

Reference No. HRRT 017/2019

UNDER HUMAN RIGHTS ACT 1993

BETWEEN MARCUS JAMES STEELE

PLAINTIFF

AND MSC 2018 LIMITED

DEFENDANT

AT WELLINGTON

BEFORE:
Mr RPG Haines ONZM QC, Chairperson

REPRESENTATION:
Mr MJ Steele in person

DATE OF HEARING: Heard on the papers

DATE OF DECISION: 20 May 2019

**DECISION OF CHAIRPERSON DISMISSING PLAINTIFF'S APPLICATION
THAT STAY OF PROCEEDINGS BE LIFTED¹**

Introduction

[1] These proceedings were filed on Monday 13 May 2019.

[2] The thirty day period allowed for the defendant to file a statement of reply has not yet expired.

[3] On 13 May 2019 I made an order pursuant to s 92D(1) of the Human Rights Act 1993 referring Mr Steele's complaint back to the Human Rights Commission. In addition the proceedings were stayed. My decision was based on:

¹ [This decision is to be cited as *Steele v MSC 2018 Ltd (Application for Removal of Stay)* [2019] NZHRRT 26.]

[3.1] A statement by Mr Steele in a memorandum dated 11 May 2019 that the Human Rights Commission “has been notified and a request made for mediation”.

[3.2] A statement by Mr Steele in a memorandum dated 12 May 2019 that the Tribunal order “mediation to occur by Teleconference”.

[4] The effect of s 92D(1) of the Act is that it is mandatory for the Tribunal to make an order referring the complaint back to the Human Rights Commission unless the Chairperson is satisfied at least one of the circumstances stipulated by subs (1)(b)(i) to (iii) has application.

[5] On the information provided by Mr Steele in his memoranda dated 11 and 12 May 2019 respectively none of the statutory circumstances applied. Nor was there any suggestion that the proceedings were urgent or of an interim nature.

Grounds for lifting stay

[6] Subsequent to the making of the referral and stay orders Mr Steele has by memorandum dated 16 May 2019 applied to have the stay order lifted on the grounds:

[6.1] The defendant has (allegedly) ignored “many” requests to mediate.

[6.2] The urgent and interim nature of the proceedings will be undermined.

Discussion

[7] As to the first ground, Mr Steele has asserted “many” requests to mediate have been made by him to the defendant. However, only two such requests have been particularised:

[7.1] The first was allegedly made on 6 March 2019. However, the text of the alleged request, as set out in the memorandum, makes it clear the request was not made in the context of a complaint made by Mr Steele to the Human Rights Commission that he had been the victim of sexual harassment under s 62 of the Act. Rather the request was for a Manpreet Singh Chawla to attend a meeting with “Community Constable, CYFS social worker, Gair McSkinning and myself immediately”. The proposed meeting was in relation to a third person, not Mr Steele and his complaint that he has been sexually harassed.

[7.2] The second (and last) request relied on by Mr Steele was made on 13 March 2019 and addressed to “Manpreet” in the following terms:

... here is section 62 of the Human Rights Act 1993. I make this mediation request to MSC Ltd (2018) with specific regard to Section 62(2)(3) of the Human Rights Act 1993.

[8] There are several difficulties with the first ground:

[8.1] The response by the defendant to the two alleged requests is not mentioned by Mr Steele.

[8.2] The “requests” were not made in the context of a complaint which had been lodged by Mr Steele with the Human Rights Commission.

[8.3] The mediation anticipated by the referral order under s 92D is mediation facilitated by the Human Rights Commission, not by Mr Steele.

[9] As to the second ground, Mr Steele has at no stage in his communications with the Tribunal mentioned any grounds of urgency or provided any evidence to justify the claim these proceedings are of an urgent nature. The claim appears to be opportunistic.

[10] There is the further point that it is not acceptable for a plaintiff to request mediation and then, three days after the s 92D order has been made, to assert that the Commission's process will not contribute constructively to resolving the complaint and that the urgent and interim nature of the proceedings would be undermined.

Conclusion

[11] No proper grounds for the lifting of the stay having been shown, the application is dismissed.

ORDER

[12] The application dated 16 May 2019 for an order that the stay of proceedings be lifted is dismissed.

[13] The Secretary is directed to provide a copy of this decision to the Human Rights Commission, Mr Steele and to MSC 2018 Limited.

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Mr RPG Haines ONZM QC
Chairperson