

**ORDER PROHIBITING PUBLICATION OF NAMES
AND IDENTIFYING PARTICULARS OF THE PARTIES**

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

**I TE KŌTI TAKE MAHI O AOTEAROA
TĀMAKI MAKURAU**

**[2025] NZEmpC 46
EMPC 195/2024**

IN THE MATTER OF a challenge to a determination of the
Employment Relations Authority

AND IN THE MATTER OF an application for variation of an order for
security for costs

BETWEEN LMN
Plaintiff

AND STC
Defendant

Hearing: On the papers

Appearances: LMN, plaintiff in person
JM Keating and L Krajancic, counsel for defendant

Judgment: 17 March 2025

**INTERLOCUTORY JUDGMENT (NO 2) OF JUDGE M S KING
(Application for variation of an order for security for costs)
(Application for leave to make further submissions)**

[1] On 24 January 2025 the Court issued a judgment granting interim non-publication orders and awarding the defendant \$12,000 in security for costs to be paid within 21 days.¹

¹ *LMN v STC* [2025] NZEmpC 7.

[2] On 28 January 2025 the plaintiff filed an application seeking leave to adjust the timeframe for her to pay the order for security for costs and leave to file and serve further submissions in light of new information she may receive from the Ombudsman, the Privacy Commissioner and possibly others. The defendant opposed the application. A summary of the defendant's grounds for opposition include:

- (a) There is no basis for the applications.
- (b) The defendant is a small rural school. The plaintiff's conduct of "incessant filing of various pleadings and complaints ... in this and various other jurisdictions" has resulted in the defendant incurring significant legal fees to defend itself in this proceeding and other proceedings. The defendant's resources are dwindling. It seeks to limit its legal costs where possible.
- (c) The defendant has been prejudiced by delays. Extending the date for payment of the security for costs by five months would further prejudice it.
- (d) The defendant has indicated that it is prepared to consent to the plaintiff paying the security ordered by the Court by 31 March 2025. However, it seeks that an unless order be made which provides that unless the plaintiff pays the security for costs to the Court by 31 March 2025, her claims against the defendant in this proceeding will be struck out.

[3] The parties have agreed that the applications can be determined on the papers. The plaintiff has filed an affidavit and submissions in support of her applications. The defendant has not filed any evidence or submissions. It has indicated that it will abide by the decision of the Court.

Application for variation of order for security for costs

[4] The plaintiff applied for the security for costs order, which required the plaintiff to pay \$12,000 as security into Court by 14 February 2025, to be varied to allow for

the defendant to make fortnightly payments of \$1,200 beginning on 6 February 2025, with the total sum of \$12,000 security being paid into Court by 12 June 2025.

[5] The Court has the power to make the orders sought under s 221 of the Employment Relations Act 2000. It may extend the time within which anything is to be done and may generally make such directions as are necessary or expedient in the circumstances.

[6] The plaintiff submitted that the order for security for costs effectively obstructs the plaintiff's access to justice and that the application to adjust the timeframe for payment would allow her to eventually pay the security ordered. She submitted that the proposed payment plan, given her current financial circumstances, is fair and reasonable and demonstrates her commitment to the case. The plaintiff submitted that this would give the defendant the security ordered by the Court while ensuring access to justice. She submitted that such a variation in the circumstances is equitable and in the interests of justice.

[7] The plaintiff submitted that the defendant's conduct in this proceeding has increased the costs of litigation through the use of undue procedural tactics and litigation strategies. It was submitted that it would be inequitable for the Court to allow such tactics to succeed, with the effect of preventing the plaintiff from being able to bring her claims before the Court. She submitted that granting the application would be consistent with the right to justice set out in s 27(1) of the New Zealand Bill of Rights Act 1990.

[8] The plaintiff in her submissions refers to the Court's judgment in "*Fowlie v Stonex (No 2) [2015] NZEmpC 94 at [18]*" in support of the proposition that the Court will take financial constraints into account when making procedural rulings. However, no such case exists, and the plaintiff is reminded that information provided by generative artificial intelligence ought to be checked before being relied on in documents filed in court proceedings.²

² Courts of New Zealand "Guidelines for Use of Generative Artificial Intelligence in Courts and Tribunals: Non-lawyers" (7 December 2023) <www.courtsofnz.govt.nz>.

