

**IN THE EMPLOYMENT COURT
AUCKLAND**

**[2011] NZEmpC 16
ARC 4/11**

IN THE MATTER OF a challenge to a determination of the
Employment Relations Authority
AND IN THE MATTER OF an application for stay of proceedings

BETWEEN DRAPAC LTD
Plaintiff

AND ROBERT WENDUO PENG
Defendant

Hearing: By memoranda of submissions

Counsel: Quan Shu, agent for plaintiff
Royal Reed, counsel for defendant

Judgment: 23 February 2011

JUDGMENT OF CHIEF JUDGE G L COLGAN

[1] The parties have agreed that the Court may deal with the plaintiff's application for stay of execution of the monetary remedies, ordered by the Authority¹, on the papers.

[2] Although the imposition of any condition on the order for stay that it seeks is opposed by the plaintiff, that is on erroneous grounds. The plaintiff says that it should not be required to secure the sum in issue until it is clearly sorted out at the hearing of its challenge. That overlooks, however, the fact that the Authority has investigated the dispute and determined that Drapac Ltd is liable to the defendant for this sum. The defendant, therefore, has a finding in his favour which is recognised in law and is enforceable unless and until overturned on a challenge.

¹ AA525/10, 23 December 2010.

[3] There is evidence that until very recently, the plaintiff has been prepared to pay the amount in issue to the defendant's solicitors to be held on trust by them, but that arrangement has apparently not succeeded.

[4] The plaintiff seeking the stay has not filed any affidavit evidence in support as is both usual and especially necessary if the Court is asked to order a stay without conditions as the plaintiff seeks.

[5] There is no suggestion that the plaintiff is unable to pay the sum ordered by the Authority.

[6] In these circumstances, I make an order that execution of the determination of the Employment Relations Authority between these parties is to be stayed on condition that, within seven days of the date of this order, the plaintiff pays to the Registrar of the Employment Court at Auckland the sum of \$26,750.28 to be held by the Registrar on interest bearing deposit and disbursed only by agreement in writing of both parties or by direction of the Employment Court.

[7] The defendant is entitled to a contribution to costs on this application but the amount of that order is reserved until other questions of costs are for determination between the parties.

[8] The Registrar should now set up a directions conference between the parties' representatives and a judge so that it can be timetabled to a fixture.

GL Colgan
Chief Judge

Judgment signed at 9.30 am on Wednesday 23 March 2011