



Employment Court of New Zealand

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Alkazaz v Asparona Limited [2019] NZEmpC 146 (16 October 2019)

Last Updated: 23 October 2019

IN THE EMPLOYMENT COURT OF NEW ZEALAND AUCKLAND

I TE KŌTI TAKE MAHI O AOTEAROA TĀMAKI MAKĀURĀU

[\[2019\] NZEmpC 146](#)

EMPC 130/2019

IN THE MATTER OF	challenges to determinations of the Employment Relations Authority
AND IN THE MATTER OF	an application for security for costs
BETWEEN	AHMED ALKAZAZ Plaintiff
AND	ASPARONA LIMITED First Defendant
AND	DELOITTE LIMITED Second Defendant
AND	DELOITTEASPARONA LIMITED Third Defendant

Hearing: On the papers

Appearances: A Alkazaz, plaintiff in person
G Service and J Hardacre, counsel for defendants

Judgment: 16 October 2019

INTERLOCUTORY JUDGMENT (NO 2) OF JUDGE M E PERKINS

(Application for security for costs)

[1] The defendants have applied for an order that the plaintiff, Ahmed Alkazaz, give security for the defendants' costs in this proceeding. For the sake of brevity, I shall refer to the defendants as Deloittes. In their application, Deloittes seek \$29,574 (or such other sum as the Court considers fair and just) as security for costs. In addition, Deloittes seek a stay of the proceedings until security has been given and that Mr Alkazaz pays their costs of the application.

AHMED ALKAZAZ v ASPARONA LIMITED [\[2019\] NZEmpC 146](#) [16 October 2019]

[2] These proceedings involve challenges to determinations of the Employment Relations Authority (the Authority) dated 11 April 2019¹ and 2 August 2019.² The latter determination dealt with costs on the proceedings in the Authority in which Mr Alkazaz was unsuccessful. Mr Alkazaz was ordered to pay to Deloittes the sum of

\$4,500 as a contribution towards their costs. In the proceedings now before the Court, Mr Alkazaz applied for a stay of enforcement of the costs award against him. Such a stay was granted on the basis that Mr Alkazaz pay the total amount of the costs awarded into Court pending the outcome of the challenges.³ He has made such payment.

[3] The grounds upon which Deloittes seek the order for security for costs are:

- (a) Mr Alkazaz does not live in New Zealand.
- (b) It is not clear where he lives.
- (c) Mr Alkazaz's claims are without merit.
- (d) The amount of security sought is appropriate in view of the likely costs which would be awarded to Deloitte if successful in defending the challenges, the estimated duration of the trial of four days and the overall costs of defending Mr Alkazaz's claims.
- (e) It is just in all the circumstances to order security for the defendants' costs in defending the proceedings.

[4] In order to advance the challenges to a hearing, a telephone directions conference was convened on 1 July 2019 with Mr Alkazaz and counsel for Deloitte. At that conference counsel indicated that Deloitte were considering an application for security for costs against Mr Alkazaz on the basis that he lived abroad and did not intend to return to New Zealand. Mr Alkazaz, however, stated that he intended to return to New Zealand and would be living in New Zealand from the end of July 2019

1 *Alkazaz v Asparona Ltd* [2019] NZERA 215.

2 *Alkazaz v DeloitteAsparona Ltd* [2019] NZERA 456.

3 *Alkazaz v Asparona Ltd* [2019] NZEmpC 124.

onwards. On the basis of that statement, Deloitte did not consider an application for security for costs would then be necessary and no application would be made.

[5] It subsequently came to light that Mr Alkazaz was not intending to return to New Zealand as he had previously indicated. Accordingly, the present application was made.

[6] The parties have each filed supporting affidavits to the application and opposition respectively. Written submissions have also been filed. I have considered all of the documents filed in dealing with this matter on the papers. Deloitte are now concerned that, with Mr Alkazaz not intending to return to New Zealand and with insubstantial assets remaining in New Zealand, if security for costs is not given by him and he is unsuccessful in his claims, it will not be possible to enforce any potential award of costs against him. Mr Alkazaz apparently now resides with his family in Dubai and has employment there. His wife works abroad. They have one child who is a New Zealand citizen, and Mr Alkazaz is a permanent resident of New Zealand.

[7] The evidence which has been disclosed in this matter is that Mr Alkazaz owns no real property in New Zealand but has an amount of savings lodged here. He is in receipt of a good income in his present position of employment. He indicates that he is intending to return to New Zealand during holiday periods. He submits that he has sufficient funds and income to meet any costs award, and an order for security for costs is unnecessary.