[9] The plaintiff's submissions also seek to engage in arguing the merits of the application for security for costs and the plaintiff's substantive claims. These arguments are not relevant for the purpose of deciding this application.

[10] There is no evidence before the Court to support the plaintiff's claims that the defendant's conduct has unnecessarily protracted the proceedings or increased costs. Nor has the plaintiff provided any evidence to verify her financial circumstances, including any real evidence of her assets and liabilities.

[11] However, in the circumstances, I consider that it is appropriate to make the orders sought. The plaintiff has indicated that she is not in a position to pay the security ordered immediately but has stated that she will be able to comply by 12 June 2025. I consider that it would be consistent with the Court's equity and good conscience jurisdiction to give the plaintiff one more opportunity to comply with the Court's order.

[12] Although I am willing to grant an extension of time, I consider that the order should be made subject to conditions to protect the defendant's position. The plaintiff proposed that payments be made on a fortnightly basis, beginning from 6 February 2025, but no payments have yet been received. As the plaintiff has indicated that she will be able to complete payments by 12 June 2025, I consider that she will need to increase the amounts to be paid on a fortnightly basis. This ought not to prejudice her if she was in fact able to make fortnightly payments of \$1,200 from 6 February 2025 as she claimed in her affidavit. Therefore, a schedule of payments to be made is set out below.

Application for leave to make further submissions

[13] The plaintiff has filed an application for leave to make further submissions in relation to her substantive challenge, being her de novo challenge to the determination of the Employment Relations Authority. The plaintiff in her evidence and submissions refers to her awaiting information from:

- (e) the outcome of an investigation from the Office of the Ombudsman; and
- (f) the Privacy Commissioner regarding the issue of privacy breaches and non-compliance with the Official Information Act 1982; and
- (g) other sources, including the Ministry of Education.

[14] The plaintiff says in her evidence that she believes the information will be relevant to her substantive claim against the defendant, and she seeks leave to file submissions on this information once she receives it.

[15] The substantive proceedings have not been set down for a hearing. There are no orders directing the parties when to file evidence or legal submissions. The substantive proceedings will be timetabled once all interlocutory matters are concluded, including the payment of security for costs. In these circumstances, the plaintiff's application for leave to make further submissions is unnecessary, and the application is declined.

Application for unless orders

[16] The defendant seeks an order that unless the plaintiff complies with the security for costs order, the proceedings should be struck out. I consider that application is premature. However, if the plaintiff fails to pay the ordered security into Court by 12 June 2025, the defendant may wish to file an application to strike out the challenge under r 7.48 of the High Court Rules 2016.³

Outcome

[17] The application for leave to file further submissions is unnecessary and is accordingly declined.

[18] The application for an extension of time to pay security for costs is granted. The plaintiff will pay the following sums into Court by the following dates:

³ See *Carrington Resort Jade LP v Maheno* [2025] NZEmpC 29 at [18].

- (a) \$1,700 by 20 March 2025;
- (b) \$1,700 by 3 April 2025;
- (c) \$1,700 by 17 April 2025;
- (d) \$1,700 by 1 May 2025;
- (e) \$1,700 by 15 May 2025;
- (f) \$1,700 by 29 May 2025;
- (g) \$1,800 by 12 June 2025.

[19] The sum is to be placed by the Registrar of the Court in an interest-bearing account until further order of the Court.

[20] As the plaintiff sought an indulgence from the Court after failing to comply with the Court's previous order in this matter and was unsuccessful on her second application, I consider that the defendant is entitled to costs. The defendant only filed a one-page document in response to the applications, so I consider that it is only necessary to make a small award. Therefore, I order that the plaintiff is to pay the defendant \$500 as a contribution within 21 days of the date of this judgment.

M S King
Judge

Judgment signed at 9.30 am on 17 March 2025