

**IN THE EMPLOYMENT COURT OF NEW ZEALAND
CHRISTCHURCH**

**I TE KŌTI TAKE MAHI O AOTEAROA
ŌTAUTAHI**

**[2020] NZEmpC 45
EMPC 322/2019**

IN THE MATTER OF proceedings removed from the Employment
Relations Authority

AND IN THE MATTER of an application for stay of proceedings

BETWEEN JOHN WILLIAMS
Plaintiff

AND RURAL LIVESTOCK LIMITED
Defendant

Hearing: On the papers

Appearances: C Murphy, counsel for plaintiff
H McIntosh, counsel for defendant

Judgment: 16 April 2020

**INTERLOCUTORY JUDGMENT OF JUDGE K G SMITH
(Application for stay of proceedings)**

[1] On 18 September 2019 the Employment Relations Authority removed the whole of this employment relationship problem to the Court pursuant to s 178 of the Employment Relations Act 2000 (the Act).

[2] Consequent on that decision the parties were directed to file pleadings. The plaintiff filed a statement of claim on 6 November 2019 in which he claimed, among other things, not having been paid:

- (a) his annual bonuses said to be due and owing to him under his employment agreement with the defendant for 2015 and 2016;
- (b) the full amount of his holiday entitlement; and
- (c) the full amount of his annual leave entitlement.

[3] In round numbers the plaintiff's claim is approximately \$500,000.

[4] The defendant filed a statement of defence and counterclaim on 6 December 2019. The defendant disputed the plaintiff's claim that it is indebted to him and claimed he breached his duties to it leading to financial losses of approximately \$7 million. It seeks to recover those losses from the plaintiff.

[5] A telephone directions conference was held on 17 March 2020 the purpose of which was to issue directions so that this proceeding could be dealt with. Before that conference a joint application was made, by memorandum, seeking a stay of the proceeding. As a result of directions issued following that conference a further joint memorandum of counsel has been filed explaining why the application has been made.

[6] Between June 2008 and July 2016 the plaintiff was employed by the defendant as a livestock agent. The defendant is involved in stock purchases and sales, auctioneering, valuing services, and represents parties involved in grazing transactions. The defendant's revenue comes from charging commission on transactions in which it represents either buyer or seller.

[7] The reason for this stay application is that on 11 September 2019 the Serious Fraud Office laid 20 charges against the plaintiff all arising from the time he was employed by the defendant. Four further charges were laid on 21 October 2019. The details of those charges do not need to be discussed in this decision, beyond recording that they relate to approximately \$2 million worth of sales notes generated by the plaintiff.

[8] The plaintiff has entered not guilty pleas to all of the charges. Counsel advised that the charges are scheduled for a case review on 1 May 2020; however, they

consider a further adjournment may be necessary because of the current level 4 alert status caused by the COVID-19 emergency. At this stage they have not been able to provide any estimate of when the prosecution may be concluded. A reasonable assessment is a lengthy hearing can be anticipated and trial dates are likely to be some time away.

[9] The reason a stay has been sought by both parties is because there is likely to be a substantial overlap in the evidence to be given in the District Court and in this Court. Counsel agreed that the charges involve allegations that the plaintiff deliberately generated sales notes that either:

- (a) were for transactions that never took place; or
- (b) relate to genuine transactions but the details of which were deliberately recorded inaccurately.

[10] The defendant's counterclaim relates to the same transactions as in the charging documents. A component of the counterclaim is about payments made by the defendant, either to settle claims or to pay damages awarded against it, to clients it says were the victims of the alleged dishonest behaviour by the plaintiff while he was its employee.

[11] The stay has been requested to enable the criminal proceeding to be concluded before this case is heard. The parties' agreed position is that in order to establish, on the balance of probabilities, that the claimed losses arose from the alleged misconduct by the plaintiff, the defendant will need to call more or less the same witnesses who will give evidence in the prosecution. There is also a strong possibility that the claim in this Court will be amended, depending on the outcome of the criminal proceeding.

[12] The Court has power to stay a proceeding.¹ The principle consideration is what is in the interests of justice, taking into account factors such as the potential effect on the other proceeding if a stay was not granted, the public interest, any duplications of witnesses or potentially wasted expense.

¹ See *Transpacific All Brite Ltd v Sanko* [2012] NZEmpC 7.

[13] I am satisfied a stay is appropriate. It is inevitable that witnesses in the criminal proceeding will also be required to give evidence in relation to the defendant's counterclaim. It would not be desirable to run the risk of potentially inconsistent findings if the proceedings were to continue at the same time.

Outcome

[14] By consent this proceeding is stayed pending further order of the Court.

[15] Leave is reserved to either party to review this stay on reasonable notice.

[16] Costs are reserved.

K G Smith
Judge

Judgment signed at 2 pm on 16 April 2020