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Nelson v Katavich [2013] NZEmpC 112 (18 June 2013)

Last Updated: 3 July 2013

IN THE EMPLOYMENT COURT CHRISTCHURCH

[\[2013\] NZEmpC 112](#)

CRC 13/13

IN THE MATTER OF a challenge to a determination of the

Employment Relations Authority

AND

IN THE MATTER OF an application for a stay of proceedings

BETWEEN MIA NELSON Plaintiff

AND TONY WAYNE KATAVICH First Defendant

AND HALDEMANN LLC Second Defendant

Hearing: on the papers - submissions received 31 May 2013

Appearances: Luke Acland, counsel for the Plaintiff

Rob Moodie, counsel for the Defendants

Judgment: 18 June 2013

INTERLOCUTORY JUDGMENT OF JUDGE A A COUCH

[1] Mia Nelson was employed as a writer and researcher until her dismissal in June 2012. She pursued three personal grievances; two alleging that she had been unjustifiably disadvantaged and a claim of unjustifiable dismissal. There were also claims for arrears of wages. An issue in relation to those claims was whether her employer was Mr Katavich personally or Haldeman LLC, a limited liability

company incorporated in the United States of America (Haldeman).

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[2] Those claims were investigated by the Employment Relations Authority (the Authority) which gave its determination on 19 February 2013. The Authority concluded that Haldeman was Ms Nelson's employer. It sustained her claim for arrears of wages, one of her claims of disadvantage and her claim of unjustifiable dismissal. Haldeman was ordered to pay Ms Nelson remedies totalling \$35,791.74.

[3] On 19 March 2013, two challenges were initiated. Ms Nelson challenged the Authority's conclusion that Haldeman was her employer and sought a finding that it was Mr Katavich. Haldeman challenged the Authority's determination that Ms Nelson had been unjustifiably dismissed and the remedies awarded as a result. Those two proceedings have since been consolidated as this proceeding.

[4] The statement of claim by Haldeman was accompanied by an application for a stay of execution of the Authority's orders for payment. This judgment decides that application.

[5] The documents have filed in relation to that application disclose the following sequence of events:

(a) On 26 February 2013, Ms Nelson obtained a certificate of determination from the Authority and lodged it with the District Court. That was done pursuant to [s 141](#) of the [Employment Relations Act 2000](#) which permits orders of the Authority to be enforced as if they were judgments of the District Court.

(b) On 28 February 2013, an order was made by the District Court for the examination of Mr Katavich as to the means of Haldeman. A summons was issued requiring Mr Katavich to attend an examination on 11 April 2013.

(c) On 19 March 2013, the application for stay of execution was made to this Court but no affidavits were provided in support of it.

(d) On 22 March 2013, the summons was served on Mr Katavich.

(e) On 25 March 2013, the Chief Judge issued a minute suggesting that the application for stay be resolved by Haldeman paying the money in question into this Court pending the outcome of the proceedings.

(f) On 2 April 2013, a relatively brief affidavit of Mr Katavich was filed in this Court, rejecting the Chief Judge's suggestion and referring to the enforcement proceedings in the District Court.

(g) On 9 April 2013, Mr Katavich gave a bank cheque for \$36,210.54 to the District Court. This comprised the full amount of the Authority's orders together with costs claimed for enforcement. Mr Katavich says that he paid this money because he did not want to disclose the financial affairs of Haldeman and he understood that the only way to avoid the risk of arrest for failing to answer the summons was to pay the total amount of money sought.

(h) After the cheque was received from Mr Katavich, the date of the examination scheduled to take place on 11 April 2013 was enlarged to

18 April 2013 to enable the cheque to be cleared.

(i) The cheque cleared and the order for examination was cancelled. On

29 April 2013, the District Court paid the money received to Ms

Nelson's solicitors who placed it their trust account.

[6] During this sequence of events, Mr Moodie wrote two letters to the District

Court as counsel for Mr Katavich and Haldeman. In the first letter, dated 2 April

2013, Mr Moodie informed the Registrar of the District Court of the history of the proceedings before the Authority, the challenges to the Employment Court and the fact that a stay of execution had been sought in the Employment Court. Against that background, Mr Moodie sought an adjournment of the examination of Mr Katavich. That adjournment was not granted.

[7] Mr Moodie's second letter was dated 8 April 2013 and Mr Katavich says that he gave it to the District Court bailiff with the bank cheque. The essential point of

the letter was that it purported to impose the following condition on the payment to the District Court:

This payment is made into court on the condition that the money is not to be paid or distributed to any other person except with the agreement of both parties to the proceedings or an order of the Court.

[8] During this sequence of events, Mr Moodie also filed several memoranda referring to events but it was not until 31 May 2013, when Mr Katavich's second affidavit was filed, that the Court had any evidence of what had occurred since 2

April 2013. By that time, the money had been in Ms Nelson's hands for a month.

[9] In support of the application, Mr Moodie filed a memorandum of submissions. In summary, those submissions are:

(a) Ms Nelson has been granted legal aid. It may be inferred from this that she is impecunious and may be unable to repay the money if Haldeman is successful in its challenge.

(b) In her challenge, Ms Nelson seeks to have Mr Katavich found liable in place of Haldeman. If she succeeds, she will then have to repay the money she has obtained by executing the orders against Haldeman.

(c) The challenges are to be decided in a hearing de novo. It follows that the determination of the Authority will be entirely replaced by the Court's decision.

(d) The payment to the District Court was conditional. Both the bailiff

and Ms Nelson's solicitors have failed to comply with that condition.

[10] While there may be some substance in these submissions, they overlook a fundamental issue. What Haldeman seeks is a stay of execution. The orders of the Authority have now been fully executed. Ms Nelson has the money. There is therefore no process which can now be stayed. It would be pointless for the Court to issue a stay which could not serve any purpose.

[11] The application for a stay of proceedings is dismissed.

[12] The plaintiff is entitled to costs on this application but I reserve the quantum for later consideration.

Judgment signed at 10.00 am on 18 June 2013.

A A Couch
Judge

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