

**IN THE EMPLOYMENT COURT  
AUCKLAND**

**[2014] NZEmpC 181  
ARC 57/14**

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

BETWEEN                      GRAHAM D'ARCY-SMITH  
   Plaintiff

AND                                NATURAL HABITATS LIMITED  
   Defendant

Hearing:                      By written submissions filed on 31 July, 21 August and 23  
   September 2014

Appearances:              Plaintiff in person  
   D Stevenson, agent for defendant

Judgment:                  23 September 2014

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**INTERLOCUTORY JUDGMENT OF CHIEF JUDGE G L COLGAN**

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[1] This interlocutory judgment deals with the plaintiff's application for an order staying execution of the costs determination of the Employment Relations Authority.<sup>1</sup> Graham D'Arcy-Smith's claims that he was an employee of Natural Habitats Limited (NHL), and that he had been dismissed unjustifiably by the company, were dismissed by the Authority in a determination issued on 13 June 2014.<sup>2</sup> On 7 July 2014 the Authority issued a costs determination requiring Mr D'Arcy-Smith to pay to NHL the sum of \$1,211.53 towards the latter's costs.

[2] The defendant advised the Registry on 23 September 2014 that it was content for this application to be dealt with on the papers including submissions made in an email to the Registrar on that date.

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<sup>1</sup> *D'Arcy-Smith v Natural Habitats Limited* [2014] NZERA Auckland 287.

<sup>2</sup> *D'Arcy-Smith v Natural Habitats Limited* [2014] NZERA Auckland 237.

[3] By a Minute dated 5 September 2014, the Court allowed NHL the period of 14 days to file and serve any evidence in opposition to Mr D’Arcy-Smith’s affidavit evidence filed in support of the claim. NHL did not do so and relies only on its notice of opposition filed on 20 August 2014 and the submissions contained in its email to the Registrar of 23 September 2014 which are not evidence. That opposition relies principally on the defendant’s contention of the correctness of the Authority’s determination and describes Mr D’Arcy-Smith’s application as “a nuisance tactic in support of [his] vexatious claim ...”.

[4] Although Mr Stevenson, on behalf of NHL, says that he believes that “there is a high risk that the plaintiff will attempt to avoid paying the awarded costs”, there is no evidence to support that contention objectively.

[5] In the circumstances, the plaintiff is entitled to an order staying execution of the Authority’s costs award.

[6] Mr Stevenson has proposed that, as a condition of any stay of execution of the Authority’s costs award, Mr D’Arcy-Smith should be required to pay the relevant sum to the Registrar, to be held in an interest bearing account pending the outcome of the determination.

[7] That is an appropriate proposal in the circumstances. There will therefore be an order staying execution of the Authority’s costs award on condition that the plaintiff pays the sum of \$1,211.53 to the Registrar by 1 November 2014. That sum, plus accrued interest, is to be released only upon the written agreement of the parties or by order of the Court.

[8] To clarify the issue for these parties who are not professionally represented, that means that the defendant is not entitled to execute the Authority’s costs order until at least 1 November 2014. If, by that date, Mr D’Arcy-Smith has paid the sum to the Registrar, then the stay will continue, that is the defendant will not be entitled to enforce the costs award. If, however, that sum has not been paid to the Registrar, NHL will be at liberty to pursue its costs award against Mr D’Arcy-Smith.

[9] There is a further matter associated with the proceeding that can be dealt with at this point. That is the venue of the hearing of the challenge. Mr D'Arcy-Smith proposes that this be in Taupo whilst Mr Stevenson submits that the hearing should be in Auckland.

[10] The plaintiff resides in or near Taupo. The defendant has its registered office in Auckland. The parties' agreement was entered into in Taupo and the work was performed in that centre also. In these circumstances, the hearing of the challenge will be in Taupo.

[11] The scheduled telephone directions conference, which will deal with other preliminary matters, will be at 9 am on Thursday 25 September 2014.

GL Colgan  
Chief Judge

Judgment signed at 2.45 pm on Tuesday 23 September 2014