

Reference No. HRRT 017/2019

UNDER THE HUMAN RIGHTS ACT 1993

BETWEEN MARCUS JAMES STEELE

PLAINTIFF

AND MSC 2018 LIMITED

DEFENDANT

AT WELLINGTON

BEFORE:

Ms J Foster, Deputy Chairperson
Dr SJ Hickey MNZM, Member
Dr JAG Fountain, Member

REPRESENTATION:

Mr MJ Steele in person
Mr M Chawla, Director of MSC 2018 Limited for defendant

DATE OF HEARING: Heard on the papers

DATE OF DECISION: 3 March 2020

**DECISION OF TRIBUNAL
LIFTING STAY AND EXTENDING TIME FOR FILING STATEMENT OF REPLY¹**

Background

[1] On 13 May 2019 these proceedings were filed, and a notice of proceedings was served on the defendant. On that same day Mr Steele's complaint was referred to the Human Rights Commission under s 92D (1) of the Human Rights Act 1993 and the proceedings stayed: *Steele v MSC 2018 Ltd (Referral back to the Human Rights Commission)* [2019] NZHRRT 25. The referral was made as it appeared from what was known about the complaint that it may be able to be resolved by the parties and the

¹ [This decision is to be cited as *Steele v MSC 2018 Ltd (Removal of Stay and Extension of Time)* [2020] NZHRRT 6]

Commission (Mr Steele had stated that the Commission “has been notified and a request made for mediation” and that the Tribunal order “mediation to occur by teleconference”).

[2] On 16 May 2019 Mr Steele applied to have the stay lifted on grounds that the defendant had (allegedly) ignored “many” requests to mediate and the urgent and interim nature of the proceedings would be undermined. That application was dismissed on 20 May 2019: *Steele v MSC 2018 Ltd (Application for Removal of Stay)* [2019] NZHRRT 26]. The reasons for the dismissal included that: the “requests” were not made in the context of a complaint made to the Human Rights Commission; there was no evidence provided to justify the claim these proceedings are of an urgent nature; and that it is not acceptable for a plaintiff to request mediation and then, three days after a s 92D order has been made assert 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.

Lifting of stay

[3] On 28 November 2019 Mr Steele emailed the Tribunal requesting the stay be lifted and attaching a copy of a letter from the Human Rights Commission dated 20 November 2019 that informed Mr Steele the Commission was declining to take further action on his complaint. By *Minute* dated 12 December 2019 Mr Steele was directed to file and serve his application to lift the stay by way of memorandum that attaches the letter from the Human Rights Commission.

[4] Mr Steele filed and served memoranda applying to remove the stay on 18 December 2019, 12 January 2020 and 27 January 2020. In respect of the stay the essence of Mr Steele’s submission is that there is no basis to maintain a stay of proceedings following the Human Rights Commission confirming they have been unable to mediate the matter.

[5] The defendant opposes the lifting of the stay. In the defendant’s memorandum dated 21 January 2020 it is submitted that the stay should remain because the proceedings are unreasonable, and it and previous employees have suffered enough harassment from Mr Steele’s unfounded complaints.

[6] The stay was ordered as the complaint had been referred back to the Human Rights Commission so the parties had an opportunity to resolve the complaint by mediation. As it has not been possible to resolve the matter by mediation there is now no basis for the stay. Whilst the defendant considers the proceedings are unreasonable, that is not a basis for a stay of proceedings. Mr Steele must be given an opportunity to progress his claim to allow the Tribunal to determine the merits of his complaint.

Extension of time for filing statement of reply

[7] No statement of reply has yet been filed. This is unsurprising, as immediately after the complaint was received by the Tribunal it was referred to the Human Rights Commission, and the proceedings stayed. The defendant now being outside of the 30 days statutory time frame for the filing of a statement of reply, the Tribunal must grant leave for the statement of reply to be filed out of time (refer Regulation 15, Human Rights Review Tribunal Regulations 2002).

[8] In these circumstances no prejudice arises from the delay in filing the statement of reply, but prejudice would arise if the defendant was denied the opportunity to defend the

claim. Leave will be granted for the defendant to file the statement of reply out of time. The statement of reply is to be filed and served by 3 April 2020.

[9] A teleconference will be convened following the filing of the statement of reply for the purposes of timetabling pre-hearing steps.

ORDERS

[10] For the reasons given the following orders are made:

[10.1] The order made by the Chairperson on 13 May 2019 staying these proceedings is set aside.

[10.2] MSC 2018 Limited is granted leave to file and serve its statement of reply by 4pm on Friday 3 April 2020.

[10.3] The Secretary of the Tribunal is to convene a teleconference following the filing of the statement of reply, for the purposes of timetabling pre-hearing steps.

[10.4] Leave is reserved to both parties to make further application should the need arise.

.....
Ms J Foster
Deputy Chairperson

.....
Dr SJ Hickey MNZM
Member

.....
Dr JAG Fountain
Member