



Employment Court of New Zealand

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Zara's Turkish Limited v Kocaturk [2017] NZEmpC 151 (29 November 2017)

Last Updated: 5 December 2017

IN THE EMPLOYMENT COURT CHRISTCHURCH

[\[2017\] NZEmpC 151](#)

EMPC 273/2017

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

AND IN THE MATTER of an application of a stay of
 proceedings

BETWEEN ZARA'S TURKISH LIMITED
 Applicant

AND GÜLER KOCATÜRK Respondent

Hearing: On the papers dated 13 October, 1 November, 16
 November and
 28 November 2017 and by telephone 23 November and
 29
 November 2017

Representation: B Buckett, counsel for the applicant
 A Sharma, counsel for the respondent

Judgment: 29 November 2017

INTERLOCUTORY JUDGMENT OF JUDGE K G SMITH APPLICATION FOR A STAY

[1] Zara's Turkish Limited has challenged the Employment Relations Authority determination that Ms Güler Kocatürk was employed by it and awarding her unpaid wages and holiday pay.¹

[2] Zara has applied for a stay of the determination until its challenge is resolved. The application is opposed.

[3] As part of that application Zara proposed to pay the amount ordered by the

Authority into a trust account administered by the Registrar of this Court where it

¹ [2017] NZERA Christchurch 145.

ZARA'S TURKISH LIMITED v GÜLER KOCATÜRK NZEmpC CHRISTCHURCH [\[2017\] NZEmpC 151](#) [29
November 2017]

would be held on interest bearing deposit pending an order of the Court. An initial payment of \$20,000 was proposed followed by regular payments until the whole amount was paid. Ms Hanife Kokcu, who is a director of Zara, filed a supporting affidavit explaining that proposal, but did not state the dates on which each payment would be made.

[4] Ms Sharma, for the defendant, filed a memorandum opposing the application for a stay. While ostensibly Ms Kocatürk was opposed to a stay, this memorandum recognised the benefits of one being granted provided it was on condition that payment into the trust

account was required. It stopped short of consenting to the application but indicated agreement was possible.

[5] On 6 November 2017, a minute was sent to counsel seeking clarification about the possibility that they were, in fact, in agreement. On 16 November Ms Buckett filed a memorandum confirming agreement in principle had been reached but stating the parties were having difficulty over a proposed condition (or conditions) adequately dealing with time payment.

[6] On the same day Ms Sharma filed a memorandum that did not take issue with what Ms Buckett said, while raising a concern about the failure of Zara to pay the amount ordered and its ability to raise funds if that was needed.

[7] A telephone directions conference was convened on Thursday 23 November

2017 to discuss this matter. During that conference the parties confirmed their intention that a stay be granted, but they were still unable to settle on the wording of a condition or conditions. Time was allowed for counsel to consult with each other to see if a resolution could be reached.

[8] On 28 November 2017 counsel filed a joint memorandum proposing the Court grant a stay by consent subject to conditions. After further discussion with counsel on 29 November 2017 their proposed conditions are that:

(a) Zara will pay to the Registrar of the Court the amount ordered to be paid to Ms Kocatürk by the Authority (\$61,813.07 gross) in the following instalments:

(i) an immediate payment of \$20,000.00 no later than 30

November 2017;

(ii) payment of a further \$10,000.00 no later than 20 December

2017;

(iii) payment of a further \$10,000.00 no later than 20 January

2018;

(iv) payment of a further \$10,000.00 no later than 20 February

2018;

(v) payment of the balance of \$11,813.07 no later than 20 March

2018;

(b) each payment referred to in (a)(i)-(v) will be held in an interest bearing deposit and will not be disbursed except to comply with an agreement in writing between the parties or by order of the Court; and

(c) leave is reserved to vary, amend or revoke the stay, including seeking any further orders relating to the payments referred to in (a), on reasonable notice.

Analysis

[9] Filing a challenge to a determination of the Authority does not automatically operate as a stay.² Regulation 64 of the Employment Court Regulations confers on

the Court power to grant a stay where an election is made under s 179 of the Act.

² [Section 180](#) of the [Employment Relations Act 2000](#).

[10] In *NZ Cards Limited v Ramsay* the Court of Appeal summarised the relevant criteria to consider as follows:

“The criteria for the grant of a stay of execution are well known. In determining whether or not to grant a stay, the Court must weigh the factors in the balance between the successful litigant’s rights to the fruits of a judgment and the need to preserve the position in case the appeal is successful. Relevant factors include whether the appeal would be rendered nugatory, if the stay were not granted, the bona fides of the applicant as to the prosecution of the appeal, the effect on any third parties, injury or detriment to the respondent if the stay is granted, the novelty and importance of the question involved, the public interest in the proceedings, the strength of the case on appeal and the overall balance of convenience.”³

[11] Similar expressions of the test can be found in Employment Court cases such as *Assured Financial Peace Limited v Pais*.⁴ Those criteria assist in determining the overall interests of justice in deciding to grant or refuse the application.

[12] I consider the test in *NZ Cards* is met by the agreement the parties have reached.

[13] The application for a stay is granted subject to the conditions in [8] of this judgment.

[14] Costs are reserved.

Judgment signed at 4.15 pm on 29 November 2017

3 [\[2013\] NZCA 582.](#)

4 [\[2010\] NZEmpC 50.](#)

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