



Employment Court of New Zealand

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Thompson v Middle Earth Flying School Limited [2015] NZEmpC 223 (14 December 2015)

Last Updated: 18 December 2015

IN THE EMPLOYMENT COURT AUCKLAND

[\[2015\] NZEmpC 223](#)

EMPC 259/2015

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

AND an application for stay of execution
of an order for costs

BETWEEN DONALD THOMPSON Plaintiff

AND MIDDLE EARTH FLYING SCHOOL
LIMITED
Defendant

Hearing: On the papers filed on 28 October, 20 November; by
telephone
hearing on 25 November 2015; and further papers filed
on
1 December and 8 December 2015

Appearances: R McNaughton, advocate for plaintiff
E Tanner, counsel for defendant

Judgment: 14 December 2015

INTERLOCUTORY JUDGMENT OF JUDGE CHRISTINA INGLIS

[1] The plaintiff pursued a claim of unjustified dismissal in the Employment Relations Authority (the Authority). The Authority found that the plaintiff was not an employee and accordingly was not entitled to pursue a personal grievance.¹ It dismissed his claim and subsequently awarded costs of \$3,500 against him.² The plaintiff has filed a challenge and has applied for a stay of execution of the costs

determination.

¹ *Thompson v Middle Earth Flying School Ltd* [2015] NZERA Auckland 243 (substantive).

² *Thompson v Middle Earth Flying School Ltd* [2015] NZERA Auckland 278 (costs).

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[2] The application for a stay is opposed. I heard briefly from the representatives during the course of the telephone conference on 25 November 2015 and granted leave for further submissions to be filed in support of their respective positions. The representatives confirmed that the parties are agreeable to the application being dealt with on the papers filed.

[3] A challenge does not operate as a stay unless the Court so orders.³

[4] The application for stay is essentially advanced on the ground that the defendant allegedly owes the plaintiff a considerable amount

of money and that the Authority's costs award ought to be offset against that amount. It is said that it would not be upholding the principles of equity and good conscience to require the plaintiff to pay the defendant's costs in these circumstances. It is also said that if the plaintiff is required to pay the amount ordered, his claimed losses may be further imperilled by concerns relating to the defendant's solvency. Somewhat unconventionally, the plaintiff suggests that these concerns could appropriately be dealt with by requiring the defendant to pay the sum of \$3,500 into Court pending the outcome of the plaintiff's challenge.

[5] The defendant, in opposing the application, submits that there are serious concerns that the plaintiff will not meet his obligations following his de novo challenge. The notice of opposition filed on behalf of the defendant makes it clear, however, that the defendant would be content with a stay on condition, namely that the plaintiff make a payment of \$3,500 into Court.

[6] While it initially appeared that the parties were at odds in relation to how the application might best be disposed of, the written submissions filed on behalf of the parties suggest otherwise. The plaintiff's submissions appear to be focussed on whether an order of security for costs would be appropriate. While the defendant has previously signalled an application for security, no such application is before the Court. The plaintiff's written submissions nevertheless make it clear that requiring the plaintiff to make a payment of \$3,500 into Court would be reasonable in the

circumstances.

3 [Employment Relations Act 2000, s 180.](#)

[7] I agree that a payment into Court by the plaintiff of a sum equivalent to the amount ordered against him is appropriate, and balances the concerns raised by each party. I have also considered the timeframe within which such a payment ought to be made, and have allowed for a longer period than I might otherwise have imposed, including having regard to the intervening Court vacation.

[8] I order a stay of execution of the costs determination of the Authority on condition. The conditions on which the stay is granted are that:

(a) The plaintiff is to pay the sum of \$3,500 to the Registrar of the Employment Court at Auckland no later than 4 pm on 1 February 2016, such sum to be held on interest-bearing deposit pending the outcome of the plaintiff's challenge;

(b) The balance in that account will be released to either the plaintiff or the defendant in accordance with the judgment of the Employment Court or otherwise by consent of both parties;

(c) If the sum of \$3,500 is not paid to the Registrar of the Employment Court by 4 pm on 1 February 2016, the stay will lapse and the costs order of the Authority will become immediately enforceable;

(d) The plaintiff is to pursue his challenge diligently.

[9] The parties have advised that they are attending mediation on 15 December

2015. The Registrar is to be advised as soon as practicable as to whether matters have been resolved in the forum. If not a telephone conference is to be convened to timetable the challenge through to a hearing.

[10] Costs on this application are reserved.

Judgment signed at 10 am on 14 December 2015

Christina Inglis
Judge