above. I am confident that if Mr Oulton is not already aware of this, he will now have been advised that to allege corruption by a Judge is not at all the same thing as saying that the Judge decided the case wrongly. The allegation imputes bad faith on the part of the Judge, violation by the Judge of his or her oath of office, and at least the implication that the Judge has been motivated in his or her decision by improper considerations. Such an allegation may amount to a contempt of the Court. After giving Mr Oulton an opportunity to

reflect on his intemperate and very serious allegation, and to take legal advice about that, I require him, as an additional condition of the grant of stay, to appear in the Employment Court at Auckland at 10 am on Friday 5 February 2016 before his Honour Judge ME Perkins. Although Mr Oulton is required to attend that hearing in person, he may be represented by counsel and may address the Court, either personally and/or through counsel, as to those allegations contained in his pleading.

[22] In default of strict compliance with both of those conditions, the interim order that I now make, staying execution of the Authority's determination, will lapse.

[23] Mr Gladden may attend the hearing on 5 February 2015, although his attendance will be excused if he does not wish to do so. If Mr Gladden does attend at the hearing, Mr Oulton should be on notice that he may be required to meet Mr Gladden's reasonable costs of that attendance.

GL Colgan  
Chief Judge

Judgment signed at 10.30 am on Monday 21 December 2015

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