[8] While Deloitte express concern about whether Mr Alkazaz would be in the position to meet any costs award against him if he was unsuccessful, it seems clear that he has sufficient savings in New Zealand and is earning such an income that he would be able to meet any likely costs award against him. The main concern, however, appears to be that, with no real property in New Zealand, it would be easy for him to spirit his savings to another country before enforcement could be effected.

[9] Insofar as the merits of the challenges are concerned, Mr Alkazaz asserts that he has a strong case. He has set out the basis for his assertion at length in his affidavit. While it is not possible to consider the challenges on anything other than an inferential

basis at this stage, I nevertheless have some concern about Mr Alkazaz's prospects. These have been referred to by counsel. Mr Alkazaz, of course, has already been unsuccessful in the Authority. It rejected his claims in their entirety. Mr Alkazaz, in the challenges, is endeavouring to set aside a settlement agreement which was earlier entered into between the parties; he having legal advice. He has also included claims in his challenges which are outside the jurisdiction of the Court to consider. This includes not only part of his claims for compensation but also some of the penalty claims. On the face of it, some of the penalty claims were not raised in the first instance before the Authority and are therefore outside the jurisdiction of the Court to consider. There may also be limitation issues in respect of those claims.

[10] As indicated, it is not possible to form any concluded view on the merits, but, on an inferential basis, Mr Alkazaz will have difficult hurdles to overcome with his claims.

[11] The Employment Court applies the provisions of the [High Court Rules 2016](#) when dealing with applications for security for costs. Regulation 6(2)(a)(ii) of the [Employment Court Regulations 2000](#) (the Regulations) enables the Court to consider the [High Court Rules](#) where there is no formal procedure provided for by the [Employment Relations Act 2000](#), the

Regulations or any other rules of the Employment Court as is the case with an application for security for costs.

[12] The Court has a discretion as to whether or not to make an order giving security for costs.⁴ One basis for ordering security is if a plaintiff is resident out of New Zealand. The discretion is likely to be exercised if there is reason to believe that a plaintiff will be unable to pay the costs of the defendant if the plaintiff is unsuccessful in the proceedings. Deloitte's rely upon both grounds in this case.

[13] In exercising the discretion, the Court must consider all of the circumstances, including the nature of the proceedings and the interests of both parties.⁵ An order for security that has the effect of preventing a party from pursuing his or her claim should only be made after careful consideration, as access to the courts for a genuine plaintiff

⁴ *Quality Consumables Ltd v Hannah (No 2)* [2017] NZEmpC 155 at [12].

⁵ *McLachlan v MEL Network Ltd* [2002] NZCA 215; [2002] 16 PRNZ 747 (CA) at [15]- [16].

is not to be lightly denied. Against that, defendants are entitled to be protected against being drawn into unjustified litigation, particularly where it is over complicated and unnecessarily protracted. In the overall balance which the Court must consider, the issue of the likely merits of the claims also needs to be taken into account.

[14] In the present case, there has already been the need to deal with three interlocutory applications by Mr Alkazaz, including an application for a stay of execution of the costs award of the Authority. Also, he chose to raise disclosure issues after the proceedings were set down for hearing, and Deloitte's have been involved in what appears to be quite extensive attendances in the search for and disclosure of relevant documents. Recently, Mr Alkazaz has indicated an escalation in the disclosure process, which now has the potential to prejudice the substantive hearing being able to commence on the dates allocated. While he has indicated that he has sufficient assets and income to meet a likely award of costs against him if he is unsuccessful, the savings which he has in New Zealand are not all that substantial. Further, representing himself, he will face considerable expense in having to return to New Zealand to conduct his case. This is likely to result in dissipation of some of the savings he has here. As indicated earlier, they could also easily be spirited away before any likely costs award could be enforced.

[15] On balance, now that Mr Alkazaz has indicated that at this stage he has no intention to return to permanently reside in New Zealand as he had earlier indicated, it is appropriate that he be ordered to lodge a sum as security for costs. I consider that an appropriate sum by way of such security is \$15,000.

[16] Accordingly, Mr Alkazaz is ordered to lodge with the Registrar of the Employment Court at Auckland the sum of \$15,000. This is to be held in an interest-bearing account pending the outcome on the challenges or until further order of the Court. The security sum is to be lodged on or before 4 pm on Friday 25 October 2019. Failure to lodge security by that date in the sum specified will result in the matter being referred back to a Judge for the purposes of an order being made staying the proceedings.

[17] While Deloitte's have sought costs on the application for security, costs should be reserved until the challenges have been determined on their merits.

M E Perkins Judge

Judgment signed at 2.30 pm on 16 October 2019

